



## Legislation Details (With Text)

**File #:** 08-1149      **Version:** 3      **Name:** PW - RES election overrule protest & election results  
**Type:** Resolution      **Status:** Adopted  
**File created:** 10/23/2008      **In control:** City Council  
**On agenda:** 12/16/2008      **Final action:** 12/16/2008  
**Title:** Recommendation to adopt resolution overruling protests and determining results of the election; and  
**Sponsors:**  
**Indexes:**  
**Code sections:**  
**Attachments:** 1. 111108-H-4sr&att.pdf, 2. 120208-UB-22sr.pdf, 3. 121608-UB-15sr&att 1.pdf, 4. 121608-UB-15-Handout J Ciampa.pdf, 5. 121608-UB-15-Handout R Gumbiner.pdf, 6. RES-08-0158

Date	Ver.	Action By	Action	Result
12/16/2008	3	City Council	approve recommendation and adopt	Pass
12/2/2008	2	City Council	approve recommendation	Pass
11/11/2008	1	City Council	approve recommendation	Pass

Recommendation to adopt resolution overruling protests and determining results of the election; and

On September 23, 2008, City Council adopted RES-08-0116, declaring its intention to order improvements and to form Assessment District No. 08-01, and RES-08-0117, preliminarily approving the Engineering Report for the assessment district and calling for a public hearing and a property owner election for the proposed assessment district on November 11, 2008. The September 23rd council letter describing the project is attached as Exhibit A.

On November 11, 2008, the City Council conducted the required hearing and received no public comments during the hearing. The public hearing was closed; however, due to a written protest received by U.S. Mail earlier in the day, it was recommended that the matter of formal consideration of adopting the required resolutions to form the assessment district be held over until December 2, 2008, to give staff time to review the protest letter.

In reviewing the protest letter with legal counsel and the consultant who prepared the Engineers Report, staff feels that all requirements under the State and City codes for the formation of the proposed assessment district have been complied with. A copy of a letter signed by the City's assessment district engineer for the proposed district is attached as Exhibit B. In the event that litigation occurs with respect to the formation of the district, the City's general fund will not be impacted, because a property owner in the proposed district has agreed to indemnify and defend the City in such litigation. This matter was continued to December 16<sup>th</sup> in order to provide time to finalize the indemnity agreement.

As part of the process for forming an assessment district, the City is required to mail out ballots to each property owner of record within the proposed assessment district as provided for by California law. The ballots were to be turned in prior to the close of the public hearing on this matter. Each ballot

is weighted by the amount of the proposed assessment for the property represented by that ballot. This means that a property whose proposed assessment is twice that of another property in the district has twice the weight when tabulated. Formation of the proposed assessment district can only proceed if a majority of the weighted ballots received were in favor of forming the assessment district. Of the 38 properties to be included in the assessment district, 28 property owners turned in ballots prior to the closure of the public hearing on November 11, 2008. 76 percent of the weighted ballots received were in favor of forming the assessment district. Since a majority of the weighted ballots received were in favor of forming the assessment district, the Council may consider formation of the district through the adoption of the attached resolutions. The Final Engineer's Report for Assessment District 08-01 is attached as Exhibit C.

This matter was reviewed by Chief Assistant City Attorney Heather Mahood on November 19, 2008 and Budget Management Officer Victoria Bell on October 22, 2008.

By Resolution No. RES-08-0117, the date for action on this matter was set for November 11, 2008, and then continued to December 16, 2008 by City Council action. This matter must be acted on December 16, 2008, or continued by Council action to another date.

If the Council adopts the attached resolutions for the formation of the proposed assessment district, there will be a 30-day cash collection period for property owners to prepay their assessments. Subsequently, it is anticipated that the City, by future action, will issue tax-exempt bonds for the remaining amount. In order to reduce costs, the property owners proposed that the bonds be sold as a direct private placement rather than as a public offering. The private placement will eliminate certain costs including printing, registration, servicing costs, and the underwriter's discount. If the direct placement is unsuccessful, the project may be underfunded and therefore infeasible. In this scenario, the bonds will not be issued.

Naples Elementary School is located within the proposed assessment district with an assessment of \$122,488. This assessment cannot be enforced and will be voluntarily paid via a separate agreement by other property owners within the assessment district prior to the issuance of any bonds.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LONG BEACH OVERRULING PROTESTS AND DETERMINING RESULTS OF ELECTION - ASSESSMENT DISTRICT NO. 08-01 (THE TOLEDO UTILITY UNDERGROUNDING)**

**MICHAEL P. CONWAY  
DIRECTOR OF PUBLIC WORKS**

APPROVED:

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**PATRICK H. WEST  
CITY MANAGER**