

REPORT FROM

OFFICE OF THE CITY ADMINISTRATIVE OFFICER

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Council File No. 17-0361

Council District: All

To: The Council



From: Richard H. Llewellyn, Jr., City Administrative Officer

Reference: Motion (Blumenfield/Koretz) related to feasibility of implementing a cost-sharing program for the repair of alleys

Subject: **REPAIR OF ALLEYS – FEASIBILITY OF IMPLEMENTING A COST-SHARING PROGRAM**

RECOMMENDATION

Note and file this report, as it is provided for informational purposes only.

SUMMARY

On March 31, 2017 Councilmember Blumenfield introduced a Motion which instructed the City Administrative Officer, with the assistance of the Bureau of Street Services (Bureau), to report on the feasibility of implementing a cost-sharing program for the repair of alleys, including the establishment of alley repair assessment districts.

This report discusses potential cost sharing and funding options for the repair of alleys.

DISCUSSION

The City's alley network is approximately 1,026 lane miles, consisting of approximately 76 lane miles of unpaved and 950 lane miles of paved alleys. According to the Bureau of Street Services (BSS), some of the paved alleys have reached or surpassed their useful lives and are prime candidates for repaving. The alleys may contain numerous cracks/potholes, buckled pavement, worn asphalt, an uneven surface making them difficult to navigate, and may have drainage issues.

The availability of funding for alley improvements has been limited given that most special funding sources cannot be used for this purpose. Alleys are vehicular thoroughfares but not City "streets," and most special funding sources can only be used for improving City "streets." Therefore, only General Funds have been traditionally used for alley repairs.

A. COST SHARING OPTIONS

ASSESSMENT DISTRICTS

An assessment district is an area that is charged a fee for a particular benefit that is gained from a public service or improvement project. In order to justify the assessment, the governing body must demonstrate that there is a special benefit to be gained from the project or service to be financed by the assessment. As outlined in Proposition 218, a benefit must be specific to the affected parcel and cannot be general property value enhancements. Proposition 218 also requires an agency to get majority voter approval for new assessments; ballots are to be weighted in proportion to the amount of the assessment each property owner would pay.

There are a number of State statutes that govern the creation of assessments and the issuance of bonds secured by them to fund the improvements. We believe that the best fit would be the 1913 Act (which governs the creation of the district), and the 1915 Act (which governs the issuance of bonds). For purposes of this report, we assume that the most common approach, the combination of 1913 Act proceedings with 1915 Act bonds, would be employed.

An assessment district can be initiated by a landowner petition or an action by the legislative body. According to our consultant from KNN Public Finance, the Motion requesting this report has effectively started the process. There are a number of steps required by the assessment statutes. The next steps required to develop an assessment program for alley improvements include:

- Identify a source of financing for preliminary activities (which can eventually be reimbursed out of bond proceeds) and to pay for any public benefit portion of the improvements.
- Determine the approximate types, cost, scope, and timing of improvements expected to be undertaken. Presumably, this work would be undertaken by the Bureaus of Street Services and Engineering.
- Determine whether the property to be improved is publicly or privately owned, and, if the latter, whether there is a public easement.
- Determine if the improvements will be designed by City staff, an outside engineer, or both, and whether the work will be performed by contractors, City forces, or both.
- Hire an assessment engineer and bond counsel to resolve major questions necessary to the process, including the method of apportioning assessments to property and the extent to which these improvements will also provide general public benefits that cannot be financed with the assessment.
- Work with specialized bond counsel to help with the process, including the official action to initiate formal proceedings. Such work is usually performed by a bond counsel firm, which, after the assessment district is formed, would draft bond documents and legal documents.
- Hire the balance of the professionals required to execute the program, such as design engineers, financing team members, and disclosure counsel and underwriters.
- Complete the design of the improvements and estimate their cost.
- Present Engineer's Report and Adoption of the Resolution of Intention. Upon completion of the preliminary engineering work, the City Council adopts a "resolution of intention" to form the assessment district, approves the Engineer's Report, calls for construction bids (meaning that design bids are completed), authorizes the future sale of bonds, sets the

- date, time and place for the public hearing and directs assessment notices to be mailed.
- Receive construction bids. It is common for a city to receive the construction bids (assuming the improvements will not be performed by City forces) prior to the close of the formation process, so that the assessment engineer can modify the assessment roll and Engineer's Report based on these bids.
 - Public Hearings. Notices are mailed of a public hearing to each affected property owner. Each notice will include a ballot for each property owner to indicate his or her support for or opposition to the proposed assessment. The City Council holds a public hearing at which written protests (effectively, the property owner votes) are presented and public testimony is taken. Following the public hearing, the Council would adopt another resolution, commonly referred to as a "resolution of formation."
 - Cash Collection Period. Following adoption of the resolution of formation, the assessment is levied as a fixed amount per property, and property owners can pay this amount in full. The City may receive cash payments during the 30 days following confirmation if property owners elect to pay off the assessment prior to the issuance of bonds.
 - Authorize Issuance of Bonds. After the prepayment period closes, the City Council determines the balance of unpaid assessments and provides for the issuance of bonds to be secured thereby.
 - Sale of Bonds. Bonds are issued against the unpaid assessments; the proceeds are used for the projects described in the Engineer's Report. The proportionate share of debt service is annually placed on the property tax bill, and collected by the County for remittance to the City.

With limited exceptions, the public work and improvements financed by assessments must be performed and constructed on public right-of-way. While the bonds issued to fund the improvements likely would bear tax-exempt interest, the changes in 2017 to federal tax law limiting deductions of state and local taxes will impact most property owners, so that the assessments themselves will, in effect, not be deductible to property owners. Attachment 1 shows an estimated timeline for an assessment district.

The general benefits of the improvements would require City funds and would be considered the City's portion of the cost sharing assessment model. Additionally, the City will have to pay assessments for City property adjacent to the alleys.

COST SHARING PROGRAM

A cost sharing program to repair alleys with adjacent property owners, similar to the Sidewalk Repair Program, could be established. This option would not rely on the assessment district process and could be implemented faster. However, this would require all adjacent property owners to participate in order for an alley to be repaired (instead of individual property owners who can opt-in to the Sidewalk Repair Program).

The next steps to implement this option would include:

- Budget funding to cover the City's share of this program.
- Develop an application process similar to the Sidewalk Repair Program

HEAVY VEHICLE IMPACT FEE

Fees could be charged to private (and/or public) refuse collection agencies for the use of the City right-of-way, primarily streets and alleys. These funds could be used to repair and maintain roads and alleys utilized by private haulers. The fee has a logical nexus with the use of revenue and is consistent with current City practice. Proposition C funds are currently provided to repair and maintain bus routes. Street Damage Repair Funds are charged to utility companies to repair and maintain streets they damage.

The Cities of Santa Ana, Petaluma, and Redlands have successfully implemented a heavy vehicle impact fee charged to refuse collection agencies and delivery companies that service residents and businesses within the City. These fees offset the cost of repair to streets and alleys caused by the refuse collection trucks and large delivery trucks.

If a heavy vehicle impact fee is implemented as it was in the cities listed above, refuse collection fees for City and private haulers could be impacted. However, a policy decision could be made to only charge the franchise fee for alley repair and maintenance. If that decision is made, we would expect that this fee would assist with repair and maintenance of alleys primarily in commercial, industrial, and multi-family residential areas. Refuse collection and deliveries in single-family neighborhoods primarily occur in the street.

This heavy vehicle impact fee option would not cover the initial cost to pave a dirt alley.

The next steps to implement this option would include:

- Complete a study on the impact of heavy vehicles on alleys to determine the level of damage in order to set a fee.
- Adopt an Ordinance, similar to the Street Damage Restoration Fee, to begin collecting the fee.
- This Office would need to work with the City Attorney's Office and the Bureaus of Street Services and Sanitation to determine how this option could be implemented and how it would impact the existing franchise agreement with the private waste haulers.

B. OTHER FUNDING OPTIONS

DESIGNATING AN ALLEY AS A STREET

The City could also declare an alley a City "street." Currently, alleys are not eligible for special funds as they are not officially public streets. If part of the City's street network, an alley-turned-street may be eligible for Gas Tax, SB 1, Measure M, Measure R and SDRF funding. Moreover, paved alleys

that are part of the street network would also be included in the Bureau of Street Services' Pavement Preservation Program. These former alleys would then be scheduled for on-going maintenance.

To designate an alley as a street, the City Street Standards Committee, consisting of representatives from the Department of City Planning, Department of Transportation and Bureau of Engineering, would need to make a recommendation. The recommendation would then be heard by the Planning Commission, and then by the City Council. Once approved by Council, a request would need to be made to the City Attorney's Office to prepare and present an Ordinance.

One issue on designating an alley as a street is its width. The Streets and Highways Code (Section 1805) specifies that the width of all City streets shall be at least 40 feet. This section also allows the City Council to determine that the public convenience and necessity requires streets of less than 40 feet. In the past, the City Council has acted on this provision and designated many streets (especially in hillside areas) less than 40 feet wide.

Designating alleys as streets, and making them part of the street system is a policy decision. However, the Bureaus of Street Services and Engineering staff have advised our Office that there are other issues to consider if there are alley-street conversions. The following should be considered when deciding on whether to convert an alley into a street:

- Adding alleys (whose conditions are usually worse than streets because they do not receive routine maintenance) to the street system might decrease the existing PCI value of 69.5 to a much lower number, much like an "F" on a test would lower a "C" average.
- One mile of alley paving/repaving will cost about the same or more as paving/repaving a street, but the benefits to the residents and commuters are not as great as when the Bureau resurfaces streets. Poor alley conditions impact the quality of life of adjacent property owners, while streets improve the quality of life of hundreds or thousands of commuters, including adjacent property owners.
- Increased liability: The California Streets and Highways Code, Section 1806(a) states the following: "(a) No city shall be held liable for failure to maintain any road until it has been accepted into the city street system in accordance with subdivision (b) or (c)." Based on this section of the Streets and Highways Code section, it does appear that accepting an alley into the City street system could give rise to additional liability.

Absent adding alleys into the street system, alleys would need to be funded by the General Fund.

REMOVE ALLEY EASEMENT

In limited circumstances, the City could vacate an alley and return ownership of an alley to adjacent property owners through the sale or removal of an easement. Candidates that are most viable for this would be alleys located behind single family residences where no access is needed for police and fire services and trash removal is being serviced in front of the property. The benefit of this option is that the total number of miles that the City is responsible for maintaining would be reduced. The alley would cease to exist after vacation and there may be some revenue along with a reduction of deferred maintenance.

FISCAL IMPACT

As this report is provided for informational purposes only, there is no fiscal impact.

RHL:NCT:06190045

ATTACHMENT 1

TYPICAL 1913 ACT ASSESSMENT PROCEEDINGS
(“Best Case” Scenario)

| Task | Days for Task | Description | Cumulative Days Elapsed |
|--|----------------------|--|--------------------------------|
| Initiation | | City Council determination to proceed | 0 Days |
| Mobilization | 90 days | Procurement of legal counsel, assessment engineer, and design engineer | 90 days |
| Improvement Design | | Complete engineering design of public improvements | |
| Engineer’s Report | 180 Days | Prepare boundary and other maps, determine assessment spread. | 270 Days |
| Legal documents | | Draft resolutions and notices and review Engineers Report | |
| Presentation of Report, Resolution of Intention | 45 Days | Presentation Engineers Report to City Council, who makes various findings and sets public hearing. Election ballots sent to property owners | 315 Days |
| Receive Construction Bids | 60 Days | Allows for amending of proceedings if necessary | 375 Days |
| Public Hearing, Confirm Assessments | 15 Days | Counting of ballots, public hearing, and confirmation of assessments | 390 Days |
| Cash Collection Period | 30 Days | Property owners can pay their assessments in full | 420 Days |
| Determine Unpaid Assessments and Authorize Issuance of Bonds | 30 Days | Final Council act for formation | 450 Days |
| Sale of Bond | 30 Days | Bonds are marketed and sold to investors | 480 Days |