Comments with respect to: **June 5, 2012 Costa Mesa City Council Agenda Item PH-1**

Dear Sirs,

Agenda item PH-1 seeks to reauthorize the annual levy of a 3% assessment on overnight room rents at 10 upscale Costa Mesa hotels to fund the Costa Mesa Tourism & Promotion Business Improvement Area (BIA) pursuant to the authority granted to the City by the state in the California "Parking and Business Improvement Area Law of 1989" (Streets & Highways Code § 36500 et seq.).

I am *not* the owner of a business within the improvement area, however I *am* a member of the California public potentially subject to paying the assessment, and would like it known I think this is not a proper levy because the Costa Mesa BIA is not now, and apparently never was, correctly constituted or conducted under the 1989 law.

1. Nothing in the 1989 law authorizes the city to contract out the administration of the levies collected. Instead it requires the city council to appoint an ADVISORY board (Gov. Code 36530).

2. When a city council appoints an advisory board, Gov. Code 54970 et seq. (the "Maddy Act") requires the City Clerk to include those positions in the City's Local Appointments List, and Gov. Code 54950 et seq. (the "Ralph M. Brown Act") requires its meetings to be noticed, including posting on the appointing agencies website. None of that appears to have happened.

3. The "improvement area" for whose benefit the assessments are being collected, is generally understood to be a geographically continuous (and underperforming) area within the city with possible smaller special "benefit zones" (subject to different assessments) defined within it. The proposed resolution appears to have the terminology backwards, defining the entire City of Costa Mesa as a "benefit zone" exterior to the "improvement area" which is seemingly confined to the property owned by the 10 hotels that want to participate in the BIA. A benefit zone larger than the improvement area is inconsistent with both the 1989 and 1994 laws, and fundamentally inconsistent with the idea that the assessments are being levied to benefit the area in which they are collected.

4. Assuming the authors of this measure intended all of Costa Mesa to be the improvement area, and allowing that the 1989 law permits the council to set different assessments for different "classes" of business (Gov. Code 36536), it nonetheless would not seem to allow businesses of a particular class (for example, hotels) to opt in or out, as is the case in the Costa Mesa BIA. Indeed Gov. Code 36531 allows the council to exempt new businesses in the improvement area from assessment for a maximum of one year. After that there is no opt out for businesses in the class being assessed.

Much of what the Costa Mesa City Council and the 10 hotel owners appear to want to accomplish, including contracting out administration of expenditures to a non-profit "owner's association," could probably be done under the "Property and Business Improvement District Law of 1994" (Streets & Highways Code § 36600 et seq.). It may even be possible to selectively assess only the businesses that want to join the "district." However this requires setting up under the 1994 code and having a "management district plan," neither of which seems to have been done in the case of the Costa Mesa BIA.

Even then, it is unclear the current contractor, the Costa Mesa Conference and Visitor Bureau (CMCVB), is a proper 501(c)6 non-profit, and the City's involvement through the BIA may be further jeopardizing that status.

The IRS explanation of 501(c)6 organizations in Chapter 4 of IRS Publication 557 suggests they need to:

1. Be supported by member dues.

2. Offer to improve business conditions for an entire line of business, rather than for a select set of individual business owners.

3. Provide services that could not be provided by a for-profit entity, with the production of advertising that carries the name of members specifically NOT establishing that the organization is providing for the improvement of business conditions.

By contrast, the Articles of Incorporation attached to the Form 990 that CMCVB filed with the IRS says the corporation has no members and the CMCVB website appears to be functioning much like a for-profit ad agency or reservation service, promoting only the 10 hotels contributing though the City contract, and not even mentioning any others. There is also a substantial conflict of interest problem with the representatives of the 10 hotels sitting as both the advisory board to the City and the administrative board controlling expenditures benefitting their own enterprises.

In my view the collection and disbursement of money for such private business purposes is an improper function of government, and would be better performed by the "member" hotels, without government involvement, reserving from their room rents whatever amount they find beneficial to pay for conventional for-profit advertising.

Beyond that, it bothers me that a law enacted in 1989 primarily to provide a governmental mechanism by which merchants can help with the cost of revitalizing physically blighted and underperforming business districts is being used to promote the best performing properties in the city, while areas that may truly need revitalization remain neglected.

Yours sincerely,

Jim Mosher

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