

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

RESOLUTION NO. RES-10-0082

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 operating revenues in order to clarify the formula 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

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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 August 3, 2010, by the following
vote:

Ayes: Councilmembers: Garcia, Lowenthal, DeLong,
Schipske, Andrews, Gabelich,
Neal.

Noes: Councilmembers: O'Donnell.

Absent: Councilmembers: Johnson.



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 or contract or exercise any voting rights relating to such lands or
14 parts, thereof both inside and outside of the Harbor District, which the
15 Commission has determined by resolution are not required for the
16 promotion or development of commerce, navigation, recreation, or
17 fishery for so long as the same may be used for or in connection with the
18 drilling for, developing, producing, extracting, processing, taking or
19 removing, storing and disposing of oil, gas and other hydrocarbon
20 substances by the City. Any such leases, contracts, voting rights, unit
21 agreements, Harbor resolutions, or approvals currently in existence or
22 entered into in the future in such areas or on any lands or parts thereof
23 for or in connection with the drilling for, developing, producing,
24 extracting, processing, taking or removing, storing and disposing of oil,
25 gas and other hydrocarbon substances shall be under the exclusive
26 jurisdiction and control of the City Council. ~~provided that with respect to~~
27 ~~such portions of said lands used therefore as are tide and submerged~~

1 lands, whether filled or unfilled, or that are held subject to the tideland
2 trust, that the Commission has determined by resolution, that said lands
3 or parts thereof, are not required, and with reasonable certainty will not
4 be required, for a period not to exceed thirty five (35) years, for the
5 promotion or development of commerce, navigation, recreation, or
6 fishery.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (u) To prescribe fines, forfeitures and penalties for the violation of
9 any provision of this Article, or of any ordinance of the Harbor
10 Commission, but no penalty shall exceed Five Hundred Dollars
11 (\$500.00) fine, or six (6) months imprisonment, or both.

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

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

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21 Sec. 1209. - FINANCE.

22 (a) All money received or collected from or arising out of the use
23 or operation of any harbor or port improvement, work, appliance, facility
24 or utility, or water craft, owned, controlled, or operated by the City in or
25 upon or pertaining to the lands and waters under control and
26 management of the Harbor Department; all tolls, charges and rentals
27 collected by the Harbor Department, and all compensations or fees

1 required to be paid for services, franchises or licenses, or otherwise by
2 law or ordinance or order, to the City for the operation of any public
3 service utility upon lands and waters under the control and management
4 of the Harbor Department, shall be deposited in the City Treasury to the
5 credit of the Harbor Revenue Fund, which fund has been heretofore
6 created and established and is hereby continued, and shall be kept
7 separate and apart from other monies of the City. Said fund shall be a
8 continuing fund not subject to transfer at the close of the fiscal year.

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

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

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

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

9 (3) For the payment of the principal or interest, or both, of
10 harbor improvement bonds, either general obligation bonds or revenue
11 bonds, issued for harbor improvements;

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

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

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

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13 Sec. 1215. - BUILDING PERMITS.

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

23 Such permit shall be in addition to any permit which may be
24 required by law from the Superintendent of Building and Safety of the
25 City. Notwithstanding the above language, all permits and approvals
26 necessary for oil operations in the Harbor District including but not
27 limited to drilling, developing, producing, extracting, processing, taking,

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removing, transporting, storing and disposing of oil, gas or other hydrocarbon substances shall be determined and approved by City.

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