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VIA EMAIL

August 24, 2016

Mr. Mike Feuer
Los Angeles City Attorney
200 North Main St., 8th Floor
Los Angeles, CA 90012

Ms. Holly Wolcott
Los Angeles City Clerk
2000 South Man St.
Los Angeles, CA 90012

RE: Council File 16-0749, Venice Beach Business Improvement District

Dear Mr. Feuer and Ms. Wolcott:

We represent the Southern Homeless Bill of Rights Coalition and write on their behalf regarding the City's failure to abide by the notice and hearing requirements outlined in California Streets and Highways Code Section 36623, California Government Code Section 53753, and Article XIID, Section 4 of the California Constitution. The City Council violated these provisions when it closed the hearing on the Venice Beach Business Improvement District (BID) without allowing all members of the public to provide testimony about the BID.

On Tuesday, August 23, 2016, the Los Angeles City Council held a public hearing pursuant to Government Code Section 53753, on the creation of the Venice Beach BID. At the beginning of the public comment period, the Council President informed the audience that the Council would hear public comment for 25 minutes. Only approximately 22 of the 40 individuals who submitted comment cards were allowed to speak and given one minute each to address the Council. Before the rest of the individuals who had submitted comment cards were allowed to testify, the public hearing was closed. Among those individuals who were not allowed to voice objections or protests were a number of property owners who will be assessed if the BID is created, as well as other community stakeholders and members of the Southern California Homeless Bill of Rights Coalition.¹ A number of individuals

¹ Approximately twelve of the 18 individuals who submitted speaker cards but were not allowed to speak were opposed to the BID, while it appears that only one who was in favor of the BID was not given an opportunity to speak. The remaining five speakers indicated that they had general comments

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vocally protested the Council's decision to conclude the public hearing, but were informed that if they continued to protest, the chambers would be cleared. Thereafter, the City Clerk's office commenced and subsequently completed the tabulation of the ballots.

The Council's actions in concluding the public comment period before individuals were allowed to give testimony about the BID violates the enabling statute for BIDs. Under Streets and Highways Code Section 36623, the City Council must hold a public hearing that complies with Section 53753 of the California Government Code before levying assessments for a Business Improvement District. *See* Str. & Highways Code § 36623(a).

Government Code Section 53753, the Proposition 218 Omnibus Implementation Act, codifies the public notice and hearing requirements of Article XIID of the California Constitution, which was passed by voters to "protect taxpayers by limiting the methods by which local governments exact revenue from taxpayers without their consent." *See Howard Jarvis Taxpayers Assn. v. City of San Diego* (2002) 72 Cal.App.4th 230, 235-36. The requirements of Section 53753 are strictly construed and must be followed in order for a City to levy an assessment under Article XIID.

Unlike public meetings held under the Brown Act, Cal Gov't Code § 54950 *et seq.*, which applies to most public comment and under limited circumstances may allow reasonable limitations on public comment periods, Government Code Section 53753(d) provides that "[a]t the public hearing, the agency shall consider *all* objections or protests, if any, to the proposed assessment. At the public hearing, *any person shall be permitted to present written or oral testimony.*" (emphasis added). Only at the conclusion of the public hearing may ballots be unsealed and tabulated. *See* Gov't Code §§ 53753(b); (e)(1).

This language is explicit and makes it clear that all members of the public must be allowed the opportunity to be heard at the hearing regarding the creation of a BID. By cutting off public comments and not allowing members of the community to speak, including stakeholders and property owners in the proposed BID who will be required to pay the assessment, the Council violated the strict provisions of Government Code Section 53753. In doing so, the Council invalidated the balloting process necessary to allow it to create the BID and impose an assessment under Streets and Highways Code Section 36600 *et seq.*

The City cannot remedy this violation by simply reopening the hearing to allow for additional public comment. The Government Code provides a detailed sequential process, in which each step is built on the preceding steps, to ensure that the due process rights outlined in Article XIID, Section 4 of the California Constitution are protected. The process begins with the distribution of a petition, the contents of which are outlined in the Streets and Highways Code. *See* Str. and Highways Code § 36621.² A successful petitioning phase is followed by the distribution of the ballot. This ballot must contain information about the public hearing, including the date and time of the hearing. Gov't Code § 53753(b). Ballots may be submitted, changed, or withdrawn up until the completion of the public

or did not indicate a position, and none of those individuals were allowed to speak. *See* Speaker Cards, Council File 16-0749.

² The initial petition itself failed to provide information required by the Streets and Highways Code. The petition failed to inform individuals that the complete management district plan "shall be furnished upon request" and where the complete management plan could be obtained, as required by Streets and Highways Code Section 36621. In fact, the complete management district plan was published until June 24, 2016, three months after the petition was circulated to property owners.

hearing, and ballots must remain sealed until the hearing is concluded. Gov't Code § 53753(c). Only after the hearing is completed may ballots be unsealed and counted. *Id.*

The noticed hearing was conducted and concluded yesterday, and the ballots were unsealed and counted. Conducting a new hearing would violate the notice provisions outlined in Section 53753(b) because the information about the hearing must be included with the ballot. Reopening the hearing would also make the City's unsealing and tabulation of the ballots a violation of both sections 53753(c) and (e).

There was no reason to close the public hearing before members of the public were allowed to be heard on this issue. Stakeholders who otherwise have no voice in the creation of a BID and the regulation of public space were present for hours, waiting to be heard. The relevant statutes gave them a right to testify, and under those statutes, the Council's failure to allow them the opportunity to exercise this right renders the balloting process invalid.

If the City wishes to create the Venice Beach Business Improvement District and assess property owners, it must comply with strict provisions of Streets and Highways Code Section 36600 *et seq.*, Government Code Section 53753, and Article XIID of the California Constitution. This includes allowing all individuals to present testimony about the BID and considering their objections and their protests.

Sincerely,

/s

Shayla Myers
Attorney

CC: **Councilmember Gilbert Cedillo**
Councilmember Paul Krekorian
Councilmember Bob Blumenfield
Councilmember David E. Ryu
Councilmember Paul Koretz
Councilmember Nury Martinez
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