

ORDINANCE NO. 2901-09

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE LEVYING SPECIAL TAXES WITHIN THE CITY OF SUNNYVALE COMMUNITY FACILITIES DISTRICT NO. 1

WHEREAS, the City Council (this “City Council”) of the City of Sunnyvale (the “City”) has conducted proceedings under the Mello-Roos Community Facilities Act of 1982, as amended, Chapter 2.5 of Part 1 of Division 2 of Title 5 (commencing with Section 53311) of the California Government Code (the “Act”), to form the City of Sunnyvale Community Facilities District No. 1 (the “Community Facilities District”), to authorize the levy of special taxes upon the land within the Community Facilities District, and to issue bonds secured by the special taxes, all as described in those proceedings.

WHEREAS, the Rate and Method of Apportionment of Special Tax for the Community Facilities District (the “Rate and Method”), was approved by this City Council pursuant to Resolution No. 115-99 adopted by the City Council on February 23, 1999, and subsequently amended pursuant to Resolution No. 134-00, adopted by the City Council on April 25, 2000, and is attached as Exhibit A to the Amendment to Notice of Special Tax Lien recorded in the office of the Recorder for the County of Santa Clara on May 8, 2000, as Document No. 15239631.

WHEREAS, on May 24, 2001, the City issued its \$36,000,000 initial principal amount City of Sunnyvale Community Facilities District No. 1 Special Tax Bonds, Series 2001 (the “Bonds”), a portion of which were subsequently redeemed. The outstanding Bonds are secured by the special taxes levied within the Community Facilities District under the Rate and Method.

WHEREAS, pursuant to landowner petitions received by the City Council, the City has been asked to (i) amend and restate the Rate and Method to cure ambiguities, to reflect the current parcelization of the property within the Community Facilities District, and to make certain changes consistent with the current development plan for the property within the Community Facilities District, and (ii) change the boundaries of the Community Facilities District to exclude certain parcels.

WHEREAS, the proposed changes may only be considered by this City Council following a public hearing and must be approved by two-thirds of the votes cast on the proposition at an election of the qualified electors in the Community Facilities District.

WHEREAS, on June 23, 2009, this City Council adopted a resolution entitled “A Resolution of the City Council of the City of Sunnyvale Considering Amendment and Restatement of the Rate and Method of Apportionment of Special Tax and Changes to the Boundary Map for the City of Sunnyvale Community Facilities District No. 1 and Authorizing and Directing Certain Actions with Respect Thereto” (the “Resolution of Consideration”), pursuant to which the Council (i) approved the proposed amended and restated Rate and Method (the “Amended and Restated Rate and Method”) in the form attached as Exhibit A to the Resolution of Consideration, (ii) approved the proposed amended boundary map for the Community Facilities District, and (iii) set a public hearing for July 28, 2009.

WHEREAS, the public hearing was held on this date, and the proposed amendment and restatement of the Rate and Method, and the proposed changes to the boundary map for the Community Facilities District, were not opposed by more than 50% of the owners of land within the Community Facilities District.

WHEREAS, Government Code Section 53338 authorizes the holding of a special election of the qualified electors in the Community Facilities District on the issues of (i) amending and restating the Rate and Method and (ii) changing the boundary map for the Community Facilities District.

WHEREAS, following the public hearing, this City Council, acting as the legislative body of the Community Facilities District, adopted a resolution entitled "A Resolution of the City Council of the City of Sunnyvale Calling a Special Election to Amend and Restate the Rate and Method of Apportionment of Special Tax and Change the Boundary Map for the City of Sunnyvale Community Facilities District No. 1 and Authorizing and Directing Certain Actions with Respect Thereto" calling for a special landowner election of the qualified electors within the Community Facilities District to be held on July 28, 2009.

WHEREAS, the special election was held on July 28, 2009, and the ballots were submitted to the City Clerk as the official conducting the election.

WHEREAS, subsequently, on July 28, 2009, this Council adopted a resolution entitled "A Resolution of the City Council of the City of Sunnyvale Declaring Results of Special Election to Amend and Restate the Rate and Method of Apportionment of Special Tax and Change the Boundary Map for the City of Sunnyvale Community Facilities District No. 1 and Authorizing and Directing Certain Actions with Respect Thereto" in which it found that two-thirds of the votes cast at the election were in favor of the ballot measure, and a resolution entitled "A Resolution of the City Council of the City of Sunnyvale Declaring Completion of Change Proceedings for the City of Sunnyvale Community Facilities District No. 1 and Authorizing and Directing Certain Actions with Respect Thereto," in which it approved the Amended and Restated Rate and Method and the amended boundary map for the Community Facilities District.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SUNNYVALE DOES ORDAIN AS FOLLOWS:

SECTION 1. LEVY OF SPECIAL TAXES UNDER AMENDED AND RESTATED RATE AND METHOD. This Council authorizes and levies special taxes within the Community Facilities District pursuant to the Act, at the rate and in accordance with the method of apportionment set forth in the Amended and Restated Rate and Method, which Amended and Restated Rate and Method is by this reference incorporated herein. The special taxes are hereby levied according to the Amended and Restated Rate and Method commencing in fiscal year 2009-10 and in each fiscal year thereafter until payment in full of any bonds issued by the City for the Community Facilities District (the "Bonds") and all costs of administering the Community Facilities District, all as contemplated by the Amended and Restated Rate and Method, the Resolution of Formation (as amended by the Resolution of Change) and the Resolution Determining Necessity (as amended by the Resolution of Change).

SECTION 2. DETERMINATION OF SPECIAL TAX RATE. The Finance Director (or a designee of such official) of the City is hereby authorized and directed each fiscal year to determine the specific special tax rate and amount to be levied for the next ensuing fiscal year for each parcel of real property within the Community Facilities District, in the manner and as provided in the Amended and Restated Rate and Method.

SECTION 3. EXEMPTIONS; MAXIMUM SPECIAL TAX LEVY. Properties or entities of the State, federal or local governments shall be exempt from any levy of the special taxes, except as otherwise set forth in the Amended and Restated Rate and Method and the Act. In no event may the special taxes be levied on any parcel within the Community Facilities District in excess of the maximum tax specified in the Amended and Restated Rate and Method.

SECTION 4. COLLECTIONS OF SPECIAL TAXES. All of the collections of the special tax shall be used as provided for in the Act, in the Amended and Restated Rate and Method and in the Resolution of Formation (as amended by the Resolution of Change) including, but not limited to, the payment of principal of and interest on the Bonds, the replenishment of the reserve fund for the Bonds, the payment of the costs of the City in administering the Community Facilities District, the costs of collecting and administering the special tax, and the payment of the costs of facilities.

SECTION 5. MANNER OF COLLECTION; DELINQUENT PAYMENTS. The special taxes shall be collected either by direct billing of the property owner or in the same manner as ordinary ad valorem taxes are collected and, in either case, shall have the same lien priority, and be subject to the same penalties and the same procedure and sale in cases of delinquency as provided for ad valorem taxes; provided, however, that this Council may provide for other appropriate methods of collection by resolutions of the Council. In addition, the provisions of Section 53356.1 of the Act shall apply to delinquent special tax payments.

SECTION 6. RESCINDING PRIOR SPECIAL TAX ORDINANCE. This Ordinance rescinds in its entirety Ordinance No. 2588-99, adopted by this Council on March 2, 1999.

SECTION 7. SEVERABILITY. If for any reason any portion of this Ordinance is found to be invalid, or if the special tax is found inapplicable to any particular parcel within the Community Facilities District, by a court of competent jurisdiction, the balance of this Ordinance and the application of the special tax to the remaining parcels within the Community Facilities District shall not be affected.

SECTION 8. POSTING AND PUBLICATION. The City Clerk is directed to cause copies of this ordinance to be posted in three prominent places in the City of Sunnyvale and to cause publication once in *The Sun*, the official newspaper for publication of legal notices of the City of Sunnyvale, of a notice setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within 15 days after adoption of this ordinance.

SECTION 9. EFFECTIVE DATE. This ordinance shall be in full force and effect 30 days from and after the date of its adoption.

Introduced at a regular meeting of the City Council held on July 28, 2009, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on _____, 2009, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

APPROVED:

City Clerk
SEAL

Mayor

APPROVED AS TO FORM AND LEGALITY:

David E. Kahn, City Attorney