

**Council Meeting: March 19, 2013****SUBJECT: Resolution Approving Amended and Restated Local Goals and Policies for Community Facilities Districts in the City of Sunnyvale****BACKGROUND**

Under California Government Code, the Mello-Roos Community Facilities Act of 1982 (Mello-Roos Act) provides a mechanism by which public entities can establish a community facilities district (CFD). A CFD may finance the purchase, construction, or rehabilitation of publicly owned facilities as a result of new development. The financed projects are paid for by property owners within the CFD through the payment of special taxes.

Before a City can initiate the process to form a CFD, the Mello-Roos Act requires that the City adopt local goals and policies that will govern the circumstances under which it will approve CFDs, the types of projects that can be financed by CFDs, and the procedures and safeguards that will be required in setting up CFDs. The policies are designed to ensure that the CFDs serve a public purpose and to minimize the possibility that problems arise in the future that would have a negative impact on property owners, bondholders or the City. The goals and policies establish parameters to apply in considering and establishing individual CFDs.

Once these policies are established and a CFD is formed, voters in the CFD can authorize the CFD to impose a special tax and issue bonds secured by the special tax.

On December 15, 1998, the City Council adopted Local Goals and Policies for CFDs under the Mello-Roos Act. The City formed two CFDs at that time to finance the construction of public parking structures in the downtown.

EXISTING POLICY

Council Fiscal Policy 7.1.1.C.2.1 – Governmental capital improvements should be funded on a “pay-as-you-go” basis in most cases. Alternate financing strategies may be considered in light of the specific project and the consequences of each financing strategy.

DISCUSSION

On September 20, 2011, the City Council approved The Estates at Sunnyvale Subdivision. The project consists of the construction of 51 new single family homes and three new public streets located at 770 Timberpine Avenue. The project will install Bio-Retention Basins in the public right-of-way that reduce storm water pollutants and flow in order to reduce the long-term impact on storm water quality and creek channels. Because the facilities require a higher level of maintenance outside of the City's standard level of service for public infrastructure, the developer of the project, Toll Brothers requested the formation of a CFD to fund the maintenance of the facilities within the public right-of-way.

The previously approved Local Goals and Policies only addressed the City's approach to CFDs for non-residential property. The proposed CFD would include residential property. In addition, since the time the Council adopted the existing goals and policies, the Mello-Roos Act was amended to require that local goals and policies also address certain matters regarding the authorized services that a CFD may finance. Consequently, in order to initiate formation of a new CFD, Council must first consider and adopt Local Goals and Policies that comply with the amended Mello-Roos Act and address CFDs composed of residential property as well as non-residential property.

Staff, with the assistance of outside bond counsel, Jones Hall, has prepared a draft of proposed Local Goals and Policies that comply with the Mello-Roos Act and reflect best practices for CFDs.

FISCAL IMPACT

The adoption of the Amended and Restated Local Goals and Policies for Community Facilities Districts will not represent an obligation or debt on the City or the General Fund. All cost related to the formation of the CFD, including bond counsel, will be borne by Toll Brothers.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site.

ALTERNATIVES

1. Approve the Resolution to Amend and Restate Local Goals and Policies for Community Facilities Districts.
2. Approve the Resolution to Amend and Restate Local Goals and Policies for Community Facilities Districts with modifications.
3. Do not approve the Resolution to Amend and Restate Local Goals and Policies for Community Facilities Districts.

RECOMMENDATION

Staff recommends Alternative #1 to approve the Resolution to Amend and Restate Local Goals and Policies for Community Facilities Districts.

The formation of the CFD is recommended to allow the City to recover costs of maintenance and replacement of the bio retention basins and administrative costs.

Reviewed by:

Grace K. Leung, Director, Finance

Prepared by: Brice McQueen, Senior Management Analyst

Reviewed by:

Kent Steffens, Director, Public Works

Approved by:

Gary M. Luebbers

City Manager

Attachments

- A. Resolution of the City Council of the City of Sunnyvale Approving Amended and Restated Local Goals and Policies for Community Facilities Districts

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE APPROVING AMENDED AND RESTATED LOCAL GOALS AND POLICIES FOR COMMUNITY FACILITIES DISTRICTS

WHEREAS, in 1998, the City Council adopted Local Goals and Policies for Community Facilities Districts – Commercial Property (the “Original Goals and Policies”) under the Mello-Roos Community Facilities Act of 1982, as amended, being section 53311 and following of the California Government Code (the “Act”). The Original Goals and Policies did not address the City’s use of the Act to finance facilities and services serving residential development.

WHEREAS, in 2007, the Act was amended to require that local goals and policies address certain matters that are not addressed in the Original Goals and Policies. Before the City may conduct any further proceedings to form community facilities districts under the Act, the Original Goals and Policies must be amended to comply with the current requirements of the Act and, before the City may conduct proceedings to form a community facilities districts for residential development, the Original Goals and Policies must be amended to apply to extend to residential development. To this end, there is on file with the City Clerk an amendment entitled “Amended and Restated Local Goals and Policies for Community Facilities Districts” (the “Amended Goals and Policies”), which amends and restates the Original Goals and Policies in order to ensure they comply with the Act and to apply to community facilities districts related to residential development (Exhibit A).

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Sunnyvale as follows:

SECTION 1. Approval of Amended and Restated Local Goals and Policies. The Amended Goals and Policies, in the form on file with the City Clerk, are hereby found to meet the requirements of the Act and are hereby adopted by the City Council for purposes of compliance with the Act, subject to further amendment by the City Council as may be required from time to time.

SECTION 2. Effective Date. This resolution, and the Amended Goals and Policies, shall take effect upon the passage and adoption of this resolution.

Adopted by the City Council at a regular meeting held on _____, 2013, by the following vote:

- AYES:
- NOES:
- ABSTAIN:
- ABSENT:

ATTEST:

APPROVED:

City Clerk
(SEAL)

Mayor

APPROVED AS TO FORM AND LEGALITY:

Joan A. Borger, City Attorney

AMENDED AND RESTATED LOCAL GOALS AND POLICIES FOR COMMUNITY FACILITIES DISTRICTS

I. INTRODUCTION. Section 53312.7(a) of the California Government Code requires that prior to the initiation of proceedings pursuant to the Mello-Roos Community Facilities Act of 1982 (the “Act”) the City of Sunnyvale (the “City”) consider and adopt local goals and policies concerning the use of the Act prior to the initiation of proceedings on or after January 1, 1994 to establish a new community facilities district (“CFD”) under the Act. The following goals and policies (these “Policies”) are intended to meet the minimum requirements of the Act, and are intended to be general in nature; specific details will depend on the nature of each particular financing.

These Policies are intended to amend, restate and supersede all prior local goals and policies adopted by the City Council under the Act. These Policies may be further amended or supplemented by resolution of the City Council at any time.

II. ELIGIBLE PUBLIC FACILITIES AND SERVICES.

A. Eligible Facilities. The improvements eligible to be financed by a CFD must be owned by a public agency or public utility, and must have a useful life of at least 5 years, except that up to five percent of the proceeds of an issue may be used for facilities owned and operated by a privately-owned public utility. The development or redevelopment proposed within a CFD must be consistent with the City's general plan and must have received any required legislative approvals such as zoning or specific plan approvals prior to the issuance of public debt. A CFD shall not vest any rights to future land use on any properties, including those which are responsible for paying special taxes.

The list of eligible public facilities include, but are not limited to, the following:

- Streets
- Street lighting
- Traffic signals and safety lighting
- Landscaping on public property or in public easements
- Sanitary sewer facilities
- Storm drain facilities
- Flood control facilities
- Potable and reclaimed water facilities
- Public utilities
- Parks, trails and other recreational facilities
- Elementary and secondary school sites and facilities
- Libraries
- Child care facilities
- Public parking structures
- Cultural facilities
- Police and fire protection facilities
- Governmental facilities

The funding of public facilities to be owned and operated by public agencies other than the City shall be considered on a case-by-case basis. If the proposed financing is consistent with a public facilities financing plan approved by the City, or the proposed facilities are otherwise consistent with approved land use plans for the property, the City shall consider entering into a joint financing agreement or joint powers authority agreement in order to finance these facilities.

B. Eligible Services. The services eligible to be financed by a CFD are those identified in the Act, including without limitation Section 53313 of the Act. To the extent required by the Act, the CFD may only finance public services to the extent they are in addition to those provided in the territory of the CFD before the CFD was created, and the additional services may not supplant services already available within the territory of the CFD when the CFD was created.

III. PRIORITIES FOR CFD FINANCING UNDER THE ACT. Priority for CFD financing shall be given to public facilities which: (a) are necessary for economic development, or (b) are otherwise incident to an economic development project. If appropriate, the City shall prepare a public facilities financing plan as a part of the specific plan or other land use document that identifies the public facilities required to serve a project, and the type of financing to be utilized for each facility.

IV. CREDIT QUALITY REQUIREMENTS FOR CFD BOND ISSUES. For all CFD bond issues, the value of the taxable property included in the CFD (taking into account the value of the public improvements to be financed by the CFD) should be at least 3 times the principal amount of the bonds to be issued plus the outstanding principal amount of any outstanding bonds secured by a special tax or assessment lien on the property in the CFD, unless otherwise specifically approved by the City Council as provided in Section 53345.8(b) or (c) of the Act. Property value may be based on either an appraisal (as further described in Section VIII below) or on assessed values as indicated on the county assessor's tax roll.

The City may disallow the sale of bonds or require additional credit enhancement for the bonds under certain circumstances, such as cases where the property value to public lien ratio is less than 3 to 1, excessive tax delinquencies exist with respect to the property in the CFD, or the project proposed to be constructed within the CFD is deemed to have poor economic viability.

The City may consider exceptions to the above policies for bond issues that do not represent an unusual credit risk, either due to credit enhancement or other reasons specified by the City, and which otherwise provide extraordinary public benefits.

If the City requires letters of credit or other security, the credit enhancement shall be issued by an institution, in a form and upon terms and conditions satisfactory to the City. Any security required to be provided by the applicant may be discharged by the City upon the opinion of a qualified appraiser, retained by the City, that a value-to-lien ratio of three to one has been attained per land use category, including any overlapping special assessment or special tax liens.

As an alternative to providing other security, the applicant may request that a portion of the bond proceeds be placed in escrow with a trustee bank in an amount sufficient to assure a value-to-lien ratio of at least three to one on the outstanding proceeds. The proceeds shall be released at such times and in such amounts as may be necessary to assure a value-to-lien ratio of

at least three to one per land use category, including any overlapping special assessment or special tax liens, on the aggregate outstanding bond proceeds.

V. DISCLOSURES TO PROPERTY PURCHASERS.

A. Disclosure Requirements for Developers. Developers who are selling lots or parcels that are within a CFD shall provide disclosure notice to prospective purchasers that complies with all of the requirements set forth in the Act, including without limitation Section 53341.5. The disclosure notice must be provided to prospective purchasers of property at or prior to the time the contract or deposit receipt for the purchase of property is executed. Developers shall keep an executed copy of each disclosure document as evidence that disclosure has been provided to all purchasers of property within a CFD.

B. Disclosure Requirements for the Resale of Lots. The City shall provide a notice of special taxes to sellers of property (other than developers) which will enable them to comply with their notice requirements under Section 1102.6 of the Civil Code, within a reasonable time after receiving a written request for the notice. A reasonable fee may be charged for providing the notice, not to exceed any maximum fee specified in the Act.

VI. EQUITY OF SPECIAL TAX FORMULAS AND MAXIMUM SPECIAL TAXES. The special tax formula shall be reasonable and equitable in allocating public facilities' costs to parcels within the CFD. Special tax formulas for CFDs shall provide for minimum special tax levels which satisfy the following expenses of a CFD:

- (a) 110% debt service coverage for all CFD bonded indebtedness,
- (b) minimum projected annual costs of providing authorized Services within the CFD,
- (c) the reasonable and necessary annual administrative expenses of the CFD, and
- (d) amounts equal to the differences between expected earnings on any escrow fund and the interest payments due on bonds of the CFD.

Additionally, the special tax formula may provide for the following:

- (i) any amounts required to establish or replenish any reserve fund established in association with the indebtedness of the CFD,
- (ii) the accumulation of funds reasonably required for future debt service,
- (iii) amounts equal to projected delinquencies of special tax payments,
- (iv) the costs of remarketing, credit enhancement and liquidity facility fees,
- (v) the cost of acquisition, construction, furnishing or equipping of facilities,
- (vi) lease payments for existing or future facilities,
- (vii) costs associated with the release of funds from an escrow account, and
- (viii) any other costs or payments permitted by law.

In structuring the special tax, projected annual interest earnings on bond reserve funds may not be included as revenue for purposes of the calculation.

Exemptions from the special tax may be given to parcels which are publicly owned, are held by a property owners' association, are used for a public purpose such as open space or wetlands, are affected by public utility easements making impractical their utilization for other

than the purposes set forth in the easements, or have insufficient value to support bonded indebtedness.

At the time a CFD is formed, the City shall reasonably determine that the total projected annual property tax rate on each residential parcel in the CFD (including the special taxes (based on the expected special tax rates and not any "back-up" special taxes), ad valorem taxes, and any maintenance, landscaping or other assessments, and other similar annual government charges, but excluding homeowners' association annual levies) will not exceed the lesser of (i) 2% of the estimated sales prices or assessed values of the respective homes to be constructed in the CFD, or (ii) any maximum specified in the Act; provided, however, that the City may waive this requirement with respect to any CFD whose qualified electors are registered voters.

The annual increase, if any, in the maximum special tax for any parcel shall not exceed any maximum specified in the Act. The increase in the special tax levied on any parcel as a consequence of delinquency or default by the owner of any other parcel shall not exceed any maximum specified in the Act.

Special taxes will only be levied on an entire County Assessor's parcel, and any allocation of special tax liability of a County Assessor's parcel to leasehold or possessory interest in the fee ownership of such County Assessor's parcel shall be the responsibility of the fee owner of such parcel (except where the City is the fee owner of the parcel and has leased the parcel pursuant to a lease with a term of at least 5 years, in which case the lessee shall have the responsibility for the special tax liability) and the City shall have no responsibility therefore and has no interest therein. Failure to pay or cause to be paid any special taxes in full when due, shall subject the entire parcel to foreclosure in accordance with the Act.

The City may retain a special tax consultant to prepare a report which: (a) recommends a special tax for the proposed CFD, and (b) evaluates the special tax proposed to determine its ability to adequately fund identified public facilities, City administrative costs, services (if applicable) and other related expenditures. Such analysis shall also address the resulting aggregate tax burden of all proposed special taxes plus existing special taxes, ad valorem taxes and assessments on the properties within the CFD.

VII. APPRAISALS. The definitions, standards and assumptions to be used for appraisals shall be determined by City staff on a case-by-case basis, with input from City consultants and CFD applicants, and by reference to relevant materials and information promulgated by the State of California, including the Appraisal Standards for Land-Secured Financings prepared by the California Debt and Investment Advisory Commission. The appraiser shall be selected by or otherwise acceptable to the City, and the appraisal shall be coordinated by and under the direction of, or otherwise as acceptable to, the City.

The date of value of the appraisal must generally be no more than approximately 3 months before the date the bonds are sold, unless the City determines that a longer time is appropriate.

All costs associated with the preparation of the appraisal report shall be paid by the entity requesting the establishment of the CFD through the advance deposit mechanism.

VIII. TERMS AND CONDITIONS OF BONDS. All terms and conditions of the bonds shall be established by the City. The City will control, manage and invest all CFD issued bond proceeds. Each bond issue shall be structured to adequately protect bond owners and to not negatively impact the bonding capacity or rating of the City. These security measures could include a combination of credit enhancement, foreclosure covenant, special reserve fund or deposits, or a contractual commitment by the proponents and successors to pay the special taxes or assessments during the initial development stages of the development project. The City has the sole discretion to determine the types of credit enhancement, foreclosure covenant or special reserve fund that may be required.

All statements and material related to the sale of bonds shall emphasize and state that neither the faith, credit nor the taxing power of the City is pledged to security or repayment of the Bonds. The sole source of pledged revenues to repay CFD bonds are special taxes, bond proceeds and reserve funds held under the bond document, and the proceeds of foreclosure proceedings and additional security instruments provided at the time of bond issuance.

The City is under no obligation to issue tax-exempt debt. The ability to issue tax-exempt debt depends upon the particular facts and circumstances of each CFD. If the City, in its sole discretion determines to issue tax-exempt debt, the developer must agree to cooperate in connection with any covenants or other requirements of state or federal tax law that may be necessary in order for the City to issue tax-exempt debt.

IX. CFD COST DEPOSITS AND REIMBURSEMENTS. All City and consultant costs incurred in the evaluation of CFD applications and the establishment of CFDs will be paid by the entity requesting the establishment of the CFD by advance deposit increments. The amount of the initial advance deposit shall be determined by the City, but shall in no case be less than \$5,000. The City shall not incur any non-reimbursable expenses for processing and administering CFDs. Expenses not chargeable to the CFD shall be directly borne by the applicant.

Each petition for formation of a CFD shall be accompanied by the initial deposit in the amount determined by the City to fund initial staff and consultant costs associated with CFD review and implementation. If additional funds are needed to offset costs and expenses incurred by the City, the City shall make written demand upon the applicant for such funds. If the applicant fails to make any deposit of additional funds for the proceedings, the City may suspend all proceedings until receipt of such additional deposit.

The City shall not accrue or pay any interest on any portion of the deposit refunded to the applicant or the costs and expenses reimbursed to the applicant. Neither the City nor the CFD shall be required to reimburse the applicant or property owner from any funds other than the proceeds of bonds issued by the CFD.

X. APPLICANT DISCLOSURE. Landowners owning land within any CFD, and which are responsible for 10% or more in the aggregate of the special taxes or assessments, must agree to provide the following disclosures as required by the City and the bond underwriter in order to comply with the federal securities laws: (A) initial disclosure at the time of issuance of any bonds relating to such CFD; and (B) periodic continuing disclosure until the time at which the aggregate special tax of such landowner is less than 10%.

XI. USE OF CONSULTANTS. The City shall select all consultants necessary for the formation of the CFD and the issuance of bonds, including without limitation the underwriter, bond counsel, disclosure counsel, financial advisor, appraiser, absorption consultant, and the special tax consultant. Prior consent of the applicant shall not be required in the determination by the City of the consulting and financing team.

XII. EXCEPTIONS TO THESE POLICIES. The City may find in limited and exceptional instances that a waiver of any of the above stated policies is reasonable given identified special City benefits to be derived from such waiver. Such waivers only will be granted by action of the City Council.