

AMENDED IN ASSEMBLY MARCH 27, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2412

Introduced by Assembly Member Atkins

February 21, 2014

An act to add Chapter 9 (commencing with Section 51299) to Part 1 of Division 1 of Title 5 of the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 2412, as amended, Atkins. Cities: community benefit districts.

Existing law authorizes cities and counties to establish various districts and other entities to provide improvements and other benefits within their jurisdiction. Existing law, the Property and Business Improvement District Law of 1994, authorizes cities and counties, and joint exercise of powers agencies comprised of cities and counties, to establish property and business improvement districts for the purpose of financing certain activities and certain improvements on real property located within the district.

This bill would authorize a local agency, *as defined, in the County of San Diego* to form a community benefit district by complying with specified procedures and requirements, to be operated by a nonprofit management company, and to levy an assessment for the funding of certain improvements and activities within the district.

This bill would make legislative findings and declarations as to the necessity of a special statute for the County of San Diego.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 9 (commencing with Section 51299) is
2 added to Part 1 of Division 1 of Title 5 of the Government Code,
3 to read:

4

5

CHAPTER 9. COMMUNITY BENEFIT DISTRICTS

6

7

51299. As used in this chapter the following terms shall have
8 the following meanings:

9

(a) "Activities" means activities that benefit real property located
10 within a commercial, retail, or mixed-use, industrial, or residential
11 district or neighborhood within the district, and includes, but is
12 not limited to, all of the following:

13

(1) Promotion of public events and programs that benefit real
14 property in the district.

15

(2) Furnishing of music in any public place within the district.

16

(3) Promotion of district or neighborhood identity within the
17 district.

18

(4) Marketing, planning, zoning, and economic development,
19 including business retention and recruitment.

20

(5) Providing security, sanitation, graffiti removal, street and
21 sidewalk cleaning, parking, and other services supplemental to
22 those normally provided by the local agency.

23

(b) "Improvement" means the acquisition, construction,
24 installation, or maintenance of any tangible property with an
25 estimated useful life of five years or more, including, but not
26 limited to, the following:

27

(1) Parking facilities.

28

(2) Benches.

29

(3) Booths.

30

(4) Kiosks.

31

(5) Display cases.

32

(6) Pedestrian shelters and signs.

33

(7) Trash receptacles and public restrooms.

34

(8) Lighting and heating facilities.

35

(9) Decorations.

36

(10) Fountains.

37

(11) Planting areas.

1 (12) Minor modifications of existing streets, facilities, or
2 equipment, or any combination thereof, to enhance security of
3 persons and property within the district.

4 (13) Ramps, sidewalks, plazas, town centers, or pedestrian malls.

5 (14) Rehabilitation or removal of existing public structures.

6 (15) Installation or planting of landscaping, the installation or
7 construction of statuary, fountains, and other ornamental structures
8 and facilities.

9 (16) Installation or construction of any facilities that are
10 appurtenant to any of the foregoing or that are necessary or
11 convenient for the maintenance or servicing thereof, including,
12 but not limited to, grading, clearing, removal of debris, the
13 installation or construction of curbs, gutters, walls, sidewalks or
14 paving, or water, irrigation, drainage or electrical facilities.

15 (c) “Legislative body” means a city council or board of
16 supervisors *for a local agency located in the County of San Diego*.

17 (d) “Local agency” means a city, ~~county, or city and~~ or county.

18 (e) “Maintain” or “maintenance” means the furnishing of
19 services and materials for the ordinary and usual maintenance,
20 operation, and servicing of any improvement, including the
21 following:

22 (1) Repair, removal, or replacement of any part of the
23 improvement.

24 (2) Providing for the life, growth, health, and beauty of
25 landscaping, including cultivation, irrigation, trimming, spraying,
26 fertilization, or treating for disease or injury.

27 (3) The removal of trimmings, rubbish, debris, and other solid
28 waste.

29 (4) The cleaning, sandblasting, and painting of walls and other
30 improvements to remove or cover graffiti.

31 (f) “Nonprofit management corporation” means a private
32 nonprofit entity that is under contract with a city or county to
33 administer or implement activities and improvements specified in
34 the community benefit district plan.

35 51299.1. (a) A local agency may establish a community benefit
36 district by complying with the procedures established in this
37 chapter.

38 (b) A community benefit district may be used to order
39 improvements, maintenance, or activities, or any combination
40 thereof, in specifically defined commercial, retail, mixed-use,

1 industrial, or residential districts or neighborhoods of a local
2 agency. The local agency shall determine and declare the property
3 owners to be benefited by the improvement, maintenance, or
4 activities, or any combination thereof, and assess the cost and
5 expenses of the improvements, maintenance, and activities,
6 including all expenses incurred incidentally, upon the lots or parcels
7 of real property in proportion to the estimated benefits to be
8 received.

9 51299.2. (a) Upon the receipt of a written petition prepared
10 pursuant to Section 51299.3, and a community benefit district plan
11 prepared pursuant to Section 51299.4, the city clerk or county clerk
12 shall prepare a report pursuant to Section 51299.5, and submit that
13 report to the legislative body for its consideration.

14 (b) The legislative body may approve, correct, or modify the
15 report in any respect, or may direct the city clerk or county clerk
16 to make changes to the report. If the legislative body approves of
17 the report, or approves the report as modified and corrected, the
18 legislative body may pass an ordinance of intention to establish
19 the district pursuant to Section 51299.6.

20 (c) If the legislative body passes an ordinance of intention
21 pursuant to subdivision (b), that legislative body shall notify the
22 affected property owners at least 45 days prior to the public hearing
23 pursuant to Sections 51299.7 and 51299.8, and hold a public
24 hearing on the matter consistent with the procedures of Section
25 53753.

26 (d) If the legislative body complies with subdivision (c), and
27 there is no majority protest as described in Section 53753, then
28 the legislative body may adopt an ordinance establishing a
29 community benefit district and levying an assessment pursuant to
30 Section 51299.9.

31 51299.3. The written petition shall be signed by the property
32 owners in the proposed district who support the establishment of
33 the district and who will pay more than 30 percent of the
34 assessments proposed to be levied. The amount of assessment
35 attributable to property owned by the same property owner that is
36 in excess of 20 percent of the amount of all assessments proposed
37 to be levied shall not be included in determining whether the
38 petition is signed by property owners who will pay more than 30
39 percent of the total amount of assessments proposed to be levied.

1 51299.4. The property owners in the proposed district who
2 support the establishment of the district shall prepare a community
3 benefit district plan that shall contain all of the following:

4 (a) A map of the district in sufficient detail to locate each parcel
5 of property within the district.

6 (b) The name of the proposed district.

7 (c) A description of the boundaries of the district, including the
8 boundaries of any benefit zones, proposed for the establishment
9 or extension of the district in a manner sufficient to identify the
10 lands included. Under no circumstances shall the boundaries of a
11 proposed district overlap with the boundaries of another existing
12 district created pursuant to this chapter. Nothing in this chapter
13 prohibits the boundaries of a district created pursuant to this chapter
14 from overlapping with other types of assessment districts.

15 (d) The improvements and activities proposed for each year of
16 operation of the district and their maximum cost.

17 (e) The total annual amount proposed to be expended for
18 improvements, maintenance, and operations.

19 (f) The proposed source or sources of financing, including the
20 proposed method and basis of levying the assessment in sufficient
21 detail to allow each property owner to calculate the amount of the
22 assessment to be levied against his or her property, including a
23 statement setting forth the requirement to provide completion
24 bonds for any improvements that are proposed to be constructed.

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

26 (h) Any proposed rules and regulations to be applicable to the
27 district.

28 (i) A statement, placed in a conspicuous place in the community
29 benefit district plan, stating that assessments for the maintenance
30 of improvements constructed by the district, if any, shall continue
31 to be levied on each parcel of land within the district for a period
32 of time equal to the useful life of the improvement, as determined
33 by the city clerk or county clerk, regardless of whether the district
34 is disestablished or the term of the original levy has expired.

35 (j) The name of the nonprofit management corporation that will
36 administer the district on behalf of the property owners.

37 51299.5. (a) Before the city council or board of supervisors
38 may take any action on the ordinance of intention, the city clerk
39 or county clerk shall prepare and file a report in writing proposing
40 that the proceeding be commenced as requested in the petition,

1 designating the plans and specifications of the proposed
2 maintenance, improvements, and activities for the proposed district,
3 and estimating the cost and expenses of the work for each year
4 during which the proposed work will be done.

5 (b) The report shall include a certified engineer's report stating
6 that the establishment of the district is consistent with the
7 provisions of Article XIII D of the California Constitution in that
8 each lot or parcel within the district to be assessed is being assessed
9 in proportion to the estimated benefit to be received, and containing
10 a diagram showing the boundaries of the proposed assessment
11 district and each lot or parcel of land within the district proposed
12 to be assessed.

13 51299.6. (a) The ordinance of intention shall briefly describe
14 the proposed improvements, state the period of time, which shall
15 not exceed 20 years, for which the proposed improvements are to
16 be made, and contain a description of the district that will benefit
17 from the improvements and that will pay the costs and expenses
18 of the improvements.

19 (b) In addition to the requirements of subdivision (a), the
20 ordinance of intention shall also do all of the following:

21 (1) State that a district is proposed to be established pursuant
22 to this chapter and describe the boundaries of the proposed district
23 and the boundaries of each separate benefit zone to be established
24 within the district. The boundaries may be described by reference
25 to the map and description contained in the preliminary report of
26 the city clerk or county clerk on file in the office of the city clerk
27 or county clerk.

28 (2) State the name of the proposed district.

29 (3) State the type or types of improvements and activities
30 proposed to be funded by the levy of assessments on property
31 owners within the district, including any improvements to be
32 acquired.

33 (4) State the amount of the proposed assessment for the entire
34 district, the duration of the payments, the reason for the assessment,
35 and the basis upon which the proposed assessment was calculated.

36 (5) State the date, time, and location of a public hearing on the
37 proposed assessment.

38 (6) Include a ballot as described in Section 53753.

39 (7) State, in a conspicuous place, a summary of the procedures
40 applicable to the completion, return, and tabulation of the ballots,

1 including a disclosure statement that the existence of a majority
2 protest will result in the assessment not being imposed.

3 (8) State that at the public hearing the testimony of all interested
4 persons for or against the establishment of the district, the
5 boundaries of the district, or the furnishing of specified types of
6 improvements or activities will be heard.

7 (9) Refer to the preliminary report of the city clerk or clerk of
8 the board of supervisors on file in the office of the city clerk or
9 clerk of the board of supervisors.

10 (10) State the manner of collection of the assessment.

11 51299.7. (a) In addition to the notice and protest procedures
12 established pursuant to Section 53753, a legislative body shall mail
13 a complete copy of the ordinance of intention by first-class mail
14 to each property owner in the proposed district, and to each
15 neighborhood council known by the legislative body to be located
16 within the proposed district, no later than 45 days before the public
17 hearing.

18 (b) In addition to a first-class mailed notice sent pursuant to
19 subdivision (a), the legislative body shall publish the ordinance of
20 intention in a newspaper of general circulation in the local agency
21 once at least seven days before the public hearing.

22 51299.8. Following the adoption of the ordinance of intention
23 pursuant to subdivision (c) of Section 51299.2, the city clerk or
24 county clerk shall prepare a notice and map describing the
25 assessment district pursuant to Division 4.5 (commencing with
26 Section 3100) of the Streets and Highways Code, and file a copy
27 of that map with the county recorder of each county in which all
28 or any part of the proposed district is to be located.

29 Following the adoption of the ordinance establishing the district
30 pursuant to subdivision (d) of Section 51299.2, the city clerk or
31 county clerk shall record a map of the newly created district
32 pursuant to Division 4.5 (commencing with Section 3100) of the
33 Streets and Highways Code. All the provisions of that division
34 apply to the district established pursuant to this chapter.

35 51299.9. (a) The ordinance establishing the district shall
36 contain all of the following:

37 (1) A summary of the community benefit district plan.

38 (2) The number, date of adoption, and title of the ordinance of
39 intention.

1 (3) The time and place where the public hearing was held
2 concerning the establishment of the district or the levying of a new
3 assessment.

4 (4) A determination regarding any protests received.

5 (5) A statement that a district has been established.

6 (6) A statement that the improvements and activities to be
7 provided to the district will be funded by the levy of assessments.
8 The revenue from the levy of assessments within a district shall
9 not be used to provide improvements or activities outside the
10 district or for any purpose other than the purposes specified in the
11 ordinance of intention, as approved, or as modified and approved,
12 by the legislative body at the hearing concerning the establishment
13 of the district.

14 (7) A finding that the property within the district will be
15 specially benefited by the improvements and activities funded by
16 the assessment to be levied.

17 (8) A statement, if applicable, that a completion bond will be
18 required for any improvements constructed by the district and that
19 a continuing assessment in an amount sufficient to maintain the
20 improvement throughout its useful life, as determined by the local
21 agency, will be levied on each parcel within the district regardless
22 of whether the district is disestablished or the term of the original
23 levy has expired.

24 (b) The adoption of the ordinance establishing the district and
25 levying the assessment pursuant to subdivision (d) of Section
26 51299.2, and recordation of the notice and map pursuant to Section
27 51299.8, shall constitute the levy of an assessment in each of the
28 fiscal years referred to in the community benefit district plan.

29 51299.10. The validity of an assessment levied under the
30 provisions of this chapter shall not be contested in any action or
31 proceeding unless the action to contest is commenced within 30
32 days after the time the assessment is levied, and any appeal from
33 a final judgment in the action or proceeding shall be perfected
34 within 30 days after entry of the judgment.

35 51299.11. (a) The legislative body shall contract with a
36 nonprofit management corporation to manage the district on a
37 day-to-day basis. The contract shall be for a minimum period of
38 one year, with the option to renew.

39 (b) The nonprofit management corporation shall comply with
40 the following requirements:

1 (1) The board of the nonprofit management corporation shall
2 be composed of the property owners of the district.

3 (2) A nonprofit management corporation is a private entity and
4 may not be considered a public entity for any purpose, nor may
5 its board members or staff be considered to be public officials for
6 any purpose. Notwithstanding this paragraph, a nonprofit
7 management corporation shall comply with the Ralph M. Brown
8 Act (Chapter 9 (commencing with Section 54950) of Part 1 of
9 Division 2 of Title 5 of the Government Code), at all times when
10 matters within the subject matter of the district are heard, discussed,
11 or deliberated, and with the California Public Records Act (Chapter
12 3.5 (commencing with Section 6250) of Division 7 of Title 1 of
13 the Government Code), for all documents relating to activities of
14 the district.

15 51299.12. The legislative body may advance funds for the first
16 quarter of a new district so that the district may commence work
17 prior to the initial collection of the assessments. The funds
18 advanced may not exceed one-quarter of the assessment for the
19 first year. The funds advanced shall then be deducted from the
20 first year's disbursement.

21 51299.13. The collection of assessments levied pursuant to
22 this chapter shall be made at the time and in the manner set forth
23 by the legislative body in the ordinance of intention. The
24 assessment may be collected at the same time and in the same
25 manner as for the ad valorem property tax, and may provide for
26 the same lien priority and penalties for delinquent payment.

27 51299.14. (a) The nonprofit management corporation shall
28 prepare an annual report that shall explain the results of the
29 improvements and activities funded by the district.

30 (b) The report shall be filed with the city clerk or county clerk
31 and shall refer to the district by name, specify the fiscal year to
32 which the report applies, and, with respect to that fiscal year, shall
33 contain all of the following information:

34 (1) Any proposed changes in the boundaries of the district or
35 in any benefit zones within the district.

36 (2) The improvements and activities to be provided for that
37 fiscal year.

38 (3) An estimate of the cost of providing the improvements and
39 the activities for that fiscal year.

1 (4) The method and basis of levying the assessment in sufficient
2 detail to allow each real property owner to estimate the amount of
3 the assessment to be levied against his or her property for that
4 fiscal year.

5 (5) The amount of any surplus or deficit revenues to be carried
6 over from a previous fiscal year.

7 (6) The amount of any contributions to be made from sources
8 other than assessments levied pursuant to this chapter.

9 (c) The legislative body may approve the report as filed by the
10 nonprofit management corporation or may modify any particular
11 contained in the report and approve it as modified. Any
12 modification shall be made pursuant to Section 51299.16. The
13 legislative body shall not approve a change on the basis and in the
14 method of levying assessments that would impair an authorized
15 or executed contract to be paid from the revenues derived from
16 the levy of assessments.

17 51299.15. A community benefit district, the improvements or
18 activities provided by the community benefit district, and any
19 assessment levied to support the community benefit district
20 pursuant to this chapter shall not extend beyond 20 years after the
21 date of the creation of the district by the local agency.

22 51299.16. (a) A legislative body may modify a community
23 benefit district plan in accordance with the procedures established
24 by this section.

25 (b) The nonprofit management corporation may, at any time,
26 request that the legislative body modify the community benefit
27 district plan. Upon the written request of the nonprofit management
28 corporation, the legislative body may adopt an ordinance of
29 intention to modify the community district plan. The ordinance of
30 intention shall state the proposed modifications to the community
31 benefit district plan. The legislative body shall notify the affected
32 property owners of the proposed modifications at least 45 days
33 prior to the public hearing pursuant to Sections 51299.7 and
34 51299.8, and hold a public hearing on the matter consistent with
35 the procedures of Section 53753.

36 (c) If the legislative body complies with subdivision (b), and
37 there is no majority protest as described in Section 53753, then
38 the legislative body may adopt an ordinance modifying the
39 community benefit district plan in accordance with the ordinance
40 of intention.

1 (d) Any subsequent modification of the ordinance shall be
2 reflected in subsequent notices and maps recorded pursuant to
3 Division 4.5 (commencing with Section 3100) of the Streets and
4 Highways Code.

5 51299.17. (a) A legislative body may disestablish a district
6 established pursuant to the provisions of this chapter where there
7 is no indebtedness, outstanding and unpaid, incurred to accomplish
8 any of the purposes of the district, in either of the following
9 circumstances:

10 (1) The legislative body finds there has been misappropriation
11 of funds, malfeasance, or a violation of law in connection with the
12 management of the district.

13 (2) The property owners in the district who pay 30 percent or
14 more of the assessment levied file a written petition with the local
15 agency requesting to disestablish the district. During the operation
16 of the district, there shall be a 30-day period each year in which
17 assesses may request disestablishment of the district. The first
18 period shall begin one year after the date of establishment of the
19 district and shall continue for 30 days. The next 30-day period
20 shall begin two years after the date of the establishment of the
21 district. Each successive year of operation of the district shall have
22 such a 30-day period.

23 (b) (1) If a valid ground to disestablish the district exists
24 pursuant to subdivision (a), the legislative body may disestablish
25 the district by adopting an ordinance of intention to disestablish
26 the district. The ordinance of intention shall state the reason for
27 the disestablishment, the time and place of the public hearing, and
28 contain a proposal to dispose of any assets acquired with the
29 revenues of the assessments levied within the property and business
30 improvement district.

31 (2) The legislative body shall notify the affected property owners
32 of the disestablishment as provided in Section 51299.7, and shall
33 hold a public hearing on the disestablishment no less than 30 days
34 and no more than 60 days after the adoption of the ordinance of
35 intention in accordance with the procedures in Section 53753.

36 (3) After holding a public hearing, the legislative body may
37 adopt an ordinance to disestablish the district.

38 (c) (1) Upon the disestablishment of the district, any remaining
39 revenues derived from the levy of assessments, or any revenues
40 derived from the sale of assets acquired with the revenues, shall

1 be refunded to the owners of the property located and operating
2 within the district in which assessments were levied by applying
3 the same method and basis that was used to calculate the
4 assessments levied in the fiscal year in which the district was
5 disestablished, other than amounts needed to maintain any
6 improvements constructed by the district.

7 (2) If the disestablishment occurs before an assessment is levied
8 for the fiscal year, the method and basis that was used to calculate
9 the assessment levied in the immediate prior fiscal year shall be
10 used to calculate the amount of refund.

11 (3) In the event that the district has constructed any
12 improvements, an amount of assessment equal to the amount
13 needed to maintain the improvements through its useful life, as
14 determined by the legislative body, shall continue to be levied
15 upon each parcel in the district after disestablishment of the district.

16 (d) The legislative body shall publish a notice of the
17 disestablishment of a district once in a newspaper of general
18 circulation in the local agency, not later than 15 days after the
19 ordinance disestablishing the district is adopted.

20 *SEC. 2. The Legislature finds and declares that a special law*
21 *is necessary and that a general law cannot be made applicable*
22 *within the meaning of Section 16 of Article IV of the California*
23 *Constitution because of the unique circumstances and concerns*
24 *regarding the provision of real property-related improvements*
25 *and activities in the County of San Diego.*