

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

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NET INCOME VERSION

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LONG BEACH ORDERING, CALLING AND PROVIDING FOR AND GIVING NOTICE OF A SPECIAL MUNICIPAL ELECTION TO BE HELD IN THE CITY OF LONG BEACH ON TUESDAY, THE 2ND DAY OF NOVEMBER, 2010, FOR THE PURPOSE OF SUBMITTING A BALLOT PROPOSITION TO A VOTE OF THE QUALIFIED ELECTORS OF THE CITY REGARDING THE HARBOR DEPARTMENT AND OIL PROPERTIES

NOW, THEREFORE, the City Council of the City of Long Beach resolves as follows:

Section 1. Under the provisions of the Constitution and laws of the State of California and the Charter of the City of Long Beach, a Special Municipal Election is ordered, proclaimed and called to be held in the City of Long Beach between the hours of 7:00 a.m. and 8:00 p.m. on Tuesday, the 2nd day of November, 2010, for the purpose of submitting to a vote of the qualified electors of the City of Long Beach the following proposition which, for identification purposes only, is marked as Proposition D.

Proposition D

Shall Proposition D, which amends the Long Beach City Charter by changing the definition of "net income" used for the transfer of funds from Harbor Department revenues to the Tidelands Operating Fund, and clarifying that the management of the City's oil properties and subsidence

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control operations are under the exclusive control of the City Council, be ratified?

Section 2. Notice is hereby given of the time and place of the election. The City Clerk is directed and authorized to print and publish the proposition as required by law. All particulars not provided in this resolution shall be held under the provisions of law governing the conduct of such elections in the City of Long Beach.

Section 3. The proposition shall be stated as provided in Section 13119 of the Elections Code of the State of California. The ballot used in voting upon the proposition shall contain the words "yes" and "no". The text of Proposition D is set forth in full in Exhibit "A".

Section 4. That only qualified voters of the City of Long Beach shall be permitted to vote in the election called by this resolution.

Section 5. This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify the vote adopting this resolution.

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I hereby certify that the foregoing resolution was adopted by the City Council of the City of Long Beach at its meeting of _____, 2010, by the following vote:

Ayes: Councilmembers: _____

Noes: Councilmembers: _____

Absent: Councilmembers: _____

City Clerk

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PROPOSITION D
PROPOSED CHARTER AMENDMENT

(New provisions or language added to existing Charter sections are underlined;
language deleted from the existing Charter section are shown in strikeout type.)

Section 1. That Section 1203 of Article XII of the City Charter of the City
of Long Beach is amended to read as follows:

Sec. 1203. - POWERS AND DUTIES OF THE COMMISSION.

The Commission shall have the exclusive power and duty for and
on behalf of the City:

(a) To sue and defend in the name of the City in all actions and
proceedings pertaining to any matters within the jurisdiction of the
Commission.

(b) To provide for the needs of commerce, navigation, recreation
and fishery in the Harbor District; to plan, promote, develop, construct,
re-construct, alter, repair, maintain, equip, and operate all properties
including, but not limited to, the piers, wharves, seawalls, docks, basins,
channels, slips, landings, warehouses, floating and other plants or
works, and all other publicly owned facilities or appliances incident to the
operation of the Harbor District, both inside and outside the Harbor
District; to dredge and reclaim land, to construct, equip and operate
terminal trackage with connections between docks, piers and other
Harbor District properties and connect the same with mainline tracks; to
provide services including, but not limited to, tugs, dredges, fireboats,

1 barges, cold storage plants; to establish, equip and operate all other
2 facilities or aids incident to the development, protection and operation of
3 the Harbor District, and to modify plans from time to time as the
4 requirements of commerce, navigation, recreation or fishery may
5 demand, and as the Commission may deem proper and desirable in its
6 judgment.

7 (c) To direct, control, and supervise the Harbor District, including
8 all the waterfront properties, and lands adjacent thereto, or under water,
9 structures thereon, and approaches thereto, storage facilities and other
10 utilities, and all rights and interests belonging thereto, which are now or
11 may hereafter be owned or possessed by the City, both inside and
12 outside of the Harbor District, except the Commission shall not make any
13 lease, contract or other agreements or exercise any voting rights relating
14 to such lands or parts, thereof both inside and outside of the Harbor
15 District, for so long as the same may be used for or in connection with
16 the drilling for, developing, producing, extracting, processing, taking or
17 removing, storing and disposing of oil, gas and other hydrocarbon
18 substances by the City. Any such leases, contracts or other
19 agreements, voting rights or approvals shall be under the exclusive
20 jurisdiction and control of the City Council consistent with Article XIII of
21 the Charter. provided that with respect to such portions of said lands
22 used therefore as are tide and submerged lands, whether filled or
23 unfilled, or that are held subject to the tideland trust, that the
24 Commission has determined by resolution, that said lands or parts
25 thereof, are not required, and with reasonable certainty will not be
26 required, for a period not to exceed thirty five (35) years, for the
27 promotion or development of commerce, navigation, recreation, or
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1 fishery.

2 (d) To control and have jurisdiction of that part of the City
3 hereinafter defined as the "Harbor District", as said district was bounded
4 and described on the first day of February, 1979, except the Commission
5 shall not have control or jurisdiction as to those lands, or parts thereof,
6 within said district as may be used for or in connection with the drilling
7 for, developing, producing, extracting, processing, taking or removing,
8 storing and disposing of oil, gas and other hydrocarbon substances by
9 the City, as provided herein; said lands or parts thereof both inside and
10 outside of the Harbor District shall be under the exclusive jurisdiction and
11 control of the City Council consistent with Article XIII of the Charter; and
12 to make and enforce in the Harbor District general rules and regulations,
13 to the extent that may be necessary or requisite for port purposes and
14 harbor development, and in carrying out the powers elsewhere vested in
15 the Commission; provided, however, that with the approval of the City
16 Council, the Commission may with the prior approval of the electors,
17 relinquish to the City Council control of portions of the Harbor District.
18 Upon request of the Commission, the City Council may, by ordinance,
19 also with the prior approval of the electors, change the boundaries of the
20 Harbor District.

21 (e) To require owners of water terminal properties and facilities
22 within the Harbor District to keep said properties and facilities in proper
23 condition and repair and to maintain them with special reference to the
24 safety of persons and property and the reduction, of fire hazard or
25 nuisances. The Commission shall have the right to inspect such terminal
26 facilities at reasonable times.

27 (f) To regulate and control all public service and public utilities
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1 operated in connection with, or for the promotion and accommodation of
2 commerce, navigation, recreation or fishery in the Harbor District; to fix
3 the proper license fees to be paid to the City by any person, firm or
4 corporation operating any such public service or utility; and to fix and
5 regulate the rates or tolls to be charged or collected for services
6 furnished by any such public service or utility. The Commission shall
7 have the right, at all reasonable times, to have access to, and, in person,
8 or by its duty authorized representatives, to examine the books, papers,
9 maps and records showing the affairs, transactions, property and
10 financial condition of such persons, firms or corporations, and to require
11 reports respecting said matters from such persons, firms or corporations
12 at such times and in such form as the Commission may prescribe. The
13 amounts of the license fees to be paid to the City by any such person,
14 firm or corporation, operating any such public service or utility and the
15 rates or tolls to be charged and collected for service furnished or
16 supplied by such public service or utility shall be fixed by the
17 Commission by ordinance.

18 (g) To regulate the speed, berthing, anchoring, towing, loading,
19 unloading and mooring of vessels within the Harbor District.

20 (h) To provide for handling, storage and reconditioning of all
21 commodities; to sell or otherwise dispose of personal property within its
22 possession or ownership.

23 (i) To issue receipts, negotiable or otherwise, for property or
24 merchandise, in its charge or possession, and to act as agent in sales
25 and other contracts.

26 (j) To fix all rates, dockage, rentals, tolls, pilotage, wharfage, and
27 charges for the use and occupation of the public facilities or appliances
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1 of the port, and for services rendered by the Harbor Department, and to
2 provide for the collection thereof.

3 (k) To use, for loading and unloading cargo, with the right to
4 collect tolls, dockage and other terminal charges thereon, such portions
5 of the streets of the City ending or fronting upon the water areas of the
6 harbor of said City, as may be used for said purposes.

7 (l) To lend its aid to secure the improvements of navigable tidal
8 waters, within or adjacent to the Harbor District where, in its opinion,
9 such improvements are economically justifiable, and in the general
10 carrying out of its powers to cooperate with the City, with neighboring
11 cities, other ports, the State of California, or the United States
12 Government; and to appear before state, federal and other public
13 legislative and administrative authorities.

14 (m) To manage the business of the port and promote the
15 maritime and commercial interests by proper advertisement of its
16 advantages, and by the solicitation of business, within or without the
17 Harbor District, within the State of California or other states or in foreign
18 countries, through such employees and agencies as it may deem
19 expedient.

20 (n) To acquire in the name of the City by purchase,
21 condemnation, gift, lease, or otherwise take over and hold all lands,
22 property, property rights, leases, or easements, and personal property of
23 every kind, necessary or convenient for the development and operation
24 of the Harbor District, or for the carrying out of the powers herein granted
25 to the Commission.

26 Whenever the Commission determines that any lands owned by
27 the City within its jurisdiction have become unnecessary for port
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1 purposes or harbor development, it may by ordinance, transfer such land
2 to the control of the City Council, free from all restrictions, other than
3 trust restrictions, if any.

4 (o) To enter into contracts, agreements, leases, or stipulations,
5 germane to the scope of its powers and duties.

6 (p) To let all work by contract or order it done by day labor, as the
7 Commission may determine.

8 (q) To create bureaus and divisions of the Harbor Department.

9 To employ and appoint an Executive Director who shall be Chief
10 Executive of the Harbor Department and who shall exercise the
11 management of all affairs and activities placed under the jurisdiction of
12 the Commission, and an Assistant Executive Director, each of whom
13 shall hold such position during the pleasure of the Commission. To
14 appoint and employ such other officers and employees as may be
15 necessary in the efficient and economical carrying out of its functions. To
16 prescribe and fix the duties, authority and compensation of all
17 appointees hereunder and to require such officers and employees to
18 give a bond in such an amount as the Commission may require for the
19 faithful performance of their duties. All officers and positions of
20 employment in the permanent service of the Commission shall be
21 created by resolution.

22 (r) To confer upon and delegate to the Executive Director such
23 powers and duties as the Commission shall deem appropriate.

24 (s) To expend all funds necessary to carry out the powers and
25 duties herein expressed.

26 (t) To adopt and enforce such ordinances, orders, regulations
27 and practices as are necessary for the proper administration and
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1 discharge of its duties and powers, or for the management and
2 government of the Harbor District and its facilities.

3 (u) To prescribe fines, forfeitures and penalties for the violation of
4 any provision of this Article, or of any ordinance of the Harbor
5 Commission, but no penalty shall exceed Five Hundred Dollars
6 (\$500.00) fine, or six (6) months imprisonment, or both.

7 (v) To do and perform any and all other acts and things which
8 may be necessary and proper to carry out the general powers of the
9 City, or any of the provisions of this Article, and to exercise all powers
10 not in conflict with the Constitution of the State, or with this Charter,
11 germane to the scope of its powers, purposes and duties.

12
13 Section 2. That Section 1209 of Article XII of the City Charter
14 of the City of Long Beach is amended to read as follows:

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16 Sec. 1209. - FINANCE.

17 (a) All money received or collected from or arising out of the use
18 or operation of any harbor or port improvement, work, appliance, facility
19 or utility, or water craft, owned, controlled, or operated by the City in or
20 upon or pertaining to the lands and waters under control and
21 management of the Harbor Department; all tolls, charges and rentals
22 collected by the Harbor Department, and all compensations or fees
23 required to be paid for services, franchises or licenses, or otherwise by
24 law or ordinance or order, to the City for the operation of any public
25 service utility upon lands and waters under the control and management
26 of the Harbor Department, shall be deposited in the City Treasury to the
27 credit of the Harbor Revenue Fund, which fund has been heretofore

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1 created and established and is hereby continued, and shall be kept
2 separate and apart from other monies of the City. Said fund shall be a
3 continuing fund not subject to transfer at the close of the fiscal year.

4 (b) The money deposited in the Harbor Revenue Fund may, from
5 time to time, be invested in accordance with the provisions of applicable
6 legislation of the State of California providing for the investment and
7 reinvestment of any monies in any sinking fund, or any surplus monies in
8 the treasury of cities in the State, all interest, earnings, income or profits
9 from the investment of said money shall likewise be deposited to the
10 credit of said fund.

11 (c) Monies credited to the Harbor Revenue Fund may be
12 appropriated and used only for the following purposes:

13 (1) For the necessary expenses of promoting, conducting,
14 managing and operating the Harbor Department, including, but not
15 limited to, the operation, repair and maintenance of all harbor or port
16 improvements, works, utilities, appliances, facilities and water craft,
17 owned, controlled or operated by the City, for the promotion and
18 accommodation of commerce, navigation, recreation or fishery, or used
19 in connection therewith;

20 (2) For the acquisition, construction, completion and
21 maintenance, to the extent and in the manner permitted by all applicable
22 law, of harbor and port improvements, buildings, work, utilities,
23 appliances, facilities, and water craft, for the promotion and
24 accommodation of commerce, navigation, recreation or fishery, or used
25 in connection therewith, and for all other improvements and betterments
26 authorized by law to lands and property under the control, supervision
27 and management of the department, including the purchase or
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1 condemnation of necessary lands and other property and property rights,
2 except that condemnation of property outside of the Harbor District shall
3 require the consent of the City Council;

4 (3) For the payment of the principal or interest, or both, of
5 harbor improvement bonds, either general obligation bonds or revenue
6 bonds, issued for harbor improvements;

7 (4) For the transfer to the Tideland Operating Fund at the beginning of a
8 fiscal year from revenues in the Harbor Revenue Fund of such sums as
9 shall have been determined by the City Council, by a vote of two-thirds
10 (2/3) of all its members, expressed by resolution, to be required to meet
11 the lawful obligations of the Tideland Operating Fund; provided,
12 however, that such sums designated the final payment shall not exceed
13 ten percent (10%) of the net income of Change in Net Assets (or its
14 equivalent) of the Harbor Department before transfer to the Tideland
15 Operating Fund as shown on the most recent available independently
16 audited financial statements; and further provided that such transfer of
17 funds shall be subject to the prior approval of a majority of all members
18 of the Board of Harbor Commissioners, expressed by resolution, finding
19 and determining that the funds proposed to be transferred will not be
20 needed for Harbor Department operations, including, without limitation,
21 operating expenses and capital projects, and that such transfer will not
22 result in insufficient funds to pay the principal and interest as they fall
23 due, or otherwise impair the ability to meet covenants, of general
24 obligation or revenue bonds issued for harbor purposes. All such
25 transfers shall be made by journal entry on the books of the City in the
26 manner determined by the City Manager.

27 (d) All reimbursements, repayments and approved
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1 reimbursement transfers from other established funds may be used for
2 the same purposes as specified above. All such reimbursement transfers
3 shall be made by journal entry on the books of the City in the manner
4 determined by the City Manager.

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6 Section 3. That Section 1215 of Article XII of the City Charter of the City
7 of Long Beach is amended to read as follows:

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9 Sec. 1215. - BUILDING PERMITS.

10 No person or persons shall construct, extend, alter, improve,
11 erect, remodel or repair any pier, slip, basin, wharf, dock or other harbor
12 structure, or any building or structure within the Harbor District without
13 first applying for and securing from the Commission a permit so to do, in
14 accordance with the rules and regulations adopted by it. In approving or
15 denying the right to said permit, the Commission shall consider the
16 application therefore, the character, nature, size and location of the
17 proposed improvement and exercise a reasonable and sound discretion
18 during said consideration.

19 Such permit shall be in addition to any permit which may be
20 required by law from the Superintendent of Building and Safety of the
21 City. Notwithstanding the above language, all permits and approvals
22 necessary for oil operations in the Harbor District including but not
23 limited to drilling, developing, producing, extracting, processing, taking,
24 removing, transporting, storing and disposing of oil, gas or other
25 hydrocarbon substances shall be determined and approved by City.
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