

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO

Michael J. Aguirre
CITY ATTORNEY

1200 THIRD AVENUE, SUITE 1620
SAN DIEGO, CALIFORNIA 92101-4178
TELEPHONE (619) 236-6220
FAX (619) 236-7215

MEMORANDUM OF LAW

DATE: June 20, 2008

TO: Nathan Bruner, Associate Engineer, Utility Undergrounding Program Manager

FROM: City Attorney

SUBJECT: Legality of Contributing Undergrounding Surcharge Funds to a Maintenance Assessment District for the Purposes of Offsetting the Cost of Installing Non Standard Street Lighting

INTRODUCTION

As part of the 2004 annual allocation for undergrounding projects, Residential Project Block 2E in Mission Hills was selected and designated an Underground Utility District in accordance with the Underground Utility Procedural Ordinance. San Diego Municipal Code §61.0501. In 2006 the design work was completed, and included approximately 92 standard city streetlights to replace the existing street lighting that is currently residing on above ground utility poles.

Prior to construction, representatives of the community approached Council District 2 and staff for the Undergrounding Program about efforts to have the area designated a Historical District. These representatives expressed their preference for non-standard decorative lighting that would be more fitting to a Historical District than standard concrete streetlights.

A petition from the community was presented to the Council Office expressing intent to create a Maintenance Assessment District [MAD] to allow for the raising of money to install the decorative street lighting. At the request of Council District 2, the undergrounding project was placed on hold to allow the community, with the assistance of the Park and Recreation Department, time to create the MAD.

In determining the assessment needed by the MAD for the installation of decorative lighting, the community inquired as to the possibility of receiving Undergrounding Surcharge Funds as a credit to the MAD for costs the Undergrounding Program would have incurred if it were to install standard concrete street lights as originally designed.

QUESTIONS PRESENTED

Can Undergrounding Surcharge Funds be contributed to a MAD for the purposes of installing non standard decorative street lighting whereby the contributed funds would have been spent to install standard street lighting, and the MAD remains responsible for providing the difference in cost between standard and non standard lighting?

SHORT ANSWERS

The Landscaping and Lighting Act of 1972 as embodied in the Streets & Highway Code provides for the contribution of public funds to a MAD for the payment of improvement costs with Council approval. Furthermore, Council Policy 600-08 allows for the use of Undergrounding Surcharge Funds to provide and install all necessary street lighting. This necessary lighting is limited to the replacement of lighting lost due to the removal of utility poles as a result of the undergrounding, and to provide lighting sufficient to meet current design standards.

ANALYSIS

I. Public Contributions to a Maintenance Assessment District

The Landscaping and Lighting Act of 1972, as adopted within the Streets & Highways Code, provides guidance on the use of Assessment Districts for improvements including the installation or construction of public lighting facilities. Sts. & High. Code, §22525. The Act provides for contributions of public funds to assessment districts whereby, “The legislative body, at any time either before or after the confirmation of the assessment, may provide for contributions toward payment of improvement costs from the funds of the local agency.” Sts. & Hy. Code, §22658. The language “legislative body” would in this case refer to the City Council, and any contribution would thus require Council approval.

II. Use of Undergrounding Surcharge Fund

In an effort to benefit public health, safety, and the general welfare, the City has established a policy of placing existing public utility lines underground, and removing the existing above ground poles, wires, and associated structures. See SDMC §61.0501 *et seq*; see also San Diego City Council Policy 600-08. The Undergrounding Surcharge Fund exists to support this policy. In furtherance of these goals, Council Policy 600-08 specifies how undergrounding funds may be spent. These proper expenditures include “providing and installing all necessary street lighting associated with any underground conversion project.” Council Policy 600-08(C)(2)(b).

While decorative non-standard street lighting may not be “necessary”, standard concrete street lighting to replace lighting lost to the removal of utility poles or to bring the lighting into compliance with current design standards is an appropriate expense under Council Policy 600-08. The provision of funds sufficient to install “necessary,” lighting is appropriate even if the lighting installed is non-standard and provides a special benefit, so long as the incremental cost of the non-standard lighting is born by the MAD.

CONCLUSION

The Landscaping & Lighting Act of 1972 allows for the Council to provide contributions to a MAD to pay for improvement costs. Additionally Council Policy 600-08 provides for costs to install necessary street lighting to be paid using Undergrounding Surcharge Funds. Therefore Undergrounding Surcharge Funds may be contributed to a MAD with Council approval, as long as the funds allocated do not exceed what would have been spent to install “necessary” standard concrete street lights.

MICHAEL J. AGUIRRE, City Attorney

By

Ryan Kohut
Deputy City Attorney

RK:cfq
ML-2008-3