

RESOLUTION NO. 62,659-N.S.

ESTABLISH THE THOUSAND OAKS HEIGHTS APPLICANT FINANCED
UNDERGROUND UTILITY DISTRICT NO. 1

WHEREAS, on December 19, 2000, Council endorsed the policy and procedures for forming Applicant-Financed Utility Underground Districts (AFUUD). The Council also passed a motion that prior to publishing the AFUUD procedures and starting the public process, property owners would be required to advance funds for the design and creation of an underground utility district; and

WHEREAS, in February and March 2002, parcel owners within the Thousand Oaks Heights area circulated Petition No. 1 with 70 percent affirmative response to hold a informational meeting and in August 2002 the Thousand Oaks Heights area submitted Petition 2 with the required 70 percent affirmative response and funds in the amount of \$183,945 for the up-front design costs; and

WHEREAS, on March 23, 2004, Council adopted Resolution No. 62,412-N.S., the resolution of intention to prepare an Engineer's Report and to solicit substructure bids for the proposed AFUUD and on June 1, 2004, Council adopted Resolution No. 62,505-N.S. approving a modified Preliminary Assessment Engineer's report along with other related actions; and

WHEREAS, on July 20, 2004, the public hearing was continued until September 21, 2004 and all unopened ballots were rejected. New ballots, notices, and copies of the Final Engineer's Report were mailed out to all affected property owners on or before August 5, 2004 starting the new 45-day balloting period; and

WHEREAS, on or before September 11, 2004, in accordance with Berkeley Municipal Code Chapter 16.24.020, the City Clerk mailed notices to all affected property owners on the last equalized assessment roll and affected utilities concerning the public hearing to ascertain whether the public necessity, health, safety or welfare requires the removal of poles, overhead wires and associated overhead structures within Thousand Oaks Heights area; and

WHEREAS, having provided opportunity for any interested person present at the September 21, 2004 hearing to be heard with respect to any aspect of the public necessity, health, safety, or welfare regarding the removal of poles, overhead wires and associated overhead structures within the Thousand Oaks Heights area, the hearing was closed.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley hereby finds and determines that the removal of poles, overhead wires and associated overhead structures is in the public necessity, health, safety and welfare by reducing the number of roadway obstacles and potential collisions for the traveling public; reducing the potential falling hazard and potential ingress/egress restrictions caused by overhead utility facilities during a natural disaster such as an earthquake, fire or extreme wind storm; and diminishes the possible damage to utility facilities by external forces such as wind, fire, and vehicular collisions thereby improving utilities reliability.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley hereby orders the removal of poles, overhead wires and associated overhead structures and the underground installation of wires and facilities for supplying electric, communication, or similar or associated service. It shall be unlawful for any person or utility to erect, construct, place, keep, maintain, continue to employ or operate poles, overhead wires and associated overhead structures in the designated district.

BE IT FURTHER RESOLVED, that the Council of the City of Berkeley hereby designates the Thousand Oaks Heights area of Florida Avenue between Santa Barbara Road and cul-de-sac; Boynton Avenue between Florida Avenue and approximately 100 feet north of Colorado Avenue; Colorado Avenue between Boynton Avenue and Michigan Avenue; Vermont Avenue between Colorado Avenue and approximately 60 feet north of Colorado Avenue; Michigan Avenue between approximately 70 feet north of Colorado Avenue and approximately 140 feet east of Kentucky Avenue; Kentucky Avenue between Michigan Avenue and Vassar Avenue; Maryland Avenue between Kentucky Avenue and approximately 220 feet west of Kentucky Avenue; and Vassar Avenue between Kentucky Avenue and City Limit as the Thousand Oaks Heights Applicant Financed Utility Underground District No. 1. A map delineating the boundaries of said district is attached hereto, marked "Exhibit A," and hereby incorporated as part of this resolution.

BE IT FURTHER RESOLVED, that the City may authorize any or all of the following exceptions within the Thousand Oaks Heights Applicant Financed Utility Underground District No. 1 boundaries:

- A. Any municipal facilities or equipment installed under the supervision and to the satisfaction of the Director of Public Works;
- B. Poles, or electroliers used exclusively for street lighting;
- C. Overhead wires (exclusive of supporting structures) crossing any portion of the district within which overhead wires have been prohibited, or connecting to buildings on the perimeter of a district, when such wires originate in an area from which poles, overhead wires, and associated overhead structures are not prohibited;
- D. Poles, overhead wires and associated overhead structures used for the transmission of electric energy at nominal voltages in excess of thirty-four thousand and five hundred volts;
- E. Overhead wires attached to the exterior sauce of a building by means of a bracket or other fixture and extending from one location on the building to another location on the same building or to an adjacent building without crossing any public street;
- F. Antennae, associated equipment and supporting structures, used by a utility for furnishing communication services;
- G. Equipment appurtenant to underground facilities, such as surface-mounted transformers, pedestal mounted terminal boxes and meter cabinets and concealed ducts;
- H. Temporary poles, overhead wires and associated overhead structures used or to be used in conjunction with construction projects.

BE IT FURTHER RESOLVED, that all poles, overhead wires and associated overhead structures shall be removed and underground installation made in said district within the following times:

- A. Every person owning, operating, leasing, occupying or renting a building or structure within the district shall construct and provide that portion of the service connection on his or her

property between the new underground facility in the public right-of-way and the termination facility on or within said building or structure being served within six months of the adopted date of this resolution or in conjunction with the completion of the district's substructure construction work in the public right-of-way.

- B. Utility Companies (Pacific Gas and Electric, SBC, and Comcast) shall complete their underground facility installation, convert all properties within the district, and remove poles, overhead wires, and other associated structures under applicable rules, regulations and tariffs on file with the Public Utility Commission within six months of the completion of the district's substructure construction work in the public right-of-way.
- C. The Director of Public Works or his or her designee may extend the dates indicated above when shown good cause.

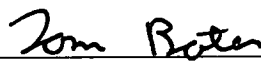
BE IT FURTHER RESOLVED, that the City Clerk, within ten days after adoption of this resolution, shall mail a copy this resolution and a copy of BMC Chapter 16.24, Underground Utility Facilities to affected property owners as shown on the last equalized assessment roll, and affected utilities.

The foregoing Resolution was adopted by the Berkeley City Council on September 21, 2004 by the following vote:

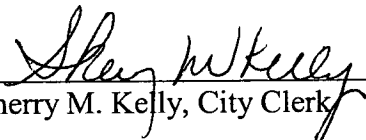
Ayes: Councilmembers Breland, Hawley, Maio, Olds, Shirek, Worthington, Wozniak and Mayor Bates.

Noes: None.

Absent: Councilmember Spring.



Tom Bates, Mayor

Attest: 

Sherry M. Kelly, City Clerk

THOUSAND OAKS HEIGHTS
Applicant Financed Utility Undergrounding District
(AFUUD) No.1

CONCRETE UTILITIES
MARCH 2007

ATTACHMENT G

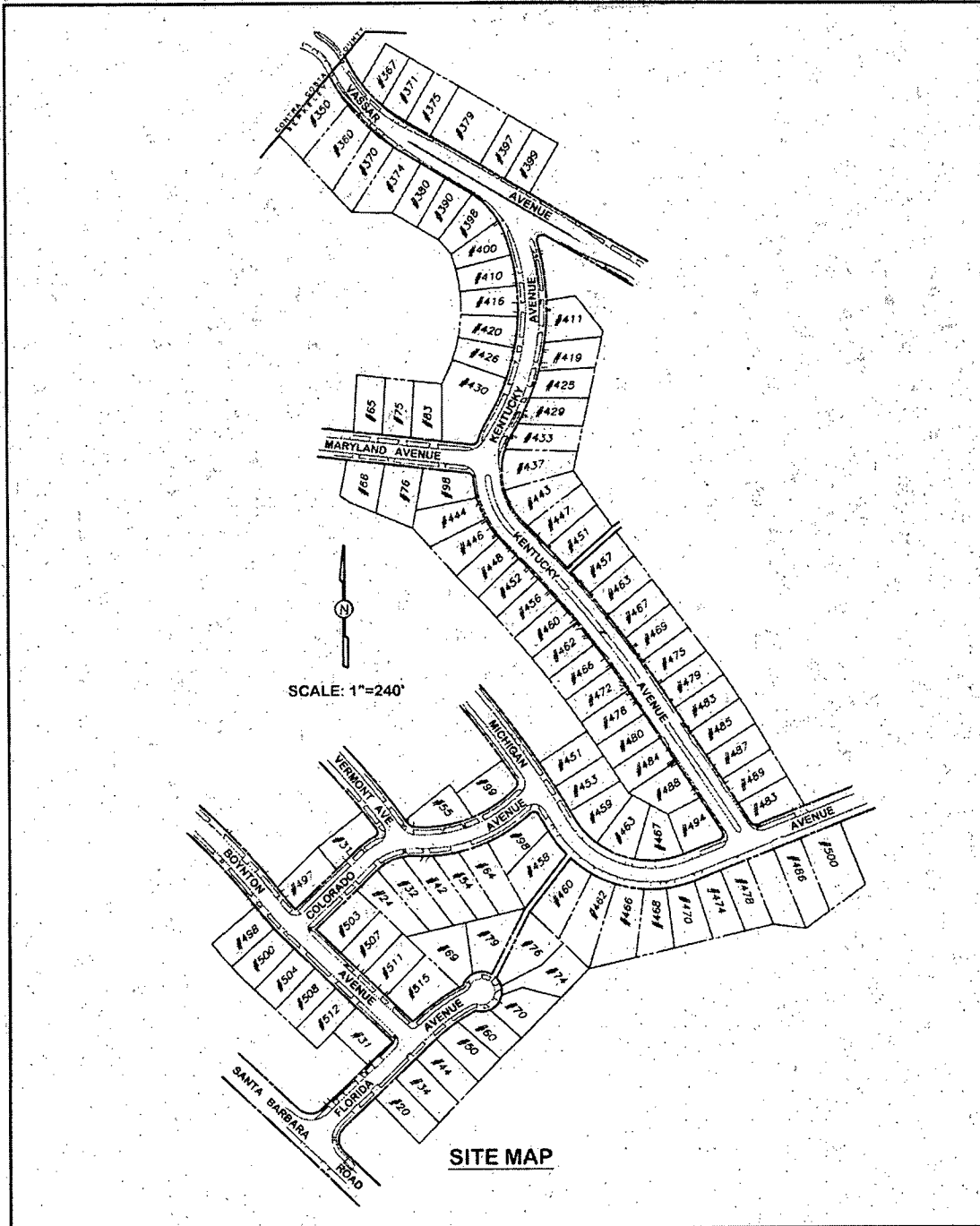


EXHIBIT A