

May 18, 2021

Attention:

Mayor Eric Garcetti

City Controller Galperin

City Attorney Mike Feuer

City Clerk Holly Wolcott

City Council Members

Jack Ainsworth, California Coastal Commission

Louise Warren Esq, California Coastal Commission

**Re: Request Postponement of City Council vote on 16-0749 on May 18, 2021.
And revocation of Venice Beach Property Owners Association contract to operate the
Venice Beach Business Improvement District for the following reasons.**

Hello Mayor Garcetti, Ms. Wolcott, Mr. Feuer, Mr. Ainsworth, & Councilmembers,

I am requesting a postponement of the City Council vote on CF 16-0749¹, Item 8 on the City Council agenda for May 18, 2021. And revocation of the City of Los Angeles contract with the Venice Beach Property Owners Association to operate the Venice Beach Business Improvement District for the following reasons.

Issue 1

The Venice Beach Property Owners Association (VBPOA) is the non-profit entity that contracts with the City of Los Angeles to operate the Venice Beach Business Improvement District (VBBID). The VBBID has an operating budget of \$1.8+M per year. 28.28% of the property in the Venice Beach BID is public property. All taxpayers in the City of Los Angeles pay into this. This means that the opportunity to serve on the Venice Beach BID board and the notice of VBBID renewal must be properly noticed to all stakeholders in compliance with the Brown Act and Roberts Rules, state laws. This did not happen. Taxpayers are assessed for 28.24% of VBBID assessments. The taxpaying public, whose taxes are paid to VBPOA, were not notified as required of the annual opportunity to apply to serve on the VBBID board, or, of the May 11, 2021 hearing at the Economic Development and Jobs Committee for CF 16-0749, renewal of the VBBID, with the ability to make public comment.

For this reason, the City Council cannot vote on agenda Item 8: CF 16-0749, the Venice Beach BID Renewal contract, on the May 18, 2021, because of defective public notice as required by state law.

Issue 2

VBBID is a private property owner's business improvement district.

California Streets and Highways Code (SHC) Section 36600, Property and Business Improvement District Act of 1994, states that private property owners can only be assessed for

an additional property tax in a private property owners business improvement district if they gain a “special benefit” that is not a general benefit.

“Special benefit” as defined by the California State Constitution means a distinct benefit over and above general benefits conferred on real property located in the District or to the public at large.

On June 24, 2016, VBPOA submitted the “Venice Beach Business Improvement District, District Assessment Engineers Report” (Engineer’s Report) prepared by Edward Henning, Edward Henning & Associates, to the City Council.

SHC, Section 36632, states:

Properties zoned solely for residential use are conclusively presumed not to benefit from the improvements and services funded through these assessments, and shall not be subject to any assessments pursuant to this part. It is noted that no parcels within the proposed District are zoned solely residential.

Engineer’s Report, Page 14, Paragraph 1, states:

For residential parcels and residential portions of mixed use parcels within the BID (all located on commercial or industrial zoned parcels), it is the **opinion** of this **Assessment Engineer** that each of these parcels and uses specially benefit similarly to commercial/industrial parcels, from the clean and safe and district identity and special project programs designed to improve the cleanliness, security, marketability and livability of these parcels and residential units on them. **Since the majority of residential units within the Venice Beach BID are used as business enterprises, live/work units, rental units, or vacation rental units whether single family units, apartments or residential condominiums, it is the opinion of this Assessment Engineer that each residential unit shall be treated as an existing or potential for-profit business enterprise, live/work unit, rental unit, or vacation rental unit.** As such, the proportionate special benefits conferred on **all residential parcels and units** shall be considered similar to those conferred on commercial/industrial parcels within the Venice Beach

The VBBID includes many 100% residential properties, whose legal use is established by Certificate of Occupancy.

Additionally, the Mello Act is PRC Article 10.7. Low- and Moderate-Income Housing Within the Coastal Zone [65590 - 65590.1] The Mello Act incorporates Article 10.6. Housing Elements [65580 - 65589.11]. Both are state Housing Element laws. In 1982, the California Legislature passed the Mello Act to protect residential housing, especially affordable housing, in the coastal zone. In 1976, the Legislature approved the California Coastal Act to manage development and protect sensitive coastal resources in the coastal zone, an area of up to five miles inland of California’s 1,100 of coastline. The California Coastal Commission (Commission) was created as the government agency to oversee implementation of the Coastal Act. The Mello Act took

oversight of affordable housing in the coastal zone away from the commission and required local municipalities to implement this state law. The Los Angeles Department of City Planning (DCP), Housing and Community Investment Department (HCID), and the Department of Building & Safety (LADBS) are responsible for the implementation of the Mello Act in the coastal zone areas of Los Angeles that include sections of Venice, San Pedro, and Pacific Palisades.

Article 10.7, 65590:

- (a) The conversion or demolition of any **residential structure** for purposes of a nonresidential use which is not “coastal dependent”, as defined in Section 30101 of the Public Resources Code, shall not be authorized unless the local government has first determined that a residential use is no longer feasible in that location.

In 1998, Venice residents filed Venice Town Council v City of Los Angeles for violation of the Mello Act. The subject of the lawsuit was DCP’s approval of the conversion of **three** ground-floor **apartments in a 24-unit apartment building in a C-1 zone** (Limited Commercial, L.A.M.C. SEC. 12.13) **on Ocean Front Walk to commercial use** without requiring “mandatory” one to one replacement housing for persons of low and moderate income in the coastal zone.

Under Facts and Proceedings, the court states:

[T]he types of conversions or demolitions *which may be reviewed for feasibility* of replacement with affordable housing are (1) single-family dwellings, duplexes, or 10 or fewer units of multiple residential structures (§ 65590, subd. (b)(1)); (2) residential units *replaced by coastal dependent or coastal related uses* (§ 65590, subd. (b)(2)); (3) converted or demolished residential units in a jurisdiction with less than 50 acres of available privately owned vacant land in the coastal zone (§ 65590, subd. (b)(3)); (4) payment of a fee in lieu of affordable replacement housing, provided the local government has a program to ensure the fees will be used to build replacement units in, or within three miles of, the coastal zone (§ 65590, subd. (b)(4)); and (5) residential units which have been declared a public nuisance (§ 65590, subd. (b)(4).)

"Coastal dependent" is defined by Public Resources Code section 30101 as "any development or use which requires a site on, or adjacent to, the sea *to be able to function at all.*" (Italics added.)

Even if one of these special circumstances applies, however, and the local government finds the further fact that it *is feasible* for the developer to replace some or all of the converted or demolished affordable housing units, "replacement dwelling units *shall* be required." (§ 65590, subd. (b), (italics added).)

That lawsuit resulted in a Settlement Agreement (Agreement) between the parties in 2000, and the creation of the Interim Administrative Procedures for Complying with the Mello Act (IAP) in 2001. DCP, HCID, and LADBS are responsible for implementation of the Mello Act in coastal zone. In Venice, the coastal zone includes the entire area west of Lincoln Boulevard.

Again, in Venice Town Council, the property owner claimed that continued residential use of three ground-floor apartments on Ocean Front Walk was infeasible. The Mello Act applies regardless of zoning. The City cannot contract with VBPOA for a business improvement district that violates the Mello Act.

Therefore, the City contract with the VBPOA must be revoked and the VBBID must be abandoned.

Issue 3

On June 1, 2016, City Clerk Holly Wolcott sent a letter to residential property owner Louis Traeger, who had protested the inclusion of his residential property in the VBBID. Ms. Wolcott stated: “It is zoned C1-1-0 which allows for limited commercial use (LAMC Chapter 1 Article 2, 2.13).” This is misinformation. It does not comply with the Mello Act and the intent of the Legislature.

HOLLY L. WOLCOTT
CITY CLERK
—
SHANNON D. HOPPE
EXECUTIVE OFFICER

City of Los Angeles
CALIFORNIA



ERIC GARCETTI
MAYOR

OFFICE OF THE
CITY CLERK
NEIGHBORHOOD AND BUSINESS
IMPROVEMENT DISTRICT DIVISION
200 N. SPRING STREET, ROOM 224
LOS ANGELES, CA 90012
(213) 978-1099
FAX: (213) 978-1130

MIRANDA PASTER
DIVISION MANAGER

clerk@lacity.org

June 1, 2016

Louis V. Traeger
[REDACTED]

Dear Mr. Traeger:

The Office of the City Clerk is in receipt of your letter, dated May 19, 2016, regarding your property located at 207 E. Horizon Avenue, Venice, CA 90291 and the petition to establish the Venice Beach Business Improvement District. We have noted your opposition to being included in the proposed Venice Beach Business Improvement District the property (Assessor's ID No. 4238 010 016) is a residence and has been used as such continuously since its building in 1923. In addition, it is located in the Venice Historical District (ZI) No. 2453.

The Office of the City Clerk, Neighborhood and Business Improvement District Division (formerly Administrative Services Division, Special Assessment Section) has confirmed that 207 E. Horizon Avenue, Venice, CA 90291 is a single family home and a contributing structure within the Lost Venice Canals Historic District. **It is zoned C1-1-0 which allows for limited commercial use (LAMC Chapter 1 Article 2 § 12.13)**, as well as assessment if an Engineer determines it will specially benefit.

In address of your request to remove said property from the proposed Business Improvement District, the City Clerk does not have the authority to remove or add any properties in a Business Improvement District. However, we will forward your request and this information to the Engineer conducting the survey and analysis for the creation of the Venice Beach Business Improvement District.

Further, you requested notice of any hearing concerning the approval of the Venice Beach Business Improvement District in order to submit your written opposition. If your property is ultimately included within the Business Improvement District boundaries, a notice of the City Council hearing date will be mailed to you. At the hearing, an opportunity will be provided to protest the establishment.

The City contract with VBPOA, which includes many residential properties, must be revoked.

Issue 4

Land use attorney Mike Newhouse served for many years on the board of the Venice Chamber of Commerce (VCC) including as vice-president in 2016, and VCC general counsel. Mr. Newhouse was president of the Venice Neighborhood Council (VNC) from May 2014 until June 2016, On October 4, 2016, Mayor Eric Garcetti appointed Mr. Newhouse to the West Los Angeles Area Planning Commission (WLAPC) where he presently serves as commission president. On October 16, 2015, as president, Mr. Newhouse submitted the official VNC Community Impact Statement to Council File 14-1635-S2 (Short-Term Rentals).

Venice Neighborhood Council Community Impact Statement on Short-Term- Rentals:

“Mello Act provisions must be strictly adhered to Special Coastal Zone provisions in any new short-term rental regulations should implement the protections of the Mello Act. The three Coastal Zone neighborhoods within the City (Venice, San Pedro, and Pacific Palisades) warrant special attention, and possibly an exemption from this ordinance in favor of stricter rules. The Mello Act, a state law, expressly prohibits the conversion of residential housing to non-residential uses in most circumstances. An RSO building owner currently operating an illegal hotel (which we have many of in Venice) cannot be granted the required zoning changes, permits or certificates of occupancy to convert their operation to a legal hotel, because the Department of City Planning would be compelled by the Mello Act to deny these requests. Currently, many operators of STRs are operating without the required zoning, certificates of occupancy, or permits to operate a commercial hotel. Therefore, in the Coastal Zone especially (and throughout the City, as a matter of good public policy), the Council should first address how to bring all residential properties into compliance with applicable laws and rules, including the Mello Act. Secondly, the City should address if and how a property owner could operate an STR legally. If no measures can be found, we have no choice but to ban STR's in the Coastal Zone, in accordance with State Law and in the interest of protecting our neighborhoods and residential housing stock.”

The inclusion of multiple residential properties in the VBBID does not comply with the Mello Act. Thus, the City contract with VBPOA must be revoked.

Issue 5

The Engineer's Report, Page 27, lists all “Publicly Owned Parcels” in the VBBID as 28.29% at an annual cost (assessed in 2016) of \$523,866.88 in Parcel Assessments.

SHC, Section 36601 states:

The Legislature finds and declares all of the following:

- (a) Businesses located and operating within business districts in some of this state's communities are economically disadvantaged, are underutilized, and are unable to

attract customers due to inadequate facilities, services, and activities in the business districts

(g) Since the enactment of this act, the people of California have adopted Proposition 218, which added Article XIII D to the Constitution in order to place certain requirements and restrictions on the formation of, and activities, expenditures, and assessments by property-based districts. Article XIII D of the Constitution provides that property-based districts may only levy assessments for special benefits.

(2) Activities undertaken for the purpose of conferring special benefits upon property to be assessed inherently produce incidental or collateral effects that benefit property or persons not assessed. Therefore, for special benefits to exist as a separate and distinct category from general benefits, the incidental or collateral effects of those special benefits are inherently part of those special benefits. The mere fact that special benefits produce incidental or collateral effects that benefit property or persons not assessed does not convert any portion of those special benefits or their incidental or collateral effects into general benefits.

(3) It is of the utmost importance that property-based districts created under this act have clarity regarding restrictions on assessments they may levy and the proper determination of special benefits. Legislative clarity with regard to this act will provide districts with clear instructions and courts with legislative intent regarding restrictions on property-based assessments, and the manner in which special benefits should be determined.

(Amended by Stats. 2016, Ch. 366, Sec. 27. (SB 974) Effective January 1, 2017.)

Engineer's Report, Setting. Page 2, Paragraph 1:

The proposed District is located in the coastal community of Venice Beach located in the southwest region of the City of Los Angeles. According to the Venice Chamber of Commerce, Venice Beach is the #2 tourist destination in Southern California (second only to Disneyland.) The property uses within the boundaries of the proposed District which will receive special benefits from District funded programs and services are currently a mix of commercial, industrial, government and residential.

The “#2 tourist destination in Southern California”, our public coastal access area, is not consistent with the definition in SHC, Section 36601(a) of the intent of the Legislature.

The City contract with VBPOA must be revoked.

Issue 6

Multiple public properties are included in the VBBID, totaling 28.29% of the total properties. In 2016, the annual cost was \$523,866.88 in Parcel Assessments.

Engineer's Report, Setting. Page 2, Paragraph 2:

Ocean Front Walk (aka the Boardwalk) is a mixed-use, oceanfront, pedestrian-oriented, tourist-dominated commercial corridor and generally includes all commercially and

industrially zoned properties along the Ocean Front Walk, Pacific, Main Street, Hampton Drive and 3rd Ave corridors between the Los Angeles-Santa Monica city boundary on the north and Venice Boulevard on the south. **The iconic Ocean Front Walk is a pedestrian-only street.** The other streets are open to vehicular traffic, most run parallel to Ocean Front Walk, and are predominantly populated with uses that are related to Ocean Front Walk and its tourism.

The Engineer's Report states, "iconic Ocean Front Walk is a pedestrian-only street." Many properties on Ocean Front Walk have no setback from the private property line on the east side of Ocean Front Walk where a private property owners business improvement district must end.

SHC, Section 36600 assessments require a "Special benefit" that is not a general benefit or a "special benefit" to the public at large. But larges areas of Ocean Front Walk, and the beach area, public coastal access property, are included in the VBBID.

Meanwhile, on June 5, 2018, the Los Angeles City Council voted to approve a \$14M settlement in *Valerio Gruppioni, et al. v. City of Los Angeles* (BC553109).

As described in the Los Angeles Times: "City lawyers had tried to fend off such lawsuits by arguing that the Venice Beach boardwalk fell under a state code that relieves government agencies from legal liability for injuries on recreational trails. The boardwalk, they argued, is used to access the beach, a nearby bicycle path and recreational activities such as handball and volleyball.

Under the state code, "the city is absolutely immune from liability for any injury occurring on the boardwalk," city attorneys argued."

Alternatively, in *Valentine v City of Los Angeles* (BC603647), the City argued that Venice Beach including Ocean Front Walk is a "public park" for the purpose of a park curfew and other restrictions. But a search of "Los Angeles city parks" does not show a "Venice Beach Park."

But, here, in CF 16-0749, the City includes this same area in a "private property owner's business improvement district. This is unacceptable.

This is a vitally important public coastal access area and free speech zone per Abbot Kinney grant deeds. The California Constitution, California Coastal Act, and the California Coastal Commission's Environmental Justice Policy, passed on March 8, 2019, mandate equitable access for all to coastal resources.

The City cannot use varying descriptions to suit its purpose for different situations and expect the public to ignore the inconsistencies and potential illegalities. This public property cannot be included in a "private property owner's business improvement district" that by state law must provide a "special benefit" to the private property owners that is not a general benefit or benefit to the general public. This is not consistent with state law or equitable access to the coast. Private security personnel working for private property owner's do not belong in this public area.

The City contract with VBPOA must be revoked for these reasons.

Please confirm receipt of this email,

Margaret Molloy.

VENICE BEACH BUSINESS IMPROVEMENT DISTRICT – ENGINEER’S REPORT

Zone	APN	Parcel Address	Property Owner	Use	Assessed for DI/SP?*	% of lot assessed?***	Parcel Assessment	% Ownership
Zone 1	4288029900	NONE	CITY OF LOS ANGELES	PUBLIC PARK / BEACH	NO	0%	\$1,074.75	0.06%
Zone 1	4226001900	26 W MARKET ST	L A CITY	PUBLIC PARK / BEACH	NO	67%	\$51,978.98	2.81%
Zone 1	4226001901	NONE	L A CITY	PUBLIC PARK / BEACH	NO	20%	\$30,484.93	1.65%
Zone 1	4226002900	2300 OCEAN FRONT WALK	L A CITY	PUBLIC PARK / BEACH	NO	25%	\$71,432.90	3.86%
Zone 1	4238014900	1608-1610 S PACIFIC AVE	L A CITY	VACANT/COMMERCIAL	YES	100%	\$7,440.29	0.40%
Zone 1	4238024900	2102 S PACIFIC AVE	L A CITY	PUBLIC PARKING	YES	100%	\$16,166.65	0.87%
Zone 1	4238024902	128 E VENICE BLVD	L A CITY	PUBLIC PARKING	YES	100%	\$8,215.66	0.44%
Zone 1	4238024903	206 N VENICE BLVD	L A CITY	PUBLIC PARKING	YES	100%	\$2,943.42	0.16%
Zone 1	4238024905	216 E VENICE BLVD	L A CITY	PUBLIC PARKING	YES	100%	\$2,629.74	0.14%
Zone 1	4238024906	302 E VENICE BLVD	L A CITY	PUBLIC PARKING	YES	100%	\$1,314.87	0.07%
Zone 1	4238024907	319 E SOUTH VENICE BLVD	L A CITY	PUBLIC PARKING	YES	100%	\$24,976.40	1.35%
Zone 1	4238024908	2106 S CANAL ST	L A CITY	PUBLIC PARKING	YES	100%	\$4,069.87	0.22%
Zone 1	4238024909	NONE	L A CITY	PUBLIC PARKING	YES	100%	\$703.20	0.04%
Zone 1	4238024910	210 N VENICE BLVD	L A CITY	PUBLIC PARKING	YES	100%	\$1,314.87	0.07%
Zone 1	4238024911	125 S VENICE BLVD	L A CITY	CANAL ACCESSWAY	NO	100%	\$4,456.56	0.24%
Zone 1	4238025901	NONE	L A CITY	PUBLIC PARKING	YES	100%	\$4,073.60	0.22%
Zone 1	4238025902	NONE	L A CITY	PUBLIC PARKING	YES	100%	\$22,171.43	1.20%
Zone 1	4238025903	NONE	L A CITY	PUBLIC PARKING	YES	100%	\$6,582.00	0.36%
Zone 1	4286027902	NONE	L A CITY	PUBLIC PARK / BEACH	NO	20%	\$17,050.35	0.92%
Zone 1	4286028902	NONE	L A CITY	PUBLIC PARK / BEACH	NO	5%	\$13,038.98	0.70%
Zone 1	4286029902	NONE	L A CITY	PUBLIC PARK / BEACH	NO	10%	\$17,922.96	0.97%
Zone 1	4286030903	NONE	L A CITY	PUBLIC PARK / BEACH	NO	60%	\$26,849.63	1.45%
Zone 2	4238018900	NONE	L A CITY	PUBLIC PARKING, LIBRARY	NO	100%	\$62,098.43	3.35%
Zone 2	4238002900	1234 S PACIFIC AVE	L A CITY	DOG PARK / SENIOR CTR	NO	100%	\$27,614.22	1.49%
			L A CITY TOTAL				\$426,604.68	23.04%
Zone 2	4238002902	1010 ABBOT KINNEY BLVD	L A UNIFIED SCHOOL DIST	WESTMINSTER ELEMENTARY	n/a	n/a	\$24,020.88	1.30%
			L A UNIFIED SCHOOL DIST TOTAL				\$24,020.88	1.30%
Zone 2	4286015900	100 SUNSET AVE	LACMTA	BUS MAINTENANCE & STORAGE YARD	NO	100%	\$35,933.09	1.94%
			LACMTA TOTAL				\$35,933.09	1.94%
Zone 1	4226001902	NONE	STATE OF CALIF	PUBLIC PARK / BEACH	NO	100%	\$10,409.51	0.56%
Zone 1	4226001903	1502-1522 S OCEAN FRONT WALK	STATE OF CALIF	PUBLIC PARK / BEACH	NO	100%	\$20,722.86	1.12%
Zone 1	4288029909	120 OCEAN FRONT WALK	STATE OF CALIF	PUBLIC PARK / BEACH	NO	0%	\$5,091.40	0.27%
Zone 1	4288029910	NONE	STATE OF CALIF	PUBLIC PARK / BEACH	NO	0%	\$750.58	0.04%
Zone 1	4288029916	NONE	STATE OF CALIF	PUBLIC PARK / BEACH	NO	0%	\$0.00	0.00%
Zone 1	4288029906	NONE	STATE OF CALIF	PUBLIC PARK / BEACH	NO	0%	\$0.00	0.00%
Zone 1	4288029914	NONE	STATE OF CALIF	PUBLIC PARK / BEACH	NO	0%	\$333.89	0.02%
			STATE OF CALIF TOTAL				\$37,308.23	2.01%
			ALL PUBLICLY OWNED PARCELS				\$523,866.88	28.29%

Finding 6. From Section 4(b): “All assessments must be supported by a detailed engineer’s report prepared by a registered professional engineer certified by the State of California”.

This report serves as the “detailed engineer’s report” to support the benefit property assessments proposed to be levied within the proposed Venice Beach BID.

STREETS AND HIGHWAYS CODE - SHC
DIVISION 18. PARKING [31500 - 36745]

(Division 18 added by Stats. 1951, Ch. 463.)

PART 7. PROPERTY AND BUSINESS IMPROVEMENT DISTRICT LAW OF 1994
[36600 - 36671]

(Part 7 added by Stats. 1994, Ch. 897, Sec. 1.)

CHAPTER 1. General Provisions [36600 - 36617]

(Chapter 1 added by Stats. 1994, Ch. 897, Sec. 1.)

ARTICLE 1. Declarations [36600 - 36604]

(Article 1 added by Stats. 1994, Ch. 897, Sec. 1.)

36600.

This part shall be known and may be cited as the "Property and Business Improvement District Law of 1994."

(Added by Stats. 1994, Ch. 897, Sec. 1. Effective January 1, 1995.)

36601.

The Legislature finds and declares all of the following:

(a) Businesses located and operating within business districts in some of this state's communities are economically disadvantaged, are underutilized, and are unable to attract customers due to inadequate facilities, services, and activities in the business districts.

(b) It is in the public interest to promote the economic revitalization and physical maintenance of business districts in order to create jobs, attract new businesses, and prevent the erosion of the business districts.

(c) It is of particular local benefit to allow business districts to fund business related improvements, maintenance, and activities through the levy of assessments upon the businesses or real property that receive benefits from those improvements.

(d) Assessments levied for the purpose of conferring special benefit upon the real property or a specific benefit upon the businesses in a business district are not taxes for the general benefit of a city, even if property, businesses, or persons not assessed receive incidental or collateral effects that benefit them.

(e) Property and business improvement districts formed throughout this state have conferred special benefits upon properties and businesses within their districts and have made those properties and businesses more useful by providing the following benefits:

(1) Crime reduction. A study by the Rand Corporation has confirmed a 12-percent reduction in the incidence of robbery and an 8-percent reduction in the total incidence of violent crimes within the 30 districts studied.

(2) Job creation.

(3) Business attraction.

(4) Business retention.

(5) Economic growth.

(6) New investments.

(f) With the dissolution of redevelopment agencies throughout the state, property and business improvement districts have become even more important tools with which communities can combat blight, promote economic opportunities, and create a clean and safe environment.

(g) Since the enactment of this act, the people of California have adopted Proposition 218, which added Article XIII D to the Constitution in order to place certain requirements and restrictions on the formation of, and activities, expenditures, and assessments by property-based districts. Article XIII D of the Constitution provides that property-based districts may only levy assessments for special benefits.

(h) The act amending this section is intended to provide the Legislature's guidance with regard to this act, its interaction with the provisions of Article XIII D of the Constitution, and the determination of special benefits in property-based districts.

(1) The lack of legislative guidance has resulted in uncertainty and inconsistent application of this act, which discourages the use of assessments to fund needed improvements, maintenance, and activities in property-based districts, contributing to blight and other underutilization of property.

(2) Activities undertaken for the purpose of conferring special benefits upon property to be assessed inherently produce incidental or collateral effects that benefit property or persons not assessed. Therefore, for special benefits to exist as a separate and distinct category from general benefits, the incidental or collateral effects of those special benefits are inherently part of those special benefits. The mere fact that special benefits produce incidental or collateral effects that benefit property or persons not assessed does not convert any portion of those special benefits or their incidental or collateral effects into general benefits.

(3) It is of the utmost importance that property-based districts created under this act have clarity regarding restrictions on assessments they may levy and the proper determination of special benefits. Legislative clarity with regard to this act will provide districts with clear instructions and courts with legislative intent regarding restrictions on property-based assessments, and the manner in which special benefits should be determined.

(Amended by Stats. 2016, Ch. 366, Sec. 27. (SB 974) Effective January 1, 2017.)

36602.

The purpose of this part is to supplement previously enacted provisions of law that authorize cities to levy assessments within property and business improvement districts, to ensure that those assessments conform to all constitutional requirements and are determined and assessed in accordance with the guidance set forth in this act. This part does not affect or limit any other provisions of law authorizing or providing for the furnishing of improvements or activities or the raising of revenue for these purposes.

(Amended by Stats. 2014, Ch. 240, Sec. 2. (AB 2618) Effective January 1, 2015.)

36603.

Nothing in this part is intended to preempt the authority of a charter city to adopt ordinances providing for a different method of levying assessments for similar or additional purposes from those set forth in this part. A property and business improvement district created pursuant to this part is expressly exempt from the provisions of the Special Assessment Investigation, Limitation and Majority Protest Act of 1931 (Division 4 (commencing with Section 2800)).

(Added by Stats. 1994, Ch. 897, Sec. 1. Effective January 1, 1995.)

36603.5.

Any provision of this part that conflicts with any other provision of law shall prevail over the other provision of law, as to districts created under this part.

(Amended by Stats. 2014, Ch. 240, Sec. 3. (AB 2618) Effective January 1, 2015.)

36604.

This part is intended to be construed liberally and, if any provision is held invalid, the remaining provisions shall remain in full force and effect. Assessments levied under this part are not special taxes.

(Added by Stats. 1994, Ch. 897, Sec. 1. Effective January 1, 1995.)

https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=CONS&article=XIII

*** CALIFORNIA CONSTITUTION**

ARTICLE XIII D [ASSESSMENT AND PROPERTY-RELATED FEE REFORM] [SECTION 1 - SEC. 6]

(Article 13D added Nov. 5, 1996, by Prop. 218. Initiative measure.)

SECTION 1.

Application. Notwithstanding any other provision of law, the provisions of this article shall apply to all assessments, fees and charges, whether imposed pursuant to state statute or local government charter authority. Nothing in this article or Article XIII C shall be construed to:

(a) Provide any new authority to any agency to impose a tax, assessment, fee, or charge.

(b) Affect existing laws relating to the imposition of fees or charges as a condition of property development.

(c) Affect existing laws relating to the imposition of timber yield taxes.

(Sec. 1 added Nov. 5, 1996, by Prop. 218. Initiative measure.)

SEC. 2.

Definitions. As used in this article:

(a) "Agency" means any local government as defined in subdivision (b) of Section 1 of Article XIII C.

(b) "Assessment" means any levy or charge upon real property by an agency for a special benefit conferred upon the real property. "Assessment" includes, but is not limited to, "special assessment," "benefit assessment," "maintenance assessment" and "special assessment tax."

(c) "Capital cost" means the cost of acquisition, installation, construction, reconstruction, or replacement of a permanent public improvement by an agency.

(d) "District" means an area determined by an agency to contain all parcels which will receive a special benefit from a proposed public improvement or property-related service.

(e) "Fee" or "charge" means any levy other than an ad valorem tax, a special tax, or an assessment, imposed by an agency upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property related service.

(f) "Maintenance and operation expenses" means the cost of rent, repair, replacement, rehabilitation, fuel, power, electrical current, care, and supervision necessary to properly operate and maintain a permanent public improvement.

(g) "Property ownership" shall be deemed to include tenancies of real property where tenants are directly liable to pay the assessment, fee, or charge in question.

(h) "Property-related service" means a public service having a direct relationship to property ownership.

(i) "Special benefit" means a particular and distinct benefit over and above general benefits conferred on real property located in the district or to the public at large. General enhancement of property value does not constitute "special benefit."

(Sec. 2 added Nov. 5, 1996, by Prop. 218. Initiative measure.)

SEC. 3.

Property Taxes, Assessments, Fees and Charges Limited. (a) No tax, assessment, fee, or charge shall be assessed by any agency upon any parcel of property or upon any person as an incident of property ownership except:

(1) The ad valorem property tax imposed pursuant to Article XIII and Article XIII A.

(2) Any special tax receiving a two-thirds vote pursuant to Section 4 of Article XIII A.

(3) Assessments as provided by this article.

(4) Fees or charges for property related services as provided by this article.

(b) For purposes of this article, fees for the provision of electrical or gas service shall not be deemed charges or fees imposed as an incident of property ownership.

(Sec. 3 added Nov. 5, 1996, by Prop. 218. Initiative measure.)

SEC. 4.

Procedures and Requirements for All Assessments. (a) An agency which proposes to levy an assessment shall identify all parcels which will have a special benefit

conferred upon them and upon which an assessment will be imposed. The proportionate special benefit derived by each identified parcel shall be determined in relationship to the entirety of the capital cost of a public improvement, the maintenance and operation expenses of a public improvement, or the cost of the property related service being provided. No assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on that parcel. Only special benefits are assessable, and an agency shall separate the general benefits from the special benefits conferred on a parcel. Parcels within a district that are owned or used by any agency, the State of California or the United States shall not be exempt from assessment unless the agency can demonstrate by clear and convincing evidence that those publicly owned parcels in fact receive no special benefit.

(b) All assessments shall be supported by a detailed engineer's report prepared by a registered professional engineer certified by the State of California.

(c) The amount of the proposed assessment for each identified parcel shall be calculated and the record owner of each parcel shall be given written notice by mail of the proposed assessment, the total amount thereof chargeable to the entire district, the amount chargeable to the owner's particular parcel, the duration of the payments, the reason for the assessment and the basis upon which the amount of the proposed assessment was calculated, together with the date, time, and location of a public hearing on the proposed assessment. Each notice shall also include, in a conspicuous place thereon, a summary of the procedures applicable to the completion, return, and tabulation of the ballots required pursuant to subdivision (d), including a disclosure statement that the existence of a majority protest, as defined in subdivision (e), will result in the assessment not being imposed.

(d) Each notice mailed to owners of identified parcels within the district pursuant to subdivision (c) shall contain a ballot which includes the agency's address for receipt of the ballot once completed by any owner receiving the notice whereby the owner may indicate his or her name, reasonable identification of the parcel, and his or her support or opposition to the proposed assessment.

(e) The agency shall conduct a public hearing upon the proposed assessment not less than 45 days after mailing the notice of the proposed assessment to record owners of each identified parcel. At the public hearing, the agency shall consider all protests against the proposed assessment and tabulate the ballots. The agency shall not impose an assessment if there is a majority protest. A majority protest exists if, upon the conclusion of the hearing, ballots submitted in opposition to the assessment exceed the ballots submitted in favor of the assessment. In tabulating the ballots, the ballots shall be weighted according to the proportional financial obligation of the affected property.

(f) In any legal action contesting the validity of any assessment, the burden shall be on the agency to demonstrate that the property or properties in question receive a special benefit over and above the benefits conferred on the public at large and that the amount of any contested assessment is proportional to, and no greater than, the benefits conferred on the property or properties in question.

(g) Because only special benefits are assessable, electors residing within the district who do not own property within the district shall not be deemed under this Constitution to have been deprived of the right to vote for any assessment. If a court determines that the Constitution of the United States or other federal law

requires otherwise, the assessment shall not be imposed unless approved by a two-thirds vote of the electorate in the district in addition to being approved by the property owners as required by subdivision (e).

(Sec. 4 added Nov. 5, 1996, by Prop. 218. Initiative measure.)

SEC. 5.

Effective Date. Pursuant to subdivision (a) of Section 10 of Article II, the provisions of this article shall become effective the day after the election unless otherwise provided. Beginning July 1, 1997, all existing, new, or increased assessments shall comply with this article. Notwithstanding the foregoing, the following assessments existing on the effective date of this article shall be exempt from the procedures and approval process set forth in Section 4:

(a) Any assessment imposed exclusively to finance the capital costs or maintenance and operation expenses for sidewalks, streets, sewers, water, flood control, drainage systems or vector control. Subsequent increases in such assessments shall be subject to the procedures and approval process set forth in Section 4.

(b) Any assessment imposed pursuant to a petition signed by the persons owning all of the parcels subject to the assessment at the time the assessment is initially imposed. Subsequent increases in such assessments shall be subject to the procedures and approval process set forth in Section 4.

(c) Any assessment the proceeds of which are exclusively used to repay bonded indebtedness of which the failure to pay would violate the Contract Impairment Clause of the Constitution of the United States.

(d) Any assessment which previously received majority voter approval from the voters voting in an election on the issue of the assessment. Subsequent increases in those assessments shall be subject to the procedures and approval process set forth in Section 4.

(Sec. 5 added Nov. 5, 1996, by Prop. 218. Initiative measure.)

SEC. 6.

Property Related Fees and Charges. (a) Procedures for New or Increased Fees and Charges. An agency shall follow the procedures pursuant to this section in imposing or increasing any fee or charge as defined pursuant to this article, including, but not limited to, the following:

(1) The parcels upon which a fee or charge is proposed for imposition shall be identified. The amount of the fee or charge proposed to be imposed upon each parcel shall be calculated. The agency shall provide written notice by mail of the proposed fee or charge to the record owner of each identified parcel upon which the fee or charge is proposed for imposition, the amount of the fee or charge proposed to be imposed upon each, the basis upon which the amount of the proposed fee or charge was calculated, the reason for the fee or charge, together with the date, time, and location of a public hearing on the proposed fee or charge.

(2) The agency shall conduct a public hearing upon the proposed fee or charge not less than 45 days after mailing the notice of the proposed fee or charge to the record owners of each identified parcel upon which the fee or charge is proposed for

imposition. At the public hearing, the agency shall consider all protests against the proposed fee or charge. If written protests against the proposed fee or charge are presented by a majority of owners of the identified parcels, the agency shall not impose the fee or charge.

(b) Requirements for Existing, New or Increased Fees and Charges. A fee or charge shall not be extended, imposed, or increased by any agency unless it meets all of the following requirements:

(1) Revenues derived from the fee or charge shall not exceed the funds required to provide the property related service.

(2) Revenues derived from the fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed.

(3) The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel.

(4) No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question. Fees or charges based on potential or future use of a service are not permitted. Standby charges, whether characterized as charges or assessments, shall be classified as assessments and shall not be imposed without compliance with Section 4.

(5) No fee or charge may be imposed for general governmental services including, but not limited to, police, fire, ambulance or library services, where the service is available to the public at large in substantially the same manner as it is to property owners.

Reliance by an agency on any parcel map, including, but not limited to, an assessor's parcel map, may be considered a significant factor in determining whether a fee or charge is imposed as an incident of property ownership for purposes of this article. In any legal action contesting the validity of a fee or charge, the burden shall be on the agency to demonstrate compliance with this article.

(c) Voter Approval for New or Increased Fees and Charges. Except for fees or charges for sewer, water, and refuse collection services, no property related fee or charge shall be imposed or increased unless and until that fee or charge is submitted and approved by a majority vote of the property owners of the property subject to the fee or charge or, at the option of the agency, by a two-thirds vote of the electorate residing in the affected area. The election shall be conducted not less than 45 days after the public hearing. An agency may adopt procedures similar to those for increases in assessments in the conduct of elections under this subdivision.

(d) Beginning July 1, 1997, all fees or charges shall comply with this section.

(Sec. 6 added Nov. 5, 1996, by Prop. 218. Initiative measure.)