

ATTACHMENT A

RESOLUTION NO. 2021- 50

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, DECLARING ITS INTENTION TO TAKE PROCEEDINGS PURSUANT TO THE MUNICIPAL IMPROVEMENT ACT OF 1913 AND TO ISSUE BONDS PURSUANT TO THE IMPROVEMENT BOND ACT OF 1915, AND MAKE CERTAIN FINDINGS AND DETERMINATIONS IN CONNECTION THEREWITH, ALL RELATING TO THE FORMATION OF ASSESSMENT DISTRICT NO. 124

WHEREAS, the City Council of the City of Newport Beach ("City") desires to provide certain property located in the City with the undergrounding of electric, telephone and cable facilities, and the removal of poles, overhead wires, guys, anchors and appurtenant work therewith as further described in Section 3 hereof ("Improvements") and to order the formation of an Assessment District to pay the costs thereof under and pursuant to the provisions of the Municipal Improvement Act of 1913 (the "1913 Act");

WHEREAS, the proposed assessment district, if it is formed, is to be known and designated as Assessment District No. 124 ("Assessment District");

WHEREAS, the proposed boundaries of the Assessment District are shown on a map which indicates by a boundary line the extent of the territory proposed to be included in the Assessment District, which map is designated "Proposed Assessment District No. 124" ("Map"), which Map is on file in the office of the City Clerk;

WHEREAS, the City Council has been presented with petitions signed by at least fifty percent (50%) of the property owners located within the boundaries of the proposed Assessment District requesting the formation of the Assessment District to finance the Improvements;

WHEREAS, pursuant to California Streets and Highways Code Section 5896.8, there is on file with the City Clerk a certificate of NV5, Inc. certifying the sufficiency of such petitions;

WHEREAS, it appears to the City Council that the Assessment District should be formed to finance the installation of said Improvements under the provisions of the 1913 Act;

WHEREAS, the City Engineer, with the assistance of NV5, Inc., is competent to make and file with the City Clerk the report with regard to the Improvements, which report is required by the 1913 Act to be made and filed;

WHEREAS, the conversion of overhead electric utility distribution system facilities to underground, including connection to existing overhead electric utility distribution lines where the surface is restored to the condition existing prior to undergrounding, is categorically exempt from the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA") and its implementing guidelines (14 California Code of Regulations Section 15000 et seq.) ("Guidelines") pursuant to Section 15302(d) of the Guidelines;

WHEREAS, before ordering the Improvements, the City Council is required, under the 1913 Act, to adopt a resolution declaring its intention to do so;

WHEREAS, the City Council intends to consider issuing bonds secured by the assessments to be levied on property in the Assessment District pursuant to the Improvement Bond Act of 1915, being Division 10 (commencing with Section 8500) of the Streets and Highways Code ("1915 Act"); and

WHEREAS, before issuing bonds, the City Council is required, under the 1915 Act, to adopt a resolution declaring its intention to do so.

NOW, THEREFORE, the City Council of the City of Newport Beach resolves as follows:

Section 1: The above recitals, and each of them, are true and correct and are incorporated into the substantive portion of this resolution.

Section 2: The Map is hereby approved, adopted and declared to describe the proposed boundaries of the Assessment District; and it shall govern for all details as to the extent of the Assessment District. The City Clerk is hereby directed to endorse her certificate on the original of the Map evidencing the date and adoption of this resolution and to file said Map in her office, and to file a copy of said Map so endorsed with the County Recorder of Orange, California within fifteen (15) days after the adoption of the resolution fixing the time and place of hearing on the formation and extent of the Assessment District.

Section 3: The Improvements generally include the undergrounding of existing electric, telephone and cable facilities, including the removal of poles, overhead wires, guys and anchors and the installation of new underground service connections and new streetlights and appurtenant work therewith as shown on the Map. The improvements will be designed by the Southern California Edison Company ("Edison") and other utility providers. Either Edison, the City, or the City's contractors will construct the Improvements, and the City will inspect the work to ensure conformance to City standards and specifications where applicable. Once completed, the underground facilities will become the property and responsibility of Edison and such other utility providers. Each owner of property located within the Assessment District will be responsible for arranging and paying for work on his or her property necessary to connect facilities constructed by the public utilities in the public streets to the points of connection on the private property owned by the property owner. Conversion of individual service connections on private property is not included in the work done by the Assessment District. Failure to convert individual service connections on private property may result in a recommendation to the City Council that the public utilities be directed to discontinue service to that property. Overhead facilities cannot be removed until all overhead service has been discontinued.

Section 4: The City Council hereby finds and declares that the public interest and necessity require the Improvements, and the Improvements will be of direct and special benefit to the properties and land within the Assessment District. The City Council hereby declares its intention to order the conversion of the existing overhead electric and communication facilities to underground locations, and the acquisition of the Improvements, to make the expenses thereof chargeable upon the area included within the Assessment District, and to form the Assessment District.

Section 5: The City Council further declares its intention to levy a special assessment upon the land within the Assessment District in accordance with the respective special and direct benefit to be received by each parcel of land from the Improvements.

Section 6: This City Council finds and determines that before ordering the acquisition of the Improvements it shall take proceedings pursuant to the 1913 Act and pursuant to Part 7.5 of the Special Assessment Investigation, Limitation and Majority Protest Act of 1931, Streets and Highways Code Section 2960 et seq. (the "1931 Act").

Section 7: NV5, Inc. is appointed the Assessment Engineer. The Assessment Engineer is hereby authorized and directed to make and file with the City Clerk a written report with regard to the 1913 Act ("Report"), which Report shall comply with the requirements of Section 10204 and Section 2961 of the Streets and Highways Code and Article XIID of the California Constitution and shall contain the following:

(a) Plans and specifications for the Improvements;

(b) A general description of works or appliances already installed and any other property necessary or convenient for the operation of the Improvements, if the works, appliances or property are to be acquired as part of the Improvements;

(c) An estimate of the cost of the Improvements, and the cost of land, rights of ways, easements, and incidental expenses in connection with the Improvements, including the cost of registering bonds;

(d) A diagram showing the exterior boundaries of the Assessment District, the boundaries of any zones within the Assessment District and the lines and dimensions of each parcel of land within the Assessment District as they existed at the time of passage of this resolution (each subdivision to be given a separate number on the diagram);

(e) A proposed assessment of the total amount of the cost and expenses of the proposed Improvements upon the several subdivisions of land in the Assessment District in proportion to the estimated benefits to be received by such subdivision, respectively, from the Improvements (the assessment shall refer to the subdivisions by their respective numbers assigned as provided in (d) above); and

(f) A proposed maximum annual assessment upon each of the several subdivisions of land in the Assessment District to pay costs incurred by the City and not otherwise reimbursed which result from the administration and collection of assessments or from the administration or registration of any associated bonds and reserve or other related funds.

In addition, the Report shall contain the information required by the 1931 Act as set forth in Streets and Highways Code Section 2961(b), including:

(a) The total amount, as near as may be determined, of the total principal sum of all unpaid special assessments and special assessments required or proposed to be levied under any completed or pending assessment proceedings, other than the proposed assessments to be levied with respect to the Assessment District, which would require an investigation and report under the 1931 Act against the total area proposed to be assessed; and

(b) The total true value, as near as may be determined, of the parcels of land and improvements within the Assessment District which are proposed to be assessed. Total true value may be estimated as the full cash value of the parcels as shown upon the last equalized assessment roll of the County of Orange. Alternatively, total true value may be determined by other reasonable means, including, but not limited to, by adjusting the value shown on the last equalized assessment roll to correct for deviations from market value due to Article XIII A of the California Constitution.

Section 8: Following the acquisition of the Improvements and the payment of all incidental expenses in connection with the formation of the Assessment District and the issuance of bonds pursuant to the 1915 Act, any surplus remaining in the improvement fund established for the Assessment District shall be used as determined by the City Council as provided in Section 10427 of the Streets and Highways Code.

Section 9: Notice is hereby given that serial or term bonds to represent unpaid assessments and to bear interest at a rate not to exceed twelve percent (12%) per annum will be issued in the manner provided in the Improvement Bond Act of 1915 to represent the unpaid assessments and the last installment of such bonds shall mature a maximum of twenty (20) years from the second day of September next succeeding twelve (12) months from their date. The principal amount of such bonds maturing or becoming subject to mandatory prior redemption each year shall not be an amount equal to an even annual proportion of the aggregate principal amount of the bonds, but rather (except as specifically otherwise provided by the City Council in connection with the sale of such bonds), shall be an amount which, when added to the amount of interest payable in each year, will be a sum which is substantially equal in each year, except for the moneys falling due on the first maturity or mandatory prior redemption date of the bonds which shall be adjusted to reflect the amount of interest earned from the date when the bonds bear interest to the date when the first interest is payable on the bonds. Such bonds shall be serviced and collected by the City Treasurer or by such registrar and/or paying agent(s) as this City Council may from time to time designate.

Section 10: The provisions of Part 11.1 of the Improvement Bond Act of 1915, providing an alternative procedure for the advance payment of assessments and the calling of bonds, shall apply.

Section 11: Except as specifically otherwise provided for herein, the Improvements shall be made and ordered pursuant to the provisions of the 1913 Act.

Section 12: The City Council hereby determines that the City will not obligate itself to advance available funds from its treasury to cure any deficiency which may occur in the bond redemption fund established for the Assessment District.

Section 13: The public interests will not be served by allowing the property owners to take any contract to be let for the construction of the Improvements, and no notice of award of contract shall be published.

Section 14: It is hereby determined that the bonds proposed to be issued in these proceedings may be refunded. Any adjustment to assessments resulting from such refunding shall be done on a pro rata basis as required pursuant to Section 8571.5 of the Streets and Highways Code. Any such refunding shall be pursuant to the provisions of Division 11.5 (commencing with Section 9500) of the Streets and Highways Code, except that, if, following the filing of the report specified in Section 9523 and any subsequent modifications of the report, the City Council finds that all of the conditions specified in Section 9525 are satisfied and that the adjustments to assessments are on a pro rata basis, the City Council may approve and confirm the report and without further proceedings, authorize, issue, and sell the refunding bonds pursuant to Chapter 3 (commencing with Section 9600) of Division 11.5 of the Streets and Highways Code. Any such refunding bonds shall bear interest at the rate of not to exceed twelve percent (12%) per annum, or such higher rate of interest as may be authorized by applicable law at the time of sale of such bonds; and the last installment of such bonds shall mature on such date as will be determined by the City Council in the proceedings for such refunding.

Section 15: It is in the public interest and more economical to do certain work on private property to eliminate any disparity in level or size between the Improvements and private property and to add the actual cost of such work to the Assessment of the property to which such work was done; provided that no work of this nature shall be performed until and unless the written consent of the owner of property is first obtained.

Section 16: Pursuant to Streets and Highways Code Section 10110, the City intends to enter into agreements with Edison and the other utility providers, and any agreement between the City and Edison, or any other public utility, for the ownership, management, or control of the underground electric, telephone and cable facilities to be installed pursuant to the Improvements, would benefit any current or future residents of the Assessment District.

Section 17: Pursuant to Section 15302(d) of the Guidelines, the undergrounding of the Improvements will have no significant effect on the environment and is categorically exempt from CEQA. The City Clerk is directed to work with the Community Development Director to cause a notice of exemption to be posted as required by law.

Section 18: All inquiries for any and all information relating to these proceedings, including information relating to protest procedures, should be directed to:

CITY OF NEWPORT BEACH
Attention: Michael Sinacori
100 Civic Center Drive
Newport Beach, California 92660
(949) 644-3342

Section 19: If any section, subsection, sentence, clause or phrase of this resolution is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this resolution. The City Council hereby declares that it would have passed this resolution, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 20: This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify the vote adopting the resolution.

ADOPTED this 8th day of June, 2021.

Brad Avery
Mayor

ATTEST:

Leilani I. Brown
City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



Aaron C. Harp
City Attorney