

REVISED — 9/21/2004 3:30 PM

Office of the City Manager

ACTION CALENDAR
September 21, 2004

To: Honorable Mayor and
Members of the City Council

From: Phil Kamlarz, City Manager *PK by ed*

Subject: Public Hearing for Establishing the Utility Underground District - Thousand Oaks Heights AFUUD No.1

RECOMMENDATION

Conduct a public hearing and upon conclusion adopt a resolution to establish the Thousand Oaks Heights Applicant Financed Utility Underground District (AFUUD) No. 1.

FISCAL IMPACTS OF RECOMMENDATION

Before action can be taken to establish this Applicant Financed Utility Underground District (AFUUD), the funding needs to be approved by the affected property owners. A separate action is on the September 21, 2004 Council Agenda to determine the support for this undergrounding project. Should the financing be approved, Council would need to (1) establish the Utility Underground District; (2) order the removal of poles, overhead wires and associated overhead structures within the Thousand Oaks Heights area; (3) find it is in the public necessity, health, safety or welfare to require the removal and underground installation (4) require the property owners to provide the portion of the service connection on his or her property between the new underground facility in the public right-of-way and the termination facility on or within building or structure being served (5) establish time frames the work must be completed within.

Fiscal Impact on the City: There are no initial costs to the City by establishing this Utility Underground District. The affected property owners have to approve the proposed assessments to pay for the improvements including staff time to administer and inspect the project. Other associated costs to the City would be the fronting of funds to have the conversion work done on a property when the property owner refuses to have it done or comply with the enacted legislation. The City funds would eventually be recouped by placing a lien on the property for the funds expended.

Fiscal Impact on the District: The City by enacting this resolution and executing contracts with the utilities for the undergrounding saves the District approximately 35 percent or \$500,000 of additional costs. The District builds and pays for the new underground facility then turns over the facility to the utilities. The utilities are taxed by the state and federal governments for the contribution of the new facility (Income Tax Component of Contribution (ITCC)), which the utilities pass on to the applicant. The City as the applicant on the utility contracts and the City passing legislation ordering the removal of the overhead facilities within the Thousand Oaks Heights area as a public necessity, health, safety or welfare issue precludes the state and federal

government from charging the utilities the ITCC. This saves the district the additional 35 percent the utilities would have passed on to the applicant for these taxes.

Each property owner is responsible for the conversion of his or her property from existing overhead utility facility to the new underground utility facility. The range for the property owner conversion work is between \$500 and \$2,500 or more depending on the existing conditions at each property.

CURRENT SITUATION AND ITS EFFECTS

In addition to the public hearing on the levying of assessments for the Thousand Oaks Heights Applicant Financed Utility Underground District No. 1, a second separate action and public hearing is required to establish the Utility Underground District itself. Should the financing of the Thousand Oaks Heights Applicant Financed Utility Underground District No. 1 fail; the second action will not be necessary.

The creation of this district provides for the removal of the poles, wires, and associated overhead structures and establishes regulations and time frames for the underground installation of wires and facilities by Pacific Gas and Electric, SBC, Comcast, City of Berkeley- Street Lights and property owners adjusting the wires on their property to pick up the electrical and communication service from new underground junction boxes.

BACKGROUND

On December 19, 2000, Council endorsed the policy and procedures that form Applicant-Financed Utility Underground Districts (AFUUD). The Council also passed a motion that prior to publishing the AFUUD procedures and starting the public process, property owners were required to advance funds for the design and creation of an underground utility district. A motion to refer to the City Council any requests for subsidies from low-income property owners in designated districts, who could not afford to participate, did not pass.

Staff prepared and released the Applicant-Financed Utility Underground District (AFUUD) Information Packet in December 2001. A general meeting was held in January 2002 to explain the procedures and information in the packet.

In early 2002, the Thousand Oaks Height parcel owners circulated Petition No. 1 requesting an informational meeting be held. The proposed District met the minimum size requirements of the adopted procedures. The estimated pre-design cost was approximately \$1.8 million with 4,531 linear feet of trench or \$397.26 per linear feet of trench.

The Organizing Committee circulated Petition 2, gathering signatures and up-front utility design costs. Petition 2 received a 75% affirmative response (procedures require a minimum 70% affirmative response), and checks totaling \$183,945 were submitted to cover the up-front design costs in late August 2002.

Contracts were issued with utility companies for the design of their facilities. The City issued a Request for Proposals for an Assessment Engineer. After a delay, design of the proposed district started in June 2003. In October 2003, the City received the utility designs and started preparing the composite joint trench drawings and civil design for the project. Preliminary composite joint trench drawings and each utility company's apportioned costs for their facilities were submitted to the Utility Companies in early February 2004.

On March 23, 2004, Council adopted Resolution No. 62,412-N.S., the resolution of intention to prepare an Engineer's Report and to solicit substructure bids for the TOH AFUUD No. 1.

On June 1, 2004, Council adopted Resolution No. 62,505-N.S. approving a modified Preliminary Assessment Engineer's report eliminating the debt service reserve fund and making the City guaranty the payment of the bonds. Council authorized the ballots to be mailed to affected property owners with their proposed assessment.

On June 1, 2004, Council also adopted Resolution No. 62,504-N.S. which set 60 percent of the ballots weighted according to the proportional financial obligation of the affected property owners in favor of the assessment as the approval level required to establish an applicant financed utility underground District.

On June 4, 2004, ballots were mailed to the affected property owners starting the 45-day balloting period.

On June 16, 2004, the composite joint trench drawings were released for bids. The engineer's estimate for the substructure work was \$1,547,639 for 7,768 linear feet of trench.

On July 8, 2004, the bid proposals were opened. Nine bid proposals were received. The high bid proposal was for \$1,587,773. The lowest bid of \$1,216,494.10 was received from Manuel Bros., Inc. Staff has checked out Manuel Bros., Inc references and declares that Manuel Bros., Inc is the lowest responsible bidder for the project. The Non-Discrimination Conference will be held after September 21, 2004 should the District be approved. If the District fails on September 21, 2004, a notice will be sent to all bidders that all bids have been rejected because the applicant District failed to approve the financing for the project.

On July 20, 2004, the public hearing was continued until September 21, 2004 and all unopened ballots were rejected. Council established 66^{2/3}% affirmative response, of those ballots cast, as the new threshold for community acceptance of the District. New ballots, notices, and copies of the Final Engineer's Report were mailed out to all affected property owners on or before August 5, 2004 starting the new 45-day balloting period.

Public Hearing Establishing the
Utility Underground District – Thousand Oaks Heights
AFUUD No. 1

ACTION CALENDAR
September 21, 2004

CONTACT PERSON

Rene Cardinaux, Director of Public Works..... 981-6303
Jeffrey L. Egeberg, Manager of Engineering..... 981-6406
Lorin Jensen, Supervising Civil Engineer..... 981-6411
Approved:

A handwritten signature in cursive script that reads "Rene Cardinaux". The signature is written in black ink and includes a stylized flourish at the end.

Rene Cardinaux, Director of Public Works

Attachments:

1. Resolution

THOUSAND OAKS HEIGHTS
Applicant Financed Utility Undergrounding District
(AFUUD) No.1

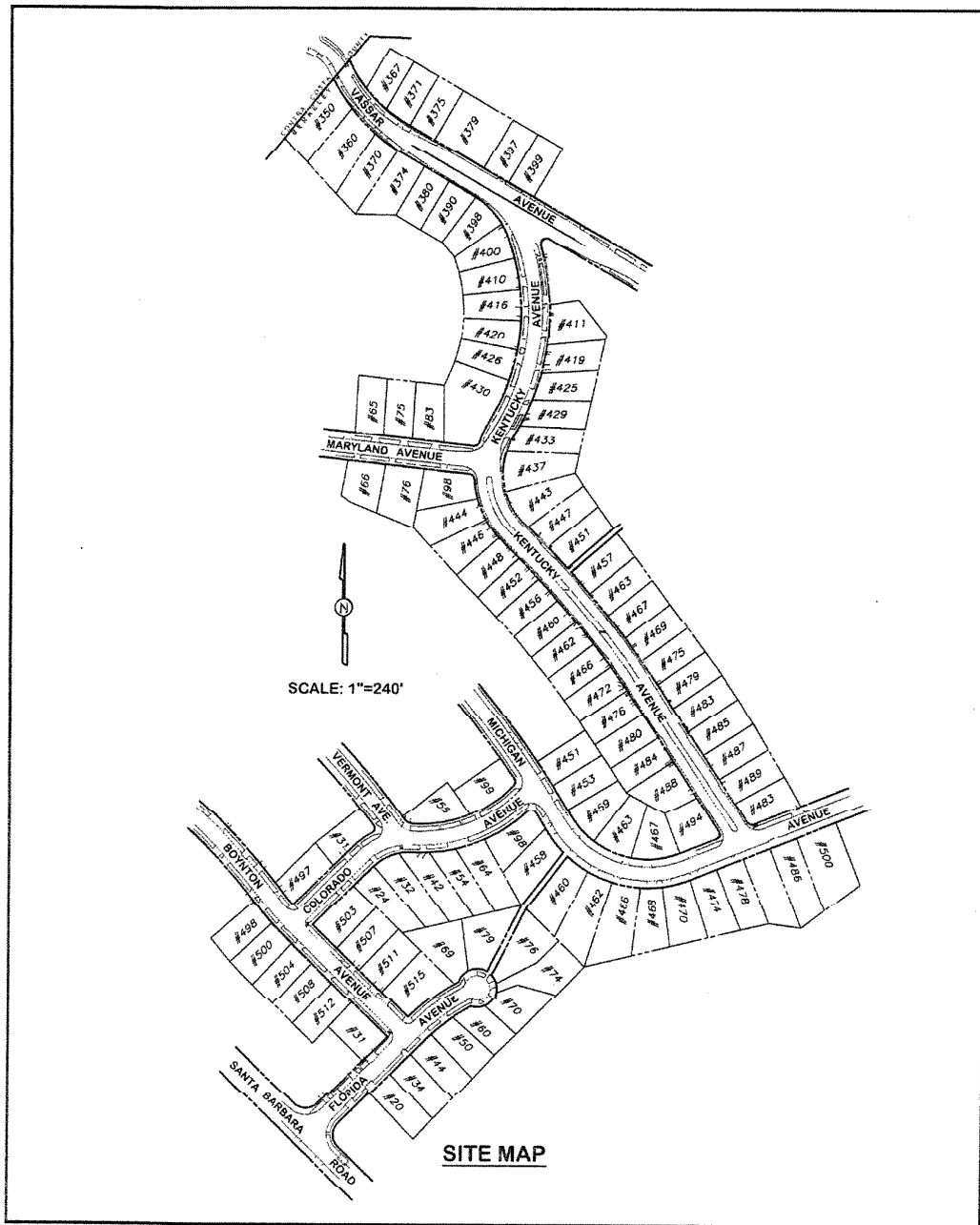


EXHIBIT A

RESOLUTION NO. -N.S.

ESTABLISH THE THOUSAND OAKS HEIGHTS APPLICANT FINANCED UNDERGROUND UTILITY DISTRICT NO. 1

WHEREAS, on December 19, 2000, Council endorsed the policy and procedures for forming Applicant-Financed Utility Underground Districts (AFUUD). The Council also passed a motion that prior to publishing the AFUUD procedures and starting the public process, property owners would be required to advance funds for the design and creation of an underground utility district; and,

WHEREAS, in February and March 2002, parcel owners within the Thousand Oaks Heights area circulated Petition No. 1 with 70 percent affirmative response to hold a informational meeting and in August 2002 the Thousand Oaks Heights area submitted Petition 2 with the required 70 percent affirmative response and funds in the amount of \$183,945 for the up-front design costs; and,

WHEREAS, on March 23, 2004, Council adopted Resolution No. 62,412-N.S., the resolution of intention to prepare an Engineer's Report and to solicit substructure bids for the proposed AFUUD and on June 1, 2004, Council adopted Resolution No. 62,505-N.S. approving a modified Preliminary Assessment Engineer's report along with other related actions; and,

WHEREAS, on July 20, 2004, the public hearing was continued until September 21, 2004 and all unopened ballots were rejected. New ballots, notices, and copies of the Final Engineer's Report were mailed out to all affected property owners on or before August 5, 2004 starting the new 45-day balloting period; and,

WHEREAS, on or before September 11, 2004, in accordance with Berkeley Municipal Code Chapter 16.24.020, the City Clerk mailed notices to all affected property owners on the last equalized assessment roll and affected utilities concerning the public hearing to ascertain whether the public necessity, health, safety or welfare requires the removal of poles, overhead wires and associated overhead structures within Thousand Oaks Heights area; and,

WHEREAS, and having provided opportunity for any interested person present at the September 21, 2004, hearing to be heard with respect to any aspect of the public necessity, health, safety, or welfare requires the removal of poles, overhead wires and associated overhead structures within the Thousand Oaks Heights area, the hearing was closed.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley hereby finds and determines that the removal of poles, overhead wires and associated overhead structures is in the public necessity, health, safety and welfare by reducing the number of roadway obstacles and potential collisions for the traveling public; reducing the potential falling hazard and potential ingress/egress restrictions caused by overhead utility facilities during a natural disaster such as an earthquake, fire or extreme wind storm; and diminishes the possible damage to utility facilities by

external forces such as wind, fire, and vehicular collisions thereby improving utilities reliability.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley hereby orders the removal of poles, overhead wires and associated overhead structures and the underground installation of wires and facilities for supplying electric, communication, or similar or associated service. It shall be unlawful for any person or utility to erect, construct, place, keep, maintain, continue to employ or operate poles, overhead wires and associated overhead structures in the designated district.

BE IT FURTHER RESOLVED, that the Council of the City of Berkeley hereby designates the Thousand Oaks Heights area of Florida Avenue between Santa Barbara Road and cul-de-sac; Boynton Avenue between Florida Avenue and approximately 100 feet north of Colorado Avenue; Colorado Avenue between Boynton Avenue and Michigan Avenue; Vermont Avenue between Colorado Avenue and approximately 60 feet north of Colorado Avenue; Michigan Avenue between approximately 70 feet north of Colorado Avenue and approximately 140 feet east of Kentucky Avenue; Kentucky Avenue between Michigan Avenue and Vassar Avenue; Maryland Avenue between Kentucky Avenue and approximately 220 feet west of Kentucky Avenue; and Vassar Avenue between Kentucky Avenue and City Limit as the Thousand Oaks Heights Applicant Financed Utility Underground District No. 1. A map delineating the boundaries of said district is attached hereto, marked "Exhibit A," and hereby incorporated as part of this resolution.

BE IT FURTHER RESOLVED, that the City may authorize any or all of the following exceptions within the Thousand Oaks Heights Applicant Financed Utility Underground District No. 1 boundaries:

- A. Any municipal facilities or equipment installed under the supervision and to the satisfaction of the Director of Public Works;
- B. Poles, or electroliers used exclusively for street lighting;
- C. Overhead wires (exclusive of supporting structures) crossing any portion of the district within which overhead wires have been prohibited, or connecting to buildings on the perimeter of a district, when such wires originate in an area from which poles, overhead wires, and associated overhead structures are not prohibited;
- D. Poles, overhead wires and associated overhead structures used for the transmission of electric energy at nominal voltages in excess of thirty-four thousand and five hundred volts;
- E. Overhead wires attached to the exterior sauce of a building by means of a bracket or other fixture and extending from one location on the building to another location on the same building or to an adjacent building without crossing any public street;
- F. Antennae, associated equipment and supporting structures, used by a utility for furnishing communication services;
- G. Equipment appurtenant to underground facilities, such as surface-mounted transformers, pedestal mounted terminal boxes and meter cabinets and concealed ducts;
- H. Temporary poles, overhead wires and associated overhead structures used or to be used in conjunction with construction projects.

BE IT FURTHER RESOLVED, that all poles, overhead wires and associated overhead structures shall be removed and underground installation made in said district within the following times:

- A. Every person owning, operating, leasing, occupying or renting a building or structure within the district shall construct and provide that portion of the service connection on his or her property between the new underground facility in the public right-of-way and the termination facility on or within said building or structure being served within six months of the adopted date of this resolution or in conjunction with the completion of the district's substructure construction work in the public right-of-way.
- B. Utility Companies (Pacific Gas and Electric, SBC, and Comcast) shall complete their underground facility installation, convert all properties within the district, and remove poles, overhead wires, and other associated structures under applicable rules, regulations and tariffs on file with the Public Utility Commission within six months of the completion of the district's substructure construction work in the public right-of-way.
- C. The Director of Public Works or his or her designee may extend the dates indicated above when shown good cause.

BE IT FURTHER RESOLVED, that the City Clerk, within ten days after adoption of this resolution, shall mail a copy this resolution and a copy of BMC Chapter 16.24, Underground Utility Facilities to affected property owners as shown on the last equalized assessment roll, and affected utilities.