

# CITY OF OAKLAND

SUPPLEMENTAL AGENDA REPORT 2008 JUL 10 PM 8:25

TO: Office of the City Administrator  
ATTN: Dan Lindheim  
FROM: Community and Economic Development Agency  
DATE: July 15, 2008

RE: **A Public Hearing On A Report And Recommendation From The Director, Community And Economic Development Agency, Regarding A Proposed Resolution Establishing The Lake Merritt/Uptown Community Benefit District of 2008, Approving The Management Plan, Directing Filing Of The Proposed Assessment District Boundary Description, Making A Determination With Regard To The Majority Protest Procedure For Approval Of The Proposed Assessments, And Approving The Assessments For The District.**

**Response to Comment Regarding Lake Merritt/Uptown Community Benefit District**

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## SUMMARY

Staff received a comment letter regarding the establishment of the proposed Lake Merritt/Uptown Community Benefit District. Staff forwarded the letter to the Consultant hired by the Lake Merritt/Uptown Community Benefit District Steering Committee to form the CBD. The Consultant has prepared a response to the comment letter. Both communications are attached.

Respectfully submitted,



Dan Lindheim, Director  
Community and Economic Development Agency

Reviewed by:  
Gregory Hunter, Deputy Director  
Economic Development and Redevelopment Divisions

Prepared by:  
Aliza Gallo, Project Manager  
Business Development Services

APPROVED AND FORWARDED  
TO THE CITY COUNCIL:



Office of the City Administrator

Item \_\_\_\_\_  
City Council  
July 15, 2008

**Gallo, Aliza**

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**From:** Gallo, Aliza  
**Sent:** Thursday, July 10, 2008 6:40 PM  
**To:** 'Martin/Scally'  
**Cc:** jrusso@oaklandcityattorney.org; 'chjohnson@sfchronicle.com'; 'newcityamerica@aol.com'  
**Subject:** RE: Lake Merritt/Uptown CBD

Mr. Scally:

Upon receiving your communication, I forwarded your request to Marco LaMandri, New City America, Inc., the Consultant, hired by the Lake Merritt/Uptown Community Benefit District (CBD) Steering Committee, for a response. Mr. LaMandri's response is attached.

As previously discussed, it would be extremely helpful if you could provide a listing of concerned property owner (s), so that a ballot can be provided to them. If you cannot provide a listing, please ask them to contact Marco LaMandri, New City America, Inc., at (888) 356-2726 or email him at [newcityamerica@aol.com](mailto:newcityamerica@aol.com). In order for their vote to be counted, ballots must be received by the Oakland City Clerk prior to the close of the public input portion of the Public Hearing on the Lake Merritt/Uptown Community Benefit District, which is scheduled for July 15, 2008, at 7:01 pm, in the City Council Chambers, Oakland, City Hall, 1 Frank Ogawa Plaza, Oakland, California, 94612.

Thank you.

**Aliza Gallo**  
**Business Development Services Manager**  
**Community & Economic Development Agency**  
**City of Oakland**  
**250 Frank Ogawa Plaza, Suite 3315**  
**(510) 238-7405 office**  
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[www.oaklandnet.com](http://www.oaklandnet.com)

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**From:** Martin/Scally [REDACTED]  
**Sent:** Saturday, July 05, 2008 2:48 PM  
**To:** Gallo, Aliza  
**Cc:** Reid, Larry; Quan, Jean; Brunner, Jane; Kernighan, Pat; Nadel, Nancy; Chang, Henry; De La Fuente, Ignacio; Brooks, Desley; chjohnson@sfchronicle.com; Russo, John  
**Subject:** Re: Lake Merritt/Uptown CBD

Re: Lake Merritt/Uptown CBD Property Owner Ballot list

We notice that there are still many individual condominium owners that are not on the list. Will they be assessed after the fact? If this still goes to vote on July 15, 2008 and these condo owners receive an extra assessment tax for the CBD on their property tax bills without having been involved in the voting process they will have a valid claim against the CBD and those who were involved in its organization. If you are planning on sending them an assessment amount and ballot then you have to push back the date for the public hearing and vote because according to Resolution 81330 all ballots and notices must be mailed out to affected property

7/10/2008

owners no later than 45 days before the scheduled public hearing.

We also would like something cleared up. Are the property owners and organizations who have funded the organization of this CBD going to be refunded out of our CBD tax money? Does this mean the large corporations in the steering committee are going to be taking money back out of our CBD? We would need to know who exactly will be looking to be reimbursed out of the CBD assessment tax money.

We would also like to know how involved the City of Oakland is and will be in this CBD? After reading the management plan, it looks like a lot of the services under the Sidewalk Operations, Beautification, Order and District Identity are services the City of Oakland should already be providing us with the tax money we are already paying. It also looks like City Council will be involved in the Management Corporation and the Advisory Board and we will be entering into a contract with the City Of Oakland for administration? Is this correct? I guess we need to know more about this considering the City of Oaklands' accountability track record.

We would appreciate a clear and descriptive response to all of the above mentioned concerns.

Thank you,  
Ciaran Scally  
Rathlin Properties, LLC  
Oakland, Ca



To: Aliza Gallo

SUBJECT: Response to Points Made by Mr. Ciaran Scally Regarding Proposed Lake Merritt/Uptown Community Benefit District (Email Communication dated July 5, 2008)

cc: John Russo, Chip Johnson

Please find below our responses to concerns raised by Mr. Ciaran Scally, in his email communication of Saturday, July 5, 2008. I have provided a response to each of his concerns; my responses are in bold lettering. I understand that both the July 5<sup>th</sup> email and this response will be placed in the City Council packet for the July 15, meeting.

1.

Re: Lake Merritt/Uptown CBD Property Owner Ballot list

*We notice that there are still many individual condominium owners that are not on the list.*

Response:

We have asked on more than one occasion for Mr. Scally to provide us with the addresses of property owners who are individual condominium owners that are "not on the list". We have verified that all affected parcels have been notified through the Prop 218 procedures for assessment ballot proceedings.

2.

*Will they be assessed after the fact?*

Response:

Our intent is to ensure that each and every affected property owner is notified of all aspects of the investigation and formation of the district. All property owners have been notified through at least six (6) mailings since September 2007. Property owners who, for whatever reason have failed to receive a mail ballot, should be put on notice through the City of Oakland's website as well as published public hearing notice. However, it is rarely the case that affected property owners are not notified of the plan through the petition process or through the balloting.



3.

*If this still goes to vote on July 15, 2008 and these condo owners receive an extra assessment tax for the CBD on their property tax bills without having been involved in the voting process they will have a valid claim against the CBD and those who were involved in its organization. If you are planning on sending them an assessment amount and ballot then you have to push back the date for the public hearing and vote because according to Resolution 81330 all ballots and notices must be mailed out to affected property owners no later than 45 days before the scheduled public hearing.*

Response:

We have followed all State law and City of Oakland procedures for notification of property owners. The City of Oakland has approved a Resolution also outlines provisions for on-record owners to submit a ballot. If a person is not on the official records of the City as the owner of the property, the protest shall contain or be accompanied by written evidence that the person subscribing is the owner of the property. Please see attached procedures.

4.

We also would like something cleared up. Are the property owners and organizations who have funded the organization of this CBD going to be refunded out of our CBD tax money? Does this mean the large corporations in the steering committee are going to be taking money back out of our CBD? We would need to know who exactly will be looking to be reimbursed out of the CBD assessment tax money.

Response:

Yes, the proponents of the CBD will be reimbursed for formation costs related to the CBD. This approach to funding assessment districts is widely used statewide since it is considered a "special benefit" to property owners. At times, Cities fund these efforts. Increasingly, based upon tighter budget and new demands on annual revenues, cities and counties are allowing proponents of these districts to be reimbursed for any and all costs related to the district formation process.

The property owners took the risk of putting forward their own funds to move this district investigation forward. If the district was not formed, they would have to forego the investigation and formation costs – so it was on their dime.

Furthermore, on page 17 of the Management District Plan, which was mailed to each affected property owner, it stated the following:

**Repayment of Formation and Advanced Services Funds from First Year Assessments:**

*Property owners who advanced funds for the formation of the Lake Merritt/Uptown CBD, as well as the funds for any advanced special benefit services prior to the receipt of the first assessment installment shall be entitled to be fully repaid for any verifiable contributions to the CBD effort. Those*

reimbursements may be paid by the District Management Corporation out of the first year or second year receipts. The amount of reimbursable funds should not exceed 25% of the total first year budget for formation costs and advanced special benefit funded prior to December 31<sup>st</sup>, 2008.

**Table 4-B**  
**Summation of Categories of Special Benefit Services for the Lake Merritt/Uptown Community Benefit District**

<b>PROGRAM OR ACTIVITY FUNDED BY THE LAKE MERRITT/UPTOWN COMMUNITY BENEFIT DISTRICT</b>	<b>APPROXIMATE% OF FIRST YEAR ANNUAL BUDGET</b>	<b>ESTIMATED ANNUAL COSTS (FIRST YEAR FUNDING SOURCE)</b>
Sidewalk Operations, Beautification Order and District Identity	74%	\$ 860,000.00 (Building square footage and linear frontage assessments)
Enhanced Residential Beautification and Security	6%	\$ 75,000.00 (Residential assessments)
Administration/Corporate Operations	16%	\$ 185,000.00 (Lot or parcel assessments)
Contingency/City and County Fees/Reserves	4%	\$ 44,573.00 (Lot or parcel assessments)
TOTAL	100%	\$ 1,164,573.00

It is estimated that the actual costs of the formation and advance services will not exceed 10% of the first year revenues. Those property owners that have advanced funds for the CBD shall be reimbursed according to the previous agreement approved by the City. The disbursement of funds to these property owners will be publicly accessible through the Brown Act requirements and City codes for disclosure of BID and CBD funds.

**5.**

*We would also like to know how involved the City of Oakland is and will be in this CBD? After reading the management plan, it looks like a lot of the services under the Sidewalk Operations, Beautification, Order and District Identity are services the City of Oakland should already be providing us with the tax money we are already paying.*

**Response:**

This is an interpretation of special vs. general benefits that the author has raised before. An assessment engineer has made a finding, consistent with Proposition 218 that these services are in fact "special" and not general benefits. The services being provided by the CBD are not, and are not anticipated to be funded through the Oakland

general fund. The services alluded to by Mr. Scally are listed on pages 14 - 16 of the plan. Please see below.....

**SIDEWALK OPERATIONS , BEAUTIFICATION, ORDER AND DISTRICT IDENTITY:    \$ 860,000    74%**

Examples of these special benefit services and costs include, but are not limited to:

- Private security over and above those services currently provided by the Oakland Police Department, BART Police, Alameda County Transit Authority Police and the Alameda County Sheriff's Department;
- Regular sidewalk and gutter sweeping,
- Regular sidewalk steam cleaning
- Spot steam cleaning as necessary
- Beautification throughout the district
- Enhanced trash emptying
- Removal of bulky items as necessary
- Timely graffiti removal, within 24 hours as necessary
- Tree and vegetation maintenance
- Parking assistance
- Special events
- Strategies to improve District Identity
- Holiday decorations
- Web site development and maintenance
- Communications
- Planning of new outdoor public spaces
- Banner program
- Maintenance vehicle and equipment costs (if done in house).

**TABLE 4 – A**  
**SPECIAL BENEFIT SOBODI SERVICES BROKEN DOWN BY ESTIMATED COSTS:**

<b>Sidewalk Operations, Beautification, Order and District Identity (SOBODI)</b>	<b>Anticipated First Year Task frequency</b>
Sidewalk Sweeping	As determined by Management Corporation, but at least five times per week. Enhanced sweeping for residential areas seven days per week
Steam Cleaning	District wide, four times per year
Trash Emptying	As needed, assumes a series of new trash receptacles and the current level of City baseline service of Monday through Saturday pick ups
Security	As determined by Management Corporation, but at least five days per week during morning and evening employee ingress and egress to the BART Station
Beautification	As the budget allows, the main commercial pedestrian corridors will be enhanced with trees, hanging plants and potted plants
Banner installation and maintenance	Seasonally
Holiday decorations	Seasonally
Reporting hazards to City	As needed
Removal of bulky items	Within 24 hours - if desired above City standard of pickup within 72 hours
Graffiti removal	As soon as noticed or reported
Tree and shrub planting and maintenance	Weekly or as needed
Miscellaneous	As needed

**ENHANCED RESIDENTIAL BEAUTIFICATION AND SECURITY: \$ 75,000 6%**

Examples of these special benefit services and costs include, but are not limited to:

- Enhanced beautification around blocks with predominantly residential land uses. Such enhanced services would include regular security sweeps and evening monitoring, in addition to installation of additional hanging plants, intensive sidewalk landscaping, extra trash cans, dog waste distribution boxes;



6.

*It also looks like City Council will be involved in the Management Corporation and the Advisory Board and we will be entering into a contract with the City Of Oakland for administration? Is this correct?*

Response:

Yes, as a property owner paying into the district, the City of Oakland can be involved in the Board of Directors of the Management corporation, and would be encouraged to do so. This should allow for greater accessibility of "general benefit" resources to the district. The City will not be entering into a contract with itself. Rather, the City may serve on a non-profit management corporation Board of Directors, which will then enter into a contract with the City to manage the special benefit services of the district.

Summary:

The Lake Merritt/Uptown Steering Committee has worked very hard to keep the property owners of record informed of the Community Benefit District formation process. As the consultant, I am available to meet with Mr. Scally and others to discuss the formation process, and I am available to join the City of Oakland City Attorney's Office and the Community and Economic Development Agency to discuss the provisions of Proposition 218 and the Oakland Business Improvement Management District Ordinance which have been followed in the formation of the Lake Merritt/Uptown Community Benefit District. I am available to respond to inquiries and meet with concerned individuals.

In closing, it would be most helpful if Mr. Scally provided a listing of the affected individual condo owners that he refers to; if these individuals are property owners, we would like to provide them a ballot. If Mr. Scally refuses to provide such a listing, then these owners individually can follow the protest process that is outlined in the Ordinance.

Respectfully submitted on behalf of the Lake Merritt/Uptown CBD Steering Committee:

Marco Li Mandri  
Consultant to the CBD Steering Committee  
New City America, Inc.

**GOVERNMENT CODE  
SECTION 53750-53754**

53750: For purposes of Article XIIIC and Article XIIID of the California Constitution and this article:

(a) "Agency" means any local government as defined in subdivision (b) of Section 1 of Article XIIIIC of the California Constitution.

(b) "Assessment" means any levy or charge by an agency upon real property that is based upon the special benefit conferred upon the real property by a public improvement or service, that is imposed to pay the capital cost of the public improvement, the maintenance and operation expenses of the public improvement, or the cost of the service being provided. "Assessment" includes, but is not limited to, "special assessment," "benefit assessment," "maintenance assessment," and "special assessment tax."

(c) "District" means an area that is determined by an agency to contain all of the parcels that will receive a special benefit from a proposed public improvement or service.

(d) "Drainage system" means any system of public improvements that is intended to provide for erosion control, landslide abatement, or for other types of water drainage.

(e) "Extended," when applied to an existing tax or fee or charge, means a decision by an agency to extend the stated effective period for the tax or fee or charge, including, but not limited to, amendment or removal of a sunset provision or expiration date.

(f) "Flood control" means any system of public improvements that is intended to protect property from overflow by water.

(g) "Identified parcel" means a parcel of real property that an agency has identified as having a special benefit conferred upon it and upon which a proposed assessment is to be imposed, or a parcel of real property upon which a proposed property-related fee or charge is proposed to be imposed.

(h) (1) "Increased," when applied to a tax, assessment, or property-related fee or charge, means a decision by an agency that does either of the following:

(A) Increases any applicable rate used to calculate the tax, assessment, fee or charge.

(B) Revises the methodology by which the tax, assessment, fee or charge is calculated, if that revision results in an increased amount being levied on any person or parcel.

(2) A tax, fee, or charge is not deemed to be "increased" by an agency action that does either or both of the following:

(A) Adjusts the amount of a tax or fee or charge in accordance with a schedule of adjustments, including a clearly defined formula for inflation adjustment that was adopted by the agency prior to November 6, 1996.

(B) Implements or collects a previously approved tax, or fee or charge, so long as the rate is not increased beyond the level previously approved by the agency, and the methodology previously approved by the agency is not revised so as to result in an increase in the amount being levied on any person or parcel.

(3) A tax, assessment, fee or charge is not deemed to be "increased" in the case in which the actual payments from a person or property are higher than would have resulted when the agency approved the tax, assessment, or fee or charge, if those higher payments are attributable to events other than an increased rate or revised methodology, such as a change in the density, intensity, or nature of the use of land.

(i) "Notice by mail" means any notice required by Article XIIIIC or XIIID of the California Constitution that is accomplished through a mailing, postage prepaid, deposited in the United States Postal Service and is deemed given when so deposited. Notice by mail may be

included in any other mailing to the record owner that otherwise complies with Article XIIIIC or XIIID of the California Constitution and this article, including, but not limited to, the mailing of a bill for the collection of an assessment or a property-related fee or charge.

(j) "Record owner" means the owner of a parcel whose name and address appears on the last equalized secured property tax assessment roll, or in the case of any public entity, the State of California, or the United States, means the representative of that public entity at the address of that entity known to the agency.

(k) "Registered professional engineer" means an engineer registered pursuant to the Professional Engineers Act (Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code).

(l) "Vector control" means any system of public improvements or services that is intended to provide for the surveillance, prevention, abatement, and control of vectors as defined in subdivision (k) of Section 2002 of the Health and Safety Code and a pest as defined in Section 5006 of the Food and Agricultural Code.

(m) "Water" means any system of public improvements intended to provide for the production, storage, supply, treatment, or distribution of water.

53752. The Department of General Services shall develop compliance standards in the State Administrative Manual (SAM) to inform owners of state property of their duties and responsibilities pursuant to this article and Articles XIIIIC and XIIID of the California Constitution.

53753. (a) The notice, protest, and hearing requirements imposed by this section supersede any statutory provisions applicable to the levy of a new or increased assessment that is in existence on the effective date of this section, whether or not that provision is in conflict with this article. Any agency that complies with the notice, protest, and hearing requirements of this section shall not be required to comply with any other statutory notice, protest, and hearing requirements that would otherwise be applicable to the levy of a new or increased assessment, with the exception of Division 4.5 (commencing with Section 3100) of the Streets and Highways Code. If the requirements of that division apply to the levy of a new or increased assessment, the levying agency shall comply with the notice, protest, and hearing requirements imposed by this section as well as with the requirements of that division.

(b) Prior to levying a new or increased assessment, or an existing assessment that is subject to the procedures and approval process set forth in Section 4 of Article XIIID of the California Constitution, an agency shall give notice by mail to the record owner of each identified parcel. Each notice shall include the total amount of the proposed assessment chargeable to the entire district, the amount chargeable to the record owner's parcel, the duration of the payments, the reason for the assessment and the basis upon which the amount of the proposed assessment was calculated, and the date, time, and location of a public hearing on the proposed assessment. Each notice shall also include, in a conspicuous place thereon, a

summary of the procedures for the completion, return, and tabulation of the assessment ballots required pursuant to subdivision (c), including a statement that the assessment shall not be imposed if the ballots submitted in opposition to the assessment exceed the ballots submitted in favor of the assessment, with ballots weighted according to the proportional financial obligation of the affected property. An agency shall give notice by mail at least 45 days prior to the date of the public hearing upon the proposed assessment.

(c) Each notice given pursuant to subdivision (b) shall contain an assessment ballot that includes the agency's address for receipt of the form and a place where the person returning the assessment ballot may indicate his or her name, a reasonable identification of the parcel, and his or her support or opposition to the proposed assessment. Each assessment ballot shall be in a form that conceals its contents once it is sealed by the person submitting the assessment ballot. Each assessment ballot shall be signed and either mailed or otherwise delivered to the address indicated on the assessment ballot. Regardless of the method of delivery, all assessment ballots shall be received at the address indicated, or the site of the public testimony, in order to be included in the tabulation of a majority protest pursuant to subdivision (e). Assessment ballots shall remain sealed until the tabulation of ballots pursuant to subdivision (e) commences, provided that an assessment ballot may be submitted, or changed, or withdrawn by the person who submitted the ballot prior to the conclusion of the public testimony on the proposed assessment at the hearing required pursuant to subdivision (d). An agency may provide an envelope for the return of the assessment ballot, provided that if the return envelope is opened by the agency prior to the tabulation of ballots pursuant to subdivision (e), the enclosed assessment ballot shall remain sealed as provided in this section.

(d) At the time, date, and place stated in the notice mailed pursuant to subdivision (b), the agency shall conduct a public hearing upon the proposed assessment. At the public hearing, the agency shall consider all objections or protests, if any, to the proposed assessment. At the public hearing, any interested person shall be permitted to present written or oral testimony. The public hearing may be continued from time to time.

(e) (1) At the conclusion of the public hearing conducted pursuant to subdivision (d), an impartial person designated by the agency who does not have a vested interest in the outcome of the proposed assessment shall tabulate the assessment ballots submitted, and not withdrawn, in support of or opposition to the proposed assessment. In a city, the impartial person may include, but is not limited to, the clerk of the agency. The impartial person may use technological methods of tabulating the assessment ballots, including, but not limited to, punchcard or optically readable (bar-coded) assessment ballots. During and after the tabulation, the assessment ballots shall be treated as disclosable public records, as defined in Section 6252, and equally available for inspection by the proponents and the opponents of the proposed assessment.

In the event that more than one of the record owners of an identified parcel submits an assessment ballot, the amount of the proposed assessment to be imposed upon the identified parcel shall be allocated to each ballot submitted in proportion to the respective record ownership interests or, if the ownership interests are not shown on the record, as established to the satisfaction of the agency

by documentation provided by those record owners.

(2) A majority protest exists if the assessment ballots submitted, and not withdrawn, in opposition to the proposed assessment exceed the assessment ballots submitted, and not withdrawn, in its favor, weighting those assessment ballots by the amount of the proposed assessment to be imposed upon the identified parcel for which each assessment ballot was submitted.

(3) If there is a majority protest against the imposition of a new assessment, or the extension of an existing assessment, or an increase in an existing assessment, the agency shall not impose, extend, or increase the assessment.

(4) The majority protest proceedings described in this subdivision shall not constitute an election or voting for purposes of Article II of the California Constitution or of the California Elections Code.