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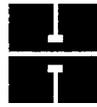
# **Preliminary Feasibility Analysis**

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## **Funding Citywide Maintenance Services**

Prepared for the  
**City of San Jose**  
**Department of Transportation**

April 13, 2009



**Harris & Associates**

Program Managers

Construction Managers

Civil Engineers

April 13, 2009

Ms. Diane Milowicki  
Division Manager, Infrastructure Maintenance Division  
City of San Jose, Department of Transportation  
1404 Mabury Road  
San Jose, CA 95133

**Re: Preliminary Feasibility Analysis for the  
Funding of Citywide Maintenance Services**

Dear Ms. Milowicki:

Harris & Associates hereby submits the Preliminary Feasibility Analysis for Citywide Maintenance Services Funding.

Should you have any questions or comments, or need any additional information or services, please let us know.

Sincerely,

**Harris & Associates**

Joan E. Cox, PE  
Sr. Project Manager

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## I. INTRODUCTION

Like many cities, the City of San Jose is experiencing reductions in property tax and sales tax revenues while realizing increases in the costs of providing on-going maintenance and services due to economic conditions.

The City is looking at the feasibility of funding maintenance and/or services activities through the establishment of a property-based revenue source, such as an assessment district, property-related user fee or parcel tax.

The purpose of this feasibility analysis is to review the various funding mechanisms available, analyze the complex issues related to establishing these types of funding mechanisms and the options for cost apportionment concepts looking at a variety of different infrastructure elements based on Proposition 218 and recent court rulings.

The infrastructure elements reviewed are operated and maintained by the Department of Transportation. The specific infrastructure elements are:

- Street Median Islands
- Street Trees
- Parkway Backup Landscaping
- Sidewalks
- Street Lights
- Street Pavement

The City currently has a number of Maintenance Assessment Districts (MD's) and special tax Community Facilities Districts (CFD's) within the City. Based on a review of the formation documents for these districts, the following is a synopsis of the types of infrastructure maintenance they fund:

Maint District Name	Improvements							
	street islands	park-ways	street lighting	parcel frontage	street trees	side-walks	roads	other infra-structure
MD #1 Los Paseos		X						X
MD #2 Trade Zone Blvd - Lundy Ave	X			X				X
MD #5 Orchard Pkwy - Plumeria Dr	X							
MD #8 Zanker - Montague	X	X						X
MD #9 Santa Teresa - Great Oaks	X			X				
MD #11 Brokaw Rd, Junction Ave - Old Oakland Rd	X							
MD #13 Karina - O'Neil	X							X
MD #15 Silver Creek Valley	X	X				X		X
MD #18 The Meadowlands				X				X
MD #19 River Oaks	X							X
MD #20 Renaissance - North First Landscaping	X			X				
MD #21 Gateway Pl - Airport Pkwy	X							
MD #22 Hellyer Ave - Silver Creek Valley Rd	X							
CFD #1 Capital Expressway Auto Mall	X	X	X				X	X
CFD #2 Aborn - Muriillo	X	X			X			X
CFD #3 Silverland - Capriana	X	X			X			X
CFD #8 Communications Hill	X	X	X		X	X	X	X
CFD #11 Adeline - Mary Helen								X
CFD #12 Basking Ridge		X					X	X

## II. ANALYSIS OF AVAILABLE FUNDING MECHANISMS

### A. Introduction

This section provides an analysis of available property-based funding mechanisms.

### B. Issues to Consider

Establishing a new funding source for maintenance and services activities requires that several major issues be considered. The new funding source must balance the needs of the City and the unique features of each funding mechanism.

- **Methodology Requirements.** The concept of special benefit is used in some funding tools (particularly assessments) and proportional use in others (specifically fees and charges). The special benefit concept requires that a property receive unique and special benefit from the City's project or activity as a condition of paying for that project or activity.
- **Voter Pool.** All additional funding mechanisms available to the City will be subject to voter approval of some form or another. The voter pool changes depending upon which type of funding mechanism is used. Property owners vote on assessments and fees and charges. Registered voters approve taxes. The property owners may or may not be registered voters within the City, and the registered voters may or may not own property within the City. This issue of voter pool or "enfranchisement" is often important in selecting a funding mechanism.
- **Vote Weight.** Assessment district votes are weighted by the amount of the assessment. A property with a large assessment has more "vote weight" than properties with small assessments. Property-related fees operate on the principal of "one property, one vote", and taxes operate on the principal of "one person, one vote". As with the issue of the voter pool, the issue of vote weight may determine which funding mechanism is more appropriate for the City.
- **Allowable Projects / Activities.** Different funding mechanisms allow different types of projects and activities to be funded. Assessments are generally limited to projects and activities that provide special benefit to properties (such as capital projects and operation and maintenance activities). Fees and charges are generally limited to services that are attributable to the properties (such as water and sewer services) but may not be used for "general governmental services" as defined by Article XIID of the California Constitution (Prop. 218). Special taxes are not limited at all.

Most cities are constrained by the type of infrastructure specifically authorized by the various State Codes; however, because San Jose is a charter city, it has the ability to create its own funding legislation and is not limited by what is available to standard law cities. Therefore, those specific limitations are not considered in this analysis.

## C. Proposition 218

Passed in 1996 and known as the “Right to Vote on Taxes Act,” Proposition 218 added Articles XIII C and XIII D to the California State Constitution. Article XIII C confirmed a 2/3 vote of the electorate for special taxes, and Article XIII D modified the requirements used to establish benefit assessments and property-based fees and charges.

### Benefit Assessments

**General vs. Special Benefit.** Proposition 218 reads, “Only special benefits are assessable and an agency shall separate the general benefits from the special benefits...” General benefits, if they exist, now have to be quantified and these general benefits may not be included in the assessment to the specially benefiting properties within the assessment district.

**Public Property.** Proposition 218 also reads, “Parcels within a district that are owned or used by any (public) agency... shall not be exempt from the assessment unless the agency can demonstrate ... that (the) parcels in fact receive no special benefit.” Publicly owned parcels must be assessed for the benefit they receive so that the cost of their benefit is not passed on to the other parcels being assessed.

**Assessment Ballot Proceedings.** Proposition 218 reads, “...Each such notice mailed to owners of identified parcels... shall contain a ballot,” and “In tabulating the ballots, the ballots shall be weighted according to the proportional financial obligation of the affected property.” The former Protest Hearing process has now been replaced with an Assessment Balloting process that counts only the ballots that are returned weighted by the proposed assessment amount for each property.

**Burden of Proof.** Proposition 218 reads, “In any legal action contesting the validity of any assessment, the burden shall be on the agency to demonstrate that the property or properties in question receive a special benefit over and above the benefits conferred on the public at large and that the amount on any contested assessment is proportional to, and no greater than, the benefits conferred on the property or properties in question.” Therefore, the benefit nexus and formula must be defensible, as the burden of proof of the validity of the assessment now rests with the public agency.

The July 2008 California Supreme Court ruling against the Santa Clara County Open Space Authority emphasized and clarified the above.

### Property-Related Fees and Charges

**Methodology Requirements.** The following are the requirements that all “new, extended, imposed or increased” fees and charges must meet:

1. “Revenues derived from the fee or charge shall not exceed the funds required to provide the property-related service.”
2. “Revenues derived from the fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed.”
3. “The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel.”

4. “No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question. Fees or charges based on potential or future use of service are not permitted. Standby charges, whether characterized as charges or assessments, shall be classified as assessments and shall not be imposed without compliance with [the assessment section of this code].”
5. “No fee or charge may be imposed for general governmental services including, but not limited to, police, fire, ambulance or library services where the service is available to the public at large in substantially the same manner as it is to property owners.”

***Establishment Requirements.*** All new or increased fees and charges now require a public hearing process with mailed notices to all affected property owners. If a majority of property owners submit written protests, then the fee or charge may not be imposed. With the exception of fees or charges for sewer, water and refuse collection services, an additional election is required – either a majority approval property owner election process or a two-thirds vote of the electorate residing in the affected area.

## D. Available Funding Mechanisms

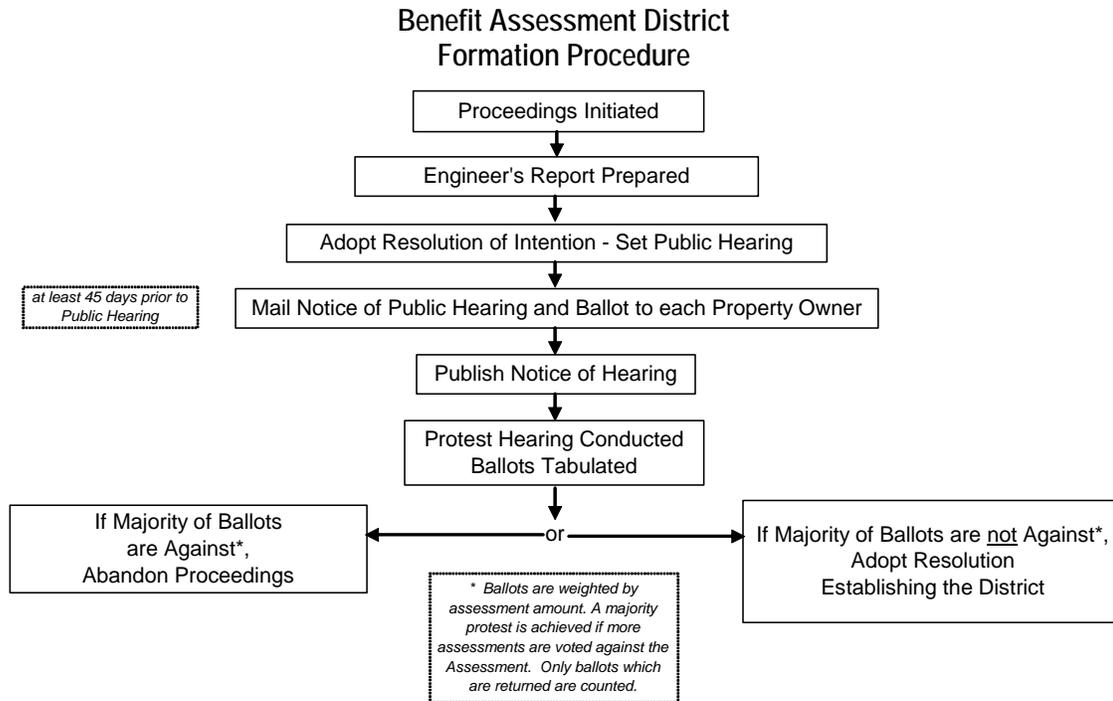
The following information has been prepared to provide an easy reference to the different funding mechanisms. Under the heading of each funding mechanism is an outline of the requirements and applications, and the pros and cons for the mechanism.

Flowcharts of the formation processes have also been provided for each mechanism.

### 1. Benefit Assessment

1. Special / general benefit analysis required (only special benefits may be assessed)
2. Public property share of benefit must be “assessed” to the public property
3. Property owner vote
4. Requires 50% approval of ballots returned (weighted by assessment amount)

The following is a flowchart of the formation process for a Benefit Assessment:



**Pros:**

- a. 50% approval, by assessment amount, of the property owners returning their ballots

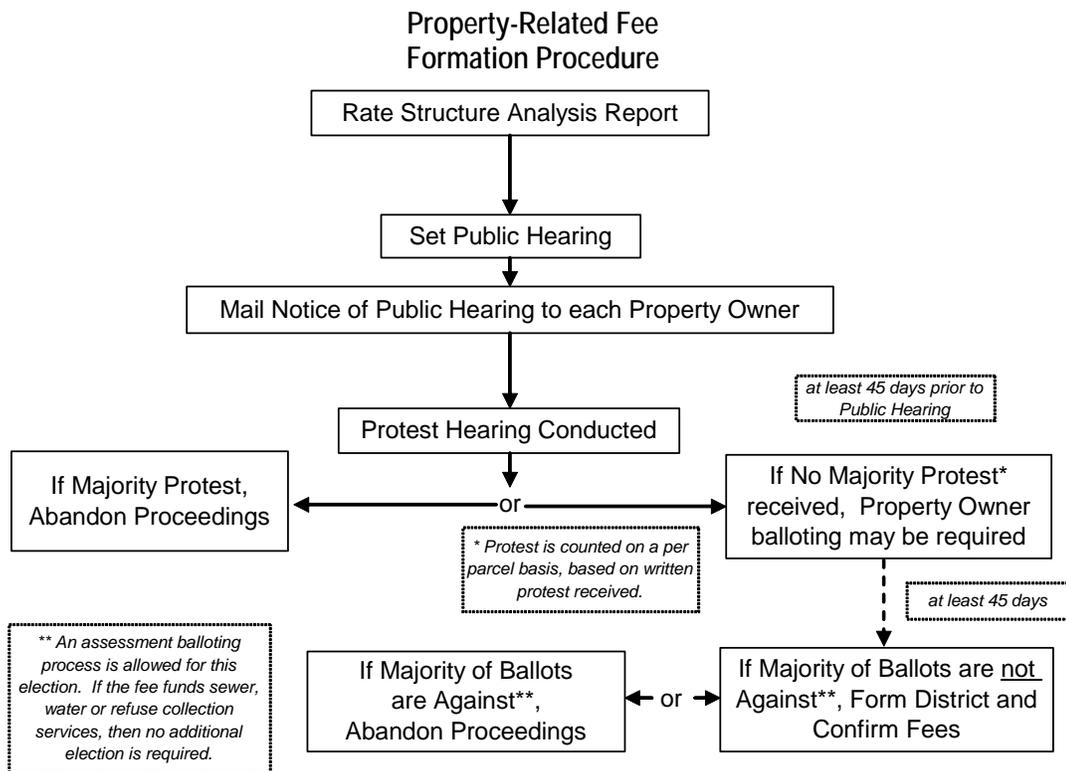
**Cons:**

- a. Requires a benefit methodology, which must include public property (which is difficult to collect)
- b. Assessed amounts must exclude any general benefits

**2. Property-Related Fee or Charge**

1. Fee must be proportional to the cost of service attributed to each parcel
2. Requires a protest hearing and a separate property owner election (unless funding sewer, water or refuse services)
3. If less than a majority protest received, property owner ballots may be mailed
4. Requires 50% approval of ballots returned (one ballot per property)

The following is a flowchart of the formation process for a Property-Related Fee:



**Pros:**

- a. Charges properties that use the facilities or services
- b. No requirement to charge public properties (Prop. 218 is silent on this)
- c. 50% approval of the ballots returned

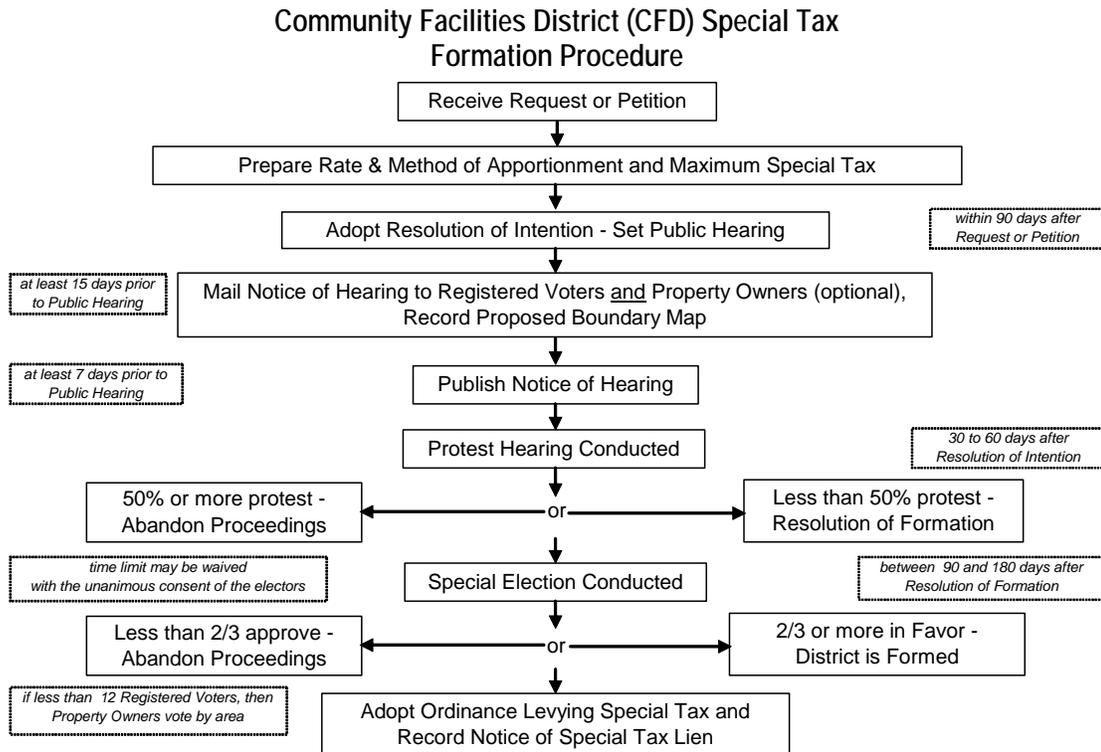
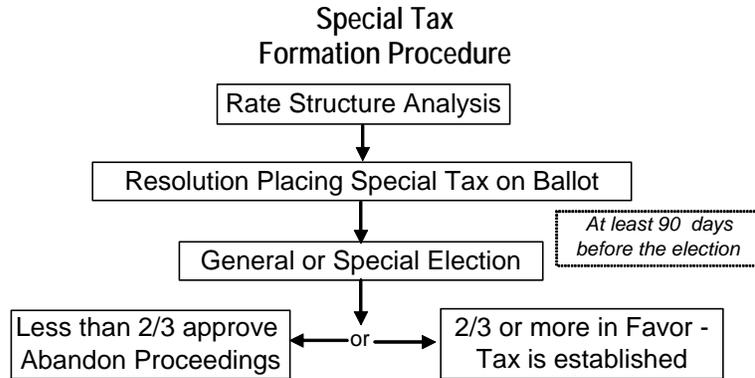
**Cons:**

- a. Service proportionality limits the applicability of this type of mechanism
- b. 2-step mailed process, protest hearing plus a property owner election
- c. Very limited times to hold mailed ballot elections, per Elections Code:
  - 1<sup>st</sup> Tuesday after the 1<sup>st</sup> Monday in May,
  - Last Tuesday in August, and
  - In even years, the 1<sup>st</sup> Tuesday after the 1<sup>st</sup> Monday in March.

### 3. Special Tax

1. No benefit analysis required – but tax rate structure must be “reasonable”
2. Registered voter vote
3. Requires 2/3 approval of tax

The following is a flowchart of the formation process for a Special Tax. A slightly different procedure is required for a CFD special tax, which is also shown below.



**Pros:**

- a. Does not require a benefit nexus
- b. Is not limited to funding only “special” benefit
- c. Public property would not be taxed

**Cons:**

- a. 2/3 approval of registered voters (or property owners, by area, if a CFD and less than 12 registered voters)



### III. PRELIMINARY COST APPORTIONMENT CONCEPTS

#### A. Introduction

This section provides an analysis of the methodology options for a variety of maintenance services provided by the Department of Transportation and applicable to a benefit assessment, property-related user fee, and special tax. These are:

- Street Median Islands
- Street Trees
- Parkway Backup Landscaping
- Sidewalks
- Street Lights
- Street Pavement

#### B. Benefit Assessment

Section 4.a of Article XIID of the State Constitution (Proposition 218) states that:

“An agency which proposed to levy an assessment shall identify all parcels which will have a special benefit conferred upon them and upon which an assessment will be imposed. The proportionate special benefit derived by each identified parcel shall be determined in relationship to the entirety of the capital cost of a public improvement or the maintenance and operation expenses of a public improvement or for the cost of the property related service being provided. No assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on that parcel. Only special benefits are assessable, and an agency must separate the general benefits from the special benefits conferred on a parcel.”

Additionally, Proposition 218 requires that all parcels that benefit from improvements or services be assessed for that benefit, whether the properties are publicly or privately owned, so City-owned property, as well as properties owned by school districts or other public entities, are required to be assessed unless they are found not to benefit.

The benefit nexus test imposed by Proposition 218 effectively limits the special assessment to funding ongoing maintenance that directly and specially benefits the properties in the City.

In the July 2008 Supreme Court decision regarding the Santa Clara County Open Space Authority (the “Santa Clara County Case”), the court provided some additional guidance with respect to defining general and special benefits.

##### 1. *Street Median Islands*

###### **Special Benefit Discussion**

15 of the City’s 19 MD’s and CFD’s fund the maintenance of street median islands. However, based on the Geographic Information System (GIS) maps reviewed, most of the City’s medians are not located within the MD’s and CFD’s.

In accordance with City policy, most of the medians appear to be located on the major thoroughfares of the City. The major thoroughfares are the entryways into the City and the landscaping within the medians provide beautification and positive enhancement of the community character.

This beautification and positive enhancement of the community character clearly provides special benefit to those properties directly adjacent to the medians; and, in some instances, the special benefits could extend into neighborhoods taking direct access from the enhanced roadways.

The general benefits associated with median maintenance are somewhat difficult to quantify. Previously established maintenance assessment districts in other California cities have attributed the “citywide” benefits associated with medians in the major thoroughfares as special benefits to all properties within the City limits. However, some of the statements in the Santa Clara County Case make this type of special benefit nexus more difficult.

Specifically, the Supreme Court stated, with respect to the county-wide benefit nexus, “[i]f everything is special, then nothing is special.” So if all properties benefit in the City from the major thoroughfares having landscaped median islands, then there is an argument that the benefit is general, rather than special.

Added to that, the City’s two-level standard for medians – one for medians within an assessment district and one for medians that would be city-maintained – makes for an argument that the city-maintained level of landscaping is the general benefit level, and anything additional to that is a special benefit attributable to the adjacent properties.

### **Special Benefit Apportionment**

Properties that front the median islands with enhanced landscaping receive a special benefit from the enhanced beautification adjacent to their properties.

This special benefit can be apportioned in a variety of ways and would be looked at on a case-by-case basis. Many times, frontage along the enhanced roadways is the basis of apportionment. However, if there are flag lots (with very little frontage) or lots with no apparent frontage that take ingress-egress rights across another property, this method is less appropriate.

Many times, parcel area of the properties adjacent to the medians is seen as more a more appropriate method to quantify the benefits received, as the amount and intensity of use on a property is often limited based on the size of the property.

If entire neighborhoods are allocated special benefit, due to the access they take from the enhanced roadways, then a Benefit Unit basis is often used that equates the various land uses to each other (usually based on an Equivalent Dwelling Unit (EDU) system) and the differing levels of benefit attributed to the uses, if there are any.

### **Considerations for Moving Forward**

To move forward with creating a Maintenance District funding landscaped street median maintenance, the following will be required.

- a) Identify the medians to be funded:
  - i. Medians with Assessment Level landscaping that are not being funded by an existing MD or CFD.

- ii. Medians funded by an MD or CFD but needing additional funding.
  - iii. Medians that have support for higher levels of landscaping and associated property assessments.
- b) For each identified median, analyze the area of special benefit associated with it. If properties are being considered that do not front the medians (such as neighborhoods taking access), an analysis will need to be done to show how the boundary of special benefit should be determined. Each median will probably have its own Zone of Benefit.
  - c) If a neighborhood is considered to benefit, identify an appropriate EDU basis for the different land uses within the City, and calculate the EDU for each property. This could be based on land use density and/or trip generation. Analyze the appropriateness of using Benefit Factors for different land use types. Identify the limits of benefit within the neighborhood and provide justification for those limits.
  - d) For each median to be funded, a budget needs to be calculated showing the total maintenance cost for the median and then deducting the “standard” landscaping costs, to come up with the net budget requirement for the MD.
  - e) Provide an analysis explaining whether or not there are any general benefits from the improvements being maintained and, if there are, how those general benefits are calculated.

## 2. *Parkway Backup Landscaping*

### **Special Benefit Discussion**

Like median landscaping, enhancement of the street parkways backing up to properties and walls provides special benefit to those properties directly adjacent to them.

Standard levels of maintenance would probably be construed as general benefit, but any enhancements above and beyond those standard levels can be considered special benefits attributable to the properties adjacent to them.

### **Special Benefit Apportionment**

Like medians, properties that back up to these parkway areas with enhanced landscaping receive a special benefit from the enhanced beautification adjacent to their properties.

This special benefit can be apportioned in a variety of ways and would be looked at on a case-by-case basis. Many times, frontage along the enhanced roadways is the basis of apportionment. However, if there are flag lots (with very little frontage) or lots with no apparent frontage that take ingress-egress rights across another property, this method is less appropriate.

Many times, parcel area of the properties adjacent to the medians is seen as more a more appropriate method to quantify the benefits received, as the amount and intensity of use on a property is often limited based on the size of the property.

If entire neighborhoods are allocated special benefit, due to the access they take from the enhanced roadways, then a Benefit Unit basis is often used that equates the various land uses

to each other (usually based on an EDU system) and the differing levels of benefit attributed to the uses, if there are any.

### **Considerations for Moving Forward**

To move forward with creating a Maintenance District funding street parkway backup landscaping maintenance, the following will be required.

- a) Identify the landscaped parkway backup areas to be funded:
- b) For each identified parkway area, analyze the area of special benefit associated with it. If properties are being considered that do not front (or back) the parkways (such as neighborhoods taking access), an analysis will need to be done to show how the boundary of special benefit should be determined.
- c) If a neighborhood is considered to benefit, identify an appropriate EDU basis for the different land uses within the City, and calculate the EDU for each property. This could be based on land use density and/or trip generation. Analyze the appropriateness of using Benefit Factors for different land use types.
- d) For each parkway backup area to be funded, a budget needs to be calculated showing the total maintenance cost for the parkway. Each parkway backup area will probably have its own Zone of Benefit.
- e) Provide an analysis explaining whether or not there are any general benefits from the improvements being maintained and, if there are, how those general benefits are calculated.

### **3. *Street Trees and Sidewalks***

#### **Special Benefit Discussion**

Street trees and sidewalks are being considered together, due to similar circumstances.

The City policy related to both street tree and sidewalk maintenance is the same. Properties directly adjacent to the street trees or sidewalks are required to maintain the trees and sidewalks. If the City provides maintenance work on the trees or sidewalk, the costs are billed to the responsible adjacent properties.

If the City chose to take the responsibility of maintaining the street trees and sidewalks and relieve the adjacent properties of the responsibility and liability associated with them, then a special benefit could be construed to those properties that no longer need to maintain those street trees and/or sidewalks.

It appears that most sidewalk maintenance can be attributed to street trees; therefore, if the sidewalk maintenance is limited to tree damage, then the sidewalk maintenance benefit can be linked to street tree maintenance.

#### **Special Benefit Apportionment**

For street trees, the special benefit attributed to each property would probably equate to the number of trees adjacent to the property. Certain trees might need additional maintenance,

due to the type of tree it is: for instance, certain trees might need to be trimmed every three years, as opposed to a standard 5-year trimming cycle. Also, some trees do more damage to sidewalks than others, so if sidewalks are included with trees, this will also need to be taken into consideration.

Special benefit zones would probably be needed in locations with the higher maintenance trees, and the higher levels of costs would be allocated to those adjacent properties.

For properties that should have more trees adjacent to them (per the municipal code), an additional assessment could be levied for the planting and maintenance of the new trees. Issues of timing would need to be taken into consideration, as properties that pay this additional planting assessment should receive the tree within the fiscal year that the funds are collected.

If sidewalks are considered separately, then the special benefit would probably equate to the area of sidewalk adjacent to each property because sidewalk width varies throughout the City.

### **Considerations for Moving Forward**

To move forward with creating a Maintenance District funding street tree maintenance, the following will be required.

- a) Locate all street trees and identify the type of tree and which Assessor's parcel they are adjacent to.
- b) If there are sidewalks adjacent to the trees, identify the width and length of sidewalk associated with each parcel.
- c) Identify, for the various tree types, the level of tree trimming required (every 2 years, every 5 years, etc.), and the associated sidewalk maintenance requirements and frequency due to root damage.
- d) For each type of tree, estimate the costs associated with the tree trimming cycle and sidewalk maintenance cycle.
- e) If new trees are to be planted and assessed, locate all vacant street tree locations and identify the Assessor's parcel they will be adjacent to. Estimate the cost per tree for planting and the additional maintenance for the young tree.
- f) If sidewalks are considered separately, estimate the costs per square foot of sidewalk replacement and the estimated frequency that maintenance will be required (due to type of tree or other factors).
- g) Provide an analysis explaining whether or not there are any general benefits from the improvements being maintained and, if there are, how those general benefits are calculated.

#### 4. *Street Lights*

##### **Special Benefit Discussion**

Proper maintenance and operation of the street lighting system in close proximity to certain lots or parcels provides a special benefit to such lots or parcels by providing security, safety and community character and vitality as outlined below.

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##### **Security and Safety**

- Mitigates crime
- Alleviates the fear of crime
- Reduces traffic accidents
- Enhances pedestrian safety

##### **Community Character and Vitality**

- Promotes social interaction
  - Promotes business and industry
  - Contributes to a positive nighttime visual image
  - Decorative lights provide a pleasing daytime appearance
- 

All properties that are located on a street with street lights receive special benefits from those lights.

According to the City's GIS, not all properties within the City are located on lit streets, so those properties not on lit streets (or on streets with very few lights, well below what is considered the standard for street lighting) would receive no special benefit from street lighting.

General benefits associated with street lighting are usually attributed to lights along the arterial roadways, which carry the bulk of the City's "through traffic." Safety lighting at arterial and collector street intersections is also usually attributed to traffic safety and considered a general benefit.

The general benefits on arterial roadways can be quantified in a number of ways.

- Traffic studies showing the percentage of "through traffic" on the arterial roadways can be used to equate the general benefits associated with the arterial lighting. If 33% of the arterial traffic neither starts nor stops within the City, then 33% of the arterial lighting is considered general benefit.
- If the City doesn't have any traffic studies available, then approximations can be made. If the arterial roadways are typically 4-lane roadways, then the inside lanes might be attributed to through-traffic and the outside lanes attributed to local traffic. Therefore, 50% of the arterial roadway would be considered for through traffic, which would be general benefit.
- Another way to look at general benefit is to equate the special benefit to the typical local roadway lighting levels. If the local roadway lighting is 100 watts or less, then any lighting on the arterials higher than 100 watts is considered general. The costs associated with the higher wattage can be calculated and subtracted from the lighting budget as the general benefit component of the lighting.

### **Special Benefit Apportionment**

For street lighting assessments, a Benefit Unit basis is often used that equates the various land uses to each other (usually based on an EDU system) and the differing levels of benefit attributed to the uses, if there are any.

Different levels of benefit could be associated with land uses that do not receive all the benefits attributed to street lighting, such as industrial uses not receiving benefit from “community character and vitality” benefits.

Benefit Factors can be multiplied by the Equivalent Benefit Units to equal Benefit Units, and the costs would be apportioned based on the number of Benefit Units each parcel is assigned.

Some areas of the City might have higher levels of lighting or decorative lights that have a higher maintenance cost. These areas should be separated out into Benefit Zones for separate analysis and cost apportionment.

### **Considerations for Moving Forward**

To move forward with creating a Maintenance District funding street light maintenance, the following will be required.

- a) Locate all street lights in the City and the type and wattage of like, as well as the pole type (standard cobra head, the type of decorative pole, etc).
- b) Define what a “lit street” is for the purpose of assigning special benefit, such as “street lights spaced 200 feet about on local streets.”
- c) Identify an appropriate EDU basis for the different land uses within the City, and calculate the EDU for each property. This could be based on land use density and/or trip generation. Analyze the appropriateness of using Benefit Factors for different land use types.
- d) Research all publicly-owned property to confirm land use information for them, so they can be appropriately assessed for their special benefits.
- e) Analyze for each street segment, whether the street is lit or not, whether there is a higher level of street lighting on the segment due to more lights or higher intensity lights, and whether there are decorative lights.
- f) For each type of light, estimate the costs associated with the maintenance and operation.
- g) Create Zones of Benefit based on the number, type and intensity of the lights along the street.
- h) Provide an analysis explaining whether or not there are any general benefits from the improvements being maintained and, if there are, how those general benefits are calculated. A traffic study, showing the through-traffic volumes on the City’s arterial streets and major thoroughfares would be very helpful.

## 5. *Street Pavement*

### **Special Benefit Discussion**

Proper maintenance of the street pavement system in close proximity to certain lots or parcels provides a special benefit to such lots or parcels by providing: 1) improved ingress and egress from such lots, 2) improved aesthetics, 3) improved local access for emergency vehicles, and 4) improved drainage.

Like street lighting, general benefits associated with pavement maintenance are usually attributed to the arterial roadways, which carry the bulk of the City's "through traffic." In addition to the percentage of traffic flowing through the City, arterial roadways usually carry the bulk of the truck traffic, requiring thicker pavement sections due to the higher impact on the roads. This thicker pavement equates to higher costs, which should be added to the general benefit component of the budget.

### **Special Benefit Apportionment**

For street maintenance assessments, an Equivalent Dwelling Unit (EDU) basis is often used that equates the various land uses to each other.

Some areas of the City might have different levels of costs, such as areas with concrete streets or industrial areas where a thicker pavement section is required on local streets due to the high truck volume. These areas should be separated out into Benefit Zones for separate analysis and cost apportionment.

### **Considerations for Moving Forward**

To move forward with creating a Maintenance District funding street pavement maintenance, the following will be required.

- a) Identify the pavement segments within the City with different levels of maintenance requirements (such as thicker pavement sections for streets with higher truck traffic or concrete streets).
- b) Identify an appropriate EDU basis for the different land uses within the City, and calculate the EDU for each property. This could be based on land use density and/or trip generation. Analyze the appropriateness of using Benefit Factors for different land use types.
- c) Research all publicly-owned property to confirm land use information for them, so they can be appropriately assessed for their special benefits.
- d) Based on the City's adopted pavement management cycle (such as 3 7-year slurry seal cycles followed by an overlay in the 28<sup>th</sup> year), all streets within the City will be maintained and the costs for the total maintenance cycle can be estimated.
- e) Create Zones of Benefit based on the pavement maintenance type.
- f) Provide an analysis explaining whether or not there are any general benefits from the improvements being maintained and, if there are, how those general benefits are calculated. A traffic study, showing the through-traffic volumes on the City's arterial streets and major thoroughfares would be very helpful.

## C. Property-Related User Fee

Any new property-related fee must comply with Article XIID of the State Constitution (Proposition 218). Section 6.b of Article XIID of the State Constitution (Proposition 218) states that:

“The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel.”

and

“No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question.”

Typically, property-related user fees are used for the sewer and water system maintenance and operation. Watershed drainage fees are also fairly common.

Few of the maintenance services under review would be considered “use-based.” Street landscaping and street lighting are not really used, and although sidewalks could be considered used, the maintenance of them is more truly reflected in what is in front of a property rather than how much a property would use them.

Of all the maintenance services, street pavement maintenance and street tree maintenance are the only ones with the characteristics associated with a use-based service.

### 1. *Street Pavement*

#### **Service Proportionality Discussion**

Properties use, or are served by, the street system for ingress and egress purposes.

The amount each property uses the roadway system can be quantified by using the Average Daily Trips (ADT's) associated with each land use.

Although there is no requirement to take general benefits into consideration, there is a requirement that no property should be charged more than its proportional share of the cost of the service. To guarantee that, a similar calculation of arterial roadway through-traffic volume should be made and that amount should be taken into consideration when the rates are calculated.

#### **Use-based Apportionment**

As stated above, the amount of use each property has can be quantified by using the Average Daily Trips (ADT's) associated with each land use. The Institute of Traffic Engineers (ITE) trip generation manuals are typically used as the standard for measuring traffic volume, and other more local sources can be used, if they are available.

An Equivalent Dwelling Unit system can be set up using ADT and equating 1 EDU to a single family residential ADT. All other land use ADT would be compared to the single family home to come up with their EDU factors.

## **Considerations for Moving Forward**

To move forward with creating a Maintenance District funding street pavement maintenance, the following will be required.

- a) Identify the pavement segments within the City with different levels of maintenance requirements (such as thicker pavement sections for streets with higher truck traffic or concrete streets).
- b) Identify an appropriate ADT rate for the different land uses within the City, and calculate the ADT for each property.
- c) Research all publicly-owned property to confirm land use information for them, so they can be appropriately charged for their use.
- d) Based on the City's adopted pavement management cycle (such as 3 7-year slurry seal cycles followed by an overlay in the 28<sup>th</sup> year), all streets within the City will be maintained and the costs for the total maintenance cycle can be estimated.
- e) Identify different Maintenance Zones based on the pavement maintenance type.
- f) Provide an analysis explaining that no property's proposed charge exceeds the proportional cost of the service attributable to the parcel. A traffic study, showing the through-traffic volumes on the City's arterial streets and major thoroughfares would be very helpful.

## **2. Street Trees**

### **Service Proportionality Discussion**

Properties within the City of San Jose are required to maintain the street trees within the public right-of-way adjacent to their properties. The City does not currently have a tree trimming/maintenance program in place. If the City has to provide maintenance to the trees because of a public nuisance, the property owner is charged for the service to its trees.

If a tree trimming/maintenance program were implemented, then each property that has one or more trees would receive a specific service from the City for the maintenance of its trees.

The service would be proportional to the number of trees and the maintenance cycle for the particular species of trees.

### **Service-based Apportionment**

As stated above, the amount of service each property receives can be quantified by identifying the number of street trees adjacent to the property and the type of maintenance cycle required for the particular type of tree. Some trees might require trimming every 5 years and others might require a more frequent trimming.

Each category of tree would have costs associated with it based on the expected life-cycle, including replacement costs and the costs required to nurture the tree until it reaches a level of maturity. This would provide the rationale for charging the same fee for very young trees and very old, mature trees.

As new trees are planted in previously vacant tree locations, the property associated with the new tree would be charged for that tree after it has been planted.

### **Considerations for Moving Forward**

To move forward with creating a Maintenance District funding street tree maintenance, the following will be required.

- a. Locate all street trees and identify the type of tree and which Assessor's parcel they are adjacent to.
- b. Identify, for the various tree types, the level of tree trimming required (every 2 years, every 5 years, etc) and typical lifespan.
- c. For each type of tree, estimate the costs associated with the tree trimming cycle, the replacement costs and nurturing costs for a young tree.
- d. As trees are planted in vacant street tree locations, identify the Assessor's parcel they will be adjacent to.
- e. Provide an analysis explaining that no property's proposed charge exceeds the proportional cost of the service attributable to the parcel.

## D. Special Tax

Special Taxes may fund any type of improvement or service, provided a 2/3-registered voter approval is received. The Special Tax does not need to be broken down into special zones, but may be apportioned to the entire City area.

As there are no benefit nexus or usage proportionality requirements, the City has some latitude the structure of the tax.

Properties can be taxed based on any tax formula that is deemed palatable enough to pass with a 2/3 vote.

The tax formula could be per parcel, based on area or some other measurable attribute, or based on various ranges of attributes for various land uses, such as the following sample tax structure:

Special Tax Category	Tax Rate
<b>Single Family Residential and Condominium</b>	\$100 / parcel
<b>Multiple Family Residential</b>	
2 - 4 Dwelling Units	\$100 / parcel
5 - 15 Dwelling Units	\$250 / parcel
16 or more Dwelling Units	\$800 / parcel

<b>Non-Residential</b>	
0 acre - 1/4 acre lot	\$100 / parcel
over 1/4 acre - 1/2 acre lot	\$200 / parcel
over 1/2 acre - 3/4 acre lot	\$300 / parcel
over 3/4 acre - 1 acre lot	\$400 / parcel
over 1 acre lot	\$500 / parcel

<b>Vacant</b>	
0 acre - 1/4 acre lot	\$25 / parcel
over 1/4 acre - 1/2 acre lot	\$50 / parcel
over 1/2 acre - 3/4 acre lot	\$75 / parcel
over 3/4 acre - 1 acre lot	\$100 / parcel
over 1 acre lot	\$125 / parcel

If a CFD special tax is used, there is a requirement for “reasonableness,” but this term is not defined and the City Council would make a “reasonableness” determination. CFD’s are often used to provide an additional option of using Mello-Roos bonds to fund capital improvements.

## IV. CONCLUSIONS AND RECOMMENDATIONS

### Conclusions

Each funding mechanism has its own requirements relating to establishment, methodology, voter pool, vote weight, and allowable projects and activities. The table below provides a summary of pertinent information relating to each funding mechanism.

<b>Funding Mechanism</b>	<b>Hearing Required</b>	<b>Vote Required</b>	<b>Voter Pool</b>	<b>Weighted Votes</b>	<b>Rate Structure</b>
Special Assessment	Yes	50%	Property Owners	Yes	Benefit
User Fee	Yes	50%	Property Owners	No	Use
Special Tax	No	2/3	Registered Voters	No	Any

The Special Tax provides the City with the most flexibility and can fund any aspect of the City’s maintenance program. Also, the Special Tax can cover the entire City uniformly, or it can have special tax zones. However, the 2/3 voter approval requirement is high, which presents some challenges in terms of adequately conveying the City’s goals to the voting public.

The User Fee has a more complex establishment requirement, with the two-step public hearing / property owner election process, and has very limited applicability with respect to the maintenance elements the Department of Transportation is responsible for. However, for roadway maintenance, this may be a viable alternative to an assessment district. Assessment districts are coming under increasing scrutiny, especially after the Santa Clara County Case. Implementing a User Fee would eliminate the issues surrounding the assessment of appropriate special benefits.

The Benefit Assessment provides the most alternatives for applicability, but the quantification of general benefits, and the scrutiny that any assessment would endure, might make it a less desirable alternative. Also, a great deal of detailed analysis might be required to implement an assessment, to appropriately designate zones of benefit and apportionment concepts.

### Recommendations

The following are our recommendations for infrastructure maintenance funding through property-based funding mechanisms:

1. **Assessment Districts for Landscaped Medians.** Specifically for medians that have or are proposed to have higher-level landscaping, and where properties (rather than neighborhoods) front the median improvements.
2. **Property-Related Fee for Pavement Maintenance.** This Citywide fee would utilize the existing Pavement Management Program for the proposed funding levels and maintenance strategies / scenarios.

3. **Property-Related Fee for Street Tree Maintenance.** This fee would be over only properties with street trees adjacent to them in the public right-of-way and would fund the maintenance of those trees. The City would need to have a complete database of all tree locations, the types of trees, and the properties the trees are adjacent to.
4. **“Green” Special Tax.** This tax would fund a number of environmentally “green” initiatives, such as converting the street lighting to be more energy-efficient, maintaining the street trees and planting additional trees, improving and acquiring parks and open space, stormwater pollution prevention (including the NPDES permit requirements), etc. Although there are a few more procedural steps required, a CFD is recommended, so the City can have the option of using Mello-Roos bonds.

On any of the above, we would further recommend incorporating an annual escalator, so the revenues will keep up with cost of living (such as the Consumer Price Index (CPI) or a construction cost index).

No matter what funding mechanism is attempted, getting a revenue measure approved in any economic environment is extremely challenging. Extensive education and outreach is highly recommended.