

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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GROSS REVENUE 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 formula from 10% of net income to 5% of gross income for the transfer of funds from Harbor Department revenues to the Tidelands Operating Fund,

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and clarifying that the management of the City's oil properties and subsidence 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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1 PROPOSITION D
2 PROPOSED CHARTER AMENDMENT
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4 (New provisions or language added to existing Charter sections are underlined;
5 language deleted from the existing Charter section are shown in strikeout type.)
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8 Section 1. That Section 1203 of Article XII of the City Charter of the
9 City of Long Beach is amended to read as follows:
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11 Sec. 1203. - POWERS AND DUTIES OF THE COMMISSION.

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

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

17 (b) To provide for the needs of commerce, navigation, recreation and
18 fishery in the Harbor District; to plan, promote, develop, construct, re-
19 construct, alter, repair, maintain, equip, and operate all properties including,
20 but not limited to, the piers, wharves, seawalls, docks, basins, channels, slips,
21 landings, warehouses, floating and other plants or works, and all other
22 publicly owned facilities or appliances incident to the operation of the Harbor
23 District, both inside and outside the Harbor District; to dredge and reclaim
24 land, to construct, equip and operate terminal trackage with connections
25 between docks, piers and other Harbor District properties and connect the
26 same with mainline tracks; to provide services including, but not limited to,
27 tugs, dredges, fireboats, barges, cold storage plants; to establish, equip and
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operate all other facilities or aids incident to the development, protection and operation of the Harbor District, and to modify plans from time to time as the requirements of commerce, navigation, recreation or fishery may demand, and as the Commission may deem proper and desirable in its judgment.

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

(d) To control and have jurisdiction of that part of the City hereinafter defined as the "Harbor District", as said district was bounded and described on the first day of February, 1979, except the Commission shall not have

1 control or jurisdiction as to those lands, or parts thereof, within said district as
2 may be used for or in connection with the drilling for, developing, producing,
3 extracting, processing, taking or removing, storing and disposing of oil, gas
4 and other hydrocarbon substances by the City, ~~as provided herein;~~ said lands
5 or parts thereof both inside and outside of the Harbor District shall be under
6 the exclusive jurisdiction and control of the City Council consistent with Article
7 XIII of the Charter; and to make and enforce in the Harbor District general
8 rules and regulations, to the extent that may be necessary or requisite for port
9 purposes and harbor development, and in carrying out the powers elsewhere
10 vested in the Commission; provided, however, that with the approval of the
11 City Council, the Commission may with the prior approval of the electors,
12 relinquish to the City Council control of portions of the Harbor District. Upon
13 request of the Commission, the City Council may, by ordinance, also with the
14 prior approval of the electors, change the boundaries of the Harbor District.

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

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

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

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

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

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

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

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

6 (m) To manage the business of the port and promote the maritime and
7 commercial interests by proper advertisement of its advantages, and by the
8 solicitation of business, within or without the Harbor District, within the State
9 of California or other states or in foreign countries, through such employees
10 and agencies as it may deem expedient.

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

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

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

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

24 (q) To create bureaus and divisions of the Harbor Department. To
25 employ and appoint an Executive Director who shall be Chief Executive of the
26 Harbor Department and who shall exercise the management of all affairs and
27 activities placed under the jurisdiction of the Commission, and an Assistant
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1 Executive Director, each of whom shall hold such position during the pleasure
2 of the Commission. To appoint and employ such other officers and
3 employees as may be necessary in the efficient and economical carrying out
4 of its functions. To prescribe and fix the duties, authority and compensation of
5 all appointees hereunder and to require such officers and employees to give a
6 bond in such an amount as the Commission may require for the faithful
7 performance of their duties. All officers and positions of employment in the
8 permanent service of the Commission shall be created by resolution.

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

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

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

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

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

26
27 Section 2. That Section 1209 of Article XII of the City Charter of the
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1 City of Long Beach is amended to read as follows:
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3 Sec. 1209. - FINANCE.

4 (a) All money received or collected from or arising out of the use or
5 operation of any harbor or port improvement, work, appliance, facility or utility,
6 or water craft, owned, controlled, or operated by the City in or upon or
7 pertaining to the lands and waters under control and management of the
8 Harbor Department; all tolls, charges and rentals collected by the Harbor
9 Department, and all compensations or fees required to be paid for services,
10 franchises or licenses, or otherwise by law or ordinance or order, to the City
11 for the operation of any public service utility upon lands and waters under the
12 control and management of the Harbor Department, shall be deposited in the
13 City Treasury to the credit of the Harbor Revenue Fund, which fund has been
14 heretofore created and established and is hereby continued, and shall be kept
15 separate and apart from other monies of the City. Said fund shall be a
16 continuing fund not subject to transfer at the close of the fiscal year.

17 (b) The money deposited in the Harbor Revenue Fund may, from time
18 to time, be invested in accordance with the provisions of applicable legislation
19 of the State of California providing for the investment and reinvestment of any
20 monies in any sinking fund, or any surplus monies in the treasury of cities in
21 the State, all interest, earnings, income or profits from the investment of said
22 money shall likewise be deposited to the credit of said fund.

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

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

4 (2) For the acquisition, construction, completion and
5 maintenance, to the extent and in the manner permitted by all applicable law,
6 of harbor and port improvements, buildings, work, utilities, appliances,
7 facilities, and water craft, for the promotion and accommodation of commerce,
8 navigation, recreation or fishery, or used in connection therewith, and for all
9 other improvements and betterments authorized by law to lands and property
10 under the control, supervision and management of the department, including
11 the purchase or condemnation of necessary lands and other property and
12 property rights, except that condemnation of property outside of the Harbor
13 District shall require the consent of the City Council;

14 (3) For the payment of the principal or interest, or both, of
15 harbor improvement bonds, either general obligation bonds or revenue
16 bonds, issued for harbor improvements;

17 (4) For the transfer to the Tideland Operating Fund at the
18 beginning of a fiscal year from revenues in the Harbor Revenue Fund of such
19 sums as shall have been determined by the City Council, by a vote of two-
20 thirds (2/3) of all its members, expressed by resolution, to be required to meet
21 the lawful obligations of the Tideland Operating Fund; provided, however, that
22 ~~such sums designated the final payment~~ shall not exceed ~~ten~~ five percent
23 (10%5%) of the ~~net income~~ gross operating revenues of the Harbor
24 Department as shown on the most recent available independently audited
25 financial statements; and further provided that such transfer of funds shall be
26 subject to the prior approval of a majority of all members of the Board of
27 Harbor Commissioners, expressed by resolution, finding and determining that
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1 the funds proposed to be transferred will not be needed for Harbor
2 Department operations, including, without limitation, operating expenses and
3 capital projects, and that such transfer will not result in insufficient funds to
4 pay the principal and interest as they fall due, or otherwise impair the ability to
5 meet covenants, of general obligation or revenue bonds issued for harbor
6 purposes. All such transfers shall be made by journal entry on the books of
7 the City in the manner determined by the City Manager.

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

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

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16 Sec. 1215. - BUILDING PERMITS.

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

25 Such permit shall be in addition to any permit which may be required
26 by law from the Superintendent of Building and Safety of the City.

27 Notwithstanding the above language, all permits and approvals necessary for

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oil operations in the Harbor District including but not limited to drilling,
developing, producing, extracting, processing, taking, removing, transporting,
storing and disposing of oil, gas or other hydrocarbon substances shall be
determined and approved by City.

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