**22-1672** **Agenda Date: 1/25/2022**

# REPORT TO COUNCIL

## SUBJECT
Update on Discussions with Parking Maintenance District No. 122 - Franklin Square (PMD 122) Property Owners Regarding Council's Request to Explore Increased Contributions for Operations and Maintenance Costs

## COUNCIL PILLAR
Deliver and Enhance High Quality Efficient Services and Infrastructure

## BACKGROUND
Parking Maintenance District No. 122 (PMD 122) was formed in 1965 for the parking lots, arcades, fountains, sidewalks, landscaping, irrigation, lights, and utilities within Franklin Square, which is bounded by Benton Street, Homestead Road (formerly known as Liberty Street), Monroe Street, and Jackson Street. There have been several changes in how maintenance and operations costs have been collected over the years and in 2002 the City Council passed a motion at a public hearing in which the City assumed all future costs for operation and maintenance and in May 2003 adopted Resolution 7026. Under the collection method contained in Resolution 7026, the property owners contribute annually to pay for capital repairs of the parking lot and associated walkways. The fixed annual contribution from the property owners totals $14,200, less the earned interest on the accumulating balance. The accumulated balance in the account is $144,887 as of October 2021.

The City, through the General Fund, is responsible for covering the costs for annual maintenance and operations of PMD 122 and that has continued to be the arrangement through the present day. In FY 2021/22, the City budgeted $138,163 to cover the day-to-day maintenance of PMD 122.

On several occasions Council has discussed the allocation of PMD 122 costs because the City pays for all of the day-to-day maintenance and there was sentiment by some members of the Council that the property owners should pay some of these costs, similar to how PMD 122 was funded prior to 2003. On May 4, 2021, Council directed staff to engage PMD 122 property owners and discuss opportunities for reallocating operations and maintenance costs more equitably between the City and property owners since costs have increased since 2003. Later in this report, the State law process for administering PMD 122 is provided but, in short, any change requires a favorable voter outcome of those impacted by the assessment. It should be noted that regardless of changes to the funding allocations in the PMD, the City is responsible for the upkeep and maintenance of the City-owned improvements at Franklin Square. Absent changes to the funding allocations, only changes to the level of service of upkeep and maintenance could reduce the City's share of the annual maintenance cost.

## DISCUSSION
Staff developed a plan to implement this request which included property owner coordination and

engagement, a survey, and follow up with Council.

Property Owner Engagement July 2021
All PMD 122 property owners were contacted and invited to a virtual meeting on July 12, 2021. At this meeting, staff summarized the background of the past and current PMD 122 cost sharing arrangements and the direction from the Council to engage property owners to see if they are amenable to paying a portion of the operations and maintenance costs which have risen over the last 19 years. The property owners conveyed some of their concerns about PMD 122 and were encouraged to propose funding alternatives for consideration and ask questions. A copy of the minutes from the July 12 meeting was distributed to all the property owners following the meeting and can be viewed in Attachment 1.

Survey
Following the meeting, staff developed a series of survey questions designed to gauge property owners' amenability to contributing to the annual maintenance. In general, the purpose of the survey was to gauge the property owners' willingness to shift a portion of the PMD 122 operations and maintenance costs to the property owners. A virtual meeting was scheduled for October 21, 2021 to review the draft survey questions with the property owners to ensure that everyone understood the questions and to receive suggestions prior to finalizing the survey and sending it out. Prior to the meeting, the City was contacted by David DeLozier who indicated that the property owners had been discussing this item and were not in support of changing the current cost allocations included in PMD 122. Mr. DeLozier indicated that the property owners would be submitting a petition that would also include the merchants.

Property Owner and Merchant Petition
The property owners and merchants circulated a petition for *no changes* to PMD 122, which was signed by all the property owners and most of the merchants. The signed petition (Attachment 2) was submitted to staff on October 19, 2021 which made it clear that a survey was not necessary to gauge PMD property owners' interest in financially contributing to operations and maintenance.

Property Owner Engagement October 2021
All PMD 122 property owners were contacted and invited to a virtual meeting on October 21, 2021. The initial purpose of the meeting was to review proposed survey questions developed by staff to ensure that the property owners understood the questions and to get their input to see if any of the language needed to be modified to make the questions more clear. At the end of the meeting it was determined that due to the petition from the property owners, there was no need to proceed with the survey. Staff discussed next steps with the property owners in attendance and indicated a report would be prepared for Council at a meeting to take place in early 2022. A copy of the minutes from the October 21 meeting can be viewed in Attachment 3.

During prior meetings, Council had raised questions about the procedures for modifying and dissolving PMD 122. Staff has included the information on both of those processes below.

Process for Modifications to PMD 122
Any decision by the Council to increase the assessment (e.g., to increase the property owners' share of operation, maintenance, and capital costs or to modify the formula used to calculate the amount of the assessment levied on any individual parcel) must follow the assessment balloting procedure required by Proposition 218. That procedure consists of three basic steps:

(1) **Notice to Property Owners** - Mailed notice of the proposed modification to the 11 property owners within PMD 122. The notice must contain the following information: the total amount to be assessed across PMD 122; the amount chargeable to each parcel individually; the duration of the payments; the basis upon which the assessment was calculated; the date, time, and location of the public hearing on the proposed modification; and a ballot on which the owner can indicate support for or opposition to the proposed modification.

(2) **Public Hearing** - At least 45 days after the date of the mailed notice, the Council must hold a public hearing to consider protests and tabulate the ballots on the proposed assessment.

(3) **Ballot Tabulation** - Ballots are weighted according to the proportional financial obligation of the affected property. For PMD 122, the assessments are calculated based on the gross floor area of the building(s) on each parcel and therefore the ballots would be weighted accordingly. If the ballots submitted in opposition exceed the ballots submitted in support, then the City may not impose the modified assessment.

Process for Dissolving PMD 122

Proposition 218 does not govern the dissolution of PMD 122 because dissolution has the effect of eliminating, rather than increasing, the assessment. Therefore, only the City Code and Streets and Highways Code would apply. Under those laws, dissolution is not subject to the approval of property owners within the district. The Council can dissolve the maintenance district by: (1) adopting a resolution of intention to dissolve the district; (2) between 10 and 30 days later, conducting a public hearing on the dissolution; and, (3) adopting a resolution dissolving the district. A resolution dissolving the district would only need a simple Council majority to pass. If Council votes to dissolve PMD 122, extraordinary maintenance activities can continue to utilize PMD 122 assessment funds until the balance is exhausted. After the funds are exhausted the City would be required to fund the extraordinary maintenance in its entirety.

Staff notes that as a practical matter, dissolution would merely eliminate the property owners' assessments as a funding source for capital improvement costs. Dissolution would not relieve the City's responsibility for upkeep and maintenance of the City-owned improvements at the Franklin Square Mall. As such, the Council direction to determine how property owners pay more for services offered through PMD 122 would not be achieved.

## ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(a) as it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

## FISCAL IMPACT

There is no fiscal impact associated with this report.

## COORDINATION

This report has been coordinated with the City Attorney's Office.

## PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website

and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <mailto:clerk@santaclaraca.gov>.

## RECOMMENDATION

Note and file this informational report.

Reviewed by: Craig Mobeck, Director of Public Works
Approved by: Deanna J. Santana, City Manager

## ATTACHMENTS

1. July 12, 2021 minutes from meeting with PMD 122 property owners
2. Signed petition
3. October 21, 2021 minutes for meeting with PMD 122 property owners

**PARKING MAINTENANCE DISTRICT NO. 122 (PMD 122)**
**VIRTUAL MEETING WITH PROPERTY OWNERS**
**MINUTES**

Date: 07/12/21 Monday
Time: 5:00 PM

City Attendees:
Dave Staub, Deputy Director of Public Works
Craig Mobeck, Director of Public Works
Lourdes Marasigan, Staff Aide I

Property Owner Attendees:
David DeLozier (APN 269-22-098)
Gia Vitarelli (APN 269-22-100, 269-22-101)
Bob Freitas (APN 269-22-104)
Lisa Gillmor (APN 269-22-113, 269-22-114, 269-22-115)

1. Introductions - All Attendees

2. Background
   Prior to 2002, the property owners paid 75% of the annual maintenance costs and the City paid 25%.Under the current cost sharing arrangement the City is responsible for 100% of the annual operations and maintenance (O&M) costs and the property owners pay $14,200 less accrued interest from the prior toward capital repairs for PMD 122 pursuant to a Council determination on July 9, 2002 and subsequent Resolution No. 7041, which was adopted by Council on May 6, 2003.

   On May 4, 2021 Council approved the Resolution of Intention to levy the alternative method of assessment for the PMD 122, after it failed to pass on April 20. Council indicated that At the May 4 meeting, also Council directed staff to engage the property owners to see if they are amenable to paying a portion of the operations and maintenance costs to help cover costs that have risen over the previous 19 years.

   On June 22, Council approved the Resolution directing staff to proceed with the preparing assessments using the methodology approved in 2002. The property owners will be assessed $10,561, with accrued interest in the amount of $3,639 covering the balance of the $14,200 assessment for FY 2021/22. It is projected that the interest bearing account containing property owner assessments contains $146,000

   Below are links to the Council meeting agendas that PMD 122 was recently discussed under the Public Hearing section of the agenda. The videos for the meeting can also be accessed on the City's website.

   June 22 Council Agenda
   May 4 Council Agenda
   April 20 Council Agenda

3. Property Owner Concerns
   - The two parking lots are the only real benefit to the property owners

- The City chose to add improvements that elevated the O&M costs in the early 2000's that were not requested by the property owners
- The U.S. Post Office receives the most benefit, but is not included in the maintenance district
- The parking lots are used by Post Office customers, Farmer's Market customers and other public uses that don't necessarily benefit the tenants
- Why would the property owners agree to pay more for the same level of maintenance
- Any additional property owner assessments will be passed on to tenants who are already struggling due to COVID-19
- Property owners are already struggling to keep tenants
- City should be supporting small businesses not raising their costs of doing business
- Valley Transportation Authority (VTA) should pay a portion of maintenance because it benefits
- Current PMD 122 grounds look shabby
- Concerns for safety around PMD 122 with recent rise in crime
- Fountains should be operational

4. Alternatives for Consideration
   a. Assessments based on land area of Franklin Square (36% buildings / 64% landscape/parking lots)
   b. Develop option in which property owners pay only for O&M of parking lots (contracted street sweeping and City contract administration)
   c. Develop option in which property owners pay for annual concrete and asphalt power washing to improve the appearance of the grounds

5. Dissolution of PMD 122
   a. Council inquired about the process and ramifications
   b. City would still be the property owner of the landscaped areas and parking lots, while property owners would still own the buildings
   c. City would be responsible for 100% of O&M costs, as well as the capital repair costs of the parking lots and interior walkways
   d. City has discretion to set levels of service

6. Next Steps
   a. Staff to take property owner feed back and develop an informational survey to gauge property owners willingness to shift a portion of the PMD 122 O&M costs to the property owners
   b. Follow-up meeting will be scheduled to review the survey questions and upcoming process before the surveys are to be submitted
   c. Staff to prepare an informational report to the City Council summarizing discussions and survey results – Staff will not be making any recommendations
   d. City Council direction will dictate any future actions, if any are necessary

7. Questions from Property Owners
   a. Question: Do any of the City's fountains run on recycled water, and if not why don't we move to retrofit?
      *Answer: No, all of the City's fountains use potable water. A retrofit is not being considered because of the costs associated with running a recycled water pipeline to connect PMD 122.*

b. Question: What is the process to make any changes to assessment allocations?
*Answer: The City would have to follow the process required by Proposition 218.*
    - *Property owners would receive a notice of public hearing and a ballot*
    - *Votes would be weighted by square footage owned by each property owners*
    - *In order for any increased assessment to pass, the number of ballots submitted in favor must exceed the number of ballots submitted in opposition*
        - *Based on relative weight of votes received*
        - *Ballots not submitted do not count in favor or opposition*
        - *Simple majority of ballots received in favor needed to pass*

c. Question: What type of notice can be expected?
*Answer: It is Staff's intent to keep the property owners engaged and informed throughout this process. Staff will set-up a 2nd meeting to go over the survey questions to make sure that it is clear. Staff will inform the property owners of the date that the informational report that summarizes the engagement of property owners on the topic of shifting O&M costs. Finally, the City would be required to provide property owners with a Notice of Public Hearing and a ballot, in advance of taking any action to increase assessments.*

10/12/2021

To whom it may concern,

We, the landlords and merchants of the Franklin Mall / Franklin Square do hereby petition for no changes to the Parking Maintenance Distract # 122. The City of Santa Clara and landlords/Merchants will abide by the July 2002 agreement and resolution for that Parking Maintenance district #122 which was reached in good faith between the parties.

| | Name and Address of Owners /Merchant | Signature | Parcel | Date |
|---|---|---|---|---|
| (Land) | MITCHELL & JAMES T. ROFFO MANAGING PARTNER | [signature] | 269-22-106 | 10-12-21 |
| (merchant) | [signature] STAMPCRAFT | [signature] | | 10/12/21 |
| (merchant) | SANTA CLARA LIQUORS 1291 FRANKLIN SQ | [signature] | OWNER | 10/12/2021 |
| (Land) | David Delozier Trustee 1162 Carmel Way Santa Clara | [signature] | Trustee Owner 269-22-098 | 10/12/21 |
| (merchant) | J.P. Bourget (Mission Chiropractic) 1280 Benton | [signature] | | 10/12/21 |
| (merchant) | Shine Dry Cleaning 1260 benton st. | [signature] | Owner | 10/12/21 |
| (merchant) | Jason Lorist Tick Tock shop 1073 Monroe st. | [signature] | Owner | 10-12-21 |
| (Land) | GIOVANNI VITARELLI 925 DIRECE DR | Giovanni Vitarelli | 269-22-100 269-22-101 | 10.21-12 |
| (merchant) | Alejandro Monte Franklin Cleaners 1280 Franklin St. | [signature] | | |
| (Land) | [signature] GILLMOR PROPERTIES LLC 1201 FRANKLIN MALL SANTA CLARA CA 95050 | | 269-22-113, 114, 115 | 10-12-2021 |
| (merchant) | Jasmine Thai Cuisine 1211 Frank Mall | [signature] | Owner | 10/12/2021 |
| (merchant) | Adam DeKeyrel chiropractic 1270 Benton St SC 95050 | [signature] | owner | 10/14/2021 |
| (merchant) | Hunny #1 1274 Benton St. | [signature] | OWNER | 10/14/21 |
| (merchant) | Hunny #2 1065 Monroe St | [signature] | OWNER. | 10/14/21 |
| (merchant) | Big Jims Barber Shop 1041 Monroe St | Owner [signature] | | 10/14/21 |

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| | Name and Address of Owners /Merchant | Signature | Date |
|---|---|---|---|
| (Merchant) | Blinkys Lounge Inc. 1031 Monroe St. Santa Clara, Ca 95050 | [illegible] | 10/14/21 |
| (Merchant) | Acuerb Studio 1243 Franklin Mall Santa Clara CA 95050 | owner | 10/14/21 |
| (Merchant) | Bhavika Patel 1231 Franklin Mall Santa Clara CA 95050 | B Patel | 10/14/21 |
| (Merchant) | Mio Vicino 1290 Benton St. | GM/co-owner | 10/14/21 |

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| Name and Address of Owners /Merchant | Signature | APN | Date |
|---|---|---|---|
| (Landowner) Green Valley Corp BARRY + MOLLY SWENSON | [illegible] | 269-22-111 | Oct 8 2021 |
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| | Name and Address of Owners /Merchant | Signature | Parcel # | Date |
|---|---|---|---|---|
| (Land) | Ramiro Hermosillo Trust 951 - 953 - 955 MONROE ST. | Ramiro Hermosillo | 269-22-110 | 10/14/2021 |

10/12/2021

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| Name and Address of Owners /Merchant | Signature | APN | Date |
|---|---|---|---|
| (Land) John + Catherine DeMartini Trust<br>Stephen DeMartini Trustee | Trustee | 269-22-108 | 10/15/21 |

10/12/2021

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| Name and Address of Owners /Merchant | Signature | Parcell# | Date |
|---|---|---|---|
| (Land) Robert L. Freitas ET ALL | [signature] | | 10/17/21 |
| 1045 Monroe ST. | SC | 269-22-254 | |
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| Name and Address of Owners /Merchant | Signature | Parcell # | Date |
|---|---|---|---|
| (Land) Robert L. Freitas ET AL | | | 10/17/21 |
| 1031 Monroe St | | ~~269-22-005~~ | |
| | | 269.22-105 | |

10/12/2021

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| Name and Address of Owners /Merchant | Signature | APN | Date |
|---|---|---|---|
| (Land) Alice May-Wan Chan 1063 Monroe St. | X | 269-22-102 | X |

**PMD 122 Teams Meeting Minutes**
**Thursday, October 21, 2021**

City Attendees: Craig Mobeck, Department of Public Works Director
Dave Staub, Department of Public Works Deputy Director
Lourdes Marasigan, Staff Aide I

Property Owner Attendees:
Dave DeLozier
Nancy Vitarelli
Gia Vitarelli

1. Brief Recap/Background on Property Owners' Survey
2. Discussion
    a. Dave Staub confirms receipt of signed petitions from 100% of the property owners which the Department will provide to the Council.
    b. Dave DeLozier confirms that he received the signed petition from the last property owner via email today, which now makes 100% of the property owners signed petitions.
    c. Dave Staub confirms that there is no need to proceed any further with the property owners' definitive response from the signed petitions from all the property owners.
    d. Craig Mobeck summarizes the next steps that the Department will be taking and will be reporting to Council.
    e. Dave DeLozier provides feedback from the tenant regarding problems in the Franklin Square and also added the maintenance concerns of the landscaping in/around the Franklin Square mall.
    f. Nancy Vitarelli reported that the bushes in the parking lot needs to be maintained and for the City to shave the concrete in front of their building which is by the dry cleaners/in front of Giovanni's.
    g. Dave DeLozier thanks the staff and reiterates that he understands the staff and what process the staff have to go through for the Council.

For Staff:

1. Accella Request # 11009754 – concrete shaving