

TOWN OF TIBURON

POLICY & PROCEDURES FOR THE FORMATION OF UTILITY UNDERGROUNDING ASSESSMENT DISTRICTS

Town Policy

The Town of Tiburon strongly supports the undergrounding of overhead utility wires and poles (see Town Council Resolution No. 2996, adopted February 2, 1994). Undergrounding of overhead utilities improves public safety under fire, earthquake and high wind conditions; reduces utility company maintenance costs for tree trimming to maintain overhead lines and equipment; and results in improved visual characteristics.

General Overview

These policies describe the basic considerations and actions required to relocate and to finance such relocation of overhead utility lines underground. The policies are provided to guide property owners in achieving undergrounding of utilities in their neighborhoods and to help the Town Council, Town Staff and Town consultants in assisting in such efforts. Specific figures regarding estimated costs for undertaking this effort and ultimately implementing a specific project are not presented herein since they vary depending on the size, location of the proposed district and economic factors. A separate Frequently Asked Questions brochure (available at Town Hall or at www.ci.tiburon.ca.us) may provide a range of answers to those types of specific non-policy questions.

The procedures, events and steps described below are governed by California State law and guidelines of California Public Utilities Commission (regulating the Pacific Gas & Electric Company (PG&E) and other utilities) about the physical and financial requirements for utility undergrounding projects. The Town must comply with these laws and regulations while taking appropriate actions to coordinate the project from its inception to its completion.

To provide for financing and to enforce connections to the underground system, the undergrounding districts will be special assessment districts established by the Town under State law. Unless contributions are available from other sources, property owners should know that 100% of the cost of the underground project will be borne by the property owners in the district. If available, funds from PG&E and other utilities will be applied to help reduce the costs, but there is no assurance of such availability.

The proponents of a proposed district must submit a written petition to the Town showing the support by owners of at least 60% of all of the parcels in the prospective district. The Town will supply examples of petitions and instructions on its signing. Along with the petition, the required subscription deposit for district formation costs (see discussion below) and an informal boundary map showing the parcels proposed to be included must be provided. Upon receipt of a satisfactory petition, deposit and informal map, the Town will begin the process of district formation.

The Town will retain the District Engineer for the assessment district, along with Bond Counsel and the Bond Underwriter. The District Engineer (with the assistance of Town staff and Bond Underwriter) will prepare an estimate of all of the costs of the project. Those costs will include construction cost estimates (based on information from the utilities) and an allowance for the Town's administrative costs calculated to reimburse the Town for the work of Town staff on the project and bond issuance costs and deduct any possible contributions. An Advisory Services fund is also established to allow project proponents and opponents to obtain legal advice and information from the Bond Counsel regarding the assessment process and their rights and responsibilities.

That net cost will be apportioned or "assessed" to each of the parcels in the district based on how each parcel is specially benefited from the undergrounding work. Under Proposition 218, the District Engineer is responsible for defining the special benefit each parcel receives and may take into account a variety of factors in defining that benefit. The method of allocating special benefit may vary from district to district depending on the conditions of and the improvements needed for each such district.

Under State law, the Town Council must hold a public hearing and conduct an assessment ballot to seek approval of the assessment part of the district. This approval requires an affirmative majority approval (based on dollars assessed) by property owners returning ballots. If approved, the Town may proceed with the assessment and the district. The assessment may then be paid in cash or allowed to "go to bond" or be financed at tax-exempt municipal bond rates for 20-25 years. Bonded assessments are collected on the County tax bill. The assessment is not a personal obligation of the property owner and it passes with the title to the property assessed, like regular taxes. The Bond Counsel and Underwriter prepare documents needed for the bonds.

The costs of individual service connections to the underground facilities are borne by each property owner and are typically not included in the assessment. In some cases, a small amount of bond funds may be available on a pre-financing basis, at the request of property owners (first come-first served) to help finance connections. The actual amount will depend on the size of the project and the estimated amount of bond financing available and will vary with each project.

The entire process may take at least 12 to 24 months (assuming no legal actions/challenges). The duration of the process may also be affected by utility company financial conditions and staffing priorities.

Procedural Events & Steps for District Formation

This section outlines the process of forming a special assessment district for utility undergrounding in Tiburon.

1. Preliminary Meetings

Interested Property Owners meet with Town Staff to discuss the process and procedures, and to have questions answered and concerns addressed. This meeting would typically include representatives of the Department of Public Works and the Town Manager. The project proponents would also be encouraged to hold a neighborhood meeting to discuss the proposed project, solicit input, answer questions, etc. and schedule an informal presentation before the Town Council to solicit informal support for the proposed project. These are some of the most important steps in successfully creating a district. This document, along with the FAQ brochure, should be distributed to all property owners whose participation is to be solicited. Proponents should also arrange a site walk with the prospective District Engineer to develop ballpark estimates of preliminary costs associated with creating the District. This will help refine the estimate of the total amount of subscription deposit funds that will be submitted to the Town along with petitions of interest as described below.

2. Petition of Interest

Proponents of the proposed district circulate Petitions of Interest among all Property Owners of the prospective district.

3. Informal Boundary Map

As part of the Petition process, the Property Owner proponents prepare an informal boundary map showing the area proposed to be the district based upon the results of the circulated petition. The Town and District Engineer will review this map and may suggest changes, as required to satisfy utility companies' requirements and requests of other, adjacent Property Owners. Property Owner Proponents may wish to distribute the informal boundary map. Property Owner Proponents may also request a 'boundary walk' with the affected utility companies to better refine the project boundary. It should be noted that the utility companies (particularly PG&E) may require a deposit before they will attend a boundary walk.

4. Subscription Deposits

When obtaining Petitions, Property Owner Proponents should also raise subscription deposit funds for preliminary design engineering and construction cost estimates and legal advisory services. Funding must be sufficient to secure engineering cost estimates from electric, telephone, and the cable franchise provider and to pay the advance costs required to retain the District Engineer.

The District Engineer will prepare complete technical plans and drawings for review by the utilities, and establish final cost estimates for the construction bidding process. Plans must contain detailed information on trench size and location, and the location of equipment within the trenches. Such drawings are usually ordered and directed by the District Engineer. Such costs may range from \$900 to \$1,700 per Property Owner Proponent and will depend on the size of the district, complexity of the project, the costs for the preliminary services required to establish the district. Recently, PG&E and SBC (formerly Pacific Bell) have required full deposits “up front” before they will proceed with engineering support for a proposed district. The utility companies develop engineering drawings and technical specifications for design of their particular underground facilities, which are then incorporated into composite drawings by the District Engineer. It is the composite drawings which are ultimately used for construction bidding purposes. If the district is formed and issues bonds, it will refund these deposits to the Property Owner Proponents on a pro rata basis.

As further described in the following section, the Property Owner Proponents are also required to raise funds for Legal Advisory services. In accordance with a recently adopted Settlement Agreement, this amount is to be \$100 per Property Owner Proponent, up to a maximum of \$10,000 for the entire district.

Accordingly, the total subscription deposit necessary to form an assessment district may range between \$1,000 and \$1,800 per Property Owner Proponent. If for any reason, the district is not formed, and/or fails to issue the bonds, the Property Owner Proponents will receive proportionate refunds only if their contributions have not already been spent.

5. Filing the Petition of Interest, Subscription Deposit and Boundary Map

The Petitions may be submitted to the Town when Property Owners representing at least 60% of the total number of parcels to be in the proposed district have signed and the Subscription Deposits (see above) and the informal boundary map are ready. Staff will check the Petition to be sure that there are the necessary signatures from the required percentage of properties and that the Subscription Deposit and boundary map are in order.

6. First Council Meeting-Resolution of Intention

At the first Council meeting, the Council adopts the Resolution of Intention to Make Acquisitions and Improvements which formally begins the assessment process.

7. Consultants

With the Resolution of Intention, the Town will appoint: Bond Counsel, the District Engineer, and the Underwriter. The District Engineer prepares the estimates of costs, the proposed assessment of the costs to each parcel in the district, the formal maps of the district and the plans and specifications for the construction work. The plans may be preliminary at this stage. In accordance with State law, the assessment of costs to each parcel in the district will be developed by an analysis of the special benefit that each property owner receives from the

improvements funded by the assessment. All of the above information is summarized in the “Engineer’s Report” for the district.

The Underwriter is responsible for helping to estimate the costs of the bonds and in pricing, selling and delivering the bonds to the bond market. The Underwriter is paid only from the bond issue and only if bonds are issued.

Bond Counsel directs all legal proceedings to establish the district including Council resolutions, notices, forms of documents and instructions, including the levy of the assessments and issuance of bonds. Except for the Advisory Services to Property Owners below, Bond Counsel is paid only if the bonds are actually issued.

Bond Counsel also provides advice and information (“Advisory Services”) to all interested Property Owners within the proposed district (whether they support or oppose the project) about the assessment process and their rights and responsibilities.

- All Property Owners shall be provided with notice of their right to meet with Bond Counsel, and this notice shall include written materials that describe the assessment process and their rights and opportunities to be heard during the process.
- Bond Counsel shall hold at least 2 meetings for the purpose of advising the Property Owners: The 1st meeting as soon as practicable following Town appointment of Bond Counsel and the 2nd second meeting shall be held before Town Council votes to preliminarily adopt the Engineer’s Report for the district.
- To the extent that Advisory Funds are available, Bond Counsel shall be available to provide brief follow-up telephone consultation to affected Property Owners.
- In the event the Advisory Fund is insufficient to provide all of the Advisory Services described in this section, Bond Counsel shall provide Advisory Services in the following order of priority: (1) written materials describing the process; (2) meeting with Property Owners prior to adoption of the draft Engineer’s Report; (3) meeting following retention of Bond Counsel; and (4) telephone consultation.
- The Town Attorney has sole discretion to supervise Bond Counsel’s provision of Advisory Services to ensure, so far as practicable, that such services are fairly allocated between all affected Property Owners.

8. Second Council Meeting-Preliminary Approval

The District Engineer prepares and files the following items with the Town Clerk:

- The Engineer's Report containing estimates of total assessment district costs, including costs for District Engineer, utility company engineering, Bond Counsel, Underwriter Advisory Fund, construction contract and Town administration. Construction cost estimates will include a breakdown of each property owner's individual service connection cost.
- Map of Proposed Boundaries and Assessment Diagram for the district
- Plans & Specifications for Project

The Town Council adopts:

- Resolution Preliminarily Approving District Formation/Boundary Map, Engineer's Report, and Directing Actions with Respect Thereto; and
- Resolution Approving Plans and Specifications and Calling for Bids for Construction (If the plans and specifications are still preliminary, this step may be deferred until after the Assessment District is officially formed and the final plans are prepared by the District Engineer).

9. After Second Council Meeting

Immediately following the Second Council Meeting, the Town Clerk, in coordination with the District Engineer and Bond Counsel, takes the following actions:

- Mails Notices of Proposed Assessments and Ballots to Property Owners at least 45 days prior to the Public Hearing;
- Records Map of Proposed Boundaries of the District; and
- Coordinates publication of call for construction bids (if appropriate).

10. Informational Workshop

In the 45-day period after Item 9, Town Staff and the consultants hold a Workshop about the project and the proposed financing.

11. Construction Bids

Under the State Public Contract Code and the Chapter 3A of the Tiburon Municipal Code, Town solicits contractor bids for construction. Typically, the bid period is 30 days, with bids received about two weeks before the public hearing and ballot. After the bid opening, the District Engineer and Town Staff determine the lowest responsible bid and adjust the proposed assessments if warranted. This step may be deferred until after Item 17 if preliminary plans and specifications are used for district formation.

12. Third Council Meeting-Public Hearing and Ballot

At a Council meeting held at least 45 days following mailing of the Notice of Proposed Assessments, the Town Council will:

- Hold a public hearing to solicit any comments for or against the assessment
- Close the public hearing and call for the tabulation of ballots

The Town Clerk opens and counts ballots. Ballots are weighted on dollars assessed (for example, if all assessments are the same, each property owner has one vote). Only valid ballots actually received by the end of the hearing are counted. Unsigned, unreadable or unmarked ballots are not valid. If more than 50 percent of the ballots cast are against, the proceedings must be abandoned.

If a majority approving vote is received, and the Council concurs, Council then adopts:

Resolution Adopting Engineer's Report, Confirming Assessments and Directing Actions with Respect Thereto

This resolution levies the assessment and directs recordings and filings for the assessment lien and directs the cash payment period. This resolution also has provisions establishing completion time requirements for individual service connections.

13. Immediately After 12 above:

The Town Clerk, District Engineer and Bond Counsel, takes the following actions:

- Files and Records Assessments, Notices of Assessment and Assessment Diagram;
- Publishes Notice to Pay Assessments; and
- Mails Notices to Pay Assessment to each Property Owners (include the deadline date for completing individual service connections).

14. Cash Payment Period

Property Owners have a minimum 30-day period to pay cash for their assessments or any portion. At the end of the 30-day period, the exact amount of bonds to be issued is determined based on the remaining, unpaid assessments.

After the cash payment period:

- The Administrative Services Director completes the List of Unpaid Assessments; and
- The Bond Purchase Agreement and Preliminary Official Statement are filed with the Town Clerk.

Property Owners must also decide whether to contract with the Contractor performing the District work or hire their own contractor to perform individual service connection work on their property.

15. Fourth Council Meeting-Bonds

At a Town Council Meeting after Item No. 14 above, Town Council adopts:

- Resolution Authorizing Issuance of Bonds; and
- Resolution Authorizing Execution of the Construction Contract. This step may be deferred until after Item 17 if preliminary plans and specifications need to be finalized by the District Engineer.

16. After Item 15

The Administrative Services Director and Underwriter price the bond issue, and the Town executes the following:

- Bond Purchase Agreement (sells bonds); and
- Preliminary Official Statement (describes bonds for market)

17. Bond Closing

Approximately 2 weeks after Item 16, the bonds are delivered to Underwriter in exchange for the purchase price under the Bond Purchase Agreement. This, along with the cash payments, provides the funds for to pay for the underground project and its related costs.

18. Execution of Construction Contract

The Town executes the Construction Contract with the selected bidder. Construction work would typically commence within a few weeks of contract execution. Town staff makes progress payments to the Contractor as with any public works contract. Construction duration will depend on the size and complexity of the project, but typically lasts 60 to 90 days.

19. Utility Coordination

Upon completion of construction, the Town coordinates with the utilities to connect all properties to the new underground system. This process may take several weeks or more depending on the scheduling requirements of each utility company. Each property owner is responsible for connecting his or her property to the newly undergrounded facilities. The Town's contractor is usually required to offer service connection work at established costs. However, each owner may chose his or her own contractor or other provider for the individual service connection work.

20. Work Completed

After all connections are completed, the utilities will remove the overhead system.

21. Accounting of District Bond Proceeds

The Director of Administrative Services, or his/her designee, shall provide a monthly accounting on the use and source of assessment district bonds proceeds. The Town will make this report available to any interested member of the public no later than thirty (30) days following the end of the month covered by the report. This report shall include a statement of revenues and expenditures for the month along with cumulative totals. The expenditure report shall be broken down into construction costs, incidental expenses, financing costs and contingencies.

22. Disposition of Surplus Funds

Within one year after the completion of the improvements and payment of all claims from the improvement fund, the Town shall return any existing surplus funds to the District members as outlined below, less reserves for any potential claims and liabilities, i.e. litigation.

If a resident opted to pay his or her assessment in cash, the Town will refund his or her share of those refunds in cash. For those residents who paid their share by the assessment bonds, the Town will (1) refund the surplus cash to bond investors by redeeming a portion of their bonds in return for a cash payment (equal to the par amount, plus accrued interest, plus premium); then (2) recalculate all of the assessments against property in the district by a proportionate amount that reflects the reduction in debt service that results from redeeming some of the bonds. In other words, District property owners that financed their share of the project through the bond sales will receive their refunds by reduced assessments.

In the event that the surplus is so small that the costs of making refunds exceeds the amount to be refunded, the Town shall transfer the remaining funds to the bond redemption account to be applied against a future bond payment.