



STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of July 23, 2024

TO: Mayor and Members of the City Council

VIA: Dante Hall, City Manager

SUBMITTED BY: Mike Roberts, Public Works Director/City Engineer

SUBJECT: Fiscal Year 2024/25 Assessment Rates and Service Levels for Victoria by the Bay Landscaping and Lighting Assessment District (Continued from the June 25 Council Meeting)

RECOMMENDED ACTION:

It is recommended the City Council:

- a. Hold a Public Hearing to receive testimony regarding the proposed increase to the maximum assessment rate for the City of Hercules Landscaping and Lighting Assessment District No. 2002-1 (Victoria by the Bay LLAD) commencing with FY 2024/25;
- b. Adopt a Resolution Declaring the Results of the Ballot Tabulation Regarding the Proposed Increase to the Maximum Assessment Rate for the Victoria by the Bay LLAD commencing Fiscal Year 2024/25;
- c. Adopt a Resolution Approving the Final Engineer's Report, Confirming Diagram and Assessments, and Ordering Levy of Assessments for Fiscal Year 2024/25 for the Victoria by the Bay LLAD pursuant to the Landscaping and Lighting Act of 1972;
- d. Provide direction to City Staff on the timing of Service Level Reductions for the Residential Parkway Strips in the Victoria by the Bay LLAD, which Staff recommends occur on September 1, 2024; and
- e. Review and provide direction to Staff on a Draft Promissory Note outlining terms for repayment of the Victoria by the Bay LLAD cumulative fund deficit.

BACKGROUND:

This agenda item is a continuation from the June 25, 2024 City Council meeting. As such, past events and information regarding the financial status of the Victoria by the Bay LLAD and proposed assessment increase leading up to the June 25 meeting are covered in detail in the staff report of the same (Attachment #1).

In brief, on May 8, 2024, notices and ballots regarding a proposed assessment increase to cure a structural deficit for Victoria by the Bay LLAD were mailed to all affected property owners in accordance with Proposition 218. The instructions included ballots had to be returned by mail by 5:00 PM on June 25, 2024, or in person by the conclusion of public testimony of the Public Hearing to be held that night at the City Council meeting.

Immediately following the public hearing on June 25, the returned ballots were publicly tabulated outside the City Council Chambers. Property owners voted 70.7% **not in** favor of increasing their maximum assessment rates. Given the proposed assessment increase for Fiscal Year 2024/25 can only go into effect if a majority of the weighted ballots returned support the increase, the increase cannot be implemented.

Curing the structural deficit the District is experiencing will require other means.

ANALYSIS:

At the March 26, 2024 City Council meeting, the City Council selected by minute order service cuts per the excerpt below as the alternative means to cure the structural deficit should the assessment increase fail:

“the cessation of irrigation and maintenance of the landscaping on residential streets, excepting trees, as the preferred cost-cutting option to balance the budget and eliminate the deficit over a 10-year period, should the Proposition 218 proceedings to increase the assessments not pass, and authorize(d) staff to communicate the same to property owners in advance of said proceedings.”

In addition to this minute order, City Council added the caveat that said service cuts could occur only at the time directed by the City Council.

In accordance with the Council-provided authorization, language on the cost-cutting measures were included in both the notice to the property owners and the ballot itself to provide clarity and transparency on what would occur if the assessment increase was not approved, in contrast to the prior Proposition 218 effort last Fall which included no such measures.

Excerpt from Proposition 218 Notice

Why am I receiving this notice?

Your Victoria by the Bay Landscaping and Lighting Assessment District (LLAD) is experiencing a funding shortfall primarily due to higher-level tree pruning, water rate increases and increased irrigation demand from more extreme weather patterns. Increased property assessments are needed to maintain current levels of service. **Without this increase, the City of Hercules (City) will stop maintaining the residential parkway strips, excluding trees, within the Victoria by the Bay neighborhood as shown on page 3 of this notice in order to balance the budget. Residential parkway strips are the landscaped areas between the curb and the sidewalk on residential streets.**

Excerpt from Proposition 218 Ballot

No, I OPPOSE increasing my maximum annual assessment beginning in FY 2024-25 and again in FY 2025-26 as shown below. I understand that a majority no vote means the City will stop maintaining the residential parkway strips, excluding trees, within the Victoria by the Bay neighborhood and the Current Maximum Assessment shown below will continue with annual inflationary adjustments.

Given the results from the ballot tabulation conducted on June 25, 2024 confirmed that Victoria by the Bay LLAD property owners did not approve the proposed increase to their assessments by a **70.7%** to **29.3%** margin, staff is seeking direction from City Council on when to implement the service cuts.

With the severity of the District's structural deficit in mind – which is estimated to be \$449K beginning FY 2024-2025 and to increase \$14K each subsequent month – staff is recommending the service cuts occur as soon as is reasonably possible. This would include time for a transition to occur to allow for:

- Notification to property owners of the pending service cuts via a mailed postcard.
- Negotiating a modified scope of work with the City's landscape contractor.
- Notifying the HOAs of their obligations under the original Development Agreement per the Condition of Approval below, then entering into dialogue on the viability of the HOAs assuming maintenance responsibility of the residential parkway strips.

4.5 Participation in Landscaping and Lighting Assessment District. The parties understand and acknowledge the necessity of participation in Landscaping and Lighting Assessment Districts ("LLA District") to provide for the long-term operation and maintenance of the public landscaped parkways and recreational improvements on the Project Site. This long-term operation and maintenance shall be performed, as appropriate, by two existing LLA Districts within the City, one for San Pablo Avenue and one for City Parks, and one new LLA District to be formed by the City following the Effective Date, pursuant to Streets and Highways Code Section 23500 *et seq.* and other applicable laws. Hercules LLC shall support formation of the new LLA District. On behalf of itself and its successors and assigns, Hercules LLC hereby waives any and all rights which it may have to protest or oppose the use of the LLA District laws to fund such operation and maintenance activities. Hercules LLC shall cooperate with the City as requested by the City, from time to time, to make changes to the existing and new LLA District's boundaries and to the amount of the assessments, and to take other actions reasonably necessary to implement this Section.

Taking into account the time needed for this transition to occur, staff is recommending the service cuts be implemented starting September 1, 2024.

To levy assessments for Victoria by the Bay in FY 2024/25, City Council is required to approve the attached Victoria by the Bay LLAD Engineer's Report and adopt the resolution confirming the Victoria by the Bay LLAD assessments, which staff is recommending be increased by the change in the applicable Consumer Price Index (CPI), the maximum legally permissible. The applicable change in the CPI for Fiscal Year 2024/25 is 2.37%, which equates to an assessment of \$617.03 per single-family home for Fiscal Year 2024/25, versus \$602.76 for Fiscal Year 2023/24, as outlined in the attached Engineer's Report.

The Victoria by the Bay LLAD budget within the attached Final Engineer's Report (Attachment #4) reflects the estimated cost reductions from the Draft Engineer's report approved in March in water, landscaping and City personnel in the amount of \$114,223, \$98,994, and \$16,783 respectively, which would be attributed to the elimination of services to the residential parkway strips, excepting trees. This budget represents a full fiscal year commencing July 1, 2024 to be consistent with the Engineer's Reports for the 4 other Districts and based upon current projections the aforementioned savings associated with the service cuts will cure the operating deficit and allow the fund deficit to be eliminated within 10 years. Once the service cuts have been implemented, the City's budget will be modified to reflect the change in staffing costs. Staff also intends to bring a promissory note to City Council for approval when the final fund deficit is known. The promissory note will outline the terms for repayment for the loan from the General Fund to the District that is now occurring to cover the fund deficit. The Draft Promissory Note is included as Attachment #5.

FISCAL IMPACT:

Implementing the recommended service cuts will reduce annual expenditures to allow the Victoria by the Bay LLAD cumulative fund deficit to be paid off in 10 years. If service cuts are not implemented, the Victoria by the Bay LLAD fund deficit is estimated to increase by \$42k per quarter.

ATTACHMENTS:

1. June 25, 2024 Staff Report
2. Resolution Declaring the Results of the Property Owner Protest Balloting Proceedings for LLAD No. 2002-1 (Victoria by the Bay LLAD)
3. Resolution Confirming Diagrams and FY 2024/25 Assessments for LLAD No. 2002-1 (Victoria by the Bay LLAD)
4. FY 2024/25 Final Engineer's Reports for LLAD No. 2002-1 (Victoria by the Bay)

5. Promissory Note for repayment of the Victoria by the Bay LLAD cumulative fund deficit.