

City of Piedmont  
COUNCIL AGENDA REPORT

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DATE: February 3, 2003  
FROM: George Peyton, Sam Sperry & Ann Swift  
SUBJECT: **Underground Utility Formation Policy**

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RECOMMENDATION

Consider the revised Underground Utility Formation Policy which has been modified based on council direction at your meeting of January 21, 2003, make any further changes as required and approve the policy and attachments.

BACKGROUND

On January 21, council considered a draft policy on the formation of underground utility districts. In general, the council felt that the materials presented with too “legalistic” and not informative enough for the general public. Staff was asked to revise the materials for consideration at this meeting.

Based on council direction, staff has prepared the following materials:

1. Underground Utility Formation Policy - The primary change in this policy is to eliminate the requirement for preliminary engineering costs prior to the circulation of a petition. As a result, the level of reimbursement required in Item 6 now refers to costs “as determined by the city” rather than to costs “based on a preliminary cost estimate prepared by a civil engineer”. Other clerical changes have been made to conform the language of all the documents in the proposed packet. The draft shows new language in italics and deleted language in strikethrough.
1. New FAQ Sheet – A list of commonly asked questions about undergrounding with simple answers.
2. Revised Cover Sheet – Has been changed to conform to the new policy and to reference the new materials which are proposed for attachment.
3. Revised Sample Petition – The form has been substantially revised and all but one citation to state code has been removed. Key concepts have been highlighted to add emphasis.

4. Sample Reimbursement Agreement - No substantive change has been made, since this is a legally binding agreement rather than an information piece. Blanks have been inserted where specific data is required.

The list of appropriate light standards and qualified engineers which council requested are not completed. They will be included in the final packet offered to the public.

Staff believes that these documents will give the public adequate information regarding the undergrounding process and will facilitate development of new underground utility districts. We ask that you approve the Underground Utility Formation Policy effective immediately.

**City of Piedmont**  
**UNDERGROUND UTILITY FORMATION POLICY**

**Policy**

Neighborhood groups wishing to form an Underground Utility District must prepare documents which conform to *this policy*. ~~the State Streets and Highways Code and to the city's procedures.~~

**Procedure**

1. Groups interested in forming an Underground Utility District shall contact the Director of Public Works who will provide them with a packet of information describing the formation process including a *cover sheet*, a *FAQ sheet*, a *sample petition*, a *sample reimbursement form*, a *sample map* and a list of qualified engineers of work who satisfy the city's requirements as Engineer of Work.
2. When a Steering Committee has been formed and a survey conducted by the committee regarding the general scope of the district, the Public Works Director shall arrange a meeting between city staff, the engineer, and representatives of both P.G. & E. and PacBell to create a "Area ~~district~~ Map". The map shall be prepared by the City Clerk on the Geographic Information System and shall be posted on the city's web site to inform the public regarding the scope of the proposed district.
3. ~~The engineer selected by the Steering Committee shall prepare an estimate of costs for use in the formal district petition.~~
4. The City Clerk will prepare a formal Underground Utility *an Official Petition* for circulation and attach the map prepared in 2 above and insert the engineer's estimate of costs as prepared in 3 above.
5. The Steering Committee shall be responsible for convening a meeting to which all homeowners in the proposed district are invited and at which time the official petition is made available for circulation. The committee may continue to circulate the petition until persons representing a minimum of 70% of the homes in a proposed district have signed and the petition has qualified for council consideration.
6. The Steering Committee or other interested parties shall execute a Reimbursement Agreement in a form prepared by the city attorney and shall provide proof of commitments sufficient to pay for initial engineering and other relevant costs *as determined by the city*. ~~Reimbursable costs shall be determined based on a Preliminary Cost Estimate prepared by a civil engineer.~~

7. The Steering Committee shall present all signed petitions and reimbursement forms to the City Clerk who shall verify signatures and schedule council consideration on the matter ~~within 30 days of receipt~~ *as soon as practical*.
8. *The city council shall consider the Area Map (and make changes as appropriate to create a tentative Boundary Map), approve a contract with an Engineer of Work, and schedule a public hearing regarding the formation of the proposed district.*
9. *At the public hearing regarding the proposed Assessment District the city council will either approve the benefit assessment analysis by the Engineer of Work and order that ballots be prepared to determine continued support for the district, or shall reject the benefit analysis and stop the proceedings for the district.*



## City of Piedmont Resource Materials for Utility Undergrounding Assessment Districts

The city understands that you and some of your neighbors are interested in exploring the possibility of forming a utility undergrounding assessment district. The City of Piedmont has a policy adopted by the city council which you will need to follow in order to move forward with your plan. That policy and other materials are contained in this packet. Please feel free to copy and distribute any of the items which are of interest. They consist of the following:

- City Council Policy on Underground Assessment District Formation
- FAQ Sheet on Underground Utility Districts
- Sample Petition
- Sample Reimbursement Form
- Sample Map
- List of Qualified Engineers of Work

If, after reviewing these materials, you and your neighbors are still interested, you will need to make a preliminary determination about the area you believe should be included in an assessment district. We suggest that you conduct an informal survey and do not attempt to collect any signatures at this point.

When you have decided what properties should be included in your preliminary or Area Map, please contact the Director of Public Works. He will arrange a meeting with an engineer and representatives of the utilities who can help you understand any construction related issues and assist you in refining your Area Map.

When the Area Map is completed, the city's policy requires that all of the homeowners within the proposed area be invited to an informational meeting. City staff, an engineer and bond counsel representatives will answer questions about the undergrounding process and costs. An important part of the informational meeting is a discussion of how your group will guarantee payment of initial costs through some type of reimbursement agreement with the city.

Following this kick-off meeting, you may circulate an official petition which will be prepared for you by the City Clerk. The council policy requires that your petition include a copy of the proposed Area Map which will also be provided by the City Clerk. You must gather the signatures of at least 70% of homeowners within your Area Map before the city council will consider taking initial steps to form an undergrounding district.

Please feel free to contact Larry Rosenberg, Director of Public Works, at 420-3050 or Ann Swift, City Clerk, at 420-3041 for further assistance.



# City of Piedmont

## FAQs About Underground Utility Districts

### **What does an “underground utility district” do?**

An “underground utility district” is formed by homeowners in an area who want to improve their neighborhood by removing above-ground utility poles. The district, acting through the city, issues municipal bonds to pay for the construction costs. Utility poles which carry electricity, telephone, and cable television signals are replaced by underground conduit in the street.

### **Who pays for the undergrounding?**

Homeowners in the underground district are assessed for a proportional cost of the construction of the main underground conduit. Homeowners are also responsible for the cost of the individual conduit connection between their home and the main line. Utility companies also pay a share of the costs involved, through formulas set by the State Public Utilities Commission and/or in the city’s franchise agreement with the utility.

### **Why doesn’t the city pay for undergrounding?**

The city does not have sufficient tax revenue for this type of project. A new city wide tax would penalize those homeowners who have already paid to underground their properties by making them pay twice. Requiring that neighborhoods form an undergrounding utility district ensures that most costs are borne by the people who want the project and who will benefit from it.

### **How much is this going to cost me?**

There is no way of knowing costs until an engineering study has been completed by the Engineer of Work. This estimate, prepared by the Engineer of Work, will be used on your assessment ballot.

### **How is the cost divided between the property owners?**

A civil engineer is hired by the city to develop what is called a “benefit assessment analysis”. The engineer takes into account many factors including safety, view, size of parcel, etc. so that the properties gaining the most pay the most. The benefit assessment analysis is presented to the city council for approval together with actual bids for the construction. The council holds a

public hearing and has the authority to make changes or to accept the benefit assessment and cost apportionment as presented by the engineer.

**Who determines the cost for the individual connection to my house?**

As noted above, the city will solicit bids for the undergrounding project, including all individual connections. You will be notified by the city of the bid which was accepted by the city council. You may accept this bid or may select a contractor of your own to do the work.

**Do I have to pay for all of this work right away?**

Homeowners are given the option to pay for their assessments immediately or to have their assessment added to their property tax bill over a period of time (typically 20-25 years). This applies to both the main underground utility assessment and, if you choose the city's contractor, to the cost of the individual assessment.

**Am I voting for the assessment district if I sign an underground petition?**

No. You are asking the city council to take steps to develop a preliminary cost analysis for the district. When you receive your ballot with actual costs on it, you may vote no, even if you have signed the initial petition.

**Do I have to sign a reimbursement agreement at the same time I sign a petition?**

No. However, the city requires a "security deposit" from any neighborhood that wishes to underground utilities and one or more of the residents in the proposed area must pledge money to pay for the initial engineering costs.

**If I sign a reimbursement agreement, will I get my money back?**

If the district is formed, pledges will be repaid from the bond sale proceeds. If the district is stopped either by a majority protest or by the city council, the answer is no. The reimbursement may be reduced if the actual costs for construction exceed the budget or if the bond issue doesn't receive the anticipated price or yield.

**How many votes does it take for a “majority protest” to stop the assessment district?**

A majority (51%) “no votes” of the total ballots returned is required to stop an assessment district. State law requires that the number of ballots each property owner may vote is directly proportional to the dollar value of the proposed assessment. If a property owner’s assessment will be \$25,000, that property owner has 25,000 votes. (Note: the cost of the lateral connection from the street to your home is not included in the assessment total for voting purposes.

**If my house is not included in a proposed district, can it be added?**

Yes. The proponents of a district present an Area Map to the city council when asking that the city take initial steps to form an undergrounding district. The city council has the ultimate authority to add or delete properties before approving a final boundary map for the district.

**Is there any other way to stop an assessment district?**

The city council has the authority to stop the formation of a district whether or not there is a majority protest.

## Sample Petition

### Supporting the \_\_\_\_\_ Undergrounding Assessment District

To the City Council of the City of Piedmont:

The purpose of this petition is to express the interest of our neighborhood in forming an undergrounding assessment district. **I/we understand that this is a non-binding petition based on preliminary information** and does not obligate the undersigned to support the undergrounding project once the costs and expenses are more precisely calculated and an allocation of costs among the homeowners in the district has been established.

I/we have reviewed the attached Area Map which represents the proposed limits for the \_\_\_\_\_ Undergrounding Utility District. **I/we understand that city council policy requires that owners of at least 70% of the parcels on the attached map must sign this petition in order for the proceedings outlined below to get started.**

**I/we also understand that the city must receive a cash deposit and/or reimbursement agreement from some or all of the project supporters** to pay the preliminary expense in obtaining the required engineer's report. The cash deposit will be repaid from project financing ONLY in the event the project is ultimately approved by the City Council.

The undersigned is either the owner or a co-owner of a home situated within the area shown on the attached exhibit map (the "Area") and requests that the City Council initiate legal proceedings for an assessment district to do the following:

- (1) Determine whether utilities should be undergrounded in the area;
- (2) Request an engineering report that would allocate the expenses of the project, including bond financing, to the properties in the Area on the basis of estimated benefit; and

The proceedings to form the proposed assessment district will entail the following stages:

1. Accept the petitions and approve a boundary map - **The "Area Map" attached to this petition is a preliminary outline of the proposed district.** The city council may add or delete properties as information about project is developed. A boundary map is the final version approved by the city council.

2. Preparation of an engineer's report by a qualified engineer selected by the city, the report to include a more precise cost estimate and a proposed allocation of the costs to the benefited properties;
3. Council calls a public hearing and issues a notice of assessment and ballots to the affected property owners (notice and ballots to be mailed at least 45 days prior to the hearing);
4. Public hearing and tally the assessment ballots which have been returned to see if there is still strong support; and
5. Depending on the outcome of the hearing and the ballot procedure, the council then decides whether to proceed and, if so, whether it wants to approve the report as is or to receive a modified report with changes the Council believes should be made.

I/we understand that the legal process described above is based on provisions of the Improvement Act of 1911 (Sections 5000 and following, Streets and Highways Code) and the Municipal Improvement Act of 1913 (Sections 10000 and following, Streets and Highways Code).

Name

Property Street Address

Date

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**The exhibit or Area Map must be attached for this petition to be accepted by the City Clerk!**

## Sample Reimbursement Agreement

### PRELIMINARY EXPENSE DEPOSIT AND INDIVIDUAL REIMBURSEMENT AGREEMENT

#### Recitals

A. The parties to this agreement are the City of Piedmont, a California charter city (the “City”), and (the “Proponents”).

B. The effective date of this agreement shall be \_\_\_\_\_, or on approval by the City Council of the City (the “City Council”) of the Petition referred to in Paragraph C hereafter, whichever occurs later.

C. The Proponents have coordinated the effort which has led to obtaining signatures on a petition (the “Petition”), counterparts of which have been filed with the City Clerk of the City, requesting that the City undertake special assessment proceedings to provide for the undergrounding of certain existing overhead utility facilities and the related relocation of street lights located on utility poles which will be removed as part of the undergrounding project (the “Project”).

D. The Petition requests the City to implement land-secured financing proceedings under the Municipal Improvement Act of 1913 (the “1913 Act”), and to issue and sell limited obligation bonds of the City under the Improvement Bond Act of 1915 (the “1915 Act Bonds”) upon the security of the unpaid assessments levied and recorded against certain residential real property located within the boundary of an area to be known as the proposed \_\_\_\_\_ Undergrounding Assessment District (the “Proposed Assessment District”).

E. In the event the City is able to complete the 1913 Act assessment proceedings and to thereafter accomplish sale and delivery of the 1915 Act Bonds, the City intends to utilize a prescribed portion of the proceeds of sale thereof, pursuant to the 1913 Act in general and the Engineer’s Report (the “Engineer’s Report”) approved by the City Council of the City as a part of the 1913 Act proceedings and pursuant to the terms and conditions of this agreement to (1) reimburse the Proponents for the deposit or deposits made pursuant to this agreement and (2) finance the implementation of the Project, all in accordance with and subject to the terms and conditions of the 1913 Act, the Engineer’s Report and this agreement.

F. In consideration for the mutual undertakings of the parties stated herein, the parties agree as follows.

#### Agreement

1. The foregoing recitals are true and correct, and the parties expressly so acknowledge.

2. Forthwith upon approval of this agreement by the City Council and execution hereof by the authorized representatives of the parties, the Proponents will deposit with the City \$\_\_\_\_\_ into a special fund to be established and maintained by the City and to be known as the “\_\_\_\_\_ Preliminary Expense Fund” (the “Preliminary Expense Fund”), which initial deposit shall remain in the Preliminary Expense Fund, unless otherwise needed, until the final invoice from the Engineer of Work has been submitted to the City. The City is authorized to disburse amounts from the Preliminary Expense Fund, from time to time, to pay invoices submitted to the City by \_\_\_\_\_, as Engineer of Work for the Proposed Assessment District proceedings (the “Engineer of Work”), for services provided by the Engineer of Work in connection with the Proposed Assessment District proceedings pursuant to a written agreement between the City and the Engineer of Work pertaining to such services, which written agreement is being approved by resolution of the City Council and executed by the parties.

a. In addition to the foregoing, the Proponents shall deposit with the City sufficient funds to pay the exact amount shown in each separate invoice within ten (10) calendar days after the date of the invoice from the Engineer of Work or of the date of the cover letter sent with the invoice by the Engineer of Work, whichever is later. Any such check or cash deposit shall be made to the attention of the City Clerk, and shall be physically received in the Office of the City Clerk, Piedmont City Hall, 120 Vista Avenue, Piedmont, CA 94611, no later than 5 p.m. on the date due.

b. The maximum aggregate amount that the Proponents shall be required to deposit with the City under this Agreement shall be \$\_\_\_\_\_ which amount may be reduced if the invoices to the City from the Engineer of Work are less than that maximum amount. Any amount overpaid by the Proponents based on the terms of this Agreement shall be repaid to the Proponents by City within thirty (30) days after the amount of the overpayment has been finally determined based on the final invoice received from the Engineer of Work.

c. The obligations of the Proponents set forth in this Paragraph 2 are joint and several, and shall be fully enforceable in a court of law.

3. The City agrees to proceed with all due diligence in conducting and completing the legal proceedings, leading to recording of the assessments levied upon the various parcels of land within the Proposed Assessment District. The Engineer of Work for said legal proceedings shall be instructed to include in the incidental expenses listed in the cost estimate in the Engineer’s Report an amount estimated to be sufficient to reimburse the Proponents for the full amount of the deposit or deposits made by the Proponents pursuant to this agreement, and in addition, for the full amount of reasonable project development costs incurred and paid by the Proponents prior to this Agreement.

4. The City shall proceed with all due diligence to accomplish issuance and sale of the 1915 Act Bonds to accomplish the authorized purposes of the Proposed Assessment District, including but not limited to reimbursement to the Proponents for their deposit or deposits pursuant to this agreement and to implement the Project. Notwithstanding any other

provision hereof, the City shall be under no obligation to reimburse any amounts to the Proponents hereunder except from the proceeds of the 1915 Act Bonds issued for the Proposed Assessment District when, as and if issued. Proponents acknowledge that the City Council retains complete discretion over the issuance of the 1915 Act Bonds and that if for any reason the bonds are not issued, Proponents will have no right to recover any amounts deposited hereunder. If the City Council determines to abandon the proceedings for the Proposed Assessment District and the 1915 Act Bonds, any amounts deposited by the Proponents hereunder which have not been spent and which are not held to cover future payments to the Engineer of Work for which the City is obligated will be returned to the Proponents.

5. It is understood and agreed that nothing in this Agreement requires the City Council or the City to finally approve the Proposed Assessment District, which decision cannot be made by the City Council until due deliberation by the Council after the public hearing and receipt of the report on the results of the assessment ballot procedures.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their authorized representatives as of the effective date stated above.

CITY OF PIEDMONT

By \_\_\_\_\_  
City Administrator

Attest:

By \_\_\_\_\_  
City Clerk

PROPONENTS