
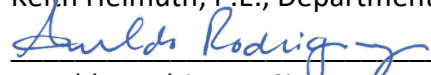


REPORT TO CITY COUNCIL

Approved by:



Keith Helmuth, P.E., Department Director



Arnoldo Rodriguez, City Manager

Council Meeting of: May 17, 2023

Agenda Number: D-1

SUBJECT:

1. Engineer's Report For City Wide Landscape And Lighting Assessment District Zones Of Benefit 1, 2, 3, 4, 6-A, 6-B, 7, 8, 9, 10-A, 10-B, 10-C, 10-D, 10-E, 10-F, 10-G, 10-H, 10-I, 12, 13, 14, 15, 15-B, 15-C, 16, 17-A, 17-B, 17-C, 17-D, 18, 20-A, 20-B, 20-C, 21-A, 21-B, 21-C, 21-D, 23, 24, 25-C, 25-D, 26, 26-B, 26-C, 26-D, 27, 27-B, 28, 28-B, 29, 29-B, 29-C, 29-D, 29-E, 30, 31-A, 31-B, 32-A, 32-B, 33, 34, 34-B, 34-C, 35, 36-A, 36-B, 36-C, 37, 39, 40, 41, 43-A, 43-C, 43-D, 43-E, 44, 45-A, 46, 50 & 51 For Fiscal Year (FY) 2023/24
2. Resolution Of Intention To Levy And Collect Annual Assessments For City Wide Landscape And Lighting Assessment District Zones Of Benefit 1, 2, 3, 4, 6-A, 6-B, 7, 8, 9, 10-A, 10-B, 10-C, 10-D, 10-E, 10-F, 10-G, 10-H, 10-I, 12, 13, 14, 15, 15-B, 15-C, 16, 17-A, 17-B, 17-C, 17-D, 18, 20-A, 20-B, 20-C, 21-A, 21-B, 21-C, 21-D, 23, 24, 25-C, 25-D, 26, 26-B, 26-C, 26-D, 27, 27-B, 28, 28-B, 29, 29-B, 29-C, 29-D, 29-E, 30, 31-A, 31-B, 32-A, 32-B, 33, 34, 34-B, 34-C, 35, 36-A, 36-B, 36-C, 37, 39, 40, 41, 43-A, 43-C, 43-D, 43-E, 44, 45-A, 46, 50 & 51 for FY 2023/24 And Setting Date For Public Hearing

RECOMMENDATION:

1. Adopt a minute order approving the Engineer's Report as filed or with modifications as identified by the City Council (Council) during this meeting.
2. Adopt Resolution of Intention to levy and collect proposed annual assessments for all City-Wide Landscape and Lighting District Zones of Benefit referenced in the Engineer's Report for FY 2023/2024 or as may be amended and set June 7, 2023, as the public hearing date to consider the Proposed FY 2023/2024 Assessments for City Wide Landscape and Lighting District Zones of Benefit.

SUMMARY:

Government Code Sections §22620-22631, including the Streets and Highway Code (Code), require the City to undertake proceedings for each fiscal year during which an assessment is to be levied and collected within its existing landscape assessment district. There are 80 active Zones of Benefit (Zones) within the Citywide Landscape and Lighting District (LMD). A Zone Location Map is included in Attachment 1.

Each year, Zones are identified that are generating less assessment revenue than is required to fund needed maintenance activities adequately. To resolve this situation, assessments should be increased in conformance with the requirements of the Streets and Highway Code and Proposition 218, when applicable. Regardless of a Proposition 218 election being held, Council must:

- First, approve an Engineer's Report
- Then adopt a Notice of Intent to levy assessments.
 - Along with the Notice of Intent, the Council will set a date for a public hearing where affected residents may voice opposition or support for the recommended assessment changes.

Where proposed increases in the assessments exceed amounts specified in previously recorded covenants, or if there were no covenants, Proposition 218 requires that an election be held where voters decide whether to approve the increase. When an election occurs, the outcome is determined entirely by the owners who correctly complete and return ballots to the City; a simple majority of returned ballots dictates the outcome for or against the increase.

Council may recall that Proposition 218 elections were held last year for 28 Zones. However, all Zones failed to reach a majority vote in favor of increases. As such, no increases were authorized for these Zones. Given the reluctance of property owners to vote in favor of increasing assessments and the cost in staff time for a very low probability of success, staff recommends that Proposition 218 elections and associated hearings not be conducted this year. Instead, staff proposes to seek input from Council at a separate LMD Funding Meeting as to their preferred approach to funding zones in future years. It is staff's opinion that given the effort required to conduct the elections each year, Council may wish to discuss alternative approaches to assessments and/or maintenance levels associated with those assessments. Generally, the topics for consideration would include:

- Should Proposition 218 elections occur in future years? If so, at what frequency: all Zones, a certain number per year, or only those with the most significant deficit?
- If Proposition 218 elections are conducted and fail, should failed Zones receive full maintenance efforts or be reduced to match the level of funding? This approach of reducing maintenance efforts has occurred in the past. As expected, staff and Council received complaints when landscape quality was visibly lowered because of reduced maintenance. Currently, Parks Department has indicated that maintenance efforts are not being curtailed at any Zone to match reduced revenue.

Following the public hearing, the Council may order changes in any of the matters addressed in the Engineer's Report subject to such changes not exceeding the limits of existing covenants or the results of the Proposition 218 hearings if Proposition 218 elections are conducted. If there is a majority vote against the levy of an annual assessment as part of a Proposition 218 election where such an assessment represents an increase from any previous year and is also outside the terms of an applicable covenant for that Zone, the proposed increase in the assessment must be abandoned. The assessment amount then reverts to the previous year's assessment amount where no covenant exists or is adjusted to be consistent with the maximum assessment allowed for the covenant recorded for the property. If, as part of a Proposition 218 election, a majority vote in support of the assessment is received, the Council may adopt a resolution confirming the diagram and assessment. The adoption of the resolution will constitute the levy of an assessment for FY 2023/2024.

DISCUSSION:

On July 1, 2015, Parks staff began maintenance of the 80 LMD Zones created by the City. A private company had previously maintained most Zones under contract with the City.

This decision was made primarily to raise the quality of maintenance. It was also anticipated that this decision, together with additional direction provided by the Council (See Attachment 2), would result in less fluctuation in the cost of maintenance from year to year and a corresponding reduction in Proposition 218 elections. The assessments presented in this year's Engineer's Report reflect staff's recommendation based on Council's prior direction, recent opinions from the City Attorney's office, and several controlling factors that include:

1. Staff's experience in maintaining and managing each of the 80 Zones.
2. The amount of assessment revenue being generated relative to the maintenance cost in each Zone.
3. Staff's approach to maintenance and management moving forward.

Staff Experience

To date, full funding necessary to maintain landscaping at the proper level has yet to be achieved in 70 of the 80 Zones. The Parks Department indicates that maintenance efforts are not currently reduced to match funding. Given this, Parks staff would have a reasonable understanding of the efforts of maintaining each Zone or combination when they overlap each other. Based on records, Parks staff could therefore translate this effort level into costs.

Moving Forward

Staff is mindful that residents are critical of the cost of maintaining landscaping. History suggests that residents will reject an increase in assessments, regardless of how large or small the increase may be or how important it is to the visual appeal of the landscaping. As such, a request for additional revenue through a Proposition 218 process is not a guarantee.

This Engineer's Report and the Park's Department approach incorporate the expectation that assessments should provide value in how landscape areas look and are perceived. This is true even when sufficient funding is unavailable to provide service at recommended levels. Given this expectation, a series of questions might logically be asked:

- **What is the Plan?**

Flexibility and a five-year accounting plan. Staff utilizes a five-year plan to understand where costs and funding are heading. The five-year plan does not and will never remove the need for Proposition 218 elections if the City continues to pursue full funding from property owners. But it does aid in anticipating them, smoothing the magnitude or degree of assessment increases.

- **How is maintenance affected when there are insufficient funds?**

When a funding bump in the road is evident and is directed by Council to reduce maintenance efforts, staff can seek to lower costs in several ways, except for situations that might impede public safety. This typically begins with the least obvious measures to residents and expands those measures as necessary. The first actions might be to reduce or eliminate tree trimming, reduce water and mowing or trimming in a complimentary fashion, etc. This has been referred to in a past report as demand-responsive maintenance.

- **Does the plan change based on existing funding?**

The overarching goal is to always work within available funding. There is always a point at which a certain percentage reduction in funding exhibits itself in a way that must be addressed and will eventually lead to a Proposition 218 election or the need to fund through the General Fund. As indicated, staff is not reducing maintenance efforts at any Zone. But if directed by Council, staff will pursue Proposition 218 as has been the past practice.

- **Can significant increases to assessments be avoided entirely?**

Unlikely. The Code, as staff knows it, has the city boxed into a situation where over or undershooting expenses relative to funding can trigger requirements to reduce assessments. When this occurs, there is no simple tool to bring them back up when needed without a Proposition 218 election. Overcoming this shortfall can cause a slingshot effect that requires other steps to avoid it starting all over again. When staff identifies methodologies that may be beneficial to the management of this program, they will coordinate with the City Attorney to determine if they conform with the Code. This is addressed in a little greater detail based on the factors and previous Council direction described in Attachment 2.

While dropped for several years, last year's Proposition 218 elections have highlighted the consequences of failed Proposition 218 elections wherein there appear to be only two available options to address the results of a failed election as operational losses cannot be carried forward:

- A. Reductions in service and quality, or
- B. Contributions by the General Fund.

Also noteworthy, the LMD program has been expanding rapidly in the last several years because of significant growth within the city. This expansion, along with other non-LMD maintenance demands on staff, is placing a more substantial maintenance burden on a workforce that has remained fixed in personnel and equipment.

Even with these challenges, staff feels comfortable stating that overall maintenance quality is higher than when private contractors performed maintenance. Looking toward future years, and based on the interpretation of applicable laws, there will be an increasing need for Proposition 218 elections if Council desires to continue placing the burden of maintenance where it has historically been directed due to property owners entering into landscape covenants.

Operational Losses

As a result of the most recent results of Proposition 218 elections, the City Attorney was consulted regarding the accumulation of operational losses. Based on the opinion from the City Attorney, negative fund balances older than the current FY (2022/23 in this case) at the time the following year's Engineer's Report is being prepared cannot be carried forward. Meaning the City cannot attempt to levy assessments with the intent to recuperate the losses occurring in FY 2021/22 or before. Based on this opinion, all negative fund balances prior to the most recent fiscal year have been zeroed out; this amounts to an operational loss of \$65,915.27. The General Fund will absorb this loss.

Specific Factors Affecting the Assessment Calculation

Several specific factors are reflected in the proposed FY 2023/24 Engineer's Report. Examples of these factors include estimated operating and administrative expenses in each Zone, recommended reserve amounts for cash flow, and allowances for semi-regular expenses like tree trimming. Each of these factors plays a part in the proposed assessment. In prior years, Council has provided direction on addressing these factors. A summary discussion of the various factors is included in Attachment 2 to this report.

Accounting of the Zones

Based on the current assessments allowed by existing covenants and previous adjustments to assessments, revenue is projected to be approximately \$460,231.02, and expenses at \$559,861.05. When accounting for only those Zones where expenses exceeded revenue, there is a projected shortfall of \$41,896.55 for FY 2023/24 to be funded by the General Fund or through reductions in maintenance quality. When accounting for the estimated shortfall for the current FY 2022/23 of \$27,627.12, it is anticipated a total shortfall of \$69,523.67 that will be funded by the General Fund or through reductions in maintenance quality.

Without adjustments associated with successful Proposition 218 elections or reductions in maintenance, this shortfall will increase in future years as expenses continue to rise.

When accounting for individual Zones where a deficit is anticipated, the General Fund is projected to cover approximately \$69,523.67 in expenses, as alluded to above. Over time, this value can be reduced through the following efforts:

- Parks reduce the effort expended to match revenue as best as possible.
- Continue to conduct Proposition 218 hearings to attempt securing approval from property owners to increase funding to the point that matches expenses for their respective Zones.

Attachment 2 illustrates some of the factors involved with calculating assessments.

Table 1 summarizes some of the key aspects of this process:

Table 1: FY 2023/24 Assessment Metrics	
<i>Metric</i>	<i>Amount</i>
Total Revenue	\$460,231.02
Total Expenses	\$559,861.05
Projected Operational Budget Deficit for FY (22/23)	(\$27,627.12)
Projected Operational Budget Deficit for FY (23/24)	(\$41,896.55)
Projected Operational Budget Deficit for FY (22/23) and 23/24	(\$69,523.67)
Average Assessment per Parcel	\$73.23
Zones Where Expenses Exceed Revenue ¹	70
Zones With Assessment Increase ²	13
Zones with Assessment Less Than \$80	51
Zones with Assessment \$80-100	11
Zones with Assessment \$100-150	10
Zones with Assessment \$150-200	5
Zones with Assessment \$200-300	1
Zones with Assessment Greater than \$300	2
¹ Of these zones, 52 still have a surplus fund balance	
² Where an increase in assessment is permissible within the bounds of the original covenant.	

FISCAL IMPACT:

The General Fund will cover operation losses of \$65,915.27 that have accrued prior to FY 2022/23.

The General Fund will cover operational losses of \$27,627.12 anticipated to accrue in 2022/23.

ALTERNATIVES:

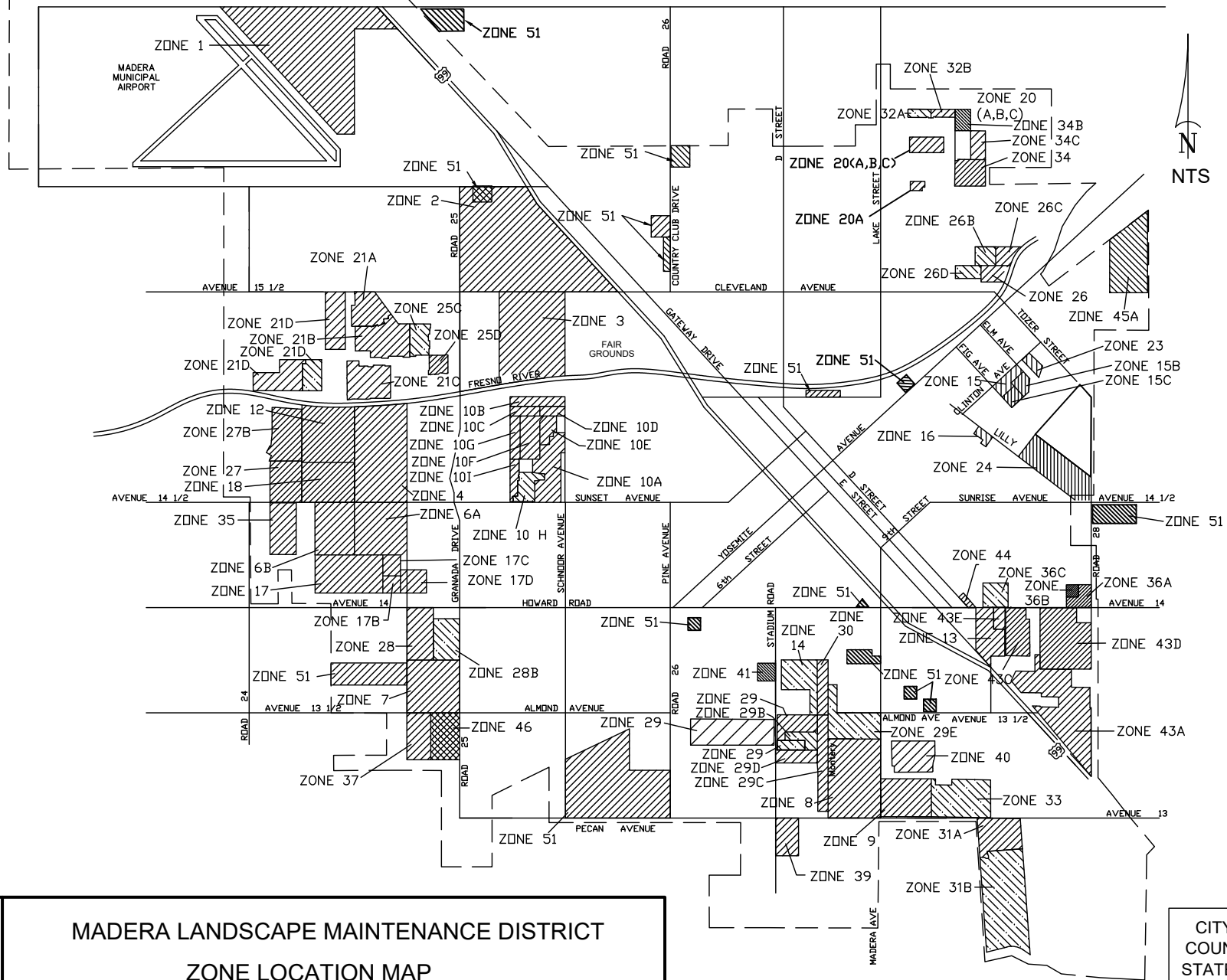
Adjust individual or multiple Zones – Each adjustment results in changes that may be carried forward in future years in varying ways.

ATTACHMENTS:

1. LMD Maps
2. LMD Cost Assessment Factors
3. Resolution

Attachment 1

LMD Maps



Attachment 2

LMD Cost Assessment Factors

- *Use of Fund Balance.* Beginning in Fiscal Year (FY) 2012/2013, an analysis of available fund balances in many Zones indicated that assessments could be temporarily reduced or eliminated in those Zones while the fund balances were brought down to appropriate levels which better approximated actual expenses. In some cases, these reductions still need to continue. In others, the fund balances have been reduced appropriately, and the assessments have previously been or will be reset at a level where they equal expenses.
- *Unsuccessful Assessment Increase.* Where Proposition 218 hearings fail to increase assessments, Parks attempts to reduce the level of maintenance to a point commensurate with available funding.
- *Tree Trimming.* Where funding is available, one-fourth of the trees in a Zone are trimmed annually. For those Zones that did not approve increases to assessments, tree trimming represents the first maintenance item to be removed; the assumption being that trees represented less of a visual impact than un-mowed grass or un-trimmed bushes. As discussed in the body of this report.
- *Water Usage Costs.* The water usage fee is included in the recommended Engineer's Report based on the square footage of landscaping within each Zone. As previously noted, this fee will transition to a metered cost in all Zones as meters continue to be installed at the various water service locations. At present, it appears as though 35 Zones of the total 80 are now metered. Five (5) are partially metered, and ten (10) are unmetered. The status of the 30 remaining Zones is unknown at present. Continuation of these installations will be based on the available budget within the Water Fund.
- *Reserve for Cash Flow.* This reserve may be held per Section 22569 of the Streets and Highways Code. The maximum amount (accrual) and defined target for the Zones is equivalent to the estimated costs of maintaining the Zones between July 1 and December 10. The maximum amount would be accrued over the course of as much as 5 years to reduce the magnitude of recommended assessment increases when they do occur. Prior to this reserve going below zero in any given year, a Proposition 218 Hearing should be implemented to increase assessments. Staff's approach to this has been expanded this year based on additional positive reviews of the Streets and Highways Code.

Attachment 3

Resolution

RESOLUTION NO. 23-_____

**A RESOLUTION OF INTENTION OF THE CITY COUNCIL OF THE CITY OF
MADERA, CALIFORNIA, TO LEVY AND COLLECT ANNUAL ASSESSMENTS
FOR CITY WIDE LANDSCAPE AND LIGHTING DISTRICT ZONES OF BENEFIT
1, 2, 3, 4, 6-A, 6-B, 7, 8, 9, 10-A, 10-B, 10-C, 10-D, 10-E, 10-F, 10-G, 10-
H, 10-I, 12, 13, 14, 15, 15-B, 15-C, 16, 17-A, 17-B, 17-C, 17-D, 18, 20-A, 20-
B, 20-C, 21-A, 21-B, 21-C, 21-D, 23, 24, 25-C, 25-D, 26, 26-B, 26-C, 26-D, 27,
27-B, 28, 28-B, 29, 29-B, 29-C, 29-D, 29-E, 30, 31-A, 31-B, 32-A, 32-B, 33,
34, 34-B, 34-C, 35, 36-A, 36-B, 36-C, 37, 39, 40, 41, 43-A, 43-C, 43-D, 43-E,
44, 45-A, 46, 50 & 51 for FY 2023/24 AND SETTING DATE FOR PUBLIC
HEARING**

WHEREAS, the City Council has heretofore, provided for the formation of a City Wide Assessment District pursuant to the Landscape and Lighting Act of 1972 (the “Act”) and provided for the inclusion of Zones 1, 2, 3, 4, 6-A, 6-B, 7, 8, 9, 10-A, 10-B, 10-C, 10-D, 10-E, 10-F, 10-G, 10-H, 10-I, 12, 13, 14, 15, 15-B, 15-C, 16, 17-A, 17-B, 17-C, 17-D, 18, 20-A, 20-B, 20-C, 21-A, 21-B, 21-C, 21-D, 23, 24, 25-C, 25-D, 26, 26-B, 26-C, 26-D, 27, 27-B, 28, 28-B, 29, 29-B, 29-C, 29-D, 29-E, 30, 31-A, 31-B, 32-A, 32-B, 33, 34, 34-B, 34-C, 35, 36-A, 36-B, 36-C, 37, 39, 40, 41, 43-A, 43-C, 43-D, 43-E, 44, 45-A, 46, 50 & 51 into said District; and

WHEREAS, the City Council initiated proceedings to levy annual assessments for the above-referenced zones and directed the City Engineer to prepare and file his report with the City Council as required by Streets and Highways Code Section 22565 et seq.; and

WHEREAS, the City Engineer has prepared an Engineer’s Report which has been filed with the office of the City Clerk for submission to the City Council, setting forth a full and detailed description of the improvements, the boundaries of the assessment district, the zones of benefit therein and the proposed assessments upon assessable lots and parcels of land within the District to which reference is hereby made for full particulars. The boundaries of the zones of benefit within the city-wide assessment district and the improvement therein are as generally described in the Engineer’s Report; and

WHEREAS, the City Council approved the Engineer’s Report on May 17, 2023; and

WHEREAS, adjustments to assessments reflect the increasing costs of landscaping, administrative overhead, and the goal of a 5-year fund balance that attempts to maintain a steady fund balance; and

WHEREAS, the City Council is required to set a hearing where all interested persons shall be heard on the question of the levy and collection of the proposed assessments.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MADERA HEREBY finds, orders, and resolves as follows:

1. The above recitals are true and correct.
2. The Engineer's Report has been prepared and has been filed with the office of the City Clerk for submission to the City Council and has been approved by the City Council.
3. It is the intention of the Madera City Council to levy and collect assessments for the 2023/2024 fiscal year in accordance with that determined in the Engineer's Report for City Wide Landscape and Lighting District Zones of Benefit 1, 2, 3, 4, 6-A, 6-B, 7, 8, 9, 10-A, 10-B, 10-C, 10-D, 10-E, 10-F, 10-G, 10-H, 10-I, 12, 13, 14, 15, 15-B, 15-C, 16, 17-A, 17-B, 17-C, 17-D, 18, 20-A, 20-B, 20-C, 21-A, 21-B, 21-C, 21-D, 23, 24, 25-C, 25-D, 26, 26-B, 26-C, 26-D, 27, 27-B, 28, 28-B, 29, 29-B, 29-C, 29-D, 29-E, 30, 31-A, 31-B, 32-A, 32-B, 33, 34, 34-B, 34-C, 35, 36-A, 36-B, 36-C, 37, 39, 40, 41, 43-A, 43-C, 43-D, 43-E, 44, 45-A, 46, 50 & 51 for Fiscal Year 2023/24.
4. The Landscape and Lighting District Zones of Benefit which generally include but are not limited to park strip and median landscaping are in general conformity to those originally formed and no changes have been made or are proposed to these improvements as part of this action.
5. A Public Hearing shall be held at a regular meeting of the Madera City Council on June 7, 2023, at 6:00 p.m. in the City Council Chambers located at 205 W. 4th Stret, Madera, CA for all interested persons to be heard on the question of the levy and collection of the proposed assessments and for the Council to consider the Proposed Fiscal Year 2023/2024 Assessments for the above-referenced Zones.
6. A 10-day public hearing notice shall be published in the Madera Tribune advertising the date, time, and place of the June 7, 2023, hearing date.
7. Written protests may be filed with the City Clerk at any time prior to the conclusion of the hearing. A written protest shall state all grounds of objection and shall contain a description sufficient to identify the property owned by the protesting person or persons.
8. This resolution is effective immediately upon adoption.

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