

TO: James L. App, City Manager
FROM: Bob Lata, Community Development Director
SUBJECT: Accept Alleys for City Street Maintenance
DATE: August 2, 2005

Needs: That the City Council consider adoption of a resolution accepting certain alleys into the City's Street Maintenance system.

- Facts:**
1. The City Public Works Department desires the option of using Gas Tax funds for the purposes of maintenance on alleys on the west side of the City.
 2. In accordance with "Guidelines Relating to Gas Tax Expenditures" for Cities and Counties published by the California State Controller, Steve Westly, maintenance or construction on alleys that have not been formally designated a part of the jurisdiction's street and road system are ineligible expenditures for Gas Tax funds.
 3. Alleys on the west side of Paso Robles were created simultaneously with the west side street system on the map of the Township of El Paso De Robles, recorded in Book A of Maps at Page 169 on October 25, 1889.
 4. Historically, alleys in Paso Robles have been an integral part of City's traffic circulation plan. They have been used to provide both primary and secondary access to many parcels on the west side of the City.
 5. Because the City's alleys have never been formally dedicated as part of the City's street system, the City has not used gas tax funds for maintenance of alleys.
 6. The City's alleys have lacked for maintenance for many years. It would seem appropriate to have as many funding options as possible to address this maintenance challenge.
 7. Per the City Attorney's attached memo, the City can make provisions to use gas tax funds for alley maintenance by adopting alleys into the City's street system.

**Analysis
and
Conclusion**

In accordance with the California Streets and Highways Code, state gas tax funds are deposited into a "Highway Users Tax Account". Funds in the account are distributed to Cities for public streets and highways, public mass transit and related purposes. The State Constitution and the State Streets and Highways

Code set forth the permissible uses for the gas tax funds. Those uses include the improvement of public streets.

The issue of whether gas tax funds can be used for alleys comes down to the definition of public “*streets*” as codified in the State Constitution and the State Streets and Highways Code. Attached is a memo prepared in the City attorney’s office which elaborates on the contents of the Codes. The conclusion of the memo is that gas tax funds may be used for alley maintenance so long as the alleys are formally accepted into the City’s street system. This is also consistent with the State Controller’s Guidelines. Attached is a resolution designed to accomplish that purpose.

Policy

Reference: State Constitution, State Streets and Highways Code

Fiscal

Impact: Adoption of the attached resolution would provide the City Council the option of spending gas tax funds for improvement and maintenance of alleys on the west side of town.

- Options:**
- a.** Adopt Resolution No. 05-xx accepting alleys shown on the original map of the Town of El Paso de Robles for maintenance as City streets.
 - b.** Amend, modify, or reject the above option.

Attachments: (2)

1. Memo from City Attorney
2. Resolution with Exhibits A & B



Memorandum

Celestial Cassman
Attorney at Law

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DATE June 6, 2005
TO Iris Yang
FROM Celestial Cassman
RE Use of Gas Tax Funds for Alleys Incorporated Into City Street System

Background

The City of El Paso de Robles would like to utilize gas tax funds to maintain certain alleys within the City (the "Alleys"). The Alleys have not yet been formally accepted into the City's street system. A state implementation guide for the proper expenditure of gas tax funds prohibits using the funds on alleys which have not been incorporated into a city's street system. The purpose of this memorandum is to evaluate whether gas tax funds may be used on the Alleys if they are accepted into the City's street system.

Question Presented

May gas tax funds be used to maintain alleys that have been accepted into a city's street system?

Brief Answer

Yes. Alleys are public streets once accepted into a city's street system. The maintenance and improvement of public streets is the purpose of gas tax funds.

Analysis

State gas tax funds are deposited into a "Highway Users Tax Account." Cal. Streets & Highways¹ Code, § 2100. Funds in the account are distributed to Cities for public streets and highways, public mass transit and related purposes. § 2102. Article XIX of the state Constitution and sections 2100 and following of the Streets and Highways

¹ All references are to the Streets and Highways Code unless otherwise indicated.

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Memorandum

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Code set forth permissible uses of the gas tax funds. These provisions provide, "Revenues from [the gas tax] shall be used for the following purposes: (a) The research, planning, construction, improvement, maintenance, and operation of public streets and highways..." (Article XIX, section 1), and "[Permissible uses include] [t]he research, planning, construction, improvement, maintenance, and operation of public streets and highways..." (§ 2102).

Neither Article XIX nor section 2100 et seq. define "public streets" in the context of permissible gas tax expenditures. However, statutory definitions and the cases that construe them consistently construe the term "public streets" broadly, often expressly including alleys. See, e.g., § 5014 ("'Street' includes avenues, highways, lanes, alleys, crossings, or intersections and courts which have been dedicated and accepted according to law."); § 18311 ("'Street' includes alleys and other public places."); § 10007 ("'Street' includes the whole or any part of one or more public streets, alleys, or other places in any municipality..."); § 8066 ("'Street' includes public street, lane, alley, court, or other place."); § 22010 ("'Street' means all or any portion of territory within a city set apart and designated for the use of the public as a thoroughfare for travel, and includes the sidewalks, the center and the side plots thereof."); Veh. Code § 590 ("'Street' is a way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel."); Gov't Code § 65002 ("'Street' includes street, highway, freeway, expressway, avenue, boulevard, parkway, road, lane, walk, alley, viaduct, subway, tunnel, bridge, public easement and right-of-way, and other ways."). In light of these expansive definitions, alleys that have been accepted into a city's street system are public streets that qualify for gas tax expenditures.

Finally, the "Guidelines Relating to Gas Tax Expenditures For Cities and Counties" (the "Guidelines") advise that the maintenance of "alleys that have not been formally designated as part of the jurisdiction's street and road system" is an ineligible gas tax expenditure. Steve Westly, California State Controller, p. 8 (2004). This statement infers that the maintenance of alleys that *have been accepted* into a city's street system is a permissible use of the gas tax.²

Conclusion

In sum, gas tax funds may be spent on public streets. The term "public street" has been interpreted so broadly that an alley which a City has formally accepted qualifies as a public street. Although the "Guidelines" prohibit the use of gas tax funds on alleys that have not been formally accepted into the City's street system, there is no such prohibition for alleys which have been accepted into the City's street system.

² Note that once the City accepts the Alleys into its street system, the City may be held liable for failure to maintain them. § 1806.

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:
CITY ENGINEER
COMMUNITY DEVELOPMENT
DEPT.
CITY OF EL PASO DE ROBLES
1000 SPRING STREET
PASO ROBLES, CA 93446

RESOLUTION NO. 05-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL PASO de ROBLES
ACCEPTING CERTAIN ALLEYS WITHIN THE CITY
INTO THE CITY'S STREET SYSTEM

WHEREAS, certain streets and alleys in the original town of El Paso De Robles were dedicated to the public by the original town layout, as recorded in Book A of Maps, at page 169, in the City of El Paso de Robles, County of San Luis Obispo, State of California, on October 25, 1889 (the "Map"); and

WHEREAS, the original Map, including descriptions of streets and alleys, is incorporated into this Resolution herein by reference; and

WHEREAS, certain alleys dedicated to the public in the original Map were not formally accepted in the City's street system, which alleys are shown on **Exhibit B**, "Map of Alleys Accepted Into the City's Street System," attached hereto and incorporated herein by this reference (the "Alleys"); and

WHEREAS, the Alleys have not been constructed to current City standards, have generally not been improved with curbs, gutters and sidewalks, and have not been uniformly paved; and

WHEREAS, the Alleys have been used by members of the general public since the establishment of the original town; and

WHEREAS, the Alleys provide necessary vehicular and other access to properties and serve a vital role in the City's traffic circulation, including both primary and secondary access to many parcels; and

WHEREAS, the City now desires to accept the Alleys into the City's street system.

NOW, THEREFORE, BE IT RESOLVED, DETERMINED AND ORDERED as follows:

SECTION 1. The above Recitals are true and correct and are incorporated into this Resolution by reference.

SECTION 2. Subject to the conditions set forth in this Resolution, the Alleys hereby accepted into the City's street system in their current condition to be maintained as non-standard City streets, are those Alleys included within the boundaries of the original Township of the City of El Paso de Robles, a "Legal Description of Alleys Accepted Into the City's Street System" is attached hereto as **Exhibit A** and incorporated by reference.

A map showing the general location of the above-listed Alleys is attached hereto as **Exhibit B** and incorporated by reference.

SECTION 3. The City shall maintain the above-listed Alleys on a schedule and in the manner established by the City.

SECTION 4. The City may, but shall not be required to, construct curbs, gutters or sidewalks along the Alleys pursuant to this Resolution.

SECTION 5. Subject to the conditions set forth in this Resolution, the Alleys designated in this Resolution are hereby accepted by the City for the purposes of maintenance. Although the current width of such Alleys are less than forty (40) feet, the City Council hereby determines that it is necessary for the public convenience and necessity to accept such Alleys into the City's street system. This determination is based upon the continuing use of such Alleys by members of the public and the need for maintenance and potential future expansion of the Alleys if the City determines that such is necessary for the public health, safety and welfare.

SECTION 6. As a specific condition to acceptance by the City of the Alleys designated herein, all speed humps and any other traffic control devices located on or about such Alleys that do not conform to City standards shall be removed. Furthermore, any encroachments into the right-of-way may be removed by City if such right-of-way is needed for City street purposes.

SECTION 7. The City Engineer, pursuant to Section 12.32.110 of the City Municipal Code, is authorized to place signs and markings indicating "No Parking" upon any of the Alleys for purposes of allowing emergency vehicles to safely travel on the Alleys.

SECTION 8. The City Clerk is hereby authorized to cause a copy of this Resolution to be recorded in the official records of the County of San Luis Obispo.

PASSED AND ADOPTED by the City Council of the City of Paso Robles this 2nd day of August 2005 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Frank R. Mecham, Mayor

ATTEST:

Sharilyn M. Ryan, Deputy City Clerk

Exhibit A

Legal Description of Alleys Accepted Into the City's Street System

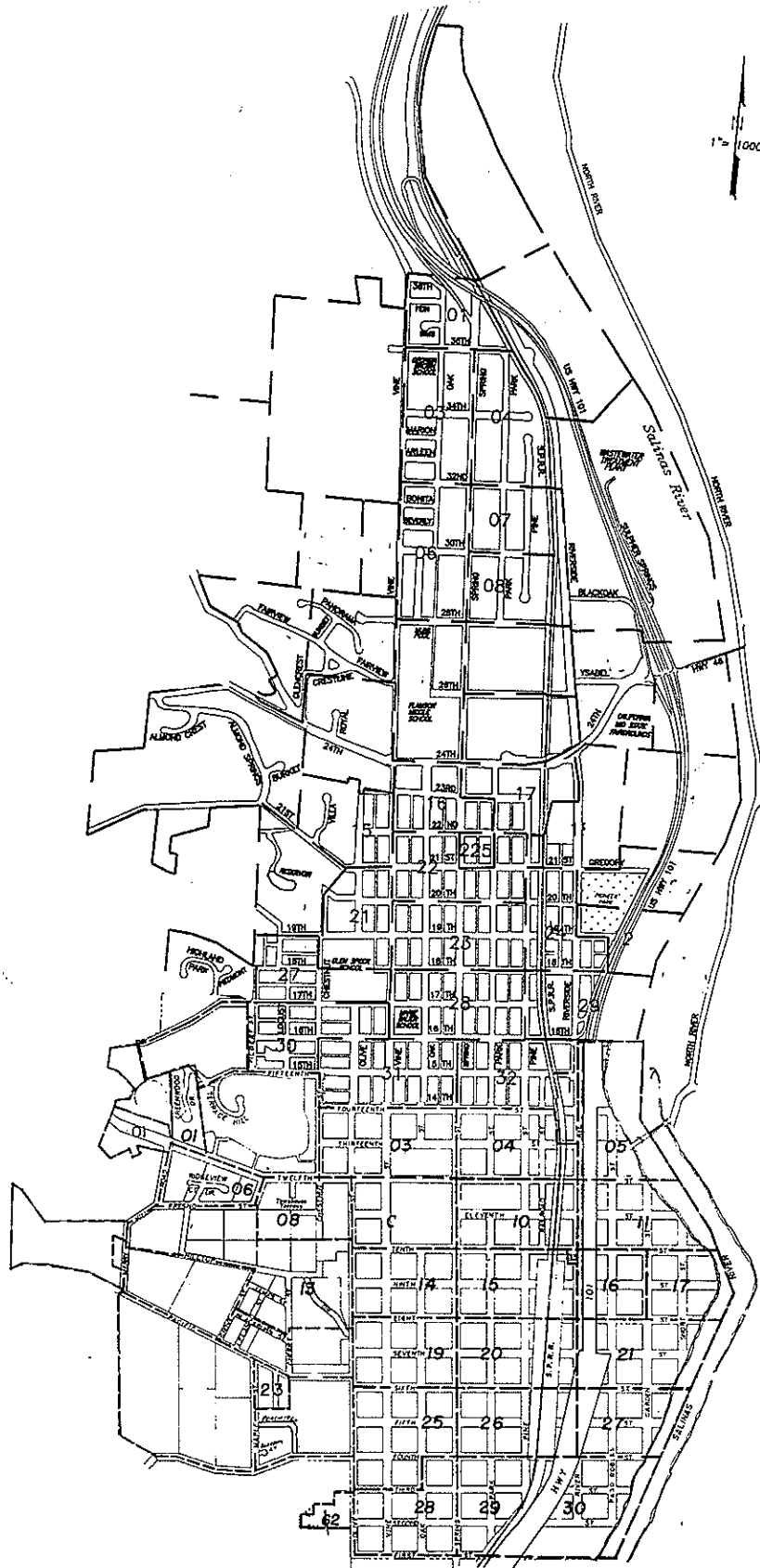
All those alleys within the boundaries of the map as recorded in Book A of Maps, at page 169, in the City of El Paso de Robles, County of San Luis Obispo, State of California, on October 25, 1889

Exhibit B

Map of Alleys Accepted Into the City's Street System

Exhibit B

Map of Alleys Accepted Into the City's Street System



CITY OF EL PASO DE ROBLES
SAN LUIS OBISPO COUNTY
CALIFORNIA