

*** This document is current through the 2017 Supplement ***
(All 2016 legislation)

STREETS AND HIGHWAYS CODE
Division 18. Parking
Part 6. Parking and Business Improvement Area Law of 1989

Cal Sts & Hy Code Div. 18, Pt. 6 (2017)

CHAPTER 1. General Provisions [36500 - 36515]

ARTICLE 1. Declarations [36500 - 36504]

36500. Citation of part

This part shall be known and may be cited as the "Parking and Business Improvement Area Law of 1989."

36501. Legislative findings and declarations

- (a) The Legislature finds and declares that businesses located and operating within the business districts of this state's communities are economically disadvantaged, are underutilized, and are unable to attract customers due to inadequate facilities, services, and activities in the business districts.
- (b) The Legislature also finds and declares that it is in the public interest to promote the economic revitalization and physical maintenance of the business districts of its cities in order to create jobs, attract new businesses, and prevent erosion of the business districts.
- (c) The Legislature also finds that it is of particular local benefit to allow cities to fund property related improvements and activities through the levy of assessments upon the businesses which benefit from those improvements and activities.
- (d) The Legislature also finds and declares that tourism is a large and growing contributor to California's economy, and that promotion of a city's or county's scenic, recreational, cultural, and other attractions as a tourist destination is an important public purpose.
- (e) The Legislature also finds and declares that assessments levied for the purpose of providing improvements and promoting activities which benefit individual businesses may also benefit the property within the area directly or indirectly and that those assessments are not taxes for the general benefit of a city, but are assessments for the improvements and activities which confer special benefits upon the businesses for which the improvements and activities are provided.

36502. Purpose of part

The purpose of this part is to recodify and supplant previously enacted provisions of law which authorize cities to levy assessments on businesses within a parking and business improvement area and to provide a uniform procedure to levy assessments for improvements and activities of businesses located and operating in a business district of a city. This part does not affect or limit any other provisions of law authorizing or providing for the furnishing of improvements or activities or the raising of revenue for these purposes. In addition, this part is intended to provide a method for financing public programs to attract tourist visits to areas where tourism is economically important and desired.

36503. Conflict of law

Any provision of this part which conflicts with any other provision of law shall prevail over the other provision of law.

36504. Liberal construction

This part is intended to be construed liberally and, if any provision is held invalid, the remaining provisions shall remain in full force and effect. If the provisions of this part respecting the levying of assessments are held invalid in any area within which assessments have been levied pursuant to Chapter 3 (commencing with Section 36530), the assessments shall be reimposed in an identical amount and upon the same businesses as a matter of law and no lapse in the levy of any assessment shall be deemed to have occurred. Assessments levied under this part are not special taxes.

ARTICLE 2. Definitions [36505 - 36513]

36505. "Advisory board"

"Advisory board" means the advisory board or commission appointed by the city council pursuant to Section 36530.

36506. "Assessment"

"Assessment" means a levy for the purpose of acquiring, constructing, installing, or maintaining improvements and promoting activities which will benefit the businesses located and operating within a parking and business improvement area.

36507. "Business"

"Business" means all types of businesses and includes financial institutions and professions.

36508. “City”

“City” means a city, county, city and county, or an agency or entity created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, the public member agencies of which include only cities, counties, or a city and county.

36509. “City council”

“City council” means the city council of a city or the board of supervisors of a county, or the agency, commission, or board created pursuant to a joint powers agreement and which is a city within the meaning of this part.

36509.5. “Clerk”

“Clerk” means clerk of the legislative body.

36510. “Improvement”

“Improvement” means the acquisition, construction, installation, or maintenance of any tangible property with an estimated useful life of five years or more including, but not limited to, the following:

- (a) Parking facilities.
- (b) Benches.
- (c) Trash receptacles.
- (d) Street lighting.
- (e) Decorations.
- (f) Parks.
- (g) Fountains.

36511. “Parking and business improvement area”

“Parking and business improvement area,” or “area,” means an area designated as provided in this part.

36512. “Property”

“Property” means real property situated within an area.

36513. “Activities”

“Activities” means, but is not limited to, all of the following:

- (a) Promotion of public events which benefit businesses in the area and which take place on or in public places within the area.
- (b) Furnishing of music in any public place in the area.
- (c) Promotion of tourism within the area.
- (d) Activities which benefit businesses located and operating in the area.

ARTICLE 3. Prior Law [36515- 36515.]

36515. Effect of act on prior law

Every improvement area established prior to January 1, 1990, pursuant to the Parking and Business Improvement Area Law of 1979 (former Part 6 (commencing with Section 36500) of this division) is hereby declared valid and effective and is unaffected by the repeal of that law, but is subject to Chapters 3 (commencing with Section 36530), 4 (commencing with Section 36540), and 5 (commencing with Section 36550) of this part rather than any provision of prior law.

CHAPTER 2. Establishment [36520 - 36529]

36520. Establishment of parking and business improvement area

A parking and business improvement area may be established as provided in this chapter.

36521. Establishment on council's initiative

The city council may establish an area on its own initiative.

36521.5. Consent required for formation of area within territorial jurisdiction of city

A county may not form an area within the territorial jurisdiction of a city without the consent of the city council of that city. A city may not form an area within the unincorporated territory of a county, without the consent of the board of supervisors of that county. A city may not form an area within the territorial jurisdiction of another city without the consent of the city council of the other city.

36522. Resolution of intention to establish area

Proceedings to establish a parking and business improvement area shall be instituted by the adoption by the city council of a resolution of intention to establish the area.

The resolution of intention shall do all of the following:

- (a) State that a parking and business improvement area is proposed to be established pursuant to this chapter and describe the boundaries of the territory proposed to be included in the area and the boundaries of each separate benefit zone to be established within the area. The boundaries of the area may be described by reference to a map on file in the office of the clerk, showing the proposed area.
- (b) State the name of the proposed area.
- (c) State the type or types of improvements and activities proposed to be funded by the levy of assessments on businesses in the area. The resolution of intention shall specify any improvements to be acquired.

- (d) State that, except where funds are otherwise available, an assessment will be levied annually to pay for all improvements and activities within the area.
- (e) State the proposed method and basis of levying the assessment in sufficient detail to allow each business owner to estimate the amount of the assessment to be levied against his or her business.
- (f) State whether new businesses will be exempt from the levy of the assessment, pursuant to Section 36531.
- (g) Fix a time and place for a public hearing on the establishment of the parking and business improvement area and the levy of assessments, which shall be consistent with the requirements of Section 54954.6 of the Government Code.
- (h) State that at the hearing the testimony of all interested persons for or against the establishment of the area, the extent of the area, or the furnishing of specified types of improvements or activities will be heard.
- (i) Describe, in summary, the effect of protests made by business owners against the establishment of the area, the extent of the area, and the furnishing of a specified type of improvement or activity, as provided in Section 36524.

36523. Notice of public hearing

Notice of a public hearing held under Section 36524, 36541, 36542, or 36550 shall be given by both of the following:

- (a) Publishing the resolution of intention in a newspaper of general circulation in the city once, for at least seven days before the public hearing.
- (b) Mailing of a complete copy of the resolution of intention by first-class mail to each business owner in the area within seven days of the city council's adoption of the resolution of intention.
- (c) Notwithstanding subdivision (b), in the case of an area established primarily to promote tourism, a copy of the resolution of intention shall be mailed by first-class mail within seven days of the city council's adoption of the resolution of intention, to the owner of each business in the area which will be subject to assessment.

36523.5. Notice prior to adopting new or increased assessment

Notwithstanding Section 36523, prior to adopting any new or increased assessment, the city council shall give notice pursuant to Section 54954.6 of the Government Code in lieu of publishing notice pursuant to subdivision (a) of Section 36523.

36524. Protests against establishment of area; Considerations

(a) At the public hearing, the city council shall hear and consider all protests against the establishment of the area, the extent of the area, or the furnishing of specified types of improvements or activities within the area. A protest may be made orally or in writing by any interested person. Any protest pertaining to the regularity or sufficiency of the proceedings shall be in writing and shall clearly set forth the irregularity or defect to which the objection is made.

(b) Every written protest shall be filed with the clerk at or before the time fixed for the public hearing. The city council may waive any irregularity in the form or content of any written protest and at the public hearing may correct minor defects in the proceedings. A written protest may be withdrawn in writing at any time before the conclusion of the public hearing.

(c) Each written protest shall contain a description of the business in which the person subscribing the protest is interested sufficient to identify the business and, if a person subscribing is not shown on the official records of the city as the owner of the business, the protest shall contain or be accompanied by written evidence that the person subscribing is the owner of the business. A written protest which does not comply with this section shall not be counted in determining a majority protest.

36525. Protests as condition precedent to suspension of proceedings

(a) If written protests are received from the owners of businesses in the proposed area which will pay 50 percent or more of the assessments proposed to be levied and protests are not withdrawn so as to reduce the protests to less than that 50 percent, no further proceedings to create the specified parking and business improvement area or to levy the proposed assessment, as contained in the resolution of intention, shall be taken for a period of one year from the date of the finding of a majority protest by the city council.

(b) If the majority protest is only against the furnishing of a specified type or types of improvement or activity within the area, those types of improvements or activities shall be eliminated.

36526. Modifications and other changes to improvement area

(a) At the conclusion of the public hearing to establish the area, the city council may adopt, revise, change, reduce, or modify the proposed assessment or the type or types of improvements and activities to be funded with the revenues from the assessments.

(b) At the public hearing, the city council may only make changes in, to, or from, the boundaries of the proposed parking and business improvement area

that will exclude territory which will not benefit from the proposed improvements or activities. However, proposed assessments may only be revised by reducing any or all of them.

(c) The city council shall not change the boundaries of the area to include any territory that will not, in its judgment, benefit by the improvement or activity. Any addition of territory to the proposed boundaries of the area may be made only upon notice to the owners of the businesses proposed to be added to the area, as provided in Section 36523, and upon a public hearing on the addition of territory, as provided in Section 36524.

36527. Ordinance establishing area; Contents

If the city council, following the public hearing, decides to establish the proposed parking and business improvement area, it shall adopt an ordinance to that effect.

The ordinance shall contain all of the following:

- (a) The number, date of adoption, and title of the resolution of intention.
- (b) The time and place where the public hearing was held concerning the establishment of the area.
- (c) A determination regarding any protests received at the public hearing.
- (d) The description of the boundaries of the area and of each separate benefit zone established within the area.
- (e) A statement that a parking and business improvement area has been established and the name of the area.
- (f) A statement that the businesses in the area established by the ordinance shall be subject to any amendments to this part.
- (g) The description of the method and basis of levying the assessments, with a breakdown by classification of businesses if a classification is used.
- (h) A statement that the improvements and activities to be provided in the area will be funded by the levy of the assessments. The revenue from the levy of assessments within an area shall not be used to provide improvements or activities outside the area or for any purpose other than the purposes specified in the resolution of intention, as modified by the city council at the hearing concerning establishment of the area.
- (i) A finding that the businesses and the property within the business and improvement area will be benefited by the improvements and activities funded by the assessments proposed to be levied. In the case of an area formed to promote tourism, only businesses that benefit from tourist visits may be assessed.
- (j) The time and manner of collecting the assessments.

36528. Establishment of separate benefit zones

The city council may establish one or more separate benefit zones within the area based upon the degree of benefit derived from the improvements or activities to be provided within the benefit zone and may impose a different assessment within each benefit zone.

36529. Provisions applicable to benefit zones

All provisions of this part applicable to the establishment, modification, or disestablishment of a parking and business improvement area apply to the establishment, modification, or disestablishment of benefit zones. The city council shall, to establish, modify, or disestablish a benefit zone, follow the procedure to establish, modify, or disestablish a parking and business improvement area.

CHAPTER 3. Assessments [36530 - 36537]

36530. Classification of businesses; Assessments

The city council shall appoint an advisory board which shall make a recommendation to the city council on the expenditure of revenues derived from the levy of assessments pursuant to this part, on the classification of businesses, as applicable, and on the method and basis of levying the assessments. The city council may designate existing advisory boards or commissions to serve as the advisory board for the area or may create a new advisory board for that purpose. The city council may limit membership of the advisory board to persons paying the assessments under this part. The city council may appoint the advisory board prior to adoption of the resolution of intention to create the area, so that the advisory board may recommend the provisions of the resolution of intention.

36531. Business assessments; Exemptions

The city council may exempt a business recently established in the area from the levy of the assessments, for a period not to exceed one year from the date the business commenced operating in the area. The city council shall state its determination to so exempt new businesses in the resolution of intention to establish the area and shall reaffirm its determination annually in the resolution of intention required to be adopted pursuant to Section 36534.

36532. Collection of assessments

The collection of the assessments levied pursuant to this part shall be made at the time and in the manner set forth by the city council in the ordinance establishing the area.

36533. Assessment Report

(a) The advisory board shall cause to be prepared a report for each fiscal year for which assessments are to be levied and collected to pay the costs of the improvements and activities described in the report. The report may propose changes, including, but not limited to, the boundaries of the parking and business improvement area or any benefit zones within the area, the basis and method of levying the assessments, and any changes in the classification of businesses, if a classification is used.

(b) The report shall be filed with the clerk and shall refer to the parking and business improvement area by name, specify the fiscal year to which the report applies, and, with respect to that fiscal year, shall contain all of the following:

(1) Any proposed changes in the boundaries of the parking and business improvement area or in any benefit zones within the area.

(2) The improvements and activities to be provided for that fiscal year.

(3) An estimate of the cost of providing the improvements and the activities for that fiscal year.

(4) The method and basis of levying the assessment in sufficient detail to allow each business owner to estimate the amount of the assessment to be levied against his or her business for that fiscal year.

(5) The amount of any surplus or deficit revenues to be carried over from a previous fiscal year.

(6) The amount of any contributions to be made from sources other than assessments levied pursuant to this part.

(c) The city council may approve the report as filed by the advisory board or may modify any particular contained in the report and approve it as modified. The city council shall not approve a change in the basis and method of levying assessments that would impair an authorized or executed contract to be paid from the revenues derived from the levy of assessments.

36534. Resolution of Intention

(a) After the approval of the report, the city council shall adopt a resolution of intention to levy an annual assessment for that fiscal year. The resolution of intention shall do all of the following:

(1) Declare the intention of the city council to change the boundaries of the parking and business improvement area, or in any benefit zone within the area, if the report filed pursuant to Section 36533 proposes a change.

(2) Declare the intention of the city council to levy and collect assessments within the parking and business improvement area for the fiscal year stated in the resolution.

(3) Generally describe the proposed improvements and activities authorized by the ordinance enacted pursuant to Section 36527 and any substantial changes proposed to be made to the improvements and activities.

(4) Refer to the parking and business improvement area by name and indicate the location of the area.

(5) Refer to the report on file with the clerk for a full and detailed description of the improvements and activities to be provided for that fiscal year, the boundaries of the area and any benefit zones within the area, and the proposed assessments to be levied upon the businesses within the area for that fiscal year.

(6) Fix a time and place for a public hearing to be held by the city council on the levy of the proposed assessment for that fiscal year. The public hearing shall be held not less than 10 days after the adoption of the resolution of intention.

(7) State that at the public hearing written and oral protests may be made. The form and manner of protests shall comply with Sections 36524 and 36525.

(b) The clerk shall give notice of the public hearing by causing the resolution of intention to be published once in a newspaper of general circulation in the city not less than seven days before the public hearing.

36535. Time and place specified for public hearing

(a) The city council shall hold the public hearing at the time and in the place specified in the resolution of intention. The public hearing shall be conducted as provided in Sections 36524 and 36525. The city council may continue the public hearing from time to time.

(b) During the course or upon the conclusion of the public hearing, the city council may order changes in any of the matters provided in the report, including changes in the proposed assessments, the proposed improvements and activities to be funded with the revenues derived from the levy of the assessments, and the proposed boundaries of the area and any benefit zones within the area. The city council shall not change the boundaries to include any territory that will not, in its judgment, benefit by the improvement or activity.

(c) At the conclusion of the public hearing, the city council may adopt a resolution confirming the report as originally filed or as changed by it. The

adoption of the resolution shall constitute the levy of an assessment for the fiscal year referred to in the report.

(d) Notwithstanding subdivision (c), if the primary purpose of the area is promotion of tourism, the city council may adopt a resolution confirming the report as submitted by the advisory board, or may adopt a resolution continuing the program and assessments as levied in the then current year without change, and that resolution shall constitute the levy of an assessment for the fiscal year referred to in the report. As an alternative, the city council may modify the report and adopt a resolution confirming the report as modified, but in that case the city council may adopt the resolution only after providing notice of the proposed changes as specified in Section 36523 and only after conducting a public hearing on the resolution as provided in Sections 36524 and 36525.

36536. Assessments levied pursuant to benefits to businesses

The assessments levied on businesses pursuant to this part shall be levied on the basis of the estimated benefit to the businesses and property within the parking and business improvement area. The city council may classify businesses for purposes of determining the benefit to a business of the improvements and activities provided pursuant to this part.

36537. Validity of assessment

The validity of an assessment levied under this part shall not be contested in any action or proceeding unless the action or proceeding is commenced within 30 days after the resolution levying the assessment is adopted pursuant to Section 36535. Any appeal from a final judgment in an action or proceeding shall be perfected within 30 days after the entry of judgment.

**CHAPTER 4. Modification of Boundaries, Assessments, Improvements, or Activities
[36540 - 36542]**

36540. Modification of boundaries, assessments, improvement or activities

In addition to the changes authorized to be made in the annual report filed with the city council pursuant to Section 36533 or at the conclusion of the public hearing on the annual levy of the assessments, the advisory board may, at any time, recommend that the city council modify the boundaries of the area, any benefit zones within the area, the basis and method of levying the assessments, and any improvements or activities to be funded with the revenues derived from the levy of the assessments. Any modification shall be made pursuant to this chapter.

36541. Ordinance required prior to modifying assessments or boundaries

(a) The city council shall modify the basis and method of levying the assessment or the boundaries of the area by adopting an ordinance after holding a public hearing on the proposed modification.

(b) The city council shall adopt a resolution of intention which states the proposed modification prior to the public hearing required by this section. The public hearing shall be consistent with the requirements of Section 54954.6 of the Government Code. Notice of the public hearing shall be published and shall be mailed to each owner of a business affected by the proposed modification, as provided in Section 36523. The public hearing shall be conducted as provided in Sections 36524 and 36525.

36542. Improvements and activities funded by assessments

(a) The city council may modify the improvements and activities to be funded with the revenue derived from the levy of the assessments by adopting a resolution determining to make the modifications after holding a public hearing on the proposed modifications. Notice of the public hearing and the proposed modifications shall be published as provided in Section 36523.

(b) The public hearing shall be conducted as provided in Sections 36524 and 36525.

CHAPTER 5. Disestablishment [36550 - 36551]

36550. Disestablishment

(a) The city council may disestablish an area by adopting an ordinance after holding a public hearing on the disestablishment, as provided in this section.

(b) The city council shall adopt a resolution of intention to disestablish the area prior to the public hearing required by this section. The resolution shall state the reason for the disestablishment, shall state the time and place of the public hearing, and shall contain a proposal to dispose of any assets acquired with the revenues of the assessments levied within the parking and business improvement area. The public hearing shall be held not less than 20 or more than 30 days after the adoption of the resolution of intention. Notice of the public hearing shall be published as provided in Section 36523.

36551. Refunds to business owners; Criteria

(a) Upon the disestablishment of an area, any remaining revenues derived from the levy of assessments, or any revenues derived from the sale of assets acquired with the revenues, shall be refunded to the owners of the businesses then located and operating within the area in which assessments were levied

by applying the same method and basis that was used to calculate the assessments levied in the fiscal year in which the area is disestablished.

(b) If the disestablishment occurs before an assessment is levied for the fiscal year, the method and basis that was used to calculate the assessments levied in the immediate prior fiscal year shall be used to calculate the amount of any refund. Notice of the disestablishment of an area shall be published once in a newspaper of general circulation in the city, not later than 15 days after the ordinance disestablishing the area is adopted.