



NEWPORT BEACH

City Council Staff Report

January 11, 2022
Agenda Item No. 19

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: David A. Webb, Public Works Director - 949-644-3311,
dawebb@newportbeachca.gov

PREPARED BY: Michael J. Sinacori, P.E., Assistant City Engineer
msinacori@newportbeachca.gov

PHONE: 949-644-3342

TITLE: Resolutions Nos. 2022-5 and 2022-6: Proposed Assessment District No. 120-2 Public Hearing – Area Along Santa Ana Avenue, Cliff Drive, La Jolla Lane & La Jolla Drive

ABSTRACT:

The City Council formed Undergrounding Utility Assessment District No. 120 on April 13, 2021, after a positive vote of 23 property owners. Shortly after that approval, residents on the adjacent La Jolla Drive and La Jolla Lane expressed a strong desire to be included in the approved district. As a result, a request to expand the district was made. The larger assessment district has 44 property owners. At least 60 percent of these property owners had signed and submitted a petition to the City of Newport Beach (City), requesting the formation of the larger assessment district. The City Council certified the larger petition for Assessment District No. 120-2 (AD 120-2) on October 12, 2021, and on November 16, 2021, declared its intention to levy assessments and issue bonds to finance the undergrounding, approved the Assessment Preliminary Engineer's Report, and set January 11, 2022, at 4 p.m. as the time and place for this public hearing for AD 120-2.

RECOMMENDATION:

- a) Open the public hearing on the formation of Assessment District No. 120-2; hear public testimony from those who desire to speak; close the public hearing; and direct the City Clerk to tabulate the ballots and report the result; and
- b) If there is greater than 50% of weighted "Yes" votes versus "No" votes submitted, a majority protest by ballot procedure does not exist and the district may be formed. If it is desired to form the District, take the following actions:
 - i. Adopt Resolution No. 2022-5, *A Resolution of the City Council of the City of Newport Beach, California, Overruling Protests, Approving Final Engineer's Report, Levying Assessments without Modification, Approving and Ordering the Work and Improvements for the Utility Underground Project, and Authorizing and Directing Related Actions with Respect to Assessment District No. 120-2*; **OR**

- c) If desired not to form the District, adopt Resolution No. 2022-6, *A Resolution of the City Council of the City of Newport Beach, California, Declaring Abandonment of Proceedings for City of Newport Beach Assessment District No. 120-2.*

DISCUSSION:

The City Council formed Undergrounding Utility Assessment District No. 120 on April 13, 2021, after a majority vote of 23 property owners in this two-block area. Shortly after that approval, residents on the adjacent La Jolla Drive and La Jolla Lane expressed a strong interest to be included in the approved district. As a result, a request to expand the district was made. In order to expand the existing assessment district as desired, a new district, AD 120-2, would have to be formed that will include both the area within Undergrounding Utility District No. 120 and the adjacent properties on La Jolla Drive and La Jolla Lane. The larger, AD 120-2 has 44 property owners who submitted a petition to the City, signed by at least 60 percent of the owners, requesting the formation of the larger assessment district. The City Council certified the petition to expand the District on October 12, 2021, approved a Preliminary Engineers Report on November 16, 2021 and set January 11, 2022 at 4 p.m. as the time and place for a public hearing on this matter.

AD 120-2 is being proposed for the conversion of existing overhead utilities to underground locations. The property owners within the boundaries of the proposed assessment district will bear the cost of the improvements and the associated proceedings. The Municipal Improvement Act of 1913 governs the procedures used to create the assessment district. Bonds issued under the Improvement Bond Act of 1915 carry up to a 40-year term and are issued to finance assessments not paid in cash within 30 days after confirmation of the assessment. Staff is recommending a 20-year term for AD 120-2.

The Federal Income Tax Component of Contribution (ITCC) has been eliminated pursuant to City Council direction. The ITCC is a tax assessed whenever private party contributions in aid of construction (CIAC) are made. To date, underground utility districts have not been assessed this tax as underground utility districts are viewed as providing public benefit by increasing community aesthetics and public safety.

If following the public hearing and balloting AD 120-2 is formed, an assessment lien would be recorded on the title of properties included in the district. Thereafter, a cash collection period would take place to provide property owners with an opportunity to prepay their assessment and remove the assessment lien. A second cash collection period is also anticipated prior to the bond sale, which is anticipated to occur prior to construction and after design is complete.

The total assessment for the proposed AD 120-2 is estimated as follows:

Proposed Assessment District No. 120-2

ITEM	FINAL COST
Cost of Design and Construction	\$2,149,150
Incidental Costs and Expenses	\$307,100
Financing (Bond) Costs	\$164,000
Estimated Total Cost:	\$2,620,250

In addition to the payment of the assessment, each property owner will be responsible for the costs of connecting the main service conduit in the public right-of-way to the property owner’s home or business, if applicable. The cost to the property owner for this conversion varies depending on the condition and location of the current electrical service. Each property owner is encouraged to contact a licensed electrical contractor to assess their particular property needs.

The following is a tentative schedule for the proposed AD 120-2:

Resolution of Intention	November 16, 2021
Public Hearing	January 11, 2022
Utility Companies Design Completed	November 2022
Tentative Bond Sale Period	April through June 2023
City managed utility construction work commences	July 2023
Property owners notified to install service connections	March 2024
Property owners complete conversions	September 2024
Public utilities begin to remove overhead structures	October 2024
Public utilities finish removing poles and overhead structures	February 2025

The assessment engineer used a lot size methodology to apportion assessments within this district based on the finding that a majority of the properties are receiving similar safety, reliability and improved aesthetics benefits. The special benefits from undergrounding the overhead utilities were defined as follows:

- **Improved Aesthetics Benefit.** This benefit relates to the improved aesthetics of the streetscape due to the removal of overhead wires and utility poles. For the purposes of this report, a street is defined as either a street or alley. The removal of guy wires and other support structures related to the overhead facilities are included in the definition of improved aesthetics. Properties that are directly adjacent to or have frontage facing overhead facilities receive an aesthetic benefit. There is a direct correlation between the size of the parcel and the extent to which a property may develop, and thus, the Improved Aesthetic Benefit a parcel receives from the undergrounding of adjacent utilities is proportional to the size of the parcel.

- **Additional Safety Benefit.** This benefit relates to the additional safety of having the overhead distribution wires placed underground and having the power poles removed, which eliminates the threat of downed utility lines and poles due to wind, rain and other unforeseeable events. Falling facilities can lead to personal injuries and damage to structures, including fire. Access by emergency vehicles can also be blocked by downed power lines. Properties that have a frontage along which the existing overhead utilities will be removed, and have existing overhead utilities that will be removed along the properties' primary ingress/egress route, receive a safety benefit. This benefit is equal for all parcels receiving this benefit because all parcels fronting the existing overhead utilities are equally at risk of being damaged by falling overhead utilities and having their primary ingress/egress route blocked. Therefore, the Additional Safety Benefit is based on the average parcel area within the assessment district boundary.
- **Connection Benefit.** This benefit relates to the enhanced reliability of service from the utilities being underground, due to having all new wires and equipment and having that equipment underground, which reduces the threat of service interruption from downed lines. When compared to overhead systems, fewer outages occur due to various acts of nature, traffic collisions and obstructions (such as trees). Properties that are connected to the facilities proposed to be undergrounded receive a connection benefit. This benefit is equal for all parcels receiving this benefit that have a singular connection. As such, the benefit is based on the average parcel area within the assessment district boundary. Parcels with more than one separate connection receive an increased benefit calculated by multiplying the number of connections by the average parcel area within the assessment district boundary.
- **View Enhancement Benefit.** This benefit relates to the enhanced view as a direct result of the utilities being underground. Properties that receive a view benefit face Newport Harbor and/or the Pacific Ocean and are located along, or have a view down, Santa Ana Avenue, La Jolla Drive or La Jolla Lane. Each parcel that has poles or overhead lines that impede their view of Newport Harbor and/or the Pacific Ocean and that are being undergrounded as part of this district, benefit equally from the undergrounding of the lines. Therefore, this benefit is based on the average parcel area within the assessment district boundary.

The range for the estimated assessment costs per parcel is as follows:

District No.	Range of Assessments	70% of Properties Assessed
AD 120-2	\$27,616.21 to \$162,950.01	Under \$67,500

Note that assessments vary due to the property size and benefits received.

The following revisions for one property are made to this report after it was preliminarily approved on November 16, 2021:

1. Assessment No. 24: This property was thought to have a buildable square footage of 5,000 square feet per the County of Orange's secured tax roll. It has since been determined through a review of the parcel map that the actual buildable square footage is approximately 3,200 square feet. This reduction in buildable square footage results in a decreased total assessment, but does not change the benefits received by the parcel. It has been determined that this property's assessment will be reduced by \$4,750 due to this correction, and the project's planned contingency funds will be reduced by a like amount.

Ballot Tabulation Procedures:

All assessment ballots submitted to the City Clerk prior to the close of the public hearing on January 11, 2022, will be tabulated per the ballot tabulation procedures directed by City Council Policy L-28. However, for assessment districts, it is important to remember that, under the California Constitution, assessments are not taxes. Properties within the assessment district are assessed only for the special benefit such properties derive from the improvements to be financed from the assessments. This is a critical distinction from a tax, as Article XIIIID Section 4(g) of the Constitution states "Because only special benefits are assessable, electors residing within the district who do not own property within the district shall not be deemed under this Constitution to have been deprived of the right to vote for any assessment." This allows for a majority protest proceeding rather than an election. Pursuant to the majority protest proceedings, a simple majority (50%+\$1) of the assessment amount of the ballots received would allow the assessment to pass.

FISCAL IMPACT:

Funds will be provided by property owner contributions and/or bond proceeds if the expanded assessment district is approved. The City Council approved a Budget Amendment on April 13, 2021, advancing funds for the utility system designs (SCE, AT&T and Spectrum) that will be reimbursed by property owners. No additional design funding is required at this time from the utility companies as the funds provided last year should be sufficient to complete the expanded district.

If the expanded district is not successfully formed following the vote, General Funds previously appropriated on October 12, 2021 for the preparation of the Engineer's Report and balloting effort for the expanded district, approximately \$37,500, including legal fees from outside bond counsel, would not be recovered from the proposed district property owners. If the expanded district is successfully formed, then these costs will be recovered from all the respective property owners within the larger district.

ENVIRONMENTAL REVIEW:

On October 12, 2021, the City Council deemed this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15302(d) (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 the undergrounding).

NOTICING:

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item). In addition, all property owners within the proposed district were mailed a Public Hearing Notice and Ballots noting their assessment amounts.

ATTACHMENTS:

- Attachment A – November 16, 2021 Staff Report
- Attachment B – Resolution No. 2022-5 (Confirming Assessment)
- Attachment C – Resolution No. 2022-6 (Declaring Abandonment)
- Attachment D – Final Engineer's Report



NEWPORT BEACH

City Council Staff Report

November 16, 2021
Agenda Item No. 8

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: David A. Webb, Public Works Director - 949-644-3311,
dawebb@newportbeachca.gov

PREPARED BY: Michael J. Sinacori, P.E., Assistant City Engineer
msinacori@newportbeachca.gov

PHONE: 949-644-3342

TITLE: Resolution Nos. 2021-111 and 2021-112: Proposed Assessment District No. 120-2 – Area Along Santa Ana Avenue, Cliff Drive, La Jolla Lane and La Jolla Drive

ABSTRACT:

The City Council formed Undergrounding Utility Assessment District No. 120 on April 13, 2021, after a positive vote of 23 property owners. Shortly after that approval, residents on the adjacent La Jolla Drive and La Jolla Lane expressed a strong desire to be included in the approved district. As a result, a request to expand the district was made. The larger assessment district has 44 property owners. At least 60 percent of these property owners had signed and submitted a petition to the City of Newport Beach (City), requesting the formation of the larger assessment district. The City Council certified the petition for AD 120-2 on October 12, 2021 and is now asked to declare its intention to levy assessments and issue bonds to finance the undergrounding, approve the Assessment Preliminary Engineer's Report, and set January 11, 2022, as the time and place for a Public Hearing for AD 120-2.

RECOMMENDATION:

- a) The City Council deemed this project exempt from the California Environmental Quality Act (CEQA) on October 12, 2021 pursuant to Section 15302(d) (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 the undergrounding);
- b) Adopt Resolution No. 2021-111, *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. 120-2;* and

- c) Adopt Resolution No. 2021-112, *A Resolution of the City Council of the City of Newport Beach, California, Preliminarily Approving the Assessment Engineer's Report and Fixing the Time and Place of the Public Hearing for Assessment District No. 120-2.*

DISCUSSION:

The City Council formed Undergrounding Utility Assessment District No. 120 on April 13, 2021, after a majority vote of 23 property owners in this two-block area. Shortly after that approval, residents on the adjacent La Jolla Drive and La Jolla Lane expressed a strong interest to be included in the approved district. As a result, a request to expand the district was made. In order to expand the existing assessment district as desired, a new district, Assessment District 120-2, will have to be formed that will include both the area within Undergrounding Utility District No. 120 and the adjacent properties on La Jolla Drive and La Jolla Lane. The larger, Assessment District 120-2 has 44 property owners who submitted a petition to the City, signed by at least 60 percent of the owners, requesting the formation of the larger assessment district. The City Council certified the petition to expand the District on October 12, 2021.

Assessment District No. 120-2 is being proposed for the conversion of existing overhead utilities to underground locations. The property owners within the boundaries of the proposed assessment district will bear the cost of the improvements and the associated proceedings.

The Municipal Improvement Act of 1913 governs the procedures used to create the assessment district. Bonds issued under the Improvement Bond Act of 1915 carry up to a 40-year term and are issued to finance assessments not paid in cash within 30 days after confirmation of the assessment. Staff is recommending a 20-year term for AD 120-2.

The Federal Income Tax Component of Contribution (ITCC) has been eliminated pursuant to City Council direction. The ITCC is a tax assessed whenever private party contributions in aid of construction are made. To date, underground utility districts have not been assessed this tax as underground utility districts are viewed as providing public benefit by increasing community aesthetics and public safety.

If following the public hearing and balloting AD 120-2 is formed, an assessment lien would be recorded on the title of properties included in the district and the existing assessments associated with the original AD 120 would be discharged. Thereafter, a cash collection period would take place to provide property owners with an opportunity to prepay their assessment and remove the assessment lien. A second cash collection period is also anticipated prior to the bond sale, which is anticipated to occur prior to construction and after design is complete.

The total assessment for Proposed Assessment District No. 120-2 is estimated as follows:

Proposed Assessment District No. 120-2	
ITEM	COST
Cost of Design and Construction	\$2,153,900.00
Incidental Costs and Expenses	\$307,100.00
Financing (Bond) Costs	\$164,000.00
Estimated Total Cost:	\$2,625,000.00

In addition to the payment of the assessment, each property owner will be responsible for the costs of connecting the main service conduit in the public right-of-way to the property owner’s home or business, if applicable. The cost to the property owner for this conversion varies depending on the condition and location of the current electrical service. Each property owner is encouraged to contact a licensed electrical contractor to assess its particular property needs.

The following is a tentative schedule for proposed Assessment District No. 120-2:

Resolution of Intention	November 16, 2021
Public Hearing	January 11, 2022
Utility Companies Design Completed	December 2022
Tentative Bond Sale Period	April thru June 2023
City managed utility construction work commences	July 2023
Property owners notified to install service connections	March 2024
Property owners’ complete conversions	September 2024
Public utilities begin to remove overhead structures	October 2024
Public utilities finish removing poles and overhead structures	February 2025

The Assessment Engineer used a lot size methodology to apportion assessments within this district based on the finding that a majority of the properties are receiving similar safety, connection aesthetic and view enhancement benefits. The special benefits from undergrounding the overhead utilities were defined as follows:

- Improved Aesthetics Benefit. This benefit relates to the improved aesthetics of the streetscape due to the removal of overhead wires and utility poles. For the purposes of this report, a street is defined as either a street or alley. The removal of guy wires and other support structures related to the overhead facilities are included in the definition of improved aesthetics. Properties that are directly adjacent to or have frontage facing overhead facilities receive an aesthetic benefit.

There is a direct correlation between the size of the parcel and the extent to which a property may develop and thus the Improved Aesthetic Benefit a parcel receives from the undergrounding of adjacent utilities is proportional to the size of the parcel.

- **Additional Safety Benefit.** This benefit relates to the additional safety of having the overhead distribution wires placed underground and having the power poles removed, which eliminates the threat of downed utility lines and poles due to wind, rain and other unforeseeable events. Falling facilities can lead to personal injuries and damage to structures, including fire. Access by emergency vehicles can also be blocked by downed power lines. Properties that have a frontage along which the existing overhead utilities will be removed, and have existing overhead utilities that will be removed along the properties' primary ingress/egress route, receive a safety benefit. This benefit is equal for all parcels receiving this benefit because all parcels fronting the existing overhead utilities are equally at risk of being damaged by falling overhead utilities and having their primary ingress/egress route blocked. Therefore, the Additional Safety Benefit is based on the average parcel area within the assessment district boundary.
- **Connection Benefit.** This benefit relates to the enhanced reliability of service from the utilities being underground, due to having all new wires and equipment and having that equipment underground, which reduces the threat of service interruption from downed lines. When compared to overhead systems, fewer outages occur due to various acts of nature, traffic collisions and obstructions (such as trees). Properties that are connected to the facilities proposed to be undergrounded receive a connection benefit. This benefit is equal for all parcels receiving this benefit that have a singular connection. As such, the benefit is based on the average parcel area within the assessment district boundary. Parcels with more than one separate connection receive an increased benefit calculated by multiplying the number of connections by the average parcel area within the assessment district boundary.
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The range for the estimated assessment costs per parcel is as follows:

District No.	Range of Assessments	80% of Properties Assessed
AD 120-2	\$26,787.30 to \$164,100.95	Under \$68,500

Note that assessments vary due to the property size and benefits received.

Ballot Tabulation Procedures:

All assessment ballots submitted to the City Clerk prior to the close of the public hearing, recommended to be set for January 11, 2022, will be tabulated per the ballot tabulation procedures directed by City Council Policy L-28.

FISCAL IMPACT:

While there is no direct fiscal impact related to this item, the City Council approved Budget Amendment No. 22-017 on October 12, 2021, appropriating \$37,500 from the General Fund to Account No. 66902-941006 (AD Assessment Engineering) for preliminary design and assessment engineering costs.

In the event that formation of the district is successful, these costs will be reimbursed by cash contributions and bond proceeds from property owners within the district. If the expanded district fails to be formed, funds advanced for preliminary work cannot be recovered from the formerly approved AD-120 district property owners. In such case, the General Fund will cover the advance used for preliminary formation costs. An annual administrative assessment of a maximum of two hundred and fifty dollars (\$250.00) will be levied on parcels in AD 120-2 in order to pay for ongoing administration costs.

ENVIRONMENTAL REVIEW:

On October 12, 2021 the City Council deemed this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15302(d) (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 the undergrounding).

NOTICING:

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

ATTACHMENTS:

- Attachment A – Resolution No. 2021-111
- Attachment B – Resolution No. 2021-112
- Attachment C – Notice of Exemption

ATTACHMENT B

RESOLUTION NO. 2022- 5

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, MAKING DETERMINATIONS, CONFIRMING ASSESSMENTS AND PROCEEDINGS, AND DESIGNATING THE SUPERINTENDENT OF STREETS TO COLLECT AND RECEIVE ASSESSMENTS AND TO ESTABLISH A SPECIAL FUND FOR CITY OF NEWPORT BEACH ASSESSMENT DISTRICT NO. 120-2

WHEREAS, this City Council has previously adopted Resolution No. 2021-111 (the "Resolution of Intention") declaring its intention to order the construction of the improvements described in the Resolution of Intention (the "Improvements") and to form Assessment District No. 120-2 (the "Assessment District") under the provisions of the Municipal Improvement Act of 1913 (Division 12 of the California Streets and Highways Code, "the Act");

WHEREAS, this City Council has heretofore preliminarily approved a report prepared under and pursuant to the Act and, in particular, Section 10204 of the California Streets and Highways Code (the "Engineer's Report");

WHEREAS, this City Council fixed January 11, 2022, at the hour of 4:00 p.m. at the regular meeting place of the City Council, City Hall, 100 Civic Center Drive, Newport Beach, California 92660, as the time and place of hearing protests and objections to the improvements proposed in the Engineer's Report to be made, the extent of the Assessment District proposed to be created and/or to the proposed assessment;

WHEREAS, the City Clerk has caused notice to be given of the passage of the Resolution of Intention, the filing of the Engineer's Report and the time and place and purpose of said hearing, all as required by the Act and by Section 53753(c) of the California Government Code and Article XIID, Section 4 of the California Constitution ("Article XIID");

WHEREAS, a final Engineer's Report (the "Final Report") has been prepared setting forth the Improvements to be acquired and constructed, and the Final Report has been filed with the City Council and has been available for review by the property owners within the proposed Assessment District;

WHEREAS, at the time and place stated in the aforesaid notice, a hearing was duly held by this City Council and, during the course of said hearing, the Final Report was duly presented and considered, all written protests and objections received, if any, were duly presented, read, heard and considered and all persons appearing at said hearing and desiring to be heard in the matter of said Final Report were heard, and a full, fair and complete hearing has been conducted;

WHEREAS, this City Council has received all ballots filed with the City Clerk prior to the conclusion of the hearing, and the Assessment Engineer, on behalf of the City Clerk, has counted all ballots for and against the formation of the Assessment District as provided in Article XIID;

WHEREAS, this City Council has considered the assessment proposed in the Final Report and the evidence presented at said hearing; and

WHEREAS, under the provisions of Section 10424 of the California Streets and Highways Code, funds collected by the Director of Public Works acting as the Superintendent of Streets (the "Superintendent of Streets") pursuant to an assessment under the Municipal Improvement Act of 1913 are required to be placed in a special improvement fund designated by the name of the assessment proceeding.

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

Section 1: The public hearing referred to in the recitals hereof has been duly held, and each and every step in the proceedings prior to and including the hearing has been duly and regularly taken. This City Council is satisfied with the correctness of the Final Report, including the assessment and diagram and the maximum annual assessment for administrative expenses, the proceedings and all matters relating thereto.

Section 2: The property within the Assessment District to be assessed as shown in the Final Report will be benefited by the Improvements.

Section 3: The City Council overrules and denies any and all protests, objections and appeals made in regard to these proceedings; and it finds and determines that a majority of the ballots received are in favor of the assessment. In tabulating the ballots, the ballots were weighted according to the proportional financial obligation of the affected property.

Section 4: The amount of the assessments shown in the Final Report and the proposed maximum annual assessment per parcel for administrative expenses shown are confirmed and are fixed in said amounts.

Section 5: The amounts to be assessed against the individual parcels shown on the assessment diagram contained in the Final Report are hereby approved and confirmed; and the Superintendent of Streets is authorized and directed to endorse the fact and date of such approval on the Final Report.

Section 6: The assessment diagram and assessment is to be placed on file in the office of the Superintendent of Streets, and the City Clerk is authorized and directed to record, or cause to be recorded, the assessment diagram and assessment in the office of the County Recorder of the County of Orange as required by Sections 3114, 10401 and 10402 of the California Streets and Highways Code; and the City Clerk shall record, or cause to be recorded, a Notice of Assessment as required by Section 3114 of said Code.

Section 7: The Superintendent of Streets is authorized and directed to give notice of the recordation of the assessment, as provided in Section 10404 of said Code.

Section 8: This City Council hereby finds and determines that the information set forth in Table 1 of the Final Report demonstrates compliance with the requirements of Part 7.5 of Division 4 of the California Streets and Highways Code, thereby dispensing with any further proceedings pursuant to said Division 4, and this determination and action is final and conclusive as to all persons in accordance with Section 3012 of the California Streets and Highways Code.

Section 9: The Superintendent of Streets is designated to receive the assessments paid during: (i) the thirty (30) day cash payment period which shall commence on the date of filing the assessment diagram with the Superintendent of Streets; and (ii) approximately ninety (90) days prior to the issuance of the limited obligation improvement bonds referenced in the Resolution of Intention (the "Bonds").

Section 10: Following receipt of the Certificate Regarding Paid and Unpaid Assessments, this City Council intends to proceed with authorization of the issuance and sale of the Bonds, pursuant to the Improvement Bond Act of 1915 and upon the security of and in a principal amount equal to the unpaid assessments, bearing interest at a rate not to exceed twelve percent (12%) per annum, with the last principal installment of the Bonds to mature not to exceed twenty (20) years from the second day of September next succeeding twelve (12) months from their date.

Section 11: The area within the Assessment District is hereby designated an underground utilities district pursuant to and in accordance with Chapter 15.32 (Underground Utilities) of the Newport Beach Municipal Code ("NBMC"), and in accordance with Section 15.32.040 (City Council May Designate Underground Utility Districts by Resolution) of the NBMC, this City Council hereby establishes the date which is one year from the date on which the Improvements are released by the utility companies responsible for such Improvements (the "Utility Companies") as a reasonable date by which all affected property owners must be ready to receive underground service.

Section 12: The City Manager of the City, or any designees thereof, is authorized to execute any and all contracts with the Utility Companies for the purpose of constructing or funding the Improvements or otherwise carrying out the intentions of this resolution.

Section 13: The recitals provided in this resolution are true and correct and are incorporated into the operative part of this resolution.

Section 14: 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 15: The City Council finds the adoption of this resolution is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

Section 16: As a result of sufficient ballots being cast in favor of the formation of the Assessment District, the City Council hereby rescinds Resolution No. 2021-28 and abandons and dissolves Assessment District No. 120, extinguishing and terminating all associated assessments in connection therewith. The City Clerk shall immediately cause the recordation of a certified copy of this resolution with the County Recorder for the County of Orange. The certificate attached to this resolution shall include a reference to the date of the adoption of this resolution, the date of the original Resolution of Intention for Assessment District No. 120, and the date the map of Assessment District No. 120 was previously filed with the County Recorder.

Section 17: 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 11th day of January, 2022

Kevin Muldoon
Mayor

ATTEST:

Leilani I. Brown
City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



Aaron C. Harp
City Attorney

STATE OF CALIFORNIA, COUNTY OF ORANGE, CITY OF NEWPORT BEACH

The undersigned CERTIFIES as follows:

1. During all of the times herein mentioned, the undersigned was, and now is, the duly qualified and acting City Clerk of the City of Newport Beach, California.

2. The attached resolution abandoning proceedings for the construction of certain improvements in City of Newport Beach Assessment District No. 120 was duly adopted on January 11, 2022.

3. Reference is hereby made to a Resolution of Intention for Assessment District No. 120, Resolution No. _____, adopted on _____, 2021 for a further and complete description of the works of improvement and assessments proposed for Assessment District No. 120.

4. A map of the proposed boundaries of Assessment District No. 120 was filed in the Office of the County Recorder of the County of Orange County on _____, 2021, as Orange County Assessor Parcel Maps Recorded Document _____.

EXECUTED this ___ day of _____, 2022.

Leilani I. Brown
City Clerk

ATTACHMENT C

RESOLUTION NO. 2022- 6

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NEWPORT BEACH, CALIFORNIA, DECLARING
ABANDONMENT OF PROCEEDINGS FOR CITY OF
NEWPORT BEACH ASSESSMENT DISTRICT NO. 120-2**

WHEREAS, this City Council has previously adopted Resolution No. 2021-111 (the "Resolution of Intention") and initiated proceedings for the acquisition of certain public works of improvement, namely, the conversion of certain overhead electrical, cable and communication facilities to underground locations, together with appurtenances and appurtenant work, in a special assessment district designated as City of Newport Beach Assessment District No. 120-2 (hereinafter referred to as the "Assessment District") under the provisions of the Municipal Improvement Act of 1913 (Division 12 of California Streets and Highways Code, the "Act"), Article XIII D of the Constitution of the State of California ("Article XIII D"), and the Proposition 218 Omnibus Implementation Act (commencing with Section 53750 of the Government Code) (the "Implementation Act") (the Act, Article XIII D, and the Implementation Act are referred to herein collectively as the "Assessment Law");

WHEREAS, after notice of a public hearing was mailed, accompanied by ballot materials, a full public hearing on the improvements and assessments was held on January 11, 2022, all in accordance with Assessment Law; and

WHEREAS, this City Council has received all ballots filed with the City Clerk prior to the conclusion of the hearing, and the Assessment Engineer on behalf of the City Clerk has counted all ballots for and against the formation of the Assessment District as provided in Article XIII D.

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

Section 1: The public hearing referred to in the recitals hereof has been duly held, and each and every step in the proceedings prior to and including the hearing has been duly and regularly taken.

Section 2: This City Council finds and determines based upon the Certificate of Assessment Engineer who conducted the ballot tabulation that a majority of the ballots received are in opposition to the assessment. In tabulating the ballots, the ballots were weighted according to the proportional financial obligation of the affected property.

Section 3: The proceedings heretofore taken under and pursuant to the Assessment Law for the work and improvements proposed by said Resolution of Intention in the Assessment District are hereby ordered abandoned.

Section 4: The City Clerk shall immediately cause the recordation of a certified copy of this Resolution of Abandonment with the County Recorder. The certificate attached to the Resolution shall include a reference to the date of the adoption of this resolution, the date of the original Resolution of Intention, and the date the map of the Assessment District was previously filed with the County Recorder.

Section 5: The recitals provided in this resolution are true and correct and are incorporated into the operative part of this resolution.

Section 6: 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 7: The City Council finds the adoption of this resolution is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

Section 8: As a result of sufficient ballots being cast against the formation of the Assessment District, Assessment District No. 120, which was confirmed in a Resolution of the City Council adopted on April 13, 2021, and its associated assessments, shall remain in place.

Section 9: This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify the vote adopting the resolution.

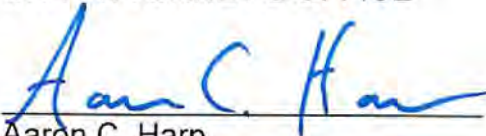
ADOPTED this 11th day of January, 2022

Kevin Muldoon
Mayor

ATTEST:

Leilani I. Brown
City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



Aaron C. Harp
City Attorney

STATE OF CALIFORNIA, COUNTY OF ORANGE, CITY OF NEWPORT BEACH

The undersigned CERTIFIES as follows:

1. During all of the times herein mentioned, the undersigned was, and now is, the duly qualified and acting City Clerk of the City of Newport Beach, California.

2. The attached resolution abandoning proceedings for the construction of certain improvements in City of Newport Beach Assessment District No. 120-2 was duly adopted on January 11, 2022.

3. Reference is hereby made to a Resolution of Intention, Resolution No. _____, adopted on _____, 2021 for a further and complete description of the works of improvement and assessments proposed for the Assessment District.

4. A map of the proposed boundaries of the Assessment District was filed in the Office of the County Recorder of the County of Orange County on _____, 2021, as Orange County Assessor Parcel Maps Recorded Document _____.

EXECUTED this ___ day of _____, 2022.

Leilani I. Brown
City Clerk