

LESLIE E. DEVANEY  
ANITA M. NOONE  
LESLIE J. GIRARD  
SUSAN M. HEATH  
GAEL B. STRACK  
ASSISTANT CITY ATTORNEYS

CASEY GWINN  
CITY ATTORNEY

OFFICE OF  
**THE CITY ATTORNEY**  
CITY OF SAN DIEGO

**Casey Gwinn**  
CITY ATTORNEY

CIVIL DIVISION  
1200 THIRD AVENUE, SUITE 1100  
SAN DIEGO, CALIFORNIA 92101-4100  
TELEPHONE (619) 533-5800  
FAX (619) 533-5856

**CORRECTED**

February 7, 2003

REPORT TO THE COMMITTEE  
ON LAND USE AND HOUSING

NEIGHBORHOOD IMPROVEMENT AND COMMERCIAL ENHANCEMENT  
ASSESSMENT DISTRICT ORDINANCE

**INTRODUCTION**

At the October 23, 2002, Land Use and Housing Committee [Committee] meeting, a proposal was presented to amend the San Diego Municipal Code to enable a new form of assessment district within the City. The assessment district was proposed to be referred to as the Neighborhood Improvement and Commercial Enhancement [NICE] assessment district. A copy of the proposal is attached as Exhibit A to this Report. The Committee directed the City Attorney's Office to review the feasibility of amending the San Diego Municipal Code to create such an enabling ordinance. This report addresses the Committee's request.

**DISCUSSION**

Assessment districts are created within communities to provide enhanced improvements, services, and activities. Landscape and lighting assessment districts are formed pursuant to the Landscape and Lighting Act of 1972 (California Streets and Highways Code sections 22500-22679) [1972 Act]. The 1972 Act authorizes the creation of a "maintenance assessment district" for public facilities through the annual levy of an assessment on property within the district. The assessments are used to pay for the installation of improvements, the maintenance of improvements, or the provision of other types of services and activities that generally are either not provided by the local agency or are at a level that is greater than that generally provided by the local agency.

In November 1996, the California voters adopted Proposition 218, which amended the California Constitution by adding articles XIII C and XIII D. Article XIII D, among other things, imposed new requirements for the imposition of assessments. Article XIII D, section 1 provides, in part, that “[n]otwithstanding any other provision of law, the provisions of [article XIII D] shall apply to all assessments . . . whether imposed pursuant to state statute or local government charter authority.” The provisions of article XIII D therefore govern any existing assessment districts, where not otherwise exempted, and future assessment districts.

In 1998, the City amended certain provisions of its Municipal Code governing landscape and lighting districts created pursuant to the 1972 Act. San Diego Municipal Code §§ 65.0201-65.0234. These assessment districts were renamed Maintenance Assessment Districts [MADs] to reflect the enhanced services and changes that were incorporated into the San Diego Municipal Code. Although renamed, the MADs are still subject to the general provisions of the 1972 Act and article XIII D.

Among those amendments adopted was a new definition for the term “improvement,” referring to the types of improvements that may be installed or maintained by a MAD. Improvement was redefined to include all of those items identified in the 1972 Act,<sup>1</sup> and included new improvements, services, and activities such as security services, ponds, flood control or drainage facilities, and *any other property-related services deemed to provide special benefit to real property*. This expansive definition was intended to comply with the new provisions of article XIII D while creating greater flexibility in determining what types of improvements, services, and activities could be provided by a MAD.

Article XIII D defines “special benefit” as “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.'” Cal. Const., art. XIII D § 2.

Ultimately, whether or not an improvement, service, or activity may be assessed in accordance with Article XIII D must be determined by an assessment engineer. “All assessments must be supported by a detailed engineer's report prepared by a registered professional engineer certified by the State of California.” *Id.* at § 4(b). To the extent that an assessment engineer can determine that a proposed improvement, service, or activity provides special benefit, the City may proceed with the requisite ballot protest procedure process and the levy of assessments in accordance with Article XIII D.

With respect to the improvements identified in the NICE proposal, the Municipal Code

---

<sup>1</sup> California Streets and Highways Code section 22525 defines “improvement” to mean one or any combination of the following: the installation or planting of landscaping; the installation or construction of statuary, fountains, and other ornamental structures and facilities and appurtenant facilities (including, curbs, gutters and sidewalks); the installation of park or recreational facilities; the acquisition or construction of any community center, auditorium or hall.

may be further amended to expand the general categories of improvements, services, and activities listed, provided that an assessment engineer can determine at the time a ballot protest procedure is brought forward to property owners within an existing or proposed district that the proposed improvement, service, or activity provides special benefit to “property” within the district.

In addition to the enhanced improvements, services, and activities, the San Diego Municipal Code amendments adopted in 1998 also allowed non-profit corporations to manage contracts for goods and contracts for services for the MADs. The requisite level of property owner support necessary for a non-profit corporation to take over administration was also reduced in order to allow greater community management of the MADs. SDMC § 65.0212.

As the legislative body for the MADs, however, the City Council determined that restrictions should be placed on these non-profit corporations in order to ensure oversight and control by the City Manager and the City Auditor and Comptroller of the corporations' performance and expenditure practices. *Id.* To that end, a non-profit that has been authorized by the property owners within a district to manage its contracts must agree to enter into an agreement with the City for its management services. The salient requirements imposed the Municipal Code respecting such an agreement are as follows: (1) The non-profit must agree to indemnify and hold the City free and harmless against any and all claims alleged to have been caused or caused by any act or omission of the non-profit corporation. (2) The non-profit must obtain comprehensive public liability insurance, satisfactory to the City Manager and the City Auditor and Comptroller, naming the City as an additional insured. (3) The non-profit must carry workers' compensation insurance for its employees. (4) The non-profit must conduct on-site inspections of the work being performed and submit reports to the City Manager of such inspections. (5) The City Manager is required to conduct at least four on-site inspections of the district to ensure that the district is being properly managed. (6) The non-profit must agree that it shall not have any financial interest in any contract it awards for improvements, services, or activities in its district. (7) The non-profit must conduct at least one noticed meeting with property owners within its district and attempt to meet on a regular basis with the relevant planning group for the area in which the district is located to finalize plans and specifications for the level of services, improvements, and activities for the district. (8) The non-profit is required to submit to the City Manager a budget for the improvements, services, and activities for the District by March 1 each year. (9) The non-profit must maintain separate books and records for the district which shall be available for audit as often as the City deems necessary. The books and records must be maintained for three years. (10) The agreement is subject to annual review and approval by the City Council, but it may be terminated by the City Manager for failure by the non-profit to comply with the terms and conditions. *Id.*

The NICE proposal provides that the new assessment districts be “self-managed” by the affected property owners in the proposed districts. The proposal does not explain how the “group” which is to manage the district is to be identified, the process for selection, or what oversight and control the City would have over it. To the extent that the City Council desires to

alter the administration of the MADs as proposed in the NICE ordinance, this can be accomplished through additional amendments to the San Diego Municipal Code provisions governing the MADs. We would recommend, however, that the same or similar oversight controls be put into place with respect to the management of the district as are in place for the non-profit corporations.

The final amendments proposed by the NICE ordinance concern dissolving a district. The NICE ordinance proposes that a district may be dissolved if property owners in the district who pay more than 30 percent of the assessments levied in the previous fiscal year submit a petition requesting dissolution. Additionally, the NICE ordinance proposes that a district would automatically dissolve after twenty years. These provisions of the NICE ordinance are more restrictive than the 1972 Act. A MAD continues to exist unless otherwise dissolved by the legislative body of the district. Cal. Sts. & High. Code § 22610. California Streets and Highways Code section 22610 provides that dissolution proceedings may be initiated by the legislative body of the district at any time, without notice to property owners. A district is dissolved merely by the adoption of a resolution of intention. To the extent that the City Council desires to place greater restrictions and a time limitation on the dissolution of a MAD, this also can be accomplished by amendments to the existing provisions of the San Diego Municipal Code.

### **CONCLUSION**

The NICE proposal recommends implementation of a new form of assessment district in order to provide a new variety of improvements, services, and activities that currently are not being provided in existing MADs. These improvements, services, and activities may be accomplished through additional amendments to the existing San Diego Municipal Code provisions governing MADs, provided that an assessment engineer can determine that they provide special benefit to property located within an existing or proposed district. Additionally, at the direction of the City Council, the City Attorney's Office can prepare the necessary amendments to the San Diego Municipal Code to provide for a different management scheme and dissolution proceedings for the MADs. We would suggest that the City Manager and the City Auditor and Comptroller have direct oversight and control over any new management group that is implemented as a result of such amendments. At the direction and recommendation of the Land Use and Housing Committee, we would be happy to draft any enabling ordinances with respect to the matters discussed in this Report.

Respectfully submitted,

CASEY GWINN  
City Attorney

KJS:lc:pev  
Attachments  
RC-2003-5

THE COMMITTEE  
ON LAND USE AND HOUSING  
September 11, 2003  
Page 5

**C:\Docx97\convert\RC-2003-5.wpd**