

City of Piedmont  
COUNCIL AGENDA REPORT

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DATE: March 19, 2007

FROM: Ann Swift, City Clerk

SUBJECT: **Consideration of Modifications to the City's Undergrounding Policy**

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RECOMMENDATION

Consider a change to the city's undergrounding policy which will enable residents to clearly understand the city's position with regard to undergrounding projects and the standards which council will use to determine approval, and give direction to staff regarding preparation of a new policy document.

BACKGROUND

The city's current undergrounding policy was adopted on February 3, 2003 and was considered without amendment on January 16, 2007 (*see page 5*). At the council meeting of March 5, 2007 the staff was asked to place this matter on a future agenda for further consideration. Council specifically requested that the undergrounding policy of the City of Manhattan Beach be reviewed as it relates to deferral of assessment.

With the help of John Tulloch, I researched more than 20 cities regarding undergrounding policies. Only four, Belvedere, Manhattan Beach, Sausalito and Tiburon had created private residential undergrounding districts within the past 10 years.

Belvedere

The City of Belvedere has a written policy supporting the long-range goal of undergrounding utilities (*page 7*). Their FAQ sheet indicates that "experience has shown that districts of about 60 homes can be best managed and completed during a normal construction period of 6-9 months" (*page 10*).

Currently 54% of the city is undergrounded and four new districts are in process. Belvedere requires that 60% of the homeowners in a proposed district sign a petition of support. The council accepts a simple majority of ballots cast as criteria for council

support. The average cost in their most recent district was \$35,000, including engineering costs.

## Manhattan Beach

The city has a very active undergrounding program with 15 districts created since 1999. Signatures of 60% of the residents in a proposed district are required for council consideration (as opposed to 70% in Piedmont). Manhattan Beach originally required only a simple majority of weighted ballots but has recently changed its policy to require 60%.

Of the 15 districts, 3 have proceeded without incident. Two districts were delayed due to lawsuits but are now proceeding. Five are in design phase. Five have been abandoned due to lack of public support. The city expended \$250,000 for preliminary engineering for the five abandoned districts (*page 12*).

The minutes of the Manhattan Beach council meeting of August 1, 2006, show that homeowner assessment estimates increased dramatically during 2005-06 with individual assessments going from \$8-10,000 per parcel to \$15-30,000 per parcel (*pages 13-20*). Council should note that Piedmont assessments are proportionally higher because the district pays for all engineering costs.

Manhattan Beach also offers loans of up to 98% of a resident's total annual assessment to homeowners who are 62 years old or older and whose Defined Taxable Income is between \$40-100,000. A fixed interest rate applies to the loan and the balance is due at time of sale or transfer of the home (*pages 21-25*).

## Sausalito

Sausalito has had only one district in the past decade, the San Carlos Undergrounding District which consisted of 98 parcels. More than 50% of the residents signed petitions of support. The council directed staff to prepare and fund an engineers report. Upon completion, a "straw poll" was taken of the residents of the district to determine whether the district should go forward. Residents voted 53% against, 47% in support (*pages 26-28*). The council then terminated the district and absorbed \$158,000 in engineering costs which had been expended.

During discussions, council had informally stated that it would take a "preponderance of the residents" in the district before they would vote to support it. No formal vote was taken and, therefore, there was no official majority protest.

## Tiburon

The Town of Tiburon has a policy which strongly supports undergrounding. In 2006, the council approved two new districts. Del Mar Valley received 56% popular support. Lyford Cove received 59% popular support.

The decision of the Tiburon City Council was challenged by a lawsuit (Bonander vs. Town of Tiburon). As of March 2006, the city spent \$30,946 to defend the lawsuit (\$23,500 of which was reimbursed by property owners within the district). A \$50,000 litigation fund was included in the revised engineer's report when the matter went to a second ballot. According to an e-mail from Sam Sperry today, the lawsuit was dismissed on a technicality on February 26, 2007.

In accordance with a recent settlement agreement, proponents of a district in Tiburon are now required to raise funds for legal advisory services in the amount of \$100 per property owner up to a maximum of \$10,000 per district. This amount is included in what Piedmont has referred to as the "Preliminary Expense Agreement".

### Discussion

The city's current policy could more correctly be termed a "procedure" for undergrounding. While it sets out the steps legally required for formation of a district, it does not state the city council's philosophy or over-arching policy regarding undergrounding e.g. "*we strongly support*" or "*we will assist private undergrounding projects while taking no active roll in supporting or opposing*".

In order to create a policy document, there are several questions which the council may wish to answer:

1. Is the City of Piedmont strongly in favor of undergrounding projects (as are Belvedere, Manhattan Beach and Tiburon)?
2. Does the city wish to lower the number of required signatures on undergrounding petitions from 70%?
3. Does the city wish to use General Fund monies to support undergrounding through financing of some or all of the engineering costs of a district? Because the city contracts for engineering services, this would be a direct cost from the General Fund.
4. Does the city wish to use Rule 20A funds, which are received annually from P.G. & E., to fund engineering for districts?
5. Does the city wish to establish a "threshold" of weighted ballots required for council support of a district?
6. Does the city wish to mitigate the affect of undergrounding assessments by providing an assessment deferral program similar to that of Manhattan Beach?

7. Does the city wish to require undergrounding districts to share in legal costs through a mandatory contribution from each property owner which would be added to the parcel assessment?

Answering the above questions would give staff the direction needed to prepare a revised policy document for consideration at a future meeting.

## **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 of Belvedere

### **UTILITY UNDERGROUNDING**

The Belvedere City Council is committed to the long-range goal of undergrounding all overhead utilities in the City. Shortly after the highly successful completion of the Corinthian Island undergrounding project in 1999, the Council appointed several prominent residents to the first Utility Undergrounding Committee.

Within a year, two adjacent neighborhoods on Upper Beach Road were petitioning the Council to form undergrounding assessment districts. These were ultimately combined and 59 parcels participated in a highly successful undergrounding project – completed in 2003. The Madrona, Bella Vista & Oak District (57 parcels) was completed in 2006.

Many property owners have contacted Staff about how to get the undergrounding process started in their neighborhoods. We currently have three more districts authorized by the City Council:

San Rafael Avenue (42 parcels) – in design  
Lower Belvedere Avenue (69 parcels) – in design  
Bayview/Bella Vista (61 parcels) – in design

Residents in a proposed Mid-San Rafael Avenue District are hoping to get Council approval this year as well.

Today approximately 54% of the City has underground utilities. If all four of the above districts are completed that would bring the total to 80%. For more information, click on the following links:

**CITY OF BELVEDERE  
FREQUENTLY ASKED QUESTIONS  
ABOUT UTILITY UNDERGROUNDING**

***What is utility undergrounding?***

Existing overhead utilities (phone, cable TV, internet and electric) are replaced by a system that is essentially under ground. Wires for these utilities are run through conduits in streets, lanes and easements. Utility poles are eliminated. Service wires from homes and businesses in an underground district must also be placed underground.

***What are the advantages to utility undergrounding?***

Removing overhead utilities eliminates the visual blight of utility poles with crossarms, wires, transformers and associated hardware. Besides the aesthetic improvement to the general neighborhood, some properties can realize significant view enhancements. Many feel that undergrounding will increase property values throughout the local community. As more and more utilities are undergrounded, the reliability of these services improves. Without protection from storms, wind and earthquakes, poles and wires can fall causing personal injury and damage. They can also block roads at a time when emergency vehicles need neighborhood access.

***Who pays for utility undergrounding?***

The short answer is that most of the costs are borne by the property owners in an undergrounding district. PG&E provides some funding, but it is very minor.

***What do you mean when you say undergrounding district?***

Utility undergrounding generally involves several contiguous properties that share in the cost. An official boundary is established for each district.

***How is a district created?***

Undergrounding districts can be created by the City or by property owners. In Belvedere, all undergrounding districts are initiated by property owners with a common interest in eliminating overhead utilities. There are three types of underground districts:

- Rule 20A – These are initiated by a city or county. Costs are paid from funds provided by PG&E. Belvedere receives only about \$18,000 per year, which is insufficient for a stand-alone district.
  
- Rule 20B – this is the most common way to effect undergrounding in Marin. Following State regulations, an assessment district can be established in which

the majority of voting property owners (votes weighted by assessment) can elect to form a utility undergrounding district. Cost sharing is based upon special benefits received.

- Rule 20C – One or more property owners can create a ‘private’ district with costs being shared on a mutually agreed basis.

***What happens to the PG&E funds Belvedere receives?***

There are state imposed guidelines on how these funds can be used. Business districts, historical areas and major access roads are eligible. By saving up annual allocations over a period of years, these funds can be used to help pay for a portion of a 20B assessment district. The San Rafael Avenue District is a good example.

***Who decides how much each property is assessed?***

An undergrounding assessment district will have an Engineer of Record. This is a private consulting firm which specializes in assessment engineering. The proponents of a proposed district play the major role in selecting the Engineer – a process facilitated by the City. The Engineer of Record is charged by State regulations with the task of fairly allocating the total cost of a district among the properties within a district boundary.

The method of assessment is not fixed by law, and the process, by virtue of the physical diversity of Belvedere properties, is not perfect. Factors such as view enhancement, lot size, improved safety, frontage improvement, etc. may be considered. Property owners who feel that their assessment is unfair have an opportunity to appeal to the City Council prior to finalization of assessments and the tabulation of votes.

***What is the advantage of using an assessment district (Rule 20B) vs. a ‘private’ district (Rule 20C)?***

Assessment districts tend to be much larger which provides an economy of scale. In a private district all costs are paid up front, whereas property owners in an assessment district can elect to spread payments (with interest) up to 25-30 years. Private districts are subject to a hefty federal tax. The assessment district is sheperded through every step by the City. In Belvedere this is done at no cost to the property owners.

***Why would anyone choose to do a private (Rule 20C) district?***

Private districts have no minimum size requirements and can often be done in almost half the time. Although they take 100% participation of all properties within their boundaries, they have been a convenient way for a single owner or a small

group of neighbors here in Belvedere to remove their immediate overhead utilities.

***Why not form one big district to underground the remaining overhead areas of the City?***

Public safety and convenience must be weighed against the amount of construction impact involved. Experience has shown that districts of about 60 homes can be best managed and completed during a normal construction period of 6-9 months. Larger districts, with the attendant road closures and construction activities, could strain traffic circulation and the patience of residents. Undergrounding districts must comprise contiguous parcels. The remaining areas of the City with overhead utilities are not contiguous. Many, however, lend themselves well to future neighborhood districts.

***Why doesn't the City just pay to have the rest of Belvedere undergrounded?***

Belvedere, like all California communities, simply can't afford to maintain the City's infrastructure and pay for undergrounding. To help defray the cost, Belvedere does not charge the property owners in an assessment district for administrative and professional services related to management of the project. This will typically amount to a 15 – 20% cost savings. In other community these costs are typically borne by the property owners.

***Why don't the utility companies pay for undergrounding?***

There is no legal requirement for utilities to pay for undergrounding. Public Utility Commission regulations and franchise agreements have created different obligations for the three utility companies involved in undergrounding Belvedere's overhead facilities. The costs to design and construct the new underground infrastructure are the responsibility of the property owners. In an assessment district the property owners pay for PG&E to transfer their system from overhead to underground. SBC charges only a token amount and Comcast makes no charges.

***So what will it cost?***

The average assessment for districts completed and/or estimated over the past six years has varied between \$20,000 to \$36,000. This range is mostly a function of the number properties per length of streets involved. (The more properties, the lower the average cost.) Within a district, the individual assessments will vary depending on the special benefits received as determined by the Engineer of Record.

Property owners are also responsible for the cost of undergrounding their utilities

from their homes to the street. This has varied from \$2,000 to \$15,000, depending upon the unique topography and existing improvements at each property. If your existing utility services are already undergrounded, there is no additional cost.

***What happens to the street lights that are now on the utility poles?***

New, freestanding light poles are installed. These are more attractive and generally more efficient than the old fixtures.

***How can I get an underground district formed in my neighborhood?***

A Rule 20B assessment district must be initiated by the City Council. A formal petition from at least 60% of the property owners in a proposed district must be presented to the Council for their consideration. A petition must include a preliminary estimate of cost and a defined district boundary. To formulate this information and to receive help and guidance, please call the City Engineer at 435-3838.

<b>Districts Approved and Near Completion</b>	<b>Districts Under or Soon Starting Construction</b>	<b>Districts in Design</b>	<b>Dissolved Districts</b>	<b>Districts Undergoing a Petition Drive</b>
<p><a href="#"><u>Districts 1, 3 and 5</u></a></p> <p>These three districts were formed in 1999-2000, and approved by homeowners in 2004. Construction activities commenced in April 2005 and were completed in December 2005 for all three districts. Residential conversions and infrastructure cabling has occurred throughout 2006 and into 2007. Poles and overhead wires are expected to be removed in spring 2007, thereby completing the entire project.</p> <p>For more information, click on any of the District 1, 3 or 5 buttons above.</p>	<p><a href="#"><u>Districts 2 and 6</u></a></p> <p>These two districts were formed in 2000 and approved by voters and City Council in November, 2005. Following a lawsuit delay, construction activities commenced in September 2006 for District 2 and are planned for Summer 2007 in District 6 pending completion of redesigned plans.</p> <p>The residential conversion phase will start following full installation of the public right-of way infrastructure.</p> <p>For more information, click on either of the District 2 or 6 buttons above.</p>	<p><a href="#"><u>Districts 8, 12, 13, 14 and 15</u></a></p> <p>District 8 designs are currently being completed by Edison, and will soon be forwarded to Verizon and Time Warner for design overlays. Completed designs from all three utilities are expected in late 2007.</p> <p>Districts 12, 13 and 14 will begin design work with Edison in January 2007, and all three utilities designs are expected to be completed by late 2008 (18-24 months).</p> <p>The timing to complete design plans for District 15 will be determined in January 2007 after meeting with each of the utilities to determine a projected schedule.</p> <p>For more information, click on any of the District 8, 12, 13, 14 or 15 buttons above.</p>	<p><a href="#"><u>Districts 4, 7, 9, 10 and 11</u></a></p> <p>District 4 was dissolved by City Council on November 21, 2005 following the outcome of the <a href="#"><u>Proposition 218</u></a> Ballot Procedures (see the <a href="#"><u>Minutes</u></a> of that meeting). A subset of District 4 has since reformed into District 15.</p> <p>Districts 7, 9, 10 and 11 were dissolved by City Council on August 1, 2006 following the outcome of the Official City Surveys sent out during the summer of 2006 (see <a href="#"><u>Staff Report</u></a> for Survey Results). Simply speaking, these districts no longer exist.</p> <p><a href="#"><u>District 4 Map</u></a>  <a href="#"><u>District 7 Map</u></a>  <a href="#"><u>District 9 Map</u></a>  <a href="#"><u>District 10 Map</u></a>  <a href="#"><u>District 11 Map</u></a></p>	<p>Currently, there are no neighborhoods undergoing a petition drive to form a proposed utility underground district.</p> <p>Should a district be proposed by homeowners in your neighborhood, you will be notified by the City when it commences. Please note that correspondence on this issue is mailed by the City to the owner's mailing address provided by the County of Los Angeles Tax Collectors Office (as the official address of record). This may or may not be the same address as the property itself.</p>

## **City of Manhattan Beach City Council Meeting Minutes of August 1, 2006**

*06/0801.13 Consideration of Utility Underground Assessment District Issues:*

*a) Approval of a 22% Reduction in Assessments for District 05-2 and Adoption of a Resolution Determining the Revised Unpaid Assessments for District 05-2 of \$4,545,000*

*b) Presentation of Survey Results for Proposed Utility Underground Districts 7-14*

*c) Discussion Regarding Proposed Districts 7-10*

*d) Discussion Regarding Proposed Districts 11-14*

*e) Discussion Regarding Procedures for Forming New Districts*

*f) Discussion Regarding District 4a*

*a) Reduction in Assessments for District 05-2*

Finance Director Bruce Moe explained that, after receiving the open market bids for Utility Underground Assessment District 2, it was determined that the project can be completed for approximately 22% less than the original estimate, which will result in reduced assessments of between \$7,400 and \$12,900. He advised that, per the Bond Counsel, proposed Resolution No. 6050 reflects the lower assessment amounts necessary in order to proceed with the Utility Undergrounding in District 2.

### **The following individual spoke on this item:**

#### **• Myron Pullen, 1400 Block of 19<sup>th</sup> Street**

Senior Civil Engineer Stephanie Katsouleas clarified that the previous assessment amounts were estimates provided by the utility companies for voting purposes, and that the lower cost is a reflection of open market bids obtained after District 2 was approved. Mayor Pro Tem Tell added that Southern California Edison (SCE) originally bid the project as a hard cost item, meaning they did not intend to go out for open market bids prior to finalizing an invoice to the City. However, during several meetings with SCE, that he and Councilmember Fahey attended, it was discovered that a significant contingency was built into SCE's bid for District 2 and they are required to go out for open market bids, resulting in a cost reduction. Mayor Pro Tem Tell noted that he and Councilmember Fahey will continue to meet with both SCE and Verizon in hopes of achieving cost reductions for District 6 and further cost reductions for District 2.

**MOTION:** Councilmember Fahey moved to adopt Resolution No. 6050 determining the revised unpaid assessments due to a 22% reduction construction costs for District 05-2. The motion was seconded by Mayor Pro Tem Tell and passed by the following unanimous roll call vote.

Ayes: Aldinger, Montgomery, Fahey, Tell and Mayor Ward.

Noes: None.

Absent: None.

Abstain: None.

**RESOLUTION NO. 6050**  
**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF**  
**MANHATTAN BEACH, CALIFORNIA, DETERMINING**  
**UNPAID ASSESSMENTS FOR UNDERGROUND UTILITY**  
**ASSESSMENT DISTRICT NO. 05-2**

- b) Presentation of Survey Results for Proposed Utility Underground Districts 7-14*
- c) Discussion Regarding Proposed Districts 7-10*
- d) Discussion Regarding Proposed Districts 11-14*

With the aid of a PowerPoint presentation, Senior Civil Engineer Katsouleas shared background information on the formation of the Utility Underground Assessment Districts (UUADs). She highlighted the following: the status of the proposed UUADs 7-14; the pricing for Districts 2, 4 and 6; the results of the surveys for future Districts 7-14 and estimated assessment costs related thereto; the issues to consider when deciding whether to proceed with Districts 7-10, for which the City has already initiated and spent funds; the issues to consider when deciding whether to proceed with Districts 11-14; the time frame for accepting utility underground petitions; whether or not to allow district boundaries to be modified; the sizing of districts; whether an opt-out policy is needed or whether mitigating measures could be established; and the parameters for reinitiating failed districts.

Senior Civil Engineer Katsouleas related that staff recommends that the Council: confirm the petition threshold needed for districts to form; determine if a new threshold would retroactively apply to Districts 7-14 (if they do not move forward based on discussion this evening); set a time frame for a petition drive; establish a policy for boundary modifications during a petition drive; establish a policy for district sizing; decide against forming an opt-out policy; set criteria for reinitiating failed districts; and decide if such criteria should be the same as or different from newly formed districts.

The Council discussed that their original Utility Undergrounding policy included a requirement that 60% of the total households in a proposed district must sign petitions in favor Undergrounding and that it is important to be consistent when considering the statistics gathered.

City Attorney Robert Wadden verified that the Utility Undergrounding policies previously established by the Council are documented according to minute action by the Council.

**The following individuals spoke on this item:**

- **Bev Morse, 900 Block of 1st Street**
- **Esther Besbris, No Address Provided**
- **Brian Sweeney, District 8**
- **Emma Collier, District 13**
- **Robert Bush, District 9**
- **Greg Sharp, District 12**
- **Julia Tedesco, District 13**

- **Margo Woodard, District 13**
- **Unidentified Speaker, No Address Provided**
- **Karol Wahlberg, No Address Provided**
- **Myron Pullen, 1400 Block of 19<sup>th</sup> Street**
- **Viet Ngo, No Address Provided**
- **Frank Matranga, District 2**
- **Bob Rupkey, District 7**
- **Myron Klafter, District 12**
- **Bill Bloomfield, No Address Provided**
- **Patrick McBride, 5<sup>th</sup> Street & Peck Avenue**
- **Irl Cramer, 100 Block of North Dianthus**
- **Dick May, No Address Provided**
- **Joe Moore, No Address Provided**
- **Steve Morse, No Address Provided**
- **John Roehl, Duncan Avenue**
- **Robert Freedman, 1000 Block of 1st Street**
- **Loretta Wells, Marine Avenue**
- **Lee Berouty, No address Provided**

The Council clarified that Utility Undergrounding is not proposed east of Sepulveda Boulevard.

**RECESS AND RECONVENE**

At 8:37 p.m. the Council recessed and reconvened at 8:50 p.m. with all Councilmembers present. Council discussion included the following: the funds already expended on Districts 7-10 and the anticipated amount yet to be spent relative to those districts; the title insurance associated with the Utility Undergrounding Loan Program; and the idea of returning interest along with the refunds that will be given for pre-paid assessments as a result of the lower open market bids for District 2, as discussed earlier in the meeting. The Council agreed that moving Utility Undergrounding Assessment Districts 7, 9, 10 and 11 forward should not be continued at this time because over 70% of the property owners in those districts do not support Utility Undergrounding.

**MOTION:** Councilmember Aldinger moved to deny moving forward with Utility Underground Assessment Districts 7, 9, 10 and 11. The motion was seconded by Councilmember Fahey and passed by unanimous roll call vote as shown below:

Ayes: Aldinger, Montgomery, Fahey, Tell, Mayor Ward.

Noes: None.

Absent: None.

Abstain: None.

Offering information on the City’s ballot distribution procedures, Senior Civil Engineer Katsouleas affirmed that only one ballot per household was counted using unique parcel numbers.

Council discussion continued regarding the following: that the Council could consider not pursuing Districts 7 through 14 because none of them meet the 60% threshold; that proponents in Districts 8, 12, 13 and 14 apparently did not understand that 60% was necessary for the Utility Undergrounding to move forward; that, in looking at Districts 8, 12, 13 and 14, it appears there is support for Utility Undergrounding when the price is reasonable (approximately \$20,000 or less); that, because property owners in Districts 8, 12, 13 and 14 believe they were insufficiently notified of the percentage necessary to move forward, a new survey could be distributed for an extended period of time; and that the Utility Undergrounding Subcommittee could meet to develop recommendations for future Utility Undergrounding processes. Should the Council agree to extend the time period for gathering signatures in Districts 8, 12, 13 and 14, Senior Civil Engineer Katsouleas related staff's recommendation that two letters be sent to property owners – one informing those who did respond the status of the survey effort, and another requesting participation from those who did not previously respond. Council discussed the 60% threshold concurring that for the survey; the threshold should be 60% of the total households. She noted that the Edison design plans for District 8 are completed; that pricing for District 8 should be available for consideration in the very near future should it move forward; and that if it does, the ballots for District 8 could be distributed in November or December of this year. She explained the reasons for varying costs in different Utility Undergrounding Districts, the cost of Undergrounding utilities in the future; and the goal of requiring the utility companies to obtain open market bids before balloting procedures rather than just providing cost estimates.

A majority of the Council agreed to continue the survey process in Districts 8, 12, 13 and 14 with a 90-day response period and the following motion was offered:

**MOTION:** Councilmember Montgomery moved to approve that new surveys for Utility Underground Assessment Districts 8, 12, 13 and 14 be distributed with the stipulation that there shall be a 90-day response period. The motion was seconded by councilmember Fahey and passed by the following roll call vote:

Ayes: Aldinger, Montgomery, Fahey and Tell.

Noes: Mayor Ward.

Absent: None.

Abstain: None.

Mayor Ward explained his dissenting vote due to his belief that Utility Underground Assessment Districts 8, 12, 13 and 14 should be dissolved.

#### *e) Discussion Regarding Procedures for Forming New Districts*

The Council extensively discussed procedures for forming new Utility Underground Assessment Districts, including the pros and cons of increasing the percentage of the actual Prop 218 votes required for a district to be approved by City Council and the immediate distribution of surveys after petitions (with the required percentages) are received.

**MOTION:** Mayor Ward moved to approve that the percentage of the actual ballot vote required for a Utility Underground Assessment District to move forward shall be increased to a minimum of 60%. The motion was seconded by Councilmember Fahey and passed by the following roll call vote.

Ayes: Montgomery, Fahey and Mayor Ward.

Noes: Aldinger and Tell.

Abstain: None.

Absent: None

The Council clarified that the actual Prop 218 ballot vote required was increased to 60%.

### **RECESS AND RECONVENE**

At 10:03 p.m. the Council recessed and reconvened at 10:14 p.m. with all councilmembers present. After the break, there was additional Council discussion as to whether the increased percentage to 60% of the actual ballot vote approved by the Council this evening, prior to the recess, should apply only to future Utility Undergrounding Assessment Districts, or to proposed Districts 8, 12, 13 and 14 as well.

**MOTION:** Councilmember Montgomery moved to approve that the newly approved percentage of 60% of the actual vote shall not retroactively apply to Utility Underground Assessment Districts 8, 12, 13 and 14. The motion was seconded by Mayor Pro Tem Tell and passed by the following roll call vote.

Ayes: Aldinger, Montgomery and Tell.

Noes: Fahey and Mayor Ward.

Absent: None.

Abstain: None.

The Council clarified that the percentage of the actual ballot vote required for proposed Districts 8, 12, 13 and 14 to move forward will be determined at the time those Districts come before the Council.

Senior Civil Engineer Katsouleas shared information on the duration of previous petition drives and related staff's recommendation that modifications during petition drives be reviewed on a district-by-district basis by a small subcommittee and then brought forward for the Council's consideration if desired. She called attention to the cumbersome effect of an opt-out policy, particularly in the Hill Section, and noted the difficulty of determining which areas should be allowed to opt out. She suggested that boundaries and modification procedures be established at the beginning of a petition drive and prior to the City expending funds on the formation of a district in lieu of an opt out policy

**MOTION:** Councilmember Aldinger moved to approve setting a six-month time frame for initiating and completing a petition drive; to allow the morphing of boundary modifications during a petition drive and prior to such time as the City expends funds; to not set a limit on the size of a Utility Underground Assessment District; to not allow the

creation of an opt-out policy once a district is initiated, to confirm the implementation of procedures that negate the need for an opt-out policy at the onset of district formation; and to require a one year period before petitions can be re-initiated.

The motion was seconded by Mayor Pro Tem Tell seconded and passed by the following unanimous roll call vote:

Ayes: Aldinger, Montgomery, Fahey, Tell and Mayor Ward.

Noes: None.

Abstain: None.

Absent: None.

*f) Discussion Regarding District 4a*

Background information regarding proposed District 4a was presented by Senior Civil Engineer Katsouleas. She noted modifications made to the petition for proposed District 4a; related staff's understanding that the 60% threshold to approve the petition for District 4a has been reached; and recommended that the Council discuss whether the previously-established policies, or those approved this evening, should apply to proposed District 4a. Senior Civil Engineer Katsouleas then reviewed the boundaries for proposed District 4a, expressing staff's viewpoint that they do make sense.

**The following individuals spoke on this item:**

- **Unidentified Speaker, No Address Provided**
- **Unidentified Speaker, No Address Provided**
- **Unidentified Speaker, No Address Provided**
- **Bev Morse, 900 Block of 1st Street**
- **Esther Besbris, No Address Provided**

In response to an audience member's comment that Mayor Pro Tem Tell should recuse himself from this discussion due to owning property in District 4a, City Attorney Wadden advised that, since the discussion will be general in nature, and not determine whether District 4a should be formed etc., it is not necessary for Mayor Pro Tem Tell to recuse himself.

- **Robert Friedman, 1000 Block of 1st Street**  
Mayor Pro Tem Tell left the meeting at 11:18 p.m.
- **Karen Westover, 200 Block of South Dianthus**
- **Steve Morse, No Address Provided**
- **Viet Ngo, No Address Provided**
- **Patrick McBride, 5th Street & Peck Avenue**
- **Lee Berouty, No Address Provided**
- **Joe Moore, District 4**
- **Dick Wilden, 100 Block of South Poinsettia**
- **Robert Bush, District 9**
- **Jacque May, No Address Provided**

The Council debated whether District 4a should be considered a new district and, if so, whether property owners supporting the District were previously misled by the Council. A majority of the Council agreed that District 4a should be treated as a new Utility Underground Assessment District and that the boundaries for District 4a should be as contiguous as possible. City Attorney Wadden advised that a tie vote would equate to no action, which would mean that District 4a would fall under the new district policies approved this evening. He further advised that the Council's vote in December 2005 in favor of allowing the formation of District 4a did not deal with the issue of the vote threshold in Proposition 218.

**MOTION:** Councilmember Fahey moved to approve distributing surveys if a petition in favor of District 4a is verified by staff and staff determines that the boundaries are reasonable, and that it be considered as a new district. The motion was seconded by Mayor Ward and the following roll call vote was recorded.

Ayes: Fahey and Mayor Ward.

Noes: Aldinger and Montgomery.

Abstain Tell.

Absent: None.

Prior to the vote, City Attorney Wadden explained that if the vote ends in a 2-2 tie, ultimately District 4a would fall under the new District classification. Deputy City Manager Sherilyn Lombos recapped the decisions made by the Council this evening with regard to Item No. 13: that Districts 7, 9, 10 and 11 shall be dissolved; that new surveys shall be distributed for Districts 8, 12, 13 and 14, with the stipulation that there shall be a 90-day period to get 60% of the total households to support Undergrounding; that the future ballot vote requirement shall be increased to 60%, which does not apply to proposed Districts 8, 12, 13 and 14 (which will maintain the 50% minimum threshold); that there shall be a six-month time frame for initiating and completing petitions; that modifications to district boundaries shall be allowed during the petition process and before the City has expended funds; that there shall be no limit on district sizes; that there shall be no opt-out policy; that a minimum of one year shall pass before a petition can be re-initiated; that District 4a shall be treated as a new district and thus surveys confirming support for District 4a shall be distributed as soon as possible after the validity of the petition and boundaries for District 4a are verified by staff.

#### **AUDIENCE PARTICIPATION**

*06/0801.18 Bill Bloomfield Re Undergrounding*

**Bill Bloomfield, No Address Provided**, emphasized that the Council's decision to require that future Undergrounding districts meet a 60% (of the number of households – not of the number of returns) approval for petitions and surveys is nearly impossible and will “kill” all future Undergrounding.

*06/0801.19 Bev Morse Re Undergrounding*

**Bev Morse, No Address Provided**, emphasized that the opponents in District 4 did not get to vote on Mr. Bloomfield's petition; that her husband was denied the right to circulate a petition; and that the matter should have been brought to a vote of the entire City.

*06/0801.20 Steve Morse Re Democratic Process*

**Steve Morse, No Address Provided**, stressed that the democratic process was not used when the Council gerrymandered District 4a and questioned who the Council is doing this for. In response to comments by Mr. Morse and others, Councilmember Fahey emphasized that she and the Council represent all citizens of Manhattan Beach, not just those in the audience and that they don't make decisions based on what their legacy may be. She spoke of how the Council has gone out of their way to be available to meet with residents to discuss Undergrounding and that surveys were sent out in order to determine what residents really want. She expressed her disappointment over the hostility and divisiveness that have come out of this issue and the inappropriateness of those people who have threatened to recall the Council before the issue was even discussed.

## Future Estimated Costs

At the time petitions are circulated and signatures collected, the City can **ESTIMATE** future assessment ranges in today's dollars for your neighborhood based on its housing density and known open-market construction prices. However, the City cannot forecast the **ACTUAL** assessment that will be presented to you because: 1) the project is typically priced 2-3 years after signatures are submitted to the City and 2) the construction market is volatile. Therefore, actual cost may be higher than that estimated below. The lag in pricing is due to the time needed by the utilities to design construction plans for the district. **It is worth noting that neighborhoods with denser housing densities will be, on average, less expensive per parcel to construct due to the larger number of homes sharing the total cost of construction.**

For districts already proposed (Districts 8, 12, 13, 14 and 15), the following table highlights the estimated assessment ranges in recent dollars (Spring 2006). While not a guarantee of future prices, the values may help homeowners estimate what their assessments might be when these proposed districts are priced in 2008 and 2009 (projected). Please note that the City only provides underground assessment estimates **AFTER** boundaries are proposed. This is because the number of homes and trenching distances **MUST** be known in order to calculate an estimate (i.e., they are the critical variables of the formula used to establish estimates).

Proposed District No.	Projected Voting Date	No. of Homes	Estimated Per-Parcel Assessment Range	Estimated District Parcel Average
District 8	Spring 2008	138	\$12,163 - \$20,525	\$15,204
District 12	Spring 2009	217	\$6,196 - \$10,300	\$7,745
District 13		282	\$11,288 - \$18,767	\$14,111
District 14		233	\$7,697 - \$12,795	\$9,621
District 15	TBD	74	\$30,000 - \$55,000	\$42,000

Districts 8, 12, 13 and 14 are located in the Sand Section (see [map](#)).

## Financing Options

When a proposed district is approved by voters and City Council, three options become available to pay the assessment. These include:

1. **Pay the full amount within 30 days** of receiving a “Notice to Pay Assessment” from the City. You can expect to pay about 10-12% less than the assessment amount presented due to the elimination of financing fees.
2. **Pay Yearly.** You can spread all or a portion of the assessment PLUS INTEREST over 20 years as a lien on your property tax bill. The interest rate is determined when municipal bonds are sold to finance the total project and will be the current market rate at that time. The interest rate for Districts 2 and 6 was 4.72% (summer 2006).

### *If You Elect to Pay Yearly for 20 Years...*

If financing a utility underground assessment over twenty years, the total cost of the project will include the base value of the assessment plus the simple interest associated with the bond sold to finance the project. The following table provides examples of the total cost homeowners will have paid either in full within 30 days or over 20 years using three different sample interest rates.

If the Proposed Assessment Is...	Then the Actual Assessment if Paid In Full Within 30 Days is Estimated to be...	Or the Estimated Total Amount Paid Over 20 Years if Financed at the Following Interest Rates is...*		
		5%	6%	7%
\$10,000	\$8,800	\$15,840	\$17,195	\$18,607
\$20,000	\$17,600	\$31,680	\$34,387	\$37,215
\$30,000	\$26,400	\$47,516	\$51,582	\$55,820
\$40,000	\$35,200	\$63,356	\$68,777	\$74,428
\$50,000	\$44,000	\$79,194	\$85,970	\$93,035

\* The yearly assessment payment due can be determined by dividing the totals by 20.

3. **Defer your assessment partially or completely.** If you are on a fixed income, or have a household income below thresholds established by the City and State of California, you may be able to defer all or part of your assessment until the sale or transfer of your home, at which time the assessment PLUS INTEREST ACCRUED will be due and payable. See “The City’s Assessment Deferment Program” below.

***The City’s Assessment Deferment Program***

The City has created a tiered financial assistance (loan) program to help homeowners over age 62, or blind or disabled with an annual household income of less than \$100,000 defer all or part of the cost of undergrounding utilities until the sale or transfer of their homes. The amount loaned by the City will accrue interest until it is repaid, with a fixed interest rate determined at the time the project commences. Qualifying for the program requires filling out an application form and providing certain information about your age, income and assets so that the City may determine your eligibility.

The table below illustrates the various levels of assistance available to homeowners. Other qualifying factors include:

- Applicant must be 62 years of age or older, or blind or disabled as defined by the IRS.
- The applicant must apply for funds within a specified period as identified on the “Notice to Pay Assessment” and may remain in the program until the sale or transfer of the property qualifying for assistance.
- Hardship exceptions will be considered for those who do not meet the established deferment criteria, although funding is not guaranteed.
- This program applies to the principal residence only.

Defined Taxable Income (DTI)*	Homeowner Pays...	City Loans...
\$24,000 or less	Homeowner qualifies for <a href="#">CA State Property Tax Postponement Program</a>	
\$24,001 - \$40,000	\$0	Full Assessment Amount
\$40,001 - \$70,000	First 2% of DTI toward annual assessment	Balance of Annual Assessment
\$70,001 - \$80,000	First 3% of DTI toward annual assessment	
\$80,001 - \$90,000	First 4% of DTI toward annual assessment	
\$90,001 - \$100,000	First 5% of DTI toward annual assessment	

\* The Defined Taxable Income (DTI) is determined by the inclusion and exclusion of certain income and expenses, as specified on the application for assistance.

If your household income is less than \$24,000, you qualify for the CA State Controller’s Office (SCO) [Property Tax Postponement Program](#) and thus are not eligible for assistance through the City’s program. More information about the State program can be obtained by contacting SCO directly.

Please note that you need only qualify for the City's loan program during the initial application period (i.e., one time). The level of assistance available to you would remain the same over the duration of the deferment due to the program's funding pool constraints. For full program details, please contact the City's Finance Department at 310-802-5550.

***Help Me Calculate How Much Assistance I Might Receive***

Let's assume you are 66 years old, have a Defined Taxable Income (DTI) of \$62,000, meet other program guidelines, and your annual assessment is \$3,875. Under the City's program, you would qualify for partial assessment deferment under the income bracket \$40,001 - \$70,000 and thus be expected to contribute the first 2% of your DTI toward your assessment. The City would loan you the remaining balance due. The calculated amounts are as follows:

\$3,875 Total Annual Assessment Due  
- \$1,240 Your contribution (\$62,000 income x 2%)  
-----  
= \$2,635 City loans you this amount

***Can I Also Defer the Private Property Expenses I Will Incur to Connect to the New Underground Network?***

If you qualify for the City's Assessment Deferment Program, the additional cost to connect your private property to the new underground utility network may also be included. This one-time hook up expense would simply be added to your annual assessment the year the expense is incurred, and the qualifying balance would still be paid by the City according to the criteria established above.

For example, let's assume your annual assessment is again \$3,875 and your annual defined taxable income is again \$62,000. As described above, the City would loan you \$2,635. If your private property expense to connect to the new system was \$3000, then in that year, you would still pay \$1,240, but the City would loan you \$5,635 (\$2,635 + \$3000). If grant funds or donations become available to pay for private property hook up costs, the city will allocate them according to the greatest need until such funds are expended.

## How is a Proposed District Approved by Voters and City Council?

Once a proposed district has been created and design plans finalized, the project will be priced for construction and the following steps will occur:

1. Each property owner in a proposed district will receive a ballot in the mail identifying his/her share of the project cost and will have a minimum of 45 days to consider support for or opposition to the proposed assessment. Under California State law, you CANNOT be assessed until you are informed of what the exact assessment will be and provided the opportunity to cast your vote either for or against that assessment. Please note that the assessments presented on the ballot do not include the additional private property expenses that may be incurred to complete the undergrounding project. See [Costs & Financing - Homeowner Costs](#) for more information.
2. Each ballot must be returned to the City by a specified deadline; those returned are counted during a City Council public hearing.
3. **For Districts 8, 12, 13 and 14:** The project area or utility underground assessment district is formed only if: a) it is approved by a majority (+50%) of the affected property owners who vote AND the weighted returns are greater also than 50%, and b) a resolution is passed by a majority vote of City Council following the combined procedures of [CA Proposition 218](#) and the Municipal Improvement Act of 1913.
4. **For Future Districts 15 and Above:** The project area or utility underground assessment district is formed only if: a) it is approved by a **60% majority** of the affected property owners based on the ballots cast AND the weighted returns are also greater than 50%, and b) a resolution is passed by a majority vote of City Council following the combined procedures of CA Proposition 218 and the Municipal Improvement Act of 1913.

Once approved, the assessments presented cannot be increased without implementing new balloting and voting procedures.

## **City of Sausalito Minutes of 12-13-05**

### **B. Review results of straw poll of residents of the proposed San Carlos Underground District** *(Continued from November 15, 2005)*

#### **Staff Report by City Manager Dana Whitson**

Ms. Whitson reported that on November 15, 2005, the Council directed the staff to send out a straw poll, which has been done. There was an extraordinary response rate with results coming in as recently as 5 p.m. earlier this evening, and they are now up to 75 out of 91 property owners responding, a response rate staff considers sufficient for the Council to make a determination as to whether there is broad support for the measure. As of 5 p.m., there were 46 “No” votes and 29 “Yes” votes. The yes votes represented valuations of \$1,341,982; the no votes represented valuations of \$1,392,861, so they were very closely split.

Ms. Whitson noted some clarifications. There is one parcel at 141 San Carlos that is one address, four separate legal parcels, with one owner. Staff counted that as one vote, but were you to count each of those parcels individually it would be three additional “No” votes. Ms. Whitson displayed slides showing the vote according to properties that voted “No” or “Yes”, and the vote as analyzed by weight under the 1913 Act methodology. Staff believes that the only conclusion that can reasonably be drawn is that there is no broad support for continuing with the formation of the San Carlos Underground Assessment District. Staff therefore recommends that the City Council terminate the current district proceedings. Ms. Whitson noted that there are options for property owners who want to privately pursue undergrounding at their own expense. Private projects are eligible for 20A monies, as are voluntary projects. However, the 1913 Act prohibits any new petitions for a period of at least one year.

Staff requests that the Council take public comment and direct staff to prepare a resolution terminating the district proceedings as a Consent Calendar item for the next meeting. Such a resolution would not be subject to any further testimony, it would be a pro forma action and the hearing would be continued to January 10, 2006 for the purpose of adopting that resolution.

Councilmember Scremin noted that this has been such a difficult procedure for everyone – staff, Council and especially the neighborhood – to go through. He is interested in exploring how the City may go forward with trying to heal the rift that has been created in the neighborhood. He also would like to see if staff can give the Council a report on some future date in terms of how other cities have proceeded with full city undergrounding, to look at ways the City might still go forward with undergrounding, as a city.

Ms. Whitson said she would do that, but if she were asked to give some order of magnitude of what would be involved, she would say it would be a very large number. Speaking of healing, Councilmember Scremin's sentiments have been expressed to her by all the members of the neighborhood. The City staff is committed to helping the neighborhood put this behind them and move ahead.

Councilmember Belser said it is important to recognize that the democratic process worked. Everybody had a say, and we're moving on and that says quite a lot. That's a positive thing that should not be overlooked.

Mayor Albert called for public comment.

### **Public Comment**

**Robin Sweeny** now lives at Waldo Point Harbor, but for close to 45 years she lived at 173 San Carlos. She was one of those, a number of years ago, that "led the band" in moving toward undergrounding. She has had the opportunity to see the paperwork that described what the costs were going to be for this now, and she discovered that if she still lived on San Carlos Avenue, she would simply have to say, "I can't do it at this point in my life". I simply couldn't afford to do it. If there is anybody in this proposed district in her position or anything like it, she just doesn't think the district can go forward and put people in that kind of financial place. There's got to be another way. She likes what Councilmember Scremin said about looking to the future to other ways of going about this. She thinks it should be done but it has to be done in a way that doesn't become an economic burden on the community.

**Barbara Nelson**, resident within the proposed District, said she visualizes a way to do this that will honor every citizen and not coerce any one citizen into doing something against his/her will or beyond their means. It should be done in a way that encompasses inclusion and respect, hearing everybody's concerns and not minimizing those concerns, and doing it with honesty. There is a way to get together – although it might take a long time – and do this on a consensus basis.

**Jeff Kane**, resident on Santa Rosa Avenue, was opposed to the measure from the beginning. He noted that it is much harder to repair power lines when they are undergrounded. He asked that concern be included in any further discussion about undergrounding.

Councilmember Albritton noted the 20A funds don't go away, and he assumes the City will advise other undergrounding committees of the outcome of this district, but he noted that the 20A funds will not be available unless the undergrounding district is an arterial. He'd like to find out if any of the remaining districts under consideration are eligible for 20A funds. It would also be helpful if staff mailed a notice explaining the results of the ballot and the conclusions of the Council to the people who received the ballot. It is important that everyone is aware of the outcome and has a sense of finality, which may help bring some of the healing that Councilmember Scremin talked about.

Ms. Whitson said 20A funds are only eligible for use on arterial roads. The only roads within the San Carlos area eligible are Spencer and San Carlos Avenues. It is questionable whether any of the roads within the Third Street or Bulkley Avenue districts would qualify as an arterial. The 20A monies can be used elsewhere in the City; they can be used for voluntary projects and also private projects. Those monies are there, and the City can include some of that information when they do the report that Councilmember Scremin requested.

**Councilmember Albritton moved, seconded by Councilmember Belser, to direct staff to prepare a resolution terminating the district proceedings, which resolution will to be placed on the Consent Calendar for the January 10, 2006 Council meeting, and to continue the hearing to January 10, 2006 for adoption of the termination resolution and report to Council about the potential for other methods of undergrounding.**

**The motion was approved unanimously without a roll call vote.**