

City of Piedmont  
COUNCIL AGENDA REPORT

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DATE: October 18, 2004  
FROM: Ann Swift, City Clerk  
SUBJECT: **Alta Piedmont Underground Assessment District**

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**RECOMMENDATION**

By motion, adopt and approve the following items:

1. Resolution accepting petitions
2. Resolution approving the preliminary boundary map

**BACKGROUND**

Property owners on portions of Alta, Bell, Blair, Hardwick, Langdon and Scenic Avenues have filed petitions to form a utility undergrounding district and have provided the city with a boundary map. Pursuant to the attached certificate from the city clerk, a total of 157 property owners out of 220, more than the 60% required by law, have signed petitions requesting that a district be formed.

In order to move forward, the council must adopt the two attached resolutions which accept the validity of the petitions and approve the preliminary boundary map. Under normal circumstances, councilmembers Barbieri, McEnroe and Wieler would not be eligible to vote on this item as their principal residences are included in the proposed district. However, Section 2.07(c) of the city charter requires that “no action of the council . . . shall be valid or binding unless adopted by the affirmative vote of three (3) or more members of the Council”.

Deputy City Attorney Judith Robbins has provided analysis of this issue which is attached. In brief, Government Code [Section 87100](#) does not prevent any public official from making or participating in the making of a governmental decision to the extent his participation is legally required for the action or decision to be made. In addition, California Code of Regulations Section Sec. 18708 sets out a doctrine of necessity which requires an elected official to vote when “there exists no alternative source of decision”. As there is no required method for selecting which councilmember shall be allowed to vote, Councilmembers Barbieri, McEnroe and Wieler will draw lots at the public meeting to determine the third voting member. The selected councilmember must disclose his/her financial interest for the record before voting and the minutes of the meeting must show both the disclosure and the opinion of legal counsel that such action is required.

The estimated engineering costs to be incurred by the city for this underground utility district (as estimated by Harris & Associates) are approximately \$400,000. These costs include \$303,000 for the Engineer of Work, \$75,000 for engineering by P.G.& E. and \$20,000 for engineering by SBC. As with other underground assessment districts, it will be necessary for the residents in the Alta Piedmont District to raise the \$400,000 for these costs before proceeding further.

When the engineering deposit has been received by the city, the following actions will take place:

1. Approval of an agreement between the city and the district for management of engineering costs.
2. Approval of an agreement with the Engineer of Work
3. Approval of an agreement with Bond Counsel
4. Approval of a Resolution of Intention which expresses the city council's support of the formation of this district

Adoption of a final boundary map will follow additional engineering and analysis by both the Engineer of Work and P.G. & E. and input from the public at required public hearings.

It should be noted that all of the actions scheduled at this meeting are preliminary and do not commit the council to the creation of this project.

Certificate Respecting Sufficiency of Petitions  
**Alta Piedmont Underground Assessment District**

I, Ann Swift, certify that I have examined 157 signed counterparts of a “Petition Supporting the Alta Piedmont Underground Assessment District” signed by owners of property shown on the exhibit map attached thereto, showing the boundaries of the property to be assessed for the proposed City of Piedmont Alta Piedmont Underground Assessment District (the “Proposed Assessment District”).

I have compared the names on the petition with the names of owners of the land as shown on the records of the Alameda County Assessor.

I find 157 valid petitions have been signed by (a) not less than five owners of the property to be assessed within the Proposed Assessment District and (b) by owners of more than sixty percent (60%) in area of the property to be assessed for the Proposed Assessment District.

I also certify that the total number of properties in the proposed district equals 220 and that the petitions filed exceed 70% of that number.

Attest: \_\_\_\_\_  
Ann Swift, City Clerk  
City of Piedmont

Dated: October 14, 2004

RESOLUTION NO. \_\_\_\_\_

**RESOLUTION ACCEPTING PETITIONS FOR THE  
ALTA PIEDMONT UNDERGROUND ASSESSMENT DISTRICT**

WHEREAS, the owners of certain real property situated in the City of Piedmont (the “City”) have filed with the City Clerk several signed counterparts of a petition, requesting the implementation of a project for the undergrounding of certain existing, overhead utility facilities and the relocation of certain related street lighting facilities, together with appurtenant work and improvements, as described therein, the cost of which is to be specifically assessed against each parcel of land benefiting from such improvements as shown on an exhibit map attached to the petition; and

WHEREAS, the petition contains an express waiver of statutory proceedings under the Special Assessment Investigation, Limitation and Majority Protest Act of 1931, as provided in Section 2804 of the Streets and Highways Code of the State of California; and

WHEREAS, the City Clerk has also received a certificate to the effect that the petition has been signed by persons owning lands constituting more than sixty percent (60%) in area of the land subject to assessment within the proposed assessment district; and

WHEREAS, this City Council finds that the owners of more than sixty percent (60%) in area of the land proposed to be assessed for the proposed improvements, including the owners of more than five of the subject parcels, have signed such petition and that the petition contains the matters required by Sections 2804 and 2804.5 of the Streets and Highways Code;

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

SECTION 1. PETITION ACCEPTED. The petition, as filed with the City Clerk, is hereby found to be legally sufficient and is accepted.

SECTION 2. DETERMINATION TO UNDERTAKE PROCEEDINGS. The special assessment proceedings shall be undertaken by the terms of the petition, pursuant to the Municipal Improvement Act of 1913 and without further compliance with the Special Assessment Investigation, Limitation and Majority Protest Act of 1931 (commencing with Section 2800 of the Streets and Highways Code).

SECTION 3. PUBLIC INTEREST AND CONVENIENCE SERVED. This City Council hereby finds and determines that the public interest and convenience will be served by the taking of such proceedings.

SECTION 4. ACTION IS FINAL. This action is “final” within the meaning of Streets and Highways Code Section 3012.



RESOLUTION NO. \_\_\_\_\_

**RESOLUTION APPROVING A PRELIMINARY BOUNDARY MAP  
ALTA PIEDMONT UNDERGROUND ASSESSMENT DISTRICT**

WHEREAS, there has been filed with the City Clerk a proposed boundary map entitled “Proposed Preliminary Boundaries of City of Piedmont, Alta Piedmont Underground Assessment District” (the “Proposed Assessment District”), which map shows the area to be assessed in the Proposed Assessment District; and

WHEREAS, this City Council wishes to establish said map as the map of the proposed boundaries (the “Boundary Map”) of the Proposed Assessment District;

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

1. This City Council approves the Boundary Map and adopts the boundaries shown on the Boundary Map as describing the extent of the territory included in a proposed assessment district to be known as City of Piedmont Alta Piedmont Underground Assessment District, County of Alameda, State of California.
2. This City Council finds and determines that the Boundary Map contains the matters and is in the form prescribed by Section 3110 of the California Streets and Highways Code.
3. This City Council directs the City Clerk to certify the adoption of this resolution on the face of the Boundary Map and to file a copy of the Boundary Map with the Alameda County Recorder for placement in the Book of Maps of Assessment and Community Facilities Districts.

To: Ann Swift, City Clerk  
City of Piedmont

October 14, 2004

Re: Voting under the Political Reform Act, Rule of Necessity

**California Government Code § 87100**

No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

**California Government Code §87101**

[Section 87100](#) does not prevent any public official from making or participating in the making of a governmental decision to the extent his participation is legally required for the action or decision to be made. The fact that an official's vote is needed to break a tie does not make his participation legally required for purposes of this section.

**2 California Code of Regulations §18708** (FPPC Implementing Regulations)

s 18708. Legally Required Participation.

(a) A public official is not legally required to make or to participate in the making of a governmental decision within the meaning of [Government Code section 87101](#) unless there exists no alternative source of decision consistent with the purposes and terms of the statute authorizing the decision.

(b) Whenever a public official who has a financial interest in a decision is legally required to make or to participate in making such a decision, he or she shall state the existence of the potential conflict as follows:

(1) The public official shall disclose the existence of the conflict and describe with particularity the nature of the economic interest. "Particularity" as used in this regulation shall be satisfied if the official discloses:

(A) whether the conflict involves an investment, business position, interest in real property, or the receipt of income, loans or gifts;

(B) if the interest is an investment, the name of the business entity in which each investment is held; if the interest is a business position, a general description of the business activity in which the business entity is engaged; if the interest is real property, the address or another indication of the location of the property, unless the property is the official's principal or personal residence, in which case the official shall disclose this fact. For income, loans or gifts, the official shall disclose the person or entity that is the source.



(2) The public official or another officer or employee of the agency shall give a summary description of the circumstances under which he or she believes the conflict may arise.

(3) Either the public official or another officer or employee of the agency shall disclose the legal basis for concluding that there is no alternative source of decision.

(4) The disclosures required by this regulation shall be made in the following manner:

(A) If the governmental decision is made during an open session of a public meeting, the disclosures shall be made orally before the decision is made, by either the public official or by another officer or employee of the agency. The information contained in the disclosures shall be made part of the official public record either as a part of the minutes of the meeting or as a writing filed with the agency. The writing shall be prepared by the public official and/or any officer or employee and shall be placed in a public file of the agency within 30 days after meeting; or

(B) If the governmental decision is made during a closed session of a public meeting, the disclosures shall be made orally during the open session either before the body goes into closed session or immediately after the closed session. The information contained in the disclosures shall be made part of the official public record either as part of the minutes of the meeting or as a writing filed with the agency. The writing shall be prepared by the public official and/or any officer or employee and shall be placed in a public file of the agency within 30 days after the meeting; or

(C) If the government decision is made or participated in other than during the open or closed session of a public meeting, the disclosures shall be made in writing and made part of the official public record, either by the public official and/or by another officer or employee of the agency. The writing shall be filed with the public official's appointing authority or supervisor and shall be placed in a public file within 30 days after the public official makes or participates in the decision. Where the public official has no appointing authority or supervisor, the disclosure(s) shall be made in writing and filed with the agency official who maintains the records of the agency's statements of economic interests, or other designated office for the maintenance of such disclosures, within 30 days of the making of or participating in the decision.

(c) This regulation shall be construed narrowly, and shall:

(1) Not be construed to permit an official, who is otherwise disqualified under [Government Code section 87100](#), to vote to break a tie.

(2) Not be construed to allow a member of any public agency, who is otherwise disqualified under [Government Code section 87100](#), to vote if a quorum can be convened of other members of the agency who are not disqualified under [Government Code section 87100](#), whether or not such other members are actually present at the time of the disqualification.

(3) Require participation by the smallest number of officials with a conflict that are "legally required" in order for the decision to be made. A random means of selection may be used to select only the number of officials needed. When an official is selected, he or she is selected for the duration of the proceedings in all related matters until his or her participation is no longer legally required, or the need for invoking the exception no longer exists.

(d) For purposes of this section, a "quorum" shall constitute the minimum number of members required to conduct business and when the vote of a supermajority is required to adopt an item,

the "quorum" shall be that minimum number of members needed for that adoption.

COMMENT : Nothing in the provisions of subdivision (b)(4)(B) is intended to cause an agency or public official to reveal the confidences of a closed session contemplated by law. For example, under the Brown Act ([Government Code sections 54950 et seq.](#)) a city council may enter a closed session to discuss personnel matters and need not publicly disclose the name of the employee who is the subject of the meeting. ([Government Code section 54957.](#)) This regulation does not require a city council person who is legally required to participate in that closed session to disclose that employee's name when the council member makes the record required by this regulation.