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## Coates' Canons NC Local Government Law

### A Guide to Business Improvement Districts in North Carolina

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A city's governing board wishes to support and promote its downtown area. It wants to install sidewalks and street lighting. It wants to renovate the storefronts that line its main street. It wants to hire personnel to provide additional security in the area. It wants to invest in downtown art initiatives and other beautification projects. It wants to sponsor a series of festivals and markets in the city center. Finally, it wants to aggressively market its downtown area and local businesses. But how can the city pay for it all?

The city can use its property tax proceeds or other unrestricted revenue sources to fund most, if not all, of these activities in its downtown area. The city also can accept voluntary donations from the commercial entities located in its downtown area to support these expenditures. But, can the city compel the commercial and other entities located within the downtown area to fund all of these activities? The answer to this question is yes. And the mechanism for doing so is to establish a special taxing district.

**G.S. Ch. 160A, Art. 23** (Municipal Service District Act), implements **Section 2(4) of Article 5 of the North Carolina Constitution**, which authorizes a local government to define special areas (districts) in order to assess additional *ad valorem* property taxes on properties located within the districts to fund projects and services in the districts. Specifically, the Municipal Service District Act allows North Carolina municipalities to establish special taxing districts to fund, among a handful of other services or functions, *downtown revitalization projects*. (Note that counties have **similar authority** to establish

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special taxing districts to fund certain services or functions, but that authority does not include downtown revitalization projects.) When a city establishes a special taxing district for the purpose of financing downtown revitalization projects, it is commonly referred to as a Business Improvement District or BID.

The following are answers to frequently asked questions about setting up, financing, and providing services within a BID.

### **1. What services or projects may be provided within a BID?**

**G.S. 160A-536(b)** defines *downtown revitalization* by providing a non-exclusive list of projects that can be supported with the special tax revenue in a city's downtown area. In practice, downtown revitalization projects include a wide variety of activities—including enhanced maintenance of streets,

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sidewalks, and other public facilities; downtown marketing and promotion; presentation of special downtown events; management of downtown parking; promotion of downtown business location and expansion; and construction of capital improvements.

## **2. How are a BID's boundaries established?**

A city's governing board has broad discretion to draw BID boundaries within its downtown area. As a general rule of thumb, however, BIDs should include only properties that will benefit from the additional services provided in the district. There are a series of procedural steps a governing board must follow to establish a BID (**outlined here**), which include certain notice provisions and a public hearing. There is no petition or referendum requirement, though.

## **3. How is a BIDs financed?**

In North Carolina a municipal service district is a property tax district. The city may levy an *ad valorem* (property) tax within the BID in addition to the citywide *ad valorem* property tax, the proceeds of which finance additional services or projects provided in the district.

The BID property tax (BID tax) is levied on the same tax base, within the district, on which the citywide property tax is levied. The property tax base includes real and personal property. The same exemptions apply to assessing a BID property tax as apply to the citywide property tax.

In addition to the BID tax proceeds, a city may allocate to a BID any other unrestricted revenue.

## **4. May the city levy different BID tax rates within a BID?**

No. The BID tax rate must be uniform throughout a BID. If differential rates are desired for different parts of the downtown, different BIDs must be established.

## **5. May the city exempt certain property in a BID from the BID tax (for example, residential property)?**

No. Only the General Assembly may exempt or otherwise classify property subject to the *ad valorem* property tax.

The same exemptions apply to a BID tax as apply to the citywide *ad valorem* property tax. For example, government property and property held for educational, scientific, literary, cultural, charitable, or religious purposes are exempt from the citywide property tax and, therefore, are exempt from a BID tax. Additionally, the personal property of any public service corporation is exempt from a BID tax.

Note that, to the extent possible, many cities draw BID boundary lines so as to exclude residential property because the units may not exempt these properties from a BID tax.

## **6. Are there any limits on a BID tax rate?**

The BID tax rate, combined with the property tax rate(s) levied citywide, may not exceed \$1.50 per

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\$100 valuation, unless approved by a majority of the qualified voters residing in the district. (For more information on levying *ad valorem* property taxes, click [here](#).)

**7. Once a BID is established and becomes effective, when must services be provided in the district?**

Pursuant to **G.S. 160A-540**, once a BID becomes effective, the city must “provide, maintain, or let contracts for the services for which the residents of the district are being taxed within a reasonable time, not to exceed one year.”

**8. May a city create a BID that does not take effect until a future fiscal year?**

Likely yes. **G.S. 160A-537** states that “[t]he resolution defining a service district shall take effect at the beginning of a fiscal year commencing after its passage, as determined by the city council . . . .” Thus, the governing board likely may specify in the resolution creating the BID that it will take effect in a future fiscal year. The BID must take effect at the beginning of a fiscal year, though.

**9. Does the BID have borrowing authority?**

No. A BID is a special taxing district only. It does not have borrowing authority.

A city may issue bonds or financing instruments, the proceeds of which are used solely to finance services within a BID. However, if the city proposes to issue General Obligation bonds to provide services solely within a BID (and the bonds are going to be retired with BID tax revenue), the bond issuance must be approved by the majority of citizens in the city *and* by a majority of the citizens within the existing or proposed BID.

**10. May a city contract with a private organization or entity to manage a BID?**

Yes. A city may provide services within the BID itself, or it may contract with another governmental agency or a private agency to provide the services.

Contracts with other governmental or private agencies must specify the purposes for which the funds must be used and require an accounting for the expenditure of the funds.

**11. May a city appoint a citizen advisory board for a BID?**

Yes. A city may appoint a citizen advisory board for a BID. The city may grant the advisory board some powers; however, the city must maintain final authority over the use of a BID’s funds. The city’s governing board is not legally bound by an advisory board’s recommendations.

**12. Once it is established and becomes effective, may a city’s governing board extend the boundaries of a BID to include additional property?**

Yes. The city’s governing board may add territory to an existing BID if the area to be added is contiguous to the district and the new area requires the services that are provided in the district. (At least one eighth of the new area’s aggregate external boundary must be coincident with the existing

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boundary of the BID.)

The city's governing board also may extend the boundaries of a BID if it receives a petition signed by 100 percent of the real property owners of the area to be added to the BID.

**13. Once a BID is established and becomes effective, may property be removed from the district?**

Yes. The city's governing board may adopt a resolution to redefine a BID by removing property that no longer needs the services provided in the BID.

**14. Once a BID is established and becomes effective, may it be abolished?**

Yes. The city's governing board may adopt a resolution abolishing a BID if it finds that it is no longer needed.

If a BID is abolished, any unexpended BID tax proceeds must be expended for the purposes for which the BID was established. The BID tax proceeds may not be transferred to the general fund or expended for any other purpose.

**15. What about commercial areas outside a city's downtown area, may a city establish one or more BIDs in these areas to support increased services or special projects?**

Yes, under certain circumstances. **G.S. 160A-536** lists all the purposes for which a municipal service district may be established. In addition to downtown revitalization projects, the statute includes *urban area revitalization projects*. *Urban area* is defined to include an area that meets one or more of the following conditions:

- It is the central business district of the city.
- It consists primarily of existing or redeveloping concentrations of industrial, retail, wholesale, office, or significant employment-generating uses, or any combination of these uses.
- It is located in or along a major transportation corridor and does not include any residential parcels that are not, at their closest point, within 150 feet of the major transportation corridor right-of-way or any nonresidentially zoned parcels that are not, at their closest point, within 1,500 feet of the major transportation corridor right-of-way.
- It has as its center and focus a major concentration of public or institutional uses, such as airports, seaports, colleges or universities, hospitals and health care facilities, or governmental facilities.

If an area within the city meets one or more of these criteria, the city's governing board may establish a municipal service district and provide in the urban area district any service or facility that may be provided in a downtown area as a downtown revitalization project. (Note that the General Assembly expanded this authority to apply to all municipalities in 2009. See **S.L. 2009-385**.)

For information on funding capital projects in a BID, click [here](#).

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