

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

relating to

**Condemnation Law and Procedure
Conforming Changes in Improvement Acts**

January 1974

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

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NOTE

This pamphlet begins on page 1001. The Commission's annual reports and its recommendations and studies are published in separate pamphlets which are later bound in permanent volumes. The page numbers in each pamphlet are the same as in the volume in which the pamphlet is bound. The purpose of this numbering system is to facilitate consecutive pagination of the bound volumes. This pamphlet will appear in Volume 12 of the Commission's *Reports, Recommendations, and Studies*.

This recommendation includes an explanatory Comment to each section 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.

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October 23, 1973

To: THE HONORABLE RONALD REAGAN
Governor of California and
THE LEGISLATURE OF CALIFORNIA

The California Law Revision Commission was directed by Resolution Chapter 130 of the Statutes of 1965 to make a study of condemnation law and procedure. The Commission herewith submits its recommendation relating to one aspect of this study—changes in the improvement acts that are necessary to conform those acts to the general provisions relating to condemnation law and procedure.

The Commission wishes to acknowledge the substantial assistance it received from various city attorneys and others in preparing this recommendation. The Commission is especially grateful to Messrs. Philip D. Assaf and Richard G. Randolph, San Mateo attorneys.

Respectfully submitted,
JOHN D. MILLER
Chairman

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BACKGROUND

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 commonly 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 require no revisions to conform with the general eminent domain provisions.

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 the Commission plans to submit to the 1975 Legislature. 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 1921,⁸ the Vehicle Parking District Law of 1943,⁹ and the Parking District Law of 1951.¹⁰ Each of these acts provides for the same general procedure, the essential elements of which are:

- (1) An eminent domain proceeding is commenced.
- (2) An interlocutory judgment is obtained.

¹ For a description of the California special assessment procedures under the improvement acts commonly 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*, relating to the change of grade procedure within the Improvement Act of 1911—Part 4 (Sections 6000-6123) of Division 7 of the Streets and Highways Code.

⁶ STS. & HWYS. CODE § 4000 *et seq.*

⁷ GOVT. CODE § 38000 *et seq.*

⁸ GOVT. CODE § 39000 *et seq.*

⁹ STS. & HWYS. CODE § 31500 *et seq.*

¹⁰ STS. & HWYS. CODE § 35100 *et seq.*

(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 acts apparently was designed to permit a public entity to obtain a judgment as to the value of the property needed for the improvement and to 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 when an eminent domain proceeding is abandoned. In addition, these acts include other provisions that are inconsistent with the general eminent domain law; they include special valuation rules and condemnation provisions, special valuation commissions, and provision for 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 is no justification for further 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 from 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

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).

¹³ See, e.g., GOVT. CODE §§ 23014, 25210.9c; STS. & HWYS. CODE §§ 5102, 10210.

¹⁴ See, e.g., STS. & HWYS. CODE §§ 5360, 5520.

The special eminent domain provisions are so integrated with the special assessment provisions in these improvement acts that it is not practical merely to 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 general eminent domain provisions but it will also 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. These statutes are noted below.

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 700 sections, the amendment of 27 sections, and the enactment of 22 new sections.

RECOMMENDATIONS

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 general eminent domain law. The act also contains special assessment provisions.

The special condemnation procedure provisions and the special assessment provisions of the Park and Playground Act of 1909 should be repealed, leaving only the authorization to exercise the power of eminent domain for parks, urban open space lands, playgrounds, and libraries. A provision should be added 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 such improvements.

¹⁵ See GOVT. CODE §§ 38002 (defining “improvement”) and 38010 (authorizing acquisition of land by condemnation for “improvements”).

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 and 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 authority to exercise the power of eminent domain for such improvements. A provision should be added 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 authorized under the act.

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

¹⁶ See GOVT. CODE §§ 39002 (defining “improvement”) and 39040 (authorizing acquisition of property for construction of improvements).

Opening Bond Act of 1911. Moreover, the recommended revisions of the Street Opening Act of 1903 and the Park and Playground Act of 1909 would permit the issuance of bonds under the Improvement Act of 1911 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 1911.¹⁷

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, leaving the provisions of the act that authorize the construction and operation of parking places and that authorize the acquisition of property by eminent domain for that purpose. A provision should be added 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 authorized under the act. Various other technical and conforming revisions should be made.¹⁸

¹⁷ 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.*).

¹⁸ See Proposed Legislation *infra*.

Parking District Law of 1951

The Parking District Law of 1951—Streets and Highways Code Sections 35100–35708—provides an ad valorem assessment rather than a direct lien assessment. For this reason, the act supplies 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 general eminent domain provisions. The act requires 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.¹⁹ The act should be revised to conform 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.²⁰

PROPOSED LEGISLATION

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

An act to amend Section 61715 of, to add Chapter 7 (commencing with Section 38000) to Part 2 of Division 3 of Title 4 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, to amend Sections 4771 and 6541 of the Health and Safety Code, to amend Section 17010 of the Public Utilities Code, and to amend Sections 5150.5, 10207, 10600, 31502, 31504, 31781, 31782, 31791, 31792, 31861, 31910, 31915, 35276, 35402, 35402.3, 35450, 35469, and 35469.5 of, to add Sections 11011, 31503, 31505, 31506, and 31519 to, to add Part 1 (commencing with Section 4000) to Division 6 of, to add Chapter 2.1 (commencing

¹⁹ 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.

²⁰ See Proposed Legislation *infra*.

with Section 31580) to Part 1 of Division 18 of, to repeal Sections 31501, 31503, 31505, 31506, 31507, 31508, 31509, 31510, 31511, 31512, 31513, 31514, 31515, 31517.5, 31853.5, 31862, 31863, 31864, 31867, 31932, 35400, 35401.5, and 35402.1 of, to repeal Parts 1 (commencing with Section 4000) and 2 (commencing with Section 4500) of Division 6 of, to repeal Part 4 (commencing with Section 6000) of Division 7 of, and 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, the Streets and Highways Code, and to amend Sections 31502, 36455.1, 56100, 56104, and 74900 of the Water Code, relating to public improvements.

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

Park and Playground Act of 1909

Government Code §§ 38000–38213 (repealed)

SECTION 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 §§ 38000–38011 (added)

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 *Recommendation Relating to Condemnation Law and Procedure: Conforming Changes in Improvement Acts*, 12 CAL. L. REVISION COMM'N REPORTS 1001 (1974).

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 chapter. See *Recommendation Relating to Condemnation Law and Procedure: Conforming Changes in Improvement Acts*, 12 CAL. L. REVISION COMM'N REPORTS 1001 (1974).

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 the 1911 and 1913 improvement acts and the Improvement Bond Act of 1915, replaces the assessment provisions formerly included in this chapter. "Improvement" is defined in Section 38002. For examples of similar incorporations of the statutes referred to, see GOVT. CODE § 61715; HEALTH & SAF. CODE §§ 4771, 6541; PUB. UTIL. CODE § 17010; STS. & HWYS. CODE §§ 4091, 31519; and WATER CODE §§ 31502, 36455.1, 56100, 56104, 74900.

Sewer Right of Way Law of 1921

Government Code §§ 39000–39374 (repealed)

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 GOVT. CODE § 39002 defining "improvement" to mean "sewers and drains for sanitary or drainage purposes") *with* STS. & HWYS. CODE §§ 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 or were inconsistent with the general provisions of the Code of Civil Procedure relating to condemnation. See *Recommendation Relating to Condemnation Law and Procedure: Conforming Changes in Improvement Acts*, 12 CAL. L. REVISION COMM'N REPORTS 1001 (1974).

Community Services Districts

Government Code § 61715 (technical amendment)

SEC. 4. Section 61715 of the Government Code is amended to read:

61715. Whenever, in the opinion of the board, the public interest or convenience may require, it may order to be done in, under, or upon the whole or any portion of any one or more of the streets or public places of the district, or any property or rights of way owned by the district, any work or improvement which the district is authorized to do and provide that the cost thereof shall be assessed upon the lots and lands fronting on the streets or public places, or upon any district to be assessed therefor, which district need not be composed of lands contiguous to each other. The Improvement Act of 1911, the Municipal Improvement Act of 1913, *and* the Improvement Bond Act of 1915; ~~the Street Opening Act of 1903, and the Street Improvement Act of 1913~~ are applicable to districts.

Comment. Section 61715 is amended to delete the references to the Street Opening Act of 1903 and the Street Improvement Act of 1913. The reference to the 1903 act is unnecessary since that act has been revised to delete the special condemnation provisions and the special assessment provisions and to incorporate the procedures under the 1911 and 1913 improvement acts which already are referred to in Section 61715. See *Recommendation Relating to Condemnation Law and Procedure: Conforming Changes in Improvement Acts*, 12 CAL. L. REVISION COMM'N REPORTS 1001 (1974). The reference to the Street Improvement Act of 1913 has been deleted because that act was repealed by Chapter 346 of the Statutes of 1963.

County Sanitation Districts

Health & Safety Code § 4771 (technical amendment)

SEC. 5. Section 4771 of the Health and Safety Code is amended to read:

4771. The Improvement Act of 1911, ~~the Street Opening Act of 1903~~, the Municipal Improvement Act of

1913 and the Improvement Bond Act of 1915 are applicable to districts.

Comment. Section 4771 is amended to delete the reference to the Street Opening Act of 1903. This reference is unnecessary because that act has been revised to delete the special condemnation provisions and the special assessment provisions and to incorporate the procedures of the 1911 and 1913 improvement acts which already are referred to in Section 4771. See *Recommendation Relating to Condemnation Law and Procedure: Conforming Changes in Improvement Acts*, 12 CAL. L. REVISION COMM'N REPORTS 1001 (1974).

Sanitary District Act of 1923

Health & Safety Code § 6541 (technical amendment)

SEC. 6. Section 6541 of the Health and Safety Code is amended to read:

6541. The Improvement Act of 1911, ~~the Street Opening Act of 1903~~, the Improvement Bond Act of 1915, ~~the Street Improvement Act of 1913~~, and the Municipal Improvement Act of 1913 are applicable to districts.

Comment. Section 6541 is amended to delete the references to the Street Opening Act of 1903 and the Street Improvement Act of 1913. The reference to the 1903 act is unnecessary because that act has been revised to delete the special condemnation provisions and the special assessment provisions and to incorporate the procedures under the 1911 and 1913 improvement acts which already are referred to in Section 6541. See *Recommendation Relating to Condemnation Law and Procedure: Conforming Changes in Improvement Acts*, 12 CAL. L. REVISION COMM'N REPORTS 1001 (1974). The reference to the Street Improvement Act of 1913 has been deleted because that act was repealed by Chapter 346 of the Statutes of 1963.

Public Utility Districts

Public Utilities Code § 17010 (technical amendment)

SEC. 7. Section 17010 of the Public Utilities Code is amended to read:

17010. Whenever, in the opinion of the board, the public interest or convenience may require, it may order to be done in, under, or upon the whole or any portion of any one or more of the streets or public places of the

district, or any property or rights-of-way owned by the district, any work or improvement which the district is authorized to do and provide that the cost thereof shall be assessed upon the lots and lands fronting on the streets or public places, or upon any district which may be assessed therefor, and which need not be composed of lands contiguous to each other. The Improvement Act of 1911, the Municipal Improvement Act of 1913, *and* the Improvement Bond Act of 1915, ~~and the Street Opening Act of 1903~~, as now or hereafter provided, are applicable to districts.

Comment. Section 17010 is amended to delete the reference to the Street Opening Act of 1903. This reference is unnecessary because that act has been revised to delete the special condemnation provisions and the special assessment provisions and to incorporate the procedures under the 1911 and 1913 improvement acts which already are referred to in Section 17010. See *Recommendation Relating to Condemnation Law and Procedure: Conforming Changes in Improvement Acts*, 12 CAL. L. REVISION COMM'N REPORTS 1001 (1974).

Street Opening Act of 1903

Streets & Highways Code §§ 4000-4443 (repealed)

SEC. 8. 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 §§ 4000-4091 (added)

SEC. 9. 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 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 *Recommendation Relating to Condemnation Law and Procedure: Conforming Changes in Improvement Acts*, 12 CAL. L. REVISION COMM'N REPORTS 1001 (1974).

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 *Recommendation Relating to Condemnation Law and Procedure: Conforming Changes in Improvement Acts*, 12 CAL. L. REVISION COMM'N REPORTS 1001 (1974).

4000.2. Unless the particular provision or the context otherwise requires, the definitions and general provisions contained in this part 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 acts, replaces the assessment provisions formerly included in this division. "Improvement" is defined in Section 4009. For examples of similar incorporations of the statutes referred to, see GOVT. CODE §§ 38011, 61715; HEALTH & SAF. CODE §§ 4771, 6541; PUB. UTIL. CODE § 17010; STS. & HWYS. CODE § 31519; and WATER CODE §§ 31502, 36455.1, 56100, 56104, 74900.

Street Opening Bond Act of 1911

Streets & Highways Code §§ 4500–4677 (repealed)

SEC. 10. 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 so that bonds may be issued under the Improvement Act of 1911 and the Improvement Bond Act of

1915 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. 11. 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)

SEC. 12. 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 eminent domain provisions. See *Recommendation Relating to Condemnation Law and Procedure: Conforming Changes in Improvement Acts*, 12 CAL. L. REVISION COMM'N REPORTS 1001 (1974). 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.*).

Streets & Highways Code § 10207 (technical amendment)

SEC. 13. Section 10207 of the Streets and Highways Code is amended to read:

10207. The provisions of Chapter 4 (*commencing with Section 5150*) of Part 3 ~~and the provisions of Part 4 of the Improvement Act of 1911 relating to grades~~ are incorporated in this division as if fully set out herein.

Comment. Section 10207 is amended to delete the reference to Part 4 of the Improvement Act of 1911 (STS. & HWYS. CODE §§ 6000–6123) because that part has been repealed.

Municipal Improvement Act of 1913**Streets & Highways Code § 10600 (technical amendment)**

SEC. 14. Section 10600 of the Streets and Highways Code is amended to read:

10600. The legislative body conducting the proceedings under the provisions of this division may, in its resolution of intention, determine and declare that bonds shall be issued under the provisions of either the Improvement Act of 1911 or the Improvement Bond Act of 1915. In any case, the assessment shall be recorded in the office of the superintendent of streets of the city, county surveyor of the county, or district engineer of the district or public corporation conducting the proceedings in the manner and with like force and effect as provided in the Improvement Act of 1911 and the Improvement Bond Act of 1915, and the assessment therefor shall have the priority, and the proceedings shall be subject to all of the curative clauses and powers of reassessment, provided in those acts. In any case, the official in whose office the original of the assessment is recorded shall give the notice to pay the assessments, as provided in this division. ~~If bonds are to be issued under the Improvement Act of 1911, assessments under fifty dollars (\$50) shall be subject to the penalties and costs, and collected as provided for cash assessments in the Street Opening Act of 1903.~~

Comment. The last sentence of Section 10600 is deleted because the provisions of the Street Opening Act of 1903 to which reference is made have been repealed. See also STS. &

HWYS. CODE § 6402 (collection of assessments under \$50 under Improvement Act of 1911).

Pedestrian Mall Law of 1960

Streets & Highways Code § 11011 (added)

SEC. 15. Section 11011 is added to the Streets and Highways Code, to read:

11011. "Vehicle Parking District Law of 1943" means the Vehicle Parking District Law of 1943, Part 1 (commencing with Section 31500) of Division 18 of the Streets and Highways Code, as that statute existed on December 31, 1973. For the purposes of this section, references in the Vehicle Parking District Law of 1943 to the Street Opening Act of 1903 mean the Street Opening Act of 1903, Part 1 (commencing with Section 4000) of Division 6 of the Streets and Highways Code, as that statute existed on December 31, 1973.

Comment. Section 11011 is added to preserve—for the purposes of the Pedestrian Mall Law of 1960—the repealed provisions of the Vehicle Parking District Law of 1943 and the Street Opening Act of 1903. See Sections 11502 and 11503.

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 or were inconsistent with the general provisions of the Code of Civil Procedure relating to condemnation. See *Recommendation Relating to Condemnation Law and Procedure: Conforming Changes in Improvement Acts*, 12 CAL. L. REVISION COMM'N REPORTS 1001 (1974).

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: Conforming Changes in Improvement Acts, 12 CAL. L. REVISION COMM'N REPORTS 1001 (1974).

Streets & Highways Code § 31501 (repealed)

SEC. 16. 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. Section 31501 is unnecessary since the pertinent definitions from the Street Opening Act of 1903 have been added to this part. See Sections 31503, 31505.

Streets & Highways Code § 31502 (amended)

SEC. 17. 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 incorporates a phrase used in former Section 31505.

Streets & Highways Code § 31503 (repealed)

SEC. 18. 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 is repealed as unnecessary.

Streets & Highways Code § 31503 (added)

SEC. 19. 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 Highways Code Section 4002, continues the substance of the definition formerly applicable to this part. See former STS. & HWYS. CODE § 31501.

Streets & Highways Code § 31504 (amended)

SEC. 20. 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. 21. Section 31505 of the Streets and Highways Code is repealed.

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

Streets & Highways Code § 31505 (added)

SEC. 22. 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. The definition in Section 31505 continues the substance of the definition formerly applicable to this part. See former STS. & HWYS. CODE §§ 31501, 4004. Section 31505 is based on Streets and Highways Code Section 5008 (defining "treasurer" for the purposes of the Municipal Improvement Act of 1911).

Streets & Highways Code § 31506 (repealed)

SEC. 23. 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 improvement 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.

~~(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.~~

Comment. See the Comment to Section 31506 (added).

Streets & Highways Code § 31506 (added)

SEC. 24. Section 31506 is added to the Streets and Highways Code, to read:

31506. A city may:

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

(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 § 31507 (repealed)

SEC. 25. 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. 26. 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. 27. 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. 28. 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. 29. 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. 30. 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. 31. 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. 32. 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. 33. 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. 34. 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 proceedings may be continued under this part following the incorporation as though there had been no incorporation.

Streets & Highways Code § 31519 (added)

SEC. 35. 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.

Comment. Section 31519, which permits use of various improvement acts, replaces the assessment provisions formerly included in this part. For examples of similar incorporations of the statutes referred to, see GOVT. CODE §§ 38011, 61715; HEALTH & SAF. CODE §§ 4771, 6541; PUB. UTIL. CODE § 17010; STS. & HWYS. CODE § 4091; and WATER CODE §§ 31502, 36455.1, 56100, 56104, 74900.

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

SEC. 36. 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. 37. Chapter 2.1 (commencing with Section 31580) of Part 1 of Division 18 of the Streets and Highways Code is repealed.

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

SEC. 38. 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.

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 Vehicle Parking District Law of 1943.

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.

Comment. See Comment to Section 31580.

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. See Comment to Section 31580.

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

SEC. 39. 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. 40. 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. 41. 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. 42. 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. 43. Chapter 7 (commencing with Section 31730) of Part 1 of Division 18 of the Streets and Highways Code is repealed.

Streets & Highways Code § 31781 (amended)

SEC. 44. Section 31781 of the Streets and Highways Code is amended to read:

31781. The board ~~shall~~ *may* 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 31784.1 which allows the facilities to be operated without charge.

Streets & Highways Code § 31782 (amended)

SEC. 45. 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. 46. 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. 47. 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. 48. 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.~~

Streets & Highways Code § 31861 (amended)

SEC. 49. 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. 50. 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.

Streets & Highways Code § 31863 (repealed)

SEC. 51. 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.

Streets & Highways Code § 31864 (repealed)

SEC. 52. 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 § 31867 (repealed)

SEC. 53. 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 900) 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 because there is no independent public entity created in a proceeding under this part.

Streets & Highways Code § 31910 (amended)

SEC. 54. 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. The introductory clause of Section 31910 is deleted since it 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. 55. 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. 56. 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 revenues from fees, charges and rentals for the use of parking places of the district may be used.

Comment. Section 31932 is obsolete in view of the repeal of Section 31571 by Chapter 1702 of the Statutes of 1959.

Parking District Law of 1951

Streets & Highways Code § 35276 (amended)

SEC. 57. 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~~ 35402 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.

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. 58. 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.~~

Comment. See the Comment to Section 35401.5.

Streets & Highways Code § 35401.5 (repealed)

SEC. 59. 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.~~

Comment. Section 35401.5 is repealed because its provisions either duplicated or were inconsistent with the general provisions relating to eminent domain. Sections 35400 and 35402.1 are repealed, and Sections 35402 and 35402.3 are amended for the same reason. See *Recommendation Relating to Condemnation Law and Procedure: Conforming Changes in Improvement Acts*, 12 CAL. L. REVISION COMM'N REPORTS 1001 (1974).

Streets & Highways Code § 35402 (amended)

SEC. 60. 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~~ *The* legislative body may by ordinance, resolution, or indenture provide for the issuance of bonds of the district in an amount not exceeding ~~that~~ *the amount estimated to be* 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.

Comment. Section 35402 is 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—that the cost of property acquisition be first determined by contract, option, or judgment before bonds could be issued—has been omitted because it was inconsistent with the general eminent domain provisions. See the Comment to Section 35401.5.

Streets & Highways Code § 35402.1 (repealed)

SEC. 61. 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.

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. 62. 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 provisions that either duplicate or are inconsistent with the general provisions relating to eminent domain. See the Comment to Section 35401.5.

Streets & Highways Code § 35450 (amended)

SEC. 63. 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 4000) 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 is 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. 64. 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 is amended to substitute a reference to the relevant chapter of the Improvement Act of 1911 for the reference to Chapter 11 of the Street Opening Act of 1903 which has been repealed. Conforming substitutions are made in Section 35469.5.

Streets & Highways Code § 35469.5 (amended)

SEC. 65. Section 35469.5 of the Streets and Highways Code is amended to read:

35469.5. The notice published pursuant to Section ~~4280 5362~~ and the notices mailed pursuant to Section ~~4281 5363~~ 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.

Comment. See the Comment to Section 35469.

County Water Districts

Water Code § 31502 (technical amendment)

SEC. 66. Section 31502 of the Water Code is amended to read:

31502. The Municipal Improvement Act of 1913 ~~and the Street Opening Act of 1903~~ are also applicable to districts.

Comment. Section 31502 is amended to delete the reference to the Street Opening Act of 1903. This reference is unnecessary since that act has been revised to delete the special condemnation provisions and the special assessment provisions and to incorporate the procedures under the 1911 and 1913 improvement acts. Use of both the 1911 and 1913 acts already is authorized. See Sections 31501 and 31502. See also *Recommendation Relating to Condemnation Law and Procedure: Conforming Changes in Improvement Acts*, 12 CAL. L. REVISION COMM'N REPORTS 1001 (1974).

California Water Districts

Water Code § 36455.1 (technical amendment)

SEC. 67. Section 36455.1 of the Water Code is amended to read:

36455.1. The work or improvement shall be done and the cost thereof assessed and collected in accordance with the procedures of the Improvement Act of 1911 (Division 7 (commencing with Section 5000) of the Streets and Highways Code), the Municipal Improvement Act of 1913 (Division 12 (commencing with Section 10000) of the Streets and Highways Code), ~~the Street Opening Act of 1903 (Part 1 (commencing with Section 4000), Division 6 of the Streets and Highways Code)~~, or the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500) of the Streets and Highways Code).

Comment. Section 36455.1 is amended to delete the reference to the Street Opening Act of 1903. This reference is unnecessary since that act has been revised to delete the special condemnation provisions and the special assessment provisions and to incorporate the procedures under the 1911 and 1913 improvement acts, both of which are listed in Section 36455.1. See *Recommendation Relating to Condemnation Law and*

Procedure: Conforming Changes in Improvement Acts, 12 CAL. L. REVISION COMM'N REPORTS 1001 (1974).

County Drainage Districts

Water Code § 56100 (technical amendment)

SEC. 68. Section 56100 of the Water Code is amended to read:

56100. The Improvement Act of 1911; ~~the Street Opening Act of 1903~~ and the Improvement Bond Act of 1915 are applicable to county drainage districts formed under this part. After approving and adopting the engineer's report as provided in Chapter 5, the district board may order the work contained in the said report to be done in whole or in part pursuant to the provisions of the Improvement Act of 1911 ~~or the Street Opening Act of 1903~~ or the Improvement Bond Act of 1915 and the costs thereof assessed upon the real property benefited, all in the manner provided by ~~said the~~ Improvement Act of 1911; ~~or the Street Opening Act of 1903~~; or the Improvement Bond Act of 1915.

Comment. Sections 56100 and 56104 are amended to delete the references to the Street Opening Act of 1903. The references are unnecessary since that act has been revised to delete the special assessment provisions to which reference is made. See *Recommendation Relating to Condemnation Law and Procedure: Conforming Changes in Improvement Acts*, 12 CAL. L. REVISION COMM'N REPORTS 1001 (1974).

Water Code § 56104 (technical amendment)

SEC. 69. Section 56104 of the Water Code is amended to read:

56104. Notwithstanding any other provision contained in the Special Assessment Investigation, Limitation and Majority Protest Act of 1931 to the contrary, in the event the district board shall order the work contained in the report prepared by the district engineer pursuant to Chapter 5 to be done in whole or in part pursuant to the provisions of the Improvement Act of 1911 ~~or the Street Opening Act of 1903~~ or the Improvement Bond Act of 1915, the provisions of the said Special Assessment Investigation, Limitation and Majority Protest Act of 1931

shall not be applicable to such work if the district board so declared by resolution duly adopted by four-fifths vote after a finding that said work is necessary for the public welfare, which finding shall not be made by the district board if, prior to the conclusion of the hearing on said report as provided in Chapter 5, the owners of more than 20 percent of the total assessed value of the taxable property within the district file written protests against the doing of said work.

Comment. See the Comment to Section 56100.

Water Conservation Districts

Water Code § 74900 (technical amendment)

SEC. 70. Section 74900 of the Water Code is amended to read:

74900. A district, in the construction of any work to be done or improvement made by it or within an improvement district formed pursuant to Part 7 (commencing with Section 75000) of this division and in the levying of assessments and reassessments and the issuing of bonds to pay for costs and expenses of the work and improvements done or to be done, may use the Improvement Act of 1911, the Municipal Improvement Act of 1913, or the Improvement Bond Act of 1915; ~~the Street Opening Act of 1903, or the Street Improvement Act of 1913~~. These acts are hereafter referred to in this chapter as the "improvement acts."

Comment. Section 74900 is amended to delete the references to the Street Opening Act of 1903 and the Street Improvement Act of 1913. The reference to the 1903 act is unnecessary since that act has been revised to delete the special condemnation provisions and the special assessment provisions and to incorporate the procedures under the 1911 and 1913 improvement acts which already are referred to in Section 74900. See *Recommendation Relating to Condemnation Law and Procedure: Conforming Changes in Improvement Acts*, 12 CAL. L. REVISION COMM'N REPORTS 1001 (1974). The reference to the Street Improvement Act of 1913 has been deleted because that act was repealed by Chapter 346 of the Statutes of 1963.

Savings Clause

SEC. 71. (a) Notwithstanding the amendments made and the repeals effectuated by this act, any proceeding commenced or completed prior to the effective date of this act by any public entity acting under or pursuant to any of the provisions amended or repealed by this act shall remain unaffected by such amendment or repeal and, with respect to any such pending proceeding, any such public entity shall continue to have and may exercise any of the powers authorized or provided for in such provisions prior to their amendment or repeal by this act.

(b) No amendment or repeal made by this act shall be applicable to or affect in any way any bonds or refunding bonds issued or authorized to be issued prior to the effective date of this act under any of the provisions amended or repealed by this act or any assessment or reassessment levied or authorized or required to be levied under such provisions, and for all purposes (except that no new proceedings can be begun under such repealed provisions after the effective date of this act) all of the authority, power, and jurisdiction conferred by any such provisions and all of the provisions of any statute containing such provisions are retained in full force and effect until all bonds or refunding bonds issued under any such statute have been fully paid and discharged.