

**Council Meeting: March 19, 2013****SUBJECT: Initiation of Proceedings to Establish City of Sunnyvale Community Facility District No. 3 (Estates at Sunnyvale)****BACKGROUND**

At the request of the developer/owner (Toll Brothers), staff has begun the process of forming a community facilities district (CFD) under the Mello-Roos Community Facilities Act of 1982, as amended (Mello-Roos Act). The proposed CFD will finance the maintenance and replacement of publicly owned infrastructure and other improvements planned for in a 10-acre residential subdivision located at 770 Timberpine Avenue. The new CFD would be named "City of Sunnyvale Community Facilities District No. 3 (Estates at Sunnyvale)."

Several steps must be taken to form a CFD. A petition requesting the formation of a CFD by the property owner/owners starts the process. This is followed by Council approving a Resolution of Intention to establish the formation of a CFD.

EXISTING POLICY

The Local Goals and Policies for CFDs adopted by Council outline how projects eligible for CFD financing will be evaluated. These policies are generally designed to ensure that the CFDs created are made for the public good. They define credit requirements for projects under consideration that protect bondholders from default and set forth disclosure requirements that notify prospective property purchasers of the lien associated with the properties they seek to buy. The Local Goals and Policies for CFDs were amended first at this same Council meeting to conform to the amended Mello-Roos act and address CFDs composed of residential property as well as non-residential property.

DISCUSSION

The City Clerk has received a petition signed by Toll Brothers, the sole owner of property proposed to be included in the CFD. The petition requests Council to initiate proceedings to form the CFD, and waives certain otherwise-applicable time frames associated with the election described above in order to expedite the process.

On September 20, 2011, the City Council approved The Estates at Sunnyvale Subdivision, Tract 10101. The project consists of the construction of 51 new single family homes and three new public streets. Under the Santa Clara Valley Storm Water Permit C.3 Provisions, the project is required to install storm water facilities that reduce storm water pollutants and flow in order to reduce the long-term impact

on storm water quality and creek channels. A portion of the approved facilities include the use of Bio-Retention Basins in landscaping features located in the public right-of-way. Because the facilities require a higher level of maintenance outside of the City's standard level of service for public infrastructure, Toll Brothers requested the formation of a CFD to fund the maintenance and replacement of the facilities within the public right-of-way.

The proposed CFD will fund the annual operation, maintenance and servicing, including repair and replacement, of the bio-retention basins and associated facilities which service the properties located within the boundaries of the CFD. The annual operation, maintenance and servicing of the bio-retention basins and associated facilities may also include, but are not limited to, field inspections, record keeping, cost of permits and regulatory fees, environmental mitigation monitoring, annual reporting, vegetation management, removal of silt, sediment, trash and debris from the drainage areas, bio-retention basins and City catch basins, and any other associated services which are needed to operate and maintain, including repair and replacement, of the bio-retention basins and associated facilities.

To initiate the formation of a CFD, a Resolution of Intention to establish the district is required. This resolution formally starts the CFD formation process. The CFD would be authorized to levy special taxes to pay for specific authorized services and facilities. The resolution sets forth the authorized facilities and services that may be financed and funded by the special taxes (Exhibit A to Resolution), proposes a special tax formula that will govern the special tax rate and method of the special tax levy (Exhibit B to Resolution), and sets a public hearing for the City Council meeting on Tuesday, April 23, 2013, so that public testimony can be taken on the question of establishing the CFD.

Following adoption of the Resolution of Intention, the City Clerk will record the boundary map of the proposed CFD with the County Recorder and publish a notice of the public hearing at least once seven days prior to the date of the hearing.

Upon conclusion of the public hearing, Council will be asked to approve a Resolution of Formation to create the CFD and a Resolution Calling Special Election. The ballot will be tabulated at this public hearing.

Assuming Toll Brothers votes in favor of the CFD, Council will then be asked to introduce an ordinance levying the special tax in the CFD. The levy conforms to the special tax formula approved after the hearing and provides for the taxes to be collected each year on the general tax rolls of the County.

At least five days after the ordinance is introduced, Council will be asked to adopt the ordinance; this would most likely occur at the end of April. The ordinance will be effective 30 days after its adoption, by the end of May.

Once the proceedings are completed, the City will be authorized to levy special taxes to pay for the authorized services and to finance replacement of the authorized facilities in the future. Because the City will be collecting funds for the replacement of the bio-retention basins over their estimated life, bond financing will not be required. The City will be authorized to levy the special taxes to pay for the authorized services in perpetuity.

FISCAL IMPACT

Toll Brothers has made a deposit with the City to cover any non-contingent costs of forming the CFD and the first six months of the annual operation, maintenance and servicing costs of the bio-retention basins and associated facilities. The City's obligation for the cost of maintenance and replacement of the publicly owned infrastructure and other improvements will be limited to special taxes levied and collected in the CFD. Any City costs associated with administering the CFD in the future will also be paid from the special taxes. In the unlikely event of future special tax delinquencies that trigger a requirement that the City initiate foreclosure actions on delinquent parcels, the City could be required to advance legal and other costs to carry out the foreclosure process; all such costs would be eligible for reimbursement to the City from the proceeds of the foreclosure action.

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. Initiate formation of City of Sunnyvale Community Facilities District No. 3 (Estates at Sunnyvale) by approving the Resolution of Intention to Establish a Community Facilities District.
2. Initiate formation of City of Sunnyvale Community Facilities District No. 3 (Estates at Sunnyvale) by approving the Resolution of Intention to Establish a Community Facilities District with modifications.
3. Do not initiate formation at this time.

RECOMMENDATION

Staff recommends Alternative #1, to initiate formation of City of Sunnyvale Community Facilities District No. 3 (Estates at Sunnyvale) by approving the Resolution of Intention to Establish a Community Facilities District.

The formation of the CFD is recommended to allow the City to recover costs of maintenance and replacement of the public improvements 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. Luebbbers
City Manager

Attachments

- A. Resolution of the City Council of the City of Sunnyvale of Intention to Establish Community Facilities District

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE OF
INTENTION TO ESTABLISH COMMUNITY FACILITIES DISTRICT**

**CITY OF SUNNYVALE
Community Facilities District No. 3
(Estates at Sunnyvale)**

THE CITY COUNCIL OF THE CITY OF SUNNYVALE HEREBY RESOLVES, DETERMINES, AND ORDERS AS FOLLOWS:

1. Authority. This City Council is authorized to establish a community facilities district and to act as the legislative body for a community facilities district under the Mello-Roos Community Facilities Act of 1982, as amended (the "Act"), Chapter 2.5 of Part 1 of Division 2 of Title 5, commencing at Section 53311, of the California Government Code, and proposes to conduct proceedings to establish a community facilities district under the Act in order to finance certain services.

2. Petition and Waiver. The City Council acknowledges receipt of a petition and waiver by the owner(s) of all taxable property in the proposed boundaries of the CFD.

3. Name of CFD. The name proposed for the community facilities district is "City of Sunnyvale Community Facilities District No. 3 (Estates at Sunnyvale)" (the "CFD").

4. Boundaries Described. The proposed boundaries of the CFD are as shown on the map of it on file with the City Clerk, and are hereby preliminarily approved as the boundaries of the CFD. Reference is hereby made to this map for further particulars. The City Clerk is hereby directed to record, or cause to be recorded, the map of the boundaries of the CFD in the office of the County Recorder of the County of Santa Clara (the "County") within 15 days after the date of adoption of this Resolution, but in any event at least 15 days before the public hearing specified below.

5. Services. The type of public services proposed to be financed by the CFD under the Act shall consist of those shown on Exhibit A hereto and hereby incorporated herein (the "Services"). The City Council hereby determines that the Services are necessary to meet increased demands placed upon local agencies as the result of development occurring within the CFD.

6. Special Tax. Except to the extent that funds are otherwise available, the City will levy a special tax (the "Special Tax") to pay for the Services. The Special Tax will be secured by recordation of a continuing lien against all non-exempt real property in the CFD, will be levied periodically within the CFD, and will be collected in such manner as this City Council or its designee may determine, which may include direct billing of the affected property owners, or collection in the same manner as ordinary ad valorem property taxes. The proposed rate and method of apportionment of the Special Tax among the parcels of real property within the CFD are described in Exhibit B attached hereto and hereby incorporated herein (the "Rate and Method"); the Rate and Method contains sufficient detail to allow each landowner within the proposed CFD to estimate the maximum amount that such owner will have to pay.

7. Exempt Property. Except as may otherwise be provided by law or by the Rate and Method, all lands owned by any public entity, including the United States, the State of California and the City, or any departments or political subdivisions thereof, shall be exempt from the levy of the Special Tax. If a portion of the property within the CFD becomes exempt for any reason, wholly or in part, from the levy of the Special Tax, this City Council will, on behalf of the CFD, increase the levy to the extent necessary upon the remaining property within the CFD which is not exempt in order to yield the required annual expenses of the CFD, subject to the provisions of the Rate and Method.

8. Election; Voting Procedure. The levy of the Special Tax shall be subject to the approval of the qualified electors of the CFD at a special election. The proposed voting procedure shall be by mailed or hand-delivered ballot to the landowners in the proposed CFD, with each owner having one vote for each acre or portion of an acre such owner owns in the CFD.

9. CFD Report. The Director of Finance is hereby directed to study the proposed Services, and to make, or cause to be made, and file with the City Clerk a report in writing (the "CFD Report") presenting the following:

A. A description of the Services by type that will be required to adequately meet the needs of the CFD.

B. An estimate of the fair and reasonable cost of the Services.

The CFD Report shall be made a part of the record of the public hearing specified below.

10. Public Hearing. This City Council hereby appoints and fixes April 23, 2013, at 7:00 p.m. or as soon as possible thereafter, in the Council Chambers, 456 West Olive Avenue, Sunnyvale, California, as the time and place when and where this City Council, as legislative body for the CFD, will conduct a public hearing in order to take public comment on the establishment of the CFD, and to consider and finally determine whether the public interest, convenience and necessity require the formation of the CFD and the levy of the Special Tax.

11. Notice of Hearing. Pursuant to Section 53322 of the Act, the City Clerk is hereby directed to cause notice of the public hearing to be given by publication one time in a newspaper published in the area of the CFD. The publication shall be completed at least 7 days before the date of the public hearing specified above. Under Section 53322.4 of the Act, the City Clerk may also give notice of the public hearing by first-class mail to each landowner within the CFD, to each such owner's address as it appears on the most recent tax records of the County or as otherwise known to the City Clerk to be correct, such mailing to be completed not less than 15 days before the date of the public hearing. Each of the notices shall be substantially in the form specified in Section 53322 of the Act, with the form summarizing the provisions hereof hereby specifically approved.

12. Further Action. The Director of Finance is hereby authorized and directed to take all actions necessary or advisable to give effect to the transactions contemplated by this Resolution.

13. No Obligation. This Resolution shall in no way obligate the City Council to form the CFD. The formation of the CFD shall be subject to the approval of this City Council by resolution following the holding of the public hearing referred to above.

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:

Joan A. Borger, City Attorney

EXHIBIT A

**CITY OF SUNNYVALE
Community Facilities District No. 3
(Estates at Sunnyvale)**

**DESCRIPTION OF AUTHORIZED SERVICES
TO BE FINANCED BY THE CFD**

City of Sunnyvale Community Facilities District No. 3 (Estates at Sunnyvale) will finance, in whole or in part, the following services (“services” shall have the meaning given that term in the Mello-Roos Community Facilities Act of 1982), which generally include the following:

- Annual operation, maintenance and servicing, including repair and replacement, of the storm drain facilities, including but not limited to, bio-retention basins and associated facilities which service the properties located within the boundaries of the CFD. The annual operation, maintenance and servicing of the bio-retention basins and associated facilities may also include, but are not limited to, field inspections, record keeping, cost of permits and regulatory fees, environmental mitigation monitoring, annual reporting, vegetation management, removal of silt, sediment, trash and debris from the drainage areas, bio-retention basins and City catch basins, and any other associated services which are needed to operate, maintain and service, including repair and replacement, the storm drain facilities;
- Costs associated with the setting, levy, and collection of the Special Taxes; and
- Contingency costs, including a contingency and/or reserve for operating and capital reserves, as required by the City.

EXHIBIT B

**CITY OF SUNNYVALE
Community Facilities District No. 3
(Estates at Sunnyvale)**

RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

A Special Tax authorized under the Mello-Roos Community Facilities Act of 1982 (the “Act”) applicable to the land in the “City of Sunnyvale Community Facilities District No. 3 (Estates at Sunnyvale)” (the “CFD”) established by the City of Sunnyvale (the “City”) shall be levied and collected according to the tax liability determined by the City through the application of the appropriate amount or rate, as described below.

GENERAL

A Special Tax shall be levied on all Taxable Parcels within the CFD and collected according to the Rate and Method of Apportionment of Special Taxes described herein.

The Special Tax shall be collected by the Santa Clara County Auditor’s office by means of inclusion on the annual ad-valorem property tax billings or in such other manner (including by means of direct billing of the affected Property Owners) as the City Council or its designee may determine.

DEFINITIONS

Act: means the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5 (commencing with Section 53311), Division 2, of Title 5 of the Government Code of the State of California.

Administrative Expenses: means the actual or estimated costs incurred by the City to determine, levy and collect the Special Taxes, including the proportionate amount of the salaries and benefits of City employees whose duties are related to administration of the CFD and fees of Administrator, other consultants, legal counsel, the costs of collecting installments of the Special Taxes upon the County tax rolls and any other incidental costs needed to administer the CFD as determined by the Finance Director.

Administrator: means the Finance Director, or his or her designee.

Annual Escalator Factor: means the greater of 1) an amount equal to the percentage increase during the preceding Calendar Year in the Consumer Price Index for All Urban Consumers in the San Francisco-Oakland-San Jose area (CPI-U), as published by the U.S. Department of Labor, Bureau of Labor Statistics, or 2) 3.0%. If the Consumer Price Index for All Urban Consumers in the San Francisco-Oakland-San Jose area (CPI-U) ceases to be published then an equivalent index will be used as determined by the Finance Director.

Annual Special Tax: means the annual special tax per Taxable Parcel as determined in accordance with Annual Calculation of Special Taxes as described below.

Annual Special Tax Requirement: means the amount necessary in any Fiscal Year for the following purposes:

(i) to pay the costs of Authorized Services.

(ii) to compensate for any delinquencies that have occurred in prior Fiscal Years or are expected to occur in the Fiscal Year in which the Special Tax will be collected, and

(iii) to pay Annual Administrative Expenses,

The Annual Special Tax Requirement may be reduced in any Fiscal Year by (i) proceeds from the collection of penalties and interest associated with delinquent Special Taxes, (ii) proceeds from interest earnings, and (iii) any other available funds as determined by the Finance Director.

Assessor Parcel: means any legally created lot or parcel within the boundaries of the CFD referenced by an Assessor's parcel number assigned by the Santa Clara County Assessor's office, and shall include without limitation parcels of land, condominium parcels and air parcels.

Authorized Services: mean the services that are authorized to be financed with Special Taxes pursuant to the Resolution of Formation.

Building Permit: means a building permit issued by the City for a Taxable Parcel prior to June 30 of the preceding Fiscal Year in which Special Taxes are proposed to be levied.

Calendar Year: means January 1 through December 31.

City Council: means the City Council of the City, in its capacity, as legislative body of the CFD.

CFD: means the City of Sunnyvale Community Facilities District No. 3 (Estates at Sunnyvale).

City: means the City of Sunnyvale.

County: means the County of Santa Clara.

Developed Parcel: means any Taxable Parcel which is Zoned for construction of a Structure and has been issued a Building Permit for construction of a Structure, as determined by the Finance Director.

Exempt Parcels: means all Assessor Parcels: (1) owned by the State, the federal government, the City or any other governmental entity (except as otherwise provided in the Act), and/or (2) used exclusively for landscaping, open space or common area.

Finance Director: means the City's Finance Director or any duly appointed deputy or designee.

Fiscal Year: means the period starting on July 1 and ending the following June 30.

Maximum Annual Special Tax per Taxable Parcel: means the maximum Special Tax shown below for each Taxable Parcel commencing in Fiscal Year 2013-14 and escalated each Fiscal Year thereafter based upon the Annual Escalator Factor.

| Classification | Maximum Special Tax ¹ |
|--|----------------------------------|
| Developed Parcel | \$1,000.00 per Parcel |
| Undeveloped Parcel | \$1,000.00 per Parcel |
| ¹ Maximum Special Tax will be increased each Fiscal Year commencing in FY 2014-15 per the Annual Escalator Factor | |

Property Owner: means the property owner as shown on the records in the Santa Clara County Assessor's office for each Assessor Parcel, or if more accurate and updated information is known by the Administrator then that information would supersede the records in the Santa Clara County Assessor's office.

Special Tax: means the tax each Taxable Parcel pays based upon the Rate and Method of Apportionment of Special Taxes.

State: means the State of California.

Structure: means a building which can be used for residential, commercial, industrial or institutional purposes.

Taxable Parcel: means an Assessor Parcel that is not classified as an Exempt Parcel.

Undeveloped Parcel: means any Taxable Parcel which is Zoned for construction of a Structure and has not been issued a Building Permit for construction of a Structure, as determined by the Finance Director.

Zoned: means the allowed or designated use per the City's adopted General Plan at the time the CFD was formed.

ANNUAL CALCULATION OF SPECIAL TAXES

Each Fiscal Year, on or about July 1, but in sufficient time to include the ensuing year's Special Tax levy on the County's secured property tax roll, the City shall calculate and levy the Annual Special Tax on all Taxable Parcels in the CFD as follows:

- 1) Classify each Assessor Parcel within the boundaries of the CFD as either a Taxable Parcel or an Exempt Parcel.
- 2) Classify each Taxable Parcel as either a Developed Parcel or an Undeveloped Parcel.
- 3) Calculate the Maximum Annual Special Tax per Taxable Parcel that can be levied within the boundaries of the CFD for the ensuing Fiscal Year.
- 4) Determine the Annual Special Tax Requirement for the ensuing Fiscal Year.
- 5) If the total Annual Special Tax Requirement identified in Step No. 4 above is less than the total revenue that can be generated by levying the Maximum Annual Special Tax per Taxable Parcel on all Taxable Parcels, then proportionately reduce the amount to be levied on each Taxable Parcel below the Maximum Annual Special Tax per Taxable Parcel until the total revenue that would be generated equals the Annual Special Tax Requirement identified in Step No. 4 above, then levy such amount on each Taxable Parcel.
- 6) If the total Annual Special Tax Requirement identified in Step No. 4 above is equal to or greater than the revenue that can be generated by levying the Maximum Annual Special Tax per Taxable Parcel on all Taxable Parcels, then levy the Maximum Annual Special Tax per Taxable Parcel on all Taxable Parcels.

COLLECTION OF THE ANNUAL SPECIAL TAX

Each year, the City will coordinate with the Santa Clara County Auditor's office to have the Annual Special Tax for each applicable Taxable Parcel placed on the property tax roll, or will affect a direct billing of the Annual Special Tax to the Property Owners of each Taxable Parcel.

TERM OF SPECIAL TAX

Taxable Parcels in the CFD will remain subject to the Special Tax in perpetuity. If the Special Tax ceases to be levied, the City shall direct the County Recorder to record a Notice of Cessation of Special Tax. Such notice will state that the obligation to pay the Special Tax has ceased and that the lien imposed by the Notice of Special Tax Lien is extinguished. The Notice of Cessation of Special Tax shall additionally identify the book and page of the Book of Maps of Assessment and Community Facilities Districts where the map of the boundaries of the CFD is recorded.

PROPERTY OWNER APPEALS OF SPECIAL TAX LEVIES

Any Property Owner claiming that the amount or application of the Special Tax is not correct and requesting a refund may file a written notice of appeal and refund to that effect with the Finance Director not later than one calendar year after having paid the Special Tax that is disputed. The Finance Director shall promptly review the appeal, and if necessary, meet with the Property Owner, consider written and oral evidence regarding the amount of the Special Tax, and decide the appeal. If the Finance Director's decision requires that the Special Tax be modified or changed in favor of the Property Owner, a cash refund shall not be made (except for the last year of levy), but an adjustment shall be made to the next Special Tax levy. Any dispute over the decision of the Finance Director shall be referred to the City Council and the decision of the City Council shall be final. This procedure shall be exclusive and its exhaustion by any Property Owner shall be a condition precedent to any legal action by such owner.

REPEAL OF THE SPECIAL TAX

If the levy of the Special Tax is repealed by initiative or any other action participated in by the Property Owners, the City shall cease to levy the Special Tax and shall cease to be obligated to provide the Authorized Services for which the Special Tax was levied. The obligations to provide the Authorized Services previously funded by the repealed Special Tax shall become the obligations of any property owners association established within the CFD, and if there is no such association, they shall become the joint obligations of the property owners of Taxable Parcels within the CFD in proportion to the number of Taxable Parcels owned by each such owner to the total number of Taxable Parcels within the CFD.