

ORDINANCE #15-13
AN ORDINANCE AMENDING CHAPTER XXI, BUSINESS IMPROVEMENT DISTRICT,
OF THE REVISED GENERAL ORDINANCES OF THE BOROUGH OF KEYPORT

**BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE BOROUGH
OF KEYPORT AS FOLLOWS:**

SECTION I. REPEAL OF PRIOR CHAPTER XXI.

The existing Chapter XXI, Business Improvement District, of the Revised General Ordinances of the Borough of Keyport is repealed and replaced by this Ordinance.

SECTION II.

21-1 STATEMENT OF FACTS; DECLARATION.

The Mayor and Council of the Borough of Keyport find and declare as follows:

- a. The business community is a vital economic and social force in the Borough of Keyport.
- b. A Business Improvement District pursuant to N.J.S.A. 40:56-65, *et seq.*, was established by Borough Ordinance No. 25-99, amended by Borough Ordinance 6-02.
- c. Since the establishment of the Business Improvement District the business community and the entire Borough, its residents and the surrounding communities have benefitted from the actions of the District Management Corporation, its Directors, staff and members.
- d. Notwithstanding the success of the Business Improvement District and the District Management Corporation there is a need to ensure that both act in the best interests of the business community, the Borough and its residents.
- e. ~~The District Management Corporation is a quasi-public entity entrusted by the Mayor and Council with the performance of certain governmental functions and it is necessary that it comply with uniform contracting and purchasing practices and other laws and otherwise shall conduct its business in an open and transparent fashion consistent with the high standards and principles required of a public trust.~~
- f. N.J.S.A. 40:56-75 provides that notwithstanding the establishment of a Business Improvement District the municipality and its governing body shall retain its police powers and other rights and powers relating to the Business Improvement District and may abandon or change the Business Improvement District or change or repeal any plans, rules or regulations adopted for its operation.

- g. N.J.S.A. 15A:6-6 of the New Jersey Nonprofit Corporation Act provides that the trustees of a nonprofit corporation such as the Keyport Business Alliance, Inc. can only be removed by a vote of its members or the other trustees as set forth in the certificate of incorporation or bylaws of the nonprofit corporation.
- h. In order to ensure that the operation of the Business Improvement District is conducted in a manner consistent with the high standards and principles required of a public trust there is a need for the Mayor and Council to more effectively exercise their police powers and other rights and powers pursuant to N.J.S.A. 40:56-75.
- i. The certificate of incorporation and bylaws of the Keyport Business Alliance, Inc. do not allow the proper exercise by the Mayor and Council of those police powers and other rights and powers and accordingly it is necessary that it be decertified as the District Management Corporation and replaced by a nonprofit corporation whose certificate of incorporation and bylaws ensure that the Mayor and Council retain all powers to which they are entitled under the law.
- j. The non-profit corporation known as the Keyport Business Alliance, Inc. is hereby decertified as the District Management Corporation for the Business Improvement District of the Borough of Keyport.

21-2 DEFINITIONS.

As used in this Chapter:

Business Improvement District, also referred to as the Special Improvement District, the District or by the acronyms BID or SID, shall mean those areas within the Borough of Keyport occupied by commercial property or businesses, including multi-family apartment complexes in which the units are not available for fee simple purchase, designated by street addresses and block and lot numbers, upon which properties and businesses a special assessment shall be imposed for the purposes of promoting the economic and general welfare of the District.

~~*Zone* shall mean a geographical part of the Business Improvement District which is distinct in location or function and within which the rate of the special assessment shall be set to reflect the needs of and anticipated benefits to the included commercial properties or businesses.~~

District Management Corporation shall mean a nonprofit corporation established pursuant to the New Jersey Nonprofit Corporation Act, N.J.S.A. 15A:1-1, *et seq.*, and designated by municipal ordinance to receive the funds collected by the special assessment imposed within the Business Improvement District.

21-3 PURPOSES AND OBJECTIVES.

The purposes and objectives of this Chapter are:

- a. To foster the economic development and revitalization of the business community and strengthen its contributions to residents and property owners within the Borough of Keyport.
- b. To establish a public/private partnership through a business improvement district and a district management corporation to allow all those who live, work or invest in the District to contribute to the improvement of the Borough and its business community.
- c. To create and foster self-help programs to improve the local business environment.
- d. To organize and coordinate community activities with other agencies, commissions, committees, organizations and other persons within the Borough.
- e. To establish the procedures for the imposition of a special assessment and its collection by the Borough with the regular property tax payment or payment in lieu of taxes or otherwise, and for the transfer of all or a portion of these payments to the District Management Corporation to effectuate the purposes of this Chapter and to exercise the powers given to it by this Chapter.
- f. To provide for the administrative, planning and other services necessary to properly use the special assessment imposed and collected by the Borough to the maximum benefit of the business community and residents of the Borough of Keyport.
- g. To ensure that the business community has the resources required over and above the services regularly provided by the Borough to meet the unique needs of the District ~~or Zone~~.

21-4 CREATION AND CONTINUATION OF THE BUSINESS IMPROVEMENT DISTRICT.

- a. The Business Improvement District established by Borough Ordinance No. 25-99 and amended by Borough Ordinance 6-02 and known as the Keyport Business Improvement District or Keyport BID is continued having the boundaries set forth in this Ordinance. The Business Improvement District is designated on the attached Map, Schedule A. All affected commercial properties or businesses designated by street addresses and block and lot numbers are listed on Schedule B.
- ~~b. The Business Improvement District shall be divided into two or three Zones entitled the Downtown Zone, the Highway Zone and, if created, the Noncontiguous Zone or Central Zone. The commercial properties or businesses designated for each Zone will be proposed by the Board of Directors and submitted to the Mayor and Council for approval. The Mayor and Council may amend or alter the Zone designations or assignments proposed by the Board of Directors. In order to ensure that the owners and other parties in interest of the affected commercial properties and businesses have the opportunity to be heard, they shall be notified by regular mail of their~~
proposed inclusion of their property in the Business Improvement

~~District~~~~Zone~~ designations or assignments, and subsequent amendments or alterations of those designations or assignments shall be effected by ordinances amending Schedules A and B.

- c. All affected commercial properties or businesses designated by street addresses and block and lot numbers shall be subject to ~~at the~~ special assessment ~~fixed for the Zone in which they are located. Such assessment shall be~~ imposed by the Borough of Keyport to effectuate the purposes and objectives of this Chapter.
- d. Those properties within the District that are tax-exempt or used solely for single-family, two-family or three-family residences or are vacant lots are deemed excluded from the special assessment imposed by this Chapter and are expressly exempt from any assessment made for District purposes.
- e. The owner of any commercial or business property located outside the Business Improvement District may request that said property be included in and be subject to the provisions of this Chapter. Upon approval of the request by the Board of Directors of the District Management Corporation any such property shall be deemed to be within the Business Improvement District. Such approval shall not obligate the District Management Corporation to provide any specific services or benefits to the property.

21-5 APPEAL OF PROPERTY OWNER FROM INCLUSION IN DISTRICT.

Any owner of property included within the District and subject to the assessing provisions of this Ordinance may appeal to the Tax Assessor of the Borough of Keyport requesting to be excluded from the District and from any assessment provisions of this Ordinance. This appeal is only as to whether or not the property should be included within the District under the standards set forth in Section 21-4. It is not an appeal with regard to any taxes. Appeals with regard to taxes should be taken in the usual manner to the Monmouth County Board of Taxation or to the Tax Court. Any appeal seeking exclusion from the District and any assessment provisions of this Chapter shall be in writing and specifically detail the factual basis for the appeal. The Assessor shall investigate the matter and conduct an informal hearing or conference within thirty (30) days of receipt of the appeal. Within ten (10) days after the conclusion of the informal hearing or conference the Assessor shall file a report and recommendation with the Mayor and Council. The Mayor and Council shall review the matter and act within thirty (30) days from receipt of the report and recommendation of the Assessor.

21-6 ASSESSMENTS.

- a. *Operation and Maintenance of the District.* Annual operation and maintenance costs relating to services peculiar to the District, as distinguished from services normally provided by the Borough, will provide benefits primarily to the properties included within the District rather than to the Borough as an entirety. These annual costs shall be assessed to the benefitted properties pursuant to the provisions of N.J.S.A. 40:56-65, *et seq.*

- b. *Development, Construction or Acquisition Costs.* Improvements and facilities hereinafter acquired or developed for the benefit of the District shall be operated and maintained and the costs thereof assessed to the properties within the ~~Zone or District.~~

21-7 THE DESIGNATED DISTRICT MANAGEMENT CORPORATION.

- a. The nonprofit corporation, Keyport BID, Inc., incorporated pursuant to N.J.S.A. 15A:1-1, *et seq.*, is hereby designated as the District Management Corporation for the District.
- b. This ~~District~~ Management Corporation shall conduct its business in accordance with the Open Public Meetings Act, N.J.S.A. 10:4-6, *et seq.*, and the Open Public Records Act, N.J.S.A. 47:1A-1, *et seq.*, ~~and the Local Public Contracts Law, N.J.S.A. 40A:11-1, et seq., except as modified in Section 8 of this Chapter.~~
- c. The ~~District~~ Management Corporation shall conduct regular meetings no less than quarterly. It shall regularly file copies of the minutes and recordings of its meetings with the Borough clerk to ensure that the minutes will be conveniently accessible to the public for inspection.
- d. The ~~District~~ Management Corporation shall have a Board of Directors consisting of ~~eleven~~thirteen voting members as follows:
 - i. The Mayor or Mayor's Designee;
 - ii. ~~Two~~One members of the Borough Council appointed by the Mayor with the approval of the Council;
 - ~~iii. The Borough Business Administrator or Business Administrator's Designee;~~
 - iii. One member of the Recycling Committee, Environmental Commission or a Code Enforcement Official appointed by the Mayor with the approval of the Council;
 - iv. One resident or property owner not assessed under this Chapter, who is not an employee or tenant of a business or property owner assessed under this Chapter, or an employee of the Borough appointed by the Mayor with the approval of the Council;
 - v. ~~Five~~Nine business property owners or occupants of assessed properties located within the District, who shall be known as the "Elected" members. ~~with at least one Director representing each Zone.~~ These business property owners or occupants of assessed properties shall not be employees or tenants of another Director on this Board.

- e. The term of the Mayor shall be coterminous with his term in office. The term of the Mayor's Designee shall be for a period of one year and shall be at the pleasure of the Mayor. ~~In the event of the Mayor's death, resignation or removal from office the Mayor's successor on the Board shall be selected by a majority vote of the full Council. A Mayor appointed pursuant to the Municipal Vacancy Law, N.J.S.A. 40A:16-1 shall have no powers of appointment to the Board of Directors until a successor, which may be the appointed Mayor, is elected to complete the unexpired term. Until that election is conducted the power of appointment to the Board of Directors shall reside with the Council with the appointed Mayor serving only to constitute a quorum.~~
- f. The term of the Directors appointed pursuant to paragraphs ii, iii and ~~v(d)(iii) and (d)(iv)~~ shall be for a period of one year and shall be at the pleasure of the Mayor and Council. These Directors may be removed by a vote of a simple majority of the Mayor and Council.
- g. The ~~five~~nine **Elected** Directors who are business property owners or occupants of assessed properties located within the District shall serve a term of **three years; except for the initial Elected Directors**~~of two years.~~ The initial "business" members of the Board of Directors shall be nominated by the Mayor with the approval of the Council. The terms of three of the initial "business" members shall be for one year and the terms of two of the initial "business" members shall be for two years. ~~Thereafter all terms of the "business" members of the Board of Directors shall be for two years. The date when each term commences shall be fixed in the Bylaws of the Keyport BID, Inc. Elections shall be scheduled within the first year after the formation of the Keyport BID, Inc. for the three Directors serving one year terms. The remaining two Directors shall be elected the following year and they shall serve a term of two years from the date fixed in the Bylaws.~~
- h. **The manner for conducting e**~~Elections of the "business" members of~~ **to the Board of Directors (known as the "Elected" members)** ~~shall allow one vote for each assessed commercial property or business in the District. That vote may be cast by either an owner or an occupant of an assessed property. The conduct of the election shall be established in the Bylaws of the Keyport BID, Inc. with particular attention given to the requirement that at least one Director represent each Zone.~~
- i. Vacancies on the Board of Directors shall be filled by appointment of the Mayor with the approval of the Council until the next election scheduled pursuant to the Bylaws of the Keyport BID, Inc. at which time a Director will be elected to serve for the balance of the unexpired term. **A Director elected to fill an unexpired term shall take office immediately upon certification of election.**
- i. If a member of the Board of Directors is alleged to have violated the laws governing the operation of the District Management Corporation, or has

voted to authorize the District Management Corporation to violate the laws governing the operation of the Corporation, or has been convicted in a court of competent jurisdiction of violating any other law, the Mayor and Council may request in writing that the Board of Directors remove that member in the manner provided in the Bylaws of the Corporation. That written request shall specify the charges stating both the facts alleged and the ordinances, regulations or statutes alleged to have been violated. If the Board of Directors fails or refuses to remove that member the Mayor and Council may charge the member and proceed to remove the member as provided in this section. Any member of the Board of Directors charged by the Mayor and Council with violating the law will, at the member's discretion, be afforded a hearing before the Mayor and Council. A vote for removal of a Director must be adopted by a vote of at least four Councilmembers. The Mayor shall preside over the hearing, but shall not vote on any motion to remove. The vacancy created by the removal may be filled by appointment of the Mayor with the approval of the Council.

21-8 POWERS OF THE DESIGNATED DISTRICT MANAGEMENT CORPORATION.

The Mayor and Council expressly retains all of its power and authority over the area designated as being within the District and all of its power and authority over the District Management Corporation ~~which shall be considered an agency of the Borough of Keyport entrusted with the performance of certain enumerated governmental and quasi-governmental functions pertaining to the promotion of the general welfare of the Borough's business community and residents.~~ N.J.S.A. 40:56-75 provides that notwithstanding the establishment of a Business Improvement District the municipality and its governing body shall retain its police powers and other rights and powers relating to the Business Improvement District and may abandon or change the Business Improvement District or may change or repeal any plans, rules or regulations adopted for the operation of the Business Improvement District.

The District Management Corporation shall have no power of condemnation or eminent domain.

The District Management Corporation shall ~~act as an advisory board to the Mayor and Council~~ (pursuant to statute, and shall have all of the powers and responsibilities necessary and requisite to effectuate the purposes of this Chapter and the District. The exercise of these powers shall be by resolution approved by a majority of a quorum of the Board of Directors. These powers shall include, but not be limited to:

- a. 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;

- i. These Bylaws shall be submitted to the Mayor and Council for approval and any amendments thereto shall be submitted to the Mayor and Council for approval;
- ii. The Bylaws, ~~Certificate of Incorporation and other corporate documents~~ shall provide that Management Corporation shall ~~[in voluntary compliance]~~ conduct its business in accordance with the Open Public Meetings Act, N.J.S.A. 10:4-6, *et seq.*, the Open Public Records Act, N.J.S.A. 47:1A-1, *et seq.*, and **to the extent required by N.J.S.A. 40:56-86**, the Local Public Contracts Law, N.J.S.A. 40A:11-1, *et seq.*, ~~except as modified in this Section;~~
- iii. The Bylaws, Certificate of Incorporation and other corporate documents shall provide that the Management Corporation shall conduct regular meetings no less than quarterly and that it shall regularly file copies of the minutes and recordings of its meetings with the Borough Clerk to ensure that the minutes will be conveniently accessible to the public for inspection;
- iv. The Bylaws shall include the following:
 - a) Eligibility requirements to run for election to the Board of Directors,
 - b) Quorum for the Board of Directors to exercise the powers and conduct the business of the District Management Corporation,
 - c) Manner in which a candidate is nominated to run for election to the Board of Directors,
 - d) Grounds and Manner in which Directors may be removed from office by the Board of Directors in addition to removal by the Mayor and Council as provided in Section 7,
 - e) Asset distribution upon dissolution of the District Management Corporation,
 - f) **Unless there is a provision to the contrary in the bylaws of the District Management Corporation, the Board of Directors shall conduct its meetings in accordance with *Parliamentary Authority: Robert's Rules of Order, Revised*.**
- b. Contract for work to be done on any street or streets, or on any other municipal property included in the Business Improvement District, if the Mayor and Council pursuant to N.J.S.A. 40:56-86 delegates such work to the District Management Corporation. **If so delegated,** the Management Corporation shall be a "contracting unit" within the meaning of the Local Public Contracts Law, N.J.S.A. 40A:11-1, *et seq.*, and shall be fully subject to the requirements of that law. The plans and specifications for the work to be

contracted shall be approved by the Municipal Engineer prior to the initiation of any action for the awarding of a contract under that Law.

- c. Employ such persons as may be required, and fix and pay their compensation from funds available to the Management Corporation.
- d. Apply for, accept, administer and comply with the requirements respecting an appropriation of funds or a gift, grant or donation of property or money.
- e. Make and execute agreements which may be necessary or convenient to the exercise of powers and functions of the Management Corporation, including contracts with any person, firm, corporation, governmental agency or other entity. ~~The Management Corporation shall be a "contracting unit" within the meaning of the Local Public Contracts Law, N.J.S.A. 40A:11-1, et seq., and shall be fully subject to the requirements of that law except as provided herein. The competitive proposals required by N.J.S.A. 40A:11-6.1 or any other section of the Local Public Contracts Law may be solicited solely from businesses located within the District or such location within the District may be considered a dominant or controlling factor in awarding the contract. If a Resolution is adopted by the Mayor and Council pursuant to N.J.S.A. 40A:11-6.1(c) all contracts that are in the aggregate less than 15 percent of the bid threshold may be awarded by the Management Corporation without soliciting competitive proposals.~~
- f. Administer and manage its own funds and accounts and pay its own obligations.
- g. Borrow money from private lenders and from governmental entities;
- h. Fund the improvement of the exterior appearance of properties in the District through grants or loans. Standards for eligibility and standards for terms of such grants and loans shall be established by the Board of Directors.
- i. Fund the rehabilitation of properties in the District through grants or loans. Standards for eligibility and standards for terms of such grants and loans shall be established by the Board of Directors.
- j. Accept, purchase, rehabilitate, sell, lease or manage property in the District. Any sale or conveyance of any interest in property including a leasehold shall be conducted in accordance with the Local Lands and Buildings Law, N.J.S.A. 40A:12-1, et seq., except that bids may be initially solicited solely from businesses located within the District by a means reasonably certain to communicate the offer to all businesses and assessed property owners within the District, without need of advertising in a newspaper, and if bids are received from persons or entities within and without the District location within the District may be considered a dominant or controlling factor in awarding the sale or leasehold.

- k. Enforce the conditions of any loan, grant, sale or lease made by the Management Corporation.
- l. Provide security, sanitation and other services to the District, supplemental to those provided normally by the municipality. The Mayor and Council specifically reserve the authority to determine that certain security, sanitation and other services are necessary in the District and to require the Management Corporation to provide said services. If the Management Corporation fails or refuses to provide said services the Mayor and Council may provide them and deduct the cost thereof from the assessment levied and collected for the support of the District.
- m. Undertake improvements designed to increase the safety or attractiveness of the District to businesses which may wish to locate there or to visitors to the District, including, but not limited to, litter cleanup and control, landscaping, parking areas and facilities, recreational and rest areas and facilities, pursuant to pertinent regulations of the Borough of Keyport and the directives of the Mayor and Council ~~and the Local Public Contracts Law, N.J.S.A. 40A:11-1, et seq., as modified by this Chapter.~~
- n. Publicize the District and the businesses included within the District boundaries.
- o. Recruit new businesses to fill vacancies in, and to balance the business mix of, the District.
- p. Organize special events in the District.
- q. Provide special parking arrangements for the District.
- r. Provide temporary decorative lighting in the District.
- s. Establish, coordinate and direct various committees to which Borough officials such as the Police Chief or Director and Director or Superintendent of Public Works shall serve as liaisons to the Board of Directors to further the objectives of the Management Corporation.

21-9 ANNUAL BUDGET, HEARING AND ASSESSMENTS.

- a. The fiscal year of the District and of the Management Corporation shall be the calendar year. The first budget shall be for the calendar year 2012 and shall be submitted by the Board of Directors to the Mayor and Council within ninety days of the anniversary from the formation of the Keyport BID, Inc. Hereafter, beginning December 1, 2012, the Management Corporation shall submit no later than December 1 of each year a detailed annual budget for the following year for approval by the Mayor and Council. The budget shall be processed and adopted by the Borough on or before April 1 of each year in accordance with the procedures set forth in N.J.S.A. 40:56-84.

- b. The budget shall be submitted with a report which explains how the budget contributes to the goals and objectives of the Business Improvement District. The budget may include:
 - i. The amount of such costs to be charged against the general funds of the municipality, if any;
 - ii. The amount of costs to be charged and assessed against properties in the District in proportion to benefits which shall be the aggregate of costs of annual improvements to be made in the District during each year;
 - iii. The amount of the costs, if any, to be specially assessed against properties in the District.
- c. The budget shall be introduced, approved, amended and adopted by resolution passed by not less than a majority of the full membership of the Mayor and Council, that is, three Councilmembers and the Mayor or four Councilmembers. The procedure shall be as follows:
 - i. Introduction and approval,
 - ii. Public advertising,
 - iii. Public hearing,
 - iv. Amendments and further public hearings, if required,
 - v. Adoption.

The budget shall be introduced in writing at a meeting of the Mayor and Council. Approval thereof shall constitute a first reading, which may be by title. Upon approval of the budget by the Mayor and Council it shall fix the time and place for the holding of a public hearing upon the budget. the budget shall be advertised after approval. The advertisement shall contain a copy of the budget and shall set forth the date, the time and place of the hearing. It shall be published at least 10 days prior to the date fixed therefor in a newspaper approved for publication. No budget shall be adopted until a public hearing has been held thereon and all persons having an interest therein shall have been given an opportunity to present objections.

The hearing shall be held not less than twenty-eight (28) days after the approval of the budget upon first reading. The public hearing shall be held at the time and place specified in the advertisement thereof, but may be adjourned from time to time until the hearing is closed. The budget, as advertised, shall be read at the public hearing, in full, or it may be read by its title if:

- i. At least one week prior to the date of hearing a complete copy of the approved budget, as advertised:
 - a. Shall be posted in a public place where public notices are customarily posted in Borough Hall, and
 - b. Is made available to each person requesting the same during that week and during the public hearing, and
- ii. The Mayor and Council shall, by resolution passed by not less than a majority of the full membership, determine that the budget shall be read by its title and declare that the conditions set forth in clause (i) have been met.

After closing the hearing the Mayor and Council may adopt the budget by title, without amendments, or may approve amendments, as provided below, before adoption.

The Mayor and Council may amend the budget during or after the public hearing. No amendment by the Mayor and Council shall be effective until taxpayers and all persons having an interest therein shall have been granted a public hearing thereon, if the amendment shall:

- i. Add a new item in an amount in excess of one (1%) percent of the total amount as stated in the approved budget,
- ii. Increase or decrease any item by more than ten (10%) percent, or
- iii. Increase the amount to be raised by more than five (5%) percent unless the same is made pursuant to an emergency temporary appropriation.

Notice of hearing on an amendment shall be advertised at least three (3) days before the date set therefor. The amendment shall be published in full in the same manner as an original publication and shall be read in full at the hearing and before adoption.

Final adoption of the budget shall be by resolution, adopted by a majority of the full membership of the Mayor and Council, and may be by title.

Upon final adoption of the budget the amounts of each item estimated and set forth therein shall be deemed appropriated and expendable during the ensuing fiscal year.

- d. Each year, when the Mayor and Council shall have acted on the estimated costs and/or the budget for the ensuing year, the Borough Tax Assessor shall prepare an assessment roll, separately setting forth the amounts to be specially assessed against the benefitted and assessable properties in the

District, pursuant to statutory authority and consistent with this Chapter, to be approved by the Mayor and Council by resolution. 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 Mayor and Council shall annually meet to consider objections to the amounts of such special assessments at least ten (10) days after notice of hearing has been published once in the official newspaper and mailed to the named owners of all tracts, parcels and lots or property proposed to be assessed. The notice 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 Mayor and Council shall have approved the amounts of the special assessment, the Borough Clerk shall forthwith certify a copy of the assessment roll, with such changes, if any, to the Monmouth County Tax Board.

- e. For the purpose of this Ordinance, "annual improvements" shall mean and include any reconstruction, replacement or repair of trees, plantings, furniture, shelters and other facilities of the Business Improvement District and the furnishing of any other local improvement which benefits properties within the District. For the purpose of this Ordinance, "costs" shall, with respect to annual improvements to and operation and maintenance of the Business Improvement District, mean costs of annual improvements, fees of consultants employed by the Mayor and Council to assist in the planning of annual improvements, and all other costs, including planning costs incurred or to be incurred in connection with annual improvements to, and operation and maintenance of the District.
- f. Monies appropriated and collected on account of annual improvement costs, and costs of operating and maintaining the Business Improvement District, shall be credited to a special account. Pursuant to N.J.S.A 40:56-80(e), the Mayor and Council may incur the annual costs of improving, operating and maintaining the Business Improvement District 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.
- g. The Mayor and Council may pay over funds to the District Management Corporation quarterly on the first day of March, June, September and December of each year. The Mayor and Council may determine to withhold or deduct some funds to pay costs or expenses incurred or anticipated arising from the operation or maintenance of the District or the District Management Corporation.

21-10 ASSESSMENT RATE.

- a. The Borough Tax Assessor shall prepare an assessment roll sufficient to finance the budget adopted pursuant to Section 21-9, separately setting forth the amounts to be assessed against the commercial properties in the District.

The Board of Directors may adopt ~~Bylaws~~ **policies** allocating percentages of the total assessment among **specific areas within the District.** ~~the Zones.~~

~~Within each Zone -~~ **The Borough Tax Assessor shall assess each commercial or business property in proportion to each property's assessed valuation to the entire assessed valuation of the commercial and business properties in the District.** ~~Zone.~~

- b. Business Improvement District assessments shall be payable to the Borough on a quarterly basis on the same basis as real estate taxes and as provided by statute.
- c. The Borough shall retain the authority to adjust the BID assessment rate for a given year after reviewing the annual budget as submitted by the Management Corporation.

21-11 ANNUAL AUDIT OF DISTRICT MANAGEMENT CORPORATION.

The District Management Corporation shall cause an annual audit **consistent with government accounting standards** of its books, accounts and financial transactions to be made and filed with the Mayor and Council and, for that purpose, the Management Corporation shall employ a certified public accountant of New Jersey. The annual audit shall be completed and filed with the Mayor and Council within four (4) months after the close of the fiscal year of the Corporation, and a certified duplicate copy of the audit shall be filed with the Director of the Division of Local Government Services in the Department of Community Affairs within five (5) days of the filing of the audit with the Mayor and Council.

21-12 ANNUAL REPORT TO MUNICIPALITY.

The District Management Corporation 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 Council of the Borough.

21-13 MUNICIPAL POWERS RETAINED.

Notwithstanding the creation of a Business Improvement District, the Borough of Keyport expressly retains all its powers and authority over the area designated as within the Business Improvement District. No improvements or modifications shall be made to any public property without the prior approval by resolution or ordinance of the Mayor and Council.

21-14 SEVERABILITY.

Each section, subsection, sentence, clause and phrase of this Ordinance is declared to be an independent section, subsection, sentence, clause and phrase, and the finding or holding of any such portion of this Ordinance to be unconstitutional, void, or ineffective for any cause, or reason, shall not affect any other portion of this Ordinance.

21-15 EFFECTIVE DATE.

This Ordinance shall be in full force and effect from and after its adoption and any publication as may be required by law.

SCHEDULE A. [No Change]

SCHEDULE B. [No Change]

Introduced: August 6, 2013
Public Hearing: September 3, 2013
Adopted: September 3, 2013

Valerie T. Heilweil, RMC
Borough Clerk
Borough of Keyport

Harry M. Aumack, II, Mayor
Borough of Keyport