



Agenda Cover Memorandum

Meeting Date:

March 8, 2014

Meeting Type:

☒ COW (Committee of the Whole) ☐ City Council ☐ Budget Workshop

Item Title:

Special Service Area Options for Flood Reduction Plan

Action Requested:

- ☐ Approval
☒ For discussion
☐ Feedback requested
☐ For your information

Staff Contact:

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Background:

Attached is a memorandum from City Attorney Hill on Special Service Areas.

Recommendation:

Budget Implications:

Does Action Require an Expenditure of Funds: ☐ Yes ☒ No

If Yes, Total Cost: \$

If Yes, is this a Budgeted Item: ☐ Yes ☐ No ☐ Requires Budget Transfer

If Budgeted, Budget Code (Fund, Dept, Object)

Attachments:

- Memorandum from City Attorney Hill

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TO: SHAWN HAMILTON
FROM: EVERETTE M. HILL, JR. AND KATHLEEN HENN
DATE: MARCH 3, 2014
RE: SPECIAL SERVICE AREAS

A. Background

In basic terms, the Illinois Constitution allows a municipality to levy an additional real estate tax and other taxes in an area within its boundaries for the purpose of providing special services to that area that are not available to the entire municipality.

Whenever an improvement is to be constructed that will primarily affect a specific locality, the municipal government must decide whether to finance it by special assessment or by the creation of a Special Service Area ("SSA").

1. Special Services

The term "special services" means "all forms of services pertaining to the government and affairs of the municipality or county, including but not limited to . . . improvements permissible under Article 9 of the Illinois Municipal Code, and contracts for the supply of water." 35 ILCS 200/27-5. Article 9 of the Municipal Code pertains to local improvements and provides for making a wide variety of improvements, including, but not limited to, streets, storm drain sewers, water mains, sanitary sewer improvements, sidewalks, walkways, bicycle paths, landscaping, lighting improvements, signage improvements, vehicular parking improvements, any additional improvements necessary to provide access to the public improvements, and all necessary appurtenances.

2. Boundaries

One of the practical difficulties in special service area financing is the establishment of the boundaries of the special service area. The enabling legislation provides that a "special service area" means a "contiguous area within a municipality or county." 35 ILCS 200/27-5. A court has held that a special service shopping area boundary was valid even though the legal description omitted all residential and

industrial properties from the special service area and even though some of those properties omitted were surrounded by the special service area, thus leaving a "hole in the donut."

3. Permissible Taxes, Rates, and Debt Limits

Taxes may be levied or imposed in the special service area at a rate or amount sufficient to produce revenues required to provide the special service. 35 ILCS 200/27-25. Taxes are not limited to property taxes but may include other taxes as the Illinois Constitution and the statute may provide. 35 ILCS 200/27-45 provides that special service area bonds shall not be regarded as indebtedness of the municipality or county for the purpose of any limitation provided by law.

4. General Procedures and Ordinance Calling for Hearing on Proposed Service Area

A special service tax (and bond issue supporting it) must be for a public purpose. After determining that a proposed project is for a public purpose, the next step is to ascertain a reasonable boundary for the special service area. This boundary could be based on existing uses, existing zoning classifications or simply the extent of the benefits received from the special service.

Next, a determination must be made that the services to be rendered are "special," which means that the services to be rendered are different in quality, quantity or necessity in relation to services generally rendered throughout the municipality.

5. Supplemental Ordinances

Although there is no specific statutory requirement, it is suggested that the annual budget reflects those items to be financed out of the annual tax levy. It is necessary to adopt a separate tax levy ordinance for the special service area if a tax levy has been authorized. A certified copy of this ordinance must be filed with the County Clerk's office by the last Tuesday in December. 35 ILCS 200/27-75. If bonds are to be issued, then it is necessary to adopt a bond ordinance. A certified copy of this ordinance must be filed with the County Clerk's office by December 31st. 35 ILCS 200/27-75.

B. Special Service Area Process

STEP 1: Determine the nature of the special services needed/requested, the area that will be benefited and the cost, for providing the special services. The costs should include:

- a. Construction costs;
- b. Engineering costs;
- c. Legal fees;

- d. Bond issuance costs;
- e. In-house services;
- f. Capitalized interest; and
- g. Other costs uniquely attributable to the special services being provided.

STEP 2: Adopt Ordinance calling for a public hearing on the establishment of the special service area. The Ordinance must set forth:

- a. The boundaries by legal description and, when possible, street location;
- b. The permanent tax index number of each parcel located within the area;
- c. The proposed tax rate limits, if any;
- d. The proposed limit on the amount of bonds to be issued, if any;
- e. The maximum number of years for the special service area;
- f. The form of the notice to the property owners;
- g. The nature of the proposed special services to be provided within the special service area;
- h. A statement as to whether the proposed special services are for new construction, maintenance, or other purposes;
- i. The hearing time, date and location; and
- j. If the special services are to be maintained other than by the municipality or county after the life of the bonds, then a statement indicating who will be responsible for the maintenance of the special services after the life of the bonds.

STEP 3: Notice of the public hearing must be given in the following manner:

- a. Notice of the hearing must be published in a local newspaper once, not less than fifteen (15) days prior to the hearing date; and
- b. The taxpayer of record for each parcel must be mailed a notice not less than ten (10) days prior to the hearing date.

The notice must set forth items a through e, and g through j, in Step 2 above. It must also state that all interested persons will be given an opportunity to be heard at the hearing regarding the tax levy and an opportunity to file objections to the amount of the tax levy if the tax is a tax upon property.

STEP 4: Hold public hearing to discuss the formation of the special service area, the levy or imposition of taxes and/or the issuance of bonds.

STEP 5: Finalize boundaries. The original boundaries may be amended at the public hearing or at the first meeting of the City Council following the public hearing to delete areas from the special service area, so long as the remaining area is contiguous.

STEP 6: After the final adjournment of the public hearing, there is a sixty (60) day window for the filing of objections. A valid objection petition must be:

- a. Filed within the sixty (60) day period;
- b. Signed by at least 51% of the owners of record within the proposed boundaries; and
- c. Signed by at least 51% of the electors (registered voters) within the proposed boundaries.

If the SSA the proposition is rejected by the property owners and electors, then the subject matter may not be re-proposed by the municipality or to any of the signatories for two years. 35 ILCS 200/27-55. The 60 days for filing the petition to reject the SSA does not commence until final adjournment of the public hearing. *Id.*

Although the issue of whether the property owners and electors can waive the 60-day objection period has not been addressed by Illinois courts. However, many municipalities attempt to obtain such a waiver. The benefit of obtaining a waiver from the majority of property owners and electors is that it would allow the bidding and construction of the project to move forward immediately. This may be advantageous to the municipality and the property owners and electors for a number of reasons, such as securing a competitive construction bid and a favorable construction schedule.

STEP 7: Adopt an Ordinance establishing the special service area. This Ordinance can be adopted at the end of the sixty (60) day objection period, or immediately after the public hearing, but with an effective date after the running of the sixty (60) day objection period. This Ordinance should include all the information set forth in Step 2 above, plus an accurate map of the territory that makes up the special service area.

STEP 8: File a certified copy of the Ordinance establishing the special service area with the County Clerk and record a certified copy with the Recorder of Deeds. The Ordinance must be recorded within sixty (60) days after its adoption or it will be deemed invalid.

STEP 9A: If the special service area provides for payment other than through a bond issue, adopt the budget then follow the budget or budget amendment procedure and tax levy Ordinance. The tax levy Ordinance must be filed with the County Clerk on or before the last Tuesday of December.

STEP 9B: If the special service area involves a bond issue, adopt a bond Ordinance. This Ordinance must be filed with the County Clerk by December 31st.

C. Special Service Area Timetable (Best Case Scenario)

- DAY 1: – Adopt Ordinance calling for public hearing.
- DAY 2: – Publish public hearing notice and mail out public hearing notices.
- DAY 17: – Hold Public Hearing and finally adjourn same.
- DAY 18: – Begin bond issuance process.
- DAY 77: – Adopt Ordinance establishing special service area and bond Ordinance.
- DAY 78: – File Ordinances with the County Clerk/Recorder.
- DAY 79: – Issue bonds.

Note: If the property owners and electors waive their right to object during the sixty (60) day objection period, the timetable can be shortened.