

**Office of
The City Attorney
City of San Diego**

**MEMORANDUM
MS 59**

(619) 533-5800

DATE: April 15, 2014
TO: Honorable City Councilmembers
FROM: City Attorney
SUBJECT: Formation of Five Kensington Maintenance Assessment Districts

INTRODUCTION

On April 16, 2014, the Public Safety & Livable Neighborhoods Committee will be asked to recommend that the City Council take certain actions in furtherance of the proposed formation of five separate and distinct Maintenance Assessment Districts located in the Kensington/Talmadge Area (collectively, the Kensington MADs). The proposed Kensington MADs are as follows: 1) Kensington Heights; 2) Kensington Manor; 3) Kensington Park – North; 4) Talmadge Park – North; and 5) Talmadge – South.

If authorized, the Kensington MADs assessments are expected to result in approximately \$110,000 in annual assessments from 13,000 property owners. A 1996 California constitutional amendment known as Proposition 218 imposes certain substantive and procedural requirements for the levy of property-related assessments. Subsequent court decisions evaluating property-based assessment districts under Proposition 218 have resulted in the dissolution of certain assessment districts and repayment of levied assessments by the assessing agency. California appellate courts have determined in certain instances that assessing agencies failed to meet a standard established by Proposition 218. Specifically, the Fourth District Court of Appeal (which hears all appeals of cases in San Diego), has set forth a high standard for meeting constitutional mandates when identifying and apportioning special benefit and general benefit conferred on a parcel within a property-based assessment district.

ANALYSIS

This Office has written a number of memoranda advising on potential legal issues regarding challenges to the City's property-based assessment districts, such as MADs.¹ In 2011, California's Fourth District Court of Appeal (Court of Appeal) ruled in the case of *Golden Hill Neighborhood Association, Inc. v. City of San Diego* that the engineer's report issued in 2007 was defective for failing to demonstrate a basis for the allocation of votes to City property and for failing to separate and quantify the general and special benefits. 199 Cal. App. 4th 416 (2011). The engineer's report is the required foundational document supporting the levy of the assessments in any particular MAD. Cal. Const. art. XIII D, § 4(b). As a result of the ruling, the Greater Golden Hill Maintenance Assessment District (GGHMAD) was dissolved, assessments levied by GGHMAD were invalidated, and the City was held responsible to reimburse all assessment refunds owed to GGHMAD property owners.

The Court of Appeal in *Golden Hill* stated that essentially every improvement and activity provided by San Diego's MADs results in some general benefit. 199 Cal. App. 4th 416. MAD assessments may only be used to pay for the special benefits provided by the improvements and activities of a district and may not be used to pay for the general benefits. Cal. Const. art. XIII D, § 4(a). Therefore, an engineer must separate and quantify the special and general benefits accruing from a district's improvements and activities by apportioning the costs between the two types of benefits and assessing property owners only for the portion of the cost representing special benefits. *Golden Hill*, 199 Cal. App. 4th at 438. Such apportionment must be reasonable and based on credible evidence. *Id.* In an earlier decision, however, a different appellate court acknowledged that "no special assessment district could survive scrutiny if courts expected rigorous mathematical precision in the calculation and apportionment of assessments" and stated that "[a]ny attempt to classify special benefits conferred on particular properties and to assign relative weights to those benefits will necessarily involve some degree of imprecision." *Town of Tiburon v. Bonander*, 180 Cal. App. 4th 1057, 1088 (2009).

¹ MADs are generally formed pursuant to the Landscape and Lighting Act of 1972, which authorized local legislative bodies to establish assessment districts and to levy assessments for the construction, installation and maintenance of certain public landscaping and lighting improvements. Cal. Sts. & High Code §22500 – 22679. The City has further codified the authorization of such districts in Chapter 6, Article 5, Division 2 of the San Diego Municipal Code. To establish an assessment district, a local legislative body must pass a resolution which initiates formation of the district, describes the district, and orders the preparation of an engineer's report, which serves as the key document describing the district boundaries, improvements and services to be provided to the district, and budget. Cal. Sts. & High. Code § 22585. Proposition 218 was passed in 1996, adding articles XIIC and XIID to the California Constitution to limit local government's ability to levy real property assessments without taxpayer consent. *Silicon Valley Taxpayers Ass'n., Inc. v. Santa Clara Cnty. Open Space Auth.*, 44 Cal. 4th 431 (2008). Pursuant to Proposition 218, in order for a maintenance assessment to be valid, the properties must be assessed in proportion to the special benefit each parcel within the district receives, but not in excess of the reasonable proportional cost of that special benefit. *Silicon Valley*, 44 Cal. 4th at 456. The "proportional special benefit" conferred on a parcel is determined in relationship to the total capital cost of the services or improvements to be provided, plus the operating costs for the district. *Id.*

CONCLUSION

As the Council considers whether to form the new MADs, it must determine whether the engineer's reports contain reasonable and credible evidence that separates and quantifies the special and general benefits accruing from the districts' improvements and activities by apportioning the costs between the two types of benefits. A more detailed discussion of risks to the City is contained in a confidential memorandum.

JAN I. GOLDSMITH, CITY ATTORNEY

By _____ /s/_____
Daphne Z. Skogen
Deputy City Attorney

DZS:dkr

cc: Paul Sirois, Assistant Deputy Director, Open Space Division/MADs
Andrew Field, Interim Deputy Director, Park and Recreation
Ron Villa, Deputy Chief Operating Officer, Neighborhood Services
Scott Chadwick, Chief Operating Officer
Andrea Tevlin, Independent Budget Analyst

MS-2014-7

Doc. No.: 766936