

Amended LEGISLATIVE DIGEST

Amended to reflect proposed changes at Government Audit and Oversight Committee
on January 24, 2014

[Business and Tax Regulations Code - Public Realm Landscaping, Improvement and
Maintenance Assessment Districts]

Ordinance amending the Business and Tax Regulations Code by adding Article 15A “Public Realm Landscaping, Improvement and Maintenance Assessment Districts” (“Green Benefit Districts”) to provide for establishment of assessment districts to finance landscaping, improvements and maintenance of Public Realm areas (outdoor spaces open to the public), including parks, parklets, sidewalks, unimproved areas, landscaped areas, plazas, and gardens; to authorize the purchase of real property with assessment funds, where property will be a Public Realm area and the district will provide landscaping, improvements and/or maintenance; and making environmental findings.

Existing Law

The state Property and Business Improvement District Law of 1994 (California Streets and Highways Code §§36600 *et seq.*, or “1994 Act”) authorizes boards of supervisors to create assessment districts and levy proportionate assessments on real property and/or businesses for specified periods of time, to provide services, improvements and activities that specially benefit each assessed property and/or business. Proposed assesses submit petitions to the Board of Supervisors requesting that the Board commence a process of public hearing and voting by proposed assesses. The petitions and the votes are weighted according to each property or business owner’s share of the total proposed assessment. In the absence of a majority protest, the Board of Supervisors may form the district and levy the assessments. The 1994 Act allows the Board of Supervisors to contract with an owners’ nonprofit corporation to manage the district; and includes provisions on operations, reporting, renewal, and disestablishment.

City Business and Tax Regulations Code Article 15 “Business Improvement Districts Procedure Code” (“Article 15”) provides certain optional modifications and augmentations to the 1994 Act. For example, Article 15: allows institution of formation proceedings by the Board of Supervisors upon submission of 30% weighted petitions by proposed assesses, instead of the 50% required under state law; allows a 15-year district term, instead of the (initial) 5-year term or (renewed) 10-year terms that the state law allows; allows assessment of residential property (which is otherwise limited in the 1994 Act); provides for 20% minimum representation by business owners on any owners’ nonprofit board of directors managing a district; provides that the Board may require an affirmative 2/3 weighted vote of proposed assesses before forming a district where business owners (rather than real property owners) are assessed; and provides a disestablishment alternative through supermajority vote of the Board of Supervisors (8 or more of the 11 members).

The City has formed 16 assessment districts under the 1994 Act and Article 15, focused on services, improvements and activities benefitting businesses and surrounding neighborhoods; thirteen assess real property owners, and three assess specified business owners. Each such district is managed under a contract between the City and an owners nonprofit corporation, as approved by the Board of Supervisors.

Amendments to Current Law

This ordinance would add new Article 15A to the City's Business and Tax Regulations Code: "Public Realm Landscaping, Improvement and Maintenance Assessment Districts (Green Benefit Districts)." Similar to Article 15, Article 15A augments and modifies state law, the "Property and Business Improvement District Law of 1994" (California Streets and Highways Code §§36600 *et seq.*, or "1994 Act").

Article 15A creates a procedural vehicle for neighborhoods to establish assessment districts that focus on landscaping, improvements, and maintenance of Public Realm areas ("Green Benefit Districts"). Assessment district services, improvements and activities may include, but are not limited to, involvement with ecological systems, water and energy systems, pedestrian and bicycle amenities, and recreational improvements.

As defined in Article 15A, Public Realm areas are outdoor spaces open to the public, including parks, parklets, sidewalks, unimproved areas, landscaped areas, plazas, and gardens. Article 15A also includes a provision for utilization of assessment funds to purchase or participate in the purchase of real property that will be a Public Realm area, where the district will provide landscaping, improvements and/or maintenance. [Section 15A.2(a).]

A Green Benefit District may be managed by an owners' nonprofit corporation; or alternatively, a District may be managed by the City utilizing existing City departments such as the Department of Public Works or the Recreation and Park Department, and/or by contracting out. [Section 15A.2(j).]

If managed by an owners' nonprofit corporation, instead of the minimum 20% business owner participation required by Article 15, §1511(h), Article 15A provides that: "the management district plan shall ensure adequate representation on the governing body of the owners' nonprofit corporation of district stakeholders who do not own or have an ownership interest in property located in the district, including residents, businesses, and neighborhood organizations." [Section 15A.2(j)(1).]

The proposed Ordinance was originally filed with the Board of Supervisors on May 14, 2013. A Substitute Ordinance was filed June 4, 2013. In addition to some clarifying text, current proposed changes to the June 4, 2013 Substitute Ordinance, are as follows:

- "Green Benefit Districts" has been inserted in the title of Article 15A, as a shortened form of the name for this type of assessment district.
- The term "unimproved areas" has been included in examples of Public Realm areas. [Section 15A.2(a)(1).]
- Additional examples of services, improvements and activities have been added: "involvement with ecological systems, water and energy systems, pedestrian and bicycle amenities, and recreational improvements." [Section 15A.2(e)(1).]

Background Information

The state Property and Business Improvement District Law of 1994 (California Streets and Highways Code §§36600 *et seq.*, or "1994 Act"), Chapter 6 "Disestablishment," provides as follows:

"Section 36670. Procedures for disestablishment.

(a) Any district established or extended pursuant to the provisions of this part, where there is no indebtedness, outstanding and unpaid, incurred to accomplish any of the purposes of the district, may be disestablished by resolution by the [Board of Supervisors] in either of the following circumstances:

(1) If the [Board of Supervisors] finds there has been misappropriation of funds, malfeasance, or a violation of law in connection with the management of the district, it shall notice a hearing on disestablishment.

(2) During the operation of the district, there shall be a 30-day period each year in which assesses may request disestablishment of the district. The first such period shall begin one year after the date of establishment of the district and shall continue for 30 days. The next such 30-day period shall begin two years after the date of the establishment of the district. Each successive year of operation of the district shall have such a 30-day period. Upon the written petition of the owners or authorized representatives of real property or the owners or authorized representatives of businesses in the area who pay 50 percent or more of the assessments levied, the [Board of Supervisors] shall pass a resolution of intention to disestablish the district. The [Board of Supervisors] shall notice a hearing on disestablishment.

(b) The [Board of Supervisors] shall adopt a resolution of intention to disestablish the district prior to the public hearing required by this section. The resolution shall state the reason for the disestablishment, shall state the time and place of the public hearing, and shall contain a proposal to dispose of any assets acquired with the revenues of the assessments levied within the property and business improvement district. The notice of the hearing on disestablishment required by this section shall be given by mail to the property owner of each parcel or to the owner of each business subject to assessment in the district, as appropriate. The city shall conduct the public hearing not less than 30 days after mailing the notice to the property or business owners. The public hearing shall be held not more than 60 days after the adoption of the resolution of intention.

Section 36671. Disestablishment or expiration without renewal; disposition of remaining revenues.

(a) Upon the disestablishment or expiration without renewal of a district, any remaining revenues, after all outstanding debts are paid, derived from the levy of assessments, or derived from the sale of assets acquired with the revenues, or from bond reserve or construction funds, shall be refunded to the owners of the property or businesses then located and operating within the district in which assessments were levied by applying the same method and basis that was used to calculate the assessments levied in the fiscal year in which the district is disestablished or expires. All outstanding assessment revenue collected after disestablishment shall be spent on improvements and activities specified in the management district plan.

(b) If the disestablishment occurs before an assessment is levied for the fiscal year, the method and basis that was used to calculate the assessments levied in the immediate prior fiscal year shall be used to calculate the amount of any refund.”