

MEMORANDUM OF LAW

DATE: August 7, 1991

TO: Jack Sturak, Assistant City Treasurer

FROM: City Attorney

SUBJECT: Business Improvement Districts - Assessment Categories

On July 30, 1991, you asked me the following question regarding assessment categories for business improvement districts ("BIDs"):

Given that BID assessments are based on business category and business owners determine their business category, does the City of San Diego ("City") have the responsibility to enforce or challenge a business owner over the category he or she has chosen? This question has arisen when the City or the nonprofit corporation administering the BID believes that the category chosen is to be assessed a lesser amount or avoid an assessment altogether.

Discussion

California Streets and Highway Code section 36500 et seq. controls BIDS. "Assessment is defined by Section 36506 as:

A levy for the purpose of acquiring, constructing, installing, or maintaining improvements and promoting activities which will benefit businesses located and operating within a parking and business improvement area.

Section 36536 states:

The assessments levied on businesses pursuant to this part shall be levied on the basis of the estimated benefit to the businesses and property within the parking and business

improvement area. The City Council may classify businesses for purposes of determining the benefit to a business of the improvements and activities provided pursuant to this part.

Apparently it has been the policy of the City to allow businesses to classify themselves on the basis of their perception of the benefit. Section 36536, quoted above, certainly seems to indicate that the City, through the City Council, has the discretion to classify businesses into categories. However, it should be noted that any time the City classifies a business or group of businesses differently from how that business or businesses classified themselves, there should be factual

findings on the record to support the City's position. This situation could give rise to litigation if the businesses were distressed with the Council's classifications.

Conclusion

The City has the discretion to challenge a business owner over the category he or she has chosen for the purpose of levying assessments for BIDs.

Please call me if you have any further questions.

JOHN W. WITT, City Attorney

By

Allisyn L. Thomas

Deputy City Attorney

ALT:LC:pev:831.1(x043.2)

cc Maureen Stapleton, Asst. City Manager

Walt Hauschildt, Comm. Dev. Coordinator, EDD

Marcus Thompson, Proj. Administrator, EDD

Mary Kay Jackson, Deputy City Attorney

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