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CITY ATTORNEY

INTRODUCED BY COUNCILMEMBER _____

OFFICE OF THE CITY CLERK
C. CLARD

ORDINANCE NO. _____ C.M.S.

2003 OCT 23 PH 3: 34

**AN ORDINANCE ESTABLISHING PROCEDURES
FOR THE CREATION OF SPECIAL
ASSESSMENT DISTRICTS TO FUND SERVICES
AND PROGRAMS FOR FIRE SUPPRESSION,
PREVENTION AND PREPAREDNESS WITHIN
DESIGNATED AREAS OF THE CITY OF OAKLAND**

WHEREAS, the high fire risks inherent in the urban wildland interface areas of the City of Oakland pose a significant threat to lives and property throughout the urban wildland interface areas and adjacent neighborhoods; and

WHEREAS, the City of Oakland has suffered urban wildland interface fires such as the October 1991 firestorm in the Oakland Hills, and the City Council wishes to establish a dedicated source of funding to upgrade the level of vegetation management and fire' suppression activities in the urban wildland interface areas and adjacent neighborhoods in an attempt to mitigate theses identified risks on an on-going basis; and

WHEREAS, the City of Oakland is a municipal corporation and chartered city duly organized and existing pursuant to its charter (the "charter"), the Constitution and laws of the State of California; and

WHEREAS, the City Council, acting under and pursuant to the powers reserved to the City under the, Constitution of the State of California and Section 106 of the Charter wishes to adopt a procedure for the authorization and creation of special assessment districts to fund services and programs for fire suppression, prevention and preparedness within the areas of the City of Oakland at risk from such fires;

NOW, THEREFORE, the Council of the City of Oakland does ordain as follows: .

Section 1. OAKLAND MUNICIPAL CODE

The text of this ordinance, starting with the following sections, shall be added to Chapter _____, Article _____ of the Oakland Municipal Code.

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This ordinance may be referenced as the "Oakland Fire Suppression, Prevention, and Preparedness District Ordinance."

Section 2. FINDING AND PURPOSE

The Council finds as follows:

A. The Oakland Hills Fire of October 1991 brought into stark focus the need to take preventative steps both to reduce the likelihood of another such conflagration, and to reduce the severity of its consequences in the event that, despite increased efforts, another large fire should occur.

B. Although a disaster such as the October 1991 Fire has far-reaching consequences, the damage to the lives and property of the residents and property owners of such fire risk areas is of an altogether different order of magnitude than that suffered by the City-at-large. Therefore, it is the residents of the urban wildland interface areas and adjacent neighborhoods of the City (or other areas of the City with a cognizable, special fire danger) that will specially benefit from the suppression, preventative and preparedness procedures of a special benefit fire suppression, prevention and preparedness district; and it is those areas that should properly and equitably bear the costs of the extra services involved.

C. The implementation of a locally-funded mechanism to implement a program of fire suppression, prevention and preparedness in areas of the City specially in need of such services to supplement and augment the provisions of state law is a matter of special local interest and concern and is a proper subject for an ordinance adopted under the City's Charter powers.

Section 3. RESOLUTION; DETERMINATION AND LEVY OF ASSESSMENT

The City Council may, by resolution, adopted after notice and public hearing, create a special benefit fire suppression, prevention and preparedness district for designated areas of the City of Oakland, and may determine and levy an annual assessment for the district so established for fire suppression, prevention and preparedness services pursuant to this chapter. The duration of the existence of this assessment district may be specified by the City Council in the resolution creating the district, and, if not specified, shall continue in

existence until terminated by City Council action in a resolution dissolving the district.

The assessment may be made for the purpose of providing fire suppression, prevention and preparedness services and programs including, but not limited to: inspection services to monitor and identify hazardous conditions; inspection services to identify Fire Code violations in order to provide notice of violations, abatement proceedings, imposition of fines and institution of formal legal enforcement measures; mitigation services to reduce and eliminate fire hazardous condition's; fire suppression and prevention education services and programs for area schools, churches and neighborhood homeowner associations; planning, personnel and material assistance to the Citizens of Oakland Respond to Emergencies (CORE) Program; neighborhood access and evacuation training programs; signage, tow-away zones, and other services and facilities to reduce evacuation "bottlenecks"; parking programs to improve access for emergency vehicles; services and equipment for mechanical chipping of landscaping debris; debris removal or recycling; reduction of heavy fuel loads on open spaces; clearing of the rights-of-way of public paths (including stairs) and trails, improving and extending such paths in critical fire areas, and providing adequate signage; building and maintaining fire breaks; obtaining, furnishing, operating and maintaining fire suppression equipment or apparatus that is devoted to district operations; deployment of additional firefighting personnel in periods of increased fire-hazard weather conditions; paying the salaries and benefits of firefighting or civilian personnel, or both, involved in providing these services, whether or not fire suppression or inspection services are actually used by or upon a parcel, improvement, or property. Funds from any district revenues shall be used solely for the purpose of enhancing fire suppression, prevention and preparedness services within the district.

Section 4. UNIFORM SCHEDULES AND RATES; RISK CLASSIFICATION

(a) The resolution, by means of the adoption of a Final Report (as defined in Section 13), shall establish uniform schedules and rates based upon the type of use of property and the risk classification of the structures or other improvements on, or the use of, the property. The risk classification may include, but need not be limited to, the amount of water required for fire suppression on that property, the structure size, type of construction, structure use, and other factors relating to potential fire and panic hazards and liabilities, the costs of providing the fire suppression by the City to that property, and any other factors which reflect the benefit to the land

resulting from the fire suppression, prevention and preparedness services. The assessment shall be related to the benefits to the property assessed.

(b) The benefit assessment levies on land devoted primarily to agricultural, timber, or livestock uses, and being used for the commercial production of agricultural, timber, or livestock products, shall be related to the relative risk to the land and its products. The amount of the assessment shall recognize normal husbandry practices that serve to mitigate risk, onsite or proximate water availability, response time, capability of the fire suppression service, and any other factors which reflect the benefit to the land resulting from the fire suppression, prevention, and preparedness services provided. A benefit assessment shall not be levied for wildland or watershed fire suppression on land located in a state responsibility area as defined in Section 4102 of the Public Resources Code.

(c) The use, risk and benefit calculations and classifications may take into account the character of each large parcel with regard to its proportion of development, partial development, limited kind of development, and partially undeveloped character. For the purposes of assessment of benefit, each such large parcel may be considered as being several parcels of differing character, and be assessed as such on a proportionate or separate category basis reflecting such mixed use when there is a substantially large percentage of partial development, limited kind of development and/or undeveloped land in proportion to the developed portion of the land.

Section 5. RESOLUTION; PRESUMPTION OF COMPLIANCE WITH REQUIREMENTS

Any resolution adopted by the City Council pursuant to this article establishing uniform schedules and rates for assessment for fire suppression, prevention, and preparedness services, which substantially conforms with the model ordinance that the State Fire Marshal is authorized to adopt pursuant to Section 13111 of the California Health and Safety Code, shall be presumed to be in compliance with the requirements of Section 4.

Section 6. WRITTEN REPORT; FILING; CONTENTS

The City Council shall cause to be prepared and filed with the City Clerk a written report (the "Benefit Assessment Report") which shall contain all of the following:

(a) a general description of the nature and objective of the programs or services to be funded;

(b) A description of each lot or parcel of property proposed to be subject to the assessment which may be accomplished by means of a map together with the Assessor's Parcel Number of each lot or parcel.

(c) The amount of the assessment for each lot or parcel for the initial fiscal year in which it is proposed to levy an assessment, and, when applicable, the maximum amount of the assessment which may be levied for each lot or parcel during any fiscal year.

(d) The basis and duration of the assessment.

(e) The schedule of the assessment.

(f) A statement as to the maximum amount by which the assessment may increase for the duration of the assessment period, if any.

(g) A description specifying the requirements for protest and hearing procedures for the proposed assessment.

Section 7. ZONES OR AREAS OF BENEFIT; ESTABLISHMENT; LEVY OF ASSESSMENT

(a) The City Council may establish zones or areas of benefit within the district and may restrict the imposition of assessment to areas lying within one or more of the zones or areas of benefit so established.

(b) The benefit assessment shall be levied on a parcel, class of improvement to property, or use of property basis, or a combination thereof, within the boundaries of the zone, or area of benefit.

(c) The assessment may be levied against any parcel, improvement, or use of property to which such services may be available whether or not the service is actually used.

SECTION 8. NOTICE OF FILING OF REPORT AND HEARING; PUBLICATION, POSTING AND MAILING

The City Clerk shall cause notice, protest, and hearing procedures to comply with California Government Code Section 53753. The mailed notice shall also contain the name and telephone number of the person designated by the City Council to answer inquiries regarding the protest proceedings.

**Section 9. WRITTEN PROTEST PRIOR TO HEARING
CONTENTS; DELIVERY**

At any time not later than the close of the public hearing, any proposed assessee, whether a fee owner, lessee, or otherwise of the interest in the property which is proposed to be assessed and who will be directly obligated to pay any proposed assessment by the terms of the assessment, may make written protest against the proposed assessment. The protest shall be in writing, shall contain a description of the property and the interest in the property which each signer of the protest represents, sufficient to identify the property, and, if the signers are not shown on the last equalized assessment roll as the owners of that property, shall contain or be accompanied by written evidence that the signers are the holders of the property interest proposed to be charged and who will be obligated to pay the proposed charge. All protests shall be delivered to the City Clerk as provided for in the notice and, for the purposes of Section 10, no other protests or objections shall be considered.

Section 10. HEARING; WITHDRAWAL OF PROTEST

(a) At the time, date, and place stated in the notice, the City Council shall conduct a public hearing upon the proposed assessment and hear and consider all objections or protests, if any, to the proposed assessment and the report referred to in the notice and shall also hear and determine all protests. At the public hearing any interested person shall be permitted to present written and oral testimony. The City Council may continue the hearing from time to time.

(b) Any written protest may be withdrawn, in writing, by the person who made the protest at any time prior to the conclusion of the protest hearing or any adjournment of the hearing.

(c) At the conclusion of the public hearing the City Clerk shall direct the tabulation of the assessment ballots submitted, and not withdrawn, in support of or opposition to the proposed assessment.

Section 11. MAJORITY PROTEST; EFFECT

A majority protest exists if the assessment ballots submitted, and not withdrawn, in opposition to the proposed assessment exceed the assessment ballots submitted, and not withdrawn, in its favor, weighing those assessment ballots by the amount of the proposed assessment

to be imposed upon the identified parcel for which each assessment ballot was submitted. If the City Council finds that a majority protest exists, the City Council shall not impose, extend, or increase the assessment to which there was a majority protest.

Section 12. DETERMINATION OF EXISTENCE OF A MAJORITY PROTEST

If it shall be necessary, in order to find whether a majority protest exists, to determine whether any or all of the signers of written protests are the holders of property interests proposed to be assessed and who will be obligated to pay the proposed assessment, the City Council shall make the determination from the latest equalized assessment roll, any written evidence submitted with a written protest, and any other evidence received at the hearing. The City Council shall be under no duty to obtain or consider any other evidence as to the holding of property interests, and its determination of valid protests shall be final and conclusive.

Section 13. ASSESSMENT; DETERMINATION BY CITY COUNCIL IN ACCORDANCE WITH REPORT OR HEARING; ORDINANCE OR RESOLUTION; LEVY

If no protests or objections in writing have been delivered to the City Clerk within the time permitted, or if valid protests have been found by the City Council to represent less than the amount required to constitute a majority protest, the City Council may, thereafter, proceed to form the district and adopt, revise, change, reduce (but may not increase), or modify any aspect of the Benefit Assessment Report including the proposed assessment, determine the final contents of such written report and levy the first year assessment in accordance therewith. The report as finally adopted shall be called the "Final Report."

Section 14. LEVY OF ANNUAL ASSESSMENTS AFTER THE FIRST YEAR

Each year, prior to levying the annual assessment authorized under this chapter pursuant to the Final Report, the City Council shall cause to be prepared and filed with the City Clerk an annual written statement ("Annual Report") setting forth as nearly as possible the use to which the funds, resulting from the assessment levied the previous year, have been and are being put. The Annual Report shall set forth the expected uses of the assessment proposed to be levied for the next fiscal year and shall set forth the proposed amount of the assessment on each parcel subject to the method of assessment and limitation on assessment of the Final Report. The City Council may

preliminarily accept the Annual Report and set a public hearing thereon. The City Clerk shall cause notice of the filing of the Annual Report and of the time, date, and place of the public hearing thereon to be published pursuant to Section 6066 of the California Government Code and to be posted in at least three public places within the City. Following the public hearing, the City Council may confirm or reduce (but may not increase) the assessment proposed in the annual written statement and may levy the assessment by resolution. Any reduction shall be subject to the method of assessment in the Final Report.

Section 15. COLLECTION; COSTS; DEDUCTION BY COUNTY

The City Council may provide for the collection of the assessment in the same manner and at the same time and in the same installments as the general taxes of the City on real property are payable and are subject to the same penalties as, other fees, charges, and taxes fixed and collected by or on behalf of the City. If the assessment is collected by the County, the County may deduct its reasonable costs incurred for that service before remittal of the balance to the City. In the event the City Council does provide for collection of the assessment by the County hereunder, the City Clerk shall annually, following the levy of the assessment by the City Council, and on a timely basis to permit its inclusion on the County tax roll, convey to the County Auditor an auditor's record showing, for each parcel subject to assessment, the amount of the assessment for the current fiscal year. The City Clerk shall take whatever steps are reasonably necessary to enable the County Auditor to accurately place the annual assessments on the tax rolls each year. The Clerk's costs in doing so may be paid out of the proceeds of the assessment. Additionally, the City may recover from the proceeds of the assessment any other costs it incurs with regard to the formation or the continuing operation of the district, including but not limited to the costs of the engineer's report, the noticing and conducting of the public hearing and majority protest procedure, annual report, survey, public outreach, and the costs of preparing and levying the assessment. All proceeds of the assessment are, at all times, to be maintained separately, and segregated from, the General Fund.

Section 16. PROCEEDINGS TO CHANGE OR AMEND THE FINAL REPORT AFTER ADOPTION

The City Council may conduct proceedings to change or amend the Final Report. Such proceedings may alter the method and amount of the assessment, may increase or decrease the authorized services, and may change the boundary of a zone or area of benefit, or may add or

subtract zones or areas of benefit. The procedure to be used in conducting change proceedings is the same as that required for the initial authorization of the assessment as set forth in this chapter. Proceedings to add or annex territory to that already subject to assessment shall be conducted only with respect to the area to be added or annexed. Proceedings to increase the assessment (in fact or merely in relation to other areas subject to assessment) on a portion of the area subject to assessment shall be conducted only in the area subject to the proposed increase.

**Section 17. ACTIONS OR PROCEEDINGS TO CHALLENGE
RESOLUTIONS LEVYING ASSESSMENT; LIMITATIONS**

Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure applies to any judicial action or proceedings to validate, attack, review, set aside, void or annul a resolution adopting a Final Report and levying an initial assessment or modifying or amending a Final or Annual Report and levying an assessment. Annual assessments, after the first year and in conformity with an adopted Final or Annual Report providing for a continuation of the fee or assessment at the same or a lower rate or in accordance with an automatic adjustment provision for an assessment, are not subject to any additional legal challenge at the time of the renewal of the assessment in accordance with such continuation of or automatic adjustment of the assessment. Any ground of challenge not raised by a complainant in a written or oral protest submitted with respect to a public hearing held in connection with the adoption or modification of such Final or Annual Report, is considered to have been waived by that complainant, and may not be raised by that complainant in any legal challenge to assessments levied in conformity with an approved Final or Annual Report.

Section 18. OTHER FEES, CHARGES ASSESSMENT AND TAXES

This chapter does not limit or prohibit the levy or collection of any other fee, charge, assessment, or tax for fire suppression services authorized by any other provisions of law.

**Section 19. LIBERAL CONSTRUCTION; VALIDITY OF
PROCEEDINGS; EXCLUSIVE REMEDY**

This chapter shall be liberally construed in order to effectuate its purposes. No error, irregularity, informality, and no neglect or omission of any officer, in any procedure taken under this division, shall avoid or invalidate such proceeding or any assessment. The exclusive

remedy of any person affected or aggrieved thereby shall be by appeal to the City Council.

Section 20. PROVISIONS REGARDING NOTICE

No step in any proceeding shall be invalidated or affected by any error or mistake or departure from the provisions governing the giving of notice under this chapter. The failure of the City Clerk to mail any notice or the failure of any person to receive the notice shall not affect in any way whatsoever the validity of any proceedings taken under this division, nor prevent the City Council from proceeding with any hearing so noticed. No notice, nor any publication of any notice, order, resolution, or other matter, other than as expressly provided in this chapter, shall be necessary to give validity to any of the proceedings provided in this chapter.

Section 21. ESTABLISHMENT OF ADVISORY COMMITTEE

APPOINTMENT. The City Council in its discretion may appoint an advisory committee for the district to advise and/or make recommendations to the City Council on the operation of the district. Such appointment may take place in the resolution creating the district or in a subsequent resolution of the City Council.

TERMS OF APPOINTMENT. The terms of appointment shall be as specified in the resolution establishing the advisory committee. The members of the advisory committee shall serve without salary or compensation.

POWERS AND DUTIES OF THE ADVISORY COMMITTEE. The advisory committee shall have such powers and duties as are determined by the City Council in its resolution creating the advisory committee.

Section 22. ANNUAL BUDGET. The City Manager shall prepare an annual budget which includes the assessment rate for the next fiscal year as well as the programs to be funded by the assessment district revenue, including revenue from fines and code enforcement activities. The budget may include accounts which may be used to fund contract services to meet District objectives. The City Council will retain final approval of all contracts.

The annual budget will be submitted to the City Council for final approval.

Section 23. FEES; FINES. Fees and fines generated by the District's enforcement activities may be collected in any manner provided for the collection of other fees and fines by the City and any special provisions therefore may be specified in the resolution creating the district or in a subsequent resolution by Council. Fees and fines generated by the District's enforcement activities shall be returned to the District's accounts to support future programs and services.

Section 24. VALIDITY OF PROCEEDINGS BEGUN PRIOR TO THE EFFECTIVE DATE OF THIS ORDINANCE

Proceedings undertaken according to the terms of this Ordinance, but taken prior to its effective date, shall nonetheless be valid, provided only that no public hearing may be held, nor may any Final Report be adopted, until after the effective date of this Ordinance.

IN COUNCIL, OAKLAND, CALIFORNIA, (DATE), 20 (YEAR)

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID,
WAN, AND PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

Introduction Date:

NOV 04 2003

ATTEST:

CEDA FLOYD
City Clerk and Clerk of
the Council of the City
of Oakland, California

Beal

OFFICE OF THE CITY CLERK
OAKLAND

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NOTICE AND DIGEST

AN ORDINANCE ESTABLISHING PROCEDURES
FOR THE CREATION OF SPECIAL
ASSESSMENT DISTRICTS TO FUND SERVICES
AND PROGRAMS FOR FIRE SUPPRESSION,
PREVENTION AND PREPAREDNESS WITHIN
DESIGNATED AREAS OF THE CITY OF OAKLAND

This Ordinance establishes procedures for the creation of special assessment districts to fund services and programs for fire suppression, prevention and preparedness within the City of Oakland. The Ordinance is based on the authority of the City of Oakland as a charter city. It establishes a process for the creation of such districts and the general limits on the kinds of programs and services that can be provided, as well as certain provisions for the operation of the districts. The Ordinance does not, in itself, create a district. Each district created under the terms of the Ordinance would be created pursuant to the Ordinance by separate Resolution of the City Council after a public hearing and majority protest procedure. The Ordinance supplements state law regarding the creation of fire districts.

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