

City of Bellingham
CITY COUNCIL AGENDA BILL

SUBJECT	FOR AGENDA OF	COUNCIL ASSIGNMENT	BILL NUMBER	
Worksession Regarding Ordinance To Establish A Transportation Benefit District (TBD) Prior To Council Vote On Third And Final Reading	07-12-10	TRANSPORTATION	18883	
		TIME REQUIRED	DEPART. CONTACT	RECEIVED IN COUNCIL OFFICE
ATTACHMENTS Ordinance Draft Resolution	20 min.	Ted Carlson		
		CLEARANCES	INITIAL	DATE
		Ted Carlson, Public Works	<i>TC</i>	7/6/10
		John Carter, Finance Director	<i>JC</i>	7/7/10
CATEGORY				
<input type="checkbox"/> Public Hearing <input type="checkbox"/> Other <input type="checkbox"/> Evening Presentation <input type="checkbox"/> Special Meeting <input checked="" type="checkbox"/> Committee Briefing Ordinance: <input type="checkbox"/> Mayor's Report <input type="checkbox"/> Briefing/Discussion <input type="checkbox"/> Consent Agenda <input type="checkbox"/> Introduction or Expedited				
	Legal	<i>JH</i>	7-6-10	
	Mayor or CAO	<i>JCW</i>	7-6-10	
SUMMARY STATEMENT:				
<p>On June 21, 2010, a public hearing was held to consider establishment of a city-wide Transportation Benefit District (TBD) for the purpose of funding specific projects identified in the City's 2011-2016 Transportation Improvement Program; funding to be provided by a voter-approved 0.2% sales and use tax increase. Council passed the Ordinance 1st and 2nd to establish the TBD. Council requested a follow-up work session prior to considering final approval of ordinance at the July 12th evening meeting.</p>				
Previous Council Action: June 7, 2010 work session, June 21, 2010 public hearing passing Ordinance 1 st and 2 nd .				
FISCAL IMPACT:				
Total Fiscal Impact: No				
Source of Funds: N/A				
RECOMMENDED ACTION:				
<input type="checkbox"/> Information only; no action required <input checked="" type="checkbox"/> Move to adopt ordinance or resolution <input type="checkbox"/> Other		<input type="checkbox"/> Provide direction to staff <input type="checkbox"/> Move to approve appointment <input type="checkbox"/> Award Bid to lowest bidder		
COMMITTEE RECOMMENDATION / ACTION:				
COUNCIL ACTION:				

ORDINANCE NO. 2010-__-__

AN ORDINANCE ESTABLISHING A TRANSPORTATION BENEFIT DISTRICT; SPECIFYING THAT THE BOUNDARIES OF THE DISTRICT WILL COINCIDE WITH CITY BOUNDARIES; AND SPECIFYING THE TRANSPORTATION IMPROVEMENTS TO BE FUNDED BY THE DISTRICT.

WHEREAS, RCW 35.21.225 authorizes the legislative authority of a city to establish a transportation benefit district ("TBD"), for the purpose of acquiring, constructing, improving, providing, and funding transportation improvements within the TBD, subject to the provisions of chapter 36.73 RCW; and

WHEREAS, transportation improvements are defined in RCW 36.73.015 to include, among others, projects contained in the transportation plan of a city, which may include investment in new or existing highways of statewide significance, principal arterials of regional significance, high capacity transportation, public transportation, and other transportation projects and programs of regional or statewide significance including transportation demand management. Projects may also include the operation, preservation, and maintenance of these facilities or programs; and

WHEREAS, the City's six-year (2011-2016) Transportation Improvement Program identifies projects that also constitute transportation improvements that may be funded by a TBD, including Project #1 entitled "Annual Arterial Pavement Resurfacing Program", Project #16 entitled "Non-Motorized Transportation Options", Project #17 entitled "Transit Enhancement Options" (collectively the "TBD Projects"); and

WHEREAS, the City Council finds that the TBD Projects are transportation improvements within the meaning of RCW 36.73.015, and

WHEREAS, on June 21, 2010, the City conducted a public hearing in accordance with RCW 36.73.050, after giving proper notice describing the TBD Projects and activities to be funded by the TBD, and

WHEREAS, the City Council finds it to be in the best interests of the City to establish a citywide TBD to fund and implement the TBD Projects, through the imposition by the TBD of a voter-approved sales and use tax in accordance with RCW 82.14.0455, consistent with Chapter 36.73 RCW, and

WHEREAS, the City Council shall establish a governing body for the TBD comprised of the City Council acting in an *ex officio* and independent capacity;

AN ORDINANCE ESTABLISHING A TRANSPORTATION BENEFIT DISTRICT; SPECIFYING THE BOUNDARIES OF THE DISTRICT; AND SPECIFYING THE TRANSPORTATION IMPROVEMENTS TO BE FUNDED BY THE DISTRICT.

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NOW THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:

Section 1: Findings

The City Council finds it is in the public interest to provide adequate levels of funding for transportation improvements through establishment of a TBD. The City Council further finds that Project #1 entitled "Annual Arterial Pavement Resurfacing Program", Project #16 entitled "Non-Motorized Transportation Options", and Project #17 entitled "Transit Enhancement Options" included within the City's six-year (2011-2016) Transportation Improvement Program constitute transportation improvements that may be funded by a TBD.

Section 2: Formation of a Transportation Benefit District

The City, pursuant to RCW 35.21.225 and chapter 36.73 RCW, hereby establishes and creates a TBD to be known and referred to as TBD No. 1, subject to the following:

1. **Establishing a Transportation Benefit District.** There is created TBD No. 1 with geographical boundaries comprised of the corporate limits of the City, as these boundaries may be amended following future annexations..
2. **Governing Board.**
 - a. Consistent with RCW 36.73.020(3), the governing board of TBD No. 1 (the "TBD Board") shall be the Bellingham City Council acting in an *ex officio* and independent capacity. The TBD Board shall have the authority to exercise the statutory powers set forth in chapter 36.73 RCW.
 - b. Consistent with RCW 36.73.020(4), the secretary/treasurer of TBD No. 1 shall be the City Finance Director.
 - c. As required by RCW 36.73.160(1), as the same may be amended from time to time, the TBD Board shall develop a material change policy to address major plan changes that affect TBD Project delivery or the ability to finance the plan for funding and implementing the TBD Projects.
 - d. Meetings of the TBD Board shall be governed by the procedural rules applicable to meetings of the City Council, as these rules may be amended by the City Council from time to time. TBD Board actions shall be taken in the same manner and follow the same procedure as for the adoption of City Council resolutions. Meetings of the TBD Board shall, whenever possible, take place on the same dates scheduled for City Council meetings.
 - e. The City Council legislative coordinator shall provide primary staff support to the TBD Board. The TBD Board will be advised by, and may assign tasks to, the City Administration which also acts as the Administration for TBD No. 1. The City

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Attorney will serve as legal advisor to the TBD Board, except where separate counsel is engaged by the TBD.

f.. The City Council President shall serve as the chair of the TBD Board and shall preside over all meetings of the TBD Board.

3. **Powers of TBD No. 1.** TBD No. 1 shall possess all of the powers of a transportation benefit district authorized pursuant to Chapter 36.73 RCW, including without limitation the power to request voter approval of, and thereafter impose and collect, a sales and use tax in accordance with RCW 82.14.0455.

4. **Transportation Improvements Funded.** The funds generated by TBD No. 1 shall be used for the TBD Projects described in Section 1 of this ordinance. The TBD Projects may be amended in accordance with the material change policy described in Section 2(2)(c) of this ordinance and in accordance with the notice, hearing and other procedures described in chapter 36.73 RCW, including RCW 36.73.050(2)(b), as the same may be amended from time to time.

5. **Annual Report to the Public.** As required by RCW 36.73.160(2), as the same may be amended from time to time, the TBD shall issue an annual report, indicating the status of transportation improvement costs, transportation improvement expenditures, revenues, and construction schedules, to the public and to newspapers of record in the TBD.

6. **Dissolution of TBD No. 1.** TBD No. 1 shall be dissolved pursuant to the procedures set forth in chapter 36.73 RCW, when all indebtedness, if any, of TBD No. 1 has been retired and when all of TBD No. 1's anticipated responsibilities have been satisfied.

Section 3. Severability; Construction. If a section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction; such decision shall not affect the validity of the remaining portions of this ordinance. If the provisions of this ordinance are found to be inconsistent with provisions of the Bellingham Municipal Code, this ordinance is deemed to control.

PASSED by the Council this _____ day of _____, 2010.

Council President

APPROVED by me this _____ day of _____, 2010.

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Mayor

ATTEST: _____
Finance Director

APPROVED AS TO FORM:

Office of the City Attorney

Published:

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DRAFT

RESOLUTION NO. _____

A RESOLUTION OF THE BOARD OF TRANSPORTATION BENEFIT DISTRICT NO. 1, BELLINGHAM, WASHINGTON, PROVIDING FOR A BALLOT PROPOSITION TO BE SUBMITTED TO THE QUALIFIED ELECTORS OF THE DISTRICT ON NOVEMBER 2, 2010 TO IMPOSE A TWO-TENTHS OF ONE PERCENT (0.2%) SALES AND USE TAX WITHIN THE DISTRICT FOR A PERIOD OF TEN YEARS TO FUND SPECIFIED TRANSPORTATION IMPROVEMENTS.

WHEREAS, the City of Bellingham (the "City") approved Ordinance No. 2010-07-_____ on July 12, 2010, establishing Transportation Benefit District No. 1 (the "District") pursuant to chapter 36.73 RCW; and

WHEREAS, the City's six-year (2011-2016) Transportation Improvement Plan identifies projects that constitute transportation improvements that may be funded by the District, including Project #1 entitled "Annual Arterial Pavement Resurfacing Program", Project #16 entitled "Non-Motorized Transportation Options", and Project #17 entitled "Transit Enhancement Options", (collectively the "TBD Projects"); and

WHEREAS, on June 21, 2010, the City conducted a public hearing in accordance with RCW 36.73.050, after giving proper notice describing the TBD Projects and activities to be funded by the District, and

WHEREAS, with voter approval, the District may impose a sales and use tax upon the occurrence of any taxable event within the boundaries of the District to fund transportation improvements; and

WHEREAS, the governing board of the District (the "Board") now desires to fund and implement the TBD Projects, through the imposition by the District of a two-tenths of one percent (0.2%) sales and use tax in accordance with RCW 82.14.0455, consistent with Chapter 36.73 RCW, upon voter approval thereof;

NOW THEREFORE, THE BOARD OF TRANSPORTATION BENEFIT DISTRICT NO. 1, BELLINGHAM, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

Section 1 Findings; Description of the TBD Projects.

The Board hereby finds that the best interests of the inhabitants of the District require the District to impose a sales and use tax in the amount of two-tenths of one percent (0.2%) pursuant to RCW 36.73.040(3)(a) and RCW 82.14.0455 for the purpose of providing a portion of the funds necessary to finance the TBD Projects.

RESOLUTION RE SALES AND USE TAX TO FUND
SPECIFIED TRANSPORTATION IMPROVEMENTS - 1

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The TBD Projects consist of the following transportation improvement projects described in the City's six-year (2011-2016) Transportation Improvement Plan, which descriptions are incorporated herein:

- Project #1 entitled "Annual Arterial Pavement Resurfacing Program",
- Project #16 entitled "Non-Motorized Transportation Options ", and
- Project #17 entitled "Transit Enhancement Options"

The cost of all necessary design, engineering, financial, legal and other consulting services, inspection and testing, administrative and relocation expenses and other costs incurred in connection with the foregoing TBD Projects shall be deemed a part of the costs of the TBD Projects.

The Board shall determine the application of moneys available for the TBD Projects so as to accomplish, as nearly as may be, all of the TBD Projects. In the event that the proceeds of sales and use taxes authorized herein, plus any other money of the District legally available therefor, are insufficient to accomplish all of the TBD Projects, the Board shall use the available funds for paying the cost of those portions of the TBD Projects deemed by the Board most necessary and in the best interest of the District.

The Board shall determine the exact locations and specifications for the elements of the TBD Projects as well as the timing, order and manner of implementing or completing the TBD Projects. The Board may alter, make substitutions to and amend the TBD Project descriptions as it determines is in the best interests of the District consistent with the general descriptions provided above and in accordance with the material change policy adopted by the Board and the notice, hearing and other procedures described in chapter 36.73 RCW, including RCW 36.73.050(2)(b), in each case as the same may be amended from time to time.

If the Board shall determine that it has become impractical to acquire, construct, or implement all or any portion of the TBD Projects by reason of changed conditions, incompatible development, costs substantially in excess of the amount of sales and use tax proceeds estimated to be available, or acquisition by a superior governmental authority, the Board shall not be required to acquire, construct, or implement such portions. If all of the TBD Projects have been acquired, constructed, implemented or duly provided for, or found to be impractical, the Board may apply the sales and use tax proceeds (including earnings thereon) or any portion thereof to other transportation improvements then identified in the City's six-year transportation improvement program in accordance with the material change policy adopted by the Board and the notice, hearing and other procedures described in chapter 36.73 RCW, including RCW 36.73.050(2)(b), in each case as the same may be amended from time to time.

Section 2. Proposition.

It is hereby found and declared that the best interests of the District require the submission to the qualified electors of the District of the proposition whether the District shall impose a sales and use tax within the limitations established in RCW 82.14.0455 for their ratification or rejection at a special election to be held on November 2, 2010. For the purpose of providing funds necessary to pay or finance costs of the TBD Projects, the Whatcom County Auditor, as *ex officio* supervisor of elections in Whatcom County, Washington, is hereby requested to call and conduct such special election to be held within the District on such day and to submit to the qualified electors of the District for their approval or rejection, a proposition to impose a sales and use tax in the amount of two-tenths of one percent (0.2%) of the selling price in the case of a sales tax, or value of the article used, in the case of the use tax. The tax is in addition to any other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the boundaries of the District, for a period of ten years.

Upon approval of the voters of the proposition hereinafter set forth, the District may use proceeds of such sales and use tax for the purpose of paying or financing costs of the TBD Projects in accordance with the requirements of chapter 36.73 RCW. The Secretary of the Board is hereby authorized and directed to certify said proposition to said official in the following form:

**TRANSPORTATION BENEFIT DISTRICT NO. 1
BELLINGHAM, WASHINGTON
SALES AND USE TAX FOR
TRANSPORTATION IMPROVEMENTS**

The Board of Transportation Benefit District No. 1, Bellingham, Washington, adopted Resolution No. 2010-___ concerning a sales and use tax to fund transportation improvements. This proposition would authorize a sales and use tax of two-tenths of one percent (0.2%) to be collected from all taxable retail sales within the District in accordance with RCW 82.14.0455 for a term of ten years for the purpose of paying or financing costs of the following transportation improvement projects identified in the City of Bellingham Transportation Improvement Plan (TIP): resurfacing pavement on arterial streets and bicycle lanes, adding non-motorized transportation options and transit service. Should this proposition be approved?

Yes?

No?

Section 3. Corrections.

The Secretary of the District is authorized to make necessary clerical corrections to this resolution including, but not limited to, the correction of scrivener's or clerical errors, references, resolution numbering, section/subsection numbers and any references thereto.

Section 4. Severability.

If any section, sentence, clause or phrase of this resolution should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this resolution.

PASSED by the Board of Transportation Benefit District No. 1, Bellingham, Washington, at a regular open public meeting thereof held this 9th day of August, 2010.

**TRANSPORTATION BENEFIT DISTRICT
NO. 1, BELLINGHAM, WASHINGTON**

Chair

ATTEST:

Secretary/Treasurer

APPROVED AS TO FORM:

City Attorney

APPROVED by me this _____ day of _____, 2010.

Mayor

RESOLUTION RE SALES AND USE TAX TO FUND
SPECIFIED TRANSPORTATION IMPROVEMENTS - 4

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