

RESOLUTION NO. 08-89

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM DESERT APPROVING THE REPORT OF THE DIRECTOR OF THE CITY'S OFFICE OF ENERGY MANAGEMENT IN CONNECTION WITH THE PROPOSED ESTABLISHMENT OF A CONTRACTUAL ASSESSMENT PROGRAM PURSUANT TO CHAPTER 29 OF PART 3 OF DIVISION 7 OF THE CALIFORNIA STREETS AND HIGHWAYS CODE; ESTABLISHING A PROGRAM TO FINANCE DISTRIBUTED GENERATION RENEWABLE ENERGY SOURCES AND ENERGY EFFICIENCY IMPROVEMENTS; APPROPRIATING MONEYS FROM THE GENERAL FUND TO FUND THE PROGRAM; CONFIRMING ASSESSMENTS TO BE LEVIED WITHIN THE PARAMETERS OF THE REPORT; AMENDING RESOLUTION NO. 08-75; AND TAKING CERTAIN OTHER ACTIONS

RECITALS:

WHEREAS, on July 24, 2008, the City Council adopted its Resolution No. 08-75 (the "Resolution of Intention"), declaring its intention to finance distributed generation renewable energy sources and energy efficiency improvements through the use of contractual assessments pursuant to Chapter 29 of Part 3 of Division 7 of the California Streets and Highways Code (the "Act"); and

WHEREAS, the Resolution of Intention ordered the Director of the City's Office of Energy Management (the "Director") to make and file with the City Clerk a report (the "Report") in accordance with Section 5898.22 of the Act and the Director has filed the Report with the City Clerk; and

WHEREAS, the Resolution of Intention set the time and place for a hearing on the proposed Energy Independence Program (the "Program") as described in the Report; and

WHEREAS, the Resolution of Intention described the proposed arrangements for funding the Program, including certain parameters in the event that the City determines to issue in the event improvement bonds will be issued pursuant to Streets and Highways Code Section 5898.28 to represent assessments; and

WHEREAS, on August 28, 2008, following notice duly given in accordance with law, the City Council held a full and fair public hearing at which interested persons were afforded the opportunity to object to, inquire about or provide evidence with regard to the proposed Program or any of its particulars, including the extent of the area proposed to be included within the Program, the terms and conditions of the draft contract (described below), or the proposed financing provisions; and

WHEREAS, the Report contains (a) a map showing the boundaries of the territory within which the Program is proposed to be offered, (b) a draft application for participation in the Program (the "Application"), (c) a draft contract (the "Contract") specifying the terms and conditions that would be agreed to by a property owner and the City for participation in the Program, (d) a statement of city policies concerning contractual assessments including: (1) identification of types of facilities, distributed generation renewable energy sources, or energy efficiency improvements that may be financed through the use of contractual assessments (the "Authorized Equipment List"), (2) identification of a City official authorized to enter into contractual assessments on behalf of the City, (3) a maximum aggregate dollar amount of contractual assessments, (4) a method for setting requests from property owners for financing through contractual assessments in priority order in the event that requests appear likely to exceed the authorization amount, (e) a plan for raising a capital amount required to pay for work performed pursuant to contractual assessments, (f) a statement of or method for determining the interest rate and time period during which contracting property owners would pay any assessment, (g) the establishment of any reserve fund or funds, (h) the apportionment of all or any portion of the costs incidental to financing, administration, and collection of the contractual assessment program among the consenting property owners and the City, and (i) a report on the results of the consultations with the County Auditor-Controller's office; and

WHEREAS, the City Council, having considered all oral and written testimony, desires to approve the Report and proceed with the establishment of the Program;

NOW, THEREFORE, BE IT RESOLVED, DETERMINED, AND ORDERED BY THE CITY COUNCIL OF THE CITY OF PALM DESERT AS FOLLOWS:

Section 1. The above recitals are all true and correct.

Section 2. The City Council declares that the Report as filed is hereby approved.

Section 3. The City Council hereby establishes the Program to be implemented as provided in the Report.

Section 4. The City Council hereby establishes a special trust fund held by the City called the "Energy Independence Fund." Moneys in the Energy Independence Fund shall be used and disbursed for the purpose of funding the Program.

Section 5. The City Council hereby authorizes and directs the Director of Finance of the City to transfer from the City General Fund to the Energy Independence Fund the amount of \$2.5 million.

Section 6. The City Council hereby confirms the contractual assessments to be levied within the parameters of the Report.

Section 7. The Director is hereby directed to file with the City Treasurer and to revise, as appropriate, a list of the parcels for which the City and a property owner have entered into a contractual assessment agreement (each, a "Loan Agreement") pursuant to the Program.

Section 8. The City Council hereby appoints and designates the Director to perform the duties and functions of the Superintendent of Streets in connection with the Program.

Section 9. Upon the execution of any Loan Agreement by all parties thereto pursuant to the Program, the City Clerk is hereby directed to cause to be recorded in the office of the Superintendent of Streets and in the office of the County Recorder of the County of Riverside an assessment diagram as provided by Section 3114 of the California Streets and Highways Code.

Section 10. After recording in the office of the County Recorder of the County of Riverside an assessment diagram pursuant to Section 9 hereof and prior to the disbursement of any loan proceeds pursuant to a Loan Agreement, the City Clerk is hereby directed to cause to be recorded in the office of the County Recorder of the County of Riverside a notice of assessment in the form and content approved by the Director, as provided by Section 3114 of the California Streets and Highways Code.

Section 11. Section 6 of Resolution No. 08-75 is hereby amended to read as follows:

"The proposed arrangements for financing the contractual assessment financing program are briefly described as follows: The City may issue bonds pursuant to Chapter 29, the principal and interest of which would be repaid by contractual assessments. Alternatively, the City may advance its own funds to finance work to be repaid through contractual assessments, and may from time to time sell bonds, notes, certificates of participation or other forms of indebtedness to reimburse itself for such advances. The proposed financing arrangements may include the lease-purchase of public facilities by the City pursuant to a lease or other contractual arrangement with a public financing authority or non profit entity or other financing elements as may be determined necessary or useful to the financing of the contractual assessment program.

In the event improvement bonds will be issued pursuant to Streets and Highways Code Section 5898.28 to represent assessments, all of the following will apply:

- (a) Division 10 (commencing with Section 8500) of the Streets and Highways Code ("Division 10") shall apply to any bonds issued pursuant to Section 5898.28, insofar as that division is not in conflict with Chapter 29.
- (b) Provision is hereby made for the issuance of improvement bonds, in one or more series;
- (c) Notice is hereby given that serial bonds or term bonds or both to represent unpaid assessments, and to bear interest at the rate of not to exceed 12 percent per year, or such other amount authorized by

law, payable semiannually, shall be issued hereunder in one or more series in the manner provided by the Division 10 (to the extent not in conflict with Chapter 29), and the last installment of bonds shall mature a maximum of 39 years from the second day of September next succeeding 12 months from their date.

- (d) The City Council hereby determines and declares that the City may obligate itself to advance available funds from the City treasury to cure any deficiency which may occur in the bond redemption fund.
- (e) The City Council hereby determines that the principal amount of bonds maturing or becoming subject to mandatory prior redemption each year shall be other than an amount equal to an even annual proportion of the aggregate principal amount of the bonds, and the amount of principal maturing or becoming subject to mandatory prior redemption in each year plus the amount of interest payable in that year shall be an aggregate amount that is substantially equal each year, except for the moneys falling due on the first maturity or mandatory prior redemption date of the bonds which shall be adjusted to reflect the amount of interest earned from the date when the bonds bear interest to the date when the first interest is payable on the bonds.
- (f) With respect to the procedures for collection of assessments and the advance retirement of bonds, the City Council proposes to proceed under the provisions of Part 11.1 of Division 10 (commencing with Section 8670 of the Streets and Highways Code)."

Section 12. The Director and the City Manager are hereby authorized and directed, jointly and severally, to do all acts and things which may be required of them by this Resolution, or which may be necessary or desirable in carrying out the Program and all matters incidental thereto, including without limitation, to make clarifying changes to the Report and to modify as deemed necessary by the Director or City Manager the Authorized Equipment List, the draft Application and the draft Contract included therein.

PASSED, APPROVED AND ADOPTED this ____ day of _____ 20__, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Mayor

ATTEST:

City Clerk