

Article

Assessments for Business and Property Based Business Improvement Districts

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BUSINESS IMPROVEMENT DISTRICT ASSESSMENTS

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DEFINITIONS.

The following words and phrases whenever used in this article shall be construed as defined in this section, unless from the context a different meaning is intended or unless a different meaning is specifically defined and more particularly directed to the use of such words or phrases:

(a) **"BUSINESS"** shall mean any activity, enterprise, profession, trade or undertaking of any nature conducted or engaged in, or ordinarily conducted or engaged in, with the object of gain, benefit or advantage, whether direct or indirect, to the taxpayer or to another or others. The term shall include operations of subsidiary or independent entities conducted for the benefit of others and at no profit to themselves, nonprofit businesses and trade associations. A person shall not be deemed to be engaged in business solely by reason of receipt of dividend or interest income from passive investments.

(b) **"GROSS RECEIPTS."** (Except as otherwise specifically provided, the term "gross receipts" as used in this article shall mean the gross receipts of a hotel as assessed and shall be calculated on either a cash or accrual basis in accordance with Internal Revenue Service guidelines.

(c) **"ASSESSMENT YEAR."** "The term "Assessment Year" as used in this article shall mean the calendar year unless there is a specific Ordinance indicating a different fiscal year for the business improvement district. After an Ordinance to use the alternate fiscal year is adopted, a business may not change its assessment measure year from that fiscal year, unless it changes its fiscal year or receives a waiver from the Council or Division Manager. The measure of assessment for a business improvement district electing to use its fiscal year shall be attributable to the 12 month period ending on the last day of its fiscal year, and shall be for the fiscal year ending in the calendar year that would otherwise be the measuring year.

(d) **"BUSINESS ASSESSMENT"** shall mean the assessment imposed upon businesses, properties or hotels included within the Management District Plan or Annual Report of the individual Business Improvement District within the City of Los Angeles.

(e) **"NEWLY ESTABLISHED BUSINESS"** shall mean a business which was not engaged in during the immediately preceding business assessment period specified for that kind of business. NOTE: a business improvement district may have a policy for newly established businesses included in its Annual Report.

(f) **"PERSON"** shall mean any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, partnership, joint venture, club, company, joint stock company, business trust, domestic or foreign corporation, association, syndicate, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise.

(g) **"REGISTRATION CERTIFICATE"** shall mean a Business Tax Registration Certificate. Participation in a business improvement district does not preclude the need for a Business Tax Registration Certificate.

(h) **"STREET"** shall include all streets, avenues, highways, alleys, courts, lanes, places, squares, curbing, sidewalks or other public ways in this City which have been or may hereafter be dedicated as such and open to public use.

(i) **"SALE," "SELL"** shall be deemed to include and refer to: The making of any transfer of title, in any manner or by any means whatsoever, to tangible personal property for a price, and the serving, supplying or furnishing, for a price, of any tangible personal property fabricated or made at the special order of consumers who do or who do not furnish directly or indirectly the

specifications therefor. A transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price shall likewise be deemed a sale. The foregoing definitions shall not be deemed to exclude any transaction which is or which, in effect, results in a sale within the contemplation of law.

(j) **“BUSINESS”** shall mean any activity, enterprise, profession, trade or undertaking of any nature conducted or engaged in, or ordinarily conducted or engaged in, with the object of gain, benefit or advantage, whether direct or indirect. The business improvement district may create assessments based on the type of business.

(k) **“ENGAGED IN BUSINESS”** shall mean the conducting, operating, managing or carrying on of a business, whether done as owner, or by means of an officer, agent, manager, or employee. A person shall be deemed engaged in business within the City if:

- (1) such person or his employee maintains a fixed place of business within the City for the benefit or partial benefit of such person, or
- (2) such person or his employee owns or leases real property within the City for business purposes, or
- (3) such person or his employee regularly maintains a stock of tangible personal property in the City for sale in the ordinary course of business, or
- (4) such person or his employee regularly conducts solicitation of business within the City, or
- (5) such person or his employee performs work or renders services in the City on a regular and continuous basis involving not less than seven working days per year for all such employees, or
- (6) such person or his employee utilizes the streets within the City in connection with the operation of motor vehicles for business purposes.

The foregoing specified activities shall not be a limitation on the meaning of engaged in business.

(l) **“EMPLOYEE”** shall mean any individual who performs services for a principal in a capacity other than as an independent contractor. Assessments may be based on the number of employees employed by a business.

(m) **“TYPE OF BUSINESS”** – A Category of business or business type as set for assessment purposes (e.g., nonprofit, bank, retail, fast food restaurant, law firm, school, etc.)

(n) **“COLLECTION AGENCY”** - Collection agency means and includes all persons engaged directly or indirectly and as primary or secondary object, business or pursuit, in soliciting claims for collection of assessments or in the collection of assessments owed.

IMPOSITION OF ASSESSMENT.

(a) Subject to the provisions of the enabling Ordinance, a business, property or applicable hotel must pay the assessment levied for the special benefit services provided by the business improvement district. The City of Los Angeles, Neighborhood and Business Improvement District Division, or relevant City department and Division, may collect the assessments and/or obtain the assistance of the Office of Finance and City Attorney in the collection of the assessments. Any property-based assessments and delinquent assessments may be added to the ad valorem property tax for collection or collected by the City from time to time. The nonprofit organization for which a contract has been executed to administer a business improvement district shall submit a detailed annual report listing the assessments and the planned programs of special benefit for Council approval to reconfirm the merchant-based or tourism-based assessments. An annual planning report is required for submission for property-based assessments business improvement districts and its annual percentage increase.

DUE DATES.

All business assessments shall be paid to the City of Los Angeles in lawful money of the United States and assessments required hereunder shall be paid in advance except where otherwise specifically provided, and shall be due and payable at the following times:

(a) 30 days after the invoice date.

All property based assessments shall be due according to the ad valorem property tax due dates unless invoiced directly by the City of Los Angeles. Penalties and interest shall be applied and collected in the same manner as the ad valorem property tax.

(b) When a business discontinues, dissolves, moves out of the business improvement district, or otherwise terminates before the expiration of a business assessment period, any assessments accrued and owing to the business improvement district shall be due on the date of termination.

DELINQUENT DATES – INTEREST – PENALTIES.

(a) **Delinquent Dates:** Unless otherwise specifically provided for in other provisions of this article, all business assessments required to be paid shall be deemed delinquent if not paid on or before or within the time prescribed on the invoices:

1. **Annual Business Assessments** – on or before the close of business on the last day of the 30 day invoice billing period.
2. **LATMD Monthly hotel Assessments** – on or before the close of business on the last day of the month for which the assessment is due. These assessments shall be collected in the same manner as the Transient Occupancy Tax.
4. **Daily Business Assessments** – on or before the close of business on each day for which the assessment is due (e.g., hotel assessments).
5. **Business Assessments Unpaid When a Business Has Been Discontinued, Dissolved or Otherwise Terminated** – within 45 days of the termination of the business.

(b) **Penalties:**

1. **Original Delinquency.** Any person who fails to pay any assessment required to be paid by this ordinance within the time required shall pay a penalty of 10% of the amount of the assessment in addition to the amount of the assessment.

(c) **Penalties Merge With Assessment For Collection Purposes.** For collection purposes only, every penalty imposed under the provisions of this section shall become a part of the assessment required to be paid. After remaining unpaid for 90 days, unpaid assessments will automatically refer to a collection agency. The collection agency shall be entitled to a 30% agency fee of the total amount owed (assessment plus penalties).

REFUNDS OF OVERPAYMENTS.

No refund of an overpayment of Assessments imposed in this Code shall be made except under the following procedure

(a) No claim for refund shall be allowed in whole or in part unless filed by the person claiming the overpayment, or his authorized agent on his behalf, with the City Clerk within a period of one year from the date of the claimed overpayment, and all such claims for refund of overpayment must be filed with the City Clerk on forms furnished by the City and in the manner prescribed by the City.

(b) Nothing in this section shall be deemed to bring into being or validate any claim for refund arising from a cause heretofore existent if such claim, whether filed or not, was or would have been invalid because of the then existing statutory term, and nothing in this section shall be deemed to validate, revive, restore or continue any claim for refund heretofore filed and denied.

NEWLY ESTABLISHED BUSINESSES – COMPUTATION OF BUSINESS ASSESSMENT.

(a) The assessment for a newly established business shall be determined based on the stipulation included in the Annual Report for business-based or tourism-based business improvement districts. The assessments for property-based business improvement district shall be subject to the provisions as listed in the Management District Plan and Engineer's Report pursuant to State law.

CITY OF LOS ANGELES – DUTY TO ENFORCE – POWERS – RULES AND REGULATIONS (NEIGHBORHOOD AND BUSINESS IMPROVEMENT DISTRICT DIVISION).

(a) **Duty to Enforce.** It shall be the duty of the Division Manager of the Business Improvement Districts, or relevant City Department to enforce each and all of the provisions of this article and the Office of Finance and City Attorney shall render such assistance in the enforcement of this article as required.

(b) **Inspection and Examination of Data for Business Improvement Districts.** The Division Manager of Business Improvement Districts in the exercise of the duties imposed, and acting through the deputies, shall review and examine all data for businesses, properties and hotels included within business improvement districts in the City. Each Business Improvement District shall submit up-to-date data for review by the Neighborhood and Business Improvement District Division for the invoicing of assessments.

(c) **Audit and Examination of Records and Equipment.** The Division Manager of Business Improvement Districts or relevant City Department with the assistance of the Director of Finance and/or the City Controller, and deputies of each of them as needed, shall have the power to audit and examine all books and records, and, where necessary, all equipment, of any non profit organization engaged in administering a business improvement district in the City for the purpose of ascertaining the amount of business assessment, proper utilization of business assessments in accordance with the administration contract, management district plan, annual planning report or any other report as required. Upon written demand by the Division Management of Neighborhood and Business Improvement District Division or relevant City Department Division or a deputy, a non profit organization must make available for audit, examination or verification such books, records or equipment as the Director of Business Improvement Districts, duly authorized contracted auditor, City Controller, or deputy of either. If the non profit organization refuses to make the records or data available, the Division Manager of Business Improvement Districts or relevant City Department, may after full consideration of all information within his knowledge concerning the business and activities of the person so refusing, make a recommendation for disestablishment of the district.

(d) **Compromise of Claims.** The Division Manager of Business Improvement Districts, subject to the provisions of the Charter and approval by the appropriate business improvement district, may compromise a claim for business assessment where the portion of the claim proposed to be released is equal to or less than the monetary limitations set forth in Section [22.13](#) of the LAMC, as adjusted by the Controller in accordance with Subsection (e) of that section. Compromise of claims in excess of \$15,000.00, requires the written approval of the City Attorney. The Director of Finance is further authorized to enter into releases of the approved compromises subject to the approval of the City Attorney.

(g) **Minor Error in Payment.** In the event a discrepancy exists between the amount of assessment paid and the amount of assessment due resulting in the underpayment or overpayment of the assessment in an amount of \$30.00 or less, the Division Management of Neighborhood and Business Improvement District Division or relevant City Department

Division may accept and record the underpayment or overpayment without other notification to the assessment payer.

(h) **Rules and Regulations – Apportionment.** When, by reason of the provisions of the Constitution of the United States or the Constitution of California, the business assessment imposed by this article cannot be enforced without there being an apportionment according to the Annual Report or Management District Plan adopted by the City of Los Angeles, or in the State of California, as the case may be, the Division Management of Neighborhood and Business Improvement District Division or relevant City Department Division may make such rules and regulations for the apportionment of the assessment as are necessary or desirable to overcome the constitutional objections. Such rules and regulations shall be approved by the City Attorney prior to becoming effective.

(j) **Payments, etc., Made by Mail.** Whenever any payment, statement, report, request or other communication received by the Division Management of Neighborhood and Business Improvement District Division or relevant City Department Division is received after the time prescribed by this article for the receipt thereof, but is in an envelope bearing a postmark showing that it was mailed prior to the time prescribed in this article for the receipt thereof, or whenever the Division Management of Neighborhood and Business Improvement District Division or relevant City Department Division is furnished substantial proof that the payment, statement, report, or request for other communication was in fact deposited in the United States mail prior to the time prescribed for receipt thereof, the Division Management of Neighborhood and Business Improvement District Division or relevant City Department Division may regard such payment, statement, report, request or other communication as having been timely received.

(l) **Requirement of Payments by Electronic Funds Transfer.** All assessment payments in the amount of fifty thousand dollars (\$50,000) or more shall be paid via a financial institution's electronic funds transfer.

(m) **Credit Card Transaction Fee for On-line Payment.** Every person who files their renewal online and pays their business assessment with a credit card shall pay a transaction fee in the amount of \$3.00. The purpose of this fee is to offset a portion of the administrative costs incurred by the City for those transactions.

(n) **Public Disclosure of Assessment Delinquencies.**

(i) Notwithstanding any other provision of law, the Division Management Neighborhood and Business Improvement District Divisions or relevant City Department Division shall make available as a matter of public record each calendar year a list of the assessment delinquencies to the relevant Business Improvement Districts. For purposes of compiling the list, a "assessment delinquency" means an amount owed to the relevant Business Improvement Districts in the City of Los Angeles as to which all of the following apply:

(A) That has been submitted to the Director of Finance for a finding that the delinquent assessment is unpaid and the administrative process has been completed pursuant to this Los Angeles Municipal Code.

(B) The amount of assessment has been delinquent for more than ninety (90) days.

(C) For purposes of the list, an assessment delinquency does not include any delinquency that would be uncollectible by operation of law.

(ii) Each quarterly list shall include all of the following with respect to each delinquency:

(A) The name of the person or persons liable for payment of the assessment and the person's or persons' last known business address.

(B) The amount of assessment delinquency as shown on the notice or notices of the assessment delinquency and any applicable interest or penalties, less any amounts paid.

(C) The type of assessment that is delinquent.

(iii) An assessment delinquency is a matter of public record and may be referred to collection agencies as deemed necessary by the Director of Business Improvement Districts. The assessment delinquency shall be deemed uncollectible after three (3) years. A notice shall be provided to the relevant Business Improvement Districts of the list of uncollectible. The City and its employees shall not be liable for the uncollected assessments.

CONFIDENTIAL CHARACTER OF INFORMATION OBTAINED – DISCLOSURE UNLAWFUL.

(a) It shall be unlawful for the Division Management of Neighborhood and Business Improvement District Division or relevant City Department Division or any person having an administrative duty under the provisions of this Article to make known in any manner whatever the business affairs and operations of, or the nature, amount or source of income, profits, losses, expenditures, net worth, or any particular thereof, or any other information set forth in any statement or return or obtained by an investigation of records and equipment of, any business, property owner, or hotel operator pursuant to the administrative contract for the operation of the Business Improvement Districts or pay business assessment or any other person visited or examined in the discharge of official duty, or to permit any statement or return, or copy of either, or any book containing any abstract or particulars thereof to be seen or examined by any person.

(b) Nothing in this section shall be construed to prevent:

1. The disclosure of information to, or the examination of records and equipment by, another City official or employee or a member of the Board of Review for the sole purpose of administering or enforcing any provision of this article or the non profit organization administering the Business Improvement Districts.
2. The disclosure of information to, or the examination of records by federal or state officials, or the tax officials of another city or county, or city and county, if a reciprocal arrangement exists; or to a grand jury;
3. The disclosure of information and results of examination of records of a particular assessee with respect to any proceeding in a court of law or before an administrative body in which the existence or amount of any business assessment of the particular assessee to the City of Los Angeles is relevant and material party to the proceeding;
4. The disclosure after the filing of a written request to that effect, to the assessee himself, or to his successors, receivers, trustees, executors, administrators, assignees and guarantors, if directly interested, of information as to the items included in the measure of any paid assessment, any unpaid assessment or amounts of assessment required to be collected, interest and penalties; further provided, however, that the City Attorney approves each such disclosure and that the Division Management of Neighborhood and Business Improvement District Division or relevant City Department Division may refuse to make any disclosure referred to in this paragraph when in his opinion the public interest would suffer thereby;
5. The disclosure of information when compelled by an order of court or other judicial process; and
6. The disclosure of statistical or cumulative information when the disclosure does not identify any particular taxpayer or reveal information in a manner that could identify a particular taxpayer.

DELINQUENT ASSESSMENTS – INSTALLMENT PAYMENT.

(a) The Division Manager may authorize an assessee to pay such delinquent Assessments in monthly installments, or oftener, extending over a period of not to exceed one year.

(b) Persons indebted to the City of Los Angeles business improvement district for delinquent Assessments may, with the consent of the Division Manager, Neighborhood and Business Improvement District Division, enter into an agreement with the City of Los Angeles to pay such delinquent Assessments in monthly installments, or more often, extending over a period not to exceed one year.

(c) In any agreement so entered into, the person shall acknowledge the obligation owed to the Business Improvement Districts and agree that in the event of failure to make timely payment of any installment, the whole amount unpaid, together with accrued interest, shall become immediately due and payable; and that in the event legal action is brought by the City to enforce collection of any amount included in the agreement, the person will pay all costs of suit incurred by the City of Los Angeles, including a reasonable attorney's fee.

(d) An action to collect the business assessment and any related penalty and interest must be commenced within three years of the date the business assessment becomes delinquent.

DELINQUENT ASSESSMENTS – DEBT NOT DISCHARGED BY PENAL CONVICTION.

The conviction of any person for engaging in business without obtaining a registration certificate, or for failure to pay any assessment due under or otherwise comply with the provisions of this article, shall not relieve the person from the obligation to pay any assessments that he may owe the City's Business Improvement Districts, nor shall the payment of any Assessments owed prevent a prosecution under appropriate provisions of the Municipal Code for any violation of the provisions of this article.

DELINQUENT ASSESSMENTS – UNCOLLECTIBLE.

If the Division Management of Neighborhood and Business Improvement District Division or relevant City Department Division finds that any amount of tax due or believed to be due under the provisions of this article cannot be collected, or that efforts to collect any such amount would be disproportionately costly with relation to the probable outcome of the collecting efforts, he may prepare a report setting forth this finding and the reasons therefor, and submit it to relevant Business Improvement District for approval to write off the debt. Subsequently, the Division Management of Neighborhood and Business Improvement District Division or relevant City Department Division may submit the report to a Board of Review. Upon unanimous approval of a finding by the Board of Review, the Division Management of Neighborhood and Business Improvement District Division or relevant City Department Division may remove from his active accounts receivable any unpaid assessments owing or believed to be owing to Business Improvement Districts. If the Board of Review does not unanimously approve the finding, the matter shall be returned to the Director of Business Improvement Districts.

COLLECTION AGENCIES. Collection agency means and includes all persons engaged directly or indirectly and as primary or secondary object, business or pursuit, in soliciting assessments for collection or in the collection of assessments owed or due or asserted to be owned or due to another, and any person, when engaged in collecting accounts for another, where the employment is for one or more persons, shall be deemed to be engaged in the collection business within the meaning of this section. Any person using a fictitious name in collecting his or her own accounts receivable with the intention of conveying to the debtor that a third party has been employed, is a collection agency as contemplated by this section and shall

Attachment 2 Authority to collect Assessments LAMC amendment

be subject to these provisions. The term "collection agency" shall not include attorneys-at-law, individuals regularly employed on a regular wage or salary, in the capacity of credit men or in other similar capacity upon the staff of employees of any one person not engaged in the business of a collection agency, banks, abstract companies doing an escrow business, duly licensed real estate brokers or agents doing a real estate business, nor a merchant-owned non-profit credit association unless they are conducting a collection agency.

