

**CITY OF MANHATTAN BEACH
MINUTES OF THE CITY COUNCIL
ADJOURNED REGULAR MEETING
(UNDERGROUND UTILITY ASSESSMENT DISTRICTS 2, 4 & 6)
NOVEMBER 21, 2005**

The Adjourned Regular Underground Utility Assessment District Meeting of the City Council of the City of Manhattan Beach, California, was held on the 21st day of November, 2005 at the hour of 6:32 p.m., in the City Council Chambers of City Hall, at 1400 Highland Avenue, in said City.

PLEDGE TO FLAG

Councilmember Aldinger led the pledge of allegiance.

ROLL CALL

Present: Tell, Aldinger, Montgomery, Ward and Mayor Fahey.
Absent: None.
Clerk: Tamura.

AUDIENCE PARTICIPATION

05/1121.3 Councilmember Aldinger Re Thanksgiving

Councilmember Aldinger wished everyone a Happy Thanksgiving.

SCHEDULED

05/1121.1 Presentation on the Establishment of Underground Utility Districts 05-2, 05-4 and 05-6, and Consideration of Resolutions to Form Those Underground Districts Which are Approved by a Majority Vote of the Weighted Returned Ballots

Senior Civil Engineer Stephanie Katsouleas provided background information on the establishment of Underground Utility Districts 05-2, 05-4 and 05-6. She advised that 1) in 1999-2000 petitions in favor of utility undergrounding were signed by at least 60% of the residents in the defined areas and submitted so that the City could explore what the related costs would be; 2) that the cost estimates were provided by the utility companies on September 26, 2005 and included in an Engineer's Report presented to the City Council on October 4, 2005, 3) the 45-day voting period required by Proposition 218 was initiated on October 6 following the mailing of the ballot and related materials to property owners identified on the tax rolls and the balloting ends this evening; 4) that an informal meeting was held on October 20, 2005 to discuss the utility undergrounding costs and the methodology of allocating the costs; 5) staff recommends the Council open the public hearing and, at the conclusion of the hearing, staff will tabulate the ballots; 6) if the ballots tabulated are greater than 50% by weighted returns (dollar value of the votes), then staff recommends that the Districts be approved and open market bids be received in January 2006; and 7) if the bids are less than the assessments approved, then the undergrounding will proceed.

Senior Civil Engineer Katsouleas explained that, should undergrounding be approved, residents will have three payment options: 1) a 30-day cash collection period that will end on January 31, 2006; 2) through a bond with a lien placed on the property owner's property taxes over 20 years; and 3) a deferral under the State Controller Guidelines whereby qualified property owners can defer their property taxes until the sale or transfer of their home. She related staff's recommendation that that the public hearing be opened; that testimony from residents in the

affected areas be heard; that the Final Engineer's Report be approved; and that the Resolutions overruling the protests for the Districts in which undergrounding is approved by a majority be adopted. She noted that anyone wishing to either vote or change their vote is invited to do so during a 15-minute window after this evening's public testimony and before the counting of the ballot.

City Manager Dolan pointed out that the ballots will be tabulated in the City Council Chambers this evening; that on-going summaries regarding the tabulation status will not be provided; that the results will be announced this evening; and that interested parties are invited to observe the tabulating of the ballots.

In answer to questions from the Council, City Attorney Robert Wadden clarified that the weighted methodology of allocating the undergrounding costs and the minimum percentage required to approve an assessment District are specified in Proposition 218. He indicated that a city's ability to change the minimum percentage required was not examined, but it might be possible to do so.

Senior Civil Engineer Katsouleas clarified for Councilman Aldinger that the approval to go forward with the undergrounding vote was approximately 66% to 70%; that the undergrounding resolutions will be considered by the Council after the ballot tabulations are announced; that only property owners can vote; and that the ballots were sent to the property owners' addresses of record.

In answer to a question from Mayor Fahey, Senior Civil Engineer Katsouleas explained that Proposition 218 is clear in stating that a simple majority of 50% is required to impose an assessment and that a count early last week showed a return rate of approximately 75%.

City Attorney Wadden advised that it is sometimes possible for a city to impose more stringent requirements than those required by a statute, but that Proposition 218 is a Constitutional provision. He further advised that the Council will not vote on the resolutions for any Districts that are not approved and that the Council has the option of not approving the resolutions for Districts that are approved.

At the request of Mayor Pro Tem Ward, Senior Civil Engineer Katsouleas shared information about the deferral under the State Controller's Guidelines. She related that the percentage of those owning property in the Districts who would qualify for a deferral is unknown at this time; that the property tax deferral applies to those having an annual household income of \$24,000 or less and are over the age of 62; and that there are some guidelines for those who are blind or disabled.

Commenting on the difficult aspects of this topic, Mayor Fahey explained the procedures for conducting the meeting this evening. She advised that questions posed by interested parties will be answered at the end of the public testimony.

Mayor Fahey opened the Public Hearing at 6:49 p.m.

Joe Moore, 200 Block of Ardmore Avenue, District 4, recalled assessments imposed over the past 45 years. He distributed diagrams to the Council depicting residences on Boundary Place that have not been consulted about the current assessment. Mr. Moore explained that he would be forced to bear a big financial burden should the assessment in his District be approved.

Pat Wooley, 700 Block of 8th Street, expressed her concern over the excessive assessment in the amount of \$51,843.39 that would be imposed on her property, particularly since the utility companies under bid the project costs and residents would have to pay for their mistake. She voiced her objection to the idea of a reverse mortgage and indicated she would be forced to sell her house if the assessment in her District is approved.

Esther Besbris, Second Street, touched on past discussions of assessing property owners for utility undergrounding in Manhattan Beach. **Ms. Besbris** stated her disagreement with the idea of a reverse mortgage to pay the undergrounding assessments, as previously emphasized by Councilmember Tell, and, because of his advocacy for a reverse mortgage and appearance of impropriety, she suggested that Councilmember Tell recuse himself from voting on and discussing this matter. She noted that homes are the only assets held by many Manhattan Beach residents; recommended that a moratorium be placed on any further undergrounding until related costs and interest rates are not astronomical; and said that the removing of the eyesore of overhead wires are insignificant compared to the “cancer” that is now impacting Manhattan Beach residents as a result of this issue.

Mayor Fahey asked that interested parties speaking to this matter address the issues, and not individuals and their positions on utility undergrounding.

John Sterling, 800 Block of 1st Street, related his understanding that the utility companies would not contribute financially to the undergrounding; that a mathematical error in calculating the excessive assessment costs must have been made; and that a trio of citizens should work with City officials to verify the assessment figures.

Frank Matranga, 100 Block of Ardmore, District 2, expressed his viewpoint that the Council seems to think the utility undergrounding would be done for Manhattan Beach residents, but it would be done to them. Like **Mr. Sterling**, he questioned the accuracy of the assessments. **Mr. Matranga** contended that all residents should be consulted about the undergrounding.

Asking the Council to change their votes to “no,” **Lorie Chaykowski, 200 Block of John Street**, stated her sadness that the utility undergrounding is dividing her neighborhood due to the financial burden it is placing on property owners, some of whom would not even benefit. She distributed and read aloud a letter of objection from **Eleanor Allen**.

Having recently purchased his home in Manhattan Beach and noting written material he previously provided to the Council, **Ted Davis, 700 Block of Poinsettia**, related his feeling that there would be no general benefits to the utility undergrounding. He contended that property owners were not given an ample amount of time to consider the undergrounding; that each household had only one vote but, theoretically, 42% of the votes can carry the petition; that larger lots should carry disproportionate costs; that the ballots were not adequately distributed and he only knew about the undergrounding because of a newspaper article he read; that many properties in the neighborhoods and outside of the assessment Districts will benefit from the undergrounding, but will not be assessed; and that the undergrounding of utilities in an entire neighborhood, not just a “section,” is a good idea. He related his appreciation of the assistance provided him by Senior Civil Engineer Katsouleas.

Charles Mau, No Address Provided, stated his understanding of reverse mortgage requirements. He said he generally supports utility undergrounding, but voiced his concern over the financial burden associated therewith.

Objecting, **Paul J. Spikula, 3100 Block of Poinsettia**, asked if the streets would be restored to good condition after the installation of the underground utilities.

Allen Adden, 100 Block of 21st Street, expressed his concern that the assessments for his neighbors to the west and east who own full lots would be the same as the assessment for his half lot. He also voiced his concern that the assessments for two condominiums on one lot in his neighborhood are worth much more than his home, but their assessments are less than his.

Stephen Morse, 900 Block of 1st Street, District 4, observed that this issue seems to divide the neighbors between the “haves” and “have nots.” He suggested that the undergrounding process be more natural, with those constructing new homes being required to underground the utilities, and voiced concern over the high cost of undergrounding.

Noting that he does not live in any of the subject utility assessment Districts, **Patrick McBride, 5th Street and Peck Avenue**, commented on the negative aspects of utility undergrounding, including repairs and life span. He contended that a two-thirds majority should be required and related his understanding of reverse mortgage requirements, including that a property owner must reside in the home.

While she does not reside in any of the subject utility assessment Districts, **Jo Ann Rodda, 1300 Block 10th Street**, related her disgust with the City pitting neighbors against one another in order to underground utilities. She contended that the City should pay the utility undergrounding costs.

Jessica Schmitt, Mira Costa High School Student, pointed out the positive aspects of utility undergrounding, including safety, efficiency, improved views and increased property values.

Viet Ngo, No Address Provided, said that he is a low-income resident of Manhattan Beach. He asserted that the Council has manipulated the vote; that, according to State Law, a City wide election for the utility undergrounding is required; and that the City is required to underground utilities and the property owner is only responsible for connecting to them.

Beverly Morse, 900 Block of 1st Street, said she did not receive a ballot. She asked how many other property owners did not receive ballots and entertained the idea of the City sending ballots via registered mail in the future. **Ms. Morse** felt that the utility undergrounding assessments would be unequal taxation; that underground utilities are more aesthetically pleasing, but not a necessity; and that property owners desiring underground utilities should do so at their own expense. **Ms. Morse** requested information on the low undergrounding estimates provided by the utility companies.

Stating that he does not own property in the subject assessment Districts, **Bill Victor, Property Owner**, related his opinion that the City informed property owners about the utility undergrounding in a “bait and switch” manner. He noted that he did not receive a previous ballot for a property he owns in Manhattan Beach and that property owners were originally told the undergrounding cost would be between \$8,000 and \$12,000, but it is actually between \$35,000 and \$60,000. **Mr. Victor** voiced concern that property owners would have to pay for their own connections to the utilities; that property owners might be exposed to supplemental real estate assessments for upgrades mandated by the City Code; and that, because of matters such as this, elderly property owners are being driven out of the City. He questioned if the requirements of CEQA Section 5896.5(b) of the Streets and Highways Code requiring that the City voluntarily pay at least 50% of the undergrounding conversion has been complied with the three subject Districts. Mr. Victor felt that, since Councilmember Tell resides in one of the subject assessment Districts, he should recuse himself from consideration of this topic. He asked that this issue be continued until information regarding compliance with Proposition 218 can be provided. He further questioned if what is being done is in accordance with Proposition 218 and whether voters made a mistake as to vote for a Council that would literally bury them with utility wires.

Residing in District 2 and noting the transitional nature of his neighborhood, **Austin Garrison, 800 Block of 6th Street**, expressed his support for the utility undergrounding. He commented on the difficult task of compiling an assessment methodology acceptable to all. He concluded by asking Council to have the vote go forward.

Like Mr. Garrison, **Ron Doornink, 800 Block of 6th Street, District 2**, supported the utility undergrounding, particularly due to aesthetics and related increases in real estate prices. He felt it is not right to ask those owning property outside of the assessment Districts to contribute.

Roger Kohn, No Address Provided, related his impression that the property owners associated with the utility undergrounding can be broken up into three groups: those in support regardless of cost, those who object due to cost and those who feel it is a good idea, but are concerned about the cost (which is where he stands). **Mr. Kohn** stated his concern that, while Edison would credit residents for improving their system, Verizon would not, and that a number of questions related to this topic, such as tax consequences, have not yet been answered.

Having been involved six to seven years ago in organizing the petition for the utility undergrounding in **District 4, Rochelle Schenider, 300 Block of Dianthus**, related her understanding that the City has followed the legal process for undergrounding; that utility undergrounding is aesthetically pleasing and safer without overhead wires; that, should the undergrounding be approved, she asked the City to obtain rebates for some wires that are in a poor state because of deferred maintenance; and that many residents do not have all related information and are, therefore, operating under a certain amount of misapprehension.

It was the opinion of **Martha Andreani, 100 Block of 10th Street (District 8, not one of the subject assessment Districts)**, that the assessments would be unfair according to Proposition 218 because the property owners who would benefit the most would not necessarily be paying the most. She also felt that the assessments should be based on safety and reliability, as well as aesthetics; that there should be more of a “partnership” between the utility companies, the property owners and the City; that the utility undergrounding should be more of a City-wide effort, and not confined to various Districts; and that Councilmember Tell should recuse himself from considering this matter since he resides in one of the Districts and he created a conflict of interest by suggesting property owners obtain reverse mortgages to pay for a benefit of others.

Bob Werle, 900 Block of 1st Street, District 4, a proponent of the utility undergrounding, said that, while the process might not be perfect, it is democratic; that, given a choice, property owners would not choose to pay for the utility undergrounding, but everyone would benefit from it; that, while they are greater than years ago, utility undergrounding costs have not escalated as much as construction costs; and that a safer atmosphere will be created with underground utility poles.

Jon Chaykowski, No Address Provided, addressed the fatal flaw of the assessment methodology not complying with the requirements of Proposition 218 in that the assessments would be disproportionate to the benefits. He stressed that the vote should be set aside in order to re-visit the assessments in District 2. He concluded by offering his help for a new assessment.

Irl Cramer, No Address Provided, encouraged the City to consider suggestions made by interested parties in order to improve the assessment methodology when Districts 7 through 14 are considered. **Mr. Cramer** asked that the result of the democratic votes to be counted this evening be honored.

Stating that he has one of the highest assessments of \$57,900, **John Lapham, 800 Block of 6th Street, District 2 Captain**, explained that he canvassed approximately 161 homes out of the 194

in District 2 and that approximately 100 homes out of those canvassed support the utility undergrounding. He voiced his hope that the community will come together after the vote, no matter what it is.

Noting that he considers his home as a place to live, and not an investment, **Bill Griffin, 1200 Block of 8th Street**, expressed his concern over the high cost of the utility undergrounding.

Residing outside of the subject assessment Districts, **Jacque May, No Address Provided**, related her understanding that the vote to approve must be a majority of 51%. She said that a reverse mortgage would not be an option for many due to the high cost and the fact that the property owner must live in the residence. **Ms. May** voiced her concern that property owners would have to pay for repairs to the utility lines and that, as a result of a survey in 1999, only one District showed 50% acceptance and the Council changed the approval requirement from two-thirds to 60% and the vote required for an approval is only 50%.

At 8:07 p.m. public testimony concluded.

Senior Civil Engineer Katsouleas addressed key points made by interested parties. She explained that, at the property owners' request, some properties on Boundary Place are not part of District 4; that the utility companies make every effort to provide the most direct path for the utility lines; that the assessments for residents in Districts 2, 4 and 6 would not be making up the financial losses from Districts 1, 3 and 5; that the assessment Districts are initiated by residents, and not the City; that she does not know if District leaders went to every property in their Districts, but would like to think they did; that residents forming new Districts have made it clear they intend to contact residents in person or by mail; and that the assessment methodology is an accumulation of community input.

Mayor Fahey related her understanding that the assessment methodology was recommended by the assessment engineer.

Public Works Director Miller recalled that the assessment engineer consistently advised that community input would be considered, but any assessment methodology recommended to the City Council would have to be according to engineering standards and legally defensible.

Mayor Fahey voiced her understanding that the previous assessment methodology was rejected because it was more difficult to make fair assessments in that each property would have to be examined on an individual basis.

Continuing her response to points made by interested parties, Senior Civil Engineer Katsouleas provided clarification concerning the District 6 assessment methodology for full and half lots. She explained that all condominiums in Districts 1, 3, 5 and 6 were given an assessment factor of 0.5. Senior Civil Engineer Katsouleas shared information about the ballot mailing process and the addresses coinciding with those on the property tax rolls. She commented on the difficulty of notifying owners of record for newly-purchased properties, noting that notices were placed in the Beach Reporter. Senior Civil Engineer Katsouleas advised that, according to Proposition 218, assessments must be based on a tangible benefit to the property, and not on assessed property values; that the City has made it clear in all assessment District materials that property owners will be responsible for the cost of providing their utility connections; and that, according to the County Assessor's office, improvements on private property and the public right-of-way will not be considered construction or remodeling and, therefore, tax bases would not be increased.

Mayor Fahey pointed out that information provided by the City states, "...proposed total underground utility assessment," which does not include the hook-up fee. She commented on

the possible confusion that could have been created by the hook-up fee having been excluded from this amount.

Senior Civil Engineer Katsouleas verified that the information referred to by Mayor Fahey includes the public right-of-way improvements only, and not the hook-up fees, and that the ballot materials, which are separate from the information referred to by the Mayor, draw attention in bold script to the separate hook-up fee. She verified that Edison provided an overhead credit in the amount of approximately \$500,000 for the civil work for each of the three units (with Verizon next and Adelphia last); and that ocean views cannot be used in allocating the assessments because Manhattan Beach does not have an ordinance protecting ocean views for each parcel and the assessment methodology clearly states the undergrounding would be a neighborhood aesthetic enhancement. Senior Civil Engineer Katsouleas advised that staff believes that the assessment methodology used is fair, equitable and legally defensible and that there are shortcomings to all methodologies that could be used. She clarified that, in addition to the digging of the trenches, the undergrounding costs would include the transformers, the wires, the switching equipment, the reimbursement to the City for the design plans, the cost of the bonds and other incidental costs.

In answer to a question from Mayor Fahey, Senior Civil Engineer Katsouleas offered input on the utility undergrounding cost estimates provided by the utility companies. She advised that the utility companies categorically state their cost information is proprietary, so a total was provided to the City and the costs were not itemized; that Edison's costs were fixed, meaning the cost to residents would be the same irrespective of the bids. However, Verizon and Adelphia have an arrangement whereby a District might not go forward if the bids were to be more than projected, and a refund would be provided to residents if the costs were to be less.

Mayor Pro Tem Ward related his impression that the utility companies previously agreed to provide the City with some type of labor cost information that would be somewhat more "relaxed" than the proprietary information.

Senior Civil Engineer Katsouleas explained that the utility companies previously agreed to provide information on percentage increases in construction costs to help the City obtain some type of an idea about what Districts 1, 3 and 5 should have cost, and then use the increased projections to get a "better feel" for today's costs. But, the difficulty in doing this is that the percentages of the total cost for labor, parts, etc. are unknown. She stated her opinion that Edison's costs were appropriate and Verizon's costs were still high; but, Verizon's actual costs would be based on the real market quote.

Councilmember Aldinger said that, if they have the ability not to proceed if the bids are greater than their estimates, Verizon would have veto power over a favorable vote.

Senior Civil Engineer Katsouleas verified that the Council cannot change the assessment amounts and that, should the bids come in greater than Verizon's estimates and the assessment amounts, the matter would be returned to the Council for a determination to either rescind the related resolution, direct the City to make up the cost difference or begin the entire process over again.

Mayor Fahey asked for input regarding repair costs once the utilities are undergrounded.

Relating her inability to address the issue of repairs, Senior Civil Engineer Katsouleas noted the utility companies' consistent contention that underground utilities are more reliable. But, she could not say if that would be the case on private property.

City Attorney Wadden clarified for Mayor Fahey that a majority in this case would 50% plus one.

Mayor Pro Tem Ward asked for what portion of repairs a property owner would be responsible.

Senior Civil Engineer Katsouleas explained that the utility companies would be responsible for repairs on public property.

Mr. Scott Gobble, Southern California Edison, came forward to address the issue of utility repairs on private property. He affirmed that Edison is responsible for the wire in undergrounded utilities; property owners are responsible for the conduit, which would cost a minimum of \$1,000 to repair; and that the conduit must be repaired less than one percent of the time. He confirmed that the assessment costs are the real costs that would be borne by Edison for Districts 2, 4 and 6, and do not include losses incurred with Districts 1, 3 and 5. **Mr. Gobble** provided information about Edison’s bidding process.

Mayor Pro Tem Ward asked if future undergrounding costs will level off.

Mr. Gobble commented on the difficulty of foreseeing future undergrounding costs. He acknowledged that the cost estimates for Districts 2, 4 and 6 greatly increased over those for Districts 1, 3 and 5; noted that any reduced costs he has seen over the past 20 years have not been major; and voiced his hope that the costs will level off over time.

Senior Civil Engineer Katsouleas asked that individuals interested in changing their vote come forward at this time.

Mayor Fahey asked for a rough estimate on how long the ballot count will take.

City Clerk Tamura advised that the ballot count will take approximately one and one-half hours.

RECESS AND RECONVENE

At 8:43 p.m. Mayor Fahey announced that the Council would recess for approximately an hour and a half while the ballots are tabulated.

The Council reconvened at 10:37 p.m. with all Councilmembers present.

Mayor Fahey announced the results of the tabulation of the Underground Utility Assessment District ballots:

AD 05-2 BALLOT SUMMARY			
DESCRIPTION	YES	NO	TOTAL
Total Number of Parcels			194
Total Number of Assessable Parcels			194
Total Assessment Amount			\$8,088,388.88
Total Number of Ballots Submitted	100	73	173
Percentage of Total Ballots Submitted in District			89%
Percentage of Weighted Assessments	59%	41%	100%
Amount of Weighted Assessments	\$4,280,188.67	\$2,988,931.13	\$7,269,119.80

AD 05-4 BALLOT SUMMARY			
DESCRIPTION	YES	NO	TOTAL
Total Number of Parcels			168
Total Number of Assessable Parcels			167
Total Assessment Amount			\$7,413,015.57
Total Number of Ballots Submitted	69	76	145
Percentage of Total Ballots Submitted in District			86%
Percentage of Weighted Assessments	50.1%	49.9%	100%
Amount of Weighted Assessments	\$ 3,260,604.48	\$ 3,246,582.32	\$6,507,186.80

AD 05-6 BALLOT SUMMARY			
DESCRIPTION	YES	NO	TOTAL
Total Number of Parcels			305
Total Number of Assessable Parcels			304
Total Assessment Amount			\$6,652,239.46
Total Number of Ballots Submitted	145	84	229
Percentage of Total Ballots Submitted in District			75%
Percentage of Weighted Assessments	63%	37%	100%
Amount of Weighted Assessments	\$3,225,112.04	\$1,866,605.98	\$5,091,718.02

Mayor Fahey closed the Public Hearing at 10:46 p.m.

Councilmember Aldinger said that this is the toughest decision he has had to make as a Councilmember. He commented that, unfortunately, the assessment costs are very high; that there will always be issues with the equity of these assessments and it is his feeling that the best scenario would be to use views in determining the assessments, but the City does not have a view protection ordinance; and that Proposition 218 does not allow for the use of property values as a determining factor. Councilmember Aldinger said that, while it is his personal opinion that undergrounded utilities are more aesthetically pleasing, he is not vested one way or the other, that the last thing he wants to do is drive Seniors and others out of town due to high assessment costs. Councilmember Aldinger explained that he is still uncertain about how to vote on the utility undergrounding assessments, particularly due to the previous close vote on Proposition 218.

Addressing comments made by interested parties concerning his possible conflict of interest due to the fact that he resides in one of the subject assessment Districts, Councilmember Tell stated his opinion that it is appropriate for him to speak on whether residents should vote, which they already have, and on what the Council should do now that residents have voted. He discussed the reasoning behind his recommendation of reverse mortgages, merely as an idea to be considered in solving financial problems related to the assessments, and advised that interested parties can access www.reverse.org to obtain information about reverse mortgages, or call the Department of Housing and Urban Development at 1(800)569-4287. Councilmember Tell entertained the idea of a City deferral program to help residents negatively impacted by the

assessments by expanding the State Deferral Program to include people with higher levels of income. He recommended that staff examine the possibility of offering a City Deferral Program, identify any legal or financial concerns, prepare details of such a program and place this item on the agenda in March 2006.

Senior Civil Engineer Katsouleas advised that assessment costs for any Districts formed this evening must be paid by January 31, 2006 and that anything not paid by that deadline would automatically be rolled over in the form of a bond.

City Manager Dolan clarified that the deadline for paying assessments for Districts formed this evening would be December 31, 2005.

City Attorney Wadden verified that Council direction regarding a City deferral program can be provided without a motion if the intent is only to have staff investigate the idea.

Councilmember Aldinger said that he has many concerns pertaining to a City Deferral Program.

Mayor Fahey suggested that the topic of a City Deferral Program be placed for discussion on the next meeting agenda.

City Manager Dolan pointed out that the first annual assessment payments would be due at the end of next year, and it is the Council's intent to find a way to help.

Councilmember Tell suggested that information be distributed to residents about the payment options they wish to use and suggested including the idea of a City Deferral Program in order to better understand the number of people who would support the idea.

Senior Civil Engineer Katsouleas clarified that, under Proposition 218, if a District passes, the 30-day notification period to property owners must begin almost immediately in order to give them a 30-day collection period and conclude it by December 31, 2005 to obtain open market bids in a timely manner and that the idea was to send out the assessment payment notifications and that a survey about a City Deferral Program could be included therewith.

Councilmember Tell expressed his intent to abstain from voting on District 4 because he resides in that area. He emphasized the importance of addressing ways to mitigate negative financial impacts associated with the assessments.

Mayor Fahey asked how a split vote amongst the Council would be handled in that Councilmember Tell intends to abstain from voting on District 4.

City Attorney Wadden advised that a split vote on District 4 would be equivalent to a "no" vote. He confirmed for Councilmember Montgomery that a number of assessment cases have been appealed; but, he is unaware of any post-Proposition 218 cases that have successfully challenged the methodology of assessments.

Councilmember Montgomery voiced his concern over the close vote in District 4.

Mayor Pro Tem Ward thanked speakers for their general politeness in addressing the Council on this difficult matter this evening. He voiced his opinion that escalating construction costs is the issue here; stated his concerns that approximately 25% of property owners in District 6 either did not receive or return their ballots; and noted that the majority of voters in District 4 apparently did not want the assessments, but the weighted assessments were in favor. Mayor Pro Tem Ward said he could support assessments in Districts 2 and 6, but would have a very difficult time moving forward with District 4 at this time. He explained his personal agreement with

undergrounding; but, given the costs, said that he would have difficulty imposing the assessments on property owners in District 4.

Mayor Fahey related her understanding that, according to Proposition 218, a weighted vote is required, but the Council is free to consider anything (such as raw votes, public testimony etc.) in making a determination.

City Attorney Wadden verified that the Council's decision is separate from property owners' viewpoints and that it is within the Council's purview to consider other factors when making a determination on the utility undergrounding assessments.

Mayor Fahey explained that the Council's decision goes beyond what is legally permissible and includes such factors as moral beliefs, the right thing to do for the community as a whole, ethics, etc. She pointed out that the democratic process has taken place and the community as a whole has participated and called attention to the tremendous number of property owners who voted -- 75% in District 6, 86% in District 4 and 89% in District 2. Mayor Fahey said that, because there was overwhelming support from property owners in District 6 and a clear majority in District 2, she could support the undergrounding in those Districts. But, property owners in District 4 apparently do not want the undergrounding and, therefore, she could not support it in District 4 (76 opposed, 69 in favor). Mayor Fahey noted that she would be devastated by the thought of driving any property owner out of his/her home, noting that the value of any neighborhood is the residents. She indicated that, while she would be reluctant to support undergrounding in District 2, it would be wrong to vote against it in the Districts where the will of the people was in favor (Districts 2 and 6).

Councilmember Aldinger emphasized that the guidelines of Proposition 218 should be taken very seriously. He said that he would have a problem with consistency in passing Districts 2 and 6 based on Proposition 218.

Mayor Fahey advised that the law requires compliance with Proposition 218, which the City has done. However, she feels it is acceptable from a policy standpoint to look at the raw votes in all three Districts.

Noting that approximately 14% of the property owners in District 4 did not vote, Councilmember Tell asked if it would be possible to keep the voting for that District open for a period of time and delay a Council decision related thereto this evening.

City Attorney Wadden advised that the process is to conclude this evening; that, in order to allow additional voting in District 4, it would be necessary to begin the process all over again; and that it might be possible to use the Engineer's Report again if the methodology and assessments were to remain the same.

Senior Civil Engineer Katsouleas explained that the 120-day quote from Edison ends on January 26, 2006; that, should the Council delay a decision on District 4 and the new prices were not identical to the current ones, a new Assessment Engineer's Report would be required; that it would take a few days to obtain a new price quote, and at least two weeks to get a new Engineer's Report.

MOTION: Councilmember Aldinger moved to adopt Resolution Nos. 6006 and 6008 as written. The motion was seconded by Councilmember Montgomery and passed by the following unanimous roll call vote:

Ayes: Tell, Aldinger, Montgomery, Ward And Mayor Fahey.
Noes: None.

Absent: None.
Abstain: None.

RESOLUTION NO. 6006

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, OVERRULING PROTESTS, ORDERING THE MODIFICATION OF THE ENGINEER'S REPORT, APPROVING THE ENGINEER'S REPORT SO MODIFIED, CONFIRMING THE ASSESSMENTS, APPROVING AND ORDERING THE WORK AND PROPOSED IMPROVEMENTS FOR THE UTILITY UNDERGROUND PROJECT AND AUTHORIZING AND DIRECTING RELATED ACTIONS IN CONNECTION WITH UNDERGROUND UTILITY ASSESSMENT DISTRICT NO. 05-2

RESOLUTION NO. 6008

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, OVERRULING PROTESTS, ORDERING THE MODIFICATION OF THE ENGINEER'S REPORT, APPROVING THE ENGINEER'S REPORT SO MODIFIED, CONFIRMING THE ASSESSMENTS, APPROVING AND ORDERING THE WORK AND PROPOSED IMPROVEMENTS FOR THE UTILITY UNDERGROUND PROJECT AND AUTHORIZING AND DIRECTING RELATED ACTIONS IN CONNECTION WITH UNDERGROUND UTILITY ASSESSMENT DISTRICT NO. 05-6

Councilmember Aldinger questioned what the new requirements will be and how they will differ, other than being more expensive, if Council is not going to pass District 4.

Councilmember Tell emphasized that they do not need to reform the District; they just need another vote to see if they could get 100% to vote.

Senior Civil Engineer Katsouleas stated that the Council would need to decide whether they wanted to continue to recognize the District boundaries or place a requirement of a new 60% signature criterion to reestablish the voting process.

Stating that the issue is the Engineers Report, Councilmember Tell reiterated that a new Report would cost \$30,000 - \$40,000; however, if the new quote from Edison and Verizon is exactly the same, there will be no additional cost. He added that the next meeting would entail allowing District 4 to go forward and revote.

Senior Civil Engineer Katsouleas stated that any new costs would probably not be identical to the current ones since prices have significantly changed since Hurricane Katrina.

Councilmember Montgomery voiced his concern that any changes in the process in mid stream would, in effect, nullify the efforts of those who participated in the process and voted. It was his feeling that new costs would be greater than current costs and he supported going forward with District 4 at this time.

Councilmember Aldinger noted that it is very difficult for him to ignore the vote in District 4 and he questioned what would be accomplished by continuing it.

MOTION: Councilmember Montgomery moved to approve moving forward with District 4 and adopt Resolution No. 6007. The motion was seconded by Councilmember Aldinger and failed by the following roll call vote:

Ayes: Aldinger and Montgomery.
Noes: Ward and Mayor Fahey.
Absent: None.
Abstain: Tell.

MOTION FAILED.

Council discussion continued with Councilmember Aldinger commenting on the importance of consistency relative to moving forward with the current and future utility undergrounding.

Mayor Fahey explained that there is nothing inconsistent in looking at the raw data in each District and forming conclusions from it.

It was Councilmember Tell's suggestion that District 4 be continued, not to form new boundaries, but to have an opportunity to obtain additional votes.

Mayor Fahey felt that inconsistencies would be created by overturning the vote of the people in a District.

City Attorney Wadden advised that it is not necessary for Councilmember Tell to abstain from discussion of District 4 in that he does not have an actual conflict related thereto.

Mayor Fahey commented that, should new costs be significantly different, she might not support a new vote.

Senior Civil Engineer Katsouleas indicated that, should the Council support a re-vote in District 4, the voting process would not be initiated until after the first of the year, which would result in a month to six week delay; that the voting process is a minimum 45-day process; that the bond costs are fixed irrespective of the number of Districts; that the next set of Districts would be considered approximately one and one-half to two years from now; and that the bond costs were approximately \$50,000 per District.

City Manager Dolan advised that a continued vote for District 4 could result in an additional amount of approximately \$90,000 plus increased engineering costs and the cost of the election.

Senior Civil Engineer Katsouleas explained that the bond costs are folded into the District costs and distributed over the assessments.

Councilmember Aldinger favored the idea of continuing District 4 to obtain information on costs associated with a new vote. He asked how much time and effort would be involved in doing so.

City Manager Dolan advised that, in order to adequately research, information about a new vote in District 4 could be provided in March 2006.

Councilmember Montgomery indicated that he is leery of using the private property money, but he could support staff researching the idea of a new vote.

The Council directed staff to research issues associated with a new vote in District 4.

City Manager Dolan advised that a separate survey regarding District 4 will be distributed.

RECESS AND RECONVENE

At 11:34 p.m. the Council recessed and reconvened at 11:45 p.m. with all Councilmembers present.

05/1115.21-2 Consideration of the Police & Fire Facility Project Status Report and Disbursement of Progress Payment #20 in the Net Amount of \$865,496.13 to Swinerton Builders

City Manager Dolan advised that this item was continued from a previous meeting in order to obtain a Recovery Schedule.

Deputy City Manager Lombos provided the staff report. She explained that there has been extensive testing/remediation for rain damage/mold and that fire proofing in the apparatus bay has been completed. She advised that the progress payment is for \$865,496, which is approximately one-half of the last eight progress payments, mainly due to the rain damage repair work, and that payments to the contractor are based solely on progress made. Deputy City Manager Lombos discussed several large issues related to the new Police & Fire Facility, including: the implementation of an escalation process for unresolved issues; the difficulties associated with the three water features and the remedies related thereto (at an additional cost of \$87,000, which was approved by the Council construction subcommittee); the problems pertaining to the roof; and the lack of required return air ducts in the plans. She related that, excluding the progress payment to be approved this evening, Swinerton has been paid for just over 70% of the construction contract and, including tonight's payment, 78%; and that, as of the end of October, approximately 42% of the contingency has been expended, which includes \$1,300,000 in change orders, and staff believes the contingency account will be sufficient to get the City through the end of the project. Referring to the Recovery Schedule prepared by Swinerton and distributed to the Council this evening, Deputy City Manager Lombos shared information about the critical milestones identified by Swinerton. She noted Swinerton's estimation that substantial completion can be reached by March 3, 2006, with final completion by the middle of June 2006.

Councilmember Aldinger asked if Swinerton could work six days per week.

Deputy City Manager Lombos verified that Swinerton has worked six days per week to accomplish various tasks. She assured the Council that staff believes the construction schedule is realistic and will push as hard as possible to accomplish the deadlines.

Mayor Fahey asked how items such as the air flow returns could have been excluded from the plans.

City Manager Dolan advised that there might be culpability for items such as the air flow returns and that items such as these will be examined at the end of the project.

Councilmember Tell emphasized the importance of Vanir looking at the schedule every week. He said that Swinerton appears to be using the City's change order process (which is a good one) as an excuse for further delays.

In response to a question from Councilmember Aldinger, Deputy City Manager Lombos reviewed the status of the "hot list."

Councilmember Aldinger called attention to the importance of assigning due dates and responsible parties to items that need to be accomplished.

City Manager Dolan acknowledged the need to assign dates and responsible parties to items that need to be accomplished. He advised that, in reality, communications between the City and the contractor are so frequent that the parties involved know the due dates etc., and that the list will be revised to show them by the next meeting.

Councilmember Aldinger related his discomfort with changing the water features' designs. He asked for input on the cost to construct them as they were originally designed.

As a member of the construction subcommittee, Mayor Pro Tem Ward explained that the cost of the original water features would be tremendous.

Councilmember Aldinger stated his concern that some of the major design aspects, such as the revised water features, were not presented to the Council.

City Manager Dolan affirmed that the revised water features' designs, which are fantastic, will be presented at the next City Council meeting. He shared information about problems with the design of the original water features.

Deputy City Manager Lombos advised that, as of this time, there is no due date for the roofing, but it will take three to five working days to install.

Regarding the milestones on Sheet 3, Councilmember Aldinger asked if line items underneath each one can be provided to the Council.

City Manager Dolan advised that Swinerton has provided a best case scenario and a worst case scenario for the schedule. The best case scenario is that they will achieve substantial completion on March 3, 2006, with the middle of May for final completion. The worst case scenario is that substantial completion won't be achieved until the middle of April and the middle of June 2006 for final completion.

Mayor Fahey invited comments from the public.

The following individuals spoke on this item:

- **Bill Victor, Property Owner**
- **Jacque May, No Address Provided**
- **Patrick McBride, No Address Provided**
- **Viet Ngo, No Address Provided**

City Manager Dolan addressed the cost of plastic laminate vs. granite and the additional cost to construct the jail cells. He explained that some costs were removed from value engineering and put back in via change orders based on quotes; that change orders can be obtained from City Manager Lombos; and that staff approves change orders up to \$25,000, the construction subcommittee approves change orders \$25,000 to \$100,000 and the Council approves those \$100,000 and above.

MOTION: Mayor Pro Tem Ward moved to accept the presentation regarding the progress of the Police & Fire Facility project and approve Progress Payment #20 in the net amount of \$865,496.13 to Swinerton Builders. The motion was seconded by Councilmember Montgomery and passed by the following unanimous roll call vote.

Ayes: Tell, Aldinger, Montgomery, Ward And Mayor Fahey.
Noes: None.
Absent: None.

Abstain: None.

Mayor Fahey commented that the approval of Progress Payment #20 is appropriate in that it is a delayed payment for work already done and that the approval does not send a message that the Council agrees with delays in the project.

ADJOURNMENT

At 12:40 a.m. the meeting was duly adjourned to the 5:30 p.m. Adjourned Regular Meeting, to be followed by the 6:30 p.m. Regular City Council Meeting, on Tuesday, December 6, 2005, in said City.

WENDY WEEKS
Recording Secretary

JOYCE FAHEY
Mayor

ATTEST:

LIZA TAMURA
City Clerk