

OCT 05 2004

RICHARD GRAHAM
PUBLIC SERVICES DIRECTOR

SALT LAKE CITY CORPORATION

DEPARTMENT OF PUBLIC SERVICES

ROSS C. "ROCKY" ANDERSON
MAYOR

DATE: September 24, 2004

TO: ROCKY FLUHART *Rocky*
CHIEF ADMINISTRATIVE OFFICER

SUBJECT: An ordinance authorizing the Mayor to approve the annual assessment ordinance for Special Lighting District LO2.

FUNDING: The annual operating, maintenance and electrical energy costs for the district is estimated at \$173,300.00. The City pays 25% of the annual expenses (\$43,325.00) and the residents in the district pay the remaining 75% (\$129,975.00). The City's portion is included in the Transportation Division's annual operating budget.

BACKGROUND AND DISCUSSION: The attached assessment LO2 authorizes the Mayor to approve the annual assessment for Special Lighting District LO2 to be levied upon each parcel of property in the lighting district for the purpose of paying the operating, maintenance and electrical energy costs of the district. There are 768 property owners in the lighting district, which are at various locations throughout the City.

CONTACT PERSON: MAX PETERSON, CITY ENGINEER *MSP.*
KAREN CARRUTHERS, ENGINEERING *KC*

SUBMITTED BY: RICK GRAHAM, DIRECTOR *Ry*
PUBLIC SERVICES

Salt Lake City, Utah

October 19, 2004

The City Council of Salt Lake City, Salt Lake County, Utah, met in regular session on Tuesday, October 19, 2004, at its regular meeting place at 451 South State Street, Salt Lake City, Utah. The following members of the City Council were present:

Jill Remington Love
Dale Lambert
Nancy Saxton
Van Blair Turner
David L. Buhler
Carlton Christensen
Eric Jergensen

Chair
Vice Chair
Councilmember
Councilmember
Councilmember
Councilmember
Councilmember

Also present:

Ross C. Anderson
Edwin P. Rutan II

Mayor
City Attorney
Deputy City Recorder

Absent:

After the meeting had been duly called to order and after other matters not pertinent to this resolution had been discussed, the Deputy City Recorder presented to the City Council a Certificate of Compliance With Open Meeting Law with respect to this October 19, 2004, meeting, a copy of which is attached hereto as Exhibit A.

Thereupon the following proceedings, among others, were duly had and taken:

It was noted Salt Lake City, Utah Special Lighting District No. 2 (the "District") was duly created, pursuant to notice and public hearing, on October 10, 1995. The District was created with notice to all property owners within the District that assessments are to be paid annually when assessed and after passage of the due date set out in the Notice of Assessment, interest will accrue on any unpaid balance until paid. On November 21, 1995, Ordinance No. 80 of 1995 (the "Original Assessment Ordinance") was adopted by the City Council. In November of each year thereafter an assessment ordinance has been adopted to cover actual and estimated costs of the District for a twelve month period.

Pursuant to the procedures established in the proceedings creating the District and the Original Assessment Ordinance, the following assessment ordinance (the "2004 Assessment Ordinance") was then introduced in writing, was fully discussed, and pursuant to motion duly made by Councilmember _____ and seconded by Councilmember _____ adopted by the following vote:

AYE:

NAY:

ABSENT:

The 2004 Assessment Ordinance was then signed by the Chair, presented to and approved by the Mayor and recorded by the Deputy City Recorder in the official records of Salt Lake City, Utah. The 2004 Assessment Ordinance is as follows:

ORDINANCE NO. ____ of 2004

AN ORDINANCE (THE "2004 ASSESSMENT ORDINANCE") APPROVING THE ASSESSMENT LIST AND LEVYING AN ANNUAL ASSESSMENT UPON PROPERTY IN SALT LAKE CITY, UTAH LIGHTING DISTRICT NO. 2, NOW KNOWN AS L02 (THE "DISTRICT L02"); ESTABLISHING THE EFFECTIVE DATE OF THE 2004 ASSESSMENT ORDINANCE; PROVIDING FOR A PROCEDURE TO CONTEST AN ASSESSMENT; AND RELATED MATTERS.

BE IT ORDAINED BY THE CITY COUNCIL (THE "COUNCIL") OF SALT LAKE CITY (THE "CITY"), SALT LAKE COUNTY, UTAH:

Section 1. Determination of Costs. All costs and expenses for providing street lighting within the District and the reasonable cost of any work to be done have been determined.

Section 2. Approval of Assessment List; Findings. The Council confirms and adopts the District L02 assessment list, a copy of which is attached hereto as Exhibit B and incorporated herein by reference (the "Assessment List"). The Assessment List has been adjusted to comport with the previous year's experience for the District and it includes estimated operation and maintenance expenses for the coming year. The Council has determined that the Assessment List is just and equitable; that each piece of property to be assessed within the District will be benefited in an amount not less than the assessment to be levied against said property; and that no piece of property listed in the assessment list will bear more than its proportionate share of the cost of such improvements or services.

Section 3. Levy of Assessments. The Council hereby levies an assessment upon the real property identified in the Assessment List. The assessments levied upon each parcel of property therein described shall be in the amount set forth in the Assessment List as adjusted.

The assessments hereby levied are for the purpose of paying the costs of providing for the operation, maintenance and patrolling of incandescent, fluorescent, metal halide and sodium vapor lamps and the furnishing of electrical energy. It is hereby determined and established that the property being assessed will be specifically benefited to the full amount of the assessment hereby levied to cover the cost of operating, maintaining, patrolling and furnishing electrical energy. The properties benefited are within the boundaries of the lots, blocks and streets as set forth in the Assessment List. Unless future modifications revise the purposes and plans of the District, future assessments will continue to be levied annually based upon applicable rates established by the energy contract with the City. Future non-energy costs of operation and maintenance relating to the providing of lighting benefits will also be a factor in determining future rates. The City Treasurer is hereby authorized and directed to notify

property owners of this assessment and to collect assessments in accordance with the provisions of the 2004 Assessment Ordinance for the purposes herein provided.

Section 4. Cost of Services Improvements; Amount of Total Assessments. As determined by the office of the City Engineer, the total actual and estimated costs of all services and improvements for this fiscal year of the District is \$173,300, of which the City's portion is approximately \$43,325. The remainder of \$129,975 is to be paid from assessments levied upon property within the District as set forth in the Assessment List.

Section 5. Method, Rate and Payment of Assessment. The total assessment for the District is levied in accordance with the method set out in the Notice of Intention pertaining to the District as adopted by the City Council on August 8, 1995. The applicable rate for each property was determined based on the costs of street lighting services, together with other related factors, the totals of which are set out in the preceding Section.

Assessments shall be payable on December 15, 2004 (the "Due Date"). Interest on assessments shall accrue only after passage of the Due Date set out in the Special Assessment Notice to be mailed by the Treasurer to property owners. The rate of interest accruing on any delinquent assessment shall be the rate allowed by Utah statute (the "Delinquent Rate"). The whole or any part of the assessment may be paid without interest on or prior to the Due Date. Future annual assessments may include adjustments to reflect changes in operation and maintenance costs and any balances or deficits resulting from the previous year's operations.

Section 6. Default in Payment. The assessment installment shall be delinquent if it remains unpaid after the Due Date. Any delinquency shall constitute a default of the payment of the assessment. If a default occurs in the payment of any installment when due, the City may file for recording a notice (the "Notice of Delinquency") with the Salt Lake County Recorder. The resulting recording fees for both the filing and the release, shall be added to the assessment together with accrued interest due and owing. In addition, costs of collection as determined by the City Treasurer or required by law shall be charged and paid on all delinquent amounts.

If the delinquency continues after the filing of the Notice of Delinquency, the City Treasurer may determine that additional enforcement action may be appropriate. Prior to commencement of such enforcement action the City shall give an additional notice (the "Notice of Default"), in writing, of the default to the owner of the property in default. Notice of Default shall be effective upon deposit of the notice in the U.S. Mail, postage prepaid, and addressed to the owner as shown on the last equalized assessment rolls for the City or on the official ownership records of the City. The Notice of Default may provide for a period of thirty (30) days in which the owner shall pay the assessment balance then due and owing together with accrued interest at the Delinquent Rate plus recording costs and other costs as determined by the City Treasurer. The Notice of Default may also declare that after the thirty (30) day period the City may bring suit for the total amount due plus costs of the enforcement action remedy, or the City may elect to commence foreclosure proceedings in the manner provided for actions to foreclose

mortgage liens or trust deeds. In the event the City elects to foreclose using trust deed procedures, a trustee shall be designated by the City to serve as trust deed trustee for purposes of the enforcement proceedings. If at the sale no person or entity shall bid and pay the City the amount due on the assessment plus interest and costs, the property shall be deemed sold to the City for these amounts. The City shall be permitted to bid at the sale.

The election by the City to use or not to use a Notice of Delinquency and a Notice of Default shall have no effect on the perfecting of the lien resulting from a delinquency in the payment of any assessment after publication of the applicable assessment ordinance. The remedies provided herein for the collection of assessments and the enforcement of liens shall be deemed and construed to be cumulative and the use of any one method or means of collection or enforcement shall not deprive the City of the use of any other method or means. The amounts of accrued interest and all costs of collection shall be added to the amount of the assessment up to the date of judgment or, in the case of foreclosure action, the date of the foreclosure sale.

Section 7. Remedy of Default. If prior to the final date payment may be legally made under a final sale or foreclosure of property to collect delinquent assessment installments, the property owner pays the full amount of the unpaid assessment balance with interest at the Delinquent Rate, plus all approved or required costs, the owner will have the right to make payment in full and receive a release of the assessment lien.

Section 8. Lien of Assessment. An assessment levied by the 2004 Assessment Ordinance or any unpaid portion of an earlier assessment, any interest accruing and the costs of recording and collection shall constitute a lien against the property upon which the assessment is levied as of December 1, 2004, the effective date of the 2004 Assessment Ordinance (the "Effective Date"), or as of the effective date of any earlier applicable assessment ordinance. Unless the assessment becomes delinquent, no notice of lien may be recorded and no release of lien will be recorded at the time of payment. When a delinquency occurs, a notice of lien setting out the assessment balance due may be incorporated into a Notice of Delinquency which will be recorded. The assessment lien based on the 2004 Assessment Ordinance, or on an earlier assessment ordinance, if the delinquency predates the effective date of the 2004 Assessment Ordinance, shall be superior to the lien of any trust deed, mortgage, mechanic's or materialman's lien or other encumbrance and shall be equal to and on a parity with the lien for general property taxes. The lien shall continue until the assessment and any interest, penalties and costs on it are paid, notwithstanding any sale of the property for or on account of a delinquent general property tax, special tax or other assessment or the issuance of a tax deed, an assignment of interest by the governing entity or a sheriff's certificate of sale or deed.

Section 9. Appeal of Assessment. An owner of property assessed within the District may, within fifteen (15) days from the Effective Date, file a written appeal with the City Engineer contesting the equity or justice of his/her assessment. Upon receipt of a written appeal, the City shall convene a Board of Equalization and Review to consider the appeal and, where appropriate, make adjustments to said assessment, provided

however, that no adjustment may be made which would result in an increase in said assessment. The City shall report to the property owner the determination of the Board of Equalization and Review within five (5) days after its recommendation is made. If an adjustment is recommended, the City Treasurer shall note said adjustment on the Assessment List attached hereto. If no adjustment is made, the property owner may take such additional legal action as provided in Section 10.

Section 10. Contestability. No assessment shall be declared void or set aside in whole or in part in consequence of any error or irregularity which does not go to the equity or justice of the assessment or proceeding. Any party who has not waived his or her objections to the assessment may commence a civil action against the City to enjoin the levy or collection of the assessment or to set aside and declare unlawful the 2004 Assessment Ordinance.

Such action must be commenced and summons must be served on the City not later than 30 days after the Due Date of the 2004 Assessment Ordinance. This action shall be the exclusive remedy of any aggrieved party. No court shall entertain any complaint which the party was authorized to make by statute but did not timely make or any complaint that does not go to the equity or justice of the assessment or proceeding.

After the expiration of the 30-day period provided in this section, the assessments levied in the District shall become incontestable as to all persons who have not commenced the action provided for in this section; and no suit to enjoin the levy, collection or enforcement of the assessments, or in any other manner attacking or questioning the legality of the assessments may be instituted in this state, and no court shall have authority to inquire into these matters.

Section 11. Notice to Property Owners. The City Treasurer is hereby authorized and directed to give notice of assessment by mail to the property owners in the District. Said notice shall, among other things, state the amount of the assessment and the date for payment. A copy of the form of notice of assessment is available for examination upon request at the office of the Deputy City Recorder.

Section 12. All Necessary Action Approved. The officials of the City are hereby authorized and directed to take all action necessary and appropriate to effectuate the provisions of the 2004 Assessment Ordinance.

Section 13. Repeal of Conflicting Provisions. All ordinances or parts thereof in conflict with the 2004 Assessment Ordinance are hereby repealed.

Section 14. Publication of Ordinances. An emergency is hereby declared, the preservation of peace, health and safety of the City and the inhabitants thereof so requiring. Immediately after its adoption, the 2004 Assessment Ordinance shall be signed by the Mayor and City Recorder and shall be recorded in the ordinance book kept for that purpose. The 2004 Assessment Ordinance shall be published once in the Deseret Morning News, a newspaper published and having general circulation in the City, and shall take effect immediately upon its Effective Date.

PASSED AND APPROVED by the City Council of the City, this October 19,
2004.

(SEAL)

By: _____
Chair

ATTEST:

By: _____
Deputy City Recorder

PRESENTATION TO THE MAYOR

The foregoing ordinance was presented to the Mayor for his approval or disapproval on October ____, 2004.

By: _____
Chair

MAYOR'S APPROVAL OR DISAPPROVAL

The foregoing ordinance is hereby approved this October ____, 2004.

Ross C. Anderson, Mayor

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

I, _____, the duly appointed, qualified and acting Deputy City Recorder of Salt Lake City, Salt Lake County, Utah, do hereby certify that the above and foregoing is a full, true and correct copy of the record of proceedings had by the City Council of Salt Lake City, Salt Lake County, Utah, at its meeting held on October 19, 2004, insofar as the same relates to or concerns Salt Lake City, Utah Lighting District No. L02 as the same appears of record in my office.

I further certify that the 2004 Assessment Ordinance levying the special assessments was recorded by me in the official records of Salt Lake City on October 19, 2004.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of Salt Lake City this October 19, 2004.

(SEAL)

By: _____
Deputy City Recorder

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

CERTIFICATE OF MAILING
NOTICE OF ASSESSMENT

I, Daniel Mulé, the duly appointed, qualified and acting City Treasurer of Salt Lake City, Salt Lake County, Utah, do hereby certify that on _____, 2004, I caused to be mailed a Notice of Assessment to each property owner in Salt Lake City, Utah Lighting District No. L02 by United States Mail, postage prepaid, at the last known address of such owner.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of Salt Lake City, Salt Lake County, Utah, this _____, 2004.

(SEAL)

By: _____
City Treasurer

PROOF OF PUBLICATION

Attached to this page is the Proof of Publication, indicating by the affidavit of the publisher that the said 2004 Assessment Ordinance levying the special assessments which was contained in the 2004 Assessment Ordinance adopted by the City Council on October 19, 2004, was published one time in the Deseret Morning News.

EXHIBIT A

CERTIFICATE OF COMPLIANCE WITH OPEN MEETING LAW

I, _____, the undersigned Deputy City Recorder of Salt Lake City, Salt Lake County, Utah (the "City"), do hereby certify, according to the records of the City in my official possession, and upon my own knowledge and belief, that in accordance with the requirements of Section 52-4-6(2), Utah Code Annotated 453, as amended, I gave not less than twenty-four (24) hours public notice of the agenda, date, time and place of the October 19, 2004, public meeting held by the City as follows:

(a) By causing a Notice, in the form attached hereto as Schedule A, to be posted at the City's offices at 451 South State Street, Salt Lake City, Utah, on _____, 2004, at least twenty-four (24) hours prior to the convening of the meeting, said Notice having continuously remained so posted and available for public inspection until the completion of the meeting; and

(b) By causing a copy of such Notice, in the form attached hereto as Schedule A, to be delivered to the Deseret Morning News on _____, 2004, at least twenty-four (24) hours prior to the convening of the meeting.

IN WITNESS WHEREOF, I have hereunto subscribed my official signature this October 19, 2004.

(SEAL)

By: _____
Deputy City Recorder

SCHEDULE A

NOTICE OF MEETING

EXHIBIT B

ASSESSMENT LIST

(Available for review at the offices of the
City Recorder and the City Engineer)