



Staff Report

City of Manhattan Beach

TO: Honorable Mayor Ward and Members of the City Council

THROUGH: Geoff Dolan, City Manager

FROM: Neil Miller, Director of Public Works
Dana Greenwood, City Engineer
Stephanie Katsouleas, Senior Civil Engineer

DATE: February 7, 2006

SUBJECT: Consideration of an Opt-out Policy for Utility Undergrounding Assessment Districts

RECOMMENDATION:

Staff recommends that the City Council consider whether to establish guidelines or a policy allowing property owners in newly formed utility underground assessment districts (UUADs) the opportunity to opt-out of participating in the formation of proposed UUAD based on the information presented in this report.

FISCAL IMPLICATION:

There are no fiscal implications associated with this recommendation.

BACKGROUND:

In 1990 and 1998, the Manhattan Beach City Council adopted Resolution No. 4694 and No. 5420, respectively, which detail the City's policy regarding utility undergrounding of existing overhead utilities (electrical, telephone and cable television). The resolution states, in part, "It is the desire of the City Council to be responsive to residents who want to be assessed for utility undergrounding, as well as to respect those who do not wish to pay for utility undergrounding. Therefore:

1. Undergrounding will not be forced upon residents.
2. The City will respond to the requests of those desiring undergrounding, rather than being active supporters.
3. The City Council will require a 60% showing of support of property owners benefiting from the assessment district before any Capital Improvement Funds will be appropriated."

California's Proposition 218 merely requires a majority approval (over 50% by weighted return) of property owners within the District.

To date, a total of 14 neighborhoods have submitted petitions showing greater than 60% support among affected property owners to become Assessment Districts. They are in various stages of progress, as follows:

- Districts 1, 3 and 5: Construction completed. Cabling underway.
- Districts 2 and 6: Approved in November, 2005. Construction pending outcome of litigation
- District 4: Not Approved by City Council in November, 2005
- Proposed Districts 7-10: In design with Edison; voting expected in Summer 2008
- Proposed Districts 11-14: Quotes for designs requested from utilities

Currently, the City has no formal guidelines or policy allowing residents of a proposed UUAD the opportunity to opt-out of participating in a proposed UUAD either during the formation process once formed.

DISCUSSION:

Several steps are taken in forming a proposed UUAD. First, a property owner proposes boundaries to City staff based on areas of known residential support. City staff then confirms that the area proposed meets eligibility requirements, such as:

- The proposed area is compatible with each utility's network (determined by each utility). Adjustments to the boundaries are made where necessary.
- The total trenching distance is at least 600 feet long (an Edison requirement).
- The number of homes is typically below 300 but enough to benefit from economies of scale due to the upfront costs paid by the City for design plans. An average of about 200 homes is desirable.

Following setting the boundaries, a lead property owner coordinates the circulation of a petition to other property owners in the proposed area asking for signatures from those generally in favor of the idea of undergrounding and are willing to pay for the necessary work depending on the estimated cost. In a few cases, properties along the border of the proposed area will need to be either included or excluded based on their service connection points. This is determined by the utilities and not always known prior to collecting signatures. Once the lead property owner is able to collect a minimum of 60% of affected property owner signatures, the petition is submitted to the City for verification and approval. Once approved, the proposed district is assigned the next sequential number and ultimately moves through the district formation process.

Whether or not to establish guidelines and/or develop a policy allowing some residents the opportunity to opt-out of a newly formed district is a complex issue in which several factors would need to be considered. And, based on the factors presented below, a district sub-section may or may not qualify for opting out due to the site-specific nature of each UUAD. These factors include:

1. **Eligibility Requirements:** Would the eligibility requirements listed above be adversely affected by allowing a section or a proposed district to opt-out? Concerns include:
 - Whether the remaining opt-in section is compatible with the utility network. There are

technical constraints within a utility's network that dictate the inclusion or exclusion of some parcels in defining a project's boundaries.

- Whether the opt-in section still has at least 600 feet of trenching distance as required by Edison to be considered for undergrounding.
- Whether the opt-out section is at least 600 feet, securing its ability to meet eligibility requirements and form a district at some future point if desired by residents at that time.

2. ***Time Limits and/or Deadlines.*** Should there be a time limit or procedural deadline for opting out? Concerns include:

- Whether the City should allow an opt-out option if it proceeds with district formation activities in a timely manner, or whether the City should immediately notify residents that a district has been formed and establish a deadline to consider opting out.
- Whether an opt-out policy should apply to districts already initiated (e.g., be retroactive) or only apply to districts not yet initiated by the City? Currently, only Districts 11-14 have been approved but not yet initiated.
- The adverse financial impact on residents who remain part of a proposed district once City Council approves and expends funds to initiate it. The additional burden placed on each remaining parcel would depend on 1) what payments had been made, 2) the number of houses opting out versus the number remaining in and 3) the increased expense of construction for the opt-in section due to the loss of economies of scale.
- The sale of homes within a district, resulting new residents now being part of a process that they were not originally part of at its initiation. This could either increase or decrease support for the proposed district at some future date.

3. ***District Dynamics.*** Does a proposed district's dynamics or characteristics allow for an opt-out section? Concerns include:

- The size and or shape of the entire district versus the opt-out section. As an example, allowing the middle section of a proposed "linear district" to opt-out might be impractical while for a square district network prohibitive (i.e., the donut hole effect). Allowing an opt-out area along the border of a district would have to be evaluated in terms of criteria identified in this report.
- Its proximity to other approved districts. Allowing a section of a proposed district which is adjacent to a previously approved or planned district to opt-out may or may not be practical/desirable considering utility network configurations or general City policy.

4. ***Signature Threshold.*** Should a signature threshold be established for opting out like that required to opt-in? Concerns include:

- The percentage of property owner signatures that should be required to opt-out either for a portion of or all of a proposed district.
- Whether residents within the entire district should be notified of the opt-out section's desire to secede and then provided the opportunity to change their positions of support for the proposed district. Consideration should be given to those residents whose support for district formation was based on the boundaries proposed, but whose position may change if the boundaries are altered.

CONCLUSION:

Based on the foregoing issues, we conclude that there is no “one size fits all” solution/policy for allowing part of a district the opportunity to opt out, and that a general policy would be impossible to administer. The issue is too complex to adopt and implement simple guidelines. Additionally, allowing an area to opt-out may have a cascading negative effect on district residents as well as city resources in terms of cost, perception and misrepresentation. In all proposed districts, residents have signed petitions knowing the boundaries proposed. Changing such boundaries at this stage would be misleading to those who supported the petition based on those boundaries. Ultimately, as is the case for forming a district (i.e., opting in), any opt-out policy will be largely dependent on the variety of factors addressed in this report.

However, going forward the City can adopt measures to help alleviate the issue of opting out. First, the City can notify all property owners in UUADs 11-14 (which have not been initiated) that the proposed districts have been preliminarily approved, and provide them some specified amount of time (e.g., 10 days) to either remove or add their name to the petitions submitted. Following the close of this period, the signature rate can be reevaluated and appropriate measures taken at that time.

Secondly, the City can notify all property owners within the boundaries of future proposed districts during the signature collection process that there is residential interest in forming a district. This notification would encourage residents to canvas their neighborhood and campaign either for or against undergrounding prior to signatures being collected and the proposed district initiated. If an area was still able to meet the 60% signature requirement at that time, then the City would still follow up with the notification letter listed in the previous paragraph. Following this and assuming the 60% threshold was maintained, there would be no future opt-out opportunity.

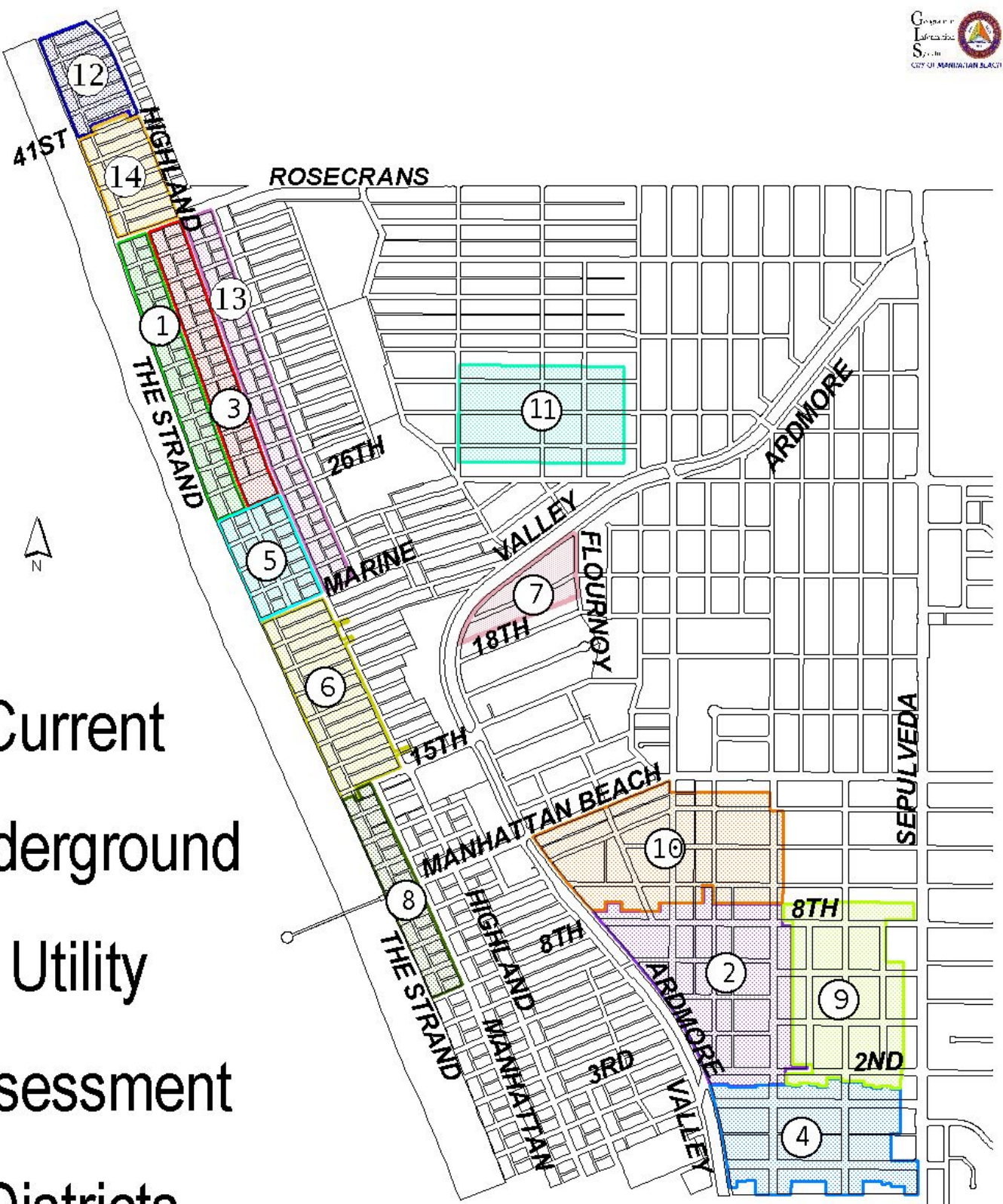
RECOMMENDATIONS:

1. Consider whether establishing an opting out policy for UUADs is feasible or practical given the constraints of initially becoming a district.
2. If developing an opt-out policy or guidelines, consider the factors presented above (i.e., cost, timing, network/district dynamics, signature threshold) as guidance on how an opt-out request should proceed.
3. Consider the increased financial burden on residents who remain in districts already initiated and the affects it will have on the perception of financial fairness.
4. Consider whether changing district boundaries is, in effect, a misrepresentation of the original conditions under which property owners signed the petition.
5. Include the provision that any requests made to opt-out must be done before funds are spent to initiate the district such that opt-in residents are not adversely financially impacted.
6. Consider proactive measures as identified under the conclusion for all districts not already initiated.
7. Establish how such requests should be made and approved if a section of a proposed area wishes to opt-out, with the understanding that not all areas will qualify to opt out.

ATTACHMENTS:

Attachment 1: City Map of Proposed and Existing Districts

Current Underground Utility Assessment Districts



09/13/2005

