

City of Piedmont  
COUNCIL AGENDA REPORT

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DATE: January 16, 2006

FROM: Ann Swift, City Clerk

SUBJECT: **Consideration of a Request to Change the City's Policy  
Regarding the Level of Support Required for Assessment  
Balloting**

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The city has received a letter from Denny McLeod, representing the steering committee of the Central Piedmont Underground Utility District in which he asks the council to give the district special consideration when considering the tally of assessment ballots. Under state law:

- An undergrounding district may not be approved by council if 51% of the ballots cast are against the project (a majority protest)
- With the exception of Item 1, the city council has absolute discretion in determining the number of positive ballots which it requires for the council to support formation of a district

The city has a long-standing policy that sets a positive threshold of 70% affirmative ballots, although this policy has not had the unanimous support of council members over the years. However, the city council has only considered the formation of two districts since implementing its policy in 2003, the Wildwood-Crocker and the Central Piedmont Districts. The Wildwood-Crocker District had 92% affirmative ballots for its first tally and 78% affirmative ballots on its second tally. The Central Piedmont District had 74% affirmative ballots in 2005.

I have attached copies of the city's adopted policy, minutes of meetings at which council discussed this matter, and minutes of meetings at which ballots were tallied.

City staff is currently working with steering committees for four undergrounding districts: Central Piedmont, Piedmont Hills, Alta Piedmont and Hampton-Sea View. There are two completed undergrounding districts, Dudley-Blair and Wildwood-Crocker. The attached map shows the scope of undergrounding if all of these districts are successful in formation.

The council has complete authority to change its policy or to continue to utilize a 70% threshold for affirmative ballots.

**Electronic Correspondence 1-16-07**

January 5, 2007

Piedmont City Council  
c/o Ann Swift, City Clerk  
120 Vista Avenue  
Piedmont, CA 94611

Dear Ann,

We are writing this letter to let you know that we are not in agreement with the items mentioned in the recent letter about the Central Piedmont Underground Assessment District.

We will not be able to attend the City Council meeting and would like our opinions to be expressed through this letter.

We are extremely upset and dismayed by the dramatic increase in costs for this project, particularly after listening to the committee express great confidence in the accuracy of the original estimate. The assessments have gone up 42% -- and we already had one of the highest assessments in the district! We are firmly against paying over \$65,000 for this project.

The suggestion that the rules for approving the project be changed after the fact is outrageous and unacceptable, especially in light of the cost increases. Everyone knew going in what the rules were, and to change them now is unfair and irresponsible. Furthermore, we think there should be a public explanation before the meeting of why there is a proposal to change the rules and what the new proposed approval level would be.

As relatively new residents of Piedmont, we have greatly enjoyed our neighborhood and community. However, this project is of great concern to us – now more than ever -- and we are firmly opposed to the project and especially to any revision of the policy requiring 70% vote to approve it.

Sincerely,

Gary and Katie Korotzer  
12 Sharon Avenue

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Dear Ms. Swift:

My wife Chistine and I own and occupy 44 Sharon Avenue. I am writing on behalf of both of us in response to your December 29 letter regarding the undergrounding of utilities in our area.

While we financially supported the initial effort to evaluate this proposal the amended assesement amounts included in your letter are substantially in excess of the highest amounts told to us when we initially contributed to the review. Simply put the amended assessments vastly exceed the value to us of performing this work. Accordingly we would certainly not support any lowering of the 70% passage requirement and in fact would favor raising the threshold given that the latest quotations for the work are at least 25% higher than the highest amount initially suggested.

Should we have the opportunity to vote on this project we will cast our ballot against this initiative.

Thanks for allowing us to provide input. Do not hesitate to contact me should you have any questions.

Sincerely,

Sellers and Christine Stough

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**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.

**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, and a sample map.
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 or Work appointed by the city, and representatives of both P.G. & E. and PacBell to create a "Area 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 City Clerk will prepare an Official Petition for circulation and attach the map prepared in 2 above.
4. 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 Steering Committee shall be responsible for notifying in writing all property owners within the proposed district at least 15 days in advance of said meeting. The committee may continue to circulate the petition until persons representing a minimum of approximately 70% of the homes in a proposed district have signed and the petition has qualified for council consideration.
5. The Steering Committee shall prepare a Reimbursement Agreement in a form acceptable to the city, including the city attorney, and shall provide proof of commitments sufficient to pay for initial engineering and bond counsel costs as determined by the city.
6. 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 as soon as practical.

7. The city council shall consider the Area Map (and make changes as appropriate to create a tentative Boundary Map), consider approving a contract with an Engineer of Work, and consider scheduling a public hearing regarding the formation of the proposed district.
  
8. 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 or make such orders as it deems appropriate. The Public Works Director has the discretion to retain an expert to review/audit the Engineer of Work's benefit assessment analysis.

City Council Meeting Minutes 1/21/03

**Proposed Policy Re  
Utility Undergrounding  
Districts**

The Public Works Director updated the Council on the status of the Dudley/Blair/Mountain/Pacific Utility Undergrounding Project which was approved two years ago – the first such project in Piedmont in more than 25 years. The Director noted that as a result of the success of the Dudley/Blair effort, the City has now received at least nine petitions requesting the formation of underground utility districts. Because the utility undergrounding process is a complex one, staff is recommending that the City establish a policy outlining the City’s requirements for the formation of such districts to educate and inform both proponents and opponents as well as provide a more standardized approach in the establishment of such districts. The City Clerk and the City’s Special Bond Counsel, Sam Sperry, summarized the proposed policy’s requirements regarding petition form, district maps, engineer selection and City reimbursement.

Mayor Matzger excused herself from the meeting at 8:40 p.m. and passed the gavel to Vice Mayor Bruck.

**Public testimony** was received from:

Marion Schwartz, speaking on behalf of the St. James Drive/La Salle Avenue utility undergrounding petition, requested that her neighborhood be consolidated with either the Sierra Avenue, Sheridan vicinity or Sotelo-Glen Alpine proposed utility undergrounding effort and that her neighborhood not be required to resubmit its petition in order to comply with the City’s new policy. She also noted discussions underway that the St. James, Sierra, Sheridan and Sotelo-Glen proposals may combine into a single, non-contiguous utility undergrounding district consisting of approximately 250 homes.

Kathy Beallo concurred with Ms. Schwatz that currently submitted petitions not be required to be resubmitted in order to conform with the City’s proposed new policy. She noted that her Crest Road area has a 73% support level for utility undergrounding.

George Kersh suggested that undergrounding petitions include estimated individual hook-up costs, administrative cost estimates, interest rates and the possibility that electrical upgrades for code compliance may be required so that residents have a full understanding of all the costs which may be involved before signing petitions of support.

Jerry Pearsall	Jeff Horner
Grant Powell	Teresa Jerner
Patricia Kelly	Kelliane Lam
Peter Persoff	

All opposed the proposed utility undergrounding districts as currently presented. The cited concerns that proposed district boundaries have repeatedly changed, a more equitable and better approach would be for the Council to submit a ballot measure to fund a citywide utility underground district, the current process is adversarial in nature and divisive to neighborhoods, proposed districts will impose significant financial hardship on some property owners especially during this economic downturn, “view” properties realize a disproportionate gain at the expense of their neighbors, there are insignificant protections and

safeguards for the “minority” properties who oppose undergrounding, and the absence of a cost/benefit analysis or full disclosure of costs is misleading and unfair. Ms. Lam felt that safety benefits cited by undergrounding proponents were exaggerated and that the resulting assessment proportion assigned for “safety” was, therefore, too high. She also suggested that a mediation process be used to resolve differences between utility undergrounding proponents and opponents within a neighborhood

Mike Savidge requested that consideration of the proposed policy be continued to allow more time for residents to review the proposal. He also opposed utility undergrounding without affected property owners’ first being given an opportunity to determine if there are better uses for their property assessment dollars. He also felt that the *one-third* designation given for “view enhancements” in determining property assessments was too low and that allowing each undergrounding neighborhood to select its own light standard design will create an unattractive mish-mash.

Ed Dorgherty referenced the Streets & Highways Code section requiring cities and utilities to provide 50% of utility undergrounding funding and inquired if this issue has been addressed.

Eleanor Gordon requested that the cost of utility undergrounding for both the City and property owners for the project completed 25 years ago be released. She was convinced that the City paid a greater share of the cost at that time to lessen the burden on property owners.

Dennis Bromley supported the current utility undergrounding process and opposed the proposed new City policy. He felt speaker arguments in opposition to utility undergrounding were bogus.

Peter Freeman suggested that the City use Rule 20A funds to pay for utility undergrounding costs in front of school property.

Joe Sheehan inquired who owns and maintains undergrounded utility lines?

Howard Bloom inquired if there are agencies or companies other than PG&E who can underground utilities and thus expedite the process when PG&E crews are unavailable or assigned higher priority duties.

The Council supported the proposed City undergrounding policy package in concept but requested that it be revised to:

- be used as a guideline for proponents. It was also requested that a list of the most commonly asked questions, with answers, be included on this cover page. Some of the questions to be included on the list are: Why doesn’t the City consider proposing a citywide utility underground district? Why isn’t the City and PG&E providing 50% of utility undergrounding funding as required by the Streets & Highway Code? Who owns and maintains undergrounded utility lines?
- include data regarding the typical costs associated with establishing utility undergrounding districts so that proponents can be more aware of the initial funding required to proceed. Also include general cost ranges for individual hook-ups;

- include a recommended list of light standard designs from which undergrounding districts can choose;
- include a recommended list of “Engineers” who undergrounding proponents can retain so that mergers of proposed districts can be more easily accommodated;
- propose a greatly simplified sample petition form and process that is “user-friendly” and which allows the greatest flexibility early in the process for defining boundaries and estimating costs;
- include a reimbursement agreement to protect the City.

The Council requested that staff proceed with processing the undergrounding petitions received to date, regardless of whether their petitions and maps are in accordance with the proposed new policy, and bring these petitions forward to the Council if they are deemed “legal” by the City’s Special Bond Counsel. However, the Council cautioned any neighborhoods contemplating forming a utility undergrounding district to wait until the new policy and process is in place before proceeding.

## City Council Meeting Minutes 2/3/03

### Proposed Policy for Utility Undergrounding

Per Council direction of January 21, the City Clerk submitted a revised Underground Utility Formation Policy for consideration. The Council agreed that the revised policy package was responsive to Council requests and commended the Clerk for her efforts. The Council requested that the policy be further amended as follows:

#### Formation Policy:

*Procedure #1: Delete:* “and a list of qualified engineers of work who satisfy the city’s requirements as Engineer of Work”

*Procedure #2:* “. . . the Public Works Director shall arrange a meeting between city staff, the Engineer of Work appointed by the city, and representatives of both PG&E and PacBell . . .”

*Procedure #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 Steering Committee shall be responsible for notifying in writing all property owners within the proposed district at least 15 days in advance of said meeting. The committee may continue to circulate the petition until persons representing approximately 70% of the homes in a proposed district have signed and the petition has qualified for council consideration.

*Procedure #8:* The city council shall consider the Area Map (and make changes as appropriate to create a tentative Boundary Map), consider approving a contract with an Engineer of Work, and consider scheduling a public hearing regarding the formation of the proposed district.

*Procedure #9:* “. . . or shall reject the benefit analysis or make such orders as it deems appropriate. The Public Works Director has the discretion to retain an expert to review/audit the Engineer of Work’s benefit assessment analysis.”

#### Resource Materials: (6<sup>th</sup> paragraph, last sentence):

“You must gather the signatures of approximately 70% of homeowners . . .”

**FAQs:** Revise the answer to the Question “How much is this going to cost me?” based upon Councilmember Wieler’s written statement.

#### Sample Petition:

Revise 3<sup>rd</sup> Paragraph as follows: “. . . city council policy requires that owners of approximately 70% of the parcels . . .”

Revise Subparagraph (2) as follows: “(2) Request an engineering report that would propose an allocation for the expenses of the project, including the cost of bond financing, to the properties in the Area on the basis of estimated benefit; and”

**Resolution 20-03**

RESOLVED, that the City Council adopts, as amended herein, the Underground Utility Formation Policy and Attachments and directs that said policy become effective immediately.

Moved by Bruck, Seconded by McEnroe

Ayes: Matzger, Bruck, Friedman, McEnroe, Wieler

Noes: None

Absent: None

(1075)

The City Administrator agreed to submit a recommendation at a future meeting regarding work flow management of current utility undergrounding proposals as well as anticipated future proposals given the extensive staff workload involved in processing such applications. Suggestions for handling undergrounding applications included: imposing a temporary moratorium on the acceptance of new petitions, hiring extra staff or setting a limited time period wherein petitions can be submitted.

**City Council Meeting Minutes 5/23/05**

**PUBLIC HEARING:  
Proposed Wildwood/Crocker  
Utilities Underground District**

The City Clerk announced that pursuant to Council action of April 24, all property owners within the proposed Wildwood/Crocker Utilities Underground Assessment District were mailed ballots setting forth the proposed assessment for their properties and notified of tonight's public hearing to discuss the proposed formation of the district and count received ballots. She noted that property owners who submitted their ballots earlier have the opportunity to change their *vote* at this hearing if they so wish. She also outlined the process to be followed depending upon the outcome of the vote tally. The Mayor opened the public hearing.

**Public testimony** was received from:

Gary Rinehart opposed district formation and stated his belief that it would be improper for the City to *cast* any votes in this matter for the Hall Fenway public property included in the district for two reasons: One, the Council is involved in the arbitration of this matter and Two, district formation may not be in the best interest of the City as a whole. He stressed that the bonded indebtedness that property owners will be required to undertake if this one block district is formed may increase their property tax burden to the point where they may be reluctant or financially incapable of supporting future passage of the City's municipal services tax. He emphasized that the current cost of the assessment is significantly higher than the initial estimate given at the time district formation was initiated, adding his belief that the undergrounding project is now no longer worth the cost to property owners or the City.

Craig Casebeer urged Council approval of district formation, stressing that utility undergrounding benefits the entire community, noting that the City has the right to cast a vote for the public property included in the district and voicing his confidence that the majority of property owners within the district will vote in favor of the project.

George Childs opposed the proposed \$30,240.80 assessment figure assigned to the Hall Fenway property, believing that the property's small amount of street frontage and limited trenching requirements do not justify such a high cost. He also urged the Council in the future to require assessment costs assigned to public property within a proposed utility underground district to be borne by the private property owners within the district.

Peter Robinson objected to the process, citing his belief that 100% voter approval should be required for the formation of an assessment district and that the "public hearing" should be held *before* votes are cast and not afterward. He also inquired as to the percentage of the City's votes in this matter. The City Clerk responded that the Wildwood/Crocker utility undergrounding proposal has been publicly discussed at previous Council meetings, the most recent being April 4, and all property owners within the proposed district were notified of tonight's public hearing and advised that ballots could be submitted or changed at tonight's hearing. She noted that the City's votes in this matter constitute 3% of the total vote tally.

The Mayor inquired if any property owner wished to submit or change his/her ballot. No responses were received and the Mayor closed the public hearing and requested the City Clerk to tally the vote. The

meeting was recessed at 7:55 p.m. for the vote count and reconvened at 8:15 p.m.

The City Clerk announced that 852,320 votes were cast (one property did not vote) with 187,158.40 in opposition (22%) and 665,160.80 in favor (78%) of district formation. The Council acknowledged the strong majority support for utility undergrounding, noting that even if the City had not cast its votes *in favor*, the district would have received a 75% approval rate. The Council therefore supported adoption of the Resolution overruling protests, levying assessments without modification, approving and ordering the work and improvements for the utility undergrounding project, authorizing and directing preparation and filing of a notice of exemption, and authorizing and directing related actions for the Wildwood/Crocker Avenues Undergrounding Assessment District. The City Clerk stated property owners have a 30 day period to choose a payment option and contract award will be scheduled for Council approval on the June 20 agenda.

### **Resolution 47-05**

WHEREAS, by resolution adopted on September 3, 2002, this City Council (this "City Council") has accepted a petition (the "Petition"), signed and submitted by various owners of certain real property situated in the City of Piedmont (the "City") and has directed that special assessment proceedings be undertaken by the terms of such petition pursuant to the Municipal Improvement Act of 1913 (the "1913 Act"); and

WHEREAS, this Council has approved a map and adopted the boundaries shown on such map as describing the extent of the territory to be included in a proposed assessment district to be known as the Wildwood/Crocker Avenues Undergrounding Assessment District, City of Piedmont, County of Alameda, State of California (the "Assessment District"); and

WHEREAS, by adoption of its resolution of intention on September 3, 2002, this Council has declared its intention to order the work and improvements described in Exhibit A to said resolution to accomplish the undergrounding of existing overhead utility facilities within or adjacent to the Assessment District and, where appropriate, the removal of the existing overhead facilities and above-ground poles (the "Undergrounding Project"), which project is deemed to provide special benefit to certain property (the "Benefited Property") situated within the Assessment District, and to levy a special assessment upon the Benefited Property, and has declared its intention to issue limited obligation improvement bonds (the "Bonds"), in accordance with the Improvement Bond Act of 1915 (the "1915 Act"), representing all unpaid assessments; and

WHEREAS, at the direction of this Council in the resolution of intention, I.L. Schwartz Associates, Inc., as Engineer of Work for the Assessment District (the "Engineer of Work"), has filed with the City Clerk (the "Clerk") the written report prescribed by and containing the matters set forth in Section 10204 of the Streets and Highway Code (the "Engineer's Report"); and

WHEREAS, by resolution adopted on June 2, 2003, this Council preliminarily approved the Engineer's Report and scheduled the required

public hearing as required by law for August 18, 2003; and

WHEREAS, notice of said hearing was given by mail to the property owners, accompanied by the property owner assessment ballot, as required by law, as evidenced by the Certificate of Mailing which has been filed with the Clerk; and

WHEREAS, on October 14, 2004, sealed bids were received and were opened, and the low bid exceeded the estimate set forth in the Engineer's Report; and

WHEREAS, on December 6, 2004, this Council rejected all bids and ordered that the new bids be solicited; and

WHEREAS, on January 25, 2005, sealed bids were received and opened and the low bid exceeded the estimate set forth in the Engineer's Report; and

WHEREAS, on March 25, 2005, the Engineer of Work prepared and filed with the City Clerk an amended engineer's report ("Amended Engineer's Report") which increased the amount of some line items to reflect the low bid received and further included a revised assessment roll which proposes increased assessment amounts to match the increased costs; and

WHEREAS, by resolution adopted on April 4, 2005, this Council preliminarily approved the Amended Engineer's Report and scheduled a public hearing as required by law for May 23, 2005; and

WHEREAS, notice of said hearing was given by mail to the property owners, accompanied by the property owner assessment ballot, as required by law, as evidenced by the Certificate of Mailing which has been filed with the Clerk; and

WHEREAS, the public hearing for May 23, 2002, was conducted, and this Council having provided opportunity for any interested person present to be heard with respect to any aspect of the Assessment District, the Undergrounding Project or the proposed assessments, the hearing was closed; and

WHEREAS, following the close of the public hearing, the property owner assessment ballots which had been submitted to the City Clerk were publicly tallied, and the City Clerk reported that ballots submitted in favor of the proposed levy of assessments exceeded the ballots submitted in opposition, with the result that there was not a majority protest as provided by Article XIID of the California Constitution and Section 53753 of the California Government Code; and

WHEREAS, based upon consideration of all of the information received by members of this Council in connection with the Assessment District, including but not limited to the information set forth in the Engineer's Report, the two alternative Amended Engineer's Reports, the testimony and discussion had at the public hearing on this date, this Council believes that the protests submitted should be over-ruled and that the Assessment District should proceed on the basis of the Amended Engineer's Report, without increasing the amount of the individual assessments to be levied; and

WHEREAS, this Council finds and determines (a) that any general public benefit from the Undergrounding Project is nominal and has been more than offset by the City's contribution of staff time and resources in the various proceedings for establishment of the Assessment District and in the review and processing of the plans and specifications for and the supervision of the bidding procedures for the Undergrounding Project, which contribution represents an expense to the City for which the City has waived the reimbursement to which it is entitled under the 1913 Act, (b) that, based upon the foregoing, the assessments being levied against the benefited parcels within the Assessment District represent only local and special benefit to the parcels being assessed, and (c) that the proposed allocation of the estimated costs and expenses of the Undergrounding Project improvements and related incidental expenses to the benefited parcels of land in the Assessment District, as set forth in Exhibit C of the Engineer's Report, utilizing the method of apportionment set forth in Exhibit D of said Engineer's Report, represents a fair and equitable apportionment of such cost and expenses in proportion to the estimated benefits to be received by each of such parcels, respectively, from the Undergrounding Project; and

WHEREAS, as authorized by Section 15302 of the California State Guidelines for the California Environmental Quality Act ("CEQA"), this Council hereby finds and determines that the Undergrounding Project is categorically exempt from the provisions of CEQA;

NOW, THEREFORE, THE CITY COUNCIL HEREBY FINDS, DETERMINES AND RESOLVES as follows:

1. The foregoing recitals are true and correct, and this Council hereby so finds and determines.
2. This Council hereby finds and determines that there was not a majority protest and hereby overrules all protests, whether written or oral, submitted prior to or at the public hearing.
3. The proposed Undergrounding Project, as described in Amended Engineer's Report, is hereby approved and ordered.
4. This Council hereby directs the preparation of a Notice of Exemption, indicating that the Undergrounding Project is categorically exempt from the provisions of CEQA, and further directs that said Notice of Exemption be filed with the Alameda County Clerk for posting in accordance with CEQA.
5. The individual assessments, in the amounts stated in Amended Engineer's Report are hereby confirmed and levied, and this action is final as to all persons, in accordance with Section 10312 of the Streets and Highways Code.
6. The assessment diagram, as set forth in the Amended Engineer's Report, shall be filed for record in the Office of the County Recorder for Alameda County, as required by Section 3114 of the Streets and Highways Code; a notice of assessment, containing the matters required by said Section 3114 shall be prepared, executed and recorded by the Clerk; and notice of recordation of assessment shall be given by publication and by mail in the form and manner required by Section 10404 of the

Streets and Highways Code. The notice of recordation of assessment given by mail shall also prescribe the deadline for submission by or on behalf of any property owner of a cash payment to prepay, either in whole or in part, the assessment levied upon the property of such owner, pursuant to Sections 10403 and 10404 of the Streets and Highways Code.

7. Pursuant to Section 10603 of the Streets and Highways Code, the City's Finance Director (the "Finance Director") is hereby designated to collect and receive the cash payments from property owners on account of the assessments levied, and the Finance Director shall, upon the expiration of the prescribed 30-day cash payment period, submit to the City Clerk a Certificate re Paid and Unpaid Assessments.
8. This Council intends to proceed with authorization for the issuance and sale of the Bonds, pursuant to the 1915 Act and upon the security of and in a principal amount equal to the unpaid assessments, bearing interest at a rate not to exceed twelve percent (12%) per annum, with the last principal installment of the Bonds to mature not to exceed twenty-nine (29) years from the second day of September next succeeding twelve (12) months from their date.
9. This resolution shall take effect immediately.

Moved by Wieler, Seconded by Barbieri  
Ayes: Bruck, McEnroe, Barbieri, Wieler  
Noes: None  
Absent: Friedman  
(1075)

**City Council Meeting Minutes 11/7/05**

**Utility Undergrounding:  
Central Piedmont  
District**

The City Clerk reported that pursuant to Council action of September 6, 2005, all property owners within the proposed Central Piedmont Utility Undergrounding Assessment District were provided notice of tonight's public hearing and assessment ballots with regard to whether this proposed utility undergrounding assessment district should be formed. The City Clerk requested that after the public hearing, the Council provide an opportunity for any affected resident to submit a ballot or change a previously submitted one. Following this, the ballots will be counted to determine if there is a *majority protest* against district formation and if not, the Council shall then determine if there is a sufficient level of support to justify district formation.

Prior to the City Clerk's staff report, Councilmember Friedman recused himself from discussion and action on this matter and left the chambers.

**Correspondence** was received from: Denny & Ruth McLeod, dated October 19; Jim & Lynn Saunders, October 25; Donna Moren, October 18; Pam Rafanelli, March 12, September 2 and October 12.

**Public testimony** was received from:

Anian Tunney, a real estate broker, stressed that undergrounding utilities significantly increases the property values within a neighborhood as well as dramatically increases neighborhood aesthetics. She emphasized that the costs associated with undergrounding are outweighed by the financial enhancement of property value.

Lynn Saunders supported undergrounding, citing the public safety benefits of increasing a neighborhood's accessibility during emergencies.

John Shuman, a member of the Dudley/Mountain Utility Undergrounding District, noted that the process of undergrounding can be accomplished with minimum disruption to private property amenities and that overall the experience is not unpleasant.

Denny McLeod urged Council approval of the proposed district, noting that proponents have worked on this project for over 3 years and if approved, the project will *connect* the undergrounding districts of Dudley/Mountain and Wildwood/Crocker for the significant benefit of the community as a whole and the neighborhoods in particular.

The Mayor inquired if any resident wished to submit a ballot or change a previously submitted one. There being no response and no more requests to speak, the Mayor closed the public hearing. The meeting was recessed at 8:05 p.m. for the counting of the ballots, with the Mayor indicating that the Council will recess to a Closed Session to resume its earlier discussions regarding police chief employment.

The Mayor reconvened the meeting at 9:10 p.m. The City Clerk announced that there was no *majority protest*, noting that of the \$4,108,043.08 ballots cast, \$3,075,898.17 were in **favor** of district formation – a 74% approval rate. The Council congratulated district organizers for their years of hard work, agreeing that the undergrounding project will be a great benefit to the City and the neighborhoods. It was noted that the 74% approval level exceeded the Council's *benchmark support level of 70%*.

**Resolution 99-05**

RESOLUTION OVERRULING PROTESTS, LEVYING ASSESSMENTS WITHOUT MODIFICATION, APPROVING AND ORDERING THE WORK AND IMPROVEMENTS FOR THE UTILITY UNDERGROUNDING PROJECT, AUTHORIZING AND DIRECTING PREPARATION AND FILING OF A NOTICE OF EXEMPTION, AND AUTHORIZING AND DIRECTING RELATED ACTIONS CITY OF PIEDMONT CENTRAL PIEDMONT UNDERGROUNDING ASSESSMENT DISTRICT

WHEREAS, by resolution adopted on February 3, 2003, this City Council (this "City Council") has accepted a petition (the "Petition"), signed and submitted by various owners of certain real property situated in the City of Piedmont (the "City") and has directed that special assessment proceedings be undertaken by the terms of such petition pursuant to the Municipal Improvement Act of 1913 (the "1913 Act"); and

WHEREAS, this Council has approved a map and adopted the boundaries shown on such map as describing the extent of the territory to be included in a proposed assessment district to be known as the Central Piedmont Undergrounding Assessment District, City of Piedmont, County of Alameda, State of California (the "Assessment District"); and

WHEREAS, by adoption of its resolution of intention on October 7, 2003, this Council has declared its intention to order the work and improvements described in Exhibit A to said resolution to accomplish the undergrounding of existing overhead utility facilities within or adjacent to the Assessment District and, where appropriate, the removal of the existing overhead facilities and above-ground poles (the "Undergrounding Project"), which project is deemed to provide special benefit to certain property (the "Benefited Property") situated within the Assessment District, and to levy a special assessment upon the Benefited Property, and has declared its intention to issue limited obligation improvement bonds (the "Bonds"), in accordance with the Improvement Bond Act of 1915 (the "1915 Act"), representing all unpaid assessments; and

WHEREAS, at the direction of this Council in the resolution of intention, Harris & Associates, Inc., as Engineer of Work for the Assessment District (the "Engineer of Work"), has filed with the City Clerk (the "Clerk") the written report prescribed by and containing the matters set forth in Section 10204 of the Streets and Highway Code (the "Engineer's Report"); and

WHEREAS, by resolution adopted on September 6, 2005, this Council preliminarily approved the Engineer's Report and scheduled the required public hearing as required by law for November 7, 2005; and

WHEREAS, notice of said hearing was given by mail to the property owners, accompanied by the property owner assessment ballot, as required by law, as evidenced by the Certificate of Mailing which has been filed with the Clerk; and

WHEREAS, the public hearing for November 7, 2005, was conducted, and this Council having provided opportunity for any interested person present to be heard with respect to any aspect of the Assessment District, the Undergrounding Project or the proposed assessments, the hearing was closed; and

WHEREAS, following the close of the public hearing, the property owner assessment ballots which had been submitted to the City Clerk were publicly tallied, and the City Clerk reported that ballots submitted in favor of the proposed levy of assessments exceeded the ballots submitted in opposition, with the result that there was not a majority protest as provided by Article XIII D of the California Constitution and Section 53753 of the California Government Code; and

WHEREAS, based upon consideration of all of the information received by members of this Council in connection with the Assessment District, including but not limited to the information set forth in the Engineer's Report and the testimony and discussion had at the public hearing on this date, this Council believes that the protests submitted should be overruled and that the Assessment District should proceed on the basis of the Amended Engineer's Report, without increasing the amount of the individual assessments to be levied; and

WHEREAS, this Council finds and determines (a) that any general public benefit from the Undergrounding Project is nominal and has been more than offset by the City's contribution of staff time and resources in the various proceedings for establishment of the Assessment District and in the review and processing of the plans and specifications for and the supervision of the bidding procedures for the Undergrounding Project, which contribution represents an expense to the City for which the City has waived the reimbursement to which it is entitled under the 1913 Act, (b) that, based upon the foregoing, the assessments being levied against the benefited parcels within the Assessment District represent only local and special benefit to the parcels being assessed, and (c) that the proposed allocation of the estimated costs and expenses of the Undergrounding Project improvements and related incidental expenses to the benefited parcels of land in the Assessment District, as set forth in the Appendix of the Engineer's Report, utilizing the method of apportionment set forth in said Engineer's Report, represents a fair and equitable apportionment of such cost and expenses in proportion to the estimated benefits to be received by each of such parcels, respectively, from the Undergrounding Project; and

WHEREAS, as authorized by Section 15302 of the California State Guidelines for the California Environmental Quality Act ("CEQA"), this Council hereby finds and determines that the Undergrounding Project is categorically exempt from the provisions of CEQA;

NOW, THEREFORE, THE CITY COUNCIL HEREBY FINDS,  
DETERMINES AND RESOLVES as follows:

1. The foregoing recitals are true and correct, and this Council hereby so finds and determines.
2. This Council hereby finds and determines that there was not a majority protest and hereby overrules all protests, whether written or oral, submitted prior to or at the public hearing.
3. The proposed Undergrounding Project, as described in the Engineer's Report, is hereby approved and ordered.
4. This Council hereby directs the preparation of a Notice of Exemption, indicating that the Undergrounding Project is categorically exempt from the provisions of CEQA, and further directs that said Notice of Exemption be filed with the Alameda County Clerk for posting in accordance with CEQA.
5. The individual assessments, in the amounts stated in the Engineer's Report are hereby confirmed and levied, and this action is final as to all persons, in accordance with Section 10312 of the Streets and Highways Code.
6. The assessment diagram, as set forth in the Engineer's Report, shall be filed for record in the Office of the County Recorder for Alameda County, as required by Section 3114 of the Streets and Highways Code; a notice of assessment, containing the matters required by said Section 3114 shall be prepared, executed and recorded by the Clerk; and notice of recordation of assessment shall be given by publication and by mail in the form and manner required by Section 10404 of the Streets and Highways Code. The notice of recordation of assessment given by mail shall also prescribe the deadline for submission by or on behalf of any property owner of a cash payment to prepay, either in whole or in part, the assessment levied upon the property of such owner, pursuant to Sections 10403 and 10404 of the Streets and Highways Code.
7. Pursuant to Section 10603 of the Streets and Highways Code, the City's Finance Director (the "Finance Director") is hereby designated to collect and receive the cash payments from property owners on account of the assessments levied, and the Finance Director shall, upon the expiration of the prescribed 30-day cash payment period, submit to the City Clerk a Certificate re Paid and Unpaid Assessments.
8. This Council intends to proceed with authorization for the issuance and sale of the Bonds, pursuant to the 1915 Act and upon the security of and in a principal amount equal to the unpaid assessments, bearing interest at a rate not to exceed twelve percent (12%) per annum, with the last principal installment of the Bonds to mature not to exceed twenty-four (24) years from the second day of September next succeeding twelve (12) months from their date.

9. This resolution shall take effect immediately.

Moved by Wieler, Seconded by Barbieri  
Ayes: Bruck, McEnroe, Barbieri, Wieler  
Noes: None  
Recused: Friedman  
(1075)