

Memorandum 73-81

Subject: Study 36.530 - Condemnation (Special Improvement Acts)

You will recall that the Commission authorized the staff to solicit comments on a staff draft of a tentative recommendation relating to conforming the improvement acts to the Eminent Domain Law. Two copies of the staff draft are attached. Please mark your suggested editorial changes on one copy and return it to the staff at the October meeting. We would like to have this tentative recommendation approved for printing as revised at the October meeting.

The League of Cities sent the draft to approximately 25 city attorneys for comment. The comments received are attached as Exhibits I-IX. Generally speaking, the comments approve the staff draft. Some of the attorneys who wrote indicated a lack of experience with the acts being revised or repealed because they have never or only rarely used those acts. They use only the general improvement acts which we do not propose to change.

Exhibit IV (City of Glendale) raises the problem of what happens if the condemnation proceeding is started and the bonds are not approved or, for some other reason, the funds to pay for the acquisition do not materialize. This is, of course, a general problem under existing law. The Commission has determined that the property owner should be paid promptly upon entry of final judgment and that the recoverable costs on abandonment will have to be paid whenever the condemnor abandons the proceeding even in cases where it abandons the proceeding because it cannot pay the judgment. As under existing law, the condemnor will have to obtain the funds to pay the costs on abandonment from some source. There is no doubt but that condemnors will exercise more caution in the future than they have in the past in deciding to institute condemnation

proceedings. Before they adopt the resolution of necessity and commence the condemnation proceeding, they will want to be fairly confident that the right to take will not be defeated and that the funds to pay for the acquisition are available. The staff does not have any suggested revisions in either the staff draft attached or the general eminent domain law in response to Exhibit IV.

Exhibit VI is an important letter. It contains the comments from Mr. Assaf and Mr. Randolph who are experts in this field and who previously provided the Commission with their suggestions for revision of the statutes relating to the improvement acts. They suggest a number of technical changes that the staff agrees should be made. These changes are listed in Exhibit ~~XII~~ (attached). The following is an analysis of their other comments:

(1) They believe the Street Opening Act of 1903 should be repealed entirely. We have retained those sections of the act which grants authority to engage in the improvements covered by the 1903 act. Retaining these few sections can do no harm.

(2) They suggest that the 75-cent limit imposed by statute on the ad valorem assessments for parking districts by a noncharter city be eliminated and the petition requesting the improvement state (as is now the case with chartered cities) the maximum rate of ad valorem taxes that may be imposed for the proposed acquisition and improvement. See the discussion on pages 4 and 5 of Exhibit VI under the heading "Parking District Law of 1951." It is true that 75-cent. limitation does impose a serious problem when we eliminate the authority to obtain a judgment in the condemnation action and the apparent authority to then abandon the proceeding without penalty if the judgment is too high. It is also true that the 75-cent. limitation does not apply to a chartered city and that the proposal is merely that the rule now applicable

to chartered cities apply to all cities. For a draft of the amendment proposed by Assaf and Randolph, see Exhibit XI. The staff has some concern whether the suggested amendment is one that should be included in this recommendation. It may be that this amendment is essential to a satisfactory statute and should be included in the recommendation. On the other hand, perhaps the legislative committee that considers the proposed legislation should be the one that decides whether this amendment should be included in the proposed legislation.

Exhibit VII (City of Oakland) comments favorably on the staff draft except for the proposed changes in the Vehicle Parking District Law of 1943. Some of the technical changes recommended in Exhibit XII would retain portions of this statute which were proposed to be repealed in the staff draft. Exhibit VII, however, suggests that the shopping feature (obtaining a judgment and then deciding whether to go ahead with the improvement) be retained. We cannot retain this feature unless we are willing to permit a significant exception to the general condemnation provisions requiring prompt payment of the judgment and the payment of recoverable costs on abandonment. Exhibit VII states that the City of Oakland is particularly concerned with the proposed repeal of Sections 31770-31779 which relate to the board of commissioners for operation of the parking facility and we propose in Exhibit XII to restore these sections.

We expect to search the various codes for condemnation provisions that need adjustment in view of the enactment of the comprehensive eminent domain statute. At the same time, we expect to find additional improvement act provisions that will require adjustment to conform to the comprehensive eminent domain statute. We plan to make those obvious changes that do not present

policy issues (such as deleting references to repealed statutes) and will present any other provisions for Commission consideration at the November meeting. Is this procedure acceptable to the Commission?

The staff believes that we have made a distribution of the attached staff draft to the persons who would be interested in the tentative recommendation. The revisions we propose to make are not substantial, and the staff draft was generally acceptable to those who commented on it. Accordingly, we suggest that we print a recommendation--as distinguished from a tentative recommendation--and also have introduced at the 1974 session the legislation needed to effectuate this recommendation. If we encounter any problems in connection with the recommended legislation at the 1975 session, we can amend out the objectionable portions and review them and submit them to the 1974 session when we submit our other eminent domain recommendations. We anticipate that most, if not all, of the improvement act revision bill would pass without any substantial opposition.

Respectfully submitted,

John H. DeMouly
Executive Secretary

Memorandum 73-81

EXHIBIT I

WILLIAM CAMIL
SHELDON E. ROSS
DAVID A. LANDER

LAW OFFICES
CAMIL & ROSS
SUITE 2 PROFESSIONAL CENTER
9940 ORR & DAY ROAD
P. O. BOX 2647
SANTA FE SPRINGS, CALIFORNIA 90670

TELEPHONE
UNIVERSITY 4-2738

July 24, 1973

Mr. John H. DeMouilly
Executive Secretary
California Law Revision Commission
School of Law
Stanford, California 94305

Dear Mr. DeMouilly:

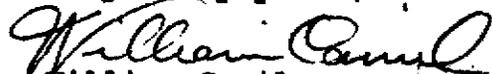
I have received from Bud Carpenter, for review, a copy of a Staff Draft of a Tentative Recommendation Relating to Conforming the Improvement Acts to the Eminent Domain Law. Because of the circumstances which I will relate, I am able to give you a rather prompt answer.

Of all of the improvement acts covered by the Draft, I have used only the Improvement Act of 1911 and Municipal Improvement Act of 1913. As your materials point out, with only one minor exception, these acts do not contain procedures for the condemnation of property. I have had no experience with that one exception--the change of grade procedure within the 1911 Act. Thus, I am unable from my experience to evaluate the Draft.

I must state, however, that I am in full agreement with the general approach taken. That is, I do not believe it necessary for Improvement Acts to contain specific condemnation procedures. I have used the general eminent domain laws on many occasions, in furtherance of projects undertaken under the 1911 and 1913 Acts, and have found that general law to be entirely adequate.

I regret that I could not be more helpful.

Very truly yours,


William Camil
City Attorney
Cities of Commerce, Duarte
and Santa Fe Springs

WC:lc
cc: Richard Carpenter

ALLEN GRIMES
CITY ATTORNEY

JACK ALLEN
SR. ASS'T. CITY ATTORNEY
MITCHEL B. KAHN
ASS'T CITY ATTORNEY



CITY OF BEVERLY HILLS
CALIFORNIA

450 NORTH CRESCENT DRIVE

CRESTVIEW 6-6181 • BRADSHAW 2-2113

August 1, 1973

Mr. John H. DeMouly
Executive Secretary
California Law Revision Commission
School of Law - Stanford University
Stanford, California 94305

Re: Staff Draft of Tentative Recommendation Relating to Con-
forming the Improvement Acts to the Eminent Domain Law

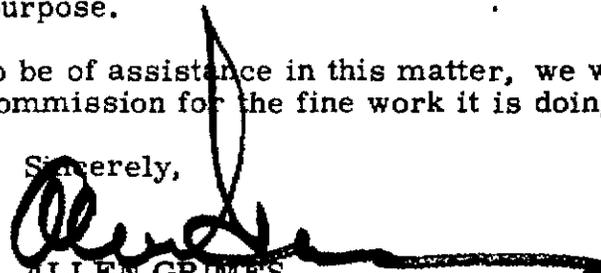
Dear Mr. DeMouly:

Bud Carpenter paid this office the compliment of sending us the above draft for review and the forwarding of our comments for consideration by the Commission. Normally we would be deeply appreciative of this opportunity. However, I write for the purpose of informing you that the environmental problems created by the new north winds have swamped us both as to staff work and litigation resulting from it. Thus, while we certainly would like to review the draft we see no reasonable probability that time will be available to allow us to do so.

We are sending a copy of this letter to Bud with our thanks for the opportunity but suggest to him, under the circumstances, that he select another city attorney for this purpose.

Notwithstanding our inability to be of assistance in this matter, we wish to commend the Law Review Commission for the fine work it is doing.

Sincerely,


ALLEN GRIMES
City Attorney

AG/bb

cc: Bud Carpenter

ES
ABG

LEONARD PUTNAM
CITY ATTORNEY
MALCOLM E. UPTGRAFF
ASSISTANT
CLEMONS C. TURNER
EDWARD T. BENNETT
PHIL J. SHAFER
ROBERT G. AUSTIN
CHARLES E. GREENBERG
JOHN R. CALHOUN
WILLIAM E. EMICK, JR.
ARTHUR Y. HONDA
DAVID M. KENNICK
DEPUTIES

OFFICES OF
THE CITY ATTORNEY
OF LONG BEACH
SUITE 800 CITY HALL
LONG BEACH, CALIFORNIA 90802
TELEPHONE 436-9041

HARBOR DEPARTMENT
BRANCH OFFICE
HARBOR ADMINISTRATION BLDG.
P. O. BOX 570
LONG BEACH, CALIF. 90801
TELEPHONE 437-0041

PHILIP J. BRADY
HAROLD A. LINGLE
LESLIE E. STILL, JR.
KENNETH K. WILLIAMS
ROBERT W. PARKIN
DEPUTIES

August 7, 1973

Mr. John H. DeMouilly, Executive Secretary
California Law Revision Commission
School of Law
Stanford, California 94305

Dear Sir:

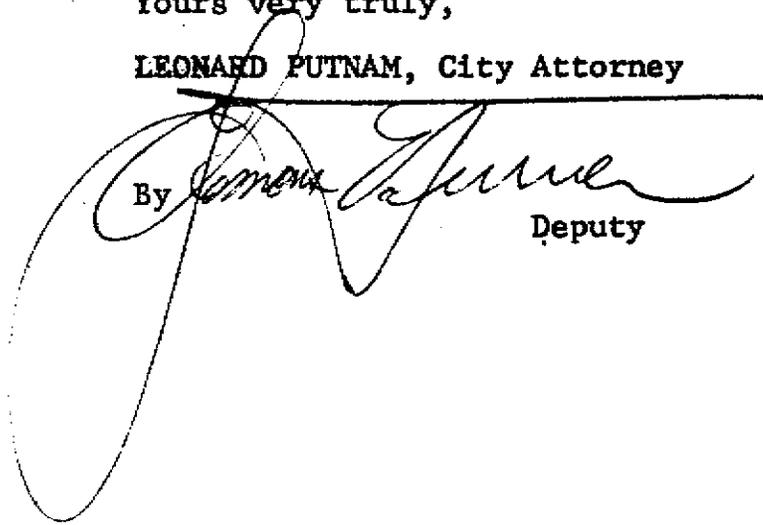
Your letter of July 13, 1973 enclosing a California Law Revision Commission staff draft of a tentative recommendation relating to conforming the Improvement Acts to the Eminent Domain Law has been referred to the writer for review and reply. The writer has, for approximately twenty years, handled the major portion of eminent domain matters in this office. In that time the office has brought only one eminent domain action under the Street Opening Act of 1903. All other eminent domain matters have been brought under appropriate Code of Civil Procedure sections.

This office has in fact had no experience with the problems sought to be covered by the tentative draft and is, therefore, unable to be of help.

Yours very truly,

LEONARD PUTNAM, City Attorney

By



Deputy

CCT:jsc

City of **GLENDALE**



CALIFORNIA

JOSEPH W. RAINVILLE
CITY ATTORNEY

513 EAST BROADWAY
GLENDALE, CALIFORNIA 91208
956-2080

FRANK R. MANZANO
SENIOR ASSISTANT CITY ATTORNEY

CRAIG H. ANDERSON
ASSISTANT CITY ATTORNEY
DEANE WESTERN
KENNETH M. YAEGER
DEPUTY CITY ATTORNEYS

August 20, 1973

California Law Revision Commission
School of Law
Stanford University
Stanford, California 94305

Attention: Mr. John H. DeMouly,
Executive Secretary

Dear Mr. DeMouly:

Your invitation to comment on the new comprehensive eminent domain law as it relates to special assessment proceedings is very much appreciated. I have read the tentative recommendation and the staff draft and wish to offer the following observations.

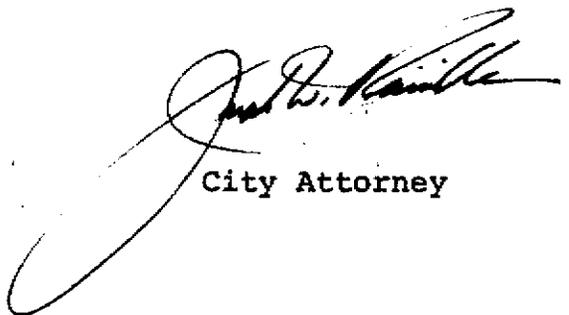
First, I am sincerely and entirely in accord with the need for bringing the eminent domain features of the special acts into accord with the general eminent domain law. To continue them in their old form would only be productive of misunderstanding and litigation.

There is one fear that I have that is not entirely answered by my reading of the draft. Recognizing the potential damage to property owners (Klopping v. City of Whittier 8 Cal. 3d 39), the need for the procedure set forth in page 2 of the tentative recommendation is understood. However, I am uncertain as to what will happen should the bonds be defeated at an election or should there be a majority protest in the assessment proceedings which would end the proceedings. If the condemnation action cannot be abandoned, the new law would defeat the purposes of the special assessment proceedings.

Special assessment proceedings are normally instituted on petition of the majority of property owners in a given area, and assessment is predicated upon the special benefit to that area so that the general tax fund is not properly charged. There is no

obligation of the taxpayers as a whole when special assessment proceedings are begun. I suspect that if entities must contemplate paying for special benefits from the general ad valorem tax review of the city, they would be very hesitant in initiating special assessment proceedings.

These are my thoughts for what they are worth, and I am sure that you have considered this problem somewhere in your studies and can relieve my concern.



City Attorney

JWR:bc

OFFICE OF

THE CITY ATTORNEY
CITY OF SAN DIEGO

CITY ADMINISTRATION BUILDING
SAN DIEGO, CALIFORNIA 92101
(714) 236-6220

JOHN W. WITT
CITY ATTORNEY

ROBERT S. TEAZE
1ST DEPT. CLERK
FREDERICK C. CONTRAD
RONALD L. JOHNSON
JACK KATZ
CHIEF CLERK
PETER D. MILENS
THOMAS F. CALVENLEY
FEDERICO CASTRO
DONALD W. DETSCH
VINCENT P. DI FIGLIA
EUGENE P. GORDON
ROBERT I. LOGAN
LARRY L. MARSHALL
DEREK "J" SIMMONS
C. ALAN SUMPTION
HAROLD O. WALDERHADG
JANE S. WIEGAND
DEPUTY

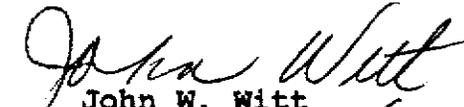
August 24, 1973

Mr. John H. DeMouilly
Executive Secretary
California Law Revision Commission
School of Law
Stanford, California 94305

Dear Mr. DeMouilly:

In reply to the July 17, 1973, letter to City Attorney John Witt from Mr. Richard Carpenter, Director of Legislative Affairs and General Counsel to the League of California Cities, enclosed are comments by this office on the Staff Draft of a Tentative Recommendation Relating to Conforming the Improvement Acts to the Eminent Domain Law.

Sincerely yours,


John W. Witt
City Attorney (as)

JWW/as
Enc
cc Richard Carpenter

CITY of SAN DIEGO
MEMORANDUM

FP - NO. 1
DATE : August 23, 1973
TO : John W. Witt, City Attorney
FROM : Larry L. Marshall, Deputy
SUBJECT: Commentary on Tentative Recommendation relating to Conforming
the Improvement Acts to the Eminent Domain Law

I have reviewed the recommended changes in detail and I am in accord with each of them. I would concur with the comments of Attorneys Assaf and Randolph contained in their letter of January 8 which is attached to the material as "Exhibit 1," particularly their comments with respect to the retention of existing rights to acquire and construct public parks, urban open space lands, playgrounds and libraries under the Park and Playground Act of 1909.

Beyond that, my own experience with the operation of these acts, independent of my peripheral concern with them as a source of funding for acquisitions with which I am charged, is severely limited. I would, therefore, suggest that if you wish to convey detailed comments to Mr. DeMouilly that this material be reviewed as well by those in this office versed in the improvement acts themselves, an area I have never had occasion to handle. Insofar as the revisions affect law of eminent domain, I am in complete accord with them, particularly in view of the fact that certain recent cases lead me to believe that some of the language was inoperative in any event.



Larry L. Marshall, Deputy

LLM:rb

September 5, 1973

Mr. John H. De Moully
California Law Revisions Commission
Executive Secretary
School of Law
Stanford University
Stanford, California 94305

Dear Mr. De Moully:

With reference to the staff draft of the tentative recommendation to conform the improvement acts to the new eminent domain law now being drafted, it is correctly pointed out that the improvement acts generally used for local improvements are the Improvement Act of 1911 and the Municipal Improvement Act of 1913. These improvement acts are used in conjunction with the bonding provisions of either the Improvement Act of 1911 or the Improvement Bond Act of 1915. Section 10600 of the Municipal Improvement Act of 1913 and Section 6404 of the Improvement Act of 1911 are the sections in each of the special assessment acts authorizing the use of the bonding provisions. We note that throughout the recommendation and in the proposed statutory amendments reference is made to "the Improvement Act of 1911, the Municipal Improvement Act of 1913 and the Improvement Bond Act of 1915." We feel the reference to the Improvement Bond Act of 1915 is unnecessary because the cited sections incorporate the Bond Acts.

In line with the format of the tentative recommendation, we make the following specific comments with respect to the subject Acts. While we have noted a few improper Code references in the staff recommendation, we have not carefully checked each and every Code reference throughout the recommendation.

Park and Playground Act of 1909:

We are in accord with the proposed amendments, but note that on Page 10 reference has been made in the comment to Section 4091 of the Streets and Highways Code. We find no such section.

Sewer Right of Way Law of 1921:

We concur with the recommendation that the Act be repealed in its entirety.

Street Opening Act of 1903:

We feel that, as originally recommended by us, the entire Act may be repealed inasmuch as everything provided for in this Act may be

ES	
AES	
AC	
AA	

accomplished under the other assessment district acts. The Park and Playground Act of 1909, on the other hand, retains the ability to build facilities which possibly could not be accomplished under the assessment acts, i.e., libraries, and even the Park and Playground Act could also be repealed in its entirety providing the definition of "improvement" contained in Section 38002 was carried over into the Improvement Act of 1911 and the Municipal Improvement Act of 1913.

We note in the comment on Page 15 references to Government Code Section 38011 and Health and Safety Code Section 38011 for similar incorporation of the statutes referred to. In checking the Codes, there is no Section 38011 of the Health and Safety Code and Section 38011 of the Government Code refers to an ordinance of intention to condemn land.

Street Opening Bond Act of 1911:

We concur in the repeal of the Act in its entirety.

Improvement Act of 1911:

We concur in the changes proposed in the recommendation.

Vehicle Parking District Law of 1943:

We feel that if it is intended to preserve the Vehicle Parking District Law of 1943, the unique qualities of the Act should be preserved in lieu of simply referring to the Municipal Improvement Act of 1913 and the Improvement Act of 1911. Specifically, we feel that the authorized powers of Section 31506, with particular reference therein to subsections h through l, should be retained. These powers have been given the Board of Parking Place Commissioners under Chapter 8. We recommend that the proposed Section 31506 read as follows:

Streets and Highways Code Section 31506 (added)

Sec. 19. Section 31506 is added to the Streets and Highways Code, to read:

31506. A city may:

(a) Acquire lands, property and rights of way necessary or convenient for use as parking places, including any lands, property and rights of way necessary or convenient for the opening, widening, straightening or extending of streets or alleys necessary or convenient for ingress to or egress from any parking place, by condemnation, purchase, gift, lease, or any other means.

(b) Improve any lands, property and rights of way by the construction thereon of garages, buildings, or other improvements necessary or convenient for parking purposes.

(c) Improve parking places and any property necessary or convenient for ingress to or egress from parking places.

(d) The administration, maintenance, operation, and repair of parking places.

(e) The collection of fees or charges to pay all or any part of the cost of improving, repairing, maintaining, and operating parking places and of acquiring and improving additional parking places.

(f) The levy of taxes to pay all or any part of the cost of improving, repairing, maintaining, and operating parking places and of acquiring and improving additional parking places.

(g) The employment of engineers, attorneys, and other persons necessary or convenient for the doing of any act authorized by this part.

(h) The doing of all acts and things necessary or convenient for the accomplishment of the purposes of this part. The enumeration of specific authority in this part does not limit in any way the general authority granted by this subdivision.

Comment. Section 31506 continues the substance of former Section 31506.

It is proposed to repeal, in its entirety, Chapter 2.1 of this Act. Chapter 2.1 refers to use of city lands as parking places. We feel that some of the provisions of Chapter 2.1 are of great import to an entity utilizing the Act because there is no reason why the public should not be compensated for the use of its lands for district parking any more than a private citizen is to be compensated for the use of his lands for district parking. We would recommend that a new Chapter 2.1 be retained to read as follows:

Chapter 2.1. Use of City Lands as Parking Places

31580. As used in this chapter, the term "city lands" means lands already owned by the city and which are either being used for the purpose of public offstreet parking or are not needed by the city for any other purpose and are available for such use.

31581. The legislative body, at any time, may declare and agree that city lands shall be held, used and treated in all respects the same as parking places acquired with the proceeds of collections of paid assessments and bonds issued under this part. The city shall, in the resolution of intention, describe the city lands to be so held, used and

treated and shall state the amount of compensation, if any, to be paid the city therefor and the manner in which said compensation is to be paid.

31582. The legislative body may increase, decrease, eliminate, change or otherwise modify the lands to be so held, used and treated, the improvements to be made or constructed thereon, or the compensation to be paid the city for such city lands, in the same manner and by the same procedure as provided in this part for increasing, decreasing, changing or otherwise modifying the acquisitions and improvements to be made.

Finally, the word "shall" in Section 31781 should, in our opinion, be changed to "may" since Section 31784.1 allows the facilities to be operated without charge.

Parking District Law of 1951:

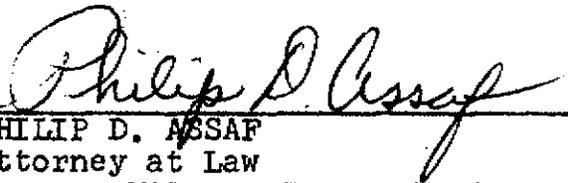
We note that except for technical amendments to the existing Act which for the most part change section numbers, the only real change occurs in the proposed amendment to Section 35402 wherein it is to be provided that bonds may be issued in an amount not exceeding the estimated cost of making the proposed acquisitions and improvements. We would refer to our letter of January 8, 1973, where we had recommended that the main obstacle to the use of the Parking District Law of 1951 was the ad valorem tax limitation of 75¢ per \$100 of assessed valuation contained in Section 35251(e).

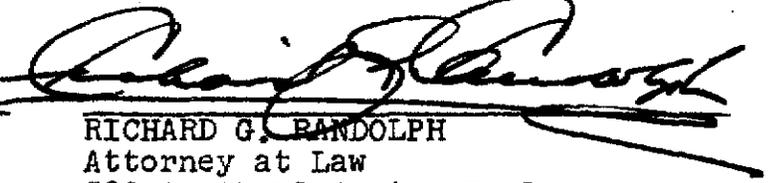
To reiterate, under the proposed procedure it would appear possible for a project to cost more than anticipated either because of unanticipated condemnation award or substantial increase in the construction costs over and above the estimate. In either case, with the imposed 75¢ limit the project would have to be abandoned and bonds sold to cover the cost incurred to the point of abandonment which would give property owners in the district nothing. As we see it, the intent of the recommendation is to eliminate the provision by which property owners are not to be compensated upon the abandonment of a project for any reason. To retain the 75¢ ad valorem assessment limit, or any other limit, in view of the objective of the revision, would substantially penalize public agencies and property owners alike in attempting to provide necessary parking facilities or make the Act unusable as a practical matter.

To depend upon on- and off-street parking meter revenues to make-up any difference so that the project could proceed could result in excessive parking rates jeopardizing the very project or not taking into consideration the desire of most persons involved in parking districts that free parking be allowed in order that they may compete with outlying shopping centers which provide their own parking at no charge. As is

clear from recent experience, most public agencies have eliminated the use of on- and off-street parking meters at the request of owners within the parking district themselves.

Respectfully submitted,


PHILIP D. ASSAF
Attorney at Law
Messrs. Wilson, Jones, Morton &
Lynch
630 North San Mateo Drive
San Mateo, California 94401
Telephone: (415) 342-3523


RICHARD G. RANDOLPH
Attorney at Law
520 South El Camino Real
San Mateo, California 94402
Telephone: (415) 342-4900



CITY HALL • 14TH AND WASHINGTON STREETS • OAKLAND, CALIFORNIA 94612

Office of the City Attorney
Edward A. Goggin
City Attorney

September 5, 1973

Mr. John H. DeMouilly
Executive Secretary
California Law Revision Commission
School of Law - Stanford University
Stanford, California 94305

Re: Staff Draft of a Tentative Recommendation Relating
to Conforming the Improvement Acts to the
Eminent Domain Law

Dear Mr. DeMouilly:

The City of Oakland has used assessment proceedings extensively throughout the years for the construction of improvements in order that the property benefitting from such improvements would finance such improvements. Our comments on the above-referenced draft are those of persons who have used and are using assessment proceedings in the actual execution of projects.

We have no real objection to the basic objective of the Law Revision Commission in amending the various Assessment Acts to have them conform to the new eminent domain law now being drafted. We would point out, however, that improvements financed by assessment proceedings as a practical matter take longer from inception of the plan to completion of construction than do other public improvements due to the assessment proceedings themselves with the required hearings, right of protest, etc. A property owner whose property is being considered for the project will therefore have his property subject to this cloud during the time the project is being discussed, petitions being obtained and hearings held. During this period, the public agency would have no financing to pay any claims for damage to the property, and would have to advance money from its general fund.

However, our basic concern with the proposed draft relates to the proposed changes to the Vehicle Parking District Law of 1943. Although we agree that this act is not used as frequently as the 1911 Act or the Municipal Improvement Act of 1913 together with the Improvement Bond Act of 1915, the City of Oakland has used the 1943 Act on two occasions in the last 14 years. Although, again, we have no real objections to the proposed changes in the law relating to eminent domain, we do not

ES	
AES	
JS	

Mr. John H. DeMouilly
Page 2
September 5, 1973

believe that the proposed repeal of the following sections relate to eminent domain, but relate to the actual formation, operation of the off-street parking facility and functioning of the assessment district by a board of commissioners once the project has been completed. These sections provide an alternative method of formation and operating the facility, and we strongly recommend that they be left intact. It has been our experience that this alternate method of formation for such an assessment district is particularly useful for providing off-street parking facilities since many of the provisions are different than under the 1911 Act or the 1913 Act and were drafted with the problems of establishing off-street parking facilities by assessment proceedings in mind. The sections which we believe should not be repealed since not involving eminent domain are as follows:

Streets and Highways Code:

Sections 31507 through 31512
31514 through 31517.5
31530 through 31571
31580 through 31585
31590 through 31591
31593 through 31595
31620 through 31642
31670 through 31683
31700 through 31702
31706 through 31710
31730 through 31750
31770 through 31779
31862 through 31865
31867

We are particularly concerned with the proposed repeal of Sections 31770 - 31779 which relate solely to a board of commissioners for the operation of the parking facility. We see no justifiable reason for their repeal based on an attempt to conform the eminent domain provisions. These provisions are completely unrelated and provide a useful alternative to public agencies in the establishing of a board for the continued operation of the facility after completion.

Very truly yours,

EDWARD A. GOGGIN
City Attorney

By: 
Ralph R. Kuchler
Deputy City Attorney

RRK: am

cc: Richard Carpenter

CHARLES J. WILLIAMS
VIRGINIA KIMBEL

LAW OFFICES
CHARLES J. WILLIAMS
917 LAS JUNTAS STREET
MARTINEZ, CALIFORNIA 94553

MAILING ADDRESS
P. O. BOX 70

(415) 228-3840
September 18, 1973

Mr. John H. DeMouilly
Executive Secretary
California Law Revision Comm.
School of Law
Stanford, California 94305

Re: Tentative recommendation relating to conforming the
Improvement Acts to the Eminent Domain Law.

Dear Mr. DeMouilly:

Bud Carpenter of the League of California Cities forwarded a staff draft anent the above and asked various city attorneys to respond by September 10, 1973. I hope that you will excuse the delay.

I cannot add anything to the recommendations already made by your staff and its various advisers. However, as one who deals from time to time with the Improvement Acts and is also active in the practice of Eminent Domain Law from the public agency standpoint, I can concur with the need for revision and lend my approval, for whatever it is worth, to the proposed staff draft.

Sincerely yours,



Charles J. Williams

CJW/bs

cc: Mr. Richard Carpenter

ES	
AY	
AL	

OFFICE OF
CITY ATTORNEY
CITY HALL
LOS ANGELES, CALIFORNIA 90012



BURT PINES
CITY ATTORNEY

September 17, 1973

Mr. John H. DeMouilly,
Executive Secretary
California Law Revision Commission
School of Law
Stanford, California 94305

RE: Staff Draft, Tentative Recommendations
Relating to Conforming the Improvement
Acts to the Eminent Domain Law

Dear Mr. DeMouilly:

Personnel of this office have examined the "Staff Draft" referenced above. We do not feel that any of the sections proposed for repeal are needed at this time. We believe the amendments are desirable in order to simplify the code sections relating to Assessment Act Improvement Projects. The City has not utilized any of the acts proposed for repeal for many years.

We concur in the objective of the staff and agree that it is desirable to remove obsolete material from our codes.

Very truly yours,

BURT PINES, City Attorney

By

Norman L. Roberts
NORMAN L. ROBERTS
Deputy City Attorney

NLR/ek
Telephone: 485-3562

ES	
AFG	

EXHIBIT X

Streets & Highways Code § 31506 (added)

Sec. 19. Section 31506 is added to the Streets and Highways Code, to read:

31506. A city may:

- (a) Acquire property necessary or convenient for use as parking places, including any property necessary or convenient for the opening, widening, straightening, or extending streets or alleys necessary or convenient for ingress to or egress from any parking place, by condemnation, purchase, gift, lease, or any other means.
- (b) Improve any property by the construction thereon of garages, buildings, or other improvements necessary or convenient for parking purposes.
- (c) Improve parking places and any property necessary or convenient for ingress to or egress from parking places.
- (d) Administer, maintain, operate, and repair parking places.
- (e) Collect fees or charges to pay all or any part of the cost of improving, repairing, maintaining, and operating parking places and of acquiring and improving additional parking places.
- (f) Levy taxes to pay all or any part of the cost of improving, repairing, maintaining, and operating parking places and of acquiring and improving additional parking places.
- (g) Employ engineers, attorneys, and other persons necessary or convenient for the doing of any act authorized by this part.
- (h) Do all acts and things necessary or convenient for the accomplishment of the purposes of this part. The enumeration of specific authority in this part does not limit in any way the general authority granted by this subdivision.

Comment. Section 31506 continues the substance of a portion of former Section 31506.

Streets & Highways Code §§ 31580-31582 (added)

Sec. . Chapter 2.1 (commencing with Section 31580) is added to Part 1 of Division 18 of the Streets and Highways Code, to read:

CHAPTER 2.1. USE OF CITY LANDS AS PARKING PLACES

31580. As used in this chapter, "city lands" means lands already owned by the city and which are either being used for the purpose of public offstreet parking or are not needed by the city for any other purpose and are available for such use.

31581. The legislative body, at any time, may declare and agree that city lands shall be held, used, and treated in all respects the same as parking places acquired with the proceeds of collections of paid assessments and bonds issued pursuant to Section 31519. The city shall, in the resolution of intention, describe the city lands to be so held, used, and treated and shall state the amount of compensation, if any, to be paid the city therefor and the manner in which such compensation is to be paid.

31582. The legislative body may increase, decrease, eliminate, change, or otherwise modify the lands to be so held, used, and treated, the improvements to be made or constructed thereon, or the compensation to be paid the city for such city lands, in the same manner and by the same procedure as is provided for increasing, decreasing, changing, or otherwise modifying the acquisitions and improvements to be made under this part.

Comment. Sections 31580, 31581, and 31582 are based on former Sections 31580-31585 but reflect the elimination of the special assessment and condemnation provisions from the Parking District Law of 1943.

Streets & Highways Code § 31781 (amended)

Sec. . Section 31781 of the Streets and Highways Code is amended to read:

31781. The board ~~shall~~ fix, regulate, and collect rentals, fees, or charges for the parking of vehicles in parking places under its control, and may provide different rates for different classes of customers or users.

Comment. Section 31781 is amended to substitute "may" for "shall" to conform to Section 31781.1 which allows the facilities to be operated without charge.

Streets & Highways Code § 35251 (amended)

Sec. . Section 35251 of the Streets and Highways Code is amended to read:

35251. The petition shall contain:

(a) A general description of the boundaries of the proposed district.

(b) A general description of the parking places proposed to be acquired.

(c) A general description of any public ways proposed to be acquired for ingress to or egress from the parking places.

(d) A general statement of the improvements to be made or constructed on the proposed parking places, the public ways proposed to be acquired, or existing public ways which would provide ingress to or egress from the proposed parking places.

(e) ~~Any limits as to time and rate upon ad valorem assessments which may be levied upon taxable real property in the district for the purposes permitted by this part. The limits as to time shall not exceed 36 years from the date of the bonds, and the limits as to rate shall not exceed seventy five cents (\$0.75) on each one hundred dollars (\$100) of assessed valuation.~~

~~This limit as to rate does not apply to any district in a chartered city. The petition shall contain the maximum tax rate which will be levied in any parking district in a chartered city.~~

(f) A statement of the maximum rate of ad valorem assessments which may be levied upon taxable real property in the district for the purposes permitted by this part.

~~¶ (f)~~ (g) Any amount of money which it is proposed that the city contribute toward the cost and expense of the acquisitions and improvements proposed by the petition, toward the payment of incidental expenses of the proceedings hereunder, for the establishment of a reserve fund for the payment of the bonds and the interest thereon, or for other purposes in connection with the district.

~~¶ (g)~~ (h) A general statement of the public ways within the district on which it is proposed the city install and maintain, or continue to maintain, parking meters, the net revenues from which will be allocated and pledged to any of the purposes specified in this part, and the period of time, measured from the date of the bonds, for which it is proposed that the city agree to maintain the meters. If it is proposed that the city agree to maintain the meters. If it is proposed that only a specified amount, percentage, or portion of the net revenues shall be so allocated and pledged, the amount, percentage or portion shall be generally defined.

Comment. Section 35251 is amended to delete the maximum statutory limit as to the rate of ad valorem assessments and to extend the requirement that the petition state the maximum tax rate--which formerly applied only to chartered cities--to all cities.

EXHIBIT XII

Technical Changes That Should Be Made

The following technical changes in the staff draft were suggested by persons commenting on the draft and should be made:

(1) Exhibit VI--Various sections of the staff draft--Sections 38011 (page 10), 4091 (page 15), 31519 (page 25)--refer to the Improvement Bond Act of 1915. This reference should be deleted as unnecessary and a reference inserted in the Comment to each of the above listed sections to Streets and Highways Code Sections 6404 and 10600.

(2) Exhibit VI--Section 31506 of the Streets and Highways Code (page 23 of staff draft) should be expanded to retain additional authority now contained in Section 31506 of existing law. Exhibit X sets forth the substance of the section proposed in Exhibit VI and recommended by the staff.

(3) Exhibit VI--The substance of Streets and Highways Code Sections 31580-31585--which were proposed to be repealed in the staff draft--should be retained. The sections proposed to be added to the recommended legislation are set out on page 2 of Exhibit X.

(4) Exhibit VI--The word "shall" should be changed to "may" in Section 31781 to be consistent with other provisions. See Exhibit X, page 3.

(5) Exhibit VII--Restore Sections 31770-31779 (text on pages 26-29 of staff draft) and restore Section 31865 (proposed to be repealed) since this section is referred to in a section we originally proposed to repeal but now propose to retain.

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

STAFF DRAFT

TENTATIVE RECOMMENDATION

relating to

CONFORMING THE IMPROVEMENT ACTS TO THE
EMINENT DOMAIN LAW

July 16, 1973

CALIFORNIA LAW REVISION COMMISSION
School of Law
Stanford University
Stanford, California 94305

Note: This staff draft is being distributed so that interested persons can make their views known to the Commission. Comments should be sent to the Commission not later than September 10, 1973.

This staff draft has not been reviewed by the Commission. Hence it is not necessarily the recommendation the Commission will submit to the Legislature. Any comments sent to the Commission will be considered when the Commission determines what recommendation, if any, it will make to the California Legislature.

This tentative recommendation includes explanatory Comments to some of the sections of the recommended legislation. The Comments are written as if the legislation were enacted since their primary purpose is to explain the law as it would exist (if enacted) to those who will have occasion to use it after it is in effect.

STAFF DRAFT

TENTATIVE RECOMMENDATION

Formation of a special assessment district under one of the improvement acts is a method commonly used to provide such local improvements as sewers, streets, and sidewalks. Use of the special assessment district enables the improvement to be financed by a special assessment against those properties benefited by the improvement.¹

The improvement acts generally used for local improvements are the Improvement Act of 1911² and the Municipal Improvement Act of 1913.³ The special assessment procedures provided in these acts ordinarily are employed in conjunction with the bonding provisions of either the 1911 act or the Improvement Bond Act of 1915.⁴ With one minor exception,⁵ these commonly used acts do not contain procedures for the condemnation of property and will require no conforming revisions in connection with the enactment of the new eminent domain law.

There are a number of other improvement acts which are infrequently or never used. These acts provide procedures that are inconsistent with the present general law of eminent domain and that will also be inconsistent with the new eminent domain law. Among these acts are the Street Opening Act of 1903,⁶ the Park and Playground Act of 1909,⁷ the Sewer Right of Way Law of

-
1. For a description of the California special assessment procedures under the improvement acts generally used, see Gaines, The Right of Non-Property Owners to Participate in a Special Assessment Majority Protest, 20 U.C.L.A.L. Rev. 201, 204-212 (1972).
 2. Sts. & Hwys. Code §§ 5000-6794.
 3. Sts. & Hwys. Code §§ 10000-10609.
 4. Sts. & Hwys. Code §§ 8500-8851.
 5. See discussion infra, p. 5, relating to Part 4 (Sections 6000-6123) of Division 7 of the Streets and Highways Code, the change of grade procedure within the Improvement Act of 1911.
 6. Sts. & Hwys. Code § 4000 et seq.
 7. Govt. Code § 38000 et seq.

1921,⁸ the Vehicle Parking District Law of 1943,⁹ and the Parking District Law of 1951.¹⁰ Each of these statutes provides for the same general procedure, the essential elements of which are:

- (1) An eminent domain proceeding is brought.
- (2) An interlocutory judgment is obtained.
- (3) A decision is made whether to proceed with the improvement or to abandon the project.
- (4) If the decision is to proceed, assessments are made against benefited property (with offsets of damages against benefits where appropriate).
- (5) Judgments (and contracts for purchase of property) are paid when money is received in payment of special assessments.

The procedure under these statutes apparently was designed to permit a public entity to obtain a judgment as to the value of the property needed for the improvement and abandon the proceeding if the judgment is too high. In fact, some of the improvement acts contain a provision that--if given effect--would preclude the property owner from recovering litigation expenses and other amounts he is entitled to recover under Code of Civil Procedure Section 1255a upon abandonment of an eminent domain proceeding. These statutes also contain other provisions that will be inconsistent with the new eminent domain law. Some contain special valuation rules and condemnation provisions, provide for special valuation commissions, and permit delay in payment to the property owner until money is received from special assessments or bonds are issued to fund such assessments.

Knowledge of a planned public improvement may have an adverse effect on property in the area where the improvement will be located.¹¹ And, once an eminent domain proceeding has been instituted, the owner's freedom to improve his property or to sell or lease it is seriously curtailed. To some extent, these consequences may be unavoidable and acceptable.¹² However, there can

8. Govt. Code § 39000 et seq.

9. Sts. & Hwys. Code § 31500 et seq.

10. Sts. & Hwys. Code § 35100 et seq.

11. See *Klopping v. City of Whittier*, 8 Cal.3d 39, 500 P.2d 1345, 104 Cal. Rptr. 1 (1972). See also *Merced Irr. Dist. v. Woolstenhulme*, 4 Cal.3d 478, 483 P.2d 1, 93 Cal. Rptr. 833 (1971).

12. But see Code Civ. Proc. §§ 1243.1 (eminent domain proceeding must be commenced within six months from adoption of resolution of necessity), 1246.3 (recovery of litigation expenses in inverse condemnation proceeding).

be no justification for any further significant delay in payment to the property owner after a condemnation proceeding has been brought to final judgment. Such delay can be avoided, for example, by advancing funds to cover the cost of property acquisition out of other funds of the public entity, to be reimbursed when moneys are received from special assessments or bonds issued to fund the special assessments.¹³ Or special assessments can be made on the basis of the estimated cost of the property acquisition and supplemental assessments made if this amount proves to be inadequate.¹⁴

The special eminent domain provisions are so integrated with the special assessment provisions in these improvement acts that it is not possible to merely remove the special eminent domain provisions. Eliminating the special eminent domain provisions and replacing the special assessment provisions by an express authorization to use the Improvement Act of 1911, the Municipal Improvement Act of 1913, and the Improvement Bond Act of 1915 is the only effective means of conforming these acts to the general eminent domain law. Not only will this eliminate provisions that are inconsistent with the new eminent domain law but also it will eliminate the unnecessary and undesirable diversity of procedure that now exists under the various improvement acts.

Other statutes related to the improvement acts are obsolete and should be repealed.

The recommendations with respect to the various improvement acts are set forth in more detail below. The adoption of these recommendations would result in the repeal of approximately 650 sections, the enactment of six new sections, and the amendment of 10 sections.

Park and Playground Act of 1909

The Park and Playground Act of 1909--Government Code Sections 38000-38213--provides a special assessment procedure for improvements that include "a public park, urban open space lands, playground, or library."¹⁵ The act relates primarily to condemnation procedure and is inconsistent in many respects with the new eminent domain law. The act also contains special assessment provisions.

13. See, e.g., Govt. Code §§ 23014, 25210.9c; Sts. & Hwys. Code §§ 5102, 10210.

14. See, e.g., Sts. & Hwys. Code §§ 5360, 5520.

15. See Govt. Code §§ 38002 (defining "improvement") and 38010 (authorizing acquisition of land by condemnation for "improvements").

The special condemnation procedure provisions and the special assessment provisions of the Park and Playground Act of 1909 should be repealed. All that should be retained of the act is the authorization to exercise the power of eminent domain to the extent now authorized. A provision should be added to the act to provide that the Improvement Act of 1911, the Municipal Improvement Act of 1913, and the Improvement Bond Act of 1915 may be used for the improvements now authorized under the act.

Sewer Right of Way Law of 1921

The Sewer Right of Way Law of 1921--Government Code Sections 39000-39374--provides a special assessment procedure for "sewers and drains for sanitary or drainage purposes."¹⁶ The act also contains special condemnation provisions.

The Sewer Right of Way Law of 1921 is obsolete and should be repealed. All acquisitions and improvements authorized under this act may presently be accomplished under the Improvement Act of 1911 or the Municipal Improvement Act of 1913.

Street Opening Act of 1903

The Street Opening Act of 1903--Streets and Highways Code Sections 4000-4443--authorizes local public entities to construct streets and parking places, to acquire property necessary for that purpose by the exercise of the power of eminent domain, and provides a special assessment procedure to finance such projects. The act contains special condemnation provisions that duplicate, overlap, or are inconsistent with the general provisions relating to condemnation.

The special condemnation procedure provisions and the special assessment provisions of the Street Opening Act of 1903 should be repealed, leaving only the authority to construct and operate the improvements now authorized and the authorization to exercise the power of eminent domain for such improvements. In addition, a provision should be added to the act to provide that the Improvement Act of 1911, the Municipal Improvement Act of 1913, and the Improvement Bond Act of 1915 may be used for the improvements now authorized under the act.

16. See Govt. Code §§ 39002 (defining "improvement") and 39040 (authorizing acquisition of property for construction of improvements).

Street Opening Bond Act of 1911

The Street Opening Bond Act of 1911--Streets and Highways Code Sections 4500-4677--authorizes issuance of bonds to represent assessments for improvements authorized under the Street Opening Act of 1903, the Park and Playground Act of 1909, or any other act providing for the acquisition of property for the construction of sewers and drains for sanitary or drainage purposes.

The Street Opening Bond Act of 1911 should be repealed. The act has not been recently used, and bonds issued pursuant to other general statutes are commonly used to represent assessments for the improvements covered by the Street Opening Bond Act of 1911. Moreover, under the recommendation above, both the Street Opening Act of 1903 and the Park and Playground Act of 1909 would be revised to permit use of the Improvement Act of 1911 (including the provisions authorizing the issuance of bonds) and the Improvement Bond Act of 1915.

Improvement Act of 1911

Part 4 (Sections 6000-6123) of Division 7 of the Streets and Highways Code, the change of grade procedure within the Improvement Act of 1911, contains special damage assessment and eminent domain provisions that are inconsistent with the general eminent domain provisions. This part serves no useful purpose in modern proceedings and should be repealed, thereby eliminating all reference to specialized or unique condemnation procedures in the Improvement Act of 1911. The repeal of Part 4 will not preclude the establishment or changing of the grade for any improvement under the Improvement Act of 1911. See Sections 5150-5152 (establishment of grade for work under Improvement Act of 1911). See also the Change of Grade Act of 1909 (Sts. & Hwys. Code § 8000 et seq.).

Vehicle Parking District Law of 1943

The Vehicle Parking District Law of 1943--Streets and Highways Code Sections 31500-31933--authorizes the construction and operation of parking places and the acquisition of property by eminent domain for that purpose. The act contains its own special assessment procedures and includes special eminent domain provisions that are inconsistent with the general eminent domain provisions.

The special eminent domain provisions and the special assessment provisions of the Vehicle Parking District Law of 1943 should be repealed. The

provisions of the act that authorize the construction and operation of parking places and the acquisition of property by eminent domain for that purpose should be retained. A provision should be added to the act to provide that the Improvement Act of 1911, the Municipal Improvement Act of 1913, and the Improvement Bond Act of 1915 may be used for the improvements now authorized under the act. Various other technical and conforming revisions should be made in the act. These are indicated in the Comments to the various sections of the act as set out in the proposed legislation infra.

Parking District Law of 1951

The Parking District Law of 1951--Streets and Highways Code Sections 35100-35708--provides for an ad valorem assessment procedure rather than a direct lien assessment. For this reason, the act provides a useful tool to public agencies not available under the Improvement Act of 1911 or the Municipal Improvement Act of 1913. Hence, it is desirable to retain the ad valorem assessment procedure provided by the Parking District Law of 1951.

In one important respect, however, the Parking District Law of 1951 is inconsistent with the recommended general eminent domain provisions. The act provides that the cost of any property necessary for the contemplated improvements be determined either by negotiation or judgment in an eminent domain proceeding prior to the issuance and sale of the bonds to pay the cost of the acquisitions and improvements.¹⁷ The act should be revised to provide for the acquisition of property pursuant to the general eminent domain provisions and to permit the sale of bonds based on an estimate of the cost of the acquisitions and improvements much as the Municipal Improvement Act of 1913 provides. Other technical and conforming revisions should be made in the act. These are indicated in the Comments to the various sections of the act as set out in the proposed legislation infra.

PROPOSED LEGISLATION

The Commission's recommendations would be effectuated by enactment of the following legislative measure.

17. The act contains an alternate procedure whereby bonds may be issued when less than all of the necessary property has been acquired; this does not, however, eliminate the long wait for the property owner before he is paid since the amount he receives is payable from the proceeds of the bonds.

An act to add Chapter 7 (commencing with Section 38000) of, and to repeal Chapters 7 (commencing with Section 38000) and 12 (commencing with Section 39000) of Part 2 of Division 3 of Title 4 of the Government Code, and to amend Sections 5150.5, 31500, 31502, 31504, 31770.1, 31782, 31791, 31792, 31861, 31910, 31915, 35276, 35402, 35402.3, 35450, 35469, and 35469.5 of, to amend the heading of Part 1 (commencing with Section 31500) of Division 18 of, to add Sections 31503, 31505, 31506, and 31519 to, to add Part 1 (commencing with Section 4000) to Division 6 of, to repeal Sections 31501, 31503, 31505, 31506, 31507, 31508, 31509, 31510, 31511, 31512, 31513, 31514, 31515, 31517.5, 31770, 31771, 31772, 31773, 31774, 31775, 31776, 31777, 31778, 31779, 31853.5, 31862, 31863, 31864, 31865, 31867, 31932, 35400, 35401.5, and 35402.1 of, to repeal Chapters 2 (commencing with Section 31530), 2.1 (commencing with Section 31580), 3 (commencing with Section 31590), 4 (commencing with Section 31620), 5 (commencing with Section 31670), 6 (commencing with Section 31700), and 7 (commencing with Section 31730) of Part 1 of Division 18 of, and to repeal Parts 1 (commencing with Section 4000) and 2 (commencing with Section 4500) of Division 6 of, and 4 (commencing with Section 6000) of Division 7 of, the Streets and Highways Code, relating to public improvements.

The people of the State of California do enact as follows:

PARK AND PLAYGROUND ACT OF 1909

Government Code § 38000 et seq. (repealed). Park and Playground Act of 1909

Sec. 1. Chapter 7 (commencing with Section 38000) of Part 2 of Division 3 of Title 4 of the Government Code is repealed.

Comment. Chapter 7 (commencing with Section 38000) of Part 2 of Division 3 is superseded by a new Chapter 7 (commencing with Section 38000) of Part 2 of Division 3. See the Comment to new Section 38000 of the Government Code.

Government Code § 38000 et seq. (added). Park and Playground Act of 1909

Sec. 2. Chapter 7 (commencing with Section 38000) is added to Part 2 of Division 3 of Title 4 of the Government Code, to read:

CHAPTER 7. PARK AND PLAYGROUND ACT OF 1909

38000. This chapter may be cited as the Park and Playground Act of 1909.

Comment. Chapter 7 (commencing with Section 38000) continues the Park and Playground Act of 1909. Sections 38000, 38001, 38002, and 38010 continue the exact wording of the former sections having the same numbers. Section 38011 is new.

This chapter omits the special condemnation provisions and the assessment procedures formerly contained in the Park and Playground Act of 1909. The special condemnation provisions duplicated, overlapped, or were inconsistent with the general provisions of the Code of Civil Procedure relating to condemnation. See Tentative Recommendation Relating to Conforming the Improvement Acts to the Eminent Domain Law, 11 Cal. L. Revision Comm'n Reports 0000 (1973). Takings by eminent domain for the purposes of the Park and Playground Act of 1909 are now governed by the provisions of the Eminent Domain Law. See Code Civ. Proc. §

The assessment procedures formerly contained in the Park and Playground Act of 1909 have also been omitted. The Improvement Act of 1911 (Sts. & Hwys. Code § 5000 et seq.), the Municipal Improvement Act of 1913 (Sts. & Hwys. Code § 10000 et seq.), and the Improvement Bond Act of 1915 (Sts. & Hwys. Code § 8500 et seq.) are adopted by Section 38011 for the purposes of this chapter, thus permitting repeal of the assessment procedures formerly provided in this part. See Tentative Recommendation Relating to Conforming the Improvement Acts to the Eminent Domain Law, 11 Cal. L. Revision Comm'n Reports 0000 (1973).

38001. This chapter shall be liberally construed to promote its objects.

Comment. See the Comment to Section 38000.

38002. As used in this chapter, "improvement" includes a public park, urban open space lands, playground, or library.

Comment. See the Comment to Section 38000.

38010. When the public interest or convenience requires, the legislative body may acquire by condemnation land situated in the city for improvements.

Comment. See the Comment to Section 38000.

38011. The Improvement Act of 1911, the Municipal Improvement Act of 1913, and the Improvement Bond Act of 1915 may be used by a city for any improvement.

Comment. Section 38011, which permits use of various improvement and bond acts, replaces the assessment provisions formerly included in this chapter. "Improvement" is defined in Section 38002. For a similar incorporation of the statutes referred to, see Health and Safety Code Section 4771 and Streets and Highways Code Section 4091.

THE SEWER RIGHT OF WAY LAW OF 1921

Sec. 3. Chapter 12 (commencing with Section 39000) of Part 2 of Division 3 of Title 4 of the Government Code is repealed.

Comment. Chapter 12 (commencing with Section 39000), the Sewer Right of Way Law of 1921, has been repealed because the special condemnation and assessment procedures it provided were obsolete, unnecessary, and inconsistent with other more recently enacted statutes.

The Improvement Act of 1911 (Streets and Highways Code Section 5000 et seq.) and the Municipal Improvement Act of 1913 (Streets and Highways Code Section 10000 et seq.) are general, commonly used statutes that provide assessment procedures for the types of improvements covered by the Sewer Right of Way Law of 1921. Compare the Sewer Right of Way Law of 1921 (see former Government Code Section 39002 defining "improvement" to mean "sewers and drains for sanitary or drainage purposes") with Streets and Highways Code Sections 5101 (improvements that may be made under the Improvement Act of 1911) and 10102 (improvements that may be made under the Municipal Improvement Act of 1913). The special condemnation provisions of the Sewer Right of Way Law of 1921 duplicated, overlapped, or were inconsistent with the general provisions of the Code of Civil Procedure relating to condemnation. See Tentative Recommendation Relating to Conforming the Improvement Acts to the Eminent Domain Law, 11 Cal. L. Revision Comm'n Reports 0000 (1973). Takings by eminent domain for the purposes of the 1921 law are authorized by numerous statutes and are governed by the general provisions of the Eminent Domain Law. See Code Civ. Proc. §

STREET OPENING ACT OF 1903

Streets & Highways Code § 4000 et seq. (repealed). Street Opening Act of 1903

Sec. 4. Part 1 (commencing with Section 4000) of Division 6 of the Streets and Highways Code is repealed.

Comment. Part 1 (commencing with Section 4000) of Division 6 is superseded by a new Part 1 (commencing with Section 4000) of Division 6. See the Comment to new Section 4000 of the Streets and Highways Code.

Streets & Highways Code § 4000 et seq. (added). Street Opening Act of 1903

Sec. 5. Part 1 (commencing with Section 4000) is added to Division 6 of the Streets and Highways Code, to read:

PART 1. STREET OPENING ACT OF 1903

4000. This part may be cited as the Street Opening Act of 1903.

Comment. Part 1 (commencing with Section 4000) continues the Street Opening Act of 1903. Sections 4000, 4000.2, 4000.5, 4001, 4002, 4008, 4009, and 4090 continue the exact wording of the former sections having the same numbers. Section 4091 is new.

This part omits the special condemnation provisions and the assessment procedures formerly contained in the Street Opening Act of 1903. The special condemnation provisions duplicated, overlapped, or were inconsistent with the general provisions of the Code of Civil Procedure relating to condemnation. See Tentative Recommendation Relating to Conforming the Improvement Acts to the Eminent Domain Law, 11 Cal. L. Revision Comm'n Reports 0000 (1973). Takings by eminent domain for the purposes of the Street Opening Act of 1903 are now governed by the provisions of the Eminent Domain Law. See Code Civ. Proc. § .

The Assessment procedures formerly contained in the Street Opening Act of 1903 have also been omitted. The Improvement Act of 1911 (Sts. & Hwys. Code § 5000 et seq.), the Municipal Improvement Act of 1913 (Sts. & Hwys. Code § 10000 et seq.), and the Improvement Bond Act of 1915 (Sts. & Hwys. Code § 8500 et seq.) are adopted by Section 4091 for the purposes of this part, thus permitting repeal of the assessment procedures formerly provided in this part. See Tentative Recommendation Relating to Conforming the Improvement Acts to the Eminent Domain Law, 11 Cal. L. Revision Comm'n Reports 0000 (1973).

4000.2. Unless the particular provision or the context otherwise requires, the definitions and general provisions contained in this chapter shall govern the construction of this part.

Comment. See the Comment to Section 4000.

4000.5. This part shall be liberally construed in order to effectuate its purposes.

Comment. See the Comment to Section 4000.

4001. "City" includes counties, cities, cities and counties, and all corporations organized and existing for municipal purposes.

Comment. See the Comment to Section 4000.

4002. "Legislative body" means:

(a) When used with reference to a county, the board of supervisors.

(b) When used with reference to a city, the body which by law constitutes the legislative department of the government of the city.

Comment. See the Comment to Section 4000.

4008. "Street" includes public streets, avenues, roads, highways, squares, lanes, alleys, courts or places.

Comment. See the Comment to Section 4000.

4009. "Work" or "improvement" whether used singly or in combination includes any work which is authorized to be done or any improvement which is authorized to be made under this part.

Comment. See the Comment to Section 4000.

4090. Whenever the public interest or convenience may require, the legislative body of any city shall have full power and authority:

(a) To order the laying out, opening, extending, widening, straightening, establishment or change of grade, in whole or in part, of any one or more of any public streets or parking places within the city.

(b) To acquire by condemnation any and all property necessary or convenient for any purpose specified in subdivision (a) of this section or any interest therein including an easement or easements for the construction and maintenance of any one or more of any public streets or walks, parking places, passages or ways upon the surface of the earth or in any designated levels or slopes, above or below such surface together with a sufficient clearance height thereabove. The legislative body shall conclusively determine and designate such clearance height and shall leave to the owner the right to maintain or construct and maintain any buildings or other structures above or below or above and below such streets, walks, parking places, passages, or ways, and the clearance height therefor so acquired by the city.

(c) To acquire by condemnation any and all property, rights of way or easements, or any interest therein, necessary or convenient for the purpose of constructing thereon any of the work or improvements of the character mentioned in the "Improvement Act of 1911," as contained in Division 7.

Comment. See the Comment to Section 4000.

4091. The Improvement Act of 1911, the Municipal Improvement Act of 1913, and the Improvement Bond Act of 1915 may be used by a city for any improvement.

Comment. Section 4091, which permits use of various improvement and bond acts, replaces the assessment and provisions formerly included in this division. "Improvement" is defined in Section 4009. For similar incorporations of the statutes referred to, see Government Code Section 38011 and Health and Safety Code Section 38011.

STREET OPENING BOND ACT OF 1911

Sec. 6 . Part 2 (commencing with Section 4500) of Division 6 of the Streets and Highways Code is repealed.

Comment. Part 2 (commencing with Section 4500), the Street Opening Bond Act of 1911, has been repealed as unnecessary. The act has not been recently used, and bonds issued pursuant to other general statutes are commonly used to represent assessments for the improvements covered by the repealed statute. See the Improvement Act of 1911 (Sts. & Hwys. Code § 5000 et seq.) and the Improvement Bond Act of 1915 (Sts. & Hwys. Code § 8500 et seq.). Both the Street Opening Act of 1903 and the Park and Playground Act of 1909 have been revised to make clear that the Improvement Act of 1911 (including the provisions authorizing issuance of bonds) and the Improvement Bond Act of 1915 may be used for improvements of the type covered by the revised Street Opening Act of 1903 and the revised Park and Playground Act of 1909.

IMPROVEMENT ACT OF 1911

Streets & Highways Code § 5150.5 (technical amendment)

Sec. 7. Section 5150.5 of the Streets and Highways Code is amended to read:

5150.5. If a county is conducting the proceedings under this division, the legislative body may, by resolution, establish the official grade of any street, boulevard, park or place which is to be improved and for which no official grade has previously been established by ordinance or resolution, and the words "official grade" when used in this division in relation to a county ~~and except where the official grade is established, changed or modified under the proceedings provided in Part 4 of this division~~ shall mean the grade so established by resolution of the legislative body of the county.

Comment. The amendment to Section 5150.5 reflects the repeal of Part 4 (commencing with Section 6000) of Division 7.

Streets & Highways Code §§ 6000-6123 (repealed). Special Change of Grade Provisions

Sec. 8. Part 4 (commencing with Section 6000) of Division 7 of the Streets and Highways Code is repealed.

Comment. Part 4 (commencing with Section 6000) has been repealed because it contained special damage assessment and eminent domain provisions that were inconsistent with the general provisions of the Eminent Domain Law. See Tentative Recommendation Relating to Conforming the Improvement Acts to the Eminent Domain Law, 11 Cal. L. Revision Comm'n Reports 0000 (1973). The repeal of Part 4 will not preclude the establishment or changing of the grade for any improvement under the Improvement Act of 1911. See Sections 5150-5152 (establishment of grade for work under Improvement Act of 1911). See also the Change of Grade Act of 1909 (Sts. & Hwys. Code § 8000 et seq.).

VEHICLE PARKING DISTRICT LAW OF 1943

Comment. The Vehicle Parking District Law of 1943--Streets and Highways Code Sections 31500-31933--is revised to omit the special condemnation provisions and the assessment procedures. The special condemnation provisions duplicated, overlapped, or were inconsistent with the general provisions of the Code of Civil Procedure relating to condemnation. See Tentative Recommendation Relating to Conforming the Improvement Acts to the Eminent Domain Law, 11 Cal. L. Revision Comm'n Reports 0000 (1973). Takings by eminent domain for the purposes of the Vehicle Parking District Law of 1943 are now governed by the provisions of the Eminent Domain Law. See Code Civ. Proc. § .

The assessment procedures formerly contained in the Vehicle Parking District Law of 1943 have also been omitted. The Improvement Act of 1911 (Sts. & Hwys. Code § 5000 et seq.), the Municipal Improvement Act of 1913 (Sts. & Hwys. Code § 10000 et seq.), and the Improvement Bond Act of 1915 (Sts. & Hwys. Code § 8500 et seq.) are adopted by Section 31519 for the purposes of this part, thus permitting repeal of the assessment procedure formerly provided in this part. See Recommendation Relating to Condemnation Law and Procedure: Special Improvement Acts, 11 Cal. L. Revision Comm'n Reports 0000 (1973). Most of the revisions of this part are needed to eliminate the special condemnation provisions and assessment procedures formerly contained in the part.

In revising the part to eliminate the special condemnation and assessment provisions, care has been taken to preserve any statutory authority granted in connection with the construction and operation of parking places. These grants have been revised in some cases to reflect the other revisions of the part.

Streets & Highways Code--heading of Part 1 of Division 18 (amended)

Sec. 9. The heading of Part 1 (commencing with Section 31500) of Division 18 of the Streets and Highways Code is amended to read:

Part 1. Vehicle Parking District Law of 1943

Streets & Highways Code § 31500 (amended)

Sec. 10. Section 31500 of the Streets and Highways Code is amended to read:

31500. This part may be cited as the Vehicle Parking District Law of 1943.

Streets & Highways Code § 31501 (repealed)

Sec. 11. Section 31501 of the Streets and Highways Code is repealed.

~~31501. Unless otherwise provided, the definitions contained in Chapter 1 of the Street Opening Act of 1903, Sections 4001 to 4012, inclusive, of the Streets and Highways Code govern the construction of this part, unless from the context of this part it clearly appears that a different meaning is intended.~~

Comment. The pertinent definitions from the Street Opening Act of 1903 have been added to this part. See Sections 31505, 31506.

Streets & Highways Code § 31502 (amended)

Sec. 12. Section 31502 of the Streets and Highways Code is amended to read:

31502. As used in this part, "parking places" includes parking lots, garages, and buildings, and other improvements for the parking of motor vehicles.

Comment. The amendment to Section 31502 picks up a phrase used in former Section 31505.

Streets & Highways Code § 31503 (repealed)

Sec. 13. Section 31503 of the Streets and Highways Code is repealed.

~~31503. As used in this part "city attorney" means:
(a) When used with reference to a city, the city attorney.
(b) When used with reference to a county having a county
counsel, the county counsel.
(c) When used with reference to a county not having a
county counsel, the district attorney.~~

Comment. Section 31503 has been repealed because it is unnecessary.

Streets & Highways Code § 31503 (added)

Sec. 14. Section 31503 is added to the Streets and Highways Code,
to read:

31503. As used in this part, "legislative body" means:

(a) When used with reference to a county, the board of supervisors.

(b) When used with reference to a city, the body which by law
constitutes the legislative department of the government of the city.

Comment. Section 31503, which uses the language of Streets and High-
ways Code Section 4002, continues the substance of the former definition
applicable to this part. See former Sts. & Hwys. Code § 31501.

Streets & Highways Code § 31504 (amended)

Sec. 15. Section 31504 of the Streets and Highways Code is amended
to read:

31504. As used in this part ~~with-reference-to-a-parking-district
partly-or-wholly-within-unincorporated-territory~~, "city" includes "county"
city, county, and city and county .

Streets & Highways Code § 31505 (repealed)

Sec. 16. Section 31505 of the Streets and Highways Code is repealed.

~~31505. Any portion of a county, incorporated, unincorpo-
rated, or both, may be formed into a vehicle parking district for
the purpose of acquiring, constructing, maintaining, and operat-
ing parking lots, garages, and other improvements for the park-
ing of motor vehicles.~~

Streets & Highways Code § 31505 (added)

Sec. 17. Section 31505 is added to the Streets and Highways Code, to read:

31505. As used in this part, "treasurer" means the county treasurer when used with reference to a county and the city treasurer when used with reference to a city. "Treasurer" also includes any person or officer who has charge and makes payments of the funds of such county or city, respectively.

Comment. Section 31505 adopts the substance of Streets and Highways Code Section 5008, which defines "treasurer" for the purposes of the Municipal Improvement Act of 1911. Also, the definition in Section 31505 continues the substance of the former definition applicable to this part. See former Sts. & Hwys. Code §§ 31501, 4004.

Streets & Highways Code § 31506 (repealed)

Sec. 18. Section 31506 of the Streets and Highways Code is repealed.

~~31506. In addition to matters specified elsewhere in this part, the acts authorized under this part include the following:~~

- (a) The formation of districts.
- (b) The acquisition of lands, property, and rights of way necessary or convenient for use as parking places.
- (c) The acquisition of lands, property, and rights of way necessary or convenient for the opening, widening, straightening, or extending of streets or alleys necessary or convenient for ingress to or egress from any parking place.
- (d) The acquisition by condemnation, purchase, or gift of property or any interest therein. Any lands or property necessary or convenient for parking places may be acquired in fee simple by condemnation or otherwise.
- (e) The improvement of any acquired lands by the construction thereon of garages or other buildings or improvements necessary or convenient for parking purposes.
- (f) The improvement of parking places, and any streets, or alleys necessary or convenient for ingress to or egress from parking places.
- (g) The levy and collection of assessments to pay the cost and expenses of any acquisition or improvement authorized by this part, and the issuance, sale, and payment of bonds representing and secured by such assessments.
- (h) The administration, maintenance, operation, and repair of parking places.
- (i) The collection of fees or charges to pay all or any part of the cost of improving, repairing, maintaining, and operating ~~parking places and of acquiring and improving additional parking places.~~

ALL
IN
STRIKEOUT

~~(j) The levy of taxes to pay all or any part of the cost of improving, repairing, maintaining, and operating parking places and of acquiring and improving additional parking places.~~

(k) The employment of engineers, attorneys, and other persons necessary or convenient for the doing of any act authorized by this part.

~~(l) The doing of all acts and things necessary or convenient for the accomplishment of the purposes of this part. The enumeration of specific authority in this part does not limit in any way the general authority granted by this subdivision.~~

ALL
IN
STRIKEOUT

Streets & Highways Code § 31506 (added)

Sec. 19. Section 31506 is added to the Streets and Highways Code, to read:

31506. A city may:

(a) Acquire property necessary or convenient for use as parking places, including any property necessary or convenient for ingress to or egress from any parking place, by condemnation, purchase, gift, lease, or any other means.

(b) Improve any property by the construction thereon of garages, buildings, or other improvements necessary or convenient for parking purposes.

(c) Improve parking places and any property necessary or convenient for ingress to or egress from parking places.

Comment. Section 31506 continues the substance of a portion of former Section 31506.

Streets & Highways Code § 31507 (repealed)

Sec. 20. Section 31507 of the Streets and Highways Code is repealed.

~~31507. Unless otherwise provided, all legislative authority and jurisdiction authorized under this part shall be exercised by the legislative body of the county or city with which the petition for the formation of the district was filed.~~

Streets & Highways Code § 31508 (repealed)

Sec. 21. Section 31508 of the Streets and Highways Code is repealed.

~~31508. Whenever any notice is to be given or posted pursuant to this part and the officer to give or post the notice is not designated, the notice shall be given or posted by the clerk of the legislative body. Any notice or posting shall not be invalidated because given or done by an officer other than the one whose duty it is to give the notice or perform the posting.~~

Streets & Highways Code § 31509 (repealed)

Sec. 22. Section 31509 of the Streets and Highways Code is repealed.

~~31509. Any proceedings taken, assessment levied, or bond issued pursuant to this part shall not be held invalid for failure to comply with the provisions of this part.~~

Streets & Highways Code § 31510 (repealed)

Sec. 23. Section 31510 of the Streets and Highways Code is repealed.

~~31510. Any procedure not expressly set forth in this part but deemed necessary or convenient to carry out any of its purposes is authorized.~~

Streets & Highways Code § 31511 (repealed)

Sec. 24. Section 31511 of the Streets and Highways Code is repealed.

~~31511. The remedies provided in this part for the enforcement of any assessment levied or bond issued pursuant to this part are not exclusive, and additional remedies may be provided at any time.~~

Streets & Highways Code § 31512 (repealed)

Sec. 25. Section 31512 of the Streets and Highways Code is repealed.

~~31512. The curative clauses of this part are cumulative, and each is to be given full effect.~~

Streets & Highways Code § 31513 (repealed)

Sec. 26. Section 31513 of the Streets and Highways Code is repealed.

~~31513. Any proceeding for the creation of a vehicle parking district and the acquisition and improvement of parking places pursuant to this part may be abandoned by the legislative body prior to the issuance of bonds for the acquisition and construction of the parking places.~~

Streets & Highways Code § 31514 (repealed)

Sec. 27. Section 31514 of the Streets and Highways Code is repealed.

~~31514. The Special Assessment Investigation, Limitation and Majority Protest Act of 1931 applies to the proceeding under this part.~~

Streets & Highways Code § 31515 (repealed)

Sec. 28. Section 31515 of the Streets and Highways Code is repealed.

~~31515. Notwithstanding any provision of this part, any proceeding for the formation of a vehicle parking district pursuant to this part and any proceeding under Sections 31861 and 31862 may provide for the acquisition of property for parking places or for both such acquisition and its improvement.~~

Streets & Highways Code § 31517.5 (repealed)

Sec. 29. Section 31517.5 of the Streets and Highways Code is repealed.

~~31517.5. Any proceedings under this part for the organization of a parking district in unincorporated territory which becomes incorporated during the pendency of the proceeding may be continued under this part following the incorporation as though there had been no incorporation.~~

Streets & Highways Code § 31519 (added)

Sec. 30. Section 31519 is added to the Streets and Highways Code, to read:

31519. The Improvement Act of 1911, the Municipal Improvement Act of 1913, and the Improvement Bond Act of 1915 may be used by a city for the purposes of this part.

Streets & Highways Code §§ 31530-31571 (repealed)

Sec. 31. Chapter 2 (commencing with Section 31530) of Part 1 of Division 18 of the Streets and Highways Code is repealed.

Streets & Highways Code §§ 31580-31585 (repealed)

Sec. . Chapter 2.1 (commencing with Section 31580) of Part 1 of Division 18 of the Streets and Highways Code is repealed.

Streets & Highways Code §§ 31590-31595 (repealed)

Sec. . Chapter 3 (commencing with Section 31590) of Part 1 of Division 18 of the Streets and Highways Code is repealed.

Streets & Highways Code §§ 31620-31642 (repealed)

Sec. . Chapter 4 (commencing with Section 31620) of Part 1 of Division 18 of the Streets and Highways Code is repealed.

Streets & Highways Code §§ 31670-31683 (repealed)

Sec. . Chapter 5 (commencing with Section 31670) of Part 1 of Division 18 of the Streets and Highways Code is repealed.

Streets & Highways Code §§ 31700-31710 (repealed)

Sec. . Chapter 6 (commencing with Section 31700) of Part 1 of Division 18 of the Streets and Highways Code is repealed.

Streets & Highways Code §§ 31730-31750 (repealed)

Sec. . Chapter 7 (commencing with Section 31730) of Part 1 of Division 18 of the Streets and Highways Code is repealed.

Streets & Highways Code § 31770 (repealed)

Sec. . Section 31770 of the Streets and Highways Code is repealed.

~~31770. Immediately upon the acquisition of the parking places pursuant to the petition for the formation of the district, a parking place commission shall be appointed. In the discretion of the legislative body, the commission may be appointed at any time prior to such acquisition and after the adoption of the ordinance declaring the district formed.~~

Streets & Highways Code § 31770.1 (amended)

Sec. 32. Section 31770.1 of the Streets and Highways Code is amended to read:

31770.1. At its discretion, the legislative body of any city may, by ordinance, provide for the appointment, removal, qualifications, terms of office, ~~and~~ number of members of parking place commissioners for such city. Such board shall have all of the powers and duties of parking place commissioners appointed under this part. Such board, so appointed, may be an existing board created by city charter or ordinance or a new board created by ordinance or a parking authority created by Chapter 2 (commencing with Section 32650) of Part 2 of this division . Such board may act for all ~~vehicle-parking-districts~~ parking places established within the city ~~under this part~~ or for such of the ~~districts~~ parking places as may be specified in the ordinance.

Streets & Highways Code § 31771 (repealed)

Sec. 33. Section 31771 of the Streets and Highways Code is repealed.

~~31771.--The-commission-may-consist-of-three-or-five-members.~~

Streets & Highways Code § 31772 (repealed)

Sec. 34. Section 31772 of the Streets and Highways Code is repealed.

~~31772.--Members-of-the-commission-shall-serve-without-compensation.~~

Streets & Highways Code § 31773 (repealed)

Sec. 35. Section 31773 of the Streets and Highways Code is repealed.

~~31773.--In-the-case-of-a-city,-members-of-the-commission-shall-be appointed-by-the-mayor,-subject-to-confirmation-by-the-legislative-body. In-the-case-of-a-county-they-shall-be-appointed-by-the-legislative-body.~~

Streets & Highways Code § 31774 (repealed)

Sec. 36. Section 31774 of the Streets and Highways Code is repealed.

~~31774. The commissioner shall hold office for the term of three years from the date of their appointment and qualification and until their successors are appointed and qualified, except that members of the first board appointed shall classify themselves by lot so that one member holds office for one year, one for two years, and one for three years, and in each instance, until a successor has been appointed and qualified.~~

ALL
IN
STRIKEOUT

Streets & Highways Code § 31775 (repealed)

Sec. 37. Section 31775 of the Streets and Highways Code is repealed.

~~31775. A commissioner may be removed by a four-fifths vote of the legislative body at any time.~~

Streets & Highways Code § 31776 (repealed)

Sec. 38. Section 31776 of the Streets and Highways Code is repealed.

~~31776. Commissioners shall be persons of business experience and ability and interested in the district to the end that the affairs of the district shall be administered in the interests of the district.~~

Streets & Highways Code § 31777 (repealed)

Sec. 39. Section 31777 of the Streets and Highways Code is repealed.

~~31777. A commissioner may be an owner or lessee of property, or an officer, employee, or agent of a corporation owning or leasing property, within the district or, in the case of a commission appointed under Section 31865, within one of the districts, or any other qualified person.~~

Streets & Highways Code § 31778 (repealed)

Sec. 40. Section 31778 of the Streets and Highways Code is repealed.

~~31778. Whenever a petition signed by the owners of more than one-half of the area of assessable land within the district requesting the removal of a commissioner is filed with the legislative body, it shall immediately remove him and appoint a new commissioner. The commissioner removed is ineligible to hold office as a commissioner of the district for one year following his removal. To secure the removal of a commissioner from a commission appointed under Section 31865, the petition shall be signed by the owners of more than one-half of the area of assessable land within each of a majority of the districts governed by the commission.~~

ALL
IN
STRIKEOUT

Streets & Highways Code § 31779 (repealed)

Sec. 41. Section 31779 of the Streets and Highways Code is repealed.

~~31779. The board of commissioners shall have possession and complete charge, supervision and control of all parking places:~~

(a) Acquired, constructed, and paid for, or to be paid for, by taxes upon land or real property or assessments upon land in the district.

~~(b) Acquired or constructed for the use or benefit of the district and paid for in any other manner.~~

ALL
IN
STRIKEOUT

Streets & Highways Code § 31782 (amended)

Sec. 42. Section 31782 of the Streets and Highways Code is amended

to read:

31782. The providing of adequate public parking places in cities ~~largely depends upon the formation of local vehicle parking districts~~ may require the use of assessment districts as authorized by Section 31519 . Such districts will be created and will be successful only if so operated as to serve adequately the property within the district. It is the intent of this part that the owners of real property in a ~~vehicle parking~~ an assessment district created pursuant to ~~this part~~ Section 31519 to provide parking places to solve the parking problems of the district , may receive preferential rates, charges, or rentals for themselves, their tenants, and the classes of persons who call upon or do business with them, all to the end that the property which bears the burden and provides a solution for the parking problem shall receive a special benefit.

Streets & Highways Code § 31791 (amended)

Sec. 43. Section 31791 of the Streets and Highways Code is amended to read:

31791. ~~To provide revenues for the district, at any time prior to the formation of the district, or after the formation of the district and~~ To expedite the conduct of proceedings and the making of any acquisition or improvement authorized by this part, the legislative body may, at any time prior to the appointment of a board of parking place commissioners, ~~the legislative body conducting the proceeding for the formation of the district~~ may enter into a contract or lease with any owner or tenant of property in the proposed assessment district under which the owner or tenant, for a specified rental or other consideration and for a specified period not exceeding 20 years, reserves a reasonable proportion or number of parking spaces in a parking place of the district for the use of the owner or tenant of such property, the employees of the owner or tenant performing services on the property, and the customers of, or other classes of persons designated by, the owner or tenant and entering the property as invitees or otherwise. After the appointment of a board of parking place commissioners, the board may make such contracts or leases.

Streets & Highways Code § 31792 (amended)

Sec. 44. Section 31792 of the Streets and Highways Code is amended to read:

31792. After the ~~improvements to be made under the initial proceeding inaugurated by the petition have been completed~~ appointment of the board of parking place commissioners, any further improvement of any parking place under its charge shall be made by the board ~~of commissioners~~.

Streets & Highways Code § 31853.5 (repealed)

Sec. 45. Section 31853.5 of the Streets and Highways Code is repealed.

~~31853.5. Whenever under this part an assessment may be levied, either in connection with the original formation of the district or subsequent thereto, for the purpose of acquiring parking places for the district, the lands to be acquired may include lands as to which the city has previously entered into a contract to purchase, whether or not the title to said lands has already passed to the city under such contract, and the proceeds of such assessment may be used to pay all or any part of the unpaid balance of the purchase price.~~

ALL
IN
STRIKEOUT

Streets & Highways Code § 31861 (amended)

Sec. 46. Section 31861 of the Streets and Highways Code is amended

to read:

31861. Whenever the board of commissioners determines by resolution that additional parking places should be acquired and improved by assessment upon land in the district, a certified copy of the resolution shall be filed with the legislative body. The legislative body may thereafter proceed to acquire the additional parking places and provide for their ~~payment and~~ improvement by a special assessment upon the land in the district ~~levied in accordance with benefits as~~ authorized by Section 31519 .

Streets & Highways Code § 31862 (repealed)

Sec. 47. Section 31862 of the Streets and Highways Code is repealed.

~~31862. Special assessment proceedings for the acquisition of additional parking places shall be commenced by the adoption of an ordinance of intention containing, so far as applicable, the matters specified in Sections 31538, 31539, 31540, and 31541. Thereafter the procedure specified in this part for the initial acquisition and improvement for a district, so far as applicable, shall be followed in such special assessment proceedings.~~

ALL
IN
STRIKEOUT

Streets & Highways Code § 31863 (repealed)

Sec. 48. Section 31863 of the Streets and Highways Code is repealed.

~~31863. The amount of any assessment levied under Sections 31861 and 31862, when added to the balance outstanding at the time the assessment is confirmed of all previous assessments levied under this part, excluding ad valorem taxes levied under Section 31822 but including supplementary assessments levied under Section 31707, shall not exceed thirty-five percent (35%) of the assessed valuation of all land in the district subject to assessment, as shown by the last equalized county assessment roll at the date the assessment is confirmed. As used in this section "balance outstanding of all previous assessments" means the total unpaid principal of assessment bonds which would be outstanding if bonds had been issued upon the entire amount of each previous assessment and if none of the bonds had been redeemed in advance of maturity.~~

ALL
IN
STRIKEOUT

Streets & Highways Code § 31864 (repealed)

Sec. 49. Section 31864 of the Streets and Highways Code is repealed.

~~31864. The Special Assessment Investigation, Limitation and Majority Protest Act of 1931 applies to special assessment proceedings for the acquisition of additional parking places and they may be terminated by a majority protest as provided in that act and in this part.~~

Streets & Highways Code § 31865 (repealed)

Sec. 50. Section 31865 of the Streets and Highways Code is repealed.

~~31865. As an alternative method of administration, upon request made to the legislative body of the city by the owners of fifty percent (50%) of the assessed value of taxable land in each vehicle parking district created in the city, as shown by the last equalized county assessment roll, the parking places acquired and constructed for the use or benefit of the districts shall be managed, operated, and controlled by a commission appointed to have charge of all parking places in the city acquired pursuant to this part.~~

ALL
IN
STRIKEOUT

Streets & Highways Code § 31867 (repealed)

Sec. 51. Section 31867 of the Streets and Highways Code is repealed.

~~31867. All claims for money or damages against the city are governed by Part 3 (commencing with Section 909) and Part 4 (commencing with Section 940) of Division 3.6 of Title 1 of the Government Code except as provided therein, or by other statutes or regulations expressly applicable thereto.~~

Comment. Section 31867 is repealed as unnecessary.

Streets & Highways Code § 31910 (amended)

Sec. 52. Section 31910 of the Streets and Highways Code is amended to read:

~~31910. At any time after the formation of a vehicle parking district and the levy of the initial assessment therefor, substitution~~ Substitution proceedings may be taken in the manner provided in this chapter if the legislative body determines that such substitution proceedings are necessary or desirable because of a change in circumstances ~~occurring after such levy.~~

Comment. Section 31910 is amended to delete the introductory clause which is no longer appropriate because of other revisions made in this part and is unnecessary in view of the restriction upon initiation of substitution proceedings provided in Section 31933.

Streets & Highways Code § 31915 (amended)

Sec. 53. Section 31915 of the Streets and Highways Code is amended to read:

31915. (a) Notice of hearing shall be by publication, posting, and mailing of the resolution proposing to order the making of a substitution, and such notice shall be given in the same manner and at the same times as provided for the ordinance of intention in Sections 31543 to 31546, inclusive, except that the posted copies of the resolution shall be

(b) The resolution shall be published once a week for two successive weeks in a newspaper published in the city or county. The first publication shall be not less than thirty (30) days prior to the date fixed for the hearing of protests. In cities or counties where no newspaper is published, copies of the resolution shall be posted in three public places in the district at least thirty (30) days before the date of hearing.

(c) Copies of the resolution headed "Notice of Parking District Substitution Proceedings" in letters at least one-half inch in height shall be posted upon all open streets within the proposed district. Notices shall be not more than three hundred (300) feet apart and shall be posted at least thirty (30) days prior to the hearing.

(d) A copy of the resolution shall be mailed, postage prepaid, by the clerk of the legislative body to each person to whom land in the district is assessed as shown on the last equalized county assessment roll, at his address as shown upon the roll, and to any person, whether owner in fee or having a lien upon, or legal or equitable interest in, any land within the district, whose name and address and a designation of the land in which he is interested is on file in the office of the clerk.

Comment. The amendment to Section 31915 incorporates the substance of the sections to which reference formerly was made in Section 31915. The sections to which Section 31915 formerly referred have been repealed.

Streets & Highways Code § 31932 (repealed)

Sec. 54. Section 31932 of the Streets and Highways Code is repealed.

~~31932. If following the adoption of the resolution of implementation the city sells all or any portion of the old property as permitted by Section 31928, the proceeds of any such sale shall be disposed of as follows:~~

(a) The proceeds of the sale of any old property which had been city-owned lands held subject to the provisions of this part pursuant to Section 31571 shall be held as district funds in an amount equal to the compensation, if any, theretofore paid to the city pursuant to Section 31571 and the balance of such proceeds shall be credited to the general fund of the city.

(b) The proceeds of the sale of any other old property shall be used, to the extent thereof, to reimburse the city for any of the costs and expenses referred to in Section 31931 which were paid from city funds, and the balance, if any, of the proceeds remaining after such reimbursement shall be held as district funds.

Any moneys held as district funds may be used for any ~~purpose for which revenue from fees, charges and rentals for the use of parking places of the district may be used.~~

ALL

IN

STRIKEOUT

Comment. Section 31932 is obsolete in view of the repeal of

Section 31571 in 1959. See Cal. Stats. 1959, Ch. 1702.

PARKING DISTRICT LAW OF 1951

Streets & Highways Code § 35276 (amended)

Sec. 55. Section 35276 of the Streets and Highways Code is amended to read:

35276. No action, proceeding or defense to correct, set aside, cancel, avoid, annul or otherwise attack any proceedings under this part up to and including the adoption of the ordinance declaring the district formed shall be maintained by any person unless such action, proceeding or defense is commenced or made within 30 days after the adoption of such ordinance. No action, proceeding or defense to correct, set aside, cancel, avoid, annul or otherwise attack any proceedings under this part taken subsequent to the adoption of said ordinance, including but not limited to proceedings taken and determinations made pursuant to Sections ~~35402.1~~, and 35402.3, shall be maintained by any person unless such action, proceeding or defense is commenced or made within 30 days after the taking of such proceedings.

35402

Comment. Section 35276 is amended to substitute a reference to Section 35402 for the reference to former Section 35402.1 which has been repealed.

Streets & Highways Code § 35400 (repealed)

Sec. 56. Section 35400 of the Streets and Highways Code is repealed.

~~35400. Before issuing any bonds the city shall contract for the purchase of the land, property, and rights of way to be acquired, which contracts may provide that the city's obligation to purchase thereunder shall be contingent upon the availability of funds from the sale of bonds and contributions, if any, or the city shall procure options to purchase such land, property, and rights of way, or, if all or any portion thereof cannot be acquired by contract or under option at a price which the legislative body deems satisfactory, the legislative body shall cause an action to be brought in the name of the city for its condemnation and, before issuing any bonds shall obtain a judgment in such action.~~

ALL
IN
STRIKEOUT

Comment. See the Comment to Section 35401.5.

Streets & Highways Code § 35401.5 (repealed)

Sec. 57. Section 35401.5 of the Streets and Highways Code is repealed.

~~35401.5. Except as otherwise provided in this part, any condemnation action brought hereunder shall be governed by those provisions of the Code of Civil Procedure which are applicable thereto; provided, however, that the time within which the proceedings may be abandoned pursuant to Section 1255a of said code is extended to the time within which the sum of money assessed must be paid pursuant to Section 1251 of said code. In any such condemnation action the ordinance declaring that the parking district is formed and describing the acquisitions and improvements to be made shall be conclusive evidence of the public necessity of the proposed acquisitions and improvements, that the property to be taken is necessary therefor and that the proposed acquisitions and improvements are planned and located in the manner which will be most compatible with the greatest public good and the least private injury.~~

ALL
IN
STRIKEOUT

Comment. Section 35401.5 has been repealed because it duplicated, overlapped, and was inconsistent with the general provisions of the Eminent Domain Law. Sections 35400 and 35402.5 have been repealed, and Sections 35402 and 35402.3 have been amended for the same reason. See Tentative Recommendation Relating to Conforming the Improvement Acts to the Eminent Domain Law, 11 Cal. L. Revision Comm'n Reports 0000 (1973).

Streets & Highways Code § 35402 (amended)

Sec. 58. Section 35402 of the Streets and Highways Code is amended to read:

35402. ~~When the amount to be paid for the land, property and rights of way finally determined to be acquired has been fixed by contract or by option or by a judgment, the legislative body may by ordinance, resolution, or indenture provide for the issuance of bonds of the district in an amount not exceeding that necessary to make the proposed acquisitions and improvements, to pay the incidental expenses in connection therewith and the proceedings therefor and to establish a reserve fund for the payment of the principal of and interest on the bonds, and for working capital and interest during the period of construction and for a period of not to exceed six (6) months thereafter, less any amount to be contributed by the city for such purposes.~~

the amount
estimated
to be

The

Comment. Section 35402 has been amended to permit the issuance of bonds based on the amount estimated to be the cost of the proposed acquisitions and improvements. The former limitation, which required that the cost of property acquisition be first determined by contract, option, or judgment before bonds could be issued, has been omitted because that limitation was inconsistent with the requirements of the Eminent Domain Law. See the Comment to Section 35401.5.

Streets & Highways Code § 35402.1 (repealed)

Sec. 59 . Section 35402.1 of the Streets and Highways Code is repealed.

~~35402.1. As an alternate procedure to that prescribed in Sections 35400 and 35402, the legislative body may issue bonds as provided in this part when the city has contracted or obtained options for the purchase of, or has obtained condemnation judgments covering, a portion of the land, property and rights-of-way to be acquired. Before issuing bonds under this section the legislative body shall give notice of its intention to do so by publication pursuant to Section 6066 of the Government Code in the newspaper in which the resolution of intention was published. Said notice shall specify a time for hearing objections to proceedings under this section which shall not be less than twenty (20) days after the first publication. At said hearing the legislative body shall hear and pass upon all objections and shall not issue bonds under this section unless following such hearing it shall determine that all of the territory within the district will be benefited by the acquisition of that portion of the land, property and rights-of-way which the city so has under contract, option or condemnation judgment. The decisions of the legislative body shall be final and conclusive. The legislative body may then by ordinance, resolution or indenture provide for the issuance of bonds of the district in an amount estimated to be necessary to make all of the proposed acquisitions and improvements and to pay the additional items specified in Section 35402.~~

ALL
IN
STRIKEOUT

Comment. Section 35402.1 is unnecessary in view of the revisions made in Section 35402. See also the Comment to Section 35401.5.

Streets & Highways Code § 35402.3 (amended)

Sec. 60. Section 35402.3 of the Streets and Highways Code is amended to read:

35402.3. If at any time, either before or after issuing bonds, the legislative body so determines, it may at one time or from time to time add to, eliminate, change or otherwise modify any of the proposed acquisitions and improvements after notice and hearing in the same manner as provided in Sections 35270 to 35272 but no such addition, elimination, change or modification shall be made unless following such hearing the legislative body shall determine that all of the territory within the district as originally formed or as changed pursuant to Section 35402.4, as the case may be, will be benefited by the acquisitions and improvements remaining after such addition, elimination, change or modification. Any such addition, elimination, change or modification shall be effected by an ordinance amending the ordinance declaring the district formed and describing the acquisitions and improvements to be made. ~~If a condemnation action has been brought on any property eliminated, such action may be dismissed as to the property eliminated even though a judgment has been entered, and a further condemnation action may be brought as to any property added.~~ No such addition, elimination, change or modification shall be made in violation of the provisions of any ordinance, resolution or indenture providing for bonds already issued.

Comment. Section 35402.3 is amended to delete a sentence relating to condemnation procedure; this matter is covered by the general provisions of the Eminent Domain Law. See the Comment to Section 35401.5.

Streets & Highways Code § 35450 (amended)

Sec. 61. Section 35450 of the Streets and Highways Code is amended to read:

35450. Unless otherwise provided, the definitions contained in ~~Chapter 1 (commencing with Section 4900) of Part 1 of Division 6 (the Street Opening Act of 1903).~~ Part 1 (commencing with Section 5000) of Division 7 (the Improvement Act of 1911), govern the construction of this chapter, unless from the context of this chapter it clearly appears that a different meaning is intended.

Comment. Section 35450 has been amended to adopt the definitions provided in the Improvement Act of 1911, the Street Opening Act of 1903 (formerly referred to in Section 35450) having been revised to delete most of the definitions formerly contained in that act.

Streets & Highways Code § 35469 (amended)

Sec. 62. Section 35469 of the Streets and Highways Code is amended

to read:

35469. The assessment shall be made, notice given, hearing held, and the assessment confirmed and recorded substantially in the manner provided in Chapter ~~11 (commencing with Section 4270) of Part 1 of Division 6 (the Street Opening Act of 1903)~~ 16 (commencing with Section 5360) of Part 3 of Division 7 (the Improvement Act of 1911), and the provisions of that chapter relating to the method of making or spreading the assessment, the giving of notice, the making and waiving of objections, appeals or protests, the holding of the hearing, the finality and conclusiveness of the decisions and determinations of the legislative body, and the confirmation and recordation of the assessment are adopted as the procedure to be followed pursuant to this chapter. Except as provided by this chapter, all of the powers and authority granted in Chapter ~~11 (commencing with Section 4270) of Part 1 of Division 6 (the Street Opening Act of 1903)~~ 16 (commencing with Section 5360) of Part 3 of Division 7 (the Improvement Act of 1911) are applicable to any assessment to be levied pursuant to this chapter.

Comment. Section 35469 has been amended to substitute a reference to the relevant chapter of the Improvement Act of 1911 for Chapter 11 of the Street Opening Act of 1903, which has been repealed. Conforming substitutions have been made in Section 35469.5.

Streets & Highways Code § 35469.5 (amended)

Sec. 63. Section 35469.5 of the Streets and Highways Code is amended

to read:

35469.5. The notice published pursuant to Section ~~4280~~ and the notices mailed pursuant to Section ~~4281~~ shall also contain a statement that the legislative body has declared its intention to take proceedings under this chapter for the levy of an assessment to provide funds necessary for the redemption of the outstanding bonds and shall state the maximum interest rate on and term of bonds to be issued to represent unpaid assessments. The notice shall also state that any person who has any objection to such proceedings for the levy of such assessment may file a written protest not later than the hour set for the hearing as stated in said notice.

5362

5363

Comment. See the Comment to Section 35469.