



## Legislation Details (With Text)

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**Title:** Consider the Current Underground Utility Assessment District Formation Policy and Provide Direction on Potential Revisions (Public Works Director Stephanie Katsouleas).  
PROVIDE DIRECTION

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Manhattan Beach Municipal Code 7.28, Undergrounding of Public Utility Facilities, 2. August 1, 2006 Staff Report, 3. August 1, 2006 Agenda Minutes, 4. Utility Undergrounding Fact Booklet, 2007, 5. Steps for Forming a District, 6. PowerPoint Presentation

Date	Ver.	Action By	Action	Result
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**TO:**  
Honorable Mayor and Members of the City Council

**THROUGH:**  
Mark Danaj, City Manager

**FROM:**  
Stephanie Katsouleas, Public Works Director

**SUBJECT:**  
Consider the Current Underground Utility Assessment District Formation Policy and Provide Direction on Potential Revisions (Public Works Director Stephanie Katsouleas).  
**PROVIDE DIRECTION**

**RECOMMENDATION:**  
Staff recommends that City Council receive the current Underground Utility Assessment District (UUAD) formation policy and provide direction on whether to revise that policy.

**FISCAL IMPLICATIONS:**  
There are no fiscal implications associated with providing direction to staff regarding policy changes to the current utility undergrounding district formation process. However, under the current UUAD policy for district formation, the City would anticipate spending approximately \$350,000 per district to reach the Proposition 218 voting phase. Those funds would be reimbursed if the districts ultimately form. Any future financial impacts to the City will be evaluated based on direction given by City Council following this presentation and residential interest in forming future UUADs.

**BACKGROUND:**

Utility undergrounding is the process of placing all overhead utilities (power, telephone, and cable TV wires) and facilities such as electrical transformers underground. The City does not currently own, operate or maintain any overhead electrical or communications utilities, but rather they belong to:

- Southern California Edison (electricity);
- Frontier (formerly Verizon, for telecom and cable and internet); and
- Spectrum (formerly Time Warner and Adelphia, for cable and internet).

Southern California Edison (SCE) carries out overhead-to-underground conversions through its Rule 20 program. Telecom utilities carry out these conversions through the Rule 40 program, which in many respects mirrors SCE's Rule 20 program. The specific guidelines for *residential* utility conversions are identified under Rule 20B and Rule 40B, respectively.

### **Current District Formation Guidelines**

The steps required to form a utility underground assessment district are described in Manhattan Beach Municipal Code (MBMC) Section 7.28, which was adopted in 1968 (see Attachment 1). That Code described the roles and responsibilities of the City, utility companies and residents in the utility undergrounding process. Although not contemplated in MBMC 7.28, passage of Proposition 218 in 1996 places additional requirements on the approval process for UUAD formation, namely the identification of special versus general benefits to affected property owners and the minimum threshold required to approve a district. The 1968 utility undergrounding district formation procedures were informally amended by City Council on August 1, 2006 (Attachments 2: 8/1/2006 Staff Report and Attachment 3: 8/1/2006 Agenda Minutes).

A complete overview of the City's utility undergrounding program is best summarized in the 2007 Utility Undergrounding Fact Booklet (Attachment 4), which documents the most recent Council-approved UUAD formation process. Additionally, Attachment 5, "Steps for Forming a District," provides detailed information on the procedures that must be undertaken to form a district and identifies the required thresholds for various phases within that process. In summary, the steps address the following phases:

1. The district boundary formation process
2. The petition drive process, signature threshold requirement and the City's verification process
3. Design and bidding phases
4. Assessment and voting phases
5. Construction and cabling phases
6. Pole removal and project completion phases

Of particular note are the various thresholds required by City Council on August 1, 2006 for all future districts. They include:

#### **Petition Drive**

At least 60% of parcel owners within a district must sign a petition stating that they are generally in favor of utility undergrounding at the estimated costs. The petitions must be submitted to the City within 6 months of initiating the petition drive.

#### **Survey Validation**

Once signatures are verified for each parcel, and before funds are expended on designs, the City

sends out a validation survey. Current policy requires that a minimum of 60% of the parcels within the entire district return surveys in support of undergrounding before the district advances to design.

### **Voting Thresholds Needed to Form A District (Proposition 218)**

Once design plans are completed and proposed assessments are calculated, one ballot is mailed to the property owners of each parcel in the district. Parcel owners have a minimum of 45 days in which to consider the proposed assessments and return their ballots. Proposition 218 requires that at least (50%) of the weighed ballots RETURNED support the proposed assessments in order for the district to be formed. It is worth stressing that conformance with Prop 218 requires that each parcel receive a “weighted” vote in proportion to the property assessment. Therefore, parcels with larger proposed assessments effectively have more voting power than parcels with lower assessments. Under this framework it is conceivable that fewer than 50% of the voting parcels could represent a majority of weighted votes in favor of district formation. To address that concern, in addition to the Prop 218 threshold requirements, in 2006 City Council approved a policy that requires the actual number of ballots RETURNED show at least 60% support among parcel owners for the proposed assessments (e.g., one equal vote per parcel or “raw” vote). Thus, those proposed districts that meet both the weighed and raw thresholds could then be approved by City Council and move forward with utility undergrounding.

### **City Expenditures**

Current policy provides that if residents want to form a district and are able meet the signature and survey validation thresholds identified above, then the City will retain staff and allocate funds to complete the design phase, retain an assessment engineer to calculate per-parcel costs, and bring the district to a vote. District design costs since 2005 have been as low as \$64,000 for District 6 to as high as \$276,000 for District 13. The significant increase in design fees is attributable to the utilities’ claims that their earlier estimates were too low and that the more recent estimates reflect their actual costs. Note that the actual cost for design plans are ultimately based on the size and number of parcels within the district proposed. Should a district be approved during the Prop 218 process, then the City is fully reimbursed for all funds already expended for design plans, assessment engineering and staff time. The City recoups all known and future estimated costs expected to support the UUAD through construction, conversion and project completion. Reimbursed and prepaid expenses include design plans, assessment engineering, staff time, annual finance oversight, bonding, and other incidental expenses. If the district fails or is dissolved by City Council, then design and personnel support expenses are not recovered.

Prior to approving Districts 2 and 6, the City also approved a financial loan assistance program, called the Assessment Deferral Program, to help pay the cost of assessments for qualifying homeowners. The terms of the program are explained on pages 8 and 9 of the Utility Undergrounding Fact Booklet, 2007 (Attachment 4). The program allowed a homeowner to defer paying the City all or a portion of the property’s UUAD assessment until the home is sold or transferred. Varying levels of financial assistance are provided to households earning less than \$100,000 annually, and complete deferral was offered for those earning less than \$24,000 annually.

In recent months, there has been a renewed interest in forming utility underground assessment districts among several residential groups in the Sand, Hill and American Martyr’s Sections of the

City. Those groups are aware that City Council will review the current policy before any new districts will be considered.

### **DISCUSSION:**

Prior to moving forward with the creation of any new UUADs, City Council has indicated the need to review the current policy and explore whether any policy changes are desired. The following policy discussion is presented by topic and/or action item under consideration. Staff recommends that City Council consider each of these policies individually and determine whether any modifications should be incorporated into the undergrounding program. They are as follows:

1. Should the City revive the utility undergrounding assessment district program and allow future districts to form?
2. Does the City want to set a minimum or maximum number of parcels needed to form a district? Current guidelines call for a least one block in length and no more than 300 parcels per district. Staff recommends that these guidelines be maintained.
3. Should the current residential petition signature threshold of 60% support among all parcels in the district be increased or decreased.
4. Should the City's current survey validation threshold of 60% support among all parcels in the district be increased or decreased? Or should the threshold apply to only those surveys returned?
5. Should the City:
  - a. Continue to "front" funds for the full cost of utility designs and assessment engineering services (estimated at \$350,000 per district); or
  - b. Require district residents to pay the full cost of designs and assessment engineering services in advance; or
  - c. Implement a cost-sharing plan for designs and assessment engineering services?
    - i. If, implementing a cost-sharing program, then what fixed or proportionate amount is recommended?
  - d. Would or should the policy be different for two failed districts that already have (draft) plans (UUADs 8 and 13) where minimal work and funding may be needed to bring the district to a vote? If yes, then what terms are desired? If Districts 8 and 13 were to move forward as originally proposed, then the City has the potential to recover the expenses previously incurred for staff time and design plans, which are approximately \$187,000 for District 8 and \$376,000 for District 13.
6. Should the City provide in-kind staff support during the design, assessment engineering and voting phases of UUAD formation? Passage of a Prop 218 vote would be required in order to be reimbursed for staff time.
7. Does the City want to modify the approval thresholds required for district formation during the Prop 218 voting process? Currently, the program requires that both of these conditions be met:
  - a. Weighted RETURNS must show at least 50% + 1 support to form per Prop 218 requirements. Should this be increased?

- b. Actual ballots RETURNED must show at least 60% support for district formation per City policy. Should this be increased or decreased?
8. Does the City want to set any limits on how many districts may enter the design phase at the same time? Currently there is no formal policy. However, in the past, it was informally based on the availability of staff resources and the City's desire to limit the total amount of funds expended that had yet to be reimbursed.
9. Does the City want to continue providing an Assessment Deferment Program? If yes, should the terms of the program be modified? Please recall that homeowners currently have the option to pay the assessment in full upon formation, or finance the assessment over 20 years as part of each parcel's annual property tax bill. For those homeowners who elect the 20-year repayment option, it is worth noting that the annual payment is tied to the parcel rather than the homeowner, thus it can be transferred to the new homeowner if a property is sold. Assessments can also be paid off at any time within the 20-year term without additional penalties.

Regarding general interest in undergrounding, staff has received requests from six neighborhood areas interested in forming utility undergrounding districts (including former Districts 8 and 13). Should future districts be initiated and ultimately approved through the Prop 218 process, a dedicated staff engineer will need to be hired to administer the design phase as well as for construction coordination, cabling and the overhead to underground conversion process. As mentioned above, the City's staff costs are fully paid for by the district assessments if it passes the Prop 218 process.

Lastly, although not part of this policy discussion, staff would like to remind City Council that we will be exploring whether the City would prefer to bid and oversee construction for Districts 12 and 14 in lieu of relying on the utility companies for that function. This will be fully explored prior to completing assessment calculations and initiating Prop 218 procedures to determine whether any significant saving can be achieved for homeowners.

**CONCLUSION:**

Staff recommends that City Council provide direction to staff on whether to amend or modify the current UOAD policies as outlined above.

**POLICY ALTERNATIVES:**

Do not revive the Utility Undergrounding Assessment District formation process.

**PUBLIC OUTREACH/INTEREST:**

Staff notified those residents who provided contact information about this agenda item. No additional outreach has been conducted.

**ENVIRONMENTAL REVIEW:**

Not applicable.

**LEGAL REVIEW:**

The City Attorney has reviewed this report and determined that no additional legal analysis is necessary.

Attachments:

1. Manhattan Beach Municipal Code 7.28, Undergrounding of Public Utility Facilities
2. August 1, 2006 Staff Report
3. August 1, 2006 Agenda Minutes
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6. PowerPoint Presentation