

LEGISLATIVE BILL 22

Approved by the Governor February 18, 1983

Introduced by Wesely, 26

AN ACT to amend sections 19-4020, 19-4021, 19-4024, 19-4025, 19-4026, 19-4027, 19-4028, 19-4029, 19-4030, 19-4031, 19-4033, and 19-4034, Revised Statutes Supplement, 1982, relating to business improvement districts; to provide definitions; to change provisions relating to special assessments as prescribed; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. As used in sections 19-4001 to 19-4038, unless the context otherwise requires:

(1) Record owner shall mean the fee owner of real property as shown in the records of the register of deeds office in the county in which the business area is located. A contract purchaser of real property shall be considered the record owner for purposes of sections 19-4001 to 19-4038 and the only person entitled to petition pursuant to section 19-4028 or protest pursuant to section 19-4027, if the contract is recorded in the register of deeds office in the county in which the business area is located;

(2) Assessable unit shall mean 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 intention to create a business improvement district; and

(3) Space shall mean 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, excepting all space owned or used by political subdivisions.

Sec. 2. That section 19-4020, Revised Statutes Supplement, 1982, be amended to read as follows:

19-4020. A business improvement district may be created as provided by sections 19-4015 to 19-4038 and shall be within the boundaries of an established business area of the city zoned and used for business, public, or commercial purposes.

Sec. 3. That section 19-4021, Revised Statutes

Supplement, 1982, be amended to read as follows:

19-4021. The mayor, with the approval of the city council, shall appoint a business improvement board consisting of property owners, residents, business operators, or users of space within the business area to be improved. The boundaries of the business area shall be declared by resolution of the city council at or prior to the time of the appointment of the board. The board shall make recommendations to the city council for the establishment of a plan or plans for improvements in the district business area. If it is found that the improvements to be included in one business area offer benefits that cannot be equitably assessed together under sections 19-4015 to 19-4038, 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 city as to the use of any ~~license~~ and occupation tax funds collected, and may administer such funds if so directed by the mayor and city council.

Sec. 4. That section 19-4024, Revised Statutes Supplement, 1982, be amended to read as follows:

19-4024. Upon receiving the recommendation from the business improvement board, the city council, after ~~consulting with receipt of recommendations from the~~ planning commission if the city has a planning commission, may create one or more business improvement districts by adopting a resolution of intention 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 city council 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 and facilities 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 intention shall recite that the method of raising revenue shall be fair and equitable. In the use of a general ~~license~~ and occupation tax, the tax shall be based primarily on the square footage of the owner's and user's place of business. In the use of a special assessment, the assessment shall be based upon the special benefit to the property within the district.

Sec. 5. That section 19-4025, Revised Statutes Supplement, 1982, be amended to read as follows:

19-4025. A notice of hearing under sections 19-4015 to 19-4038 shall be given by (1) one publication

of the resolution of intention in a newspaper of general circulation in the city and (2) mailing a complete copy of the resolution of intention to each owner of taxable property as shown on the latest tax rolls of the county treasurer for such county. If an occupation tax is to be imposed, a copy of the resolution of intention shall also be mailed, and to each user of space in the proposed area district. Publication and mailing shall be completed at least ten days prior to the time of hearing.

Sec. 6. That section 19-4026, Revised Statutes Supplement, 1982, be amended to read as follows:

19-4026. In the event that the city council has not acted to call a hearing to create a district as provided in sections 19-4015 to 19-4038, it shall do so when presented with a petition signed by the record owners of thirty per cent of the assessable front footage in the proposed a business area or by the users of thirty per cent of space in the proposed a business area.

Sec. 7. That section 19-4027, Revised Statutes Supplement, 1982, be amended to read as follows:

19-4027. Whenever a hearing is held under the provisions of sections 19-4015 to 19-4038, the city council 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 city council may deem necessary.

If a special assessment is to be used, proceedings shall terminate if written protest is made prior to the close of the hearing by the record owners of over fifty per cent of the assessable units in the proposed district. If an occupation tax is to be used, proceedings shall terminate if protest is made by over fifty per cent of the users of space in the proposed district.

Sec. 8. That section 19-4028, Revised Statutes Supplement, 1982, be amended to read as follows:

19-4028. If the city council decides to change the boundaries of the proposed area district, the hearing shall be continued to a time at least fifteen days after such decision and the notice shall be given as prescribed in section 19-4026, showing the boundary amendments, but no new or additional resolution of intention is shall be required.

Sec. 9. That section 19-4029, Revised Statutes Supplement, 1982, be amended to read as follows:

19-4029. The city council, following the hearing, may establish or reject any proposed district or districts. If the city council decides to establish any district, it shall adopt an ordinance to that effect. This ordinance shall contain the following information:

(1) The number, date, and title of the resolution of intention pursuant to which it was adopted;

(2) The time and place the hearing was held concerning the formation of such district;

(3) A statement that a business improvement district has been established;

(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 area established by the ordinance shall be subject to the general business ~~license~~ and occupation tax or that the real property in the area will be subject to the special assessment authorized by sections 19-4015 to 19-4038;

(7) The proposed method of ~~proposed~~ assessment to be imposed within the district or the initial rate of the ~~license~~ and occupation tax to be imposed; and

(8) Any penalties to be imposed for failure to pay the tax or special assessment.

Sec. 10. That section 19-4030, Revised Statutes Supplement, 1982, be amended to read as follows:

19-4030. A city may levy a special assessment against the real estate located in such district, to the extent of the special benefit thereto, for the purpose of paying all or any part of the total costs and expenses of performing any acquisition, including construction, of any authorized work, except maintenance, repair, and reconstruction costs, within improvement or facility of such district. The amount of each special assessment shall be determined by the city council sitting as a board of equalization. Assessments shall be levied in accordance with the method of assessment proposed in the ordinance creating the district. If the city council finds that the proposed method of assessment does not provide a fair and equitable method of apportioning costs, then it may assess the costs under such method as the city council finds to be fair and equitable. Notice of a hearing on any special assessments to be levied under sections 19-4015 to 19-4038 shall be given to the landowners in such district by publication of the description of the land, the amount proposed to be assessed, and the general purpose for which such assessment is to be made one time each week for three weeks in a daily or weekly newspaper of general circulation published in the city. The notice shall provide the date, time, and place of hearing to hear any objections or protests by landowners in the district as to the amount of assessment made against their land. A direct appeal to the district court of the county in which such city is located may be taken from the decision of the city council in the

same manner and under like terms and conditions as appeals may be taken from the amount of special assessments levied in street improvement districts in such city as now provided by law. All special assessments levied under sections 19-4015 to 19-4038 shall be liens on the property and shall be certified for collection and collected in the same manner as special assessments for improvements and street improvement districts of the city are collected.

Sec. 11. That section 19-4031, Revised Statutes Supplement, 1982, be amended to read as follows:

19-4031. (1) In addition to or in place of the special assessments authorized by sections 19-4015 to 19-4038, a city may levy a general business license and 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 and facilities authorized by sections 19-4015 to 19-4038, for the purpose of paying all or any part of the total cost and expenses of any authorized improvement or facility within such district. Notice of a hearing on any such tax levied under sections 19-4015 to 19-4038 shall be given to the businesses and users of space of such districts, and appeals may be taken, all in the manner provided in section 19-4030.

(2) For the purposes of the tax to be imposed under this section, the city council may make a reasonable classification of businesses or users of space. The collection of a tax imposed pursuant to this section shall be made and enforced in such a manner as the city council shall by ordinance determine to produce the required revenue. The city council may provide that failure to pay the tax imposed pursuant to this section shall constitute a violation of the ordinance and subject the violator to a fine or other punishment as provided by ordinance.

(3) ~~As used in this section, space shall mean 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, excepting all space owned or used by political subdivisions.~~

Sec. 12. That section 19-4033, Revised Statutes Supplement, 1982, be amended to read as follows:

19-4033. The total amount of assessments or general business license and occupation taxes levied under sections 19-4015 to 19-4038 shall not exceed the total costs and expenses of performing the authorized work. ~~acquiring an authorized improvement or facility, or of maintaining such improvement or facility.~~ The levy of any additional assessment or tax shall not reduce or affect in any manner the assessments previously levied. The assessments or taxes levied must be for the purposes

specified in the ordinances and the proceeds shall not be used for any other purpose.

Sec. 13. That section 19-4034, Revised Statutes Supplement, 1982, be amended to read as follows:

19-4034. A city may levy a general business ~~license~~ and occupation tax, or a special assessment against the real estate located in ~~the~~ a district to the extent of special benefit to such real estate, for the purpose of paying all or any part of the cost of maintenance, repair, and reconstruction, and including utility costs, or of any improvement of a or facility in the district. Districts created for taxation or assessment of maintenance, repair, and reconstruction costs, including and utility costs of improvements or facilities which are authorized by sections 19-4015 to 19-4038, but which were not acquired or constructed pursuant to sections 19-4015 to 19-4038, may be taxed or assessed as provided in sections 19-4015 to 19-4038. Any ~~license and~~ occupation tax levied under this section shall be limited to those improvements and facilities authorized by section 19-4031. The city council may levy such taxes or assessments under either of the following methods:

(1) The city council, sitting as a board of equalization, may, not more frequently than annually, determine the costs of maintenance or repair, and reconstruction, of a facility. Such costs shall be either assessed to the real estate 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 ordinance creating the district. However, if the city council finds that the method of assessment proposed in the ordinance 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 city council 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 estate or businesses in such district; or

(2) After notice is given to the owners or businesses as provided in section 19-4031 the city council may establish and may change from time to time, the percentage of such costs for maintenance, repair, and reconstruction which each parcel of real estate or each business or user of space in any district shall pay. The city council 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 estate in the district in accordance with the percentages previously established at such hearing. Notice of such hearing shall be given as provided in section 19-4031 and shall state the total costs and

percentage to be taxed or assessed to each parcel of real estate. Unless objections are filed with the city clerk at least five days before the hearing, all objections to the amount of total costs and the assessment percentages should be deemed to have been waived and the assessments shall be levied as stated in such notice except that the city council may reduce any assessment percentage.

Sec. 14. That original sections 19-4020, 19-4021, 19-4024, 19-4025, 19-4026, 19-4027, 19-4028, 19-4029, 19-4030, 19-4031, 19-4033, and 19-4034, Revised Statutes Supplement, 1982, are repealed.