

PIEDMONT CITY COUNCIL

Regular Meeting Minutes for Monday, May 4, 2009

A Regular Session of the Piedmont City Council was held May 4, 2009, in the City Hall Council Chambers at 120 Vista Avenue. In accordance with Government Code Section 54954.2(a) the agenda for this meeting was posted for public inspection on April 30, 2009.

CALL TO ORDER Following a 7:00 p.m. Closed Session regarding significant exposure to litigation relating to the Piedmont Hills Underground Assessment District held pursuant to Government Code Section 54956.9(b)(1), Mayor Friedman called the meeting to order at 7:40 p.m. with the Pledge of Allegiance.

ROLL CALL Present: Mayor Abe Friedman, Vice Mayor Dean Barbieri and Councilmembers John Chiang, Margaret Fujioka and Garrett Keating

Staff: City Administrator Geoff Grote, City Attorney George Peyton, Finance Director Mark Bichsel, Public Works Director Larry Rosenberg, City Clerk Ann Swift, Administrative Services Technician John Tulloch and Recording Secretary Chris Harbert

CONSENT CALENDAR The following items were considered under one vote by the Council:

Minutes Approves as submitted Council meeting minutes of April 20, 2009

Agreement Approves a 1-year “no cost” agreement with the State Franchise Tax Board for disclosure of state data regarding businesses located within the City

Agreement Approves an amendment to the City’s Ambulance & Paramedic Provider Agreement with Alameda County to extend the agreement until June 30, 2011, and add a requirement for payment by the county in the amount of \$71,488.59 for First Responder Advanced Life Support Service provided by the City

Resolution Adopts a Resolution commending the following residents who will be honored at the City’s annual Volunteer Reception on May 13, 2009:

Duncan Watry	Ken Richardson
Tom Lister	Brooke Guiney
Allen Gardner	Scott Cauchois

Resolution 35-09

RESOLVED, that the City Council adopts the consent calendar as noted.

Moved by Chiang, Seconded by Fujioka

Ayes: Friedman, Barbieri, Chiang, Fujioka, Keating

Noes: None

Absent: None

(0045; 1100)

(Note: Mayor Friedman abstained from the vote approving the April 20, 2009, Council minutes)

PUBLIC FORUM

There were no speakers for the public forum.

REGULAR CALENDAR

The Council considered the following items of regular business:

**PUSD Ballot
Measures**

The City Clerk recommended the Council continue its long-standing tradition of supporting School District tax measures by endorsing the passage of Measures B and E on the June 2, 2009, municipal ballot. Measure B reauthorizes the School District's current parcel tax and Measure E is a 3-year parcel tax measure to provide supplementary revenue to offset state cutbacks in education funding. The Council concurred that historically the Council and School Board have supported each others funding measures to maintain the high quality of services and education in Piedmont. The Council stressed that Piedmont's school system is a very important component in preserving the community's property values and that the School District has demonstrated fiscal prudence in managing the community's outstanding school system.

Resolution 36-09

RESOLVED, that the City Council endorses the passage of the Piedmont Unified School District's Measures B and E on the June 2, 2009, election ballot.

Moved by Chiang, Seconded by Barbieri

Ayes: Friedman, Barbieri, Chiang, Fujioka, Keating

Noes: None

Absent: None

(0890)

Resolution

Councilmember Fujioka requested Council endorsement of the Piedmont Appreciating Diversity Committee and the Piedmont Parents Network's presentation of *Everybody Has a Story – An Evening of Interactive Theatre* on May 14. The evening will include improvisational performances by the Living Arts Playback Theatre Ensemble that dramatize stories told by audience members.

Public testimony was received from:

Mahvash Hassan, a member of the City's Appreciating Diversity Committee, requested Council endorsement of the program in light of several recent incidents of divisiveness that have occurred in Piedmont. She added that there is widespread community support for this program.

Gina McKuen, a Piedmont Middle School teacher and member of the Living Arts Playback Theatre group, also urged Council endorsement, noting that by giving voices to individual experiences, community bonds and better understanding of differences are strengthened.

Ray Gabois, a member of the Piedmont School Board and School District Liaison to the Piedmont Appreciating Diversity Committee, noted the School District's support of the May 14th event and encouraged all residents to attend.

Resolution 37-09

RESOLVED, that the City Council endorses the presentation of “Everybody Has a Story – An Evening of Interactive Theatre” on May 14, 2009, at 7:00 p.m. in the Ellen Driscoll Theater.

Moved by Fujioka, Seconded by Chiang

Ayes: Friedman, Barbieri, Chiang, Fujioka, Keating

Noes: None

Absent: None

(0890)

**Piedmont Hills
Underground
Assessment**

The City Clerk explained that under the approved assessment formula for the proposed Piedmont Hills Underground Assessment District, the City has 142,551.5 ballots to cast in this matter because the City-owned Hampton Park/Sports Field is located within the district boundaries. The City’s assessment represents 3% of the total ballots that can be cast for this district. She added that this percentage could be higher if less than the 4,320,000 available ballots are actually cast. The Council has three options regarding its ballots: cast all ballots in favor of the Assessment District; cast all ballots against District formation or cast no ballots.

The City Administrator, in response to concerns raised as to budgetary issues, stated that funding has been set aside in the FY 08-09 budget to cover the City’s \$142,551.50 assessment should the district be established. However, he noted that the investment losses suffered by CalPERS as a result of the current economic crisis will eventually adversely impact the City’s finances. It is anticipated that the City’s contribution amount to PERS will not significantly change in FY 09-10 and 10-11. But in FY 11-12 when the CalPERS current losses are calculated into municipal contribution rates, Piedmont can expect that its annual contribution to PERS will increase by approximately \$280,000.

Correspondence was received from: George Childs; Terry Kramer; Betz Bornstein; Christine & Jim Bohar; Rosemary Boccio; Kerri & Mark Lubin; Susi & Peter Browne; Wendy & Mason Willrich; Frederick Schrag; Guy Saperstein & Carl Anderson; Ed Baker

Public testimony was received from:

George Childs, John Nady, Rod Thompson, Ryan Gilbert, David Alexander and Rosemary Boccio all voiced opposition to the expenditure of \$142,551 of taxpayers dollars in behalf of the Piedmont Hills Underground District, with some speakers also voicing their strong opposition to district formation in general. The following reasons were cited in opposition: (1) the City will receive little benefit from utility undergrounding; (2) the assessment calculation for Hampton Park is flawed and the amount of the assessment is unreasonable; (3) the proposed assessments may be unconstitutional and in violation of Proposition 218; (4) no evidence has been submitted in support of proponents’ claims that overhead power lines are less safe and reliable than undergrounded utilities and in fact evidence to the contrary exists; (5) given the current extraordinary economic recession, assessments will impose a significant financial hardship on many residents; (6) the proposed cost sharing formula is unfair, with some residents disproportionately subsidizing others; (7) utility undergrounding is a luxury, not a necessity, and residents should not be

burdened with additional financial pressure given the current difficult economic climate; (8) given the economic difficulties facing the City and School District, there are much better uses for \$142,551 in taxpayer money; (9) if overhead power lines pose a safety hazard to Hampton Park users, power lines at all other City parks should also be undergrounded; and (10) given that the legality of district formation has been questioned, the City should not take any action that could result in costly lawsuits. In conclusion, the speakers urged the Council to cast its ballots against district formation.

Carl Anderson, Marion Keyworth, Francoise Putting, Guy Saperstein, Mary Hedley, Ted Buttner and David Brown all voiced support for the City casting its ballots in favor of district formation, citing the following reasons: (1) a “yes” vote is consistent with the City’s March 19, 2007, policy decision to support privately initiated utility undergrounding projects; (2) public safety is the driving force behind district formation – because of the unique ingress/egress characteristics of the four neighborhoods involved in the project, overhead power lines pose a significant threat to neighborhood safety and the ability of emergency personnel to access the neighborhoods in case of a major disaster such as an earthquake; if said power lines are downed, residents will be trapped and emergency personnel unable to reach them; (3) Hampton Park/Sports Field is heavily used by Piedmont children and the safety of these children and other park users and visitors will be increased by the proposed utility undergrounding project; (4) 97% of the project costs will be borne by residents and public/private partnerships that improve community aesthetics, public safety and utility service operations should be encouraged; (5) the cost to City taxpayers is approximately \$38 per household – a good investment for the community; (6) construction bids and interest rates have never been lower so it is a good opportunity to invest in the betterment of the community.

Engineer of Work Joan Cox and City Bond Counsel Sam Sperry responded to Council questions in explaining the methodology used in calculating the Hampton Park assessment and assuring the Council that the engineering report meets the legal standards required by California law. The Council, with the exception of Councilmember Keating, supported casting all of the City’s ballots in favor of district formation. The Council majority agreed with district proponents that given favorable construction bids, proceeding with the undergrounding project at this time would be a cost effective response for improving public safety in this area of Piedmont with peculiar ingress/egress issues. Councilmember Keating voiced his concern and dissatisfaction with the proposed assessment relating to Hampton Park/Field, believing that the benefit the City will receive from utility undergrounding was over-estimated and City action in casting its ballots would be overly influential in determining the outcome of the count.

Resolution 38-09

RESOLVED, that the City of Piedmont casts its 142,551.5 ballots in favor of the Piedmont Hills Underground Assessment District and authorizes the City Administrator to sign and submit the sealed ballot to the City Clerk.

Moved by Barbieri, Seconded by Chiang

Ayes: Friedman, Barbieri, Chiang, Fujioka
Noes: Keating
Absent: None
(1070)

**Public Hearing:
Piedmont Hills
Undergrounding
Assessment District**

The City Clerk explained the process for proceeding with consideration as to whether the proposed Piedmont Hills Undergrounding Assessment District should be established as set forth in her staff report. The Mayor then opened the public hearing.

Correspondence was received from: George Childs; Terry Kramer; Betz Bornstein; Christine & Jim Bohar; Rosemary Boccio; Kerri & Mark Lubin; Susi & Peter Browne; Wendy & Mason Willrich; Frederick Schrag; Guy Saperstein & Carl Anderson; Ed Baker

Public testimony was received from:

Clifford Fried, Carl Anderson, Lonnie Simonson, Tony Trutner and Guy Saperstein:

- **voiced support** for establishing the Piedmont Hills Undergrounding Assessment District, citing the following reasons: (1) public safety is the driving force behind district formation – because of the unique ingress/egress characteristics of the four neighborhoods involved in the project, overhead power lines pose a significant threat to neighborhood safety and the ability of emergency personnel to access the neighborhoods in case of a major disaster such as an earthquake; if said power lines are downed, residents will be trapped and emergency personnel unable to reach them; (2) the district will connect with adjacent neighborhoods with undergrounded utilities; (3) construction bids and interest rates have never been lower so it is a good opportunity to invest in the betterment of the community; and (4) district approval is consistent with the City's March 19, 2007, policy decision to support privately initiated utility undergrounding projects;

Fred Schrag, George Childs, Rod Thompson, John Nady, Elizabeth Schultz, John Maxwell, Rosemary Boccio, Betz Bornstein and David Alexander:

- **voiced opposition** to establishing the Piedmont Hills Undergrounding Assessment District, citing the following reasons: (1) the assessment formula is legally flawed, constitutionally deficient and in violation of Proposition 218; (2) the process should not be deemed categorically exempt under CEQA because of adverse impact to historically significant property; (3) unwarranted and unjustified expenditures of City taxpayer funds are involved, e.g. Hampton Park assessment; (4) because of the current economic crises and the financial burden undergrounding assessments will impose on residents, the Council should require a super-majority percentage of property owner support for district establishment; (5) proponents arguments that undergrounding will improve public safety are unfounded and disguise the true reason for the proposal – an involuntary beautification project; (6) utility undergrounding is a luxury, not a necessity, and residents should not be burdened with

additional financial pressure given the current difficult economic climate; and (7) the benefits do not outweigh the significant financial costs to homeowners during this economic recession.

Vince Monical voiced his frustration in dealing with the project engineer and City staff in determining whether a rising power pole will be located on his boundary edge property. If so, his aesthetics will not be improved but he will be assessed for a benefit he will not receive.

At the Council's request, the Engineer of Work, the City's Bond Counsel and the City Attorney responded to issues raised by speakers relating to the legality and constitutionality of the process/assessment formula and Engineer's Report as well as CEQA requirements. In particular, the City Attorney referenced the legal and CEQA arguments put forth by Mr. Schrag in his correspondence. Specifically, the City Attorney refuted Mr. Schrag's allegations regarding the Sweetland Estate (11 Glen Alpine) in opining that the Sweetland Estate is not a historic resource as defined by law and even if it was, the removal of power poles and possible demise of trees located within the City parking strip would not be a substantial adverse change to the historic significance of the property. In all likelihood the power poles and trees are not original to the Sweetland Estate and in any event are probably located on City property. The City Attorney reaffirmed that it is standard practice to find that utility undergrounding districts qualify for Class 2 Categorical Exemptions under CEQA.

On a Motion by Councilmember Chiang, Seconded by Councilmember Fujioka and Unanimously Carried, the Council agreed to extend tonight's meeting to 12 midnight in order to complete agenda consideration.

After offering anyone in the audience an opportunity to cast a ballot or change an already submitted ballot with regard to the Piedmont Hills Underground Assessment District, the Mayor closed the public hearing and recessed the meeting at 11:00 p.m. while the City Clerk tallied the ballot vote.

The Mayor reconvened the meeting at 11:45 p.m. The City Clerk reported the following:

- 3,385,705.45 ballots were cast – 78.4% of the total number of possible ballots
- 2,262,479.9 ballots were cast in favor – 66.8%
- 1,123,225.55 ballots were cast in opposition – 33.2%
- Of the 116 households in the district which submitted ballots: 73 supported the district (63.5%) and 42 were opposed (36.5%)
- If the City's ballots are not included in the tally, the percentage in favor of district formation is 65.4% and in opposition 34.6%

The City Clerk declared that there was no majority protest.

Resolution 39-09

RESOLVED, that the City Council determines that the Piedmont Hills Underground Assessment District qualifies for a Class 2 Categorical Exemption under CEQA based on the findings that:

- The Sweetland Estate at 11 Glen Alpine Road is not a historic resource within the context of the law; and
- Even if the Sweetland Estates is a historic resource, the removal of existing utility poles and the possible loss of mature trees would not be a substantial adverse change to the historic significance of the property. In all likelihood, the existing poles and overhead wires are not original to the property and both the poles and trees are probably located on City property.

Moved by Barbieri, Seconded by Chiang

Ayes: Friedman, Barbieri, Chiang, Fujioka, Keating

Noes: None

Absent: None

(1070)

Resolution 40-09

RESOLUTION OVERRULING PROTESTS, APPROVING FINAL ENGINEER'S REPORT, LEVYING ASSESSMENTS WITHOUT MODIFICATION, APPROVING AND ORDERING THE WORK AND IMPROVEMENTS FOR THE UTILITY UNDERGROUNDING PROJECT, AND AUTHORIZING AND DIRECTING RELATED ACTIONS

CITY OF PIEDMONT

PIEDMONT HILLS

UNDERGROUND ASSESSMENT DISTRICT

WHEREAS, in response to petitions submitted by the owners of various parcel of land with this proposed "Piedmont Hills Underground Assessment District" (the "Proposed Assessment District"), this City Council (this "City Council") has previously taken the following actions in furtherance of considering formation of the Proposed Assessment District and implementing the proposed project (the "Project") of undergrounding existing overhead utility facilities and replacing existing street lighting facilities within or adjacent to the boundary of the Proposed Assessment District:

a. by resolutions adopted on February 3, 2003, this City Council (1) accepted the petitions and (2) adopted boundary maps for six initially separate assessment districts as follows:

- (1) Calvert Court;
- (2) Crest Road;
- (3) Sotelo-Glen Alpine;
- (4) St. James Drive – LaSalle Avenue;
- (5) Central Piedmont; and
- (6) Sierra Avenue & Vicinity;

b. by resolution adopted on November 3, 2003, this City Council approved a consolidation of some but not all of the separate areas into a single proposed assessment district to be known as the “Piedmont Hills Underground Assessment District,” with the parcels which were excluded later included in a separate assessment district which became known as the “Central Piedmont Underground Assessment District;”

c. at its meeting of April 4, 2005, this City Council received a request from Carl Anderson, member of the Steering Committee for the Proposed Assessment District, to amend the boundary to delete ten parcels whose owners declined to provide financial support for the preliminary expense of the Proposed Assessment District;

d. by resolutions adopted on May 2, 2005, this City Council (1) approved an amended boundary map (the “Amended Boundary Map”) for the Proposed Assessment District which excluded the ten parcels discussed on April 4, with direction to staff to cause the scope of the Project to be modified to remove those facilities which might arguably impart special benefit to the parcels excluded, (2) approved a preliminary expense agreement between the City and proponents of the Proposed Assessment District, (3) approved an engineering services agreement with Harris & Associates to serve as assessment engineers (the “Assessment Engineers”) for the Proposed Assessment District, (4) approved a legal services agreement with Orrick, Herrington & Sutcliffe to serve as bond counsel (“Bond Counsel”) to the City for the Proposed Assessment District, and (5) conditionally declared the intention (the “Resolution of Intention”) of this City Council to establish the Proposed Assessment District and implement the Project and directed the Assessment Engineers to prepare and submit to the City Clerk the engineer’s report required by law for consideration by this City Council; and

e. following the advertisement of an invitation to construction contractors to submit sealed bids for the Project, bids were received and opened on March 2, 2009, with the lowest and best bid received being for a contract amount less than the previously-estimated cost;

f. at the direction of City staff, the Assessment Engineers then prepared and submitted of a Preliminary Engineer’s Report, utilizing the low Project bid as the basis for the cost estimate set forth therein, and this City Council on March 16, 2009, adopted its resolution (1) preliminarily approving the Preliminary Engineer’s Report and scheduling a public hearing for

May 4, 2009, to consider the report and to hear protests and expressions of support for the Proposed Assessment District, (2) directing the City Clerk to provide for mailed notice of the hearing and assessment ballots to the affected property owners, (3) approving a second amended boundary map (the "Second Amended Boundary Map") to include an additional parcel identified in the Preliminary Engineer's Report as Assessment No. 22, and (4) amended the Resolution of Intention to specify that compliance with Division 4 of the Streets and Highways Code, previously established by submission and approval of property owner petitions, would be supplemented by proceedings taken pursuant to Part 7.5 of Division 4, as anticipated in the Preliminary Engineer's Report; and

WHEREAS, notice of the public hearing on May 4, 2009, was given to property owners by mail, accompanied by the property owner assessment ballots, as required by law, as evidenced by the Certificate of Mailing which is on file with the City Clerk; and

WHEREAS, due to the relocation of Samuel A. Sperry from Orrick, Herrington & Sutcliffe to Meyers, Nave, Riback Silver & Wilson, this City Council has approved the replacement of Orrick, Herrington & Sutcliffe by Meyers, Nave, Riback, Silver & Wilson as Bond Counsel to the City for the Proposed Assessment District; and

WHEREAS, on March 18, 2009, City staff and representatives of the Assessment Engineers and Bond Counsel met with property owners at an informational meeting to (1) present a summary of the status of the proceedings for the Proposed Assessment District, the Project bids, and the information set forth in the Preliminary Engineer's Report and (2) invite comments from those property owners in attendance, especially with respect to the treatment of their specific parcels; and

WHEREAS, on the basis of comments received from specific property owners, both at the information meeting and in communications subsequent to the information meeting, the Assessment Engineers have reviewed the specific parcels called to their attention and have concluded that reductions to the amount of the assessment proposed for three of the parcels were in order, as follows:

- a. Assessment No. 22 – when the Assessment Engineer concluded that the component of special benefit based upon aesthetic benefits should be reduced because a riser pole which will not be removed is situated directly adjacent to the driveway access to the property;
- b. Assessment No. 64 – reduced when the Assessment

Engineer concluded that assigning a panoramic view classification was inappropriate and the corresponding component of special benefit was reduced to the amount corresponding to general view classification;

c. Assessment No. 67 – reduced to zero when the Assessment Engineer, following consultation with staff of the City of Oakland, concluded that the parcel had been included in a prior utility undergrounding assessment district of the City of Oakland resulting in the undergrounding at that time of the facilities adjacent to and serving the parcel; and

d. Assessment No. 83 - reduced to zero when the Assessment Engineer, following further review, concluded that the parcel is no longer a viable stand-alone lot, having been merged into an adjacent parcel, which is being assessed; and

WHEREAS, based upon further review of Assessment No. 68, the Assessment Engineer has concluded that the basis for determining the special benefit to this parcel is correct and that reduction of the assessment amount is not warranted; and

WHEREAS, the Assessment Engineers have prepared and submitted a final engineer's report (the "Final Engineer's Report") which reflects the foregoing changes, together with a minor reduction in the construction contingency and incidental expense contingency line items of the cost estimate (page 4 of the Final Engineer's Report) which result in minor reductions to the amount of all of the individual parcel assessment amounts; and

WHEREAS, the public hearing was conducted as scheduled on May 4, 2009, and having provided opportunity for any interested person present to be heard, and the Mayor having provided one last opportunity for any property owner present to either (1) submit an assessment ballot or (2) change an assessment ballot previously submitted, and upon seeing that there were no further actions to be taken with respect to either submission or changing of assessment ballots, the hearing was closed; and

WHEREAS, following the close of the public hearing, the City Clerk opened, declared and tallied the assessment ballots which were received prior to the close of the hearing, and the City Clerk has reported to this City Council that the assessment ballots received in favor of proceeding with the Proposed Assessment District exceed the assessment ballots received in opposition to proceeding, as determined in accordance with Section 53753 of the California Government Code, this City Council hereby finds and determines that there is not a

majority protest respecting the Proposed Assessment District; and

WHEREAS, based upon the recommendations of the Assessment Engineer, as set forth in the Final Engineer's Report, and all of the testimony heard and written communications received from interested persons, this City Council hereby finds and determines that (1) the general benefits have been appropriately identified and separated from the special benefits, as set forth in the Final Engineer's Report, (2) only that portion of the estimated cost of the Project which represents local and special benefit has been assessed against the respective parcels of land which are assessed and (3) the proposed assessment of the portion of the total estimated cost and expense of the Project which represents local and special benefit upon the respective parcels of land in the Proposed Assessment District, as set forth in the Final Engineer's Report, represents a fair and equitable apportionment of such estimated cost and expense in proportion to the estimated benefits to be received by each of the parcels, respectively from the improvements which comprise the Project; and

WHEREAS, without limiting the generality of the foregoing, this City Council hereby finds and determines that, under the facts and circumstances pertaining to the Proposed Assessment District, the general benefits imparted by the Project, as recommended by the Assessment Engineer in the Final Engineer's Report, are relatively incidental, and do not exceed and are fully offset by the combined contributions of \$478,024 from PG&E and Comcast, with the result that only that portion of the estimated cost of the Project which represents local and special benefits has been assessed against the parcels of land which have been determined to be specially benefited;

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

1. The foregoing recitals are true and correct, and this City Council hereby expressly so finds and determines.

2. This City Council hereby finds and determines that there was not a majority protest within the meaning of Section 53753 of the Government Code, and hereby overrules all protests, whether written or oral, submitted prior to or at the public hearing.

3. The Final Engineer's Report, dated May 4, 2009, is hereby approved without modification.

4. The proposed work and improvements which comprise the Project, as described in the Final Engineer's Report, are hereby ordered.

5. The individual assessments, in the amounts set forth in the Final 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. This City Council hereby expressly finds and determines that the Project is categorically exempt from the provisions of the California Environmental Quality Act ("CEQA"). In the event that a Notice of Exemption has not previously been prepared and filed, this City Council hereby directs the preparation of a Notice of Exemption, indicating that the 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.

7. This City Council hereby finds and determines that the information set forth at page 3 of the Final Engineer's Report demonstrates compliance with the requirements of Part 7.5 of Division 4 of the Streets and Highways Code, thereby dispensing with any further proceedings pursuant to said Division 4, and this determination and action is final and conclusive as to all persons in accordance with Section 3012 of the Streets and Highways Code.

8. A Notice of Assessment shall be prepared and recorded by the City Clerk in the official records of the Alameda County Recorder, together with an assessment diagram in the form set forth in the Final Engineer's Report. Notice of recordation of assessment shall be given by the City Clerk 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 Code.

9. Pursuant to Section 10603 of the 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.

10. Following receipt of the Certificate re Paid and Unpaid Assessments, this City Council intends to proceed with authorization of the issuance and sale of the Bonds, pursuant to the Improvement Bond Act of 1915 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.

11. This resolution shall take effect immediately.

Moved by Barbieri, Seconded by Chiang

Ayes: Friedman, Barbieri, Chiang, Fujioka

Noes: Keating
Absent: None
(1070)

On a Motion by Councilmember Chiang, Seconded by Councilmember Fujioka and Unanimously Carried, the Council agreed to extend tonight's meeting to 1:00 a.m. in order to complete agenda consideration.

Prior to Councilmembers Fujioka and Chiang recusing themselves from consideration of the Hampton/Sea View Underground Assessment District, the Mayor directed that the **Announcement** portion of the agenda be held so that the two Councilmembers could leave afterwards and not have to return.

ANNOUNCEMENTS

Climate Action Plan Community Forum – Councilmember Fujioka encouraged residents to attend the May 27 community forum in connection with the preparation of the City's Climate Action Plan.

Environmental Task Force – Councilmember Fujioka announced that the next meeting of the City's Environmental Task Force will be May 26. The public is invited to attend.

Evening of Interactive Theatre – Councilmember Fujioka encouraged residents to attend the Piedmont Appreciating Diversity Committee and the Piedmont Parents Network's presentation of *Everybody Has a Story – An Evening of Interactive Theatre* on May 14.

Ride to Work – Councilmember Keating reminded residents that May 14 is "Ride to Work" day.

Public Hearing: Hampton/Sea View Underground Assessment District

Per Council action of October 20, 2008, based on the Doctrine of Necessity and pursuant to Government Code Section 87100 and California Code Section 18708, Councilmembers Chiang and Fujioka recused themselves from discussing and acting on the proposed Hampton/Sea View Underground Assessment District (both Councilmembers live within 500 ft. of the district boundaries) and Mayor Friedman remained as the designated "third" voting member on the Council, even though he too lives within 500 ft. of district boundaries. Councilmembers Chiang and Fujioka left the meeting at 12:10 a.m.

The City Clerk explained the process for proceeding with consideration as to whether the proposed Hampton/Sea View Underground Assessment District should be established as set forth in her staff report. The Mayor then opened the public hearing.

Correspondence was received from: Sandy Forderer; A.S. Edgerton; Stephen Block; William & Elizabeth Schultz; Wendy & Mason Willrich; Patricia Milligan; James Bert; Gayle Bert; William Massengill; Kathleen Quenneville & Diane Allen; Ned & Jennifer Trainor

Public testimony was received from:

Mark Kalend, Brock Settlemer, Charles Reese and Stephen Block:

- **voiced support** for establishing the Hampton/Sea View Undergrounding Assessment District, citing the following reasons: (1) construction bids and interest rates have never been lower so it is a good opportunity to invest in improving the City's infrastructure, which in turn helps preserve property values; (2) utility undergrounding improves public safety by eliminating overhead power lines which could be downed during major disasters; (3) utility undergrounding improves public safety, community aesthetics and service reliability; (4) 70% of district residents have financially contributed to the project during the 4 year process to have the neighborhood's utilities undergrounded. Many of the speakers urged that if there is no majority protest, the Council should approve the formation of the district based upon the approval percentage allowed by law.

Bert Kurtin, James Bert, Elizabeth Schultz, Jim Meacher, Barbara Timens, Jennifer Trainor and George Vlazatis:

- **voiced opposition** to establishing the Hampton/Sea View Undergrounding Assessment District, citing the following reasons: (1) utility undergrounding should be an obligation undertaken by the City and not individual neighborhoods; (2) a better expenditure of funds on behalf of public safety during a major earthquake would be to install automatic gas meter shut-off valves; (3) the imposition of underground assessments, equal in many cases to the amount of existing parcel tax assessments, will create a severe financial burden for many residents which in turn may jeopardize the future passage of much needed City and school tax measures; (4) given the economic difficulties facing the City, school district and residents, there are much better uses for the community's dollars; (5) the proposed cost sharing formula is unfair, with some residents with smaller lots disproportionately subsidizing others with much larger lots; (6) utility undergrounding is a luxury, not a necessity, and residents should not be burdened with additional financial pressure given the current difficult economic climate; (7) given concerns that the assessment formula is legally flawed, constitutionally deficient and in violation of Proposition 218, the City should retain independent legal counsel to advise on this matter before proceeding rather than rely on its own bond counsel so as to avoid the possibility of expensive lawsuits; and (8) the process should not be deemed categorically exempt under CEQA – the loss of power poles and lines will significantly affect wildlife habitat, e.g. removal of habitat used by birds and squirrels – an EIR should be required. Many speakers urged that the Council should require a super-majority vote of approval from district residents to establish the district.

On a Motion by Vice Mayor Barbieri, Seconded by Councilmember Keating and Carried, the Council agreed to extend tonight's meeting to 1:30 a.m. in order to complete agenda consideration.

Engineer of Work Irving Schwartz responded to Council questions regarding the methodology used in devising the assessment formula and calculations. He also identified the specific amendments to his report, dated May 4, 2009.

After offering anyone in the audience an opportunity to cast a ballot or change an already submitted ballot with regard to the Hampton/Sea View Underground Assessment District, the Mayor closed the public hearing and recessed the meeting at 12:55 a.m. while the City Clerk tallied the ballot vote.

The Mayor reconvened the meeting at 1:20 a.m. The City Clerk reported the following:

- 2,661,152 ballots were cast – 87.4% of the total number of possible ballots
- 1,494,181 ballots were cast in favor – 56.1%
- 1,166,971 ballots were cast in opposition – 43.9%
- 50 households supported the district (54.9%) and 41 were opposed (45.1%)

The City Clerk declared that there was no majority protest.

With regard to CEQA issues raised by one of the speakers, the City Attorney recommended that the Council find that utility poles are not significant wildlife habitat and as such their removal does not have a detrimental impact on wildlife. It was the City Attorney's opinion that the Hampton/Sea View Underground Assessment District qualifies for a Class 2 Categorical Exemption under CEQA.

Resolution 41-09

RESOLVED, that the City Council determines that the Hampton/Sea View Underground Assessment District qualifies for a Class 2 Categorical Exemption under CEQA.

Moved by Barbieri, Seconded by Keating

Ayes: Friedman, Barbieri, Keating

Noes: None

Recused: Chiang, Fujioka

(1070)

The Council agreed that the level of district resident support justified proceeding with district formation and was in conformance with the level of support required by law.

On a Motion by Vice Mayor Barbieri, Seconded by Councilmember Keating and Carried, the Council agreed to extend tonight's meeting to 2:00 a.m. in order to complete agenda consideration

Resolution 42-09

RESOLUTION OVERRULING PROTESTS, APPROVING AMENDED ENGINEER'S REPORT, LEVYING ASSESSMENTS WITHOUT MODIFICATION, APPROVING AND ORDERING THE WORK AND IMPROVEMENTS FOR THE UTILITY UNDERGROUNDING PROJECT, AND AUTHORIZING AND DIRECTING RELATED ACTIONS

CITY OF PIEDMONT
HAMPTON – SEA VIEW AVENUES
UNDERGROUND ASSESSMENT DISTRICT

WHEREAS, in response to petitions submitted by the owners of various parcel of land with this proposed "Hampton – Sea View Avenues Underground Assessment District" (the "Proposed Assessment District"), this City Council (this "City Council") has previously taken the following actions in furtherance of considering formation of the Proposed Assessment District and implementing the proposed project (the "Project") of undergrounding existing overhead utility facilities and replacing existing street lighting facilities within or adjacent to the boundary of the Proposed Assessment District:

a. by resolutions adopted on August 20, 2007, this City Council (1) accepted the petition and (2) adopted a boundary map for the Proposed Assessment District.

b. following the advertisement of an invitation to construction contractors to submit sealed bids for the Project, bids were received and opened on March 2, 2009, with the lowest and best bid received being for a contract amount less than the previously-estimated cost;

c. at the direction of City staff, the Assessment Engineer then prepared and submitted a Preliminary Engineer's Report, utilizing the low Project bid as the basis for the cost estimate set forth therein, and this City Council on March 16, 2009, adopted its resolution (1) preliminarily approving the Preliminary Engineer's Report and scheduling a public hearing for May 4, 2009 to consider the report and to hear protests and expressions of support for the Proposed Assessment District, and (2) directing the City Clerk to provide for mailed notice of the hearing and assessment ballots to the affected property owners; and

WHEREAS, notice of the public hearing on May 4, 2009, was given to property owners by mail, accompanied by the property owner assessment ballots, as required by law, as evidenced by the Certificate of Mailing which is on file with the City Clerk; and

WHEREAS, due to the relocation of Samuel A. Sperry from Orrick, Herrington & Sutcliffe to Meyers, Nave, Riback Silver & Wilson, this City Council has approved the replacement of Orrick, Herrington & Sutcliffe by Meyers, Nave, Riback, Silver & Wilson as Bond Counsel to the City for the Proposed Assessment District; and

WHEREAS, on March 19, 2009, City staff and representatives of the Assessment Engineer and Bond Counsel met with property owners at an informational meeting to (1) present a summary of the status of the proceedings for the Proposed Assessment District, the Project bids, and the information set forth in the Preliminary Engineer's Report and (2) invite comments from those property owners in attendance, especially with respect to the treatment of their specific parcels; and

WHEREAS, on the basis of comments received from specific property owners, both at the information meeting and in communications subsequent to the information meeting, the Assessment Engineer has reviewed certain parcels which were the subject of such comments and has concluded that the amount of the assessment proposed to be allocated to the parcels on account of "enhancement of streetscape appearance," which in the Preliminary Engineer's Report was allocated on the basis of total length of street frontage, should be reduced as follows:

- a. Assessment Parcels 1, 2, 13, 14, 15, 33, 43, 51, 54, 62 and 63 – These eleven parcels are "corner parcels," with frontage on more than one street where overhead utilities will be removed, but they take no vehicular or pedestrian access from all streets on which they front. Under these circumstances, the Assessment Engineer has concluded that the length of frontage assigned to these parcels should be reduced by an amount of 50% of the frontage occurring on those streets from which the occupants of the parcel take no access.
- b. Assessment Parcels 20, 23, 24, 25 and 33 – These five parcels have frontage on a street which has no overhead utilities to be undergrounded. Under these circumstances, the Assessment Engineer has concluded that the amount of frontage attributable to any such street should be deleted in determining the amount of frontage assigned to these parcels.
- c. Assessment Parcels 46, 47, 48, 49 and 66 – These five parcels derive access from streets along which overhead utilities will be undergrounded, and in addition each of them "abuts" on another street from which no access is derived. Under these circumstances, the Assessment Engineer has concluded that the amount of frontage attributable to any street from which no access is derived should be deleted in determining the amount of frontage assigned to these parcels; and

WHEREAS, the Assessment Engineer has prepared and submitted an amended engineer's report, dated May 4, 2009 (the "Amended Engineer's Report") which reflects the foregoing changes and the corresponding decrease in the amount of the proposed assessment for the twenty-one subject parcels, together with an increase in the contribution from Comcast; and

WHEREAS, the public hearing was conducted as scheduled on May 4, 2009, and having provided opportunity for any interested person present to be heard, and the Mayor having provided one last opportunity for any property owner present to either (1) submit an assessment ballot or (2) change an assessment ballot previously submitted, and upon seeing that there were no further actions to be taken with respect to either submission or changing of assessment ballots, the hearing was closed; and

WHEREAS, following the close of the public hearing, the City Clerk opened, declared and tallied the assessment ballots which were received prior to the close of the hearing, and the City Clerk has reported to this City Council that the assessment ballots received in favor of proceeding with the Proposed Assessment District exceed the assessment ballots received in opposition to proceeding, as determined in accordance with Section 53753 of the California Government Code, this City Council hereby finds and determines that there is not a majority protest respecting the Proposed Assessment District; and

WHEREAS, based upon the recommendations of the Assessment Engineer, as set forth in the Amended Engineer's Report, and all of the testimony heard and written communications received from interested persons, this City Council hereby finds and determines that (1) the general benefits have been appropriately identified and separated from the special benefits, as set forth in the Amended Engineer's Report, (2) only that portion of the estimated costs of the Project which represents local and special benefit has been assessed against the respective parcels of land which are assessed and (3) the proposed assessment of the portion of the total estimated cost and expense of the Project which represents local and special benefit upon the respective parcels of land in the Proposed Assessment District, as set forth in the Amended Engineer's Report, represents a fair and equitable apportionment of such estimated cost and expense in proportion to the estimated benefits to be received by each of the parcels, respectively from the improvements which comprise the Project;

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

1. The foregoing recitals are true and correct, and this City Council hereby expressly so finds and determines.

2. This City Council hereby finds and determines that there was not a majority protest within the meaning of Section 53753 of the Government Code, and hereby overrules all protests, whether written or oral, submitted prior to or at the public hearing.

3. The Amended Engineer's Report is hereby approved without modification.

4. The proposed work and improvements which comprise the Project, as described in the Amended Engineer's Report, are hereby ordered.

5. The individual assessments, in the amounts set forth in the 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. This City Council hereby expressly finds and determines that the Project is categorically exempt from the provisions of the California Environmental Quality Act ("CEQA"). In the event that a Notice of Exemption has not previously been prepared and filed, this City Council hereby directs the preparation of a Notice of Exemption, indicating that the 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.

7. This City Council hereby finds and determines that the information set forth at page 3 of the Amended Engineer's Report demonstrates compliance with the requirements of Part 7.5 of Division 4 of the Streets and Highways Code, thereby dispensing with any further proceedings pursuant to said Division 4, and this determination and action is final and conclusive as to all persons in accordance with Section 3012 of the Streets and Highways Code.

8. A Notice of Assessment shall be prepared and recorded by the City Clerk in the official records of the Alameda County Recorder, together with an assessment diagram in the form set forth in the Amended Engineer's Report. Notice of recordation of assessment shall be given by the City Clerk 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 Code.

9. Pursuant to Section 10603 of the 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.

10. Following receipt of the Certificate re Paid and Unpaid Assessments, this City Council intends to proceed with authorization of the issuance and sale of the Bonds, pursuant to the Improvement Bond Act of 1915 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.

11. This resolution shall take effect immediately.

Moved by Barbieri, Seconded by Keating

Ayes: Friedman, Barbieri, Keating

Noes: None

Recused: Chiang, Fujioka

(1070)

**Proposed FY 09-10
City Budget**

As required by the City Charter, the City Administrator presented the City's proposed FY 09-10 operations and capital improvements budget which is balanced, protects the City's core services and reflects a "worst case scenario" in terms of revenue receipt in light of the current economic recession. He announced that the Council will consider the proposed budget at a special work session on Sunday, May 17 as well as at two public hearings on June 1 and 15 – the public is invited to attend these meetings. Copies of the proposed budget are available at City Hall and on the City's website.

ADJOURNMENT

There being no further business, Mayor Friedman adjourned the meeting at 1:45 a.m.