

HOWARD JARVIS, Founder (1903-1986)
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April 20, 2017

Mayor Darrell Steinberg and
Members of the City Council
City of Sacramento
915 I Street
Sacramento, CA 95814

Re: Proposed Streetcar Tax

Dear Mayor Steinberg and City Council,

The City has formed a Mello-Roos Community Facilities District comprised of specially selected, noncontiguous Assessor's Parcel Numbers called the Sacramento Streetcar CFD No. 2017-01.

The Howard Jarvis Taxpayers Association (HJTA) has reviewed the City's proposal to conduct an election limited to landowners (as opposed to registered voters) to approve a special tax to be levied within the CFD.

HJTA generally agrees with the concept that those who pay taxes should have the right to vote to tax (or not tax) themselves. However, HJTA also has a record of fighting attempts by government to manipulate elections.

The purpose of this letter is to put the City on notice that, if it declares the tax passed with approval by a two-thirds, but less than unanimous, vote, any landowner who voted against the tax may have legal grounds to challenge it.

The City is relying on Government Code section 53326(b) whereunder, if fewer than twelve registered voters have resided within the District for 90 days, then the election shall be by landowners, with each having one vote for every acre or portion of an acre he owns within the District.

However, that provision of section 53326 was found unconstitutional in *City of San Diego v. Shapiro* (2014) 228 Cal.App.4th 756, which ruled that a Mello-Roos special tax approved in an election where only owners and lessees of land were allowed to vote was invalid, even though the tax would

be imposed only on such owners and lessees. Relying on past precedent, the Court held that landowners and lessees were neither “qualified electors” of the district under Proposition 13 (Article XIII A), nor a proper “electorate” under Proposition 218 (Article XIII C).

The Mello-Roos Act itself acknowledges the “qualified electors” requirement in Propositions 13 and 218, and attempts to accommodate it through a special finding. Section 53329.6 of the Act provides: “The Legislature hereby finds and declares that any unanimous approval [by landowners] constitutes the vote of the qualified elector in favor of the matters addressed in the unanimous approval for purposes of the California Constitution, including, but not limited to, Articles XIII A and XIII C.”

Thus even the Mello-Roos Act acknowledges that approval by less than a unanimous vote of landowners may expose the City to a lawsuit to invalidate the tax.

HJTA has taken no position for or against the City’s desire to build a streetcar line. But as advocates for taxpayers, we want city officials to be aware of the potential legal and fiscal repercussions of its proposal to partially fund the project through a special tax approved by a two-thirds landowner vote.

Sincerely,



Jon Coupal
President

cc: Sacramento Bee
Sacramento Taxpayers Association
Eye on Sacramento