Mike Feuer <mike.feuer@lacity.org>

Alpha Bids

Carol Schatz <cschatz@ccala.org> Wed, Nov 13, 2013 at 11:04 AM
To: "mike.feuer@lacity.org" <mike.feuer@lacity.org>, "michael.feuer@lacity.org" <michael.feuer@lacity.org>

Dear Mike,

At our recent meeting re: Alpha BIDs and the Arts District BID you asked us to present our arguments, legal & policy, in support of our stated position that Alpha BIDs should not be authorized by the City Attorney's office.

Enclosed is a memo reflecting the DCBID's views on Alpha BIDs for your consideration. Once again, thanks for the opportunity to meet and make our case.

Best regards,

Carol

Carol Schatz

President & CEO

Central City Association

626 Wilshire Blvd., Suite 200

Los Angeles, CA 90017

tel 213-416-7534

fax 213-624-0858

e-mail cschatz@ccala.org

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LOEB & LOEB LLP

PAUL ROHRER
Partner

10100 Santa Monica Blvd.
Suite 2200
Los Angeles, CA 90067

Direct 310.282.2270
Main 310.282.2000
Fax 310.919.2922
prohrer@loeb.com

MEMORANDUM

Confidential: Attorney-Client Privileged Communication and Attorney Work-Product

Date: November 12, 2013

File: 219016-10015

To: Carol E. Schatz, Central City Association

From Paul Rohrer
Michelle A. Buchmeier

Re: Alpha BIDs

You have asked us to advise on the legality of Alpha BIDs and possible litigation exposure for the City of Los Angeles (the "**City**") associated with forming, or refraining from forming, Alpha BIDs. Contained in this Memorandum is a summary of our assessment of the foregoing matters.

1. **Lack of Legitimacy of Alpha BIDs Could Lead to Bad Precedent for All BIDs.**

Currently, Business Improvement Districts ("**BIDs**") are under attack in California by anti-tax partisans and property owners objecting to payment of assessments. Recently, the City settled two cases and lost one challenge on State Constitutional arguments arising from Proposition 218, which amended Articles XIII C and XIII D of the California Constitution (the "**Constitution**") to require a local government to obtain ballot approval from property owners for any proposed new or increased assessment prior to the assessment being levied. The policy behind Proposition 218 was clear: to ensure assessments are not levied without a democratic process.

Unlike BIDs formed under the authority of the state BID law,[1] which require the active participation of 50% of the assessed parties (by assessed value), Alpha BIDs formed under the City-created BID law[2] can be created and impose assessments with the buy-in of only 30% of the assessed parties (by assessed value), which appears undemocratic. All BIDs are required to comply with the Constitution, and BIDs are frequently attacked on Constitutional grounds. In the event that an Alpha BID is challenged, a reviewing court's judement might be influenced by the lack of democratic legitimacy in the formation of such Alpha BID and rule that it is unconstitutional. Because all BIDs are required to comply with the Constitution, a negative ruling on Constitutional grounds, regardless of the underlying motivation of the deciding court, would create negative legal precedent that would universally impact BIDs. In order to reduce the likelihood of bad precedent being created and best preserve the future legality of all the City's BIDs, the City should refrain from certifying democratically-questionable Alpha BIDs.

[1] CA Streets and Highways Code §§ 36620 *et seq.*
[2] City Administrative Code §§ 6.600-6.619.

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2. **No Litigation Risk Will Be Created by Disallowing an Alpha BID to Be Formed.**

The City should not be at risk of litigation if it elects not to allow an Alpha BID to be formed because creation of an Alpha BID is a discretionary City Council action: "Upon the written petition, signed by the property owners in the proposed district who will pay more than 30% of the assessments proposed to be levied, the City Council *may* initiate proceedings to form a district by the adoption of an ordinance expressing its intention to form a district" (L.A. Admin Code Sec. 6.602, *emphasis added*). In other words, the City Council is not obligated to form an Alpha BID and may use its discretion in declining to authorize the formation of an Alpha BID. Consequently, the City Council's decision not to authorize the formation of a BID should not be subject to a successful legal challenge.

3. **Litigation Risk from Granting Alpha BID.**

Because of the apparent lack of legitimacy described in Section 1, an Alpha BID is potentially more vulnerable to Constitutional challenge than a BID adopted under the state BID law. Consequently, it is more likely that savvy litigants will challenge an Alpha BID than a BID formed under state law, and litigation may be expected.