



DATE: May 4, 2021

TO: Mayor and City Council

FROM: Director of Maintenance Services

SUBJECT: Adopt Two Resolutions to 1) Initiate Proceedings Pursuant to Government Code Section 53753, 2) Provide Intention to Levy Assessments for FY 2022, 3) Preliminarily Approve FY 2022 the Engineer's Report, 4) Provide a Notice of Proposition 218 Public Hearing for Stratford Village Flood Control Facilities Improvement Assessment (MD1 - 2021), 5) Approve the Mailing of Ballots, and 6) Adopt Proposition 218 Assessment Ballot Procedures

RECOMMENDATION

That the City Council adopts two resolutions (Attachments II and III):

1. Initiating proceedings pursuant to Government Code Section 53753,
2. Providing intention to levy assessments for FY 2022,
3. Preliminarily approving the FY 2022 Engineer's Report,
4. Providing a notice of Proposition 218 Public Hearing,
5. Approving the mailing of ballots, and
6. Adopting procedures for Proposition 218 Assessment Ballot Proceedings for the Stratford Village Flood Control Facilities Assessment District (MD1-2021).

SUMMARY

Maintenance District #1 ("District") was established in 1995 as a financial funding mechanism to fund the operation, maintenance, and the capital repair and replacement of the Stratford Village Storm Water Lift Station (SWLS). The station provides critical flood protection infrastructure for the neighborhood. Twenty-five years later, the funds generated from the annual assessment revenue are no longer sufficient to provide proper operation, maintenance, and the capital repair and replacement of the District's storm water drainage and pumping infrastructure. Staff is recommending a Proposition 218 assessment balloting procedure to propose adding an annual cost-of-living adjustment mechanism and an increase to the annual assessment to upgrade and restore this neighborhood's flood control infrastructure to the condition, efficiency, reliability, and effectiveness that was originally intended.

In preparation for the proposed Proposition 218 assessment balloting, an Engineer's Report has been prepared by SCI Consulting Group (Attachment IV) containing the benefit, assessment, and budget details for a new District. The Engineer's Report proposes to repeal the original District (MD1) and replace it with a new District (MD1-2021), which will include two key factors:

1. A cost-of-living adjustment mechanism to ensure that the flood control infrastructure is adequately funded over time for operations, maintenance, and capital repair and replacement.
2. A capital investment of \$379,000 to fund critical rehabilitation and upgrades to the existing lift station. These improvements will be funded through a temporary transfer of monies from the City's Stormwater Fund to be repaid from future assessment revenues, at a variable interest rate capped at 2.25%, adjusted annually based on the City's investment portfolio weighted average rate of return. The portfolio contains investments in the Local Agency Investment Fund (LAIF) and other investments.

Tonight, staff is recommending that the Council take formal action to initiate the Proposition 218 election process by preliminarily approving the Engineer's Report, providing a Notice of Public Hearing in compliance with Proposition 218, approving the mailing of ballots, and adopting Proposition 218 Assessment Ballot Proceeding Procedures.

By law, once the Proposition 218 process is initiated, ballots are mailed out to property owners, who then have 45 days to return their signed ballot by USPS pre-paid mail or in person to the Office of the City Clerk. Ballots returned by mail or in person to the City of Hayward Office of the City Clerk will be collected but not opened until the June 22, 2021 public hearing.

At the June 22, 2021 public hearing, the Office of the City Clerk will open the envelopes and tabulate the ballots, with the results presented to the Council for formal acceptance, approval, and action during the public hearing. Approval of the increase to the annual assessment requires a total of 50% plus 1 of the weighted ballots returned to the City in favor of the assessment. Should the assessment ballot tabulation result in a lack of approval for an increased assessment, the consequence would be further deterioration of the Stratford Village SWLS and increased risk of neighborhood flooding.

BACKGROUND

The Stratford Village neighborhood is located within a large drainage basin, with the Ward Creek¹ drainage facilities running along the western edge of the neighborhood. In 1992, as part of the Stratford Village neighborhood pre-development analysis, it was determined that the neighborhood was located below the 100-year flood zone. Due to the increased risk of

¹ [URL](#) – Ward Creek – Old Alameda Creek Watershed

flooding, the conditions of development required extensive grading to raise the elevation of the property to receive approvals from the City.

Development of the neighborhood was eventually made possible with the construction of a dedicated SWLS, built in 1995, designed solely to service this specific development. The SWLS was constructed at the end of Pacheco Way to pump storm water runoff from the developed area adjacent to Alameda County Flood Control and Water Conservation District's (ACFCWCD) Line B, Zone No. 3A, Ward Creek. The SWLS was designed with capacity to only process the stormwater run-off generated by the 174-lot development, a portion of Ruus Lane, Stratford Road, and the Stratford Village Park. No added capacity was constructed for run-off from other areas outside those mentioned above.

The Stratford Village SWLS, located at the end of Pacheco Way in the southwestern corner of Stratford Village, pumps water out of the neighborhood and into a drainage facility (Ward Creek). The ACFCWCD², through an agreement with the City, provides a range of construction, repair, maintenance, operations, and upgrades to the district's storm drainage and pump station improvements. These improvements protect the usefulness, utility, desirability, and livability of all properties within its jurisdictional area by preventing flooding.

The District was formed as a financial mechanism for the property owners to fund the station's operation, maintenance, and capital replacement in perpetuity. This station is the only privately built SWLS in the City, initially funded by the developer, and able to be operated and maintained, with capital items being repaired and replaced solely with assessment revenue collected by the benefited property owners.

Presently, each of the 174 property owners contribute \$243.92 per year for the operation, maintenance, and capital repair and replacement of this critical flood protection infrastructure. Annually, \$42,442 in assessment revenue is collected. These funds are maintained and spent only for the operation, maintenance, repair, and replacement of this neighborhood's SWLS. The annual maximum charge rate ("Assessment") was established and set when the District was established in 1995 and cannot be legally increased without official property owner approval completed through a formal assessment balloting procedure. Twenty-five years later, the funds generated from the annual Assessment is no longer sufficient to properly operate and maintain the Stratford Village SWLS and to provide for repair and replacement of its critical infrastructure assets.

On March 23, 2021 staff presented the Council with an informational report³ to advise the Council that additional funds are required, provide community outreach and input plans, present a project timeline, provide the legal requirements for a Proposition 218 ballot proceeding, and receive comments and questions from the Council pertaining to the report.

On April 14, 2021, staff conducted a second virtual Stratford Village Community Meeting via Zoom. Twenty-six attendees participated in the meeting, with the after-meeting survey

² [URL](#) – ACFCWCD Site

³ [URL](#) – March 23, 2021 Council Work session, Item 21-014

results showing a very positive response to both the meeting and to voting yes to increase the District's annual assessment.

DISCUSSION

Properties in the Stratford Village neighborhood are currently at an increased risk for flooding if the SWLS is not operating properly. The proposed Assessment will fund an increase in maintenance, operations, and improvement activities to reduce the likelihood of SWLS failure and reduce the threat of flooding, thereby significantly reducing the risk of property damage potential and loss of life associated with floods. Proper flood control operation, maintenance, and capital repair and replacement helps to protect, and specifically benefits, all properties in the District.

Based upon input from the Stratford Village neighborhood, the City has decided to proceed with the formation of a new District (MD1-2021) which incorporates two critical modifications to the existing assessment including:

1. A cost-of-living adjustment mechanism to ensure that the flood control infrastructure is properly funded over time for operations, maintenance, and capital repair and replacement.
2. A capital investment of \$379,000 to fund critical rehabilitation and upgrades to the existing lift station. These improvements will be funded through a temporary transfer of moneys from the City's Stormwater Fund to be repaid from future assessment revenues, at a variable interest rate capped at 2.25%, adjusted annually based on the City's investment portfolio weighted average rate of return. The portfolio contains investments in the Local Agency Investment Fund (LAIF) and other investments.

The attached Engineer's Report (Attachment IV) serves as the basis for this proposed new District (MD1-2021) and updated Assessment to fund a specific portion of these critically needed improvements. The new District, if approved by property owners, would repeal, and replace the existing MD1 Assessment District with a new Assessment District, designated as "Stratford Village Flood Control Facilities Assessment District," MD1-2021.

The new District that will benefit from the proposed flood protection contains 174 single-family residential parcels. The area is characterized by relatively flat terrain, low elevation and drains into ACFCWCD's Flood Control District Line B, Zone No. 3A. The District zone is described below.

- Zone 1: A single-family residential area, containing 174 single-family residential parcels, served by the Stratford Village SWLS to manage storm runoff and avoid any surface flooding.

Legal Analysis of Proposition 218 to Fund Flood Control

The proposed assessment complies with Proposition 218, The Right to Vote on Taxes Act, which was approved by the voters of California on November 6, 1996 and is now Article XIII C and XIII D of the California Constitution. Proposition 218 provides for benefit assessments to be levied to fund the cost of providing services and improvements, as well as maintenance and operation expenses of a public improvement which provide a special benefit to the assessed property.

Proposition 218 imposes several important requirements, including property-owner balloting, for the formation and continuation of assessments, and these requirements are satisfied by the process being used to establish this proposed assessment.

Funding for flood control is a well-supported and appropriate use of a benefit assessment. In fact, when Proposition 218 was initially approved in 1996, it allowed for certain types of assessments, including flood control, to be “grandfathered” in, and these were exempted from the property-owner balloting requirement. Proposition 218 is manifested as Article XIII D of the State Constitution, and states in part in Section 5:

“Beginning July 1, 1997, all existing, new, or increased assessments shall comply with this article. Notwithstanding the foregoing, the following assessments existing on the effective date of this article shall be exempt from the procedures and approval process set forth in Section 4:

*“(a) Any assessment imposed exclusively to finance the capital costs or maintenance and operation expenses for sidewalks, streets, sewers, water, **flood control, drainage systems** (emphasis added) or vector control. Subsequent increases in such assessments shall be subject to the procedures and approval process set forth in Section 4.”*

Specific mention of “flood control and drainage systems” underscores the fact that the drafters of Proposition 218 were satisfied that funding for such activities is an appropriate use of benefit assessments, and therefore confers a direct and special benefit to property.

Proposition 218 Process⁴

Principal requirements. Section 4 of Article XIII D and the Proposition 218 Omnibus Implementation Act (Gov. Code § 53750 et seq.) sets forth Proposition 218’s procedural requirements. The principal requirements are:

1. An agency must provide 45 days’ written notice of a public hearing, and mail ballots to the owners of the parcels to be assessed;
2. The notice must include specified information, including information regarding the special assessments, the public hearing, and owners’ right to cast votes weighted by each owner’s special assessment amount;

⁴ [URL](#) – League of California Cities Review of Proposition 218 and 26

3. An agency must hold a noticed public hearing and tally the results of the majority protest vote; and
4. If a majority of the weighted votes does not oppose the special assessments, the agency may vote to levy the special assessment.

Funding Options

A recent evaluation of the flood control facilities shows that various elements of the facility need repair, replacement, or rehabilitation. To upgrade the SWLS to the condition, efficiency, reliability, and effectiveness that it was originally intended, an additional amount of \$379,000 is required to fund the needed capital repairs. Were this entire cost charged to the property owners in 2022, the one-year assessment would need to be increased from **\$243** to **\$2,479** in **2022**. This amount is over ten times the \$243 currently being charged and was not an acceptable option to propose to the property owners.

Staff sought out creative ideas and methods to reduce the financial burden to the property owners. To lessen the financial impact to the property owners, the City is proposing to fund the \$379,000 in capital improvements through a temporary transfer of monies from the City's Stormwater Fund as authorized by Streets and Highways Code Section 5832.5.

During the April 14 Community Meeting, staff presented the following three funding options to the property owners for consideration to fund the needed infrastructure repairs:

1. **Option 1:** Pay 100% of Capital Funding in 2022. Station repaired in 2022. New Rate **\$2,479** in 2022, with rate being reduced to **\$375** in 2023, plus annual inflation factor thereafter.
2. **Option 2:** Accept temporary City transfer of monies in the amount of \$379,000. Station repaired in 2022. New Rate **\$498** in 2022, plus annual cost of living adjustment beginning in 2023 and thereafter. Transfer of funds will be repaid over several years at a low interest rate.
3. **Option 3:** No Change. Keep current rate of **\$243**, which includes no annual cost of living adjustment. District cannot fund needed capital repairs.

Option 2 provided the most balanced and conservative approach while affording a full funding of the needed capital repairs with the lowest annual fiscal impact to the property owners. This option is included in the Engineer's Report (Attachment IV) and will be listed as the proposal on the official ballot.

This option increases the annual assessment rate from **\$243** to **\$498**, which is an increase of about **\$5** per week, and will add an annual cost of living adjustment each year thereafter. After the temporary transfer of funds are re-paid, District assessment rates will be adjusted

back down to an amount no greater than the cost to provide annual operation, maintenance, and a minimal capital contribution to fund future repairs.

The capital improvements will be funded through a temporary transfer of moneys from the City's Stormwater Fund as authorized by Streets and Highways Code Section 5832.5. The temporary transfer will be repaid from future District assessment revenues, at a variable interest rate capped at 2.25%, adjusted annually based on the City's investment portfolio including the Local Agency Investment Fund (LAIF) and other investments.

The financial plan also includes the establishment of a fund balance equal to at least half of the annual operating costs to ensure positive cash flow to account for assessment revenues that lag approximately six months. The plan also includes a reasonable fund balance to allow for occasional major maintenance expenses in future years to ensure the pump station retains its capacity and reliability.

FISCAL AND ECONOMIC IMPACT

A public hearing will be held on June 22, 2021 to open, tally, and report on ballots received by the Office of the City Clerk. Should the proposed Proposition 218 balloting be performed and pass, City staff will complete an official agreement between the District and the City's Stormwater Operating Fund to provide "a temporary transfer of funds" in the amount of \$379,000 in FY 2022. These funds would be repaid over 12 years at a variable interest rate capped at 2.25%, adjusted annually based on the City's managed investment portfolio weighted average rate of return.

Should the proposed balloting be performed and ***not*** pass, the condition of the Stratford Village SWLS would continue to degrade and would not be able to perform its flood control duties as originally designed and intended.

PUBLIC CONTACT

Through a series of mailers, virtual community meetings, a dedicated webpage, flyers delivered to each of the 174 properties in the neighborhood, use of electronic message boards parked in the neighborhood, and Council meetings, staff has sought to inform and receive input from Stratford Village property owners and Council regarding the best path forward to protect Stratford Village from flooding. The following include staff's community outreach efforts:

1. **February 12:** Mailed informational letter to community, advertising February 25 community meeting.
2. **February 25:** Community Meeting #1: provided a virtual forum for community input via Zoom.
3. **March 23:** Council Meeting #1: provided an informational report and next steps.

4. **March 26:** Posted information about the Stratford Village Flood Prevention Project on the City's website⁵.
5. **March 29:** Advertised webpage and April 14 community meeting on social media via Next-door.
6. **April 2:** Mailed informational flyer to all property owners advertising April 14 community meeting.
7. **April 12:** Posted door flyers on each of 174 properties and on community mailboxes and placed two electronic message boards in the neighborhood to advertise the April 14 meeting.
8. **April 14:** Community Meeting #2: provided a virtual forum for community input via Zoom.
9. **April 27:** Council Meeting #2: request formal start to Proposition 218 election proceedings from the Council.

Upon adoption of the two resolutions, a notice, ballot, and stamped return envelope will be mailed to all property owners within the proposed, updated District, described as MD1 – 2021, the “Stratford Village Flood Control Facilities Assessment District.” In addition, a required legal notice will be published in the Daily Review, announcing June 22, 2021 as the public hearing date in which the ballots will be opened and counted. There will also be a third and final virtual community meeting on May 18, 2021 to provide the property owners with an educational presentation about the SWLS and provide an opportunity for property owners to ask questions and make comments.

NEXT STEPS

If Council adopts the attached two resolutions, a notice and ballot materials will be sent to all property owners of record within the District at least 45 days prior to the scheduled public hearing. The ballot materials will include a postage paid return envelope, addressed to the City of Hayward Office of the City Clerk. The City Clerk will collect all received ballot envelopes and will only open those ballot envelopes at the June 22, 2021 public hearing.

Prepared by: Denise Blohm, Management Analyst

Recommended by: Todd Rullman, Director of Maintenance Services

Approved by:



Kelly McAdoo, City Manager

⁵ [URL](#): Stratford Village Flood Prevention Project Website