

City of Los Angeles  
CALIFORNIA



ERIC GARCETTI  
MAYOR

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March 11, 2016

C.F. 15-0600-S25

Honorable Members of the City Council  
City Hall, Room 395  
200 North Spring Street  
Los Angeles, California 90012

**SUBJECT: BUDGET HEARINGS REPORT ON FEASIBILITY OF USING IN-KIND SERVICES AS GENERAL BENEFITS FOR BUSINESS IMPROVEMENT DISTRICTS**

Honorable Members:

**RECOMMENDATION**

- That the City Council note and file this report.

**SUMMARY**

On April 30, 2015, during the 2015-16 budget deliberations, Councilman Blumenfield inquired as to whether in-kind contributions, rather than General Funds, could be used to pay for General Benefits in the City's Business Improvement Districts. This report addresses that inquiry.

**BACKGROUND**

Business Improvement Districts, or BIDs, are districts that are run by private, nonprofit organizations that administer collected assessments and use these funds to pay for security, trash pick-up, graffiti abatement, sidewalk cleaning, and other services. With the passage of Proposition 218<sup>1</sup>, the State imposed limitations on assessments of real property. Local governments, like the City of Los Angeles, must separate special and "general" benefits and can assess parcels only for their special benefits. General

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<sup>1</sup> California voters passed Proposition 218 in 1996. This constitutional amendment protects taxpayers by limiting the methods by which local governments can create or increase taxes, fees and charges without taxpayer consent. Proposition 218 requires voter approval prior to imposition or increase of general taxes, assessments, and certain user fees.

benefits must be paid from sources other than the assessed parcels, including grants, General City Purposes funds, and Council funds, among others.

Until 2012, the general benefit portion of a BID went unpaid. However, a San Diego BID challenged the City of San Diego that year regarding non-payment and won. Their position was that a public park in the BID's borders provides general benefits to the community and not specifically to businesses in that BID and therefore the costs associated with the park should not be part of the BID's assessment. As a result, Los Angeles BIDs pay consultants to prepare their Management District Plans and those consultants in turn hire engineers to verify the special benefits and calculate the general benefits pursuant to Proposition 218.

This General Benefit percentage ranges from 1% to 3% of the BID's assessments and the City is mandated to pay this amount using General Funds. It should also be noted that the City recovers much of the cost of the Business Improvement District program by charging organizations running a BID administrative fees ranging from 0.5% to 5% of the dollar amount assessed.

Reducing impacts on the General Fund is a goal of all City departments. Thus, can in-kind services be counted as the General Benefit match?

### **USING IN-KIND SERVICES FOR GENERAL BENEFIT**

This Office was directed to consult with the City Attorney and determine whether City services can be counted as the in-kind payment towards the General Benefit obligation. The Office of the City Attorney has indicated that case law could not be found that would prohibit the use of in-kind services. However, the City Attorney recommends against it unless proper record keeping is in place to minimize commingling of funds and fraud. At this time, the City Clerk supports that position.

Additionally, should the City switch to in-kind payments of General Benefits, it will most likely lose all revenue for this program and the General Fund will absorb these costs. Therefore, using in-kind services for General Benefit payments would increase accounting workloads and impact revenue.

The City Clerk is committed to monitoring this matter further and seeks the following:

- 1) A better definition of "General Benefit" provided in the law,
- 2) Instruction on how to measure the General Benefit. This will assist consultants/engineers in measuring and separating general benefits, and
- 3) Development of proper accounting systems to minimize fraud and commingling if counting in-kind services as the General Benefit match is directed by Council.

The City Clerk will report back on this issue in the event of any legislative changes.

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**FISCAL IMPACT**

At this time there is no General Fund impact as the City Clerk is not recommending any changes.

Sincerely,



Holly L. Wolcott  
City Clerk

HLW/MP:gp  
EXE-013-16