

Memorandum #08-63

To: City Commission
From: Finance Officer
Date: 3/20/2008
Subject: Memorandum and Discussion of Business Improvement Districts / SDCL 9-55

Attached to this memorandum is South Dakota Codified Law (SDCL) 9-55 an act entitled Business Improvement Districts. Commissioner Knoff has asked that this agenda item be included and discussed. Communities throughout South Dakota have formed Business Improvement Districts for a number of different reasons to fund various activities and projects allowed by this section of SDCL. Aberdeen and Rapid City, to name a couple, have used this act to authorize a room charge or fee to hotels / motels. Of particular note in this chapter of SDCL are the following:

- 9-55-2. Imposition of special assessment or general business license and occupation tax.***
- 9-55-3. Uses to which generated funds may be put.***
- 9-55-13. Special assessment against real property located in district--Procedure.***
- 9-55-14. Levy of general business occupation tax in addition to or in place of special assessments.***
- 9-55-18. Purpose of taxation or assessment by municipality--Limitations on taxation and assessment--Method of taxation or assessment.***

It is recommended that the City Commission begin discussions about the possibility of forming Business Improvement Districts to raise funds to be used for purposes allowed under SDCL 9-55-3.

Thank you,

Al Viereck
Finance Officer

SDCL 9-55-1. Definition of terms. Terms as used in this chapter mean:

- (1) "Assessable unit," the front foot, square foot, equivalent front foot, or other unit of assessment established under the proposed method of assessment set forth in the resolution of intent to create a business improvement district;
- (2) "Occupation tax," a fee imposed on any person with an established place of business within the district for the privilege of doing business;
- (3) "Record owner," the fee owner of real property as shown in the records of the office of the register of deeds in the county in which the business area is located. A contract purchaser of real property is the record owner for the purpose of this chapter and the only person entitled to petition pursuant to § 9-55-9 or protest pursuant to § 9-55-10; and
- (4) "Space," the square foot space wherein customers, patients, clients, or other invitees are received and space from time to time used or available for use in connection with a business or profession of a user, except all space owned or used by political subdivisions.

Source: SL 1986, ch 81, § 1.

9-55-2. Imposition of special assessment or general business license and occupation tax. Any municipality may impose a special assessment upon the property within a business improvement district in the municipality or a general business license and occupation tax on businesses and users of space within a business improvement district or both.

Source: SL 1986, ch 81, § 2; SL 2003, ch 47, § 2.

9-55-3. Uses to which generated funds may be put. Any money generated pursuant to § 9-55-2 may be used for any one or more of the following purposes:

- (1) The acquisition, construction, maintenance, and operation of public off-street parking facilities for the benefit of the district area;
- (2) Improvement of any public place or facility in the district area, including landscaping and plantings;
- (3) Construction or installation of convention or event centers, pedestrian shopping malls or plazas, sidewalks, including moving sidewalks, parks, meeting and display facilities, bus stop shelters, lighting, benches or other seating furniture, sculptures, trash receptacles, shelters, fountains, skywalks, and pedestrian and vehicular overpasses and underpasses or any useful or necessary public improvement;
- (4) Leasing, acquiring, constructing, reconstructing, extending, maintaining, or repairing parking lots or parking garages, both above and below ground, or other facilities for the parking of vehicles, including the power to install such facilities in public areas, whether such areas are owned in fee or by easement, in the district area;
- (5) Creation and implementation of a plan for improving the general architectural design of public areas in the district area;
- (6) The development of any activities and promotion of the district area;
- (7) Maintenance, repair, and reconstruction of any improvements or facilities authorized by this chapter;
- (8) Any other project or undertaking for the betterment of the facilities in the district area, whether the project is capital or noncapital in nature;
- (9) Enforcement of parking regulations within the district area; and
- (10) Employing or contracting for personnel, including administrators for any improvement or promotional program under this chapter, and providing for any service necessary or proper to carry out the purposes of this chapter.

Source: SL 1986, ch 81, § 3; SL 2005, ch 54, § 1.

9-55-4. Creation of business improvement district--Established business area. A business improvement district may only be created as provided by this chapter and shall be within the boundaries of an established business area of the municipality zoned for business, public, or commercial purposes. For the purposes of this chapter, an established business area, may also include noncontiguous property within the incorporated

municipality that has a common zoning designation. Any business improvement district that includes noncontiguous property pursuant to this section, may by resolution of the governing body, add qualifying property to the business improvement district.

Source: SL 1986, ch 81, § 4; SL 2005, ch 54, § 2; SL 2007, ch 41, § 1

9-55-5. Appointment of business improvement board--Designation of boundaries of district-- Duties of board--Proposal of more than one district as part of same development plan. The mayor shall, with the approval of the governing body, appoint a business improvement board consisting of property owners, residents, business operators or users of space within the business area to be improved. The governing body shall, by resolution, designate the boundaries of the business area prior to the time of the appointment of the board. The board shall make recommendations to the governing body for the establishment of a plan or plans for improvements in the business area. If the improvements to be included in one business area offer benefits that cannot be equitably assessed together under this chapter, more than one business improvement district as part of the same development plan for that business area may be proposed. The board may make recommendations to the municipality as to the use of any revenue collected pursuant to § 9-55-2.

Source: SL 1986, ch 81, § 5.

9-55-6. Composition of board--Vacancies--Terms--Officers. The board shall consist of no less than five members to serve such terms as the governing body, by resolution, determines. The mayor, with the approval of the governing body, shall fill any vacancy for the remainder of the term vacated. A member of such board may serve more than one term. The board shall select from its members a chairperson and a secretary.

Source: SL 1986, ch 81, § 6.

9-55-7. Creation of districts by resolution of intent--Contents--Basis of occupation tax or special assessment. Upon receiving a recommendation from the business improvement board, the governing body may create one or more business improvement districts by adopting a resolution of intent to establish a district or districts. The resolution shall contain the following information:

- (1) A description of the boundaries of any proposed district;
- (2) The time and place of a hearing to be held by the governing body to consider establishment of a district or districts;
- (3) The proposed public facilities and improvements to be made or maintained within any such district; and
- (4) The proposed or estimated costs for improvements, facilities and activities within any district, and the method by which the revenue shall be raised. If a special assessment is proposed, the resolution also shall state the proposed method of assessment.

The notice of intent shall recite that the method of raising revenue shall be fair and equitable. In the use of a general occupation tax, the tax shall be based primarily on the square footage of the owner's and user's place of business or based on rooms rented by any lodging establishment to transient guests as defined in § 10-45-7. If the occupational tax is based on rooms rented by a lodging establishment, the tax shall be imposed on the transient guest and such tax may not exceed two dollars per occupied room per night. However, no occupational tax may be imposed on any transient guest who has been offered a room by a lodging establishment on a complimentary basis and no fee or rent was charged for such room. In the use of a special assessment, the assessment shall be based upon the special benefit to the property within the district.

Source: SL 1986, ch 81, § 7; SL 2005, ch 54, § 3.

9-55-8. Notice of hearing. A notice of a hearing required under subdivision 9-55-7(2) shall be given by mailing a complete copy of the resolution of intent to each owner of taxable property as shown on the property tax roll for the proposed district. If an occupation tax is to be imposed, a copy of the resolution of intent shall

also be mailed to the occupant of each address located in the proposed district. Mailing shall be completed at least thirty days prior to the time of hearing.

Source: SL 1986, ch 81, § 8; SL 1990, ch 68, § 2; SL 2006, ch 35, § 1.

9-55-9. *Petition for hearing.* The owners of a majority of the assessable front footage in a business area or the users of a majority of space in a business area may, by petition, direct the governing body to hold a hearing to create a district pursuant to this chapter.

Source: SL 1986, ch 81, § 9; SL 1990, ch 68, § 3.

9-55-10. *Duties of governing body at hearing--Termination of hearing--Issuance of bonds for convention center from proceeds of general occupational tax.* If a hearing is held under subdivision 9-55-7(2), the governing body shall:

- (1) Hear all protests and receive evidence for or against the proposed action;
- (2) Rule upon all written protests received prior to the close of the hearing, which ruling shall be final; and
- (3) Continue the hearing from time to time as the governing body deems necessary.

If a special assessment is to be used, the proceedings shall terminate if written protest is made prior to the close of the hearing by the owners of a majority of the assessable front footage in the proposed district. If an occupation tax is to be used, the proceedings shall terminate if protest is made by the users of a majority of the space in the proposed district. If the general occupational tax is based upon rented hotel and motel rooms pursuant to § 9-55-7, the proceedings shall terminate if written protest is made prior to the close of the hearing by the owners of a majority of the hotels and motels in the proposed district.

Any bonds for the construction of a convention facility that are payable from the proceeds of the hotel and motel room general occupational tax may only be issued and sold if at least two-thirds of the hotel and motel owners in the proposed district approve in writing of the issuance and sale of the bonds.

Source: SL 1986, ch 81, § 10; SL 1990, ch 68, § 4; SL 2004, ch 79, § 1; SL 2005, ch 54, § 4.

9-55-11. *Procedure for change of boundaries.* If the governing body decides to change the boundaries of a proposed district, the hearing shall be continued to a time at least thirty days after such decision and the notice shall be given as prescribed in § 9-55-8, showing the boundary amendments. However, no new or additional resolution of intent is required for a proposed change in the boundary of a district.

Source: SL 1986, ch 81, § 11; SL 1990, ch 68, § 5.

9-55-12. *Establishment or rejection of districts--Adoption of ordinance establishing district-- Contents.* The governing body, following a hearing held pursuant to subdivision 9-55-7(2), may establish or reject any proposed district or districts. If the governing body decides to establish a district, it shall adopt an ordinance to that effect. The ordinance shall contain the following information:

- (1) The number of the resolution of intent and the date it was adopted;
- (2) The time and place of the hearing that was held on the formation of such district;
- (3) A statement that a business improvement district has been established pursuant to the provisions of this chapter;
- (4) The purposes of the district and the public improvements and facilities to be included in such district;
- (5) The description of the boundaries of such district;
- (6) A statement that the businesses and professions in the district shall be subject to the general business occupation tax or that the real property in the area will be subject to the special assessment authorized by § 9-55-2;

- (7) The proposed method of assessment to be imposed on the property within the district or the initial rate of the occupation tax to be imposed on the business users of the space in the district; and
- (8) Any penalties to be imposed for failure to pay the occupation tax.

Source: SL 1986, ch 81, § 12.

9-55-13. *Special assessment against real property located in district--Procedure.* A municipality may levy a special assessment against the real property located in a district, to the extent of the special benefit on such property, for the purpose of paying all or any part of the total costs and expenses of any project authorized by this chapter, within the district. The amount of each special assessment shall be determined by the governing body. Assessments shall be levied in accordance with the method of assessment proposed in the ordinance creating the district. If the governing body finds that the proposed method of assessment does not provide a fair and equitable method of apportioning costs, then the governing body may assess the costs under a method the governing body finds to be fair and equitable. Notice of a hearing on any special assessments to be levied under this chapter shall be given to the landowners in the district by publication of the description of the land, the amount proposed to be assessed, and the general purpose for which the assessment is to be made, once a week for two weeks in a daily or weekly newspaper of general circulation published in the municipality. The notice shall be published at least thirty days prior to the hearing and shall provide the date, time, and place of the hearing to hear any objections or protests by landowners in the district as to the amount of assessment made against their property. All special assessments levied under this chapter constitute liens on the property and shall be certified for collection and collected in the same manner as other special assessments.

Source: SL 1986, ch 81, § 13; SL 1990, ch 68, § 6; SL 2003, ch 47, § 1; SL 2005, ch 54, § 5.

9-55-14. *Levy of general business occupation tax in addition to or in place of special assessments.* In addition to or in place of a special assessment, a municipality may levy a general business occupation tax upon the businesses and users of space within a district established for acquiring, constructing, maintaining, or operating public off-street parking facilities and providing in connection therewith other public improvements, facilities and activities authorized by this chapter, for the purpose of paying all or any part of the total cost and expenses of any authorized improvement, facility or activity within such district. Notice of a hearing on any such tax shall be given to the businesses and users of space of such districts in the same manner as provided in § 9-55-13.

Source: SL 1986, ch 81, § 14.

9-55-15. *Procedure for implementation of tax.* For the purposes of implementing the tax imposed under § 9-55-14, the governing body may make a reasonable classification of businesses or users of space in a district. The collection of the tax imposed pursuant to § 9-55-14, shall be made and enforced in such a manner as the governing body shall by resolution determine. The governing body may by resolution provide that failure to pay such tax shall constitute a violation of the resolution and shall subject the violator to a fine or other punishment as provided in such resolution.

Source: SL 1986, ch 81, § 15.

9-55-16. *Reassessment or changes in rate of levy of special assessment or occupation tax-- Procedure.* If, subsequent to the levy of an occupation tax or a special assessment, the use of any parcel of land shall change so that, had the new use existed at the time of making such levy, the assessment or levy on such property would have been higher than the levy or assessment actually made, an additional assessment or levy may be made on such property by the governing body. The governing body shall take into consideration the new and changed use of such property. Reassessments or changes in the rate of levy of special assessments or occupation taxes may be made by the governing body after notice and hearing as provided in § 9-55-13. The governing body shall adopt a resolution of intent to change the assessment or rate of levy at least thirty days prior to the hearing on such change. Such resolution shall specify the proposed change and shall give the time and place of the hearing.

Source: SL 1986, ch 81, § 16; SL 1990, ch 68, § 7.

9-55-17. Limitations on amount of assessments or taxes. The total amount of special assessments or general business occupation taxes levied under this chapter may not exceed the total costs and expenses of the projects authorized in the resolution of intent for such district. The levy of any additional special assessment or occupation tax may not reduce or affect in any manner the assessments previously levied. The special assessments or occupation taxes levied shall be for the purposes specified in the resolution of intent for each district and the proceeds may not be used for any other purpose.

Source: SL 1986, ch 81, § 17.

9-55-18. Purpose of taxation or assessment by municipality--Limitations on taxation and assessment--Method of taxation or assessment. A municipality may levy a general business occupation tax, or a special assessment against the real property located in a district to the extent of the special benefit to such property, for the purpose of paying all or any part of the cost of maintenance, repair and reconstruction, including utility costs, of any improvement or facility in the district. Districts created for taxation or assessment of maintenance, repair and reconstruction costs, including utility costs, of improvements or facilities which are authorized by this chapter but which were not acquired or constructed pursuant to this chapter, may be taxed or assessed as provided in this chapter. Any occupation tax levied under this chapter shall be limited to those improvements and facilities authorized by this chapter. The governing body may levy such occupation taxes or special assessments under either of the following methods:

(1) The governing body may not more frequently than annually, determine the costs of maintenance, repair and reconstruction of a facility. Such costs shall be either assessed to the real property located in such district in accordance with the proposed method of assessment, or taxed against the businesses and users of space in the district, whichever may be applicable as determined by the resolution creating the district. However, if the governing body finds that the method of assessment proposed in the resolution creating the district does not provide a fair and equitable method of apportioning such costs, then it may assess the costs under such method as the governing body finds to be fair and equitable. At the hearing on such taxes or assessments, objections may be made to the total cost and the proposed allocation of such costs among the parcels of real property or businesses in such district; or

(2) After notice is given to the owners or businesses as provided in this chapter, the governing body may establish and may from time to time change the percentage of such costs for maintenance, repair and reconstruction which each parcel of real property or each business or user of space in any district shall pay. The governing body shall annually determine the total amount of such costs for each period since costs were last taxed or assessed, and shall, after a hearing, tax or assess such costs to the real property in the district in accordance with the percentages previously established at such hearing. Notice of such hearing shall be given as provided in § 9-55-13 and shall state the total costs and percentage to be taxed or assessed to each parcel of real property. Unless objections are filed with the finance officer at least five days before such hearing, all objections to the amount of total costs and the assessments shall be levied as stated in such notice. However, the governing body may reduce any assessment percentage.

Source: SL 1986, ch 81, § 18.

9-55-18.1. Issuance and sale of bonds--Permissible uses of proceeds--Business improvement district to remain in effect. Any municipality which has created a business improvement district as provided by this chapter, and which has levied special assessments or general business occupation taxes, or both, may issue and sell bonds payable from the special assessments, business occupation taxes, or both, as provided in this section and chapter 6-8B if the owners of a majority of the assessable front footage in the district or the users of a majority of the space in the district petition the municipality to issue such bonds. Unless the bonds are to be general obligations which pledge the full faith and credit of the municipality, no election is required for the issuance of the bonds. The proceeds of the bonds shall be used only for the purposes for which the collections of the special assessments or general business occupation taxes from which the bonds are payable may be used under the provisions of this chapter, to fund a debt service reserve for bonds which are not general obligations of the municipality, to pay the interest estimated to accrue on the bonds until the first collections of the special assessments or general business improvement taxes and to pay the costs of issuance of the bonds. The governing body shall, in the resolution or ordinance authorizing the issuance of the bonds, agree that it shall keep the

business improvement district in effect, shall continue to impose and collect the special assessments and general business occupation taxes so long as the bonds are outstanding, and shall pledge so much of the collections of the special assessments and general business occupation taxes as may be necessary to pay the principal of, premium, if any, and interest on the bonds, and to maintain any debt service reserve established for the bonds.

The municipality may also pledge any part of the collections of special assessments or general business improvement taxes, in excess of those pledged to the payment of bonds issued under this section, to the payment of utility revenue bonds issued under chapter 9-40 or tax incremental revenue bonds issued under chapters 11-8 and 11-9, but only if the proceeds of the utility revenue bonds or tax incremental revenue bonds are used to finance improvements located, in whole or in part, in the business improvement district.

Source: SL 1990, ch 68, § 1.

9-55-19. Procedure for abolishment of district. The governing body may, by ordinance, abolish a district after a hearing thereon. The governing body shall adopt a resolution of intent to abolish the area at least thirty days prior to the hearing required by this section. The resolution shall give the time and place of the hearing. Notice of the hearing shall be given as provided in § 9-55-13.

Source: SL 1986, ch 81, § 19; SL 1990, ch 68, § 8.

9-55-20. Disposition of proceeds of tax or assessment upon abolishment. Upon abolishment of a district, any proceeds of the occupation tax or the special assessment, or assets acquired with such proceeds, are subject to disposition as the governing body shall determine.

Source: SL 1986, ch 81, § 20.

9-55-21. Use of donated funds or grants. The municipality may receive, administer, and disburse donated funds or grants for the purposes of and in the manner authorized by this chapter.

Source: SL 1986, ch 81, § 21.

9-55-22. Dissolution of district imposing occupational tax on rooms rented. If a district has imposed an occupation tax based on rooms rented and the occupational tax revenue was used only for the promotion of the district, a majority of the landowners may dissolve the district established pursuant to § 9-55-7 by submitting a petition to the governing body requesting the district to be dissolved. On and after the date the petition is filed with the governing body, the district may not enter into any new obligations or contracts. Notwithstanding the other provisions of this chapter, the governing body, upon receiving the petition and verifying that a majority of the landowners have signed the petition, shall by resolution dissolve the district. However, the governing body may not dissolve the district until there are sufficient funds available to extinguish all of the debts and obligations of the district. The governing body shall administer any remaining affairs and issues concerning the dissolved district.

Source: SL 2006, ch 35, § 2.