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Correspondence

Meeting of December 7, 2010

a. **Correspondence**

1. Item 20 – Administrative Matter: Construction and Demolition Debris Recycling Ordinance Update
 - a. Scott Whyte, Sacramento Regional Builders Exchange
2. Item 23 – Citywide Parks and Recreation Maintenance Assessment District
 - a. Craig Powell, Sacramento County Taxpayers League

b. **eComment**

1. None

TO: Honorable Mayor Johnson and Councilmembers

FROM: Sacramento Regional Builders Exchange

DATE: December 6th, 2010

RE: **Item 20 (Resolution No.2009-027) –Support**

The Sacramento Regional Builders Exchange (SRBX) supports the proposed amendments to the Construction & Demolition Debris Ordinance (C & D). Our membership, which consists of all facets of the commercial construction industry, is significantly and directly affected by the specifics of the C & D Ordinance.

The C & D Ordinance effect on the local building industry centers on the definition of what is considered a "Covered Project". The current Ordinance defines a "covered project" by stating that any construction project valued over \$250,000 would be required to recycle/divert 50% of all generated waste and 100% of the following additional building materials: scrap metal, inert material, wood pallets, corrugated cardboard, and clean wood waste". The staff recommended modified ordinance would eliminate the additional list of materials, but would retain the \$250,000 valuation limit for all projects considered not to be new construction. Staff's proposal would also align the City with the soon to be State-mandated California Green Building Code requirement of 50% for all new construction.

The Builders Exchange supports the Staff Recommended Ordinance because it creates regional consistency with the City and County of Sacramento. It also reflects basic CAL Green Building Code and does not place unreasonable burdens on local construction businesses.

We thank City Staff for their strong outreach efforts and realize that the compromise reached is workable for both sides of the table. Thank you for your consideration and time.

Sincerely,

Scott Whyte
Political Director
Sacramento Regional Builders Exchange

From: Ckpinsacto@aol.com [<mailto:Ckpinsacto@aol.com>]

Sent: Tuesday, December 07, 2010 10:56 AM

To: kjohnson@cityofsacramento.org; Angelique Ashby; Sandy Sheedy; Steve Cohn; Robert King Fong; Jay Schenirer; Kevin McCarty; Darrell Fong; Bonnie Pannell; Gus Vina; Jim Combs; Eileen Teichert; Kunal Merchant; Leyne Milstein; Mark Griffin; Larry Duran; kenpayne65@yahoo.com; bob@sactax.org; mmahood@metrochamber.org; mfaust@metrochamber.org; jim@rha.org; cory@rha.org

Subject: Sacramento County Taxpayers League's Opposition to City-Wide Park Tax

Dear Mayor Johnson and City Council Members,

Enclosed is a letter from the Sacramento County Taxpayers League expressing its opposition to the Council this evening appointing an assessment district engineer to design a city-wide park maintenance tax assessment district, designated as Item 23 on tonight's Council agenda.

If you have any questions, please do not hesitate to call or e-mail me.

Very truly yours,

Craig Powell, Vice-President
Sacramento County Taxpayers League
cell: (916) 718-3030



SACRAMENTO COUNTY TAXPAYERS LEAGUE

December 7, 2010

VIA HAND-DELIVERY & E-MAIL

Mayor Kevin Johnson and
Honorable Members of the Sacramento City Council
New City Hall
915 I Street
Sacramento, CA 95814

Re: Staff Proposal to Launch City-Wide Park Maintenance Tax Assessment District; Agenda Item 23 on December 7, 2010 Council Agenda

Ladies and Gentlemen,

It came to our attention (quite by accident) just a few days ago that city staff is recommending to you this evening that you expend \$83,000 to engage an engineer to launch a new city-wide tax assessment district to fund maintenance of all city parks. For the reasons stated in this letter, the Sacramento County Taxpayers League believes that staff's proposal is ill-advised and should be rejected by the City Council.

To summarize our objections, staff's proposal: (1) fails to address the Department of Parks and Recreation's main cost drivers; (2) fails to implement your own consultant's recommendation to employ alternative service delivery methods to reduce costs; (3) fails to account for (or prioritize) the cumulative impact of recently approved and future proposed local government rate, fee and tax hikes on Sacramento's struggling residents and businesses; (4) is poorly timed given the extended economic emergency; (5) fails to account for the public's demonstrable distaste for new tax levies; (6) fails to comply with existing city policy which calls for advance consultation with the public and impacted stakeholders in the development of major new policy initiatives; (7) exceeds the direction given by Council to staff at Council's June 10th budget hearing; and (8) is legally defective under Proposition 218, as recently construed by the California Supreme Court.

Background

No major department of city government has bourn the brunt of the current economic emergency more than the city's Department of Parks and Recreation (DPR), which has seen its general fund funding slashed from \$28.9 million to \$14.8 million in the course of the past four budget years, with DPR staff positions paid for out the general fund falling from 566 FTE's to just over 300 FTE's.

As DPR director Jim Combs stated in budget hearings in June, the cumulative impact of layoffs of park maintenance staff has placed the city at a "tipping point," with any further cuts in park care likely to have unacceptable impacts on the condition of Sacramento's beloved parks.

(1) Failure to Address the DPR's Major Cost Drivers

The new two-year contract the city entered into with Local 39 this past summer did nothing to stem the loss of park maintenance services. In fact, it exacerbated the loss by significantly reducing the hours worked by park maintenance staff (via unpaid furlough days and additional paid personal leave days). The contract with Local 39 provided only a 1.5% overall cost reduction while it reduced work hours by almost exactly the same number of hours the city would have lost had it chosen to layoff a number of park workers instead of furloughing them.

Essentially, the city is increasingly turning its park workers into part-time employees, while doing essentially nothing to address the DPR's major cost drivers: unwarranted salary hikes and out-sized benefit hikes under the city's recently expired 5-year contract with Local 39 and the looming pension and retiree health care obligations to DPR staff. The city must realign DPR wage rates and benefit levels, established when city coffers were swelling, to reflect the hard reality of diminished resources available for city programs before it asks city property owners to provide additional resources to the DPR.

(2) Failure to Employ Alternative Delivery Methods

Nor has the city taken any discernable action on one of the central recommendations of its principal consultant, Management Partners, who urged the city earlier this year to: "conduct competitive selection processes for services where qualified alternative providers exist."

You have been previously advised by your city budget director that outsourcing basic park care would reduce city costs by 50 percent. Yet the Council has failed to respond over the last two years to calls for even pilot programs to explore cost-saving alternative service delivery systems for basic park care. Similar cost-saving opportunities exist for the management of the city's community centers, pools, senior centers and recreation programs, some in the form of P3 arrangements (public-private partnerships), some through CBO's (community-based organizations) and some through private party contracting.

Local governments across the country are pursuing countless, creative ways to retain and even enhance public service levels while reducing costs to beleaguered municipal budgets by adopting such alternative service delivery methods. It is long past time for the Sacramento City Council to set aside its ideological biases and join the rest of the country in identifying practical, innovative solutions to getting our city safely through a fiscal crisis that shows no sign of abating anytime soon.

The city's current model of simply firing (or furloughing) city employees in response to budget shortfalls while trying to raise taxes on a recession-hammered population is a failed model. Firing or furloughing city employees unnecessarily deprives city residents of badly needed services (fire, police, parks, etc.) while doing little or nothing to address the city's chronic and growing structural deficit, while raising taxes worsens the pain of residents and businesses reeling under 13% local unemployment (and much higher underemployment), record high home foreclosure levels, record business failure rates and falling incomes.

City government must adopt a new operating model going forward if it is to get through the difficult years ahead without major civic trauma. The problems facing the DPR and city parks are symptomatic of this larger fiscal problem. Sacramento property owners are unlikely to support the imposition of a new park maintenance assessment tax unless they are satisfied that the city has taken steps to reduce overall maintenance costs by deploying lower cost, alternative methods of providing park maintenance services.

(3) Cumulative Impact of Higher Rates, Fees and Tax Levies

The proposal to increase taxes to finance park maintenance cannot be evaluated in a vacuum. In the past 18 months, city utility rates have risen by 19% (20% in real terms). The state water quality control board is considering imposing conditions on our region's sewage discharge permit that will impose a \$2 billion cost burden on the Sacramento economy, leading to a tripling of monthly sewer rates and deal-stopper hook-up fees for new businesses.

We are aware that public safety advocates are considering a possible public safety tax levy ballot proposal in the next few years. We also understand that the Sacramento City Unified School District is considering a parcel tax proposal to make up for reductions in state government support of education. The cumulative effect of recent and prospective fee, rate and tax hikes threatens to impose unprecedented and unsustainable burdens on Sacramento residents and businesses. Policy makers need to make hard choices and set real priorities: is it more important to seek an increase in the number of police officers patrolling Sacramento streets or is improving maintenance of city parks a higher priority? Is additional funding for local schools more important than obtaining funds to restore cuts in fire protection?

The taxpayers, property owners and businesses of Sacramento do not have an endless supply of money to satisfy all future demands for additional resources. You must carefully consider these competing demands for new resources before you decide to seek a new city park tax.

(4) Poor Timing of the Proposal

The staff report reflects a plan to distribute written ballots on a tax assessment proposal in the summer of 2012, about 19 months from now. Goldman Sachs this week projected that the national unemployment rate will remain at 8.5% or above through 2013. UCLA Anderson Forecast today released its forecast that California unemployment will not fall below 10% until 2013. The UOP Business Forecasting Center projects that Sacramento area unemployment will remain at 13% until 2013. This is not a normal recession with a normal recovery period. It is politically and economically impractical and unreasonable to take a park maintenance tax assessment proposal to Sacramento property owners during a period of continuing economic weakness and record high local unemployment.

(5) Poor Political Environment for Approval of New Taxes

It does not take a sophisticated political observer to determine that the public's appetite for new tax levies is very low. While California and Sacramento may have escaped the tea party-stoked national tsunami of public dissatisfaction with high levels of federal government spending and deficits evident in last month's election, you should note that both California and Sacramento voters opposed repeal of corporate tax breaks (Prop. 24), supported a new two-thirds vote requirement for the imposition of new fees at both the state and local level (Prop. 26) and rejected an \$18 hike in the car tax to support state parks (Prop. 21). On the heels of these results, the Council would be ill-advised to assume broad public support for a new park tax.

(6) Failure to Consult With Public and Stakeholders

The city has an announced policy that it will not launch major new initiatives without first consulting the public and impacted stakeholders. Staff's proposal to hire an assessment district engineer clearly violates this policy. There has been no outreach whatsoever to the public, neighborhood groups, parks advocates, the business community, property owner groups or taxpayer organizations. This plan has been hatched in secret by city staff and placed on the Council's agenda without even a press release to the media.

This is precisely the type of nontransparent, rush to action that helped sink the proposed hike in the city business operations tax this past summer. Staff has apparently not learned from that experience that city government is an exercise in democratic engagement and collaboration and not a heavy-handed, top-down exercise that bypasses the community.

If the city is serious about exploring this idea, the proper course for the city to take is to convene a series of community meetings and public forums to thoroughly vet the idea of creating a park maintenance assessment district. From those meetings and consultations, a well-constructed proposal might develop, one that may enjoy broad-based community support.

(7) Staff Has Exceeded the Direction of Council

Staff's proposal that Council engage an engineer to design a tax assessment district is light years beyond the direction that staff received from council members at the June 10, 2010 hearing on the DPR's budget. Staff was asked by Council member Cohn for a "report back" on an idea which had originated with the Parks and Recreation Commission to increase the existing Lighting and Landscaping (L&L) assessment by \$15. Staff noted at that time that it was inadvisable for the city to seek to amend the existing L & L assessment and that forming a new district offered fewer risks. Staff offered to "come back with an analysis" of the idea of forming a new park maintenance tax assessment district. No member of the Council asked staff to take actions that would begin the actual formation of such a district such as the appointment of an assessment district engineer.

(8) The Staff Proposal is Legally Defective Under Proposition 218

Staff is asking the Council to consider creating a city-wide tax assessment district to raise funds for park maintenance. After reviewing the law and consulting with attorneys with the Howard Jarvis Taxpayers Association (which authored and regularly defends Proposition 218), we believe that it is virtually certain that a city-wide park maintenance assessment district would not pass legal muster under Proposition 218, as construed by the California Supreme Court in the 2008 case of Silicon Valley Taxpayers Association vs. Santa Clara County Open Space Authority (44 Cal. 4th 431). Your staff report alludes to some of the legal risks their current plan entails.

In the Silicon Valley case, the County of Santa Clara sought to create a county-wide tax assessment district to finance the acquisition and maintenance of open space lands in the County. The Supreme Court struck down the assessment district under Proposition 218 because the County failed to meet its burden of proving that the parcels

of property in the assessment district would receive a "special benefit" from the assessment district over and beyond the general benefit that the assessment district would bestow other property or upon the public at large.

As the Silicon Valley court stated:

Under the plain language of Article XIID [of the California Constitution, Proposition 218], a special benefit must affect the assessed property in a way that is particular and distinct from its effect on other parcels and that real property in general and the public at large do not share.

Just as the development of open space lands in Santa Clara County did not confer a particular and distinct special benefit on specific parcels of property in that County, city-wide maintenance of city parks via assessments would not confer a particular and distinct special benefit on specific parcels of property in the City of Sacramento.

The city would be wasting its time and taxpayers dollars if it were to spend over one-half of a million dollars (\$150,000 to \$200,000 in total engineering costs and \$400,000 in written ballot costs, according to city staff estimates) creating an assessment district only to have to defend it at a cost of hundreds of thousands of dollars in legal fees, only to discover that the enterprise had been legally defective from the outset.

Engaging a district engineer at this stage is putting the assessment district cart before the legal horse. If the Council is interested in pursuing this proposal further, we strongly encourage you to direct the city attorney or outside special counsel to conduct a thorough review of the law in this area and to come back to you with a detailed assessment, perhaps delivered in executive session, of the legal landmines that a city-wide assessment district would entail. We will make ourselves available to confer with the city attorney on these issues so that her review is as inclusive and comprehensive as possible.

A Way Forward for City Parks

The League is very mindful of the inadequate care and attention that Sacramento's parks are currently receiving. We also know that Sacramentans care deeply for their parks and, if offered the right opportunity, will lend financial support to their local parks. We take note of the new park volunteer corps that are receiving strong volunteer, financial and business community support in several Sacramento neighborhoods, starting in Land Park and now expanding to McKinley Park, Tahoe Park and others. This is an encouraging community response to the current budget dilemma and we laud the DPR and the city for their support of this movement.

Given such strong community support, we believe there is the potential, both politically and legally under Proposition 218, for the city to encourage the creation of park maintenance assessment districts on a park-specific basis with assessment levels based on the physical proximity of parcels to the park in question (with the "special benefit" required under Proposition 218 being the ability of property owners to walk a relatively short distance to a nearby park).

To be politically viable, the impetus for such districts should come from property owners themselves, perhaps with encouragement and guidance from city government. This is in keeping with existing city policy which calls for a demonstrable level of community support for a proposed assessment *before* the city will pursue an assessment. City policy currently requires supporting petitions from more than 50% of all property owners. This policy assures that an assessment is politically viable before the city expends resources gearing up the assessment machinery.

We caution you, however, that a very high level of solid community support should be demonstrated before the process is initiated. In 2007, the city sought to create a large street light assessment district in Land Park and Curtis Park based on petitions purporting to represent more than 50% of all property owners in the proposed district, only to have the proposal rejected by property owners by an overwhelming margin of 84% to 16%.

It is also important that the city provide binding assurances to property owners that the creation of an assessment district to finance maintenance of a particular park will not lead to a supplanting of existing park maintenance paid for out of the general fund. Such "maintenance of effort" covenants must give property owners adequate assurance that their assessments would actually be used to support maintenance of "their" park and not used to replace current maintenance that the city might seek to redirect to other city parks.

We also believe, as noted above, that to win property owner approval of any park maintenance assessment district the city must: (1) change its current labor policy to reduce DPR labor costs while minimizing, instead of maximizing, the disruption to public services caused by such reductions; and (2) take advantage of alternative, lower cost means of providing basic park maintenance.

We would be happy to sit down with city park, finance and legal staff to explore ways in which the tax assessment mechanism may be selectively used to achieve community goals of improving maintenance of city parks. The bottom line is that the "top down" city-wide park maintenance tax assessment plan proposed by staff is a high risk approach fraught with significant legal and political impediments, while a "bottom

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up" approach to such assessments, developed in close collaboration with local neighborhoods, offers the city a low risk way of tapping into existing community support for city parks.

We urge you to: (a) reject staff's recommendation to hire an assessment district engineer; (b) direct the city attorney to more closely examine the legal issues involved in using assessment districts to pay for city park maintenance; and (3) use the \$83,000 identified by staff to support expansion of Sacramento's park volunteer corps movement.

If you have any questions or would like to discuss this matter further, please don't hesitate to call me at (916) 718-3030 or e-mail me at ckpinsacto@aol.com.

Very truly yours,

Craig K. Powell, Vice-President

cc: Mr. Gus Vina
Mr. Jim Combs
Ms. Eileen Teichert
Mr. Kunal Merchant
Ms. Leyne Milstein
Mr. Mark Griffin
Mr. Larry Duran
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