

June 4, 2018



NEWPORT BEACH
TOURISM BUSINESS
IMPROVEMENT DISTRICT

MANAGEMENT
DISTRICT PLAN

2014 - 2024

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MANAGEMENT DISTRICT PLAN

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I. OVERVIEW

Administered by Visit Newport Beach, Inc. (VNB), the Newport Beach Tourism Business Improvement District (NBTBID) is a business improvement district created to provide specific benefits to its member businesses, by funding marketing and sales promotion efforts for the assessed businesses. The NBTBID was formed by the City of Newport Beach (City) in 2009, pursuant to the Property and Business Improvement District Law of 1994, Streets and Highways Code Sections 36600 *et seq.* Upon the request of the NBTBID Owner's Association, the City Council modified the NBTBID in 2012 to add another lodging business. In January 2014, in response to a request by the Owners' Association, the City Council renewed the NBTBID for a 10-year term and increased the assessment from two (2.0%) percent to three (3.0%) percent of gross short-term revenue.

Location: The City of Newport Beach. The NBTBID includes nine (9) lodging businesses located within the boundaries of the City of Newport Beach.

The NBTBID shall include the Balboa Bay Resort, the Fashion Island Hotel, the Hyatt Regency John Wayne Airport Newport Beach, the Hyatt Regency Newport Beach, the Newport Beach Marriott Bayview, the Newport Beach Marriott Hotel & Spa, the Newport Dunes Waterfront Resort & Marina, the Renaissance Newport Beach Hotel, the Lido House, and any other hotel and resort business that may join the NBTBID in the future.

Services: The NBTBID is designed to provide specific benefits directly to assessed businesses by increasing room night sales. The improvements and activities include those improvements and activities provided in Streets and Highways Code sections 36610 and 36613, and include, but are not limited to, sales marketing and direct sales programs to increase overnight tourism and market the assessed businesses as tourist, meeting and event destinations, thereby increasing room night sales. These same improvements and activities are proposed for each year of the NBTBID's ten (10) year term.

Budget: The total NBTBID annual budget for the initial year, and subsequent years, is anticipated to be approximately \$4,100,000. This budget is expected to fluctuate as room sales do, but is not expected to significantly change over the NBTBID's ten (10) year term.

Cost: The annual assessment rate is three percent (3.0%) of gross short-term (*i.e.*, stays of thirty (30) calendar days or less) room rental revenue. Because programs will not be designed to attract certain stays, certain types of stays will not be assessed, as described in Section V(C).

Duration: The proposed NBTBID will have a ten (10) year term. The NBTBID assessment will be implemented beginning February 1, 2014, and will be in effect for ten (10) years through January 31, 2024. After ten (10) years, the petition and City Council hearing process must be repeated for the NBTBID to be renewed. Also, once per year beginning on the anniversary of the formation of the NBTBID, there is a thirty (30) calendar day period in which assessed businesses paying more than fifty percent (50%)

of the assessments may protest and initiate a City Council hearing to terminate the NBTBID.

Management: VNB will serve as the NBTBID's Owners' Association. The Owners' Association is charged with managing funds and implementing programs in accordance with this plan, and must provide annual reports to the City Council.

Renewal: The NBTBID renewal requires submission of petitions from lodging businesses representing more than fifty percent (50%) of the total annual assessment, followed by a City Council public meeting and public hearing and an opportunity for written protest. The assessed lodging business owners will receive a notice of the public meeting and the public hearing by mail. If there is no majority protest, the City Council may adopt a resolution renewing the NBTBID.

II. IMPETUS

There are several reasons why the NBTBID should be renewed; the most compelling reasons are as follows:

1. *The Need to Increase Occupancy*

The renewal of the NBTBID is a proactive effort to provide supplemental funding for tourism promotion beyond that provided by the City. The funding will ensure that adequate financing exists for the investment required to increase occupancy in the lodging industry and be competitive in the conference segment of the tourism market. The investment will cover an expanded marketing and promotional budget needed to reach this market segment.

2. *An Opportunity for Increasing City Tax Revenues*

As occupancy rates increase, so too will the City's TOT revenue. With stable public/private funding for tourism marketing efforts, annual occupancy rates should increase significantly as new marketing and sales promotion programs are implemented. Greater occupancy will also produce an increase in sales tax revenues from tourism-related spending. The renewal of the NBTBID, in partnership with VNB, creates a stable funding source tied directly to tourism promotion.

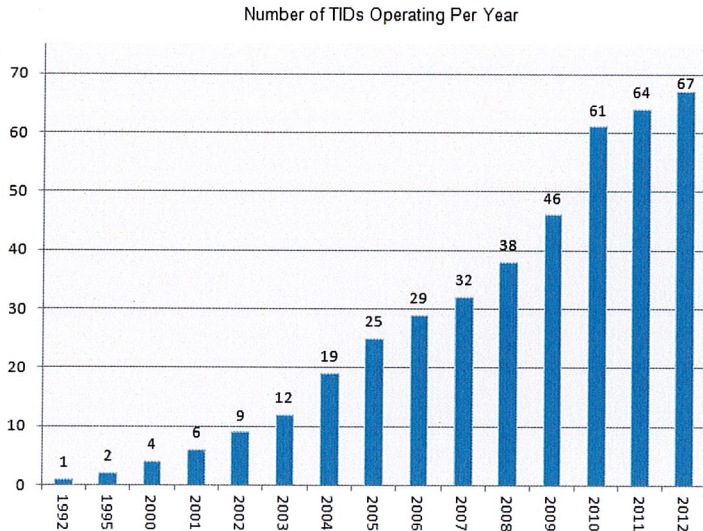
3. *Stable Funding for Tourism Promotion*

The NBTBID will provide a stable source of funding for consistent tourism promotion efforts. The NBTBID will provide funding for tourism promotion free of the political and economic circumstances that can reduce or eliminate government funding for tourism promotion.

III. BACKGROUND

Tourism Business Improvement Districts (TBIDs) are an evolution of the traditional Business Improvement District. The first TBID was formed in West Hollywood, California in 1992. Since then, over 80 California destinations have followed suit. In recent years, other states have begun adopting the California model— Washington, Montana, and Texas have adopted TBID laws. Several other states are in the process of adopting their own legislation. And, some cities, like Portland,

Oregon, have utilized their charter powers to create TBIDs without a state law.



California's TBIDs collectively raise over one hundred fifty million dollars (\$150,000,000) annually for local destination marketing. With competitors raising their budgets, and increasing rivalry for visitor dollars, it is important that the Newport Beach lodging businesses continue their investment in stable, lodging-specific marketing programs.

TBIDs utilize the efficiencies of private-sector operation in the market-based promotion of tourism districts. TBIDs allow lodging business owners to organize their efforts to increase room night sales. Lodging business owners within the TBID pay an assessment and those funds are used to provide services that increase room night sales.

In California, TBIDs are formed pursuant to the Property and Improvement District Law of 1994. This law allows for the creation of a special benefit assessment district to raise funds within a specific geographic area. *The key difference between TBIDs and other special benefit assessment districts is that funds raised are allocated to the private, non-profit corporation governing the district.*

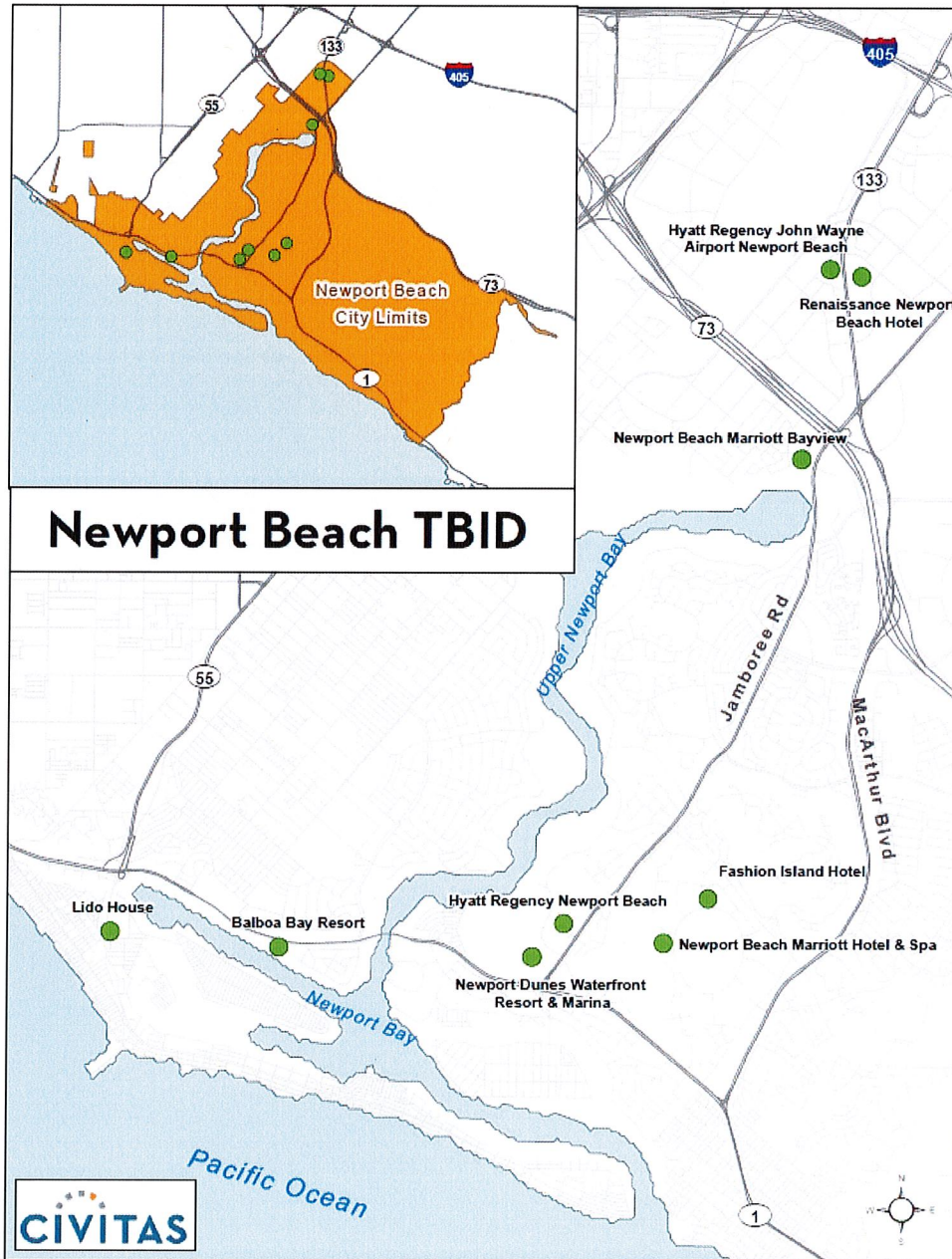
There are many benefits to a TBID:

- Funds must be spent on services and improvements that provide a specific and special benefit only to those who pay;
- Funds cannot be diverted to general government programs;
- They are customized to fit the needs of the assessed businesses in each destination;
- They allow for a wide range of services;
- They are **designed, created and governed by those who will pay** the assessment; and
- They provide a stable funding source for tourism promotion.

IV. BOUNDARY

The NBTBID will include nine (9) lodging businesses, available for public occupancy within the boundaries of the City of Newport Beach, and other hotels and resorts that may join NBTBID in the future.

The boundary, as shown in the map below, currently includes nine (9) lodging businesses. A complete listing of lodging businesses within the NBTBID can be found in Appendix 2.



V. BUDGET AND SERVICES

A. Annual Service Plan

Assessment funds will be spent to provide specific benefits conferred, or privileges granted directly to, the assessed businesses that are not provided to those not charged, and which do not exceed the reasonable cost to the City of conferring the benefits or granting the privileges. The privileges and services provided with the NBTBID funds are sales, marketing, advertising, and promotional programs available only to assessed businesses.

A service plan budget has been developed to deliver services that benefit businesses throughout the NBTBID. A detailed annual budget will be developed by the Owners' Association and approved by the City Council. The table below illustrates the initial annual budget allocations.

Category	Percent of Budget	Dollar Amount
Sales Marketing – Direct Sales	92.00%	\$3,772,000
Sales Administration	6.25%	\$256,250
Contingency	1.50%	\$61,500
City Collection	0.25%	\$10,250
Total Annual Budget	100%	\$4,100,000

Actual annual revenues will fluctuate due to market conditions, but are not expected to change significantly over the term of the district. The budget above is for the initial year; the same activities are proposed for subsequent years. VNB shall adopt specific budgets after the initial year. A description of the proposed improvements and activities for the initial year of operation is below.

Sales Marketing – Direct Sales

A sales marketing program will promote assessed businesses as tourist, meeting, and event destinations. The programs will be focused on attracting group sales to assessed businesses. Only assessed businesses will receive benefits featured in, and obtain leads from, the sales and marketing activities. The sales and marketing program will have a central theme of promoting the assessed Newport Beach lodging businesses as desirable places for group events. The program will have the goal of increasing overnight visitation and room night sales at assessed businesses, and may include the following activities:

- Internet marketing efforts to increase awareness and optimize internet presence for assessed businesses;
- Print ads in magazines and trade publications featuring assessed businesses and targeted at potential group meeting planners;
- Sales missions and sales calls to attract groups to assessed businesses;
- Costs related to providing sales marketing and direct sales programs;
- Client events designed to book new and returning groups at assessed businesses;
- Familiarization tours of assessed businesses;
- Preparation and production of collateral promotional materials such as brochures, flyers and maps featuring assessed businesses;
- Attendance of professional industry conferences and affiliation events on behalf of assessed businesses; and

- Lead generation activities designed to attract group events to assessed businesses.

The sales solicitation portion of the budget will be utilized to support direct sales efforts, including personnel and sales support teams that conduct outreach to clients, provide site inspections and work with assessed hotels to close select group business.

Sales – Administration

The sales administration portion of the budget will be utilized for administrative costs related to providing the sales programs. This may include office costs, and other general administrative costs, such as insurance, legal, and accounting fees. Legal fees may include defense of the NBTBID.

City Administration Fee

The City of Newport Beach shall be paid a fee equal to one quarter of one percent (0.25%) of the amount of assessment collected to cover its costs of collection and administration.

Contingency

A prudent portion of the budget will be held in a contingency reserve. These funds may be used to cover unanticipated program or administrative costs. If, at expiration of the NBTBID, there are contingency funds remaining and hotels wish to renew the district, the contingency funds could be used for the renewal effort.

B. Determination of Specific Benefit

State law requires that assessment funds be expended on a specific benefit conferred directly to the assessed businesses that is not provided to those not charged, and which does not exceed the reasonable cost to the City conferring the benefit. The services in this Management District Plan are designed to provide targeted benefits directly to assessed businesses. These services are tailored not to serve the general public, but rather to serve the specific assessed businesses within the NBTBID (e.g., the proposed activities are specifically targeted to increase room night sales for assessed businesses within the boundaries of the NBTBID, and are narrowly tailored). NBTBID funds will be used exclusively to provide the specific benefit of increased room night sales directly to the businesses. Non-assessed businesses will not be featured in NBTBID programs and will not receive sales leads from them. The activities paid for from assessment revenues are business services constituting and providing specific benefits to the assessed businesses. To the extent any non-paying business benefits from TBID programs, that portion of the program will be paid for with non-assessment funds.

Further, the assessment may be utilized to provide specific government services directly to the assessed businesses that are not provided to those not charged, and which do not exceed the reasonable costs to the City providing the services. Marketing like that to be provided by the NBTBID has been and is provided by the City, through its contract with VNB. The amount of the assessment is no more than necessary to cover the reasonable costs of the proposed activities, and the manner in which the costs are allocated to a business owner bear a fair share and bears a reasonable relationship to the assessed businesses' benefits received from the proposed activities.

NBTBID services will be implemented carefully to ensure they do not exceed the reasonable cost of such services. Funds will be managed by the Owners' Association, and reports submitted on an annual basis to the City. Only assessed businesses will be featured in marketing materials, receive sales leads generated from NBTBID-funded activities, be featured in advertising campaigns, and benefit from other NBTBID-funded services. Non-assessed businesses will not receive these, nor any other, NBTBID-funded services and benefits.

C. Assessment

The annual assessment rate is three (3) percent of gross short-term (stays of thirty (30) calendar days or less) room rental revenue. Based on the benefit received, assessments will not be collected on stays of more than thirty (30) consecutive calendar days. Based on the benefit received and because these types of stays will not be sought after by the NBTBID programs, the following stays are not subject to TOT under the Newport Beach Municipal Code (Section 3.16.040) and are not subject to assessment:

- Stays by any officer or employee of a foreign government who is exempt from payment of transient occupancy taxes by reason of express provision of Federal law or international treaty;
- Stays by a transient occupying a hotel pursuant to a qualifying rental agreement entered into prior to the first day of occupancy;
- Stays by an employee of an airline company who is occupying a hotel room in the course of his or her employment, but only when the room is rented by the airline employer pursuant to a qualifying rental agreement that has been preapproved by the City's Finance Director;
- Stays by any person or transient occupying a hotel room provided without rent charged (complimentary) to the person or transient by the operator, including but not limited to:
 1. Rooms provided to charitable organizations;
 2. Rooms provided to meeting planners who may book future hotel rooms and provide business and conferencing opportunities for the economic benefit of the hotel;
 3. Rooms provided to displeased guests; and/or
 4. Rooms provided to hotel employees.

The term "rent" shall mean the consideration charged, whether or not received, for the occupancy of space in a hotel valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits, and property and services of any kind or nature, without any deduction. Rent shall include the consideration charged by a business for accommodations, including any (A) un-refunded advance rental deposits or (B) separate charges levied for items or services which are part of such accommodations including, but not limited to, furniture, fixtures, appliances, linens, towels, non-coin-operated safes, utilities (such as energy surcharges) and maid service. Rent shall not include any federal, state or local taxes collected, including but not limited to transient occupancy taxes.

The amount of assessment, if passed on to each transient, shall be disclosed in advance and separately stated from the amount of rent charged and any other applicable taxes, and each transient shall receive a receipt for payment from the business. The assessment shall not be considered revenue for any purposes, including calculation of transient occupancy taxes.

Bonds may not be issued.

D. Time and Manner for Collecting Assessments

The NBTBID assessment will be implemented beginning February 1, 2014 and will continue for 10 years through January 31, 2024. The City, or its designee, is responsible for collecting the assessment

on a monthly basis (including any delinquencies, penalties and interest) from each assessed business located in the boundaries of the NBTBID. The City, or its designee, shall take all reasonable efforts to collect the assessments from each assessed business. The City shall forward the assessments collected to the Owners' Association.

E. Penalties and Interest

1. Any assessed business which fails to remit any assessment within the time required shall pay a penalty of ten (10) percent of the amount of the assessment in addition to the amount of the assessment (initial penalty).
2. Any business that fails to remit the assessment and initial penalty on or before a period of thirty (30) calendar days following the date on which the assessment first became delinquent shall pay a second delinquency penalty of ten (10) percent on both the amount of the assessment and the initial penalty (second penalty).
3. In addition to the penalties imposed, any assessed business that fails to remit any assessment shall pay interest on the amount of assessment that is due and owing at the rate of one and one-half of one percent (1- 1/2%) per month for each month or portion of a month that the assessment remains unpaid exclusive of penalties. For purposes of collection, every penalty imposed and such interest as accrues shall become a part of the assessment required to be paid.
4. In addition to the penalties and interest provided in this section, the assessed business shall reimburse the City or Owners' Association for costs in performance of an audit if, as a result of the audit, it is determined there was any intentional misrepresentation by the assessed business with respect to the amount of assessment due or there is a five percent (5%) or greater discrepancy between the amount of annual assessment due and the amount paid by the business. Such reimbursement shall be paid by business within thirty (30) calendar days of the assessed business being notified in writing of the amount of audit costs.

F. Annual Budget

The total ten (10) year improvement and service plan budget is projected at approximately \$4,100,000 annually, or \$41,000,000 through the ten (10) year term. This amount may fluctuate as sales and revenue increase at assessed businesses.

VI. GOVERNANCE

A. Owners' Association

The City Council, through adoption of this Management District Plan, has the right, pursuant to Streets and Highways Code section 36651, to identify the body that shall implement the proposed program, which shall be the Owners' Association of the NBTBID as defined in Streets and Highways Code section 36614.5. The City Council has determined that Visit Newport Beach, Inc. will serve as the Owners' Association for the NBTBID.

B. Brown Act and California Public Records Act Compliance

An Owners' Association is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose. The Owner's Association is, however, subject to government regulations relating to transparency, namely the Ralph M. Brown Act and the California Public Records Act. These regulations are designed to promote public accountability. The Owners' Association is considered a legislative body under the Ralph M. Brown Act (Government Code sections 54950 *et seq.*). Thus, meetings of the VNB board and certain committees, to the extent they discuss the TBID, must be held in compliance with the public notice and other requirements of the Brown Act. The Owners' Association is also subject to the record keeping and disclosure requirements of the California Public Records Act.

C. Annual Report

VNB shall present an annual report at the end of each year of operation to the City Council pursuant to Streets and Highways Code section 36650 (see Appendix 1).

APPENDIX 1 – LAW

*** THIS DOCUMENT IS CURRENT THROUGH THE 2018 SUPPLEMENT ***
(ALL 2017 LEGISLATION)

STREETS AND HIGHWAYS CODE DIVISION 18. PARKING PART 7. PROPERTY AND BUSINESS IMPROVEMENT DISTRICT LAW OF 1994

CHAPTER 1. General Provisions

ARTICLE 1. Declarations

36600. Citation of part

This part shall be known and may be cited as the “Property and Business Improvement District Law of 1994.”

36601. Legislative findings and declarations; Legislative guidance

The Legislature finds and declares all of the following:

- (a) Businesses located and operating within business districts in some of this state’s communities are economically disadvantaged, are underutilized, and are unable to attract customers due to inadequate facilities, services, and activities in the business districts.
- (b) It is in the public interest to promote the economic revitalization and physical maintenance of business districts in order to create jobs, attract new businesses, and prevent the erosion of the business districts.
- (c) It is of particular local benefit to allow business districts to fund business related improvements, maintenance, and activities through the levy of assessments upon the businesses or real property that receive benefits from those improvements.
- (d) Assessments levied for the purpose of conferring special benefit upon the real property or a specific benefit upon the businesses in a business district are not taxes for the general benefit of a city, even if property, businesses, or persons not assessed receive incidental or collateral effects that benefit them.
- (e) Property and business improvement districts formed throughout this state have conferred special benefits upon properties and businesses within their districts and have made those properties and businesses more useful by providing the following benefits:
 - (1) Crime reduction. A study by the Rand Corporation has confirmed a 12-percent reduction in the incidence of robbery and an 8-percent reduction in the total incidence of violent crimes within the 30 districts studied.
 - (2) Job creation.
 - (3) Business attraction.
 - (4) Business retention.
 - (5) Economic growth.
 - (6) New investments.
- (f) With the dissolution of redevelopment agencies throughout the state, property and business improvement districts have become even more important tools with which communities can combat blight, promote economic opportunities, and create a clean and safe environment.
- (g) Since the enactment of this act, the people of California have adopted Proposition 218, which added Article XIII D to the Constitution in order to place certain requirements and restrictions on the formation of, and activities, expenditures, and assessments by property-based districts. Article XIII D of the Constitution provides that property-based districts may only levy assessments for special benefits.
- (h) The act amending this section is intended to provide the Legislature’s guidance with regard to this act, its interaction with the provisions of Article XIII D of the Constitution, and the determination of special benefits in property-based districts.
 - (1) The lack of legislative guidance has resulted in uncertainty and inconsistent application of this act, which discourages the use of assessments to fund needed improvements, maintenance, and activities in property-based districts, contributing to blight and other underutilization of property.
 - (2) Activities undertaken for the purpose of conferring special benefits upon property to be assessed inherently produce incidental or collateral effects that benefit property or persons not

assessed. Therefore, for special benefits to exist as a separate and distinct category from general benefits, the incidental or collateral effects of those special benefits are inherently part of those special benefits. The mere fact that special benefits produce incidental or collateral effects that benefit property or persons not assessed does not convert any portion of those special benefits or their incidental or collateral effects into general benefits.

(3) It is of the utmost importance that property-based districts created under this act have clarity regarding restrictions on assessments they may levy and the proper determination of special benefits. Legislative clarity with regard to this act will provide districts with clear instructions and courts with legislative intent regarding restrictions on property-based assessments, and the manner in which special benefits should be determined.

36602. Purpose of part

The purpose of this part is to supplement previously enacted provisions of law that authorize cities to levy assessments within property and business improvement districts, to ensure that those assessments conform to all constitutional requirements and are determined and assessed in accordance with the guidance set forth in this act. This part does not affect or limit any other provisions of law authorizing or providing for the furnishing of improvements or activities or the raising of revenue for these purposes.

36603. Preemption of authority or charter city to adopt ordinances levying assessments

Nothing in this part is intended to preempt the authority of a charter city to adopt ordinances providing for a different method of levying assessments for similar or additional purposes from those set forth in this part. A property and business improvement district created pursuant to this part is expressly exempt from the provisions of the Special Assessment Investigation, Limitation and Majority Protest Act of 1931 (Division 4 (commencing with Section 2800)).

36603.5. Part prevails over conflicting provisions

Any provision of this part that conflicts with any other provision of law shall prevail over the other provision of law, as to districts created under this part.

36604. Severability

This part is intended to be construed liberally and, if any provision is held invalid, the remaining provisions shall remain in full force and effect. Assessments levied under this part are not special taxes.

ARTICLE 2. Definitions

36606. “Activities”

“Activities” means, but is not limited to, all of the following that benefit businesses or real property in the district:

- (a) Promotion of public events.
- (b) Furnishing of music in any public place.
- (c) Promotion of tourism within the district.
- (d) Marketing and economic development, including retail retention and recruitment.
- (e) Providing security, sanitation, graffiti removal, street and sidewalk cleaning, and other municipal services supplemental to those normally provided by the municipality.
- (f) Other services provided for the purpose of conferring special benefit upon assessed real property or specific benefits upon assessed businesses located in the district.

36606.5. “Assessment”

“Assessment” means a levy for the purpose of acquiring, constructing, installing, or maintaining improvements and providing activities that will provide certain benefits to properties or businesses located within a property and business improvement district.

36607. “Business”

“Business” means all types of businesses and includes financial institutions and professions.

36608. “City”

“City” means a city, county, city and county, or an agency or entity created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, the public member agencies of which includes only cities, counties, or a city and county, or the State of California.

36609. “City council”

“City council” means the city council of a city or the board of supervisors of a county, or the agency, commission, or board created pursuant to a joint powers agreement and which is a city within the meaning of this part.

36609.4. “Clerk”

“Clerk” means the clerk of the legislative body.

36609.5. “General benefit”

“General benefit” means, for purposes of a property-based district, any benefit that is not a “special benefit” as defined in Section 36615.5.

36610. “Improvement”

“Improvement” means the acquisition, construction, installation, or maintenance of any tangible property with an estimated useful life of five years or more including, but not limited to, the following:

- (a) Parking facilities.
- (b) Benches, booths, kiosks, display cases, pedestrian shelters and signs.
- (c) Trash receptacles and public restrooms.
- (d) Lighting and heating facilities.
- (e) Decorations.
- (f) Parks.
- (g) Fountains.
- (h) Planting areas.
- (i) Closing, opening, widening, or narrowing of existing streets.
- (j) Facilities or equipment, or both, to enhance security of persons and property within the district.
- (k) Ramps, sidewalks, plazas, and pedestrian malls.
- (l) Rehabilitation or removal of existing structures.

36611. “Management district plan”; “Plan”

“Management district plan” or “plan” means a proposal as defined in Section 36622.

36612. “Owners’ association”

“Owners’ association” means a private nonprofit entity that is under contract with a city to administer or implement improvements, maintenance, and activities specified in the management district plan. An owners’ association may be an existing nonprofit entity or a newly formed nonprofit entity. An owners’ association is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose. Notwithstanding this section, an owners’ association shall comply with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), at all times when matters within the subject matter of the district are heard, discussed, or deliberated, and with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), for all records relating to activities of the district.

36614. “Property”

“Property” means real property situated within a district.

36614.5. “Property and business improvement district”; “District”

“Property and business improvement district,” or “district,” means a property and business improvement district established pursuant to this part.

36614.6. “Property-based assessment”

“Property-based assessment” means any assessment made pursuant to this part upon real property.

36614.7. “Property-based district”

“Property-based district” means any district in which a city levies a property-based assessment.

36615. “Property owner”; “Business owner”; “Owner”

“Property owner” means any person shown as the owner of land on the last equalized assessment roll or otherwise known to be the owner of land by the city council. “Business owner” means any person recognized by the city as the owner of the business. “Owner” means either a business owner or a property owner. The city council has no obligation to obtain other information as to the ownership of land or businesses, and its determination of ownership shall be final and conclusive for the purposes of this part. Wherever this part requires the signature of the property owner, the signature of the authorized agent of the property owner shall be sufficient. Wherever this part requires the signature of the business owner, the signature of the authorized agent of the business owner shall be sufficient.

36615.5. “Special benefit”

“Special benefit” means, for purposes of a property-based district, a particular and distinct benefit over and above general benefits conferred on real property located in a district or to the public at large. Special benefit includes incidental or collateral effects that arise from the improvements, maintenance, or activities of property-based districts even if those incidental or collateral effects benefit property or persons not assessed. Special benefit excludes general enhancement of property value.

36616. “Tenant”

“Tenant” means an occupant pursuant to a lease of commercial space or a dwelling unit, other than an owner.

ARTICLE 3. Prior Law

36617. Alternate method of financing certain improvements and activities; Effect on other provisions

This part provides an alternative method of financing certain improvements and activities. The provisions of this part shall not affect or limit any other provisions of law authorizing or providing for the furnishing of improvements or activities or the raising of revenue for these purposes. Every improvement area established pursuant to the Parking and Business Improvement Area Law of 1989 (Part 6 (commencing with Section 36500) of this division) is valid and effective and is unaffected by this part.

CHAPTER 2. Establishment

36620. Establishment of property and business improvement district

A property and business improvement district may be established as provided in this chapter.

36620.5. Requirement of consent of city council

A county may not form a district within the territorial jurisdiction of a city without the consent of the city council of that city. A city may not form a district within the unincorporated territory of a county without the consent of the board of supervisors of that county. A city may not form a district within the territorial jurisdiction of another city without the consent of the city council of the other city.

36621. Initiation of proceedings; Petition of property or business owners in proposed district

- (a) Upon the submission of a written petition, signed by the property or business owners in the proposed district who will pay more than 50 percent of the assessments proposed to be levied, the city council may initiate proceedings to form a district by the adoption of a resolution expressing its intention to form a district. The amount of assessment attributable to property or a business owned by the same property or business owner that is in excess of 40 percent of the amount of all assessments proposed to be levied, shall not be included in determining whether the petition is signed by property or business owners who will pay more than 50 percent of the total amount of assessments proposed to be levied.
- (b) The petition of property or business owners required under subdivision (a) shall include a summary of the management district plan. That summary shall include all of the following:
 - (1) A map showing the boundaries of the district.
 - (2) Information specifying where the complete management district plan can be obtained.
 - (3) Information specifying that the complete management district plan shall be furnished upon request.
- (c) The resolution of intention described in subdivision (a) shall contain all of the following:
 - (1) A brief description of the proposed improvements, maintenance, and activities, the amount of the proposed assessment, a statement as to whether the assessment will be levied on property or businesses within the district, a statement as to whether bonds will be issued, and a description of the exterior boundaries of the proposed district, which may be made by reference to any plan or map that is on file with the clerk. The descriptions and statements do not need to be detailed and shall be sufficient if they enable an owner to generally identify the nature and extent of the improvements, maintenance, and activities, and the location and extent of the proposed district.
 - (2) A time and place for a public hearing on the establishment of the property and business improvement district and the levy of assessments, which shall be consistent with the requirements of Section 36623.

36622. Contents of management district plan

The management district plan shall include, but is not limited to, all of the following:

- (a) If the assessment will be levied on property, a map of the district in sufficient detail to locate each parcel of property and, if businesses are to be assessed, each business within the district. If the assessment will be levied on businesses, a map that identifies the district boundaries in sufficient detail to allow a business owner to reasonably determine whether a business is located within the district boundaries. If the assessment will be levied on property and businesses, a map of the district in sufficient detail to locate each parcel of property and to allow a business owner to reasonably determine whether a business is located within the district boundaries.
- (b) The name of the proposed district.
- (c) A description of the boundaries of the district, including the boundaries of benefit zones, proposed for establishment or extension in a manner sufficient to identify the affected property and businesses included, which may be made by reference to any plan or map that is on file with the clerk. The boundaries of a proposed property assessment district shall not overlap with the boundaries of another existing property assessment district created pursuant to this part. This part does not prohibit the boundaries of a district created pursuant to this part to overlap with other assessment districts established pursuant to other provisions of law, including, but not limited to, the Parking and Business Improvement Area Law of 1989 (Part 6 (commencing with Section 36500)). This part does not prohibit the boundaries of a business assessment district created pursuant to this part to overlap with another business assessment district created pursuant to this part. This part does not prohibit the boundaries of a business assessment district created pursuant to this part to overlap with a property assessment district created pursuant to this part.
- (d) The improvements, maintenance, and activities proposed for each year of operation of the district and the maximum cost thereof. If the improvements, maintenance, and activities proposed for each year of operation are the same, a description of the first year's proposed improvements, maintenance, and activities

and a statement that the same improvements, maintenance, and activities are proposed for subsequent years shall satisfy the requirements of this subdivision.

(e) The total annual amount proposed to be expended for improvements, maintenance, or activities, and debt service in each year of operation of the district. If the assessment is levied on businesses, this amount may be estimated based upon the assessment rate. If the total annual amount proposed to be expended in each year of operation of the district is not significantly different, the amount proposed to be expended in the initial year and a statement that a similar amount applies to subsequent years shall satisfy the requirements of this subdivision.

(f) The proposed source or sources of financing, including the proposed method and basis of levying the assessment in sufficient detail to allow each property or business owner to calculate the amount of the assessment to be levied against his or her property or business. The plan also shall state whether bonds will be issued to finance improvements.

(g) The time and manner of collecting the assessments.

(h) The specific number of years in which assessments will be levied. In a new district, the maximum number of years shall be five. Upon renewal, a district shall have a term not to exceed 10 years. Notwithstanding these limitations, a district created pursuant to this part to finance capital improvements with bonds may levy assessments until the maximum maturity of the bonds. The management district plan may set forth specific increases in assessments for each year of operation of the district.

(i) The proposed time for implementation and completion of the management district plan.

(j) Any proposed rules and regulations to be applicable to the district.

(k) (1) A list of the properties or businesses to be assessed, including the assessor's parcel numbers for properties to be assessed, and a statement of the method or methods by which the expenses of a district will be imposed upon benefited real property or businesses, in proportion to the benefit received by the property or business, to defray the cost thereof.

(2) In a property-based district, the proportionate special benefit derived by each identified parcel shall be determined exclusively in relationship to the entirety of the capital cost of a public improvement, the maintenance and operation expenses of a public improvement, or the cost of the activities. An assessment shall not be imposed on any parcel that exceeds the reasonable cost of the proportional special benefit conferred on that parcel. Only special benefits are assessable, and a property-based district shall separate the general benefits, if any, from the special benefits conferred on a parcel. Parcels within a property-based district that are owned or used by any city, public agency, the State of California, or the United States shall not be exempt from assessment unless the governmental entity can demonstrate by clear and convincing evidence that those publicly owned parcels in fact receive no special benefit. The value of any incidental, secondary, or collateral effects that arise from the improvements, maintenance, or activities of a property-based district and that benefit property or persons not assessed shall not be deducted from the entirety of the cost of any special benefit or affect the proportionate special benefit derived by each identified parcel.

(l) In a property-based district, the total amount of all special benefits to be conferred upon the properties located within the property-based district.

(m) In a property-based district, the total amount of general benefits, if any.

(n) In a property-based district, a detailed engineer's report prepared by a registered professional engineer certified by the State of California supporting all assessments contemplated by the management district plan.

(o) Any other item or matter required to be incorporated therein by the city council.

36623. Procedure to levy assessment

(a) If a city council proposes to levy a new or increased property assessment, the notice and protest and hearing procedure shall comply with Section 53753 of the Government Code.

(b) If a city council proposes to levy a new or increased business assessment, the notice and protest and hearing procedure shall comply with Section 54954.6 of the Government Code, except that notice shall be mailed to the owners of the businesses proposed to be assessed. A protest may be made orally or in writing by any interested person. Every written protest shall be filed with the clerk at or before the time fixed for the public hearing. The city council may waive any irregularity in the form or content of any written protest. A written protest may be withdrawn in writing at any time before the conclusion of the public hearing. Each written protest shall contain a description of the business in which the person subscribing the

protest is interested sufficient to identify the business and, if a person subscribing is not shown on the official records of the city as the owner of the business, the protest shall contain or be accompanied by written evidence that the person subscribing is the owner of the business or the authorized representative. A written protest that does not comply with this section shall not be counted in determining a majority protest. If written protests are received from the owners or authorized representatives of businesses in the proposed district that will pay 50 percent or more of the assessments proposed to be levied and protests are not withdrawn so as to reduce the protests to less than 50 percent, no further proceedings to levy the proposed assessment against such businesses, as contained in the resolution of intention, shall be taken for a period of one year from the date of the finding of a majority protest by the city council.

(c) If a city council proposes to conduct a single proceeding to levy both a new or increased property assessment and a new or increased business assessment, the notice and protest and hearing procedure for the property assessment shall comply with subdivision (a), and the notice and protest and hearing procedure for the business assessment shall comply with subdivision (b). If a majority protest is received from either the property or business owners, that respective portion of the assessment shall not be levied. The remaining portion of the assessment may be levied unless the improvement or other special benefit was proposed to be funded by assessing both property and business owners.

36624. Changes to proposed assessments

At the conclusion of the public hearing to establish the district, the city council may adopt, revise, change, reduce, or modify the proposed assessment or the type or types of improvements, maintenance, and activities to be funded with the revenues from the assessments. Proposed assessments may only be revised by reducing any or all of them. At the public hearing, the city council may only make changes in, to, or from the boundaries of the proposed property and business improvement district that will exclude territory that will not benefit from the proposed improvements, maintenance, and activities. Any modifications, revisions, reductions, or changes to the proposed assessment district shall be reflected in the notice and map recorded pursuant to Section 36627.

36625. Resolution of formation

(a) If the city council, following the public hearing, decides to establish a proposed property and business improvement district, the city council shall adopt a resolution of formation that shall include, but is not limited to, all of the following:

- (1) A brief description of the proposed improvements, maintenance, and activities, the amount of the proposed assessment, a statement as to whether the assessment will be levied on property, businesses, or both within the district, a statement on whether bonds will be issued, and a description of the exterior boundaries of the proposed district, which may be made by reference to any plan or map that is on file with the clerk. The descriptions and statements need not be detailed and shall be sufficient if they enable an owner to generally identify the nature and extent of the improvements, maintenance, and activities and the location and extent of the proposed district.
- (2) The number, date of adoption, and title of the resolution of intention.
- (3) The time and place where the public hearing was held concerning the establishment of the district.
- (4) A determination regarding any protests received. The city shall not establish the district or levy assessments if a majority protest was received.
- (5) A statement that the properties, businesses, or properties and businesses in the district established by the resolution shall be subject to any amendments to this part.
- (6) A statement that the improvements, maintenance, and activities to be conferred on businesses and properties in the district will be funded by the levy of the assessments. The revenue from the levy of assessments within a district shall not be used to provide improvements, maintenance, or activities outside the district or for any purpose other than the purposes specified in the resolution of intention, as modified by the city council at the hearing concerning establishment of the district. Notwithstanding the foregoing, improvements and activities that must be provided outside the district boundaries to create a special or specific benefit to the assessed parcels or businesses may be provided, but shall be limited to marketing or signage pointing to the district.
- (7) A finding that the property or businesses within the area of the property and business improvement district will be benefited by the improvements, maintenance, and activities funded

by the proposed assessments, and, for a property-based district, that property within the district will receive a special benefit.

(8) In a property-based district, the total amount of all special benefits to be conferred on the properties within the property-based district.

(b) The adoption of the resolution of formation and, if required, recordation of the notice and map pursuant to Section 36627 shall constitute the levy of an assessment in each of the fiscal years referred to in the management district plan.

36626. Resolution establishing district

If the city council, following the public hearing, desires to establish the proposed property and business improvement district, and the city council has not made changes pursuant to Section 36624, or has made changes that do not substantially change the proposed assessment, the city council shall adopt a resolution establishing the district. The resolution shall contain all of the information specified in Section 36625.

36627. Notice and assessment diagram

Following adoption of the resolution establishing district assessments on properties pursuant to Section 36625 or Section 36626, the clerk shall record a notice and an assessment diagram pursuant to Section 3114. No other provision of Division 4.5 (commencing with Section 3100) applies to an assessment district created pursuant to this part.

36628. Establishment of separate benefit zones within district; Categories of businesses

The city council may establish one or more separate benefit zones within the district based upon the degree of benefit derived from the improvements or activities to be provided within the benefit zone and may impose a different assessment within each benefit zone. If the assessment is to be levied on businesses, the city council may also define categories of businesses based upon the degree of benefit that each will derive from the improvements or activities to be provided within the district and may impose a different assessment or rate of assessment on each category of business, or on each category of business within each zone.

36628.5. Assessments on businesses or property owners

The city council may levy assessments on businesses or on property owners, or a combination of the two, pursuant to this part. The city council shall structure the assessments in whatever manner it determines corresponds with the distribution of benefits from the proposed improvements, maintenance, and activities, provided that any property-based assessment conforms with the requirements set forth in paragraph (2) of subdivision (k) of Section 36622.

36629. Provisions and procedures applicable to benefit zones and business categories

All provisions of this part applicable to the establishment, modification, or disestablishment of a property and business improvement district apply to the establishment, modification, or disestablishment of benefit zones or categories of business. The city council shall, to establish, modify, or disestablish a benefit zone or category of business, follow the procedure to establish, modify, or disestablish a property and business improvement district.

36630. Expiration of district; Creation of new district

If a property and business improvement district expires due to the time limit set pursuant to subdivision (h) of Section 36622, a new management district plan may be created and the district may be renewed pursuant to this part.

CHAPTER 3. Assessments

36631. Time and manner of collection of assessments; Delinquent payments

The collection of the assessments levied pursuant to this part shall be made at the time and in the manner set forth by the city council in the resolution levying the assessment. Assessments levied on real property may be collected at the same time and in the same manner as for the ad valorem property tax, and may provide for the same lien priority and

penalties for delinquent payment. All delinquent payments for assessments levied pursuant to this part may be charged interest and penalties.

36632. Assessments to be based on estimated benefit; Classification of real property and businesses; Exclusion of residential and agricultural property

(a) The assessments levied on real property pursuant to this part shall be levied on the basis of the estimated benefit to the real property within the property and business improvement district. The city council may classify properties for purposes of determining the benefit to property of the improvements and activities provided pursuant to this part.

(b) Assessments levied on businesses pursuant to this part shall be levied on the basis of the estimated benefit to the businesses within the property and business improvement district. The city council may classify businesses for purposes of determining the benefit to the businesses of the improvements and activities provided pursuant to this part.

(c) Properties zoned solely for residential use, or that are zoned for agricultural use, are conclusively presumed not to benefit from the improvements and service funded through these assessments, and shall not be subject to any assessment pursuant to this part.

36633. Time for contesting validity of assessment

The validity of an assessment levied under this part shall not be contested in any action or proceeding unless the action or proceeding is commenced within 30 days after the resolution levying the assessment is adopted pursuant to Section 36626. Any appeal from a final judgment in an action or proceeding shall be perfected within 30 days after the entry of judgment.

36634. Service contracts authorized to establish levels of city services

The city council may execute baseline service contracts that would establish levels of city services that would continue after a property and business improvement district has been formed.

36635. Request to modify management district plan

The owners' association may, at any time, request that the city council modify the management district plan. Any modification of the management district plan shall be made pursuant to this chapter.

36636. Modification of plan by resolution after public hearing; Adoption of resolution of intention

(a) Upon the written request of the owners' association, the city council may modify the management district plan after conducting one public hearing on the proposed modifications. The city council may modify the improvements and activities to be funded with the revenue derived from the levy of the assessments by adopting a resolution determining to make the modifications after holding a public hearing on the proposed modifications. If the modification includes the levy of a new or increased assessment, the city council shall comply with Section 36623. Notice of all other public hearings pursuant to this section shall comply with both of the following:

(1) The resolution of intention shall be published in a newspaper of general circulation in the city once at least seven days before the public hearing.

(2) A complete copy of the resolution of intention shall be mailed by first class mail, at least 10 days before the public hearing, to each business owner or property owner affected by the proposed modification.

(b) The city council shall adopt a resolution of intention which states the proposed modification prior to the public hearing required by this section. The public hearing shall be held not more than 90 days after the adoption of the resolution of intention.

36637. Reflection of modification in notices recorded and maps

Any subsequent modification of the resolution shall be reflected in subsequent notices and maps recorded pursuant to Division 4.5 (commencing with Section 3100), in a manner consistent with the provisions of Section 36627.

CHAPTER 3.5. Financing

36640. Bonds authorized; Procedure; Restriction on reduction or termination of assessments

(a) The city council may, by resolution, determine and declare that bonds shall be issued to finance the estimated cost of some or all of the proposed improvements described in the resolution of formation adopted pursuant to Section 36625, if the resolution of formation adopted pursuant to that section provides for the issuance of bonds, under the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500)) or in conjunction with Marks-Roos Local Bond Pooling Act of 1985 (Article 4 (commencing with Section 6584) of Chapter 5 of Division 7 of Title 1 of the Government Code). Either act, as the case may be, shall govern the proceedings relating to the issuance of bonds, although proceedings under the Bond Act of 1915 may be modified by the city council as necessary to accommodate assessments levied upon business pursuant to this part.

(b) The resolution adopted pursuant to subdivision (a) shall generally describe the proposed improvements specified in the resolution of formation adopted pursuant to Section 36625, set forth the estimated cost of those improvements, specify the number of annual installments and the fiscal years during which they are to be collected. The amount of debt service to retire the bonds shall not exceed the amount of revenue estimated to be raised from assessments over 30 years.

(c) Notwithstanding any other provision of this part, assessments levied to pay the principal and interest on any bond issued pursuant to this section shall not be reduced or terminated if doing so would interfere with the timely retirement of the debt.

CHAPTER 4. Governance

36650. Report by owners' association; Approval or modification by city council

(a) The owners' association shall cause to be prepared a report for each fiscal year, except the first year, for which assessments are to be levied and collected to pay the costs of the improvements, maintenance, and activities described in the report. The owners' association's first report shall be due after the first year of operation of the district. The report may propose changes, including, but not limited to, the boundaries of the property and business improvement district or any benefit zones within the district, the basis and method of levying the assessments, and any changes in the classification of property, including any categories of business, if a classification is used.

(b) The report shall be filed with the clerk and shall refer to the property and business improvement district by name, specify the fiscal year to which the report applies, and, with respect to that fiscal year, shall contain all of the following information:

- (1) Any proposed changes in the boundaries of the property and business improvement district or in any benefit zones or classification of property or businesses within the district.
- (2) The improvements, maintenance, and activities to be provided for that fiscal year.
- (3) An estimate of the cost of providing the improvements, maintenance, and activities for that fiscal year.
- (4) The method and basis of levying the assessment in sufficient detail to allow each real property or business owner, as appropriate, to estimate the amount of the assessment to be levied against his or her property or business for that fiscal year.
- (5) The estimated amount of any surplus or deficit revenues to be carried over from a previous fiscal year.
- (6) The estimated amount of any contributions to be made from sources other than assessments levied pursuant to this part.

(c) The city council may approve the report as filed by the owners' association or may modify any particular contained in the report and approve it as modified. Any modification shall be made pursuant to Sections 36635 and 36636.

The city council shall not approve a change in the basis and method of levying assessments that would impair an authorized or executed contract to be paid from the revenues derived from the levy of assessments, including any commitment to pay principal and interest on any bonds issued on behalf of the district.

36651. Designation of owners' association to provide improvements, maintenance, and activities

The management district plan may, but is not required to, state that an owners' association will provide the improvements, maintenance, and activities described in the management district plan. If the management district plan designates an owners' association, the city shall contract with the designated nonprofit corporation to provide services.

CHAPTER 5. Renewal

36660. Renewal of district; Transfer or refund of remaining revenues; District term limit

- (a) Any district previously established whose term has expired, or will expire, may be renewed by following the procedures for establishment as provided in this chapter.
- (b) Upon renewal, any remaining revenues derived from the levy of assessments, or any revenues derived from the sale of assets acquired with the revenues, shall be transferred to the renewed district. If the renewed district includes additional parcels or businesses not included in the prior district, the remaining revenues shall be spent to benefit only the parcels or businesses in the prior district. If the renewed district does not include parcels or businesses included in the prior district, the remaining revenues attributable to these parcels shall be refunded to the owners of these parcels or businesses.
- (c) Upon renewal, a district shall have a term not to exceed 10 years, or, if the district is authorized to issue bonds, until the maximum maturity of those bonds. There is no requirement that the boundaries, assessments, improvements, or activities of a renewed district be the same as the original or prior district.

CHAPTER 6. Disestablishment

36670. Circumstances permitting disestablishment of district; Procedure

- (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 city council in either of the following circumstances:
 - (1) If the city council 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 district who pay 50 percent or more of the assessments levied, the city council shall pass a resolution of intention to disestablish the district. The city council shall notice a hearing on disestablishment.
- (b) The city council 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.

36671. Refund of remaining revenues upon disestablishment or expiration without renewal of district; Calculation of refund; Use of outstanding revenue collected after disestablishment of district

- (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.

APPENDIX 2 – ASSESSED BUSINESSES

Business Name	Street	City & State	Zip
Balboa Bay Resort	1221 West Coast Highway	Newport Beach CA	92663
Fashion Island Hotel	690 Newport Center Drive	Newport Beach CA	92660
Hyatt Regency John Wayne Airport Newport Beach	4545 MacArthur Boulevard	Newport Beach CA	92660
Hyatt Regency Newport Beach	1107 Jamboree Road	Newport Beach CA	92660
Lido House	3300 Newport Boulevard	Newport Beach CA	92663
Newport Beach Marriott Bayview	500 Bayview Circle	Newport Beach CA	92660
Newport Beach Marriott Hotel & Spa	900 Newport Center Drive	Newport Beach CA	92660
Newport Dunes Waterfront Resort & Marina	1131 Back Bay Drive	Newport Beach CA	92660
Renaissance Newport Beach Hotel	4500 MacArthur Boulevard	Newport Beach CA	92660