



## Legislation Text

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**File #:** 10-0539, **Version:** 1

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Recommendation to adopt resolution determining all unpaid assessments for the City's Assessment District No. 08-01 (The Toledo Utility Undergrounding); and

The owners of property along The Toledo between Second Street and the Geneva Walkway requested that the City establish an assessment district to finance the costs of undergrounding overhead electrical, telephone and cable facilities. In response, on September 23, 2008, the City Council adopted RES-08-116 expressing the intention of the City Council to establish City of Long Beach Assessment District No. 08-01 (the "Assessment District"). On November 11, 2008, after conducting a public hearing regarding the Assessment District, an election was held wherein 76 percent of the ballots cast by the owners of the property to be assessed (weighted by the amounts of the proposed assessments on their respective properties) voted in favor of the Assessment District.

On December 16, 2008, the City Council adopted RES-08-0158 overruling protests against the Assessment District and determining the results of the election, and adopted RES-080159 confirming the assessments and ordering the improvements for the Assessment District. On December 22, 2008, the City Clerk recorded, in the County Recorder's Office, a Notice of Assessment against each of the parcels in the Assessment District.

The Conservator for the estate of one of the property owners filed an action in Superior Court seeking to invalidate the City's approval of the Assessment District and the assessment levied. On August 31, 2009, a judgment was rendered in favor of the City. As no appeal was filed, the Court order now is final. Following the court action, the City worked with the utility companies (Southern California Edison, Verizon Telephone and Charter Cable) to finalize Plans and Specifications for the installation of conduit and other civil structures for bidding purposes, and distributed a Request for Proposals (RFP) for construction bids for the work. Staff will return to City Council for authorization to award the construction contract.

The Assessment District includes a total of 38 parcels in the area that will specifically benefit from the undergrounding project, 37 of which were to be assessed for the costs of the utility undergrounding. Twenty-four of the 37 parcels each have proposed assessments of \$37,117, and the remaining parcels have proposed assessments that vary between \$6,186 and \$49,490, except for a parcel owned by the Long Beach Unified School District (LBUSD) with an assessment of \$122,488. On April 7, 2010, the estate of Dr. Gumbiner, a property owner in the Assessment District, prepaid in full the assessment on the LBUSD parcel mentioned above.

On April 12, 2010, a Notice of Assessment was mailed to each of the property owners in the Assessment District allowing them an opportunity to prepay their respective assessments at an 11 percent discount from the total assessment that otherwise will be payable in installments (through inclusion of the annual assessment amount on their County ad valorem property tax bills over the next 20 years). The 11 percent discount represents the proportional costs of the bond financing that will be done for any of the assessments that were not prepaid by May 12, 2010. The City Treasurer

has established an account in which the LBUSD parcel prepayment and any other prepayments received by the City were deposited. The City Treasurer has filed with the City Clerk a Paid/Unpaid List, indicating all payments received on account of any prepayments of the assessments.

The City Council is now requested to adopt a Resolution determining the unpaid assessments for the Assessment District, based on the Paid/Unpaid List prepared by the City Treasurer and on file with the City Clerk, directing the City Clerk to transmit the Paid/Unpaid List to the County Auditor so that the unpaid assessments can be collected on the County secured ad valorem tax roll, and authorizing a maximum annual administration charge of \$500 per parcel (with an annual CPI adjustment) to pay for administrative costs of the City related to the Assessment District, all as established each year by the City Engineer. The annual administrative levy was disclosed in the adopted Engineer's Report for the Assessment District.

The City Council also is requested to adopt a Resolution providing for the issuance of improvement bonds for the Assessment District contingent upon City Council's award of a construction contract, and approving related documents and actions. This adoption in advance of the contract award is requested to minimize delays in financing and comply with the expediency requested by the residents. The improvement bonds are proposed to be issued pursuant to a Fiscal Agent Agreement to be entered into by the City and U.S. Bank National Association, as fiscal agent. The Fiscal Agent Agreement clearly provides that the improvement bonds are payable solely from the annual assessments on properties in the Assessment District that have not prepaid their assessments, and from amounts in certain funds established under the Fiscal Agent Agreement. The improvement bonds are not in any way general obligations of the City.

The improvement bonds are expected to be offered for sale in late May 2010, pursuant to a Preliminary Official Statement, which describes the property in the Assessment District and the relevant terms of the improvement bonds. The improvement bonds are expected to be sold pursuant to a Bond Purchase Agreement to be entered into by the City and the bond underwriter, who will market the improvement bonds to prospective investors.

A Continuing Disclosure Certificate has also been prepared, wherein the City agrees to provide certain annual and material event disclosures regarding the Assessment District and the improvement bonds to bond investors. City Councilmembers are encouraged to read the Preliminary Official Statement and to advise City staff if it is believed that there are any material misstatements in the Preliminary Official Statement, or if it omits information material to an investment in the improvement bonds.

The Resolution authorizing the issuance of the improvement bonds upon City Council's award of the construction contract, authorizes the issuance of up to \$1,335,000 principal amount of improvement bonds or, if less, the aggregate amount of the unpaid assessments, and approves the above-described Fiscal Agent Agreement, Preliminary Official Statement, Bond Purchase Agreement and Continuing Disclosure Certificate. The Resolution authorizes the execution and delivery of the documents in connection with the issuance of the improvement bonds.

In accordance with the California Environmental Quality Act, Categorical Exemption number CE-110-08 has been issued for this project.

This matter was reviewed by Assistant City Attorney Heather A. Mahood on April 28, 2010 and

Budget Management Officer Victoria Hell on April 29, 2010.

A construction contract for the work cannot be awarded until the improvement bonds to be issued have been authorized by the City Council. In order to complete as much of the work as possible prior to the start of the school year, and thereby avoid disruption to the school site located in the Assessment District, the bonds need to be sold and improvement work needs to begin as soon as possible.

There is no fiscal impact to the City associated with the requested actions. The costs of the improvement project will be paid solely from the prepaid assessments and the proceeds of the improvement bonds to be issued. All bond proceeds and revenue from the Assessment District will be collected in, and expended from, accounts established for the Assessment District. All expenses related to the formation of the Assessment District will be paid from the proceeds of improvement bonds to be issued, and annual administrative costs of the Assessment District will be paid from the administrative levy, to be included with the assessments that are annually levied on the parcels in the Assessment District.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LONG BEACH DETERMINING UNPAID ASSESSMENTS FOR THE CITY'S ASSESSMENT DISTRICT NO. 08-01 (THE TOLEDO UTILITY UNDERGROUNDING)

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APPROVED:

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