



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: David Sykes

**SUBJECT: PROPOSED ANNEXATION TO
MAINTENANCE DISTRICT 19
(RIVER OAKS AREA LANDSCAPING)**

DATE: August 27, 2012

Approved

Date

9/4/12

COUNCIL DISTRICT: 4

RECOMMENDATION

Conduct a public meeting to receive public comment on a proposal to annex territory into Maintenance District 19 (River Oaks Area Landscaping).

OUTCOME

This public meeting gives the public an opportunity to express any concerns regarding the annexation of the maintenance district for Council's consideration.

BACKGROUND

Maintenance District 19 (River Oaks) (hereafter "MD 19") was formed in 2001 to accommodate the maintenance requirements of enhanced public improvements installed around the River Oaks area in north San José. These improvements include enhanced landscape in the median islands and special paving at select intersections.

Essex Portfolio, LP, the sole property owner, currently has a development permit (PDC06-067) to construct up to 769 condominium units (Tract 10080) on a 10.4 acre site located on the south east corner of Seely Avenue and River Oaks Parkway. This project is adjacent to the Crescendo condominium development and across the street from the Elan Apartments at River Oaks. This proposed development changes the site usage from office to residential similar to adjacent properties in the district and relies on access from the adjacent district. It has been determined by staff that the project will therefore benefit from the improvements being maintained by the district. The developer acknowledges that the development should share in the costs for maintaining the enhanced improvements and has provided the City with a deposit to annex the residential development into MD 19.

State and City code require that any new assessment proposal be approved by a simple majority of property owners in the maintenance district through a special election process called an assessment ballot proceeding. For maintenance districts, a four step approval process is necessary. The first two steps in this process were completed on April 3, 2012 and August 7, 2012, respectively. The final step, to conduct a Public Hearing and tabulate ballots is scheduled for October 30, 2012.

The proposed schedule of events for the district annexation:

April 3, 2012	Adopt resolution of intention (Council) (completed)
August 7, 2012	Adopt resolution to preliminarily approve the engineer's report, set Public Hearing, and Tabulation of Ballot (Council) (completed)
September 7, 2012	Publish Notice of Public Meeting and Hearing (staff)
September 7, 2012	Mail Notice of Public Meeting and Hearing along with property owner ballots (staff)
September 18, 2012	Conduct Public Meeting (Council) (this action)
October 30, 2012	Conduct Public Hearing and tabulate ballots (Council) Adopt resolution declaring ballot tabulation results, and if approved by voters annexing the land into the district (Council)

ANALYSIS

Public Meeting

At this September 18, 2012 public meeting, public testimony may be presented to Council regarding the proposed district. The Public Meeting, as prescribed by the San José Municipal Code and the Brown Act, allows the public to express concerns about the proposed district and/or provide comments, although the Council does not necessarily take action at this time. The Engineer's Report and district boundary map are available in the City Clerk's Office for public examination. A copy of the district boundary map showing the three parcels proposed for annexation is provided as Attachment A.

Public Hearing & Tabulation of Ballots

On October 30, 2012, Council will conduct a public hearing to receive and record any additional public comment. Council must consider all objections or protests to the proposed annexation and assessments. 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 annexation area cast ballots in favor of or opposed to the annexation, with votes weighted by the amount of the assessment on each parcel. The properties will only be annexed into MD 19 and the assessment levied if affected property owner protests

do not outweigh the ballots cast in favor of the District annexation. If approved, the proposed assessment will commence in fiscal year 2013-2014 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 form the district and levy the assessment.

The Notice of Public Hearing is scheduled to be mailed on or before September 7, 2012 and will include the property owner ballot. The notice will inform the affected 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 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.

It is proposed that the annexation area be subject to the same assessment and annual escalator as those properties currently within Zone A of MD 19. The assessment on residential is apportioned as a unitary flat rate with parcels containing multiple units receiving an adjustment based on density. Tract 10080 is a subdivision approved to include a maximum of 769 condominium units. Based on current development permits, apartments are to be built with condominium specifications for the possibility of future conversion on two of the three parcels. Since apartments are classified as multi-family residential, the assessment on the parcels with apartments will be adjusted based on density. If the apartments convert to condominiums in the future, the assessment will also convert to the standard flat rate. The vacant parcel will be assessed at \$0.00 until building permits are issued. The 2012-2013 aggregate assessment for the annexation area based on the current land use and unit count is \$1,018.50 which will be adjusted annually thereafter by the average annual change in the Consumer Price Index for the San Francisco-Oakland-San José area.

EVALUATION AND FOLLOW-UP

This is the third step in a four-step process required by State and City law in order to increase an assessment for maintenance districts. The first and second items in the four-step process were completed on April 3, 2012 and August 7, 2012, respectively. The final step on October 30, 2012, will be for Council to conduct the public hearing, tabulate ballots and take concluding actions based on the ballot tabulation.

If the annexation to the district is approved by the property owners within the annexation area, the assessments will be placed on the County property tax roll for collection. Staff will bring forward appropriation and funding sources recommendations for Council approval at a later date as appropriate.

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)**

This memorandum will be posted on the City's website for the September 18, 2012 Council agenda. This action was initiated at the request and with support from the Developer and was prepared by Public Works. City staff has met with the Developer regularly regarding the district and their development plans.

COORDINATION

This memorandum, related documents and resolutions were prepared in cooperation with the City Attorney's Office and the City Manager's Budget Office.

FISCAL/POLICY ALIGNMENT

These actions are in compliance with the Council-approved Budget strategy in that staff costs are funded by the Developer's deposit. If district annexation is approved by the property owners, the costs of services provided through the district will be funded through annual assessments on the properties within the district.

COST IMPLICATIONS

The Developer has deposited funds to pay annexation costs for the district. Any unused funds will be returned to the Developer. If all funds are exhausted prior to the tabulation of ballots, the Developer must provide additional funds to continue the process or the formation process will be discontinued. It should be noted that the developer funds were recognized in 2011-2012 and inadvertently not rebudgeted as part of the Adopted Budget process. It is anticipated that these funds will be recommended for rebudget into 2012-2013 as part of the 2011-2012 Annual Report, scheduled for City Council consideration in October 2012.

HONORABLE MAYOR AND CITY COUNCIL

August 27, 2012

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CEQA

CEQA: North San José Development Policy Update EIR, Resolution No. 72768.

/s/

DAVID SYKES

Director of Public Works

For questions please contact Thomas Borden, Special Districts Manager, Department of Public Works, at (408) 535-6831.

Attachment

