



COUNCIL AGENDA: 08-10-10

ITEM: 2.10

# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Katy Allen  
Hans F. Larsen

**SUBJECT:** SEE BELOW

**DATE:** 07-19-10

Approved

Date

7-29-10

**COUNCIL DISTRICT:** 4

**SUBJECT: SETTING THE APPROVAL PROCESS FOR PROPOSED MAINTENANCE DISTRICT 23 (BERRYESSA RD FROM I-680 TO PIEDMONT RD)**

## RECOMMENDATION

Council takes the following actions to establish Proposed Maintenance District 23 (Berryessa Rd from I-680 to Piedmont Rd):

- (a) Adoption of a resolution preliminarily approving the Engineer's Report.
- (b) Setting the public meeting to be held on September 28, 2010 at 1:30 p.m.
- (c) Setting the public hearing and tabulation of property owner ballots for November 16, 2010 at 1:30 p.m.
- (d) Directing that the notice of said meeting and hearing and ballots be mailed to the property owners in district

## OUTCOME

Adoption of a resolution to preliminarily approve the Engineer's Report and to call an election that satisfies the legal requirement to allow affected property owners to vote on the proposed assessment for Maintenance District 23.

## BACKGROUND

Berryessa Road is a four lane major thoroughfare that requires median islands for traffic control and safety. A typical City median is either paved or has trees with a rock based ground cover. The Berryessa Road enhanced landscape in the median island, which includes a variety of trees and flowering shrubs, was installed in 1986 utilizing San Jose Redevelopment Agency funds.

On March 17, 2009, Council reconfirmed the Median Island Landscape Program policy adopted on June 9, 1994 specifying that only Type 1 landscaping be installed on City streets unless an

alternative funding source has been identified for maintenance. Type 1 includes trees and hard or bare surfaces as the City maintenance standard.

Community meetings were held on December 9, 2009 and January 20, 2010 to gather the sentiment of the community regarding the interest in forming a maintenance district in order to preserve the existing landscaping on Berryessa Road. The consensus at the meetings indicated that the majority opinion of the property owners favored the formation of a district, however at a maintenance level slightly lower than what is typically provided by the City's other districts. In addition, several property owners expressed an interest in including maintenance of street trees in the proposed district. As part of this resolution, staff determines the assessment revenue needed to fund the maintenance of the landscaped properties which was included in the Engineer's Report. On June 8, 2010, Council approved a Resolution of Intention to form Maintenance District 23.

### **ANALYSIS**

This action requests Council to preliminarily approve the Engineer's Report on file in the Clerk's Office. The report includes: the description of improvements to be maintained and the maintenance work; the budget and assessments for Fiscal Year 2011-2012; the base assessment and escalation limit; the assessment methodology and formula; the general benefit share or City baseline portion; the assessment roll; and, the boundary description and the district map. The annual aggregate assessment for the district is proposed to be \$51,232 in Fiscal Year 2011-2012. The residential rate would be approximately \$93.00 annually, and the commercial rate would be approximately \$686 annually per acre. If approved, the District will utilize the Consumer Price Index for an inflationary adjustment of this new assessment amount beginning in Fiscal Year 2012-2013. As a property owner in the District, if this maintenance district is approved, the City will be assessed approximately \$6,800 annually with the potential increase previously mentioned. After thorough review by Public Works and Transportation staff the proposal to include maintenance of the street trees was not included in the engineer's report for the proposed Berryessa District. Staff is reviewing a City wide approach to maintenance of the street trees and in order to maintain equity and consistency staff will approach all City street trees in their entirety at a later date.

The Public Meeting on September 28, 2010 and Public Hearing on November 16, 2010 will allow for public testimony to be presented to Council. The Public Meeting, as prescribed by the San Jose Municipal Code,, allows the public to hear about the project and provide comments, although the Council does not take action at that time. At the Public Hearing, Council must consider all objections or protests to the proposed assessment. The hearing may be continued if necessary to allow staff to respond to Council's inquiries or to implement changes proposed by Council. At the close of the Public Hearing, Council will conduct a form of an election called an assessment ballot proceeding whereby property owners within the district cast ballots in favor of or opposed to the assessment, with votes weighted by the amount of the assessment on each parcel. The assessment can only be implemented if affected property owners protesting do not outweigh the ballots cast in favor of the assessment. If approved, the proposed assessment will commence in Fiscal Year 2011-2012 and will be adjusted annually by the Consumer Price Index.

In the event the ballots submitted in opposition to the assessment exceed the ballots in favor of the assessment, Council cannot impose the assessment.

The Notice of Public Hearing is scheduled to be mailed on or before September 17, 2010 and will include the property owner ballot. The notice will inform the owners of the public meeting and hearing, the services to be provided by the district and the proposed assessment. Each completed ballot must be received by the City Clerk prior to the close of the public hearing on November 16, 2010 in order to be included in the tabulation. Although this is a mailed ballot election, any property owner may submit their ballot at the hearing.

### **EVALUATION AND FOLLOW-UP**

As a property owner subject to an assessment of approximately \$6,800, Council must decide at the November 16, 2010 Public Hearing whether to vote favorably, negatively or to abstain from casting a ballot. Additionally, general benefit costs estimated at \$7,500 must be paid by funds generally available to the City. If after the close of the Public Hearing, the district is approved by the property owners within the district, the assessments will be placed on the County Property Tax bills for collection. Staff will bring forward appropriation and funding sources recommendations for Council approval at a later date as appropriate.

### **POLICY ALTERNATIVES**

*Alternative #1:* Discontinue General funded contractual maintenance and convert enhanced landscaping in median islands to Type 1.

**Pros:** The election process would be avoided and assessment funds would not be expended for staff costs associated with the process; No assessment burden on property owners during this difficult economy.

**Cons:** Removing existing landscape could give the impression that the City has little concern for negative community impact; Property owners not given the opportunity to decide what happens in their community.

**Reason for not recommending:** The property owners are accustomed to the existing Type 2 landscaping currently installed in the medians. Many property owners who attended the community meetings expressed interest in saving the landscaping.

*Alternative #2:* Partner with a volunteer organization or the neighborhood itself to maintain the existing landscape.

**Pros:** Reduces the cost of maintenance to the City; Allows the neighborhood the opportunity to organize and take pride in collectively beautifying their community.

**Cons:** Need to have sustainable viable community organization, which can obtain liability insurance and has contracting authority to perform the work; Additional liability of having private citizens perform work in the center of a four lane street; Concern about appropriate traffic control measures; Additional liability associated with public safety concerns if work not performed appropriately; Possible inconsistency of work quality along medians; Potential need for enforcement of contractual obligations or removal of improvements if work is not performed to standards; Requires City staff to regularly monitor performance.

**Reason for not recommending:** Private citizens in the right-of-way creates a great risk to themselves and potentially to others if the work is not performed or completed properly. The citizens would need to be able to form an organization that can lawfully enter into contracts with the City and obtain liability insurance and, if applicable, workers compensation coverage. There is uncertainty of the length of time volunteers will commit to provide maintenance, resulting in the need to revisit the current issue. The City would need to regularly monitor the work as it would with any contractor, and potentially remove work that is not maintained safely or to City standards.

### **PUBLIC OUTREACH/INTEREST**

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

While this action does not meet the \$1 million threshold under Criterion 1, this memorandum will be posted on the City's website for the August 10, 2010 Council agenda. Community outreach included staff meeting or speaking with several major land owners and stakeholders in the proposed district area and holding a community meeting on December 9, 2009, and a follow-up meeting on January 20, 2010 to present options for the district and receive public comment. The community meeting invitations were 1) mailed to each of the owners of the 200 properties as listed in the County records, 2) mailed to the occupant of each site address, and 3) hand delivered to each property. The presentation for the second meeting was emailed to anyone who requested a copy since a few attendees wanted to have something to show their neighbors who were unable to attend. City staff is continuing to compile public comments and is available to respond to inquiries throughout the formation process.

### **COORDINATION**

This memorandum, related documents and resolutions were prepared in cooperation with the City Attorney's Office, the Departments of Parks, Recreation and Neighborhood Services and Planning, Building and Code Enforcement, and the City Manager's Budget Office.

### **FISCAL/POLICY ALIGNMENT**

This action is consistent with 1) the Council-approved Budget Strategy to continue to move in the general direction of setting fees and charges that recover costs of service, 2) the Median Island Landscape policy, and 3) the March 17, 2009 Council approval to either convert existing

weak or underperforming Type 2 to Type 1 designs if a special district is not formed to fund the maintenance.

**COST IMPLICATIONS**

The formation costs are covered by the \$250,000 Council approved on March 17, 2009 to establish special districts if feasible around areas with existing Type 2 landscape.

The City operates a neighborhood park and community center on lands owned by the County of Santa Clara and the Santa Clara Valley Water District. As a tenant of these parcels, the City will be responsible for the associated assessment of approximately \$6,800 if the district is approved by the voters. This amount will increase at the same rate as the CPI in the following years. In addition, the City will collect annual assessments from property owners through the County tax bills or by City invoices. The yearly General Fund contribution to this district will be \$7,500.

**BUDGET REFERENCE**

The table below identifies the fund and appropriation used to fund the staff costs associated with the public outreach conducted to determine the feasibility and community interest of establishing special districts around areas with existing Type 2 landscape.

Fund #	Appn #	Appn. Name	Total Appn	2010-2011 Proposed Capital Budget Page	Last Budget Action (Date, Ord. No.)
465	7066	Maintenance Assessment District Development	\$100,000	V-746	06/29/2010 Ord. No. 28765

**CEQA**

CEQA: Exempt, PP10-090

Planning has found that the operation and maintenance of existing public facilities from this district to be exempt from the environmental review requirements of the California Environmental Quality Act of 1970, as amended.

/s/

/s/

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Acting Director of Transportation

For questions please contact TIMM BORDEN, DEPUTY DIRECTOR, DEPARTMENT OF PUBLIC WORKS, at (408) 535-8300.

