

ORDINANCE # 10-03

AN ORDINANCE OF THE MAYOR AND BOROUGH COUNCIL OF THE BOROUGH OF CHATHAM, COUNTY OF MORRIS, STATE OF NEW JERSEY, CREATING A CHATHAM BUSINESS IMPROVEMENT DISTRICT, AND ESTABLISHING A DISTRICT MANAGEMENT CORPORATION TO PROVIDE SUPPLEMENTAL SERVICES TO PROPERTY OWNERS AND/OR BUSINESSES IN THE BUSINESS IMPROVEMENT DISTRICT

WHEREAS, on January 28, 2008, the Borough Council of the Borough of Chatham (the "Borough") in Resolution 08-92, retained the services of FirsTEAMagement ("FTM") to assist the Borough in the review and development of a Business Improvement District ("BID") plan for Chatham's Main Street commercial district; and

WHEREAS, extensive meetings and studies have been conducted by FTM, Borough officials, and the Chatham BID Advisory Board as to the desirability and need for a BID for Chatham commercial property; and

WHEREAS, the Chatham BID Advisory Board has recommended that the Borough create a BID pursuant to N.J.S.A. 40:56-65 et seq.; and

WHEREAS, the Borough Council regards the Chatham commercial district as an integral, vital, economic and social aspect of the Borough of Chatham; and

WHEREAS, pursuant to N.J.S.A. 40:56-65 et seq. ("Act"), the Borough Council hereby determines the following:

1. Property owners and tenant business owners in the proposed BID will benefit from the establishment of a BID and therefore will the whole of the Borough;
2. A District Management Corporation ("DMC") would provide administrative and other services to benefit those property owners, employees, residents and consumers in the proposed BID and its surrounding areas;
3. A special assessment shall be imposed and collected by the Borough on commercial property located within the BID;
4. All special assessments collected shall be transferred in their entirety to the BID DMC in order to execute the purposes of this Ordinance and to exercise the powers given to the BID DMC by the Act;
5. It is in the best interest of the Borough and the public to create a BID for the Chatham commercial district and its neighborhoods and to establish a DMC to administer the district; and

WHEREAS, the Chatham BID Advisory Board and FTM has developed and presented to the Borough Council a study and preliminary plan for the creation, establishment, implementation, and maintenance of a BID for the Chatham commercial district; and

WHEREAS, the Borough Council has reviewed the study and heard testimony from FTM , the BID Advisory Board, and numerous business owners recommending and endorsing a BID in the Chatham commercial district; and

WHEREAS, based upon the findings of the study and the plan and the recommendation of the Chatham BID Advisory Board, the Borough Council accepts the recommendation to establish a BID within the Chatham commercial district to enhance commercial viability and attractiveness of the Chatham commercial district and to promote economic growth and employment opportunities in the Borough of Chatham.

NOW, THEREFORE, BE IT ENACTED by the Borough Council of the Borough of Chatham, New Jersey, as follows:

Section 1. Legislative Findings:

Pursuant to the Act, the Borough Council of the Borough of Chatham hereby makes the following findings:

1. Property and tenant business owners in the area set forth on the attached Schedule A proposed BID will benefit from the establishment of a Chatham Borough Business Improvement District (“BID”) and therefore will the whole of the Borough;
2. A DMC would provide administrative and other services to benefit the businesses, those property owners, employees, residents, and consumers in the proposed BID and its surrounding areas;
3. These services can best be provided through a partnership implemented by the creation of a BID to be managed by a DMC;
4. A special assessment shall be imposed and collected by the Borough with regular property tax payments or payment in lieu of taxes or otherwise, on commercial properties located within the BID;
5. All special assessments collected shall be transferred in their entirety to the BID DMC in order to effectuate the purposes of the Act and to exercise the powers given to the DMC in this Ordinance;
6. It is in the best interest of the Borough and the public to create a BID for the Chatham commercial district and its neighborhoods and to establish and designate a DMC to administer the BID.

Section 2. Establishment of the Business Improvement District.

The BID is hereby established.

Section 3. District Properties.

- A. The BID shall consist of commercial properties classified as “4A”-commercial, “4B”-industrial, and “1”-vacant land by the Borough generally located along the entire length of Main Street as well as the immediately adjacent intersecting thoroughfares where commercial properties exist in the Borough. A list of all said commercial properties to be included in the BID, identified by block and lot abstract number, is attached hereto in and made a part hereof as “Schedule A”. Schedule A may be amended in future years via Borough Council Resolution during the annual BID budget approval process without the necessity of amendment of this Ordinance.
- B. Membership in the BID shall also be offered to any commercial or industrial property or business in the Borough outside the original BID area prescribed in Section 3A based on a formula to be determined within the DMC bylaws. Said commercial or industrial properties or businesses may be added to Schedule A via Borough Council Resolution as prescribed in Section 3A.
- C. Only those properties within the BID that are fully tax-exempt or used exclusively for residential purposes shall be excluded from the assessing provisions of this Ordinance and are expressly exempt from any fee, tax or assessment made solely for BID purposes. In the event any tax-exempt or other entity makes a payment in lieu of taxes, said entity shall be subject to the imposition of the special assessment.

Section 4. District Management Corporation.

- A. Creation: A non-profit organization organized pursuant to Title 15A shall be formed and named the Chatham Business Improvement District Management Corporation (also referred to as “DMC”). The

DMC, in addition to acting as an advisory body to the Mayor and Council, shall have all the powers set forth herein to effectuate the purposes of the Ordinance and the BID.

- B. **Membership:** The DMC shall be comprised of all commercial property owners, business owners or representatives and others as may be further specified by the bylaws of the DMC. In order to receive any funds or exercise any of the powers granted herein, the DMC's Board of Directors must include as voting members the Mayor or his or her designee, and one (1) member of the Borough Council as appointed by the Mayor with the advice and consent of the Council. The Mayoral and Council appointees shall serve only during their term of office or employment with the Borough and for a term of two (2) years. The balance of the Board of Directors shall be appointed or elected according to the bylaws of the DMC. Vacancies in the Borough appointees shall be filled by the Mayor for the remainder of the unexpired term. The initial Board of Directors shall consist of a minimum of three (3) members of the Chatham BID Advisory Board to be determined by the Chatham BID Advisory Board. All members of the initial Board of Directors shall serve until the first election of Board of Directors to be held no later than twelve (12) months from the effective date of this Ordinance.
- C. **Obligations:** In addition to the obligations set forth in the Act, the DMC shall file an annual audit of its books, accounts and financial transactions, to be made and which shall be filed with the Borough Council and for that purpose the DMC shall hire a certified public accountant of the State of New Jersey. The annual audit shall be completed and filed with the Borough Council within four (4) months after the close of the DMC's fiscal year, and a certified duplicate copy of the audit shall be filed with the Director of the Division and the New Jersey Division of Local Government Services, pursuant to N.J.S.A. 40:56-88, within five (5) days of the filing of the audit with the Borough Council.
- D. **Powers:** In addition to the powers otherwise conferred upon it by the Act, the DMC shall have the power:
- 1) to adopt bylaws for the regulation of its affairs and the conduct of its business and to prescribe rules, regulations and policies for the performance of its functions and duties;
 - 2) to employ such persons as may be required, and fix and pay their compensation from funds available to the DMC;
 - 3) to apply for, accept, administer and comply with the requirements respecting an appropriation of funds or a gift, grant or donation of property or money;
 - 4) to make and execute agreements that may be necessary or convenient to the exercise of the powers and functions of the DMC, including contracts with any person, firm, corporation, government agency or other entity;
 - 5) to administer and manage its own funds and accounts and pay its own obligations;
 - 6) to borrow money from private lenders or government entities;
 - 7) to fund the improvement of the exterior appearance of commercial properties within the BID through grants or loans;
 - 8) to fund the rehabilitation of commercial properties within the BID;
 - 9) to accept, purchase, rehabilitate, sell, lease or manage property within the BID;
 - 10) to enforce the conditions of any loan, grant, sale or lease made by the DMC, provided, however, if the businesses in the BID petition to dissolve the BID, the Borough shall have the right but not the obligation to amend the current year budget and schedule fees and/or taxes in order to liquidate claims against the DMC;
 - 11) to provide security, sanitation, and other services to the BID supplemental to those normally provided by the Borough;

- 12) to undertake improvements designed to increase the safety or attractiveness of the BID to businesses which may wish to locate there or to visitors to the BID including but not limited to: litter clean-up and control, landscaping, parking areas and facilities, recreational and rest areas and facilities, and those improvements generally permitted for pedestrian malls under N.J.S.A. 40:56-66, pursuant to pertinent regulations of the Borough of Chatham;
- 13) to publicize the BID and all of the businesses included within its boundaries and membership;
- 14) to recruit new businesses to fill vacancies and to balance the business mix of the BID;
- 15) to organize and coordinate special events in the BID pursuant to the pertinent regulations of the Borough;
- 16) to provide supplemental temporary decorative lighting within the BID boundaries; and
- 17) to provide special parking arrangements for the BID.

Section 5. Annual Assessments.

- A. All costs of development, construction, and acquisition relating to the provision of improvements shall be financed by and assessed to properties or businesses especially benefited thereby, as set forth in the Act and this Ordinance.
- B. At the request of the BID, all costs of improvements and maintenance, other than the costs of improvements and maintenance ordinarily incurred by the Borough from general funds, shall be operated and maintained pursuant to the provisions of N.J.S.A. 40:56-80 or N.J.S.A. 40:56-85.
- C. The above costs shall be collected as a special assessment rate against properties or businesses which benefit in the BID.

Section 6. Annual budget; public hearing; adoption.

- A. The fiscal year of the DMC shall be August 1 to July 31.
- B. The DMC shall submit a detailed annual budget for each fiscal year by April 30 preceding the upcoming fiscal year for approval by Resolution by the Borough Council.
- C. The budget shall be submitted with a report that explains how the budget contributes to the goals and objectives of the BID.
- D. The budget shall be introduced, approved and amended and adopted by a Resolution passed by not less than a majority of the full membership of the Borough Council. The budget adoption procedure shall be in the manner set forth in N.J.S.A. 50:56-84.

Section 7. Annual Report; Estimate of cost operation and maintenance; hearing on and approving estimates; assessment; disposition of funds.

- A. Annual report of estimates
Concurrently with the submission of a plan for the BID, and annually thereafter, the Mayor shall, with the assistance of the DMC, report to the Borough Council an estimate of the cost of operating and maintaining and annually improving the BID for the next fiscal year, to be incurred under the plan, and an estimate of the changes in the amounts of such costs that would follow upon the adoption of any addition or amendment to the plan recommended to or under consideration by the Borough Council. Such estimate shall be reasonably itemized and shall include a summary of the categories of cost properly chargeable as follows:

1. The amount of such costs, if any, to be charged against the general funds of the Borough, which shall be that amount which the Borough would pay from its general funds for street maintenance and operation of a street of similar size and location, but not included in a BID, as the case may be;
2. The amount of costs to be charged and assessed against properties benefited in the BID in proportion to benefits which shall be the aggregate of costs of annual improvements to be made in the BID during the ensuing year;
3. The amount of costs, if any, to be specially taxed against properties in the BID.

B. Hearing on and Approving Estimates.

The Borough Council shall receive and consider such estimate and the items of cost after such notice and hearing before it or its appropriate committee as it shall deem necessary or expedient, and shall approve the same, with such amendments thereto as it shall find necessary, and the amounts of each item of cost estimated shall be deemed appropriated and expendable to operate and maintain the BID during the ensuing fiscal year.

C. Assessments

Each year after the Council shall have approved the budget of the BID, the Tax Assessor shall prepare an assessment roll setting forth separately the amounts to be specifically assessed against benefited and assessable properties in the BID. Descriptions of such properties and the names of the then current owners of such properties, so far as names are available, shall be included in each annual assessment roll.

The assessment roll, when so prepared, shall be filed in the Office of the Borough Clerk and be there available for inspection.

The Council shall annually meet to consider objections to the amounts of such special assessments at least ten (10) days after a notice of the public hearing on the BID budget has been published once in the official newspaper and mailed to the named owners of all tracts, parcels and lots of property proposed to be assessed. The notices shall set forth the time and place of meeting, and set forth the purpose of such meeting, but may refer to the assessment roll for further particulars. When the Council shall have approved the amounts of the special assessments and the BID budget set forth therein, or as may be changed by it, the Borough Clerk shall forthwith certify a copy of the assessment roll with such changes, if any, to the Morris County Tax Board.

D. Disposition of Funds.

1. Moneys appropriated and collected on amount of annual improvement costs, and costs of operating and maintaining the BID, shall be credited to a special account. The Borough Council may incur the annual costs of improving, operating and maintaining the BID during any fiscal year, though not specifically provided for by line item or other category in an approved estimate for such fiscal year, if in its discretion it shall be deemed necessary to provide for such annual improvements or operation or maintenance prior to the succeeding fiscal year and so long as the total amount of the account as approved for that year is not exceeded by that expenditure. Any balances to the credit of the account and remaining unexpended at the end of the fiscal year shall be conserved and applied towards the financial requirements of the succeeding year.
2. The first initial payment of funds shall occur within thirty (30) days after the incorporation of the DMC and the receipt of BID assessments. Thereafter, the Borough shall pay over the funds to the DMC on a monthly basis as said funds are collected. The Borough shall not be obligated to pay over any funds not actually received by the Borough.

Section 8. Bylaws.

The DMC shall file with the Borough Clerk a certified copy of the adopted bylaws of the Corporation. The DMC shall have the right to amend its bylaws from time to time as its members shall decide, provided that the amendments are not materially inconsistent with this Ordinance. A certified copy of the adopted amendments shall be filed with the Borough Clerk at least fourteen (14) days prior to the date they become effective.

Section 9. Debt Obligations.

This Ordinance obligates the Chatham BID to satisfy all debts, loans and financial liabilities incurred by its DMC. The DMC may not borrow an amount that exceeds the approved budget for that fiscal year. The charter of the BID shall include a clause of the aforementioned.

Section 10. DMC Annual Report.

The DMC shall, within thirty (30) days after the close of each fiscal year, make an annual report of its activities for the preceding fiscal year to the Mayor and Borough Council.

Section 11. Public Notice.

1. At least ten (10) days prior to the date fixed for a public hearing on this Ordinance, or any future amendments thereto, a copy of the proposed Ordinance or amendments and the notice of the date, time and place of the hearing, shall be mailed to the owners of the lots or parcels of land abutting or included in the BID.
2. Within ten (10) business days of the adoption of this Ordinance, or amendments thereto, the Borough Clerk shall forward a certified copy of the Ordinance, or amended Ordinance, to the Director of the Division of Local Government Services.

Section 12. Municipal Powers Retained.

- A. The creation of the Chatham Business Improvement District and the Chatham District Management Corporation shall not diminish or otherwise abrogate the police powers or other rights and powers of the Borough of Chatham.
- B. This Ordinance shall not be interpreted or construed as a vacation, in whole or in part, of any Municipal street or part hereof.
- C. The DMC shall not make or enter into any contract or agreements for the improvement of any publicly-owned or operated facility or property within the BID nor adopt any regulations relating to public property in the BID without consent of the Borough Council.
- D. The DMC shall comply with all applicable ordinances or regulations of the Borough.
- E. The Borough Council may at any time subsequent to the adoption of this Ordinance, abandon the operation of the BID, change the extent of the BID, supplement or amend the description of the district to be specially assessed or taxed for annual costs of the BID, or change or repeal any limitation on the use of BID streets by private vehicles or any plan, rule or regulations adopted for the adoption of the BID.

Section 13. DMC Obligations.

The Borough of Chatham shall not be responsible for any obligation of the DMC, financial or otherwise.

Section 14. Severability.

If any provisions of this Ordinance shall be held invalid, or contrary to the law, such provision of the Ordinance shall be deemed separable from the remaining provisions of this Ordinance and shall not affect the validity of the other provisions of the Ordinance.

Section 14. Implementation.

The BID shall become operable when the DMC has been duly incorporated and when the bylaws of the DMC are adopted by a vote of the eligible participants in the manner provided for in bylaws of the DMC.

Section 15. Effective Date and Sunset Clause

- A. This Ordinance shall take effect twenty (20) days after final passage and approval, as provided by law.
- B. This Ordinance shall automatically expire on the third anniversary (i.e., three years) after the effective date as prescribed in Section 15A unless the Borough Council votes to extend the existence of the BID by amending this Ordinance in the same manner as prescribed in Section 11.

Introduced: February 8, 2010

Adoption:

V. Nelson Vaughan, Mayor

ATTEST:

Susan Caljean, Municipal Clerk

DATED OF LAST REVISION: JANUARY 14, 2010