

**City of Piedmont  
Council Agenda Report**

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DATE: May 23, 2005  
FROM: Ann Swift, City Clerk  
SUBJECT: **Wildwood/Crocker Underground Assessment District**

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**RECOMMENDATION:**

1. Hold a public hearing relating to the establishment of the Wildwood/Crocker Underground Assessment District.
2. Recess the city council meeting after the conclusion of the public hearing to allow the counting of the ballots that have been submitted.
3. Following the counting of the ballots, make a determination on whether the district should be established and the assessments as proposed by the Engineer of Work, I.L. Schwartz Associates, Inc., should be confirmed. To officially form the district the council must adopt the Resolution Overruling Protests and Approving the Engineer's Report a copy of which is attached.

**BACKGROUND:**

On March 25, 2005, I. L. Schwartz, Inc. filed an Amended Engineer's Report with the city clerk containing the estimated cost and expense of the proposed undergrounding district together with a recommended allocation of those costs to the benefited parcels in the assessment district in accordance with the assessment engineers' perception regarding "proportionality of benefit." By resolution adopted on April 4, 2005, council preliminarily approved the report and scheduled the required public hearing for May 23, 2005. Notice of hearing and property owner assessment ballots have been mailed to the property owners as required by law, and each ballot set forth the amount of the proposed assessment on that parcel.

The intention of this meeting is to receive public testimony regarding whether or not this district should be formed, to count the ballots which have been received from homeowners and to make a final decision regarding formation of this district. The following steps will be needed.

1. The mayor opens the discussion regarding this matter and asks for public input. When all speakers have been heard, the mayor closes the public hearing.

2. The mayor asks if any property owners wish to submit ballots or change a ballot which has already been submitted.
3. The mayor requests that the city clerk count the ballots and temporarily recesses the council meeting to allow the public to watch the ballot counting.
4. When all ballots have been tallied, the mayor asks the city clerk if there is a “majority protest” (51% of the ballots cast “against” formation of the district). If there is a majority protest, the matter of the district is closed. If there is no majority protest, the council considers whether there is sufficient public support and benefit to take final action to form this district and whether or not to accept as final the engineer’s apportionment of costs. At this point, the council has broad discretion to order the engineer of work to modify or amend the assessment report before its final adoption, however, the council would need to make clear findings regarding the reason(s) for any modifications requested.
5. If council is satisfied with the level of support for the formation of the district and the apportionment of costs, a motion should be made to approve the attached “Resolution Overruling Protests, Approving the Engineer’s Report, Levying Assessments without Modification, Approving and Ordering Work and Improvements for the Underground Utility Project”.

The attached resolution has been reviewed and approved by Sam Sperry, bond counsel for the district.

RESOLUTION NO.

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

CITY OF PIEDMONT  
WILDWOOD/CROCKER AVENUES UNDERGROUNDING  
ASSESSMENT DISTRICT

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

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

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

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

WHEREAS, by resolution adopted on June 2, 2003, this Council preliminarily approved the Engineer's Report and scheduled the required public hearing as required by law for August 18, 2003; and

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

WHEREAS, on August 18, 2003, the public hearing was conducted as scheduled and upon close of the hearing, the council having determined that there was not a majority protest, adopted a resolution approving the Engineer's Report, levying the assessments, and directing preparation of plans and specifications suitable for soliciting sealed bids for the Undergrounding Project; and

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

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

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

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

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

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

WHEREAS, the public hearing for May 23, 2005, was conducted, and this Council having provided opportunity for any interested person present to be heard with respect to any aspect of the Assessment District, the Undergrounding Project or the proposed assessments, the hearing was closed; and

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

WHEREAS, based upon consideration of all of the information received by members of this Council in connection with the Assessment District, including but not limited to the information set forth in the Engineer's Report, the two alternative Amended Engineer's Reports, the testimony and discussion had at the public hearing on this date, this Council

believes that the protests submitted should be over-ruled and that the Assessment District should proceed on the basis of the Amended Engineer's Report, without increasing the amount of the individual assessments to be levied; and

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

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

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

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

Section 3114 of the Streets and Highways Code; a notice of assessment, containing the matters required by said Section 3114 shall be prepared, executed and recorded by the Clerk; and notice of recordation of assessment shall be given by publication and by mail in the form and manner required by Section 10404 of the Streets and Highways Code. The notice of recordation of assessment given by mail shall also prescribe the deadline for submission by or on behalf of any property owner of a cash payment to prepay, either in whole or in part, the assessment levied upon the property of such owner, pursuant to Sections 10403 and 10404 of the Streets and Highways Code.

7. Pursuant to Section 10603 of the Streets and Highways Code, the City's Finance Director (the "Finance Director") is hereby designated to collect and receive the cash payments from property owners on account of the assessments levied, and the Finance Director shall, upon the expiration of the prescribed 30-day cash payment period, submit to the City Clerk a Certificate re Paid and Unpaid Assessments.

8. This Council intends to proceed with authorization for the issuance and sale of the Bonds, pursuant to the 1915 Act and upon the security of and in a principal amount equal to the unpaid assessments, bearing interest at a rate not to exceed twelve percent (12%) per annum, with the last principal installment of the Bonds to mature not to exceed twenty-nine (29) years from the second day of September next succeeding twelve (12) months from their date.

9. This resolution shall take effect immediately.

I certify that the foregoing resolution was passed and adopted at a regular meeting of the Piedmont City Council on May 23, 2005, by the following vote

Ayes:

Noes:

Absent:

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