

**Attachment A—
Controller Chiang’s Letter to Wendy Watanabe
Dated August 13, 2010, Regarding
Pension Assessment Fund**



JOHN CHIANG
California State Controller

August 13, 2010

Wendy L. Watanabe
Auditor – Controller
County of Los Angeles
500 West Temple Street, Room 525
Kenneth Hahn Hall of Administration
Los Angeles, CA 90012

Dear Ms. Watanabe:

During the course of my audit of the financial affairs of the City of Bell, my auditors have discovered an issue that requires immediate attention.

It appears that on July 23, 2007, the City Council of Bell passed Resolution No. 2007-42 (copy attached) to increase the level of tax being assessed to pay the City of Bell's pension obligations from .187554% to the following:

For 2007-08 - .237554%
For 2008-09 - .257554%
For 2009-10 - .277554%

These increased rates were assessed by your office during the years cited. However, we have determined that the tax levies approved by the City Council of Bell through Resolution No. 2007-42 are unallowable under Revenue and Taxation Code section 93.31(b). Under this section, the City of Bell has no authority to levy a property tax rate greater than the rate imposed in the Fiscal Year 1982-83 or Fiscal Year 1983-84. The estimate of the unallowable taxes assessed during the fiscal years of 2007-08, 2008-09 or 2009-10 is \$2.9 million (see attached). _____

Additionally, under Revenue and Tax Code section 96.31(d), the County Auditor of Los Angeles is required to reduce the City of Bell's tax levy for pension obligations to the amount allowable - .187554%. The law also requires that the overpayment of unallowable taxes collected must be allocated to elementary, high school, and unified school districts within the City of Bell in proportion to the average daily attendance of each district.

Therefore, I request that you review this matter and take immediate actions to ensure that the taxpayers of the City of Bell are not further burdened with what appears to be an improper property assessment.

Wendy L. Watanabe
August 13, 2010
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In order to remedy this situation, the property tax levy for the City of Bell pension obligation during Fiscal Year 2010-11 should be reduced to .187554%. Also, any amounts collected above the allowable rate of .187554 during the three years identified should be calculated and reallocated to the elementary, high school and unified school districts within the City of Bell in accordance with the requirements of Revenue and Tax Code section 96.31(d).

If you have any questions, please contact Jeffrey V. Brownfield, Chief, Division of Audits at (916) 324-1696.

Sincerely,
Original signed by:

JOHN CHIANG
California State Controller

cc: Pedro Carrillo, City of Bell Interim City Administrative Officer
Mark Saladino, Treasurer, Los Angeles County
Robert Quon, Assessor, Los Angeles County

**Attachment B—
Jeffrey V. Brownfield's Letter to James M. Casso
Dated September 14, 2010, Regarding the
Sanitation and Sewerage System District Assessment Fund**



JOHN CHIANG
California State Controller

September 14, 2010

James M. Casso
Attorney at Law
Meyers | Nave
33 South Grand Avenue, Suite 1670
Los Angeles, CA 90071

Re: City of Bell Standby Charges/Assessments

Dear Mr. Casso:

Thank you for your letter dated September 9, 2010 (Attachment A), in which you responded to our letters of August 27, 2010 (Attachment B) and September 2, 2010 (Attachment C). In your letter, you expressed some disagreement with our conclusion that the City of Bell owed its residents a refund because it had increased a standby charge without following California's constitutional requirements.

Your letter states that the Bell City Council authorized the annual levy of standby charges on May 21, 2007. Your letter further states:

The Council effectuated the 2007 authorization of the levy of the annual standby charges by the adoption of Resclution No. 2007-27 (Attachment 3). The standby charge rates authorized to be levied in 2007, as calculated in the Engineer's Report attached to the resolution, were as follows, which are the same amounts levied in 1992. . . .

We agree with this statement.

In your response you also indicated that in Resolution No. 2007-31, the city recites having provided 45 days notice of a public hearing on the proposed adoption of a fee for sewer service, and included a copy of the nctice as Attachment 5 to your letter. In reviewing the notice, we note that it states:

If adopted, the proposed rate adjustments will become effective on July 1, 2007. The basis and reasons for the proposed sewer rate adjustments are to enable the City to recover increasing operating expenses, as well as fund additional capital needs required to operate the sewer system in a financially prudent manner. The bases for the rate adjustments are more particularly analyzed in that certain sewer cost report prepared by the City ("City Report"). The Cost Report is on file at the Office of the City Clerk located at 6330 Pine Ave., Bell, California 90201 and may be reviewed there by any interested person.

MAILING ADDRESS P.O. Box 942850, Sacramento, CA 94250-5874
SACRAMENTO 3301 C Street, Suite 725, Sacramento, CA 95816 (916) 324-8907
LOS ANGELES 600 Corporate Pointe, Sute 1000, Culver City, CA 90230 (310) 342-5656

Two things are apparent in that paragraph of the notice. The first is that the paragraph refers to "sewer rate adjustments." As an adjustment, the notice necessarily implies that the rates have been previously levied and are in effect. In what appears to be a direct contradiction of the plain language of the notice, you expressed the view that this is a "new" sewer fee. However, the only previously levied charge, as you have acknowledged in your letter, was a standby charge. Consequently, since a tax or assessment that does not yet exist cannot be adjusted, we do not concur with your conclusion.

The second thing of importance is that the notice attached refers to a "cost report" in the Office of the City Clerk. When we inquired about this cost report, the City Clerk indicated that she was not aware of any cost report. Later, however, she provided a folder that had the Resolution No. 2007-31 and a copy of the engineer's cost report which consisted of a single page. The document provided is noteworthy for two reasons: (1) the costs indicated therein are the same as the costs used for the approval of the standby charge in Resolution No. 2007-27, and (2) the cost report is signed and dated on June 25, 2007, the day of the public hearing. It is somewhat difficult to conclude that this cost report is the one referenced in the notice of the public hearing or, for that matter, the staff report referred to in your letter simply because it was not available for 45 days prior to the public hearing. On the other hand, the only other cost report that was available is the one that supports the standby charge.

Moreover, you have also indicated that it was unfortunate that the authors of Resolution No. 2007-31 and its accompanying staff report referred to the contemplated action as "upwardly adjusting its sewer service rates," thus implying that it was increasing the standby charges. If the public notice, as you stated, implied that the city was increasing the standby charges, then perhaps the validity of the public hearing could or should be called into question and the validity of the "sewer service fee" challenged as being invalid. While we recognize that your opinion is qualified in many respects and based upon the information made available to you, it appears that your characterization of the events are not supported by the documents we reviewed or, for that matter, the documents you attached to your letter.

In your letter you maintain that the city has only collected the sewer service fee (your description of the standby charge) since 2007, although it has continued to be labeled as a "Sewer Maintenance Assessment" on property tax bills. You further state that the city retains authority to levy the standby charge but has not done so since 2007. Instead the city has opted to require payment of the fee for sewer service.

A careful review of Bell City Council Resolution Nos. 2008-18, 2009-20, and 2010-27 would seem to contradict that assertion. The engineer's reports accompanying the resolutions are labeled as "Engineer's Report for the Sewer Maintenance District Standby and Availability Charges in the City of Bell" followed by the fiscal year. Furthermore, Section 3 of the engineer's report, "Necessity for the Charges," states, ". . . it finds necessary to levy a charge for standby and availability on all properties that are or will be receiving these services to offset the costs incurred in the maintenance of the sewer system to assure the safe operation of the sewer facilities." This begs the question that, to the extent this is a new sewer service charge, why are properties that are currently not receiving the service being charged? As clearly stated, the charge is ". . . on all properties that are or will be receiving these services" (emphasis added). This appears to be a classic definition of a standby charge.

A closer review of Resolution No. 2010-27, reveals the following:

- Section 3 provides, "That the City Council hereby confirms, approves, and adopts the description of property subject to levy, estimate of costs and assessments as submitted and orders the annual levy of the assessment for the fiscal year and in the amounts set forth in the Engineer's Report and as referred to in the Resolution of Intention as previously adopted relating to said annual report."
- Section 4 states, "That the adoption of this Resolution constitutes the levy of the assessment for the fiscal year to cover the costs of administration and servicing of properties within the District."
- Section 6 states, in relevant part, "The County Auditor shall enter on the County Assessment Roll the amount of the Assessment and said Assessment shall be collected at the same time and in the same manner as County taxes are collected."
- Section 7 states, "That the City Clerk shall transmit or cause to be transmitted to the County Auditor of the County of Los Angeles, before August 10, 2010 a certified copy of the diagram and assessment roll, together with a certified copy of this Resolution."

The wording in these sections shows that the assessment is being levied pursuant to the information in the engineer's report which clearly identified the charge as a standby and availability charge. There is no mention of a sewer service charge or similar term.

From our perspective, it appears as though the re-characterization of the standby charges as a new assessment is more for the sake of convenience in order to circumvent voter approval of such charges and your position is not supported by the documentation.

James M. Casso
September 14, 2010
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While we will include your response in our final report, we are unable to concur with the conclusion reached in your letter inasmuch as you have not presented any new or additional information or explanations sufficient to warrant amending our findings. Accordingly, our position and recommendation in the letter dated September 2, 2010, remains unchanged.

If you have any questions, please contact me at (916) 324-1696.

Sincerely



JEFFREY V. BROWNFIELD
Chief, Division of Audits

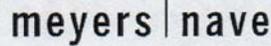
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Attachments:

- Attachment A—James M. Casso Letter of September 9, 2010
- Attachment B—Jeffrey V. Brownfield Letter of August 27, 2010
- Attachment C—Controller John Chiang Letter of September 2, 2010

cc: Oscar Hernandez, Mayor of the City of Bell
Teresa Jacobo, Vice Mayor of the City of Bell
Luis Artiga, Councilman, Bell City Council
George Mirabal, Councilman, Bell City Council
Lorenzo S. Velez, Councilman, Bell City Council
Pedro Carillo, Interim City Administrator, City of Bell
Wendy L. Watanabe, Los Angeles County Auditor-Controller



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James M. Casso
Attorney at Law
jcasso@meyersnave.com

September 9, 2010

Jeffrey V. Brownfield, Chief
Division of Audits, California State Controller
P.O. Box 942850
Sacramento, CA 94250-5874

Re: City of Bell Sewer Service Fees and Standby Charges/Assessments

Dear Mr. Brownfield:

I am writing in response to your letters dated August 27 and September 2, 2010, in which you conclude that the City of Bell has, since 2007, been levying a standby charge for sewer service and maintenance without complying with the requirements of article XIIIID of the California Constitution ("Proposition 218"). After reviewing the available documentation, and as explained below, I disagree with your conclusion. Thus, absent new and contradictory documentation not available to me at this time, I do not believe that any refund to owners of property within the City is required.

Background of the City's Standby Charge/Assessment and Sewer Service Fees

As noted in your letters, the City first adopted a standby charge to fund the operation and maintenance of its sewer system in 1989, with the adoption of Resolution No. 89-28 ([Attachment 1](#)). The rates approved at that time, as calculated in the Engineer's Report attached to the resolution were as follows:

<u>Type of Property</u>	<u>Annual Rate (per parcel)</u>
Residential Unit	\$7.47
Commercial	\$44.82
Commercial – High Use	\$74.70

The City last increased the rate of the standby charge in 1992, with the adoption of Resolution No. 92-33 ([Attachment 2](#)). Based on the information currently available, there does not appear to have been any procedural irregularity in the manner in which the Council approved the rates at that time. The rates approved at that time, as calculated in the Engineer's Report attached to the resolution were as follows:

<u>Type of Property</u>	<u>Annual Rate (per parcel)</u>
Residential: 5 or fewer units	\$12.70

Attachment A to Jeffrey V. Brownfield's September 14, 2010 Letter
(continued)

Jeffrey V. Brownfield, Chief
Division of Audits, California State Controller
September 9, 2010
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Residential: 6 or more units	\$16.32
Commercial	\$57.92
Commercial: High sewer usage	\$96.58

The City Council authorized the annual levy of the standby charges on May 21, 2007. The Council did not take that action in Resolution No. 2007-31 ([Attachment 4](#)), however, as referred to in your letters. Resolution No. 2007-31, adopted on June 25, 2007, did not increase the standby charges; instead, it approved sewer service fees, which are legally distinct from standby charges. They are property-related fees governed by article XIID, section 6. The Council effectuated the 2007 authorization of the levy of the annual standby charges by the adoption of Resolution No. 2007-27 ([Attachment 3](#)). The standby charge rates authorized to be levied in 2007, as calculated in the Engineer's Report attached to the resolution, were as follows, which are the same amounts levied in 1992:

<u>Type of Property</u>	<u>Annual Rate (per parcel)</u>
Residential: 5 or fewer units	\$12.70
Residential: 6 or more units	\$16.32
Commercial	\$57.92
Commercial: High sewer usage	\$96.58

As recited in Resolution No. 2007-31, the City provided 45 days notice of a public hearing on the proposed adoption of a fee for sewer service. (A copy of the notice is attached as [Attachment 5](#).) At the conclusion of the hearing, a majority protest against the proposed increase had not been received. The City Council then adopted the resolution setting the fees. The sewer service fee amounts approved by Resolution No. 2007-31, attached as Exhibit A to the resolution and based on the Sewer Cost Report ([Attachment 6](#)), were as follows:¹

<u>Type of Property</u>	<u>Monthly Rate (annual)</u>
Residential – 5 or fewer units	\$2.68 (\$32.16)
Residential – 6 or more units	\$3.45 (\$41.40)
Commercial	\$12.26 (\$147.12)
Commercial High use	\$20.44 (\$245.28)

Unfortunately, the authors of Resolution No. 2007-31 and its accompanying staff report referred to the contemplated action as "upwardly adjusting its sewer service rates," implying that it was increasing the standby charges. As discussed in more detail below, despite that phrasing, it appears that the City Council did not approve an increase of the existing standby charges; rather, it approved a new fee for sewer service, and the City followed all of the

¹ Note that Section 2 of Resolution No. 2007-31 authorizes an automatic annual adjustment of the sewer service fees by CPI or 3%, which ever is greater.

Jeffrey V. Brownfield, Chief
Division of Audits, California State Controller
September 9, 2010
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requirements of Proposition 218 in doing so. The City has only collected the sewer service fee since 2007, although it has continued to be labeled "Sewer Maintenance Assessment" on property owners' tax bills. The City retains authority to levy the standby charges, but it has elected not to do so since 2007, opting instead to require payment of the fee for sewer service. The City will communicate with the Los Angeles County Auditor-Controller's Office about changing the description of the fee on the tax bill.

Compliance with Proposition 218

Based upon my review of the factual background and applicable law, I do not believe that a new assessment ballot proceeding was required for the authorization to levy the standby charges in 2007, and the sewer service fees were adopted in compliance with the requirements of Proposition 218.

As your letters pointed out, article XIIIID, section 6(b)(4) states that standby charges "shall be classified as assessments and shall not be imposed without compliance with Section 4," which describes the assessment ballot proceeding required to obtain property owner approval for assessments. That alone is not determinative, however, of whether the City's standby charges required an assessment ballot proceeding to obtain authorization for the City to levy them. Section 5 of article XIIIID provides a list of existing assessments that are exempt from the procedural approval requirements of section 4, including "[a]ny assessment imposed exclusively to finance the capital costs or maintenance and operation expenses for . . . sewers . . ." Thus, an assessment or standby charge for sewer operation and maintenance that existed prior to the effective date of Proposition 218 is exempt from the procedural requirements of section 4, as long as the agency levying the assessment or standby charge does not increase the amount of the assessment or charge above the amount authorized pre-Proposition 218. See *Howard Jarvis Taxpayers Assn. v. City of Riverside* (1999) 73 Cal.App.4th 679, 682, 86 Cal.Rptr.2d 592; *Galbisio v. Orosi Pub. Util. Dist.* (2010) 182 Cal.App.4th 652, 107 Cal.Rptr.3d 36; *Keller v. Chowchilla Water Dist.* (2000) 80 Cal.App.4th 1006, 1012, 96 Cal.Rptr.2d 246, 251.

All of the engineer's reports supporting the standby charges since 1989 have stated that the purpose of the City's standby charges is to fund the operation and maintenance of the City's sewer system. As noted above, the amount of the City's standby charge has not increased since 1992, and the City Council did not increase it in 2007, as your letter purports. The 2007 Engineer's Report clearly states, for example, that the percentage change in the amount of the standby charges for each property type was 0. Since the standby charges preexisted Proposition 218 and have not been increased since 1992 (including not being increased in 2007), under article XIIIID, section 5(a), they are exempt from the procedural requirements of article XIIIID, section 4. In other words, the City was not required in 2007 to obtain property-owner authorization for the standby charges, and thus, no refund is required.

Jeffrey V. Brownfield, Chief
Division of Audits, California State Controller
September 9, 2010
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Similarly, no refund is required of the sewer service fees approved in 2007, because the City followed the requirements of article XIID, section 6 for property-related fees. A property-related fee (in this case for sewer services) is legally distinct from a standby charge or assessment. Levying one does not preclude levying the other, and although some properties may pay both, others—such as vacant and undeveloped properties that do not use sewer services—would only be subject to the standby charge.

The procedural requirements of article XIID, section 4 are that the City provide 45 days notice of a public hearing at which the Council will consider approval of proposed fees. Property owners potentially subject to the fees may submit written protests against the fees. If a majority of property owners submit written protests, then a majority protest exists, and the Council may not approve the fees. If a majority protest does not exist, then the Council may approve the proposed fees.

In 2007, the City proposed increasing the existing sewer service fees as set out in Exhibit A to Resolution No. 2007-31. Based on the information presently available to me, it appears that the notice included as Attachment 5 was mailed to property owners more than 45 days before the public hearing on June 25. At the conclusion of the hearing, a majority protest did not exist, so the Council adopted Resolution No. 2007-31, approving the proposed sewer service fees. No assessment balloting proceeding or other property owner approval was required to satisfy Proposition 218.

Subsequent to the approval of the sewer service fees, the City elected to levy only the fees and not the standby charges. As you can see in Attachment 7, the City transmitted to the County Auditor-Controller Resolution No. 2007-31, instructing requesting that the Auditor-Controller include the fees on property tax bill. The transmittal contains a reference to the "Sanitation and Sewerage Systems Assessment District FY 2007-08" and uses the same account number as the City had previously used for the standby charges. To the extent that that may constitute error, it is merely administrative and does not go to the City's underlying authority to charge the sewer service fees. As noted above, the City will work with the County Auditor-Controller to correct the terminology on the tax bill.

By way of additional explanation of this issue, you may note that the Engineer's Report for the 2007 standby charges calculated the reasonable estimated cost of providing sewer services as \$347,652. It also stated that the revenue expected from the standby charges (or assessments) would be approximately \$136,982. It thus concluded that there would be a \$210,652 shortfall that would have to be made up from general funds. According to City Engineer Carlos Alvarado, the purpose of the sewer service fees was to help fill that gap so that the City's General Fund would not have to continue to subsidize sewer maintenance and operation to the same extent. The revenue expected to be generated by the sewer service fees was approximately equal to the estimated cost of providing the services, and the County Auditor-Controller's summary of the revenue generated by the fees is similar to the amounts

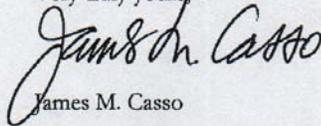
Jeffrey V. Brownfield, Chief
Division of Audits, California State Controller
September 9, 2010
Page 5

that the City anticipated receiving, taking into account the inflationary adjustments to the fees approved in Resolution No. 2007-31.

In sum, it appears to me, based on the information presently available, that in 2007, the City Council authorized two different ways to pay for sewer services—standby charges and property-related sewer service fee. With regard to both, it appears preliminarily that the City complied with the requirements of Proposition 218, to the extent that they applied to the City's action; as explained above, the standby charges are exempt. After approving both, the City elected to collect only sewer service fees. We do agree that confusing wording was used in the resolution approving the fees and in transmitting the City's request to the County Auditor-Controller to collect the fees. Despite that poor word choice, it appears that the City followed all procedural requirements for the approval of the sewer services fees, and that is the only sewer service levy that the City has collected since 2007. Thus, no refunds to property owners are required, as suggested in your letter. Indeed, a refund would actually result in an additional General Fund subsidy to those who use or have available to them sewer services, requiring those who do not use sewer services to pay for service to those who do and depriving others in the City of the services that could be funded by the moneys in the General Fund.

If you continue to be interested in this issue, the City will do everything in its power to assist you in investigating the background of the sewer service fees and standby charges, their nature, the manner of their calculation, their compliance with state law, and any other matter in which you might be interested. Please contact me or my partner, Sky Woodruff, if you have any questions about this letter.

Very truly yours,



James M. Casso

Attachments: Attachment 1—Resolution No. 89-23
Attachment 2—Resolution No. 92-33
Attachment 3—Resolution No. 2007-27
Attachment 4—Resolution No. 2007-31
Attachment 5—Notice of Sewer Service Fee and Public Hearing (2007)
Attachment 6—Sewer Cost Report (2007)
Attachment 7—Transmittal to County Auditor-Controller for 2007-08

cc: City Council
Los Angeles County Office of the Auditor-Controller



JOHN CHIANG
California State Controller

August 27, 2010

Pedro Carrillo
Interim City Administrator
City of Bell
6330 Pine Avenue
Bell, California 90201

Dear Mr. Carrillo:

My auditors have completed a review of direct assessments currently imposed on the property owners in the City of Bell. Previously, the auditors identified an unallowable assessment related to the city's pension obligations. In reviewing other direct assessments, the auditors have determined that the increased assessment imposed starting with fiscal year (FY) 2007-08 to current related to the Sanitation and Sewerage System District may also be unallowable.

The first time the City of Bell levied an assessment for the Sanitation and Sewerage System District was in 1989 (Resolution No. 89-28). The resolution specifically used the term "stand-by charge" in describing the purpose of the assessment. When the assessment was increased during FY 2007-08 (Resolution No. 2007-31), the resolution title referred to the increase as an upwardly adjusting rate while the body of the resolution referred to the engineering report with a title of "Sewer Standby and Availability Charges."

The California Constitution, Article XIII D, section 6, subsection (b)(4), requires that sewer "standby" charges, whether characterized as charges or assessments, be classified as assessments and shall not be imposed without complying with the California Constitution, Article XIII D, section 4, which requires a vote of the property owners who would be affected by the assessment. City staff could not provide us with evidence that such a vote took place or that these are not standby charges. The estimated amount of the charges related to the increase is \$621,737 (see attached).

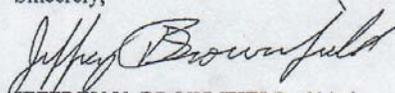
We request that you review this matter and provide us with documentation to support why this assessment should not be considered a standby charge. Please provide this information to us by the close of business, September 2, 2010.

MAILING ADDRESS P.O. Box 942850, Sacramento, CA 94250-5874
SACRAMENTO 300 Capitol Mall, Suite 518, Sacramento, CA 95814 (916) 324-8907
LOS ANGELES 600 Corporate Pointe, Suite 1000, Culver City, CA 90230 (310) 342-5656

Pedro Carrillo
August 27, 2010
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If you have any questions please contact me at (916) 324-1696.

Sincerely,



JEFFREY V. BROWNFIELD, Chief
Division of Audits
California State Controller

JVB/sk

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Attachment

cc: Oscar Hernandez, Mayor, City of Bell

CITY OF BELL
SANITATION AND SEWERAGE SYSTEM DISTRICT ASSESSMENTS
For Fiscal Years 2007-08 Through 2009-10

<u>Fiscal Year</u>	<u>Allowable Assessments</u>	<u>Actual Assessments</u>	<u>Excess Assessments</u>
2009-10	\$ 136,151	\$ 349,606	\$ (213,455)
2008-09	\$ 136,151	\$ 339,081	\$ (202,930)
2007-08	\$ 136,151	\$ 341,503	\$ (205,352)
Total Excess Assessment			<u>\$ (621,737)</u>

<u>Fiscal Year</u>	<u>Allowable Assessment Rate</u>	<u>Actual Assessment Rate</u>	<u>Excess Assessment Rate For a Single Family Residence (Dwelling)</u>
2009-10	\$ 12.70	\$ 33.12	\$ (20.42)
2008-09	\$ 12.70	\$ 32.16	\$ (19.46)
2007-08	\$ 12.70	\$ 32.26	\$ (19.56)

*Source: LA County Auditor Controller
City of Bell Resolutions and Engineer Reports*



JOHN CHIANG
California State Controller

September 2, 2010

Pedro Carrillo
Interim City Administrator
City of Bell
6330 Pine Avenue
Bell, California 90201

Dear Mr. Carrillo:

My auditors have completed a review of direct assessments currently imposed on the property owners in the City of Bell. Previously, the auditors identified an unallowable assessment related to the city's pension obligations that resulted in Bell property owners paying an estimated \$3 million in excessive taxes. In reviewing other direct assessments, the auditors have determined that the increased assessment imposed during Fiscal Year (FY) 2007-08 to present pertaining to the Sanitation and Sewerage System District is unallowable.

The City of Bell first levied an assessment for the Sanitation and Sewerage System District in 1989 pursuant to Resolution No. 89-28. The resolution referenced the assessment as a "standby charge." Subsequently, when the assessment was increased during FY 2007-08, Resolution No. 2007-31 referred to the increase in the resolution heading as an upward rate adjustment. The body of that resolution referred to the engineering report, which was titled "Sewer Standby and Availability Charges."

The California Constitution, Article XIII D, section 6, subsection (b)(4), requires that sewer "standby" charges, whether characterized as charges or assessments, be classified as assessments and shall not be imposed without complying with the California Constitution, Article XIII D, section 4, which requires a vote of the property owners who would be affected by the assessment. City staff could not provide us with evidence that such a vote took place and therefore, we have concluded that the increased assessment was not allowable. The estimated amount of the charges related to the increase for FYs 2007-08 through 2009-10 is \$621,737 (see attached).

On two separate occasions – once on September 1, 2010, and again this morning – you communicated to Jeffrey V. Brownfield, Chief of my Audits Division, that, after having the opportunity to review this matter since last Friday, you were in full agreement with our finding. However, during a subsequent conversation with Mr. Brownfield, you suggested that the property tax levy in question may not have required a vote of property owners and have requested more time to conduct additional research into the matter.



Pedro Carrillo
September 2, 2010
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The County of Los Angeles Auditor-Controller's Office has informed us that any changes to FY 2010-11 property tax bills must be received no later than noon on September 10, 2010. I urge you to quickly complete your review so that, if the increased levy was indeed an unallowable assessment, the City of Bell will have sufficient time to reduce the assessment for FY 2010-11. If necessary, this action should provide the Auditor-Controller with a new transmittal/summary, new CD (with the corrected file), and new City Council Resolution.

The Constitution does not contain a provision governing over-assessments for prior fiscal years. Therefore, if you conclude that there has been an over-assessment, the City can either refund the over-assessed amounts or to offset future assessments. Please notify us of the city's planned action regarding this matter.

Should you conclude that there was no over-assessment, please send to my office all documentation and empirical evidence upon which your conclusion is based. As you know, all documentation furnished, to date, by your office in response to our audit into this matter explicitly refer to the levy as a "standby charge," which requires a vote of the property owners.

We are planning to issue a final report of all findings related to our audit of the City of Bell, including this matter, later this month. Based upon the information provided by your research into this matter, we will include a final finding and recommendation.

If you have any questions please contact Jeffrey V. Brownfield, Chief, Division of Audits at (916) 324-1696.

Sincerely,


JOHN CHIANG
California State Controller

Attachment

cc: Oscar Hernandez, Mayor, City of Bell
Wendy Watanabe, Auditor-Controller, Los Angeles County
Robert Quon, Assessor, Los Angeles County
Mark Saladino, Treasurer, Los Angeles County
Arlene Barrera, Division Chief, Property Tax Division, Los Angeles County

CITY OF BELL
SANITATION AND SEWERAGE SYSTEM DISTRICT ASSESSMENTS
For Fiscal Years 2007-08 Through 2009-10

<u>Fiscal Year</u>	<u>Allowable Assessments</u>	<u>Actual Assessments</u>	<u>Excess Assessments</u>
2009-10	\$ 136,151	\$ 349,606	\$ (213,455)
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2007-08	\$ 136,151	\$ 341,503	\$ (205,352)
Total Excess Assessment			\$ (621,737)

<u>Fiscal Year</u>	<u>Allowable Assessment Rate</u>	<u>Actual Assessment Rate</u>	<u>Excess Assessment Rate For a Single Family Residence (Dwelling)</u>
2009-10	\$ 12.70	\$ 33.12	\$ (20.42)
2008-09	\$ 12.70	\$ 32.16	\$ (19.46)
2007-08	\$ 12.70	\$ 32.26	\$ (19.56)

*Source: LA County Auditor Controller
City of Bell Resolutions and Engineer Reports*

**Attachment C—
Controller Chiang’s Letter to Pedro Carrillo
Dated September 15, 2010
Regarding Business License Taxes**



JOHN CHIANG
California State Controller

September 16, 2010

Pedro Carrillo
Interim City Administrator
City of Bell
6330 Pine Avenue
Bell, CA 90201

Dear Mr. Carrillo:

My auditors have completed a review of the business license taxes, which also includes rental business license taxes for the 2000 through 2010 calendar years. Our review noted that the city increased the amount for business licenses taxes in excess of 50% for more than 1,000 business owners in the city since the 2000 calendar year. The increases were made without voter approval as required under Article XIII C to the California Constitution which specifies, "No local government may impose, extend, or increase any general tax unless and until that tax is submitted to the electorate and approved by a majority vote."

Additionally, the Bell Municipal Code clearly states that business license taxes are taxes for revenue generating purposes. Bell Municipal Code section 5.04.020 states:

The purpose of the provisions of this division is to prescribe a schedule of business license taxes, for revenue purposes only, for all businesses located within the city, in the amounts and manner as set forth hereinafter.

Monies collected from business license taxes are deposited in the city's General Fund and are available at the discretion of the city's management, subject to the approval of the city council, to fund any operation or activity within the city government. Therefore, we believe the increases were general tax increases and subject to voter approval.

It is not possible to quantify the specific amount of additional business license taxes collected as a result of the increase imposed without voter approval because more than 1,000 businesses are involved with varying tax rates. However, based on annual collection figures, we estimate the total to be over \$2.1 million for calendar years 2000 through 2010 (see attached).

Pedro Carrillo
September 16, 2010
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We request that you review this matter and take appropriate action to refund the excess business license taxes collected. Please provide us with your plan of action by the close of business, September 20, 2010.

If you have any questions, please contact Jeffrey V. Brownfield, Chief, Division of Audits, at (916) 324-1696.

Sincerely,

Original signed by

JOHN CHIANG
California State Controller

Attachment

cc: Oscar Hernandez, Mayor of the City of Bell
Jeffrey V. Brownfield, Chief
Division of Audits, State Controller's Office

CITY OF BELL
 SCHEDULE OF UNALLOWABLE BUSINESS LICENSE TAXES COLLECTED BY CALENDAR YEAR
 CALENDAR YEARS 2000 THROUGH 2010

	Calendar Year											Total
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	
Actual Business License Taxes Collected*	\$ 737,368	\$ 544,472	\$ 531,021	\$ 553,274	\$ 456,570	\$ 549,411	\$ 583,020	\$ 654,857	\$ 1,102,131	\$ 741,597	\$ 651,509	\$ 7,105,230
Allowable Taxes Collected	617,488	455,953	444,689	463,324	382,342	386,511	392,607	422,984	644,312	418,760	370,819	4,999,789
Unallowable Taxes Collected	\$ 119,880	\$ 88,519	\$ 86,332	\$ 89,950	\$ 74,228	\$ 162,900	\$ 190,413	\$ 231,873	\$ 457,819	\$ 322,837	\$ 280,690	\$ 2,105,441

Source: City of Bell Financial Records – Fiscal Year (FY) 2003-04 through FY 2009-10
 State Controller’s Office Financial Reports – FY 1991-92 through FY 2002-03

*This Amount Includes Rental Business License Taxes.

**Attachment D—
Copy of Administrative Agreement**

ADMINISTRATIVE AGREEMENT

This Administrative Agreement ("Agreement"), is made and entered into this 1st day of March, 2010, by and between the CITY OF BELL ("City") and [REDACTED] ("Employee"), [REDACTED] for the City of Bell.

NOW, THEREFORE, CITY AND EMPLOYEE agree to the following:

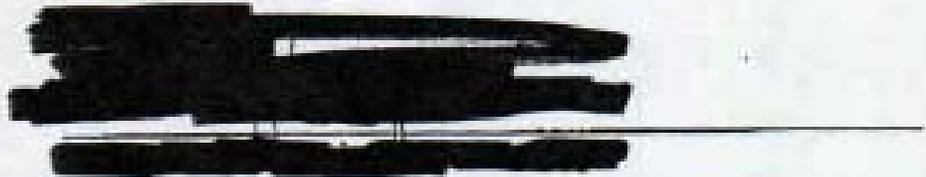
1. Employee shall be entitled to a cash advance, from the City, an amount not to exceed \$130,000 (One Hundred Thirty Thousand Dollars).
2. The Agreement is subject to the following provisions:
 - a) Employee assigns to City any rights under the Agreement or Federal, State or local law to collect from wages earned up to the unpaid balance plus accrued interest;
 - b) Repayment of the cash advance shall bear interest that shall compound biweekly and accrue at a rate equal to the annual interest rate of the Local Agency Investment Fund (LAIF) administered by the California State Treasurer for the quarter prior to the disbursement of the cash advance. The interest rate to be used after disbursement of the advance shall be the LAIF interest rate prior to the quarter of the payment date;
 - c) The term of the advance shall commence on the date of disbursement of the cash advance and shall continue until the date the repayment is fully satisfied by payment as provided herein;
 - d) Payment of the loan and the accumulated interest should be paid in full to the City no later than May 28, 2010;
 - e) In the event of Employee's termination, repayment of the advance outstanding shall immediately become due and payable;
 - f) In the event of Employee's termination, if repayment of the advance is not fully satisfied by the employee's the wages earned; employee should obtain a conventional loan to meet the aforementioned obligation to the City;
- 2) City and Employee hereby acknowledge and agree that this Agreement is in full force and effect. All capitalized terms not specifically defined herein, shall have the same meaning ascribed to them in the Agreement.

IN WITNESS WHEREOF, the parties have caused this Administrative Agreement to be executed as follows:

"City"
CITY OF BELL, CALIFORNIA

By: 
Robert A. Rizzo, Chief Administrative Officer

"Employee"



**Attachment E—
City's Response to Draft Audit Report**



City of Bell

September 20, 2010

Jeffrey V. Brownfield, Chief
Division of Audits
California State Controller
Post Office Box 942850
Sacramento, CA 94250-5874

Re: Administrative and Internal Accounting Controls Audit/CA (SCO)

Dear Mr. Brownfield:

This letter is in response to the California State Controller's Audit Report concerning the City of Bell's ("the City") Administrative and Internal Accounting Controls ("Audit Report"), and correspondence from your office on September 14 and September 15, 2010, concerning the City's standby charges for sewer services, and the City's business license tax.

Audit Report Findings 1, 2 and 3:

The City appreciates the Controller's review of the issues identified in the Audit Report, and looks forward to continue working with your office to ascertain the scope of these issues and to address them as necessary.

Finding 3: Sewer Service Fees:

The City appreciates the Controller's additional review of the City's fees for sewer service and sewer standby charges. In light of your September 14, 2010 letter, we are continuing to investigate one aspect of the matter, which is addressed in more detail below. The City continues to disagree with your overall conclusion that it improperly increased the standby charges in 2007, and that a refund of \$621,737.00 is warranted. Some refund may be appropriate to owners of property without sewer connections, and the City will make such refunds, based on the conclusion of its investigation of this matter.

Your September 14, 2010 letter identifies portions of the wording of the notice for the adoption of the sewer service fees adopted by Resolution No. 2007-31. First, the notice refers to "sewer rate adjustments," and your letter reasonably notes that an "adjustment" could only be made to an already existing rate. To clarify the City's response its September 9, 2010 letter, it does appear that the authors of the notice and Resolution No. 2007-31

made errors in drafting the documents and may have misunderstood the difference between standby charges and service fees. Moreover, those errors do create ambiguities that raise valid questions about the validity of sewer service fees. The issue, the City believes, is the lawfulness of the adoption of the service fees, which depends on whether the notice and the process of adopting the fees met the requirements of Article XIIIID, Section 6 of the California Constitution. The City's opinion is that it substantially complied with those requirements.

The substantive requirements for a notice of a city's intent to adopt a new or increased service fee are contained in Article XIIIID, Section 6(a) (1). The notice of the adoption of the City's sewer service fees contains all of that information. It mistakenly refers to the adoption of the fee as an "adjustment" rather than as the adoption of a new fee. The City does not know the reason for the mistake, and any assertion about the reason would be speculation. That mistake did not, however, deprive potential ratepayers of the information required by Section 6(a) (1). The notice informed them of the amount of the proposed fee, its purpose, and the basis upon which it was calculated, along with the date, time, and location of the hearing. Thus, the notice met the legal requirements and did not mislead potential ratepayers about any relevant aspect of the proposed fees. Whether it was a new fee or an increase of an existing fee was not legally relevant, and the identified misstatement did not, in the City's opinion, alter the lawfulness of the process that the City followed in adopting the fees.

Your September 14, 2010 letter questions whether the cost report required by Section 6 was available to the public for 45 days before the hearing and notes that its calculation of costs is the same as the calculation in the Engineer's Report for the standby charges. Regarding the first point, the only evidence that your letter cites is that it is dated the same day as the public hearing on the service fees. On its own, the City finds that fact ambiguous. Your letter does not recognize that the amounts of the fees proposed in the notice are the same as the amounts in the cost report. It seems highly unlikely to the City that the City Engineer would have calculated the fees for the purpose of the notice but not have completed the cost report and made it available to the public. Moreover, as noted in our September 9, 2010 letter, Resolution No. 2007-31 specifically recites that the report was available for the required 45-day period.

The City does not believe that it is problematic that the cost report of the sewer service fees has an identical calculation of costs to the Engineer's Report for the standby charges. Since both were intended to calculate the cost of sewer service, one would expect them to be similar. There are significant differences between the two, however. The 2007 Engineer's Report leaves the standby charges at their historical levels, whereas the cost report proposes to set service fees at a higher amount. The City does recognize the confusion resulting from the documents for the service fees incorrectly referring to the fees as an "increase," but it continues to believe that that wording alone does not undermine the lawfulness of the fees themselves, since it appears to have conformed to the required process for their adoption. It

Jeffrey V. Brownfield, Chief
Division of Audits
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September 20, 2010
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is more problematic that, in subsequent years, the annual authorization of the standby charges set those at the same rates as the sewer services fees, which are addressed below.

Your letter next questions (1) why, if the City adopted a sewer service fee in 2007, it also adopted resolutions in 2008, 2009, and 2010 authorizing and directing the levy of the standby charges; and (2) why, if the City did impose a new sewer service fee in 2007, property owners without sewer hookups are being charged, since the resolutions authorizing the levy of the standby charges state that the charge is charged against properties using the service and those for which the service is available. Two things should be kept in mind when considering those points. First, there is no reason that a city cannot maintain both a fee for sewer service and a standby charge, as long as property owners are not required to pay twice for the same things and all other legal requirements are met. Indeed, there would be nothing unusual about charging a service fee for owners of property with sewer hookups and a standby charge for those without a hookup but who benefit from the availability of the service. Second, as you know, to maintain the authority to levy standby charges, the City Council must authorize it annually; there are no similar requirements for sewer service fees.

It appears to the City that your September 14, 2010 letter takes the position that the City must be either levying sewer service fees or standby charges, and does not seem to recognize the possibility that the City is levying both. The City's September 9, 2010 letter, based on the information available then, concluded that the City had substituted the sewer service fees for the standby charges. After considering the points made in your September 14, 2010 letter, it may be the case that the City is levying both.

If the City has been levying both sewer service fees and standby charges since 2007, then the only problem that it sees is that it may have been levying the same amounts for the standby charges as for the service fees. As your September 14, 2010 letter points out, the amounts of the standby charges approved for 2008-09, 2009-10, and 2010-11 are the same as the service fees. At the time of writing our September 9, 2010 letter, we spoke with the City Engineer about whether the sewer service fees were being charged to all properties in the City or only those receiving sewer services. We understood at that time that it was only being charged to properties receiving service, but we are now investigating the matter further. If the City concludes that properties without sewer hookups have been charged standby charges in the same amount as the sewer service fees, then the staff will recommend to the Council that appropriate corrective action is taken to refund those property owners for the difference between the allowable standby charge amounts and the service fees amounts. The staff will also prepare documents for the service fees and the standby charges in the future to clarify that the City is levying the fees on properties using sewer services and standby charges on properties without sewer hookups.

The City genuinely appreciates the work of the Controller's Office in auditing the City's finances. In light of the allegations of the previous administrations actions, it has been a great benefit to the City and its residents to have an outside agency review the City's

revenues and expenditures. The City specifically thanks the Controller for identifying this issue so that it can further investigate whether some property owners are due refunds. As explained above, although the adoption of the sewer service fees was incorrectly described as an increase of an existing fee—and it may be that the engineers who prepared the documents did not sufficiently understand the difference between standby charges and service fees—the process for adopting it appears to have conformed to the requirements of Article XIIIID, section 6. Nevertheless, the City does believe that there are additional questions about the standby charges and service fees that must be answered, and it will continue to investigate. If it finds that property owners were charged a fee or standby charge in excess of what was lawfully permitted, it will take steps to provide refunds or future credits to the affected property owners. The City's opinions in this response are based on the documents presently available; its ultimate conclusions and the actions that it proposes to take in the future regarding sewer service fees and standby charges depend in part on the outcome of its ongoing investigation.

Finding 3: Business License Tax:

Your September 15, 2010 letter regarding business license taxes states that, since 2000, the City has increased those taxes without voter approval, in violation of Article XIIIIC, Section 2(b) of the California Constitution (Proposition 218). The City disagrees that the increases violated Article XIIIIC, Section 2(b); however, the City is concerned that the increases may have violated Government Code Section 53723, which is a portion of Proposition 62. The City is investigating whether the increases were in violation of that section, and if so, what the appropriate remedy is.

As the Controller's Office must have seen during its investigation of business license taxes, the current version of the tax was enacted and codified as Chapter 5.08 of the Bell Municipal Code in 1990 or 1991. (We are attempting to find the original ordinance.) Section 5.08.030 of the Code provides for the automatic annual adjustment of the tax rates by CPI, as defined in that section. The City has adjusted the tax rates annually since then, including from 2000 to the present. Under Government Code Section 53750(h)(2)(A), voter approval was not required for those inflationary adjustments, however, because that section states that a schedule of inflationary adjustments approved before the date of adoption of Proposition 218 is specifically not considered a tax "increase" that requires voter approval.

In reviewing your letter, the City became concerned that, if section 5.08.030 were newly added to the business license tax in 1990 or 1991 (i.e. the same provision for automatic inflationary adjustments did not exist in the previous version of the ordinance) and not approved by the voters, then it may violate Section 53723. As you are no doubt aware, for many years after the approval of Proposition 62, there was litigation over its constitutionality. In 1991, an appellate court held that Proposition 62 was unconstitutional. See *City of Woodlake v. Logan*, 230 Cal. App. 3d 1058 (1991). As a result of that decision, many cities approved new or increased taxes without voter approval. If the City added section

Jeffrey V. Brownfield, Chief
Division of Audits
California State Controller
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5.08.030 in 1991 without voter approval, it may have done so in reliance on that decision. Of course, the California Supreme Court ultimately upheld Proposition 62. See *Santa Clara Local Transportation Authority v. Guardino*, 11 Cal. 4th 220 (1995).

The *Guardino* case left open the question of what the appropriate remedy and the potential liability are for cities that raised taxes without voter approval while the courts were deciding Proposition 62's constitutionality. In 1997, in *McBrearty v. City of Brawley*, 59 Cal. App. 4th 1441 (1997), the appellate court held that a city must stop collecting such a tax until voters approve it, or stop collecting the tax altogether. Four years later, in *Howard Jarvis Taxpayers Association v. City of La Habra*, 25 Cal. 4th 809 (2001) the California Supreme Court held that the statute of limitations to challenge a tax adopted in violation of Proposition 62 is renewed each time a city collects it. The court added that, in the absence of another statute of limitations, the three-year period in Code of Civil Procedure Section 338(a) applies to both injunctive relief and for refunds. [Note that Bell has a claims ordinance (Municipal Code section 2.88.030(B)) that requires the presentation of claims within one year, as provided for the Government Claims Act.] Additionally, the appellate court ruled in *Ardon v. City of Los Angeles* (May 28, 2009, B201035) that class claims for a tax refund are not permitted under the Government Claims Act.

In light of the foregoing, the City is investigating whether the adoption of Section 5.08.030 of the Municipal Code violated Proposition 62. Depending on the outcome of that investigation, the City will evaluate the extent to which local business owners are entitled to refunds and the best method for making those refunds. The City thanks the Controller's Office for bringing this issue to its attention so that it can ensure that local businesses have not been taxed in excess of the legal limit or provide those businesses with refunds, in the event that the business license taxes exceed the maximum allowable rates. The City's opinions in this response are based on the documents presently available; its ultimate conclusions and the actions that it proposes to take in the future regarding sewer service fees and standby charges depend in part on the outcome of its ongoing investigation.

The City will continue its investigations of the sewer service fees and the City's business license tax. Should you have any further questions regarding these matters, please do not hesitate to contact me.

Sincerely,

Pedro Carrillo
Interim Chief Administrative Officer

cc: The Honorable Mayor Oscar Hernandez and Councilmember's

Attachment F— SCO’s Comments

Findings 1 and 2

The city did not specifically comment on Finding 1 or Finding 2, except to state, “The City appreciates the Controller’s review of the issues identified in the Audit Report, and looks forward to continue working with your office to ascertain the scope of these issued and to address them as necessary.”

Consequently, our findings and recommendations to these findings remain unchanged.

Finding 3—Sanitation and Sewerage Standby Charges

The city’s position is that it is levying two assessments/fees, a sewer service fee and a standby charge. However, the city’s resolutions and engineering cost reports for the Sanitation and Sewerage System District for the prior 21 years references only standby charges.

Additionally, the city states that “. . . and it may be that the engineers who prepared the documents did not sufficiently understand the difference between standby charges and service fees. . . .” A licensed engineer should know the difference between a standby charge and a sewer service fee. The city’s licensed engineer’s opinion fully supports that it is a standby charge.

Our finding remains as stated.

Finding 3—Business License Tax

The city disagrees with our finding and denies violating Article XIII C, section 2(b) of the California Constitution. The city claims that the business license taxes increased annually by the consumer price index from 2000 to present. However, based on our review, the business license taxes did not increase annually until 2005. Therefore, this was a tax increase which required a majority vote of the residents of the City of Bell.

Our finding remains as stated.

**State Controller's Office
Division of Audits
Post Office Box 942850
Sacramento, CA 94250-5874**

<http://www.sco.ca.gov>