



THE VOICE OF DOWNTOWN

July 22, 2010

The Honorable Kevin Faulconer
City Council President Pro Tem
City of San Diego
202 C Street, 10th Floor
San Diego, CA 92101

Dear Council President Pro Tem Faulconer:

We are writing to express our deep concern about the actions taken by the City Council at the July 20, 2010 meeting, specifically Item 332e that authorizes the levy and collection of FY 2011 annual assessments within the Downtown Property and Business Improvement District (PBID) and authorizing the appropriation and expenditure of funds for the maintenance of public restrooms.

The Downtown San Diego Partnership (DSDP) was never informed prior to the hearing by Councilmember Marti Emerald or her staff of her intentions to amend the motion and our PBID Management Committee never discussed this item. We were completely blind-sided by Councilmember Emerald's amendment and we have serious legal concerns about the process and implementation of the motion.

We respectfully request your office to forward the following items to the Office of the City Attorney for further review:

1. Operating and Management Agreement: Exhibit "A" to the operating agreement dated April 4, 2005 between the City and DSDP outlines the specific baseline services that the City shall provide. Specifically "the City agrees it will perform the following baseline services, and will not use PBID assessments to fund...11. Public Restrooms. Satisfactorily clean and maintain all City public restrooms in the downtown area on a daily basis." It would appear that the council action, if implemented, would be a breach of the City obligations under this agreement.

2. Special Benefits: Section 36601(d) of the PBID Law as well as other provisions require assessments for the improvement and activities which confer special benefits upon the real property or business assessed. I would note that in general, public restrooms are maintained in most neighborhoods by the City's general fund. Maintenance of such public restrooms is, by definition, a general benefit available to many communities in San Diego. Neighborhood recreation centers, beaches, parks, and other locations where public restrooms are located are maintained not by use of special assessment district funds but as part of the baseline service of

the City. No special benefit is conferred upon PBID property owners if assessments were to be used for restroom maintenance as the City makes this service generally available throughout the City.

3. Notice: The PBID has never been involved in restroom maintenance and such funding has never been part of our budget, and restroom maintenance has never been included in the scope of services to be provided under our annual management plan. It would appear that adding such services would require a modification to our management plan. Such a plan amendment can only be made under Sections 36650 and 36656 of the PBID Law after holding a public hearing on the proposed modifications and (1) adopting a resolution of intention and (2) a mailing to each property owner. The council action did not provide such notice or otherwise follow what appear to be required procedures.

4. New or Increased Assessments: As the PBID budget has no funds allocated for an expenditure of \$72,000.00 for restroom maintenance, new or increased assessments would be required in one or several neighborhoods, depending on where the restrooms were to be located. A lengthy procedure must be followed for any such required new or increased assessments. These requirements were obviously not considered when the council action was taken.

Thank you for your consideration of our request. Please do not hesitate to contact our office if you have any additional comments or questions.

Thank you,



Shirley Horton
President