



## Legislation Details (With Text)

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DISCUSS AND PROVIDE DIRECTION

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**Code sections:**

**Attachments:**

Date	Ver.	Action By	Action	Result
8/20/2013	1	City Council Regular Meeting	accept	Pass

**TO:**

Honorable Mayor and Members of the City Council

**THROUGH:**

David N. Carmany, City Manager

**FROM:**

Bruce Moe, Finance Director

**SUBJECT:**

Funding Options and Processes to Mitigate Storm Water and Street Lighting & Landscaping District Deficits.

**DISCUSS AND PROVIDE DIRECTION**

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**RECOMMENDATION:**

Staff recommends that the City Council discuss and provide direction regarding funding options and processes to mitigate Storm Water, and Street Lighting and Landscaping District deficits.

**FISCAL IMPLICATIONS:**

Both the Storm Water and Street Lighting & Landscape District funds operate at a deficit. Further, over the next five years, General Fund subsidies of these funds are projected to total \$4,058,555. These subsidies draw resources away from other important General Fund needs as well as diminishing the City's ability to fund certain general capital improvement projects. Under current conditions, the City's five year forecast projects the use of Economic Uncertainty funds of \$2.7 million between fiscal year 2015 and 2018, and reduced capital improvement funding below the annual goal of \$2 million per year starting in fiscal year 2016-2017. The subsidies to Storm Water and Street Lighting and Landscaping funds are directly related to these projections.

Additionally, while yet to be fully identified, the costs of compliance with the National Pollution

Discharge Elimination System (NPDES) will certainly add significant costs to the Storm Water utility in the coming years, which may require further fee increases in order to fund these federal mandates.

## **BACKGROUND:**

One of the City Council Strategic Plan goals is for staff to present to the City Council for action, alternative funding for existing Street Lighting and Landscaping District, Storm Water utility, and streets and sidewalks. This report addresses the first two activities. The remaining issue, Streets and Sidewalks, which focuses on resident responsibility for maintenance and repair of sidewalks and parkway trees, and the potential for the City to takeover that responsibility, is a much broader topic than addressing the existing deficits in the other two funds. Further, Streets and Sidewalks require two separate processes under two separate State laws, further complicating the overall goal of correcting the Storm Water and Street Lighting deficits. As a result, staff will present that topic and related issues and options at a future meeting.

## **DISCUSSION:**

The purpose of this report is to highlight the insufficient funding of the City's Storm Water utility and Street Lighting and Landscaping Districts, and provide information on the steps necessary to mitigate the funding shortfalls. The report is designed to provide a high level overview. This report does not estimate the fees or assessments necessary to fully fund these operations; that determination will require further analysis as well as assistance from outside parties. Depending upon the City Council's discussion, staff would anticipate receiving direction to pursue a course of action which will necessitate additional funding and hiring such consultants necessary to fully vet the issues and develop plans (e.g., assessment engineers, polling and public relations firms, etc.).

### ***Storm Water***

The City's Storm Water system is designed to channel water generated as a result of storm flows from public right of ways and private properties to its ultimate drainage destination, the Pacific Ocean. Because run-off water travels directly to the ocean without the benefit of treatment, operators of storm drain systems must comply with the conditions of the National Pollutant Discharge Elimination System (NPDES) permit. The Storm Drain system is comprised of: 83,538 feet of Manhattan Beach storm lines and 43,805 feet of Los Angeles County storm lines; 800 catch basins; eight continuous deflection systems; two dry weather storm water diversions; five storm water sumps; and one lift station.

The Storm Water utility is funded through the Storm Water Fund. The annual Storm Water fee is approximately \$19 per year per single family residence but varies with land use. It is collected by Los Angeles County through the property tax rolls, and remitted to the City. This fee generates approximately \$346,000 per year and has remained unchanged since 1996. However, total costs to operate this service are growing due to federal clean water mandates.

The City's Storm Water Fund is utilized to promote storm water pollution awareness to the citizens of Manhattan Beach in order to prevent property damage due to flooding, and minimize pollution run-off into the ocean consistent with the National Pollution Discharge Elimination System requirements. Other current activities in the fund include updating the City's Storm Drain System Master Plan; developing storm water runoff monitoring and capture programs that will reduce trash and pollutants that enter the sea; identifying and mitigating storm system illicit discharge and illicit connection violations; performing maintenance of catch basins, continuous deflector separators and Polliwog Pond to minimize trash conveyance to the sea in compliance with NPDES Total Daily Maximum Load (TMDL) requirements for trash and bacteria; and maintaining dry weather diversion sump to assure

dry weather run-off is conveyed away from the ocean and to the Los Angeles Sanitation District in an effort to reduce bacteria contamination at the shore line.

While the total costs of compliance with the NPDES Municipal Separate Sanitary Storm System (MS4) permit are yet to be determined, the City's current five year forecast (included in the FY 2013-2014 budget) projects General Fund subsidies totaling \$2,726,332 from Fiscal Year (FY) 2013-2014 through FY 2017-2018. This excludes the General Fund overhead charge for services provided by General Fund to the Storm Water utility of \$375,000 per year, which is not being recovered due to insufficient fund balance in the Storm Water Fund. These subsidies have a deleterious effect on the General Fund and take away from other services that are provided by the City with General Fund dollars (e.g., Police, Fire, Paramedics, Parks and Recreation, etc.). It also has a direct effect on the City's ability to fund capital improvement projects since General Fund surpluses are relied upon to fund such activities.

The City's current fee is insufficient to fully fund the Storm Water utility and its long range requirements. Increasing the fee to offset these costs is a logical starting point to correct the existing problem, while at the same time recognizing future costs are yet to be determined and may require further action by the City Council to offset those costs.

### ***Substantive Requirements***

Adjusting the funding for the Storm Water operation can be accomplished through updating the annual fee under the authority of the California Health and Safety Code Section 5471 et seq. The fee is also governed by Article XIII D of the California Constitution (Proposition 218) Section 6. Section 6 of Proposition 218 identifies five (5) specific requirements:

1. Revenues derived from the fee shall not exceed the funds required to provide the property related service.
2. Revenues derived shall not be used for any purpose other than that for which the fee was imposed.
3. The amount of the fee imposed upon any parcel as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel.
4. No fee may be imposed for a service unless that service is actually used by or immediately available to the owner of the property. Fees or charges based on potential or future use of a service are not permitted.
5. No fee may be imposed for general governmental services.

### ***Procedural Requirements***

Once the above conditions are met, the following steps are necessary to gain approval for the new fee:

1. Prepare a storm water runoff analysis using an engineer
2. Prepare a preliminary cost and fee analysis (including the City's triennial cost allocation plan scheduled to begin in Fall 2013)

3. Conduct public education and outreach/opinion polling
4. Prepare an Engineer's Report
5. Mail a notice of Protest Hearing (45 days prior to hearing) to all property owners
6. Conduct Protest Hearing; if no majority protest is received, then submit the proposed fee increase to the voters for approval at an election that is not less than 45 days after the public hearing.
7. Conduct election. The proposed fee increase must be approved by a majority vote of the property owners of the property subject to the fee or, at the option of the City, by a two-thirds vote of the electorate of the City.

This process typically lasts 12 to 18 months. It involves a tremendous amount of research, community outreach and information dissemination. Often times, community surveys are performed and public relations firms are retained in order to publicize the need and explain the purpose of the funding requirement. The total process from start to finish costs an estimated \$125,000 to \$175,000 plus mailing costs. It is possible to recover those costs through the fee, perhaps over an extended period of time (several years in order to keep the fee as low as possible). The City Council could also consider a sunset clause on the fee; the City of Rancho Palos Verdes included a 30 year sunset clause in their recent voter-approved storm drain fee.

Before committing to any large scale process, the City Council may wish to perform a preliminary analysis of the issue with the community. This can include an engineer's calculation of the estimated fee increase and early polling. This can be accomplished in a timeframe of 4 to 6 months with an estimated cost of \$30,000. The Council may consider combining polling of both the Storm Water and Street Lighting and Landscaping District issues in one survey for efficiency.

City Council's alternatives to increasing the Storm Water fee include continued General Fund subsidization; seeking voter approval for a general tax increase, the proceeds of which may be used to continue that subsidy; or seeking a special tax increase specifically for Storm Water funding purposes (requiring 2/3 voter approval).

### ***Street Lighting & Landscaping Districts***

In the early 1970's, the City formed several Street Lighting & Landscaping Assessment Districts under the State Landscaping and Lighting Act of 1972. Through an assessment paid by property owners, this program provides for the payment of energy and maintenance costs of one thousand, eight hundred and eighty five (1,885) street lights, and landscaping in the downtown streetscape district. The method of assessment, which was approved at the time of the districts' formation, is based on zones and dwelling units for street lighting, and frontage area in the landscaping district. It is collected by Los Angeles County through the property tax rolls, and remitted to the City.

Like the Storm Water utility, the revenues generated are insufficient to support existing operations, as well as funding for capital improvements. The assessments have remained unchanged since 1996 when Proposition 218 took effect, which imposed strict limitations on the City's authority to assess. As a result, the City has not changed the assessments since that time.

The result of unchanged assessments and rising costs has resulted in General Fund subsidies of SLLD of \$1,332,223 over the next five years. Like Storm Water subsidies, these will directly impact

the City's ability to fund general capital projects and offer expanded services to the community. The original assessments were created to fund these services and the fees required to meet that goal should be updated to reflect the actual costs.

Updating and increasing the assessments would be subject to the limitations in Proposition 218. As relevant here, the requirements to increase the assessment are as follows:

### ***Substantive Requirements***

Under Proposition 218, only special benefits, defined as "particular and distinct benefit over and above general benefits conferred on real property located in the [assessment district] or to the public at large" are assessable. General enhancement of property value does not constitute *special* benefit. Furthermore, no assessment may be levied against a parcel that exceeds the reasonable cost of the proportional special benefit conferred on the parcel (This is a change from the requirements in place when the district was originally established). Funds other than assessment proceeds must be used to pay for the general benefits associated with a project. If an assessment is challenged in court, the City would bear the burden of showing that these requirements have been met.

Proposition 218 requires that an assessment be supported by a detailed engineer's report, prepared by a registered professional engineer. The report must, among other things, (i) identify all parcels which will have a special benefit conferred upon them by the assessment, (ii) determine the proportionate special benefit derived by each parcel in relation to the entire cost of the improvement being built or the service being provided, (iii) separate the general benefits from the special benefits conferred upon each parcel, and (iv) identify the amount of the assessment to be levied against each parcel.

As a practical matter, these requirements mean that, should the City decide to undertake proceedings to increase the assessment, it must be prepared to utilize some alternate source of funds to pay for a portion of the costs. This is because an assessment engineer likely will find at least some general benefit is generated by the street light services. As has been noted, such general benefits may not be assessed against real properties.

### ***Procedural Requirements***

Proposition 218 also requires that the City conduct a hearing and mail ballot proceeding prior to the imposition of a new or increased assessment. Mailed notice must be sent to each owner of property that will be subject to the assessment. Along with this notice, the City must include an assessment ballot, which may be cast by the property owner at any time before the close of the hearing on the assessment. If, upon the conclusion of the hearing, ballots submitted in opposition to the assessment exceed the ballots submitted in favor of the assessment, then the assessment may not be imposed. Ballots are weighted according to the proportional financial obligation that the property would bear if the assessment is imposed. Thus, for example, a ballot for a property that would be subject to a \$1,000 assessment would have ten times as much weight as a ballot for a property subject to a \$100 assessment.

Assuming no majority protest, the City Council may approve the assessment.

Similar to the Storm Water fee, this process typically lasts 12 to 18 months. It involves a tremendous amount of research, community outreach and information dissemination. Often times, community surveys are performed and public relations firms are retained in order to publicize the need and explain the purpose of the funding requirement. The total process from start to finish costs an

estimated \$100,000 to \$150,000 plus mailing costs. It is possible to recover those costs through the assessment, perhaps over an extended period of time (several years in order to keep the assessment as low as possible).

Before committing to any large scale process, the City Council may wish to perform a preliminary analysis of the issue. This can include an engineer's calculation on benefit-nexus and early polling. This can be accomplished in a timeframe of 4 to 6 months with an estimated cost of \$25,000. The Council may consider combining polling of both the Storm Water and Street Lighting and Landscaping District issues in one survey for efficiency.

City Council's alternatives to increasing the Street Lighting & Landscaping assessments include continued General Fund subsidization; seeking voter approval for a general tax increase, the proceeds of which may be used to continue that subsidy, or seeking a new special tax specifically for Street Lighting and Landscaping funding purposes.

### ***Other Considerations***

Aside from the procedural requirements listed for both the Storm Water, and Street Lighting and Landscaping District issues, there are other considerations. For example, when scheduling the election process, it may be helpful to avoid general elections to minimize distractions from important community issues such as this. This would suggest a target of late 2013 or mid 2015 to commence the City's efforts. Additionally, asking the community to address both issues at the same time may prove to be too much, and could result in neither succeeding. Finally, it is important that any efforts be supported by the entire City Council, and that the City Council actively engages the public in dialog and education on the needs.

### **CONCLUSION:**

The Storm Water, and Street Lighting and Landscaping District services are operating at deficits, and will require continued General Fund subsidies unless action is taken to increase the fees/assessments to recover costs. If the City Council wishes to proceed with addressing these issues, staff recommends that the City Council authorize a preliminary analysis of Storm Water *and/or* Street Lighting Assessment District costs and the resulting estimated fees/assessments. If so directed, staff will seek proposals for the assessment engineer and polling firm needed to perform the work and return to the City Council for contractual approval and appropriation.

### **ALTERNATIVES:**

1. Authorize preliminary analysis/polling for Storm Water fees (\$30,000 and 4-6 months after contract award)
2. Authorize preliminary analysis/polling for Street Lighting and Landscaping District assessments (\$25,000 and 4-6 months after contract award)
3. Authorize preliminary analyses for both Storm Water fees and Street Lighting and Landscaping District assessments (\$55,000 and 4-6 months after contract award)
4. Take no action at this time (continue subsidies)