



Council Meeting: April 23, 2013

SUBJECT: Discussion and Possible Action on the Steps to Form Sunnyvale Community Facility District No. 3 (Estates at Sunnyvale), Including Public Hearing, Special Election and Budget Modification No. 41 to Appropriate \$49,445 in Deposited Funds from the Property Owner

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 will be named "City of Sunnyvale Community Facilities District No. 3 (Estates at Sunnyvale)."

On September 20, 2011, 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 (bio-retention basins) that reduce storm water pollutants and flow from the site. As a condition of approval, Toll Brothers agreed to the formation of a district to finance the annual operation, maintenance and servicing, including repair and replacement, of the bio-retention basins and associated facilities located within the public right-of-way.

The City Clerk received a petition signed by Toll Brothers, the sole owner of property, requesting Council to initiate proceedings to form a CFD and to waive certain otherwise applicable time frames associated with the election of a CFD in order to expedite the process.

On March 19, 2013, City Council approved a Resolution of Intention to establish the CFD (Resolution 567-13, RTC 13-070). This resolution formally started the CFD formation process. The resolution sets forth the authorized services to be funded by the special taxes, proposes a special tax formula that will govern the special tax rate and method of the special tax levy, and set the public hearing date for the City Council meeting on April 23, 2013, so that public testimony can be taken regarding the establishment of the CFD.

Following adoption of the Resolution of Intention, staff recorded the boundary map with the County Recorder on April 2, 2013.

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 CFDs are created for the public good and meet minimum credit criteria, and set forth disclosure requirements that notify prospective property purchasers of the lien of the CFD. The Local Goals and Policies for CFDs were recently amended to conform to the amended Mello-Roos Act and address CFDs composed of residential property as well as non-residential property (Resolution 566-13, RTC 13-061). The proposed CFD adheres to these Local Goals and Policies.

DISCUSSION

Several steps must be taken to complete the formation of this CFD. Five actions are being brought before City Council tonight:

1. *Public Hearing* - At the public hearing, the testimony of all interested persons, including persons owning property in the area of the proposed CFD, will be heard on the subjects of establishing the CFD, the boundaries of the CFD, and of funding the specified services. In addition, interested persons may submit written protests or comments to the City. If the owner of land being assessed the special tax files a written protest against the establishment of the CFD, Council may take no further action to create the CFD or levy the Special Tax for a period of one year from the date of tonight's public hearing. If the protest of the landowner is only against the furnishing of certain types of services within the CFD, or against levying a specified special tax, those services or the specified part of the Special Tax will be eliminated from the proceedings to form the CFD.
2. *Resolution of Formation of Community Facilities District (Attachment A)* - This resolution approves the formation of the CFD, the rate and method of apportionment of the special tax, and the authorized services that may be funded by the special tax. The resolution also preliminarily establishes the annual appropriations limit as required under the Mello-Roos Community Facilities Act.

It is estimated that the annual cost for the scheduled maintenance, inspection, replacement and administration of the CFD will be approximately \$463 per parcel. The special tax formula provides for a maximum annual special tax rate of \$1,000 per parcel. This maximum rate was established to fund the complete capital replacement of the CFD facilities, in the unlikely event the system fails and needs to be replaced before enough replacement funds have been collected. The annual special tax rates shown above are in FY 2013/14 dollars. The special tax formula has a provision to increase the special tax rate each year thereafter in accordance with the increase, if any, in the Consumer

Price Index in the San Francisco-Oakland-San Jose area or 3.0%, whichever is greater.

3. *Resolution Calling Special Landowner Election* (Attachment B) - This resolution calls for a special election of the sole property owner to consider the issues of the levy of the special tax and the establishment of the appropriations limit. The property owner has one vote per acre or portion of acre owned within the CFD boundaries. The special election will be held at this meeting, during a short break after the adoption of this resolution, with the results canvassed by the Clerk and reported to the Council immediately after the election.
4. *Resolution Declaring Results of Special Landowner Election and Directing Recording of Notice of Special Tax Lien* (Attachment C) - This resolution is considered after the ballot is opened and the vote is announced by the City Clerk. If the vote passes, this resolution declares the CFD to be fully formed.
5. *First Reading of an Ordinance Levying Special Taxes* (Attachment D) - This ordinance gives the City Council the authority to levy the special taxes within the CFD. The second reading of the Ordinance will be calendared for a subsequent Council meeting.

Following these actions, the Notice of Special Tax Lien (a copy of which is on file with the City Clerk) must be recorded within 15 days of tonight's meeting.

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 fully funded by the special taxes levied and collected in the CFD. Any City costs associated with administering the CFD 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; however, all such costs would be eligible for reimbursement to the City from the proceeds of the foreclosure action.

Budget Modification No. 41 has been prepared to appropriate the deposited funds in the amount of \$49,445 to a new project, Formation of Community Facilities District No. 3. Ongoing annual operating costs of \$23,595 will be included in the operating budget starting in FY 2013/14.

**Budget Modification No. 41
FY 2012/2013**

	Current	Increase/ (Decrease)	Revised
Community Facilities District No. 3 – Estates at Sunnyvale Fund			
<u>Revenues</u>			
Contributions from Property Owners	\$0	\$49,445	\$49,445
<u>Expenditures</u>			
New Project – Formation of Community Facilities District No. 3	\$0	\$49,445	\$49,445

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.

State law requires a notice be published in a local newspaper at least 7 days before the date of the public hearing. Staff published a notice of the public hearing on April 12, 2013, in the *Sunnyvale Sun*.

ALTERNATIVES

1. Conduct a public hearing on the formation of Sunnyvale Community Facility District No. 3 (Estates at Sunnyvale), adopt the following Resolutions and introduce an Ordinance if approved by the voter:
 - a. Resolution of Formation of Community Facilities District
 - b. Resolution Calling Special Landowner Election
 - c. Resolution Declaring Results of Special Landowner Election and Directing Recording of Notice of Special Tax Lien
 - d. Ordinance Levying Special Taxes
2. Approve Budget Modification No. 41.
3. Do not adopt the Resolutions and introduce an Ordinance for the formation of Sunnyvale Community Facility District No. 3 (Estates at Sunnyvale), and do not approve Budget Modification No. 41.

RECOMMENDATION

Staff recommends Alternative #1 and 2: Conduct a public hearing on the formation of Sunnyvale Community Facility District No. 3 (Estates at Sunnyvale), adopt the following Resolutions and introduce an Ordinance if approved by the voter, and approve Budget Modification No. 41:

- a. Resolution of Formation of Community Facilities District
- b. Resolution Calling Special Landowner Election
- c. Resolution Declaring Results of Special Landowner Election and Directing Recording of Notice of Special Tax Lien
- d. Ordinance Levying Special Taxes

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, Formation of Community Facilities District
- B. Resolution of the City Council of the City of Sunnyvale Calling Special Election
- C. Resolution of the City Council of the City of Sunnyvale Declaring results of Special Election and Directing Recording of Notice of Special Tax Lien
- D. An Ordinance of the City Council of the City of Sunnyvale Levying Special Taxes within the City of Sunnyvale Community Facilities District No.3 (Estates at Sunnyvale)

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
SUNNYVALE, FORMATION OF 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; Resolution of Intention. On March 19, 2013, this City Council adopted its Resolution No. 567-13 entitled “Resolution of the City Council of the City of Sunnyvale of Intention to Establish Community Facilities District” (the “Resolution of Intention”), stating its intention to form the “City of Sunnyvale Community Facilities District No. 3 (Estates at Sunnyvale)” (the “CFD”), 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.

The Resolution of Intention, incorporating a map of the proposed boundaries of the CFD and stating the services to be provided (as set forth in the list attached hereto as Exhibit A), and the rate and method of apportionment of the special tax to be levied within the CFD to pay the cost of the authorized services, is on file with the City Clerk and the provisions thereof are incorporated herein by this reference as if fully set forth herein.

2. Public Hearing. On this date, this City Council held a noticed public hearing as required by the Act and the Resolution of Intention relative to the proposed formation of the CFD. At the public hearing all interested persons desiring to be heard on all matters pertaining to the formation of the CFD, the facilities to be provided therein, and the levy of the special tax were heard and a full and fair hearing was held. At the public hearing, evidence was presented to this City Council on said matters before it, including a report caused to be prepared by the Director of Finance (the “CFD Report”) as to the services to be provided through the CFD and the costs thereof, a copy of which is on file with the City Clerk, and this City Council at the conclusion of the public hearing is fully advised in the premises.

3. No Majority Protest. Written protests with respect to the formation of the CFD, the funding of specified types of services and the rate and method of apportionment of the special taxes have not been filed with the City Clerk by 50% or more of the registered voters residing within the territory of the CFD or property owners of one-half or more of the area of land within the CFD and not exempt from the proposed special tax. The special tax proposed to be levied in the CFD to pay for the proposed services to be provided therein has not been eliminated by protest by 50% or more of the registered voters residing within the territory of the CFD or the owners of one-half or more of the area of land within the CFD and not exempt from the special tax. Accordingly, the formation of the CFD and the proposed special tax to be levied within the CFD have not been precluded by majority protest pursuant to the Act.

4. Prior Proceedings Valid. All prior proceedings taken by this City Council in connection with the establishment of the CFD and the levy of the special tax have been duly considered and are hereby found and determined to be valid and in conformity with the Act.

5. Establishment of CFD. The CFD, called "City of Sunnyvale Community Facilities District No. 3 (Estates at Sunnyvale)," is hereby established pursuant to the Act.

6. Boundaries Described. The boundaries of the CFD as set forth in the map of the CFD heretofore recorded in the Santa Clara County Recorder's Office on April 2, 2013, as Document No. 22154714, in Book 48 of Maps of Assessment and Community Facilities Districts at Page 34, are hereby approved, are incorporated herein by reference, and shall be the boundaries of the CFD.

7. Services. The type of public services proposed to be financed and funded 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.

8. Special Tax. Except to the extent that funds are otherwise available, the City will levy a special tax (the "Special Tax") to fund 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"), which contains sufficient detail to allow each landowner within the proposed CFD to estimate the maximum amount such owner will have to pay.

9. 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 or the City, or any departments or political subdivisions thereof, shall be omitted 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.

10. Responsible Official. The Director of Finance is the officer of the City who will be responsible for preparing annually a current roll of special tax levy obligations by assessor's parcel number and who will be responsible for estimating future special tax levies pursuant to the Act. The Director of Finance can be contacted at the City of Sunnyvale, 456 W. Olive Avenue, Sunnyvale, CA 94086, telephone: (408) 730-7500.

11. Tax Lien. Upon recordation of a notice of special tax lien pursuant to Section 3114.5 of the Streets and Highways Code of California, a continuing lien to secure each levy of the special tax shall attach to all nonexempt real property in the CFD and this lien shall continue

in force and effect until the special tax obligation is permanently satisfied and the lien canceled in accordance with law or until collection of the tax by the City ceases.

12. Appropriations Limit. In accordance with the Act, the annual appropriations limit, as defined by subdivision (h) of Section 8 of Article XIII B of the California Constitution, of the CFD is hereby preliminarily established at \$100,000,000, and said appropriations limit shall be submitted to the voters of the CFD as hereafter provided. The proposition establishing the annual appropriations limit shall become effective if approved by the qualified electors voting thereon and shall be adjusted in accordance with the applicable provisions of the Act.

13. Election. Pursuant to the Act, the proposition of the levy of the special tax and the proposition of the establishment of the appropriations limit specified above shall be submitted to the qualified electors of the CFD at an election. The time, place and conditions of the election shall be as specified by a separate resolution of this City Council.

14. 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.

15. Effective date. This resolution shall become effective immediately.

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 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 bio-retention basins and associated 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.

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
SUNNYVALE CALLING SPECIAL ELECTION**

**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; Resolution of Formation. On April 23, 2013, this City Council adopted its “Resolution of the City Council of the City of Sunnyvale, Formation of Community Facilities District” (the “Resolution of Formation”) ordering the formation of the “City of Sunnyvale Community Facilities District No. 3 (Estates at Sunnyvale)” (the “CFD”), authorizing the levy of a special tax on property within the CFD and preliminarily establishing an appropriations limit for the CFD, all pursuant to 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. Pursuant to the Resolution of Formation, the propositions of the levy of the special tax and the establishment of the appropriations limit shall be submitted to the qualified electors of the CFD as required by the Act.

2. Issues Submitted. Pursuant to Sections 53326 and 53325.7 of the Act, the issues of the levy of the special tax and the establishment of the appropriations limit shall be submitted to the qualified electors (as defined below) of the CFD at an election called therefor as provided below.

3. Qualified Electors. This City Council hereby finds that fewer than 12 persons have been registered to vote within the territory of the CFD for each of the 90 days preceding the close of the public hearings heretofore conducted and concluded by this Council for the purposes of these proceedings. Accordingly, and pursuant to Section 53326 of the Act, this Council finds that, for these proceedings, the qualified electors are the landowners within the CFD and that the vote shall be by such landowners or their authorized representatives, each having one vote for each acre or portion thereof such landowner owns in the CFD as of the close of the public hearings.

4. Conduct of Election. This Council hereby calls a special election to consider the measures described in Section 2 above, which shall be held on April 23, 2013, and the results thereof canvassed at the meeting of this Council on April 23, 2013. The City Clerk is hereby designated as the official to conduct the election and to receive all ballots until immediately after the adoption of this resolution. It is hereby acknowledged that the City Clerk has on file the Resolution of Formation, a map of the boundaries of the CFD, and a sufficient description to allow the City Clerk to determine the electors of the CFD. Pursuant to Section 53327 of the Act, the election shall be conducted by messenger or mail-delivered ballot pursuant to Section 4000 of the California Elections Code. This Council hereby finds that paragraphs (a), (b), (c) (1) and (c)(2) of Section 4000 are applicable to this special election.

5. Ballot. As authorized by Section 53353.5 of the Act, the propositions described in Section 2 above shall be combined into a single ballot measure, the form of which is attached hereto as Exhibit A and by this reference incorporated herein and the form of ballot is hereby approved.

The City Clerk is hereby authorized and directed to cause a ballot, in substantially the form of Exhibit "A," to be delivered to each of the qualified electors of the CFD. Each ballot shall indicate the number of votes to be voted by the respective landowner to which the ballot pertains. Each ballot shall be accompanied by all supplies and written instructions necessary for the use and return of the ballot. The envelope to be used to return the ballot was enclosed with the ballot and contained the following: (a) a declaration, under penalty of perjury, stating that the voter is the owner of record or authorized representative of the landowner entitled to vote, (b) the signature of the voter, (c) the date of signing and place of execution of the declaration, and (d) a notice that the envelope contains an official ballot and is to be opened only at the special election.

6. Waivers. This City Council hereby further finds that the provisions of Section 53326 of the Act requiring a minimum of 90 days following the adoption of the Resolution of Formation to elapse before the special election are for the protection of the qualified electors of the CFD. There is on file with the City Clerk a written waiver executed by all of the qualified electors of the CFD allowing for a shortening of the time for the special election to expedite the process of formation of the CFD and waiving any requirement for notice, analysis and arguments in connection with the election. Accordingly, this City Council finds and determines that the qualified electors have been fully apprised of and have agreed to the shortened time for the election and waiver of analysis and arguments, and have thereby been fully protected in these proceedings. This City Council also finds and determines that the City Clerk has concurred in the shortened time for the election. Analysis and arguments with respect to the ballot measures are hereby waived, as provided in Section 53327 of the Act.

7. 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.

8. Effective date. This resolution shall become effective immediately.

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

FORM OF BALLOT

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

**OFFICIAL BALLOT
SPECIAL TAX ELECTION**

This ballot is for a special, landowner election. You must return this ballot in the enclosed envelope, either by mail or in person, to the office of the City Clerk of the City of Sunnyvale no later than the public hearing on the proposed Community Facilities District, which will be held during the Council meeting starting at 7:00 p.m. on Tuesday, April 23, 2013. In order to ensure all ballots are received in time, the City requests that you return your ballot to the City Clerk no later than the close of business on Tuesday, April 23, 2013. The City Clerk’s office is located at:

City of Sunnyvale
456 W. Olive Avenue
Sunnyvale, CA 94086

To vote, mark a cross (X) on the voting line after the word “YES” or after the word “NO”. All marks otherwise made are forbidden. All distinguishing marks are forbidden and make the ballot void.

If you wrongly mark, tear, or deface this ballot, return it to the City Clerk and obtain another.

BALLOT MEASURE NO. 1: Shall the City of Sunnyvale be authorized to annually levy a special tax solely on lands within the City of Sunnyvale Community Facilities District No. 3 (Estates at Sunnyvale) (the “CFD”) in accordance with the rate and method contained in the Resolution of Formation of the CFD adopted by the City Council on April 23, 2013, to pay for the public services and pay the related administrative costs, all as specified in the Resolution of Formation, and shall the annual appropriations limit of the CFD be established in the amount of \$100,000,000?

YES: _____
NO: _____

By execution in the space provided below, (a) you represent and warrant that the property information listed below is true and correct, and (b) you indicate your waiver of (i) the time limit pertaining to the conduct of the election, (ii) any requirement for analysis and arguments with respect to the ballot measure, and (iii) any irregularity in the proceedings that may be claimed as a result of the application of such waivers.

The Property that is the subject of this Ballot is identified as:

See list of County Assessor Parcel Numbers and acreage attached as Schedule 1

The total acreage of the Property:

7.111 acres

Total number of votes:

8

Dated: _____, 2013

Toll CA VI, L.P.,
a California limited partnership

By: _____

Name: _____

Title: _____

SCHEDULE 1

**LIST OF
ASSESSOR'S PARCEL NUMBERS AND ACREAGE**

Assessor Parcel No.	Parcel Acreage
213-12-035	0.141
213-12-036	0.138
213-12-037	0.138
213-12-038	0.138
213-12-039	0.138
213-12-040	0.138
213-12-041	0.138
213-12-042	0.138
213-12-043	0.138
213-12-044	0.138
213-12-045	0.138
213-12-046	0.138
213-12-047	0.152
213-12-048	0.150
213-12-049	0.138
213-12-050	0.138
213-12-051	0.138
213-12-052	0.138
213-12-053	0.138
213-12-054	0.138
213-12-055	0.138
213-12-056	0.138
213-12-057	0.138
213-12-058	0.138
213-12-059	0.138
213-12-060	0.139
213-12-061	0.147
213-12-062	0.138
213-12-063	0.138
213-12-064	0.138
213-12-065	0.138
213-12-066	0.138
213-12-067	0.138
213-12-068	0.138
213-12-069	0.138
213-12-070	0.138
213-12-071	0.138
213-12-072	0.148
213-12-073	0.138
213-12-074	0.162
213-12-075	0.138

Assessor Parcel No.	Parcel Acreage
213-12-076	0.138
213-12-077	0.138
213-12-078	0.138
213-12-079	0.138
213-12-080	0.138
213-12-081	0.138
213-12-082	0.138
213-12-083	0.138
213-12-084	0.138
213-12-085	0.144

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
SUNNYVALE DECLARING RESULTS OF SPECIAL ELECTION
AND DIRECTING RECORDING OF NOTICE OF SPECIAL TAX
LIEN**

**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; Resolution of Formation. On April 23, 2013, this City Council adopted its “Resolution of the City Council of the City of Sunnyvale, Formation of Community Facilities District” (the “Resolution of Formation”) ordering the formation of the “City of Sunnyvale Community Facilities District No. 3 (Estates at Sunnyvale)” (the “CFD”), authorizing the levy of a special tax on property within the CFD and preliminarily establishing an appropriations limit for the CFD, all pursuant to 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.

2. Special Election. Pursuant to the Resolution of Formation, and pursuant to a resolution entitled “Resolution Calling Special Election” (the “Election Resolution”) adopted by this City Council on April 23, 2013, the propositions of the levy of the special tax and the approval of an annual appropriations limit of not to exceed \$100,000,000, were submitted to the qualified electors of the CFD as required by the Act.

3. Canvass and Issues Approved. Pursuant to the Election Resolution, which is by this reference incorporated herein, the special election has been held and the City Clerk has on file a Canvass and Statement of Results of Election, (the “Canvass”) a copy of which is attached hereto as Exhibit A. This City Council hereby approves the Canvass and finds that it shall be a permanent part of the record of its proceedings for the CFD. Pursuant to the Canvass, the issues presented at the special election were approved by the qualified electors of the CFD by more than two-thirds of the votes cast at the special election.

4. Proceedings Approved. Pursuant to the voter approval, the CFD is hereby declared to be fully formed with the authority to levy the special taxes and to have the established appropriations limit, all as heretofore provided in these proceedings and in the Act. It is hereby found that all prior proceedings and actions taken by this City Council with respect to the CFD were valid and in conformity with the Act.

5. Notice of Special Tax Lien. The City Clerk is hereby directed to complete, execute and cause to be recorded in the office of the County Recorder of the County of Santa Clara a notice of special tax lien in the form required by the Act, such recording to occur no later than 15 days following adoption by the Council of this resolution.

6. 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.

7. Effective date. This resolution shall become effective immediately.

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**CANVASS AND STATEMENT OF RESULT OF ELECTION**

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

I hereby certify that: on April 23, 2013, I canvassed the returns of the election held on April 23, 2013, in the City of Sunnyvale Community Facilities District No. 3 (Estates at Sunnyvale); the total number of ballots cast, and the total number of votes cast for and against each ballot measure, are as set forth below; and the totals as shown for and against each ballot measure are full, true and correct:

	<u>Qualified Landowner Votes</u>	<u>Total Votes Cast</u>	<u>YES</u>	<u>NO</u>
City of Sunnyvale Community Facilities District No. 3 (Estates at Sunnyvale), Special Tax Election, April 23, 2013	8	—	—	—

BALLOT MEASURE NO. 1: Shall the City of Sunnyvale be authorized to annually levy a special tax solely on lands within the City of Sunnyvale Community Facilities District No. 3 (Estates at Sunnyvale) (the "CFD") in accordance with the rate and method contained in the Resolution of Formation of the CFD adopted by the City Council on April 23, 2013, to pay for the public services and pay the related administrative costs, all as specified in the Resolution of Formation, and shall the annual appropriations limit of the CFD be established in the amount of \$100,000,000?

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND this 23rd day of April, 2013.

By: _____
City Clerk

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE LEVYING SPECIAL TAXES WITHIN THE 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; Resolution of Intention. On March 19, 2013, this City Council adopted its Resolution No. 567-13 entitled "Resolution of the City Council of the City of Sunnyvale of Intention to Establish Community Facilities District" (the "Resolution of Intention"), stating its intention to form the "City of Sunnyvale Community Facilities District No. 3 (Estates at Sunnyvale)" (the "CFD"), 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.

2. Public Hearing. On April 23, 2013, this City Council held noticed public hearings as required by the Act and the Resolution of Intention relative to the determination to proceed with the formation of the CFD and the rate and method of apportionment of the special tax to be levied within the CFD to finance the costs of the public services within the CFD. At the public hearings, all persons desiring to be heard on all matters pertaining to the formation of the CFD and the levy of the special taxes were heard, substantial evidence was presented and considered by this City Council and a full and fair hearing was held.

3. Subsequent Resolutions. On April 23, 2013, following the public hearing, this City Council adopted the following resolutions: a resolution entitled "Resolution of the City Council of the City of Sunnyvale, Formation of Community Facilities District" (the "Resolution of Formation"), which established the CFD and defined the public services to be funded by the CFD (the "Services"); and a resolution entitled "Resolution of the City Council of the City of Sunnyvale Calling Special Election" (the "Election Resolution") submitting the propositions of the levy of the special tax and the approval of an annual appropriations limit of not to exceed \$100,000,000, to the qualified electors of the CFD as required by the Act.

4. Special Election. Pursuant to the Election Resolution, on April 23, 2013, a special election was held within the CFD at which the eligible landowner electors approved such propositions by the two-thirds vote required by the Act.

5. Levy of Special Taxes. By the passage of this Ordinance this City Council hereby authorizes and levies special taxes within the CFD pursuant to the Act, at the rate and in accordance with the formula (the "Rate and Method") set forth in the Resolution of Formation, which is by this reference incorporated herein. The special taxes are hereby levied starting in Fiscal Year 2013-14 and continuing until a notice of cessation is recorded.

6. Determination of Special Tax Rate. The Director of Finance is hereby authorized and directed each fiscal year to determine the specific special tax rate and amount to be levied for each parcel of real property within the CFD, in the manner and as provided in the Resolution of Formation and the Rate and Method.

7. Exemption from Special Taxes. Except as may otherwise be provided by law or by the Rate and Method, properties or entities of the State, federal or local governments shall be exempt from any levy of the special taxes. In no event shall the special taxes be levied on any parcel within the CFD in excess of the maximum tax specified in the Resolution of Formation and the Rate and Method.

8. Use of Special Tax Collections. All of the collections of the special tax shall be used as provided for in the Act and in the Resolution of Formation including, but not limited to, the payment of the costs of the Services, the payment of the costs of the City in administering the CFD, and the costs of collecting and administering the special tax.

9. Manner of Collection. The special taxes shall be collected in the same manner as ordinary ad valorem taxes are collected and 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 the Director of Finance is hereby authorized to collect the special taxes by other appropriate methods of collection, including direct billing to the affected property owners at such intervals deemed appropriate.

10. 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 CFD, by a court of competent jurisdiction, the balance of this Ordinance and the application of the special tax to the remaining parcels within the CFD shall not be affected.

11. Execution and Publication. The Mayor shall sign this Ordinance and the City Clerk shall cause this Ordinance to be published within 15 days after its passage at least once in a newspaper of general circulation published and circulated in the City.

12. Effective Date. This Ordinance shall take effect 30 days from the date of final passage.

Introduced at a regular meeting of the City Council held on _____, 2013 and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on _____, 2013 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

APPROVED:

City Clerk
Date of Attestation: _____
(SEAL)

Mayor

APPROVED AS TO FORM:

Joan A. Borger, City Attorney