

**CITY OF OAKLAND
SUPPLEMENTAL AGENDA REPORT**

FILED
OFFICE OF THE CITY CLERK
OAKLAND
2004 JAN -9 PM 6:08

TO: Office of the City Manager
ATTN: Deborah Edgerly
FROM: Fire Department
DATE: January 20, 2004

RE: A SUPPLEMENTAL REPORT RELATED TO THE PUBLIC HEARING AND ADOPTION OF A RESOLUTION ESTABLISHING THE OAKLAND WILDFIRE PREVENTION ASSESSMENT DISTRICT; ACCEPTING AND GRANTING FINAL APPROVAL OF THE ENGINEER'S REPORT AND ASSESSMENT DISTRICT BOUNDARY MAP AND DESCRIPTION; MAKING A DETERMINATION WITH REGARD TO THE MAJORITY PROTEST PROCEDURE FOR APPROVAL OF THE ASSESSMENTS; CREATING THE DISTRICT ADVISORY BOARD; AND APPROVING, ADOPTING, AND LEVYING THE ASSESSMENTS FOR THE DISTRICT.

SUMMARY

At Council's direction the City Manager moved forward with the mail-in protest vote on the Wildfire Prevention Assessment District initiative. Public notices and mail-in ballots were sent to the property owners in the proposed District, and instructions were provided on the initiative and how ballots could be cast. A public hearing was scheduled for January 6, 2004.

At the January 6, 2004 public hearing, Council heard testimony relative to the final approval of the Engineer's report, approval of the Assessment District boundary map, creation of the District Advisory Committee and input to approve, adopt and levy the assessment for the District.

The public was notified that ballots could be cast until the conclusion of the public input portion of the hearing. That process was followed and ballots were cast and collected.

There were six letters received formally protesting the Assessment District (Attachment B).

Council continued the item until the meeting of January 20, 2004. Ballots were tallied and the results, weighted by assessment amount, are 74% in favor of the Assessment District and 26% opposed.

Attached is the Engineer's detail of balloting information (Attachment A).

Based on the above results, a determination has been made that there is a majority acceptance for the proposed assessment. Therefore the City Council can enact the assessment and create a Citizen Advisory Committee. The Committee will include representatives from the four Council districts within the Assessment District, whose purpose is to evaluate the performance of the

14.3
ORA/COUNCIL

JAN 20 2004

District. Further, the Committee will recommend program policies, priorities and budget allocation, and recommend and receive the annual auditor's report.

Council can approve, adopt and levy an annual assessment to pay for the activities and services outlined in the Engineer's Report.

RECOMMENDATION AND RATIONALE

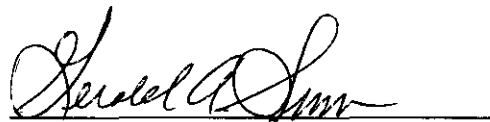
Staff recommends approval of the Resolution establishing the Oakland Wildfire Prevention Assessment District and the Engineer's detail of balloting information.

ACTION REQUESTED OF THE CITY COUNCIL

The actions requested of the City Council are as follows:

- accept and grant final approval of the Engineer's report;
- accept and grant final approval of the Assessment District Boundary map and description;
- adopt the Resolution establishing the Oakland Wildfire Prevention Assessment District;
- create the District Advisory Committee;
- approve, adopt and levy the assessment for the district.

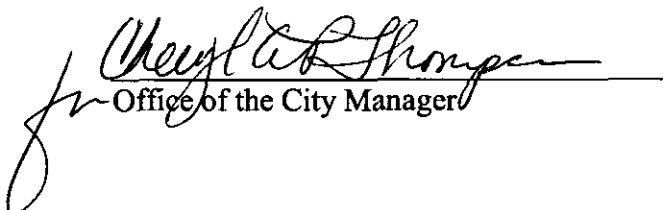
Respectfully submitted,



Gerald A. Simon, Chief
Oakland Fire Department

Prepared by: Ernest Robinson, III
Fire Marshal
Fire Prevention Bureau

APPROVED AND FORWARDED TO THE
CITY COUNCIL:



Office of the City Manager

Item: 14.3
City Council
January 20, 2004



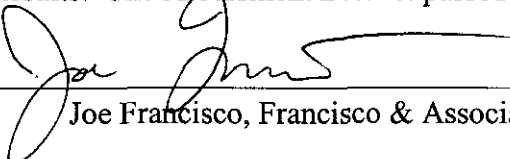
City of Oakland
Wildfire Prevention Assessment District
January 6, 2004 Proposition 218 Election

Type of Vote	No of Ballots Returned	Weighted Assessment Amount	Percent of Votes
Yes	8,750	\$733,543.48	74.38%
No	<u>3,958</u>	<u>\$252,730.34</u>	<u>25.62%</u>
Subtotal	12,708	\$986,273.82	100.00%
Invalid	<u>284</u>	<u>\$17,159.96</u>	N/A
TOTAL	12,992	\$1,003,433.78	

24,928 ballots were mailed for a total dollar amount of \$1,791,024.44

Results: The Assessment District passed 74.38%

Signed: _____


 Joe Francisco, Francisco & Associates, Inc.



REDEMPTORISTS
P.O. BOX 5007
OAKLAND, CA 94605-0007
510/562-9740 FAX 510/562-1406

January 6, 2004

Ignacio de la Fuente
Oakland City Council President
#1 Frank Ogawa Plaza
Oakland, CA 94612

To Whom It May Concern:

On behalf of the Redemptorist Society of California, the property owner at 8945 Golf Links Road (identified as APN 043A-4642-044), I, Greg Schmitt, wish to register an official protest against the proposed City of Oakland fire suppression assessment district. I am one of the directors of the Redemptorist Society of California (cf attachment).

The proposed assessment would cost us about \$6,600 per year -- a serious hardship for our struggling not-for-profit religious organization. We have already invested a considerable amount to bring our property into compliance for fire safety, and we can see no direct benefit to us from the proposed assessment.

Furthermore, we are disturbed by what we consider very questionable (and quite possibly illegal) machinations that are involved in the voting process for this assessment.

1/ Major landholders such as the University of California, Mills College and the Federal Government (Oak Knoll property) seem to have been arbitrarily excluded -- putting a heavier burden on others like ourselves.

2/ The taxing agency, the City of Oakland, has a heavily weighted number of votes which it is exercising by virtue of the amount of "public" land that belongs to the people and not to the governing agency that is exercising this vote.

3/ Certain entities such as East Bay Regional Parks District and the Peralta Junior College District have made arrangements with the City of Oakland to have their assessments rebated in order to do fire suppression work on their properties. We would be most happy to secure the same "deal," but its not being offered. In exchange for this consideration the City will add 556 votes to its already sizeable number of votes. This seems unfair and also illegal.

4/ The City's contribution to this assessment will be made from funds that have already been collected as taxes. No new income will be added by the City. By wielding its voting power this seems a way of double taxation -- a scheme to ring more money out a few using unlawful government power.

FOR 2003

FILE PRIOR TO 8-1-2003
ADD \$3.00 PENALTY
FOR LATE FILING

ANNUAL REPORT

GENERAL NOT FOR PROFIT CORPORATION ACT

SECRETARY OF STATE OF ILLINOIS

FILE NO. 5955-475-1

ANNUAL REPORT
FILING FEE \$5.00

1.) REDEMPTORIST SOCIETY OF CALIFORNIA
% CB PROGRAMS, INC. 08-25-97
1205 WINDHAM PARKWAY
ROMEDEVILLE IL 60446-1693

2.) CHANGES ONLY
REGISTERED AGENT
STREET ADDRESS
CITY, ZIP CODE
COUNTY

WILL COUNTY

3.) The above corporation organized under the laws of the state of CALIFORNIA, pursuant to the provisions of "The General Not for Profit Corporation Act" of the State of Illinois, hereby makes the following report:

4.) THE NAMES AND RESPECTIVE ADDRESSES OF ITS OFFICERS AND DIRECTORS ARE:

NAME	OFFICE	NUMBER & STREET	CITY	STATE	ZIP
RAYMOND MAISER	President	PO BOX 5007	OAKLAND	CA	94605
RICHARD SCHILTREE	Secretary	5945 GOLF LINKS RD			
RICHARD SCHIBLIN	Treasurer				
GREG SCHMITT	Director				
ENNIS LEE	Director				
MICHAEL SAMIS	Director				

NOTE: List all directors above or list them on an additional sheet. Illinois corporations MUST have at least THREE directors.

5.) The following is a brief statement of the character of the affairs which the corporation is actually conducting:
To promote, encourage and foster educational, religious and charitable purposes and activities.

6.) Is the corporation a CONDOMINIUM Association as established under the Condominium Property Act?

Yes No (CHECK ONE)

Is the corporation a COOPERATIVE HOUSING CORPORATION defined in Section 216 of the Internal Revenue Code of 1954?

Yes No (CHECK ONE)

Is this a HOMEOWNER'S ASSOCIATION which administers A COMMON INTEREST COMMUNITY AS DEFINED IN SUBSECTION (C) of Section 9-102 of the Code of the Civil Procedure?

Yes No (CHECK ONE)

7.) If a foreign corporation, the address of its principal office in the state of its incorporation is:

P.O. Box 5007
(Number and Street)

Oakland, CA 94605
(State or Country)

(Please read reverse side of this report before signing below)

8.) BY

Raymond Maiser Pres.
(Authorized Officer's Signature) (Title)

7/14/03
(Date)

Under penalty of perjury and as an authorized officer, I declare that this annual report, pursuant to provisions of the General Not For Profit Corporation Act, has been examined by me and is, to the best of my knowledge and belief, true, correct, and complete.

ITEM 8 MUST BE SIGNED

000312

5/ The proposed uses of the assessment funds are not in compliance with Article 3.6, section 500078 of state law (Proposition 218).

Therefore I submit this formal protest against the City of Oakland proposed fire suppression district. I urge the Oakland City Council to vote against this proposed fire suppression district.

Sincerely,

A handwritten signature in cursive script, appearing to read "Greg Schmitt".

Rev. Greg Schmitt, C.Ss.R.
Redemptorist Society of California - Director

Attached document

OFFICE

2004 JAN -7 PM 2:13

November 4, 2003

City of Oakland
City Council President, Ignacio De La Fuente
One Frank Ogawa Plaza, 2nd Flr.
Oakland, calif. 94612

Re: Proposed Fire Suppression
District

Dear Mr. De La Fuente:

This letter is to be considered a formal protest and objection to the procedure and implementation of the voting procedure regarding the proposed Fire Suppression District and a demand that the process be immediately halted pending the necessary corrections and revisions.

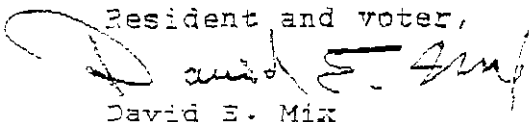
This protest is based on the following:

- 1) The Resolution: A) To form the District, accept and file the Engineer's Report, and boundary map, and submit the proposition to the assesses (voters) and B) The Resolution to execute the ballot (cast the City vote of approximately 2,292 votes) in favor of the formation of the proposed district, are both premature and improperly placed before the 2nd reading and final approval of the inacting Ordinance.
- 2) The proposed boundary of the district is not clearly defined by the written description (Council agenda, item #23, Attachment 1) or by the attached map at page 4 (unreadable). Nor, does the assessment roll filed with the City Clerk clearly define the boundaries and the parcels to be assessed therein.

In considering the votes are weighted by the monetary amount of each assessment and dependent on property usage it is absolutely imperative to the vote count that it be determined, prior to any voting, exactly which parcels or portions of plots or parcels lie within or outside of the proposed district and the exact value of each vote to be cast.

It is my contention that large gaping holes are readily apparent in determining the boundaries and subsequently an exact calculation of the eligible votes has not been made.

Resident and voter,



David E. Mix

November 18, 2003

City of Oakland
City Council President, Ignacio De La Fuente
One Frank Ogawa Plaza, 2nd Flr.
Oakland, Calif. 94612

2004 JAN -7 PM 2:13

Re: Proposed Fire District

Dear President De La Fuente:

As you are aware, at the Council meeting of November 4, 2003 I lodged an objection and written protest regarding the procedure and implementation of the Resolutions and Ordinance concerning the above captioned matter, proposed Fire Suppression District.

At this time, and at the second reading of the proposed governing Ordinance and prior to its final acceptance by the Council, I submit this addendum to my protest and complaint:

The Ordinance in question, at Section 3, page 3, far exceeds that which is permitted by the controlling Government Code, Article 3.6, FIRE SUPPRESSION ASSESSMENTS, Section 50078, et seq.

The Code provides that: "The assessment may be made for the purpose of obtaining, furnishing, operating, and maintaining fire suppression equipment or apparatus or for the purpose of paying the salaries and benefits of firefighting personnel, or both,..."

The Code simply does not provide for the vast array of items and expenditures proposed in this Ordinance. These items and expenditures proposed by the City are completely beyond the scope of the governing statute, and thus, they are not permitted.

Additionally, Sections 17 has very questionable language. It precludes objections, protests or legal challenges regarding future rate increases. It is contrary to the provisions of Section 50078.17 and thus in violation of the controlling statutes.

Likewise, Section 24 raises serious questions regarding what is a "Final Report". The Engineers Report, was in fact adopted prior to the effective date of this Ordinance, which is contrary to this Ordinance. Although it is termed a "Final Preliminary Report" (whatever) it is "Final" in the respect that it is being fully utilized in the balloting process, weight of votes, parcel usage, etc. If it is not final, of which the votes are based, then neither can the votes be final.

Duly submitted this date, David E. Mix, resident and taxpayer.

January 5, 2004

City of Oakland, City Council
Council President, Ignacio De La Fuente
One Frank Ogawa Plaza, 2nd Flr
Oakland, Calif. 94612

04 JAN -6 AM 10:25

Re: Fire Suppression Hearing

Dear President De La Fuente:

Concerning the above captioned matter there are a couple of procedural issues which we are asking to be addressed and clarified prior to the hearing.

It is our position that all business before the Council must be suspended until the conclusion of the Fire Assessment District Hearing, scheduled to commence at 7:00 p.m., as required by the governing statutes and the corresponding City of Oakland Ordinance and Resolution.

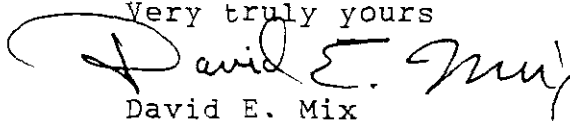
Secondly, we ask that the time allotted for speaking not be limited to the typical three minutes. A reasonable amount of time, on an individual basis, must be provided to each speaker in order for him or her to adequately address and express their concerns and objections to the proposed assessment as well as their concerns and objections to the process or procedure concerning any and all aspects of the proposed district and assessment.

The controlling statute (Government Code, Section 53753, Subdivision (d)), and the City of Oakland Fire District Ordinance, at Section 8, and the accompanying Resolution, No. 78189, Sections 13 through 19, but not limited thereto, clearly provide for ample opportunity without unreasonable time restraints for individual speakers to address the City Council at this scheduled Hearing.

Furthermore, the controlling Ordinance, at Section 17, requires that all challenges be raised at the scheduled hearing or be considered waived. It is illogical and unreasonable to impose a penalty of waiver for an objection not raised due to time restraints imposed by the controlling authority of whom the objection is lodged against.

In the event you refuse to grant this request, this letter is to be considered a formal complaint and objection to the procedure in addition to all others lodged. Your attention to this matter is greatly appreciated.

Very truly yours



David E. Mix

cc: City Manager
City Clerk

City of Oakland
Deputy Chief, Ernest Robinson III
250 Frank Ogawa Plaza 3rd Flr.
Oakland, Calif. 94612

December 8, 2003
CITY OF OAKLAND
OFFICE OF CITY MANAGER
03 DEC 10 AM 11:17

Re: Public records request

Dear Chief Robinson:

In accordance with the provisions of the California Public Records Act and the City of Oakland Sunshine Ordinance, please provide copies of the following:

The proposes Fire Prevention Assessment District boundary map or maps for said proposed district setting forth the extent of the territory included in the proposed district. As required by Streets and Highways Code, Division 4.5, Section 3110 setting forth the particulars of the requirements of the maps and as required by Section 3111 for the filing of said maps with the city clerk and county recorder as referenced and required by Government Code Section 53753, subdivision (a), but not limited thereto.

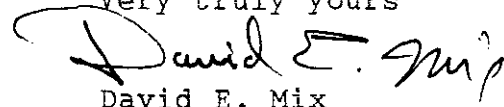
I made the above request for the district maps and other information approximately three weeks ago when I met with and spoke to your secretary, Audrey. Unfortunately, to this date there has been no response to these inquiries.

As the "vote", acceptance or rejection, of the proposed district is based on the assessment amounts (and weighted accordingly) of particular parcels located within the boundaries of the district, it is absolutely imperative that those boundaries and all parcels within, be clearly identified by the production of proper mapping as required by the governing statute. (Please see protests letters of 11/4 and 11/18/03).

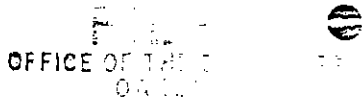
The written boundary description (also required by the Code) as provided by the Ordinance and the Engineers Report is fraught with errors, incomplete sections, inadequate descriptions and does not meet the requirements of the Code.

However, if a map or maps have not been created as required by the statute and thereby do not exist, this letter is to be considered a formal complaint and protest to and of the vote and balloting procedure. By copy to acting City Manager Deborah Edgerly, this complaint and protest is duly lodged with the City Manager's Office.

Very truly yours


David E. Mix

cc: Deborah Edgerly



2004 JAN -7 PM 2:13

Marc Greendorfer & Lauri Moss
6238 Swainland Road
Oakland CA 94611
(510) 420 8002

December 8, 2003

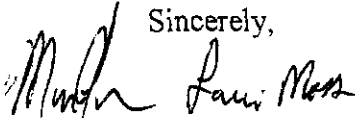
City of Oakland
Office of the City Clerk
PO Box 23505
Oakland, CA 94623-9848

RE: Oakland Wildfire Prevention Assessment District Ballot

Dear City of Oakland

Enclosed is our executed City of Oakland Wildfire Prevention Assessment District Ballot. This letter is to inform you that by executing and delivering this ballot we reserve all rights to contest both the legality of the Wildfire Prevention Assessment District and the specific assessment that has been applied to our property. Should the proposed Wildfire Prevention Assessment District be approved, we will take all actions necessary and appropriate actions to protect our rights. Without addressing the legality of the proposed Wildfire Prevention Assessment District, we believe that the assessment applied to our property is not valid in that the purported special benefits in favor of our property are not over and above the benefits conferred on the public at large and that the amount of the assessment is not proportional as such term is used in Article 13D Section 4 of the California Constitution.

Sincerely,


Marc Greendorfer and Lauri Moss

14.3

ORA/COUNCIL

JAN 20 2004