

MEMORANDUM

DATE: April 28, 2021

TO: Honorable Chair Steve Hill and Members of the Board of Directors
Chief Bryan Craig
Rodeo Hercules Fire Protection District

FROM: Richard D. Pio Roda, District Counsel

RE: **Impacts of a Consolidation between Rodeo Hercules Fire Protection District and Contra Costa County Fire Protection District on Measure O & 1998 Benefit Assessment**

BACKGROUND

In 2016, voters approved the levy of a special tax on parcels located within the District to fund the lawful expenses of the District as authorized by the Fire Protection District Law of 1987. This parcel tax is commonly known as Measure O. In 1998, the District enacted a fire suppression special assessment fee on parcels within the District (the “1998 Benefit Assessment”). The 1998 Benefit Assessment was authorized by Government Code section 50078 and enacted in accordance with Proposition 218.

The District is currently analyzing the feasibility of consolidation with the Contra Costa County Fire Protection District (“Con Fire”). As part of the District’s due diligence, you have asked what effect consolidation would have on Measure O and the 1998 Benefit Assessment. As further discussed below, both Measure O and the 1998 Benefit Assessment could continue to be collected after consolidation, but all funds will be required to be spent on fire protection services within the current boundaries of the District.

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DISCUSSION

The consolidation of two or more special districts is governed by the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (the “Act”).¹ The Contra Costa County Local Agency Formation Commission (“LAFCo”) is responsible for implementing the Act within Contra Costa County. Any potential consolidation of the District and Con Fire will require the approval of LAFCo, which has broad authority to impose conditions on any potential consolidation.²

One of the many factors LAFCo will consider when reviewing a proposed consolidation is the financial impacts of the consolidation and the level of service provided. To ensure that consolidation does not result in a decrease in the level of service provided to residents of either of the two districts proposed to be consolidated, LAFCo may condition its approval of the consolidation on the levying of taxes, assessments, or fees.³ Accordingly, as a condition of approving the potential consolidation of the District and Con Fire, LAFCo may require Measure O and the 1998 Benefit Assessment District to continue to be collected.⁴

If LAFCo decides that Measure O and the 1998 Benefit Assessment District should remain in effect after a potential consolidation, the collected funds are legally required to be used solely for fire protection services within the District.

Measure O is a special tax imposed on parcels within the District. This type of tax is commonly known as a parcel tax, since it applies to all parcels within the District but is not based on the value of the parcel. A parcel tax is an excise tax on the privilege of consuming special district services. Specifically, Measure O was enacted to fund services within the District, including “enhancing the existing level of fire prevention, emergency fire protection and paramedic response services through increasing staffing levels to operate and maintain the District’s fire stations, maintaining and when necessary replacing fire protection and lifesaving equipment and apparatus to optimal levels of function and performance, and to fund capital improvements.”⁵ California law provides that revenue from any special tax collected to fund fire protection services “shall be used for the service for which it was

¹ Govt. Code § 56000 *et seq.*

² Govt. Code § 56375(a). If at least ten percent of the voters within the District submit written protests to LAFCo regarding a proposed consolidation, the consolidation may not occur unless approved by the District’s voters at an election. (Govt. Code § 57113.)

³ See e.g., Govt. Code § 56886(b).

⁴ Govt. Code sections 56886(t) and (u).

⁵ Measure O, § 4.

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imposed, and for no other purpose.”⁶ Since Measure O was imposed to fund fire protection services within the District, if consolidation occurs those funds must be used to fund fire protection services within the District and not elsewhere in Con Fire’s service area.

Similar restrictions apply to the 1998 Benefit Assessment, which is “an assessment within the meaning of Proposition 218.”⁷ An assessment is a “levy or charge upon real property by an agency for a special benefit conferred upon the real property.”⁸ The funds collected from an assessment can only be used to pay for the benefits provided to the parcels paying the assessment. Accordingly, if consolidation occurs, the funds raised from the 1998 Benefit Assessment District must continue to be used solely to fund fire protection services within District, since only parcels within the District pay the assessment.⁹

For the reasons stated herein, both Measure O and the 1998 Benefit Assessment may continue after consolidation, but all collected funds will be required to be spent on fire protection services within the current boundaries of the District.

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⁶ Gov. Code § 53978(e).

⁷ District Ordinance No. 98-1, Art. I.

⁸ Cal. Const., art. XIII D, § 2, subd. (b).

⁹ The 1998 Benefit Assessment provides that in the event the District undergoes any *involuntary* consolidation, the assessment will become null and void “at the election and option of the District’s Board of Directors”. The assessment defines involuntary as a consolidation not initiated or supported by a Resolution of the District’s Board. This section is not relevant to any consolidation that has the support of the Board. District Ordinance No. 98-1, Art. IX.