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MEMORANDUM OF LAW

DATE: May 11, 1998

TO: Councilmember Byron Wear, Council District 2

FROM: City Attorney

SUBJECT: Amendments to the Municipal Code Pertaining to Maintenance Assessment Districts

Question Presented

Does the proposal submitted by your constituent, Marco Li Mandri, pertaining to maintenance assessment districts present any conflicts with existing San Diego Municipal Code provisions or state law?

Short Answer

Certain aspects of Mr. Li Mandri's proposal conflict with California Constitution article XIIIID (also known as Proposition 218). Some aspects of the proposal, however, may be incorporated into existing maintenance assessment districts through amendments to the Municipal Code.

Background

The proposal [Proposal], a copy of which is attached for your reference as Exhibit 1, entails establishing what is referred to as a landscaping, lighting, security, and programming maintenance assessment district. Such district would combine certain improvements, and maintenance thereof, which are provided by maintenance assessment districts in accordance with the Landscaping and Lighting Act of 1972 (California Streets and Highways Code

sections 22500-22679) [1972 Act], with certain improvements and activities provided by business improvements districts in accordance with the Property and Business Improvement District Law of 1994 (California Streets and Highways Code sections 36650-36651) [1994 Act]. Pursuant to the 1972 Act assessments are levied against the properties within the district that receive the benefits being provided by the improvements and the property-related services. Similarly, properties are assessed pursuant to the 1994 Act for the benefits properties and businesses receive from improvements and activities. A copy of the relevant provisions of the 1972 Act and 1994 Act that define "improvement," "maintenance," and "activities" are attached as Exhibit 2.

The improvements and activities identified in the Proposal have been drawn directly from the 1994 Act. Certain of these improvements and most of the activities conflict with newly enacted provisions of article XIID of the California Constitution. Those improvements and activities cannot be incorporated into any property-based assessment district. Amendments to the Municipal Code are being brought to the City Council to permit the City to incorporate some of the improvements from the 1994 Act into maintenance assessment districts. An analysis of the provisions of the California Constitution that conflict with the Proposal and those that do not follows.

Analysis

On November 6, 1996, the California voters approved Proposition 218, which amended the California Constitution by adding articles XIIC and XIID. Article XIID imposed new requirements for the imposition of assessments, fees, and charges. Article XIID, section 1 provides, in part, that "[n]otwithstanding any other provision of law, the provisions of [article XIID] shall apply to all assessments, fees and charges whether imposed pursuant to state statute or local government charter authority." The provisions of article XIID therefore are applicable to any existing maintenance assessment not specifically exempted and to all future assessment districts established by the City.

Article XIID's definitions provide guidance in determining whether certain improvements and property-related services are permissible within a maintenance assessment district. Article XIID, section 2, defines "assessment" to mean "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.'" The term "district" is defined in this section as "an area determined by an agency to contain all parcels which will receive a special benefit from the proposed public improvement or property-related service." Section 2 defines "maintenance and operation expenses" to mean "the cost of rent, repair, replacement, rehabilitation, fuel, power, electrical current, care, and supervision necessary to properly operate and maintain a permanent public improvement." Finally, "special benefit" is defined in section 2 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.'"

Article XIID, section 4 sets forth the procedures an agency must follow in order to levy an assessment on real property. The agency must (1) identify all parcels within the proposed district that will have a special benefit conferred on them; (2) determine the special benefits conferred on each parcel; (3) separate the general benefits from the special benefits conferred on each parcel; (4) have a detailed engineer's report prepared by a registered professional engineer setting forth the basis for the special benefits and method for calculating the assessments; (5) send a notice by mail to each property owner identifying the amount of the assessment proposed to be assessed against his or her property, the reason for such assessment, the basis upon which it was calculated, and the date, time, and location of a public hearing on the proposed assessment; (6) send to each property owner along with the notice a ballot to register the property owner's support or opposition to the proposed assessment, including details pertaining to the completion, return, and tabulation of the ballots, and a disclosure statement that the existence of a majority protest will result in the assessment not being imposed. Cal. Const., art. XIID, § 4(a)-(c).

To levy an assessment against a property within a district, the City must be able to identify the specific special benefits that the parcel will be receiving from the improvements and property-related services. The Proposal, however, lists several improvements and activities that do not provide special benefits to property, but rather provide benefits to businesses. The City may not levy assessments on real property for such improvements and activities. Specifically, the following improvements and activities from the Proposal are not permissible improvements or property-related services for a property-based assessment district: (1) decorations that confer only a general benefit or that benefit businesses rather than real property; (2) the closing, opening, widening, or narrowing of existing streets that provide a general benefit, or that are not enhancements above the general City standard, or that are for the benefit of businesses rather than for real property; (3) public lighting facilities including, but not limited to, traffic signals that are not above the general City standard, or that are for the benefit of businesses rather than real property; (4) promotion of public events that benefit businesses; (5) the furnishing of music in any public place; (6) the promotion of tourism; and (7) marketing and economic development, including business retention and recruitment.

The remaining improvements and property-related services discussed in the Proposal may be assessed to real property within a maintenance assessment district if amendments are made to the Municipal Code, and it can be demonstrated that the improvements and property-related services provide a special benefit to property within the district. As previously noted, some of the improvements and property-related services identified in the Proposal are not contained in the 1972 Act. Chapter VI, Article 5, Division 2 of the Municipal Code incorporates the relevant provisions of the 1972 Act into the Municipal Code. In order for the additional improvements and property-related services to be assessed within any existing or future maintenance assessment district within the City, the Municipal Code will have to be amended to broaden the scope of improvements and property-related services for which assessments may be levied. Amendments are being brought to the City Council that allow for such assessments to be levied.

Conclusion

Article XIID of the California Constitution established new requirements for the imposition of fees, charges, and assessments. Article XIID, section 4, provides that an agency may levy assessments against real property that receives special benefits from certain improvements and property-related services if certain procedures are followed. Some of the improvements and property-related services in the Proposal benefits businesses and not real property. Such improvements and services conflict with article XIID and may not be incorporated into a property-based maintenance assessment district. In order to incorporate the remaining improvements and property-related services into any existing or future maintenance assessment district, amendments will have to be made to the Municipal Code. Amendments to Chapter VI, Article 5, Division 2, which will permit the City Council to levy assessments for such improvements and services in the future, are being brought to the City Council.

CASEY GWINN, City Attorney

By

Kelly J. Salt
Deputy City Attorney

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Exhibits 1 and 2
ML-98-11