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October 5, 2022

Honorable Members of the City Council
City Hall, Room 395
200 North Spring Street
Los Angeles, California 90012

Council Districts 1, 4 & 10

REGARDING: REVISED WILSHIRE CENTER MERCHANT-BASED BUSINESS IMPROVEMENT DISTRICT 2023 RECONFIRMATION

Honorable Members:

On October 31, 1995, the City Council adopted Ordinance 170755, which established the Wilshire Center Business Improvement District, located in Council Districts One, Four and Ten (CFs 94-1949, 99-2168, 04-2480, 06-2513, 09-2715, 12-1696 & 21-1108). The City is required to conduct reconfirmation proceedings in order to levy a special assessment, which supports each year of District operations. The Wilshire Center Business Improvement District will complete its twenty-seventh operating year on December 31, 2022. The Wilshire Center Business Improvement District Advisory Board has approved and submitted an Annual Report and is ready to proceed with the reconfirmation of the Wilshire Center Business Improvement District. The Annual Report for the Business Improvement District's twenty-eighth operating year, beginning January 1, 2023 through December 31, 2023, is presented with this Report for Council consideration as "Attachment 1."

RECONFIRMATION PROCESS

The reconfirmation process consists of the adoption of an Ordinance of Intention, the approval of the Annual Report from the District's management entity, and a public meeting and a public hearing prior to the adoption of an Ordinance, which would authorize the special assessment to fund operations for the next year of the program. We have received and reviewed the Annual Report as submitted by the Wilshire Center Business Improvement District Advisory Board and as required by law (Section 36533, California Streets and Highways Code). The report includes the various programs and activities, which will be supported by assessment revenue and interest earnings.

AN EQUAL EMPLOYMENT OPPORTUNITY – AFFIRMATIVE ACTION EMPLOYER

PROPOSED BUDGET

The proposed budget for the Wilshire Center Business Improvement District's 2023 operating year is \$721,243.34. This amount includes revenue of \$768,111.25 from Business Improvement District assessments less approximately \$46,086.67 for uncollected assessments, plus approximately \$49,000.00 to pay end of the year expenses for 2022 with a reserve for 2023 of \$49,781.24. A copy of the budget is included in the Annual Report (Attachment 1, Exhibit A).

PROPOSED DISTRICT BOUNDARIES

The Wilshire Center Business Improvement District's boundaries for its 2023 operating year are unchanged from the Business Improvement District's 2022 operating year. They are generally described as the north side of Third Street on the north, the south side of Eighth Street on the south, the west side of Hoover Street to the east, and the west side of Wilton Place on the west. A map illustrating the Wilshire Center Business Improvement District's boundaries for its 2023 operating year is included in the Annual Report (Attachment 1, Exhibit E).

PROPOSED IMPROVEMENTS AND PROGRAMS

The Wilshire Center Business Improvement District's activities and programs for the 2023 operating year include, but are not limited to: maintenance, marketing, security and administrative costs which would be supported by assessment revenue and are described in its Annual Report (Attachment 1).

ASSESSMENT METHODOLOGY

The basis for the assessment methodology for the Wilshire Center Business Improvement District is services received, business classification, assessable square footage and location (zone) within the Business Improvement District area. The Technical Research Unit of the City Clerk's Neighborhood and Business Improvement District Division has verified the database of assessable area within the Wilshire Center Business Improvement District's boundaries of 39,069,820 square feet.

There are three zones within the District, Zone A1, Zone A2 and Zone A3. The Annual Report for 2023 proposes a rate of \$0.0161 (1.61 cents) per square foot of gross building area or land area, whichever is larger for Zone A1, a rate of \$0.0199 (1.99 cents) per square foot of gross building area or land area, whichever is larger for Zone A2 and a rate of \$0.0325 (3.25 cents) per square foot of gross building area or land area, whichever is larger for Zone A3. The assessment rates for all three zones remain the same as in 2022. The assessment rates determined by this assessment methodology reflect the specific benefits to the payors from the services provided.

A full description of the assessment methodology with the classification of businesses and assessment schedule by benefit zone is included in the Annual Report (Attachment

1, Exhibits B, C and D). A listing of all Wilshire Center Business Improvement District stakeholders, by address and benefit zone with assessment amount totals for 2023, is attached to this transmittal (Attachment 2).

DISTRICT ADVISORY BOARD

An advisory board consisting of business owners will govern the Business Improvement District. The advisory board provides general oversight of Business Improvement District operations, prepares annual reports, and makes recommendations to the City Council on district budget and other issues. Section 36530 of the Streets and Highways Code requires that the City Council appoint the advisory board. The City Council may designate existing advisory boards or commissions to serve as the advisory board for the District or may create a new advisory board for that purpose. A list of the proposed District's current advisory board members is attached.

EXEMPTION UNDER PROPOSITION 26

On November 2, 2010, voters in the State of California passed Proposition 26, which broadened the definition of taxes and which require approval by two-thirds of each house of the Legislature or by local voter approval. However, Proposition 26 provides for exemptions.

Under Proposition 26, assessments for specific benefits are not defined as taxes and are exempt under Article XIII C §1(e)(1) which states, "A charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege." For the City Council to find that the Wilshire Center Business Improvement District is exempt from Proposition 26, it must find that 1) the assessment dollars are used in a manner that creates a clear and direct link between the services provided and the benefit to the assessed business; 2) no business other than the assessed businesses will benefit from the assessment and services; and 3) the assessment imposed does not exceed the reasonable cost to the local government of conferring the benefit.

The assessments for the Wilshire Center Business Improvement District are used to provide specific benefits directly to the payor. The specific benefit to the payor are the maintenance services, marketing and security services and administrative services which will be provided directly to assessed businesses within the Wilshire Center Business Improvement District. These services will, in turn, provide specific benefits to the payors in the form of overall improved area aesthetics, which will result in an increase in customers and visitors to the district. This will, in turn, result in the increase of retail and commercial business to payors located within the District boundaries. The services are funded solely by the assessments collected and are provided only to the businesses that pay the assessments. No services are provided to businesses that do not pay the assessments or to businesses located outside of the District boundaries. Such services cannot be provided without charging the assessment. Furthermore, the

assessments are calculated based on the reasonable cost of providing the services to the payor and, thus, do not exceed the reasonable cost to the local government in conferring the benefit.

Government Code Section 53758 was recently enacted to, among other things, clarify the definition of specific benefit. The discussion provided herein regarding the specific benefit to payors is consistent with Government Code Section 53758.

CONTRACTING WITH NON-PROFIT SERVICE PROVIDER

Upon the establishment of the District, State law requires that the City enter into an agreement with an Owners' Association for the administration of the District. City policy dictates that competitive bidding requirements are to be met when contracting. However, Charter Sections 371(e)(2) and 371(e)(10) provide exceptions to the competitive bidding requirements and states, in relevant part, that the competitive bidding process does not apply to contracts "for the performance of professional, scientific, expert, technical, or other special services of a temporary and occasional character" and "where the contracting authority finds that the use of competitive bidding would be undesirable, impractical or impossible or where the common law otherwise excuses compliance with competitive bidding requirements."

From its first operating year, the Wilshire Center Business Improvement District has been administered by the Wilshire Center Business Improvement Corporation, a California non-profit mutual benefit corporation which oversees expenditures and manages and implements improvements and activities related to the Business Improvement District. Through its longstanding presence in the Wilshire Center community and as administrator of the Business Improvement District during its twenty-seven years of operation, the Wilshire Center Business Improvement Corporation possesses unique knowledge and expertise of the Wilshire Center Business Improvement District and has a vested interest in its success. Therefore, the City Clerk finds that it would be undesirable and impractical to comply with the competitive bidding requirements or to select another entity to administer the District.

ASSESSABLE CITY PROPERTY

There are seven (7) City-owned properties located within the Wilshire Center Business Improvement District boundaries. Because the Wilshire Center Business Improvement District is a merchant-based Business Improvement District, there are no assessments to be paid for these City-owned properties.

FISCAL IMPACT

This is a merchant-based Business Improvement District and there are no assessments for City-owned properties within the Business Improvement District, therefore, there is no impact on the General Fund.

RECOMMENDATIONS:

1. FIND that the assessments imposed by the Wilshire Center Business Improvement District for the 2023 fiscal year provide services that directly benefit each of the businesses that pay the assessments.
2. FIND that the services funded by the assessments are provided only to each of the assessed businesses within the boundaries of the District.
3. FIND that the assessment imposed does not exceed the reasonable cost of conferring the benefits.
4. FIND that the proposed improvements and activities are completely separate from the day-to-day operations of the City of Los Angeles.
5. FIND that the assessments for the proposed business based District are not taxes and that the District qualifies for exemption from Proposition 26 under exemption 1 of Article XIII C §1(e)(1).
6. FIND that the services to be provided by the Owners' Association, Wilshire Center Business Improvement Corporation, are in the nature of professional, expert, technical or other special services, that the services are of a temporary and occasional character, and that the use of competitive bidding would be impractical, not advantageous, undesirable or where the common law otherwise excuses compliance with competitive bidding requirements.
7. ADOPT an Ordinance of Intention confirming the Wilshire Center Business Improvement District's Annual Report and levying an annual assessment for the Wilshire Center Business Improvement District's twenty-seventh operating year, January 1, 2023 to December 31, 2023.
8. DIRECT the City Clerk to schedule, prepare, publish, and mail the joint notice of public meeting and public hearing, as required by the provisions of Section 36500 et seq. of the California Streets and Highways Code.
9. INSTRUCT the City Clerk, subject to approval by the City Attorney as to form and legality, to prepare an enabling Ordinance levying the special assessment for the Wilshire Center Business Improvement District's twenty-eighth operating period beginning January 1, 2023 to December 31, 2023.
10. APPROVE the Wilshire Center Business Improvement Corporation, a California non-profit mutual benefit corporation, to administer the proposed services of the Wilshire Center Business Improvement District pursuant to Section 36500 et seq. of the California Streets and Highways Code and City regulations.

11. AUTHORIZE the City Clerk, subject to City Attorney approval, to prepare, execute, and administer a contract between the City and the Wilshire Center Business Improvement Corporation to administer the Wilshire Center Business Improvement District, if the Ordinance reconfirming the Business Improvement District is adopted.

12. APPOINT the Advisory Board listed in the attached 2023 Annual Report.

Sincerely,

Signed with ClerkSign



Oct 06, 2022 12:45PM

Holly L. Wolcott
City Clerk

HLW:PYL:cg:dn

Attachments: Wilshire Center Business Improvement District 2023 Annual Report
 Ordinance of Intention