

HOUSE No. 3823

Section 30 contained in the engrossed Bill making appropriations for the fiscal year 2018 (see House, No. 3800), which had been returned by His Excellency the Governor with recommendation of amendment (for message, see Attachment G of House, No. 3828). July 17, 2017.

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

An Act relative to community benefit districts.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to establish forthwith community benefit districts, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The General Laws are hereby amended by inserting after chapter 40W the
2 following chapter:-

3 CHAPTER 40X.

4 COMMUNITY BENEFIT DISTRICTS

5 Section 1. As used in this chapter, the following words shall have the following
6 meanings unless the context clearly requires otherwise:

7 “Community benefit district”, a contiguous geographic area with clearly-defined
8 boundaries formed pursuant to this chapter.

9 “Community benefit district corporation”, the nonprofit corporation designated to receive
10 funds and otherwise implement the community benefit district, including the board of directors,
11 officers and employees.

12 “Community benefit district fee”, a payment for services or improvements specified by
13 the initial management plan or any other management plan.

14 “Initial management plan”, the strategic and operating plan for the community benefit
15 district as approved by the municipal governing body as part of the creation of the community
16 benefit district.

17 “Management plan”, a subsequent, updated version of the initial management plan that is
18 approved by the board of directors.

19 “Memorandum of understanding with the municipality”, a document that describes the
20 standard government services and supplemental services to be provided within the community
21 benefit district and how the municipality will participate in the community benefit district as a
22 property owner and member.

23 “Municipal governing body”, the city council or board of aldermen in a city or the board
24 of selectmen or town council in a town.

25 “Petition signer”, a property owner or a designee within the community benefit district
26 who affirmatively signs the petition to establish the community benefit district.

27 “Property”, real property located within the community benefit district, whether
28 commercial, tax exempt or residential.

29 “Property owner”, the owner of record of property; provided, however, that when a
30 property is owned by an entity other than a natural person, a petition signer for that property shall
31 include the petition signer’s title and shall demonstrate its authority to sign as owner; and
32 provided further, that if a property is owned by multiple persons, the signature of 1 owner shall
33 be sufficient if that owner demonstrates authority to sign on behalf of the other owners.

34 “Standard government services”, governmental functions, programs, activities, facilities,
35 improvements and other services that a municipality is authorized to perform or provide and that
36 are paid for out of the municipal government budget.

37 “Supplemental services”, the provision of programs, public rights of way services,
38 activities, amenities or information in addition to the standard governmental services provided to
39 the community benefit district.

40 Section 2. The rights and powers of a community benefit district corporation in a
41 community benefit district approved by the municipal governing body pursuant to section 4 shall
42 include: (i) retaining or recruiting business; (ii) administering and managing central and
43 neighborhood business districts; (iii) promoting economic development; (iv) managing parking;
44 (v) designing, engineering, constructing, maintaining or operating buildings, facilities, urban
45 streetscapes or infrastructure to further economic development and public purposes; (vi)
46 conducting historic preservation activities; (vii) leasing, owning, acquiring or optioning real
47 property; (viii) owning and managing parks, public spaces and community facilities; (ix)
48 supplementing maintenance, security and sanitation; (x) planning and designing services; (xi)
49 formulating a fee structure; (xii) accumulating interest; (xiii) incurring costs or indebtedness;
50 (xiv) entering into contracts; (xv) suing and being sued; (xvi) employing legal and accounting

51 services; (xvii) undertaking planning, feasibility and market analyses; (xviii) developing
52 common marketing and promotional activities; (xix) engaging in placemaking, programming and
53 event management within the district; (xx) soliciting donations, sponsorships and grants; (xxi)
54 operating transit services; and (xxii) supporting public art, human and environmental services
55 related to the enhancement of the district or other supplemental services or programs that would
56 further the purposes of this chapter.

57 Section 3. The organization of a community benefit district shall be initiated by a
58 petition of the property owners within the proposed community benefit district which shall be
59 filed in the office of the clerk of the municipality and shall contain:

60 (i) the signatures of the property owners, including participating tax-exempt entities, or
61 petition signers in the proposed district who support the establishment of the district and who
62 will pay more than 50 per cent of the assessments proposed to be levied; provided, however, that
63 the amount of the assessment attributable to property owned by the same property owner that is
64 in excess of 20 per cent of the amount of all assessments proposed shall not be included in the
65 calculation or, alternatively, if there are not more than 4 property owners in the proposed district,
66 all such property owners shall sign the petition;

67 (ii) a description of and a site map delineating the boundaries of the proposed
68 community benefit district;

69 (iii) the identity and address of the community benefit district corporation, including its
70 initial set of directors and officers and a copy of its by-laws;

71 (iv) an initial management plan which shall set forth the supplemental services and
72 programs, vision, strategy, budget and fee structures proposed for the community benefit district;

(v) the criteria for waiving the fee for a property owner within the community benefit district who can provide evidence that the imposition of such a fee would create a significant financial hardship; and

(vi) a staffing plan which may include private nonprofit, for profit or public agency contractors or subcontractors.

A petition may include a mechanism for reimbursing the municipality for the costs incurred in establishing the community benefit district and for costs incurred in collecting the district fees. A copy of the petition shall be filed with the undersecretary of housing and community development and the secretary of housing and economic development not more than 30 days following receipt of the petition by the clerk of the municipality.

Section 4. (a) The municipal governing body shall hold a public hearing not more than 60 days following receipt of the petition by the clerk of the municipality. Written notification of the hearing shall be sent to each property owner within the boundary of the proposed community benefit district at least 30 days before a hearing by mailing notice to the address listed in the property tax records. Notification of the hearing shall be published for 2 consecutive weeks in a newspaper of general circulation in the area, the last publication of which shall be not less than 14 days before the hearing and listed on the municipality's website. The public notice shall contain the proposed boundaries of the community benefit district, the proposed fee level, a summary of supplemental programs and services and where the property owner may obtain a full copy of the initial management plan.

(b) Prior to the public hearing, the municipal governing body shall direct the town clerk, city clerk or a designee to determine that the establishment criteria have been met, as set forth in

95 section 3. In determining whether a signature is authentic, the clerk shall apply the same standard
96 used when certifying signatures for a petition to place a referendum on a local or state ballot.

97 (c) Not more than 45 days after the public hearing, a municipal governing body may, by
98 vote of the city council with the approval of the mayor in a city, except in any city operating
99 under a Plan D or Plan E charter, in which case, by vote of the city council with the approval of
100 the city manager, and by a vote of the board of selectmen in a town, declare the district organized
101 and describe the boundaries and service area of the district; provided, however, that in a town
102 with a population of not more than 10,000, the district shall not be declared organized without a
103 vote by the board of selectmen and a town meeting. The declaration shall include authorization
104 to municipal staff to enter into an agreement with the community benefit district corporation with
105 respect to operations and funding consistent with the approved initial management plan. Upon
106 such declaration, the community benefit district may commence operations.

107 (d) Notice of the declaration of the organization of the community benefit district shall
108 be mailed or delivered to each property owner within the proposed community benefit district.
109 The notice shall explain that membership in the community benefit district is irrevocable unless
110 the community benefit district is dissolved pursuant to section 10 and shall include a description
111 of the basis for determining the district fee, the projected fee level and the services to be
112 provided within the community benefit district. The notice shall be published for 2 consecutive
113 weeks in a newspaper of general circulation in the area, the last publication being not more than
114 30 days after the vote to declare the district organized.

115 (e) Participation in the community benefit district shall be permanent unless the
116 community benefit district is dissolved pursuant to section 10. All property owners shall

117 contribute in accordance with fee structures based upon the benefits anticipated to be received, as
118 outlined in the initial management plan.

119 Section 5. (a) Each community benefit district corporation shall have a not-for-profit
120 board of directors that shall oversee its operations to insure the implementation of the initial
121 management plan and any management plan. Not less than 51 per cent of the board shall be
122 composed of property owners, which may include participating tax-exempt property owners or
123 their designees, and the remaining members may be a balanced group of stakeholders
124 representing the community including residents, municipal government, business tenants and
125 nonprofits.

126 (b) The initial management plan shall be updated not less than once every 3 years by the
127 community benefit district board of directors and a copy thereof shall be mailed, emailed or
128 delivered to each community benefit district member and filed with the municipal governing
129 body.

130 (c) The community benefit district corporation shall comply with the public charity
131 reporting requirements of section 8F of chapter 12.

132 Section 6. The real property located within a proposed community benefit district shall
133 be considered in the fee formula for supplemental services and programs as outlined in the initial
134 management plan, except that residential property with a homeowner eligible for a property tax
135 exemption established by statute, local ordinance or by-law shall not be charged a fee for
136 participating in the district.

137 Tax-exempt property owners in the district shall not be required to pay assessment fees,
138 but may elect to do so. Tax-exempt property owners may also enter into a memorandum of

agreement with the district management entity in lieu of, or to supplement, monetary payments and that may include contributions including: space for events, loans of equipment or vehicles, volunteers or volunteer management, staff time, programs and services to the community or another contribution deemed appropriate to support implementation of the district management plan.

The community benefit district corporation may grant a financial hardship waiver to a property owner pursuant to the waiver criteria established within the community benefit district. A waiver is not intended to be permanent, shall be requested and granted on an annual basis and shall be based upon temporary, extraordinary circumstances. The community benefit district corporation may approve in-kind contributions or services in addition to, or in lieu of, fees upon execution of a memorandum of agreement with a property owner.

Section 7. Upon formal approval of a community benefit district, the municipal governing body shall adopt the district fee structure for the financing of items submitted in the initial management plan for the community benefit district; provided, however, that the total fees assessed in any 1 year may not exceed $\frac{1}{2}$ of 1 per cent of the sum of the assessed valuation of the real property owned by participating members in the community benefit district. The basis of a district fee may be determined by a formula utilizing at least 1 or a combination of the following methodologies:

(i) different levels for varying classifications of real property;

(ii) benefit zones;

(iii) assessed valuation;

(iv) building or parcel square footage;

(v) street frontage; or

(vi) another formula that meets the objectives of the community benefit district.

The community benefit district, through its management plan, shall have the option to limit or cap the maximum annual fee derived from individual properties or the total annual revenue generated by the community benefit district.

The initial management plan may also propose a phase-in period of not more than 3 years in which assessments increase over the stated period. The formula for determining the district fee structure shall be set forth in the original petition as required by section 3.

The community benefit district may change the formula or the assessment level set forth in the initial management plan or management plan by majority vote of its board of directors, ratified by a vote of $\frac{2}{3}$ of the property owners that are members in the community benefit district. Not more than 30 days after amendment of the formula or assessment level, the community benefit district shall file notice of the changes with the municipal governing body, the undersecretary of housing and community development and the secretary of housing and economic development. In addition to receiving funds from the district fee, the community benefit district corporation may receive grants, donations, revenues generated from parking fees, community benefit district activities or gifts on behalf of the community benefit district.

Section 8. The collector or treasurer of the municipality may collect district fees in designated community benefit districts and disburse the funds to the community benefit district corporation. In addition to the items identified in section 3A of chapter 60, the collector or

181 treasurer may include notices for district fees in the envelope or electronic message in which a
182 property bill is sent. District fees collected shall be used solely to fund items to further the goals
183 identified and approved in the initial management plan for the community benefit district. The
184 collector or treasurer shall disburse fee revenues to the community benefit district corporation
185 not later than 30 days after the collection of such fees, together with any interest earned on those
186 fees.

187 Following establishment of the community benefit district, the fees billed by or on behalf
188 of the community benefit district and unpaid after 30 days from the date of billing shall become a
189 lien on the property, which shall have priority over all other liens except municipal liens and
190 mortgages of record prior to the recording of a notice of lien, if notice of the lien is duly recorded
191 by the community benefit district corporation in the appropriate registry of deeds or land court
192 registry district.

193 Section 9. After the establishment of a community benefit district pursuant to this
194 chapter, the district boundaries upon which the establishment was based may, upon the
195 recommendation of the community benefit district corporation, be amended by the municipal
196 governing body after compliance with the procedures set forth in this section.

197 The community benefit district corporation shall prepare a petition, consistent with the
198 criteria described in section 3; provided, however, that if the petition concerns an amendment to
199 expand the district, the petition shall be accompanied by signatures of the property owners who
200 are required to pay more than 50 per cent of the assessments in the expanded area. If the petition
201 concerns an amendment to reduce the size of the district, it shall be accompanied by signatures
202 of the property owners who are required to pay more than 50 per cent of the assessments levied

in the existing district. The municipal governing body shall hold a public hearing not more than 60 days after its receipt of a petition to amend the district boundaries. In the case of an expansion petition, written notification of the hearing shall be sent to each property owner within the proposed expansion area of the community benefit district at least 30 days before the hearing by mailing notice to the address listed in the property tax records. In the case of a reduction petition, the notice shall be sent to each property owner in the existing district. For either an expansion or reduction petition, notification of the hearing shall also be published for 2 consecutive weeks in a newspaper of general circulation in the area with the last publication being not less than 14 days before the hearing and shall be listed on the municipality's website. For an expansion petition, the public notice shall contain the proposed expanded boundaries of the community benefit district, the fee level, a summary of supplemental programs and services and where the property owner may obtain a full copy of the management plan. For a reduction petition, the public notice shall contain the proposed reduced boundaries of the community benefit district and any changes in the fee level, supplemental programs and services or other material aspects of the management plan that will occur as a result of the boundary change. Not more than 30 days after the hearing, and upon determination by the city or town clerk or designee, that the petition has met the necessary criteria, the municipal governing body may by a vote declare the district boundaries amended. Upon the adoption of an amendment to the district boundaries that increases the size of the district, owners of property to be added to the district shall be notified of the new boundaries of the district in accordance with section 4.

Section 10. A community benefit district may be dissolved by a majority vote by its board of directors, ratified by a $\frac{2}{3}$ vote of the property owners; provided, however, that the amount of the assessment attributable to property owned by the same property owner that is in

226 excess of 20 per cent of the amount of all assessments proposed shall not be included in the
227 calculation; provided further, that the community benefit district shall not be dissolved until it
228 has satisfied or paid in full its outstanding indebtedness, obligations and liabilities, until funds
229 are on deposit and available therefore or until a repayment schedule has been formulated and
230 approved by the municipal governing body. Upon dissolution, the community benefit district
231 shall not incur any new or increased financial obligations. Any liabilities, either current or future,
232 incurred as a result of action to accomplish the purposes of the management plan shall not be an
233 obligation of the municipality. Liabilities shall be paid for entirely from revenue gained from the
234 project or facilities authorized or from the fees on the properties in the community benefit
235 district.

236 Upon the dissolution of a community benefit district, any remaining revenues derived
237 from the sale of assets acquired with fees collected shall be refunded to the property owners in
238 the community benefit district by applying the same formula used to calculate the fee in the
239 fiscal year in which the community benefit district is dissolved. Nothing in this section shall
240 prevent the filing of a subsequent petition for a similar community benefit district.

241 SECTION 2. This act shall take effect as of July 1, 2017.