

## **Business Improvement Districts: The 2012 Amendments to M.G.L. Chapter 400**

On July 31, 2012, the Massachusetts legislature passed an "Act Relative to Economic Development and Reorganization", portions of which the Governor signed into law on August 7, 2012. Such portions, Chapter 238 of the Acts of 2012, became effective immediately with the Governor's signature on August 7th.

Chapter 238 contains, among other things, certain amendments to M.G.L. Chapter 400, *Business Improvements Districts*. The Department of Housing and Community Development has developed this document to provide certain information regarding these amendments to Chapter 400.

1. What are the effects of the amendments to Chapter 400 with respect to newly-created Business Improvements Districts (BIDs) (i.e., those created on or after August 7, 2012)?
  - a. Owners of properties that are located within the district of a newly-created BID and are included within the applicable improvement plan are automatically participating members of the BID immediately upon its creation, and are no longer permitted to "opt-out" of participation.
  - b. A purchaser of property located within a BID district, who had a right under the pre-amendment version of Chapter 400 to opt-out of BID participation within 30 days of a transfer of its property, no longer has any right to elect to opt-out.
  - c. On or before the fifth anniversary of the organization of a newly created BID, and then again on or before each fifth anniversary of the date of the most recent renewal of the BID, the BID board of directors or its designated management entity shall call a "renewal meeting" of the BID's participating property owners for the purposes of reviewing the operations of the BID since the last renewal vote and considering whether to continue the BID.
  - d. If a majority of the participating property owners who are not more than 30 days in arrears in any payment due to the BID and are present at the renewal meeting, in person or by proxy, vote to renew the BID, then the BID will continue for an additional five year term. If, on the other hand, such eligible participating property owners vote not to continue the BID, the board of directors will proceed to conclude the business of the BID in accordance with Chapter 400.
2. What are the effects of the amendments to Chapter 400 with respect to BIDs that were created prior to August 7, 2012?
  - a. As with newly-created BIDs, purchasers of property located within an existing BID no longer have any individual right to opt-out of participation.

- b. On or before January 1, 2018, and then again on or before each fifth anniversary of the date of the most recent renewal of the BID, the BID board of directors or its designated management entity shall call a “renewal meeting” of the BID’s participating property owners for the purposes of reviewing the operations of the BID since the last renewal vote and considering whether to continue the BID.
  - c. If a majority of the participating property owners who are not more than 30 days in arrears in any payment due to the BID and are present at the renewal meeting, in person or by proxy, vote to renew the BID, then the BID will continue for an additional five year term. If, on the other hand, such eligible participating property owners vote not to continue the BID, the board of directors will proceed to conclude the business of the BID in accordance with Chapter 400.
  - d. Property owners who had opted out of participation in a BID prior to August 7, 2012 will remain non-participating owners until the date of the first approved renewal vote, at which point such property owners automatically become participating property owners.
3. For BIDs that were created prior to August 7, 2012 but have been in existence for less than 5 years, when may the BID’s board of directors or designated management agency call the initial renewal meeting?
- a. As specifically provided in Section 22 of Chapter 238, the initial renewal vote for existing BIDs may be held at any time “on or before January 1, 2018”. Accordingly, a BID’s board of directors or designated management agency may hold the initial renewal meeting at any time on or before January 1, 2018, subject to the giving of notice to the BID’s participating property owners at least 30 days’ prior to the meeting.
4. For BIDs that were created prior to August 7, 2012, are property owners who had opted out of participation entitled to participate in renewal meetings?
- a. Property owners who had opted out of participation in a BID are not entitled to notice of the initial renewal meeting, and are not permitted to participate in the initial renewal vote. After the initial renewal meeting, if the participating property owners vote to continue the BID, the BID will no longer have any non-participating property owners, and, accordingly, all property owners in the district (including owners who had previously opted out) will be entitled to notice of, and have the right to participate in, future renewal meetings.