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2007-11-9 9:48

OAKLAND CITY COUNCIL

Kenneth S. Boyd
City Attorney

RESOLUTION NO. 81272 C.M.S.

Introduced by Councilmember _____

A Resolution Of Intention To 1) Order Improvements And To Form The City Of Oakland Utility Underground Assessment District No. 2007-232, Piedmont Pines Phase 1; 2) Accepting And Determining That Petitions Have Been Signed By Owners Owning Land Constituting More Than One-Half Of The Area Of All Assessable Lands Within The Proposed Assessment District; 3) Finding That The Improvements Are Of More Than Local Or Ordinary Public Benefit, And The Cost And Expenses, Including Incurred City Cost Of District Creation Thereof, Are Made Chargeable Upon The Assessment District; 4) Providing That The Council Intends To Levy A Special Assessment Upon The Land Within The Assessment District; 5) Providing That Bonds Shall Be Issued To Finance A Portion Of The Costs Of Improvements; 6) Appointing Harris & Associates As The Engineer Of Work For The Assessment District; And 7) Directing The Engineer Of Work To Make And File The Engineer's Report With The City Clerk

WHEREAS, the City Clerk of the City of Oakland (the "City") has received petitions (the "Petitions") from the owners of land in the Piedmont Pines area of the City requesting that the City Council (the "Council") initiate and conduct proceedings for the formation of an assessment district for the purpose of financing a portion of the costs of the undergrounding of electric power, telephone and other communication lines as more particularly described in Exhibit A to this Resolution (the "Improvements"); and

WHEREAS, it appears to the Council that an assessment district should be formed for such purpose to enhance public safety and the overall aesthetics of the Piedmont Pines area of the City; and

WHEREAS, the Council proposes to accomplish the formation of the assessment district pursuant to the Municipal Improvement Act of 1913, being Division 12 of the California Streets and Highways Code (the "Act") and to finance a portion of the costs of the Improvements by means of the issuance of municipal bonds pursuant to the Improvement Bond Act of 1915, being Division 10 of the California Streets and Highways Code (the "Bond Act"); and

WHEREAS, the proposed territory and boundaries of the assessment district are shown on a map (the "Map"), which is on file in the office of the City Clerk; and

WHEREAS, the Council now desires to express its intention to order the Improvements and to form the assessment district.

RESOLVED, by the City Council of the City of Oakland as follows:

1. The Council hereby finds and declares that the public interest and necessity require the construction of the Improvements, as hereinafter described, and the Council hereby declares its intention to order the Improvements and to form an

assessment district covering the real property benefited by the Improvements. The proposed assessment district (the "Assessment District") shall be designated "Utility Underground Assessment District No. 2007-232 (Piedmont Pines Phase 1)."

2. The Council hereby accepts the Petitions and, based on a certification by the City Clerk prepared with the assistance of bond counsel, finds and determines that the Petitions have been signed by owners owning land constituting more than one-half of the area of all assessable lands within the boundaries of the proposed Assessment District. The Petitions have been filed in the office of the City Clerk and shall remain open to public inspection.
3. The Council hereby finds and determines that the Improvements are of more than local or ordinary public benefit, and the cost and expenses, including incurred City cost of district creation thereof, are made chargeable upon the Assessment District, the exterior boundaries of which are shown on the Map. The Map, in the form on file with the City Clerk, is hereby approved, and shall govern for all details as to the extent of the Assessment District. The City Clerk is hereby directed to endorse the City Clerk's certificate on the Map evidencing the date and adoption of this Resolution. The City Clerk is hereby directed to retain the Map in the City Clerk's office and, within 15 days after the adoption of this Resolution, file a copy of the Map in the office of the County Recorder of the County of Alameda. The City Clerk is hereby authorized to pay any and all fees required by the County Recorder to record the map.
4. The Council intends to levy a special assessment upon the land within the Assessment District, as indicated on the Map referenced in Section 3 above, in accordance with the special benefit to be received by each parcel of land, respectively, from the Improvements.
5. Where any disparity occurs in level or size between the Improvements and private property, the Council determines that it is in the public interest and more economical to eliminate the disparity by doing work on the private property instead of adjusting the work on public property. Accordingly, work may be done on private property for this purpose with the written consent of the applicable landowner.
6. Notice is hereby given that serial and/or term bonds to represent unpaid assessments to be levied in the Assessment District, and to bear interest at a rate not to exceed the maximum rate provided by law, shall be issued pursuant to the Bond Act, and that the applicable provisions of Part 11.1 of the Bond Act, providing an alternative procedure for the advance payment of assessments and the calling of bonds, may apply. The last installment of such bonds shall mature not to exceed thirty (30) years from the second day of September next succeeding twelve (12) months from their date.
7. The Council finds and declares that a special reserve fund as provided in Part 16 of the Bond Act (commencing with Section 8880) shall be required, the amount thereof to be fixed and determined upon the sale of bonds for the Assessment District.

8. The Council hereby covenants with the owners of said assessment bonds to be issued that it will commence and thereafter diligently prosecute to completion foreclosure actions regarding delinquent installments of the assessments, as will be more fully specified in the resolution of the Council authorizing the issuance of said assessment bonds.
9. Notice is further given that the City will not obligate itself to advance available funds from the City general fund to cure any deficiency which may occur in the bond redemption fund for the bonds.
10. The procedure for the collection of assessments and advance retirement of bonds shall be as provided in Part 11.1 of Division 10 of the Bond Act.
11. It is further determined pursuant to California Streets and Highways Code Section 8571.5, that the bonds may be refunded in the manner provided by Division 11.5 of the California Streets and Highways Code if the Council determines that it is in the public interest or otherwise necessary or appropriate to do so.
12. Notice is hereby given that, in the opinion of the Council the public interest and convenience require, and that it is the intention of the Council, that administrative expenses shall be added to each annual installment of the unpaid assessments to pay costs incurred by the City and not otherwise reimbursed, which result from the administration of the bonds and reserve or other related funds, all as set forth in Section 10312 of the Act.
13. Notice is hereby further given that pursuant to Section 8682.1 of the Bond Act, in addition to or as a part of the assessment lien levied against each parcel of land within the Assessment District, each parcel of land shall also be subject to an annual assessment to pay costs incurred by the City which result from the expenses of (i) registration of any bonds and (ii) compliance with federal arbitrage laws. The amounts collected will be based on actual administrative expenses or projected administrative expenses, and no maximum need be stated in the Engineer's Report referenced in Section 15 below. If the City performs any transfer, registration, authentication, payment or other related registration function, the City may be reimbursed for its actual expenses, including a pro rata amount of the salaries of the City employees involved in the performance of these functions. In addition, no public hearing shall be required prior to their levy. These costs are to be distinguished from the costs of reimbursing the City for non-registration administrative expenses, described in Section 12 above, for which an annual estimate will be provided in the Engineer's Report.
14. Notice is hereby given that this Council intends to comply with the requirements of the Special Assessment Investigation, Limitation and Majority Protest Act of 1931 ("Division 4") by proceeding under Part 7.5 thereof. The following information shall be included in the report prepared pursuant to Section 15 below.
 - (a) The total amount, as near as may be determined, of the total principal amount of all unpaid special assessments and special assessments required or proposed to be levied under any completed or pending assessment proceedings, other than that contemplated in these proceedings, which

would require an investigation and report under Division 4 against the total area proposed to be assessed.

- (b) The total true value, as near as may be determined, of the parcels of land and improvements which are proposed to be assessed. Total true value may be estimated as the full cash value of the parcels as shown upon the last equalized assessment roll of the County of Alameda. Alternatively, total true value may be determined by other reasonable means, including, but not limited to, by adjusting the value shown on the last equalized assessment roll to correct for deviations from market value due to Article XIII A of the California Constitution.

15. The Improvements are hereby referred to the firm of Harris & Associates, which firm is hereby appointed as the Engineer of Work for the Assessment District, and the Engineer of Work is hereby directed to make and file, or cause to be made and filed, with the City Clerk a report (the "Engineer's Report") in writing, presenting the following, as applicable:

- (a) Maps and descriptions of the lands and easements, if any, to be acquired.
- (b) Plans and specifications of the proposed Improvements.
- (c) A general description of works or appliances already installed, if any, and any other property necessary or convenient for the operation of the Improvements, if the works, appliances, or property is to be acquired as part of the Improvements.
- (d) An estimate of the cost of the Improvements and the costs of any related lands, rights-of-way and easements, and incidental expenses in connection with the Improvements, including any costs of registering bonds.
- (e) A diagram showing, as they existed at the time of the passage of this Resolution, all of the following: (i) the exterior boundaries of the Assessment District; (ii) the boundaries of any zones within the Assessment District; and (iii) the lines and dimensions of each parcel of land within the Assessment District, with each subdivision given a separate number upon the diagram.
- (f) A proposed assessment of the total amount of the cost and expenses of the proposed Improvements upon the several subdivisions of land in the Assessment District in proportion to the estimated special benefits to be received by each subdivision, respectively, from the Improvements. The assessment shall refer to the subdivisions by their respective numbers.
- (g) A proposed maximum assessment upon each of the several subdivisions of land in the Assessment District to pay costs incurred by the City and not otherwise reimbursed which result from the administration and collection of assessments or from the administration of any associated bonds and reserve or other related funds.

16. If any excess shall be realized from the assessment it shall be used, in such amounts as the Council may determine, in accordance with the provisions of law for one or more of the following purposes:
- (a) for transfer to the general fund of the City, provided that the amount of any such transfer shall not exceed the lesser of \$1,000 or five percent (5%) of the total amount expended from the Assessment District improvement fund;
 - (b) as a credit upon the assessment and any supplemental assessment in accordance with the provisions of Section 10427.1 of the California Streets and Highways Code;
 - (c) for the maintenance of the Improvements or a specified part thereof; or
 - (d) to call bonds, thereby reducing outstanding assessments and subsequent assessment installments. In the event that the Council determines to use all or some portion of the surplus to call bonds prior to maturity, the City shall do each of the following:
 - (1) Cause the special reserve fund, if any, to be reduced as necessary pursuant to Section 8887 of the California Streets and Highways Code to assure that the bonds will not become subject to federal income taxation.
 - (2) Cause any assessment previously paid in cash to receive a credit in cash pursuant to subdivision (b) of Section 10427.1 of the California Streets and Highways Code for the proportionate share of the surplus as determined pursuant to subdivision (a) of Section 10427.1 of the California Streets and Highways Code.
 - (3) Cause the preparation of new auditor's records to reflect the adjusted principal amount of the remaining assessments. All subsequent assessment installments shall be based upon the adjusted principal amount of the assessments as reflected in the revised auditor's record.
17. Pursuant to Section 20487 of the California Public Contract Code, in the opinion of the Council, the public interest will not be served by allowing owners of property in the proposed Assessment District to enter into a contract for the performance of any of the work of the Improvements herein referenced, so that no notice of award of contract shall be published.

18. It is hereby acknowledged that, for all purposes of the Act and the Bond Act, the Director of Public Works is the Superintendent of Streets for the City.

IN COUNCIL, OAKLAND, CALIFORNIA, MAY 6 2008, 2008

PASSED BY THE FOLLOWING VOTE:

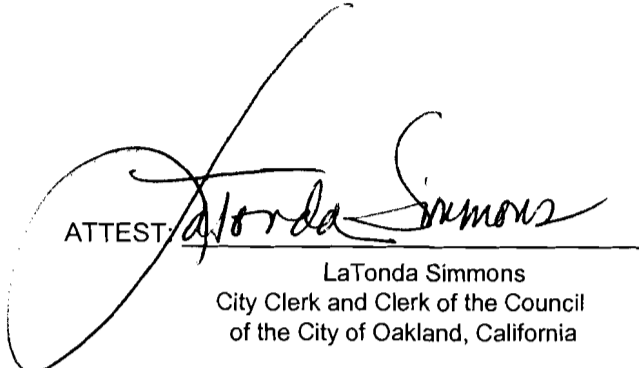
AYES - ~~Brooks~~, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, AND PRESIDENT DE LA FUENTE - 7

NOES - Brooks - 1

ABSENT - 0

ABSTENTION - 0

ATTEST:



LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

EXHIBIT A

GENERAL DESCRIPTION OF IMPROVEMENTS TO BE FINANCED BY THE ASSESSMENT DISTRICT

The project includes the construction of the following public improvements, including all planning, design, construction administration and general administration services, the acquisition of all necessary rights of way, the acquisition of licenses, franchises and permits and the construction of all auxiliary work necessary and/or convenient to the accomplishment thereof, in accordance with the plans and specifications to be approved by the City of Oakland. Public improvement construction may be phased as necessary and convenient for the City of Oakland. Phasing will be undertaken in a manner that results in a complete and functional portion of each system described below.

The following improvements are proposed to be constructed and installed in the general location referred to as Utility Underground Assessment District No. 2007-232 (Piedmont Pines Phase 1).

1. Construction of mainline underground power, telephone and cable conduit, with appurtenant manholes, pull boxes and surface-located transformers and like structures.
2. Construction of service conduit and appurtenances to property line.
3. Installation of new conductor within said conduit and underground structures by the utility companies.
4. Installation of replacement street lights.
5. Removal of existing overhead power, telephone and cable wires, poles and streetlights.

The improvements will be designed by PG&E, ATT, Comcast, and the City of Oakland (street lighting). The City of Oakland will inspect the work to ensure conformance to City standards and specifications where applicable.

Note: The foregoing improvements do not include any individual service connections which connect the public utilities in the joint trench to each individual residence or facility.