



# CITY OF POMONA COUNCIL REPORT

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March 6, 2017

To: Honorable Mayor and Members of the City Council

From: Linda Lowry, City Manager  
Arnold M. Alvarez-Glasman, City Attorney

Submitted by: Arnold M. Alvarez-Glasman, City Attorney  
Meg McWade, Acting Public Works Director

Subject: **Direction Regarding the Use of Excess RDA Bond Proceeds - Alleys and Residential Streets**

## OVERVIEW

**Recommendation** – Provide Staff direction on the use of Excess RDA Bond Proceeds, specifically related to alleys and residential streets.

**Fiscal Impact** – There is no fiscal impact related to this report. Currently, there is approximately \$16,238,754 of unappropriated Excess RDA bond proceeds available for expenditure. Per prior City Council direction, \$7,517,970 of the amount available is to be spent improving corridors. The use of the remaining amount of \$8,720,784 will be determined by the Mayor and individual Councilmembers.

**Previous Related Action** – On June 6, 2016, City Council adopted the FY 2016-17 Capital Improvement Program (CIP) Budget, including the “Excess RDA Bond Proceeds Allocation,” Project No. 428-2590-xxxxx-71041 (Excess RDA Project). Prior to this date, Council discussed the use of former Redevelopment Agency excess bond proceeds numerous times over the past few years. On December 19, 2016, City Council adopted a resolution amending the FY 2016-17 CIP budget by creating a new project, “Street Improvements – District 5,” Project No. 428-2590-xxxxx-71045, and reappropriating \$547,034 of Series “W” Bond Proceeds and \$1,177,026 of District 5 Series “AX” Bond Proceeds to “Street Improvements – District 5,” Project No. 428-2590-xxxxx-71045; and reappropriating \$45,000 of Series “W” Bond Proceeds to “Phillips Ranch Park - Dog Park,” Project No. 428-2590-xxxxx-71033. On January 23, 2017, \$2M of District 2 Series “AX” Bond Proceeds were appropriated to the “Downtown Parking Structure,” Project No. 441-3425-73368, and City Council directed Staff to return with an item to appropriate Excess Bond Proceeds to main corridor street improvements. On February 6, 2017, an item was presented for City Council consideration for use of the Bond Proceeds for portions of Mission Boulevard or Holt Avenue. No final action was taken. On February 27, 2017, \$2M of Mayoral Series “AX” Bond Proceeds and \$500,000 of

District 1 Series “AX” Bond Proceeds from “Excess RDA Bond Proceeds Allocation,” CIP Project No.428-2590-xxxxx-71041 were allocated to “Downtown Parking Structures,” CIP Project No. 441-6725-XXXXX-73368.

## **EXECUTIVE SUMMARY**

Obtaining City Council direction related to the use of Excess RDA Bond Proceeds will enable Staff to present the appropriate resolutions for City Council to create and proceed with proposed Capital Improvement Program (CIP) projects in the near future.

## **DISCUSSION**

Redevelopment Agencies (RDAs) were created to provide funding from local property taxes to promote the redevelopment/economic development of blighted areas. The State provided RDA’s with the authority to develop tax increment financing (TIF), a public financing method designed to subsidize redevelopment, infrastructure, and other community-improvement projects. TIF used future increases in property taxes to subsidize current improvements, which were projected to create the economic conditions that would support increases in the local economy and property values. In order to finance projects, RDAs issued TIF bonds. The bonds and relevant bond covenants created the blueprint for the projects that are allowed. The City has Excess RDA Bond Proceeds which are being considered for appropriation for capital projects within the City.

In determining the appropriateness of the use of bond proceeds for a street project, the City Attorney’s Office and Staff have previously provided the following guidelines:

1. Must be within the Merged Project Area (only exception is when a street improvement project connects two Project Areas)
2. Must be a major street improvement (not standard maintenance)
3. May not be a residential alley

There has been a recent request to utilize the bond proceeds for residential streets and/or alleys. In the earlier agenda reports, City Staff and the City Attorney’s office provided recommendations that the funds “may” not be used for alley improvements. It is important to note, the previous recommendation did not state that such bond proceeds “shall” not be used for alley improvements. The word “shall” is mandatory while the term “may” is discretionary.

The City Council, as the policy makers, has the ability and the discretion to make findings as to the appropriate use of the bond proceeds. In determining the appropriateness of the use, the defining language is tied to the bond project description. The bond project description for Series “AX” bond proceeds (the proceeds subject to future appropriation) reads as follows:

“A portion of the proceeds of the Bonds shall be loaned to the Agency and used to finance various improvements within the [Merged] Project Area, including infrastructure improvements, public safety improvements, recreational facilities, and programs and projects designed to improve and expand the commercial and industrial

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segments of the Project Area economy. The Agency has not yet prioritized the improvements which may be financed from the proceeds of the bonds.”

The tolerance for risk related to bond holders or potential litigation is the determining factor for how the City Council wishes to proceed in terms of expending the bond proceeds on alleys and residential streets. In order to aid the City Council in making its determination, the three guiding principles are discussed as follows:

### RDA Bond Proceeds - Street Improvement - Guiding Principle #1

1. Must be within the Merged Project Area (only exception is when a street improvement project connects two Project Areas)

As the bond description states, proceeds are to be “used to finance various improvements within the Project Area.” Because of the clarity of language, the conservative approach is to only allow projects that are within the Project Area. The more liberal and riskier approach is to attempt to make findings as to how the project outside of the project area provides direct economic benefit to the actual merged project area.

### RDA Bond Proceeds - Street Improvement - Guiding Principle #2

2. Must be a major street improvement (not standard maintenance)

The bond description language states “infrastructure improvements...designed to improve and expand the commercial and industrial segments of the Project Area economy.” The conservative approach is to implement projects that are major improvements rather than maintenance. These improvements include major street rehabilitation that incorporates sidewalk, curb and gutter, and other enhancements to the existing streetscape. The more liberal and riskier approach is to utilize the funding for minor slurry seal/pothole repair programs. While minor slurry seal/pothole repair are important, the findings the City Council would be required to make would be that the pothole repair/minor slurry seal was significant enough to change the commercial corridor resulting in economic growth and enhanced property values. (Also see the analysis below which discusses the two different ways to interpret the requirement that projects must be “designed to improve and expand the commercial and industrial segments of the Project Area economy.”)

### RDA Bond Proceeds - Street Improvement - Guiding Principle #3

3. May not be used for residential alleys

As stated in the previous guideline, the bond description language states “infrastructure improvements, public safety improvements, recreational facilities, and programs and projects designed to improve and expand the commercial and industrial segments of the Project Area economy.” One reading of the preceding language is as follows, “proceeds of the Bonds shall be loaned to the Agency and used to finance various improvements within the [Merged] Project Area, including

- infrastructure improvements,
- public safety improvements,

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- recreational facilities, and
- programs and projects designed to improve and expand the commercial and industrial segments of the Project Area economy.”

The issue is whether the modifying language “designed to improve and expand the commercial and industrial segments of the Project Area economy” applies to each of the first three bullet points above, including the final bullet point, or just to the final bullet point alone. A reasonable argument could be made that the language “designed to improve and expand the commercial and industrial segments of the Project Area economy” applies only to the last bullet point and is not a requirement to the first three points.

However, the conservative approach is to read the language from the bond documents to require the expenditure of funds only on the street segments within the Project Area that will enhance the commercial or industrial economy, rather than spending the money on residential streets or alleys within the Project Area, but which have no impact upon the expansion of commercial and industrial segments of the Project Area economy. Staff has made this recommendation previously as the greater impact on a business economy is the improvement of major streets that thousands of existing/potential customers and existing/potential business owners travel more frequently.

The more liberal approach is to make a determination that residential street or alley improvement projects enhance property values in a significant way and eliminate blight and do not have to be a project which is “designed to improve and expand the commercial and industrial segments of the Project Area economy.” The commercial segment is improved by this corresponding increase in property values.

As in the past, it is recommended that the more conservative approach be followed in developing projects to utilize RDA Excess Bond Proceeds. However, since the determination of the appropriateness of bond expenditures rests with City Council, should a decision be made to utilize the more liberal approach, the City Staff and City Attorney’s Office will follow City Council direction to perform the necessary analysis to craft the essential findings consistent with the language of the bond documents and current State law.