

**COUNCIL POLICY
CITY OF CHULA VISTA**

**SUBJECT: Statement of Goals and Policies Regarding
Establishment of Community Facilities
Districts**

**POLICY
NUMBER**

505-04

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BACKGROUND

The Mello-Roos Community Facilities Act of 1982 (the “Mello-Roos Act”) and Ordinance No. 2730, as amended from time to time and codified in Chapter 3.60 of the Chula Vista Municipal Code (the “CFD Ordinance”) allows for the creation of Community Facilities Districts (CFDs) to finance certain public capital facilities and services, especially in developing areas and areas undergoing rehabilitation. As a prerequisite to forming CFDs pursuant to the Mello-Roos Act, each local jurisdiction must first consider and adopt local goals and policies as described therein. The City first adopted the City of Chula Vista Statement of Goals and Policies Regarding the Establishment of Community Facilities Districts (the “Goals and Policies”) on January 13, 1998, via Resolution No. 18860. The Goals and Policies were subsequently amended in July 1998, December 1998, and November 2013 via Resolution Nos. 19103, 19300, and 2013-225, respectively. Inclusion of the “Goals and Policies” in the City Council Policy Manual is recommended and are applicable to CFDs formed under the Mello-Roos Act and the CFD Ordinance.

PURPOSE

The purpose of this Statement of Goals and Policies is to provide the City staff, the residents of the City, and the owners and developers of property located within the City with guidance in the application for, and consideration of, the establishment of community facilities districts for the purpose of financing or assisting in financing the acquisition or construction of public infrastructure or the provision of authorized public services to benefit and serve either existing or new development or a combination thereof. The underlying principals behind this policy are the protection of the public interest, assuring fairness in the application of special taxes to current and future property owners, assuring full disclosure of the existence of any special tax liens, ensuring the creditworthiness of any community facilities district special tax bonds, protecting the City's credit rating and financial position and assuring that applicants for all community facilities district proceedings other than City initiated proceedings pay all costs associated with the formation of any community facilities district.

POLICY

The City Council of the City of Chula Vista (hereafter the “City Council”) hereby establishes and states its goals and policies concerning the use of Chapter 2.5 of Part I of Division 2 of Title 5 of the Government Code of the State of California (hereafter the “Act”) in providing adequate public infrastructure improvements and public services for the City of Chula Vista (the “City”). The following goals and policies shall apply to all community facilities districts hereafter formed or proposed to be formed by the City. Any policy or goal stated herein may be supplemented or amended

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by resolution of the City Council.

The scope of this policy is limited to the proposed formation of community facilities districts for the limited purpose of financing or assisting in financing the acquisition or construction of public infrastructure and/or the provision of authorized public services.

Introductory Statement

The City will consider applications initiated by owners or developers of vacant property proposed to be developed, owners of property within existing developed areas, registered voters residing in existing developed areas, or the City itself for the establishment of community facilities districts to finance authorized public improvements or to provide authorized public services which benefit or serve existing or new development or a combination thereof. A community facilities district or an improvement area within a community facilities district proposed to be established to finance public improvements or authorized services to serve new development may be referred to as a "Development Related CFD."

Each application for the establishment of a community facilities district must comply with the applicable goals and policies contained herein unless the City Council expressly grants an exception to such policy or policies as they apply to a specific application.

Finding of Public Interest or Benefit

The City Council may authorize the initiation of proceedings to form a community facilities district to finance authorized public improvements or to provide authorized public services if the City Council determines that the public improvements to be financed or public services to be provided or, in the case of a Development Related CFD, the attributes of the new development will provide, in the opinion of the City Council, a public benefit to the community at large as well as the benefit to be derived by the properties within the community facilities district.

Examples of public benefit to the community at large may include, but are not limited to the following:

1. Construction of a major public facility which meets a community need including, but not limited to, a major arterial which will provide a vital roadway facility to alleviate congestion, water storage facilities which will remedy inadequate fire flow, and storm drainage facilities which are a part of the storm drainage master plan.

2. Provision of public infrastructure sooner than would otherwise be required for a

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particular development project.

3. Construction of public infrastructure to serve commercial or industrial projects which will expand the City's employment and/or sales tax base.

4. Provision of maintenance or other authorized public services such as landscaping, lighting, storm drain, flood control or open space maintenance necessary to promote or maintain quality of life and public safety within existing or developing areas of the City.

Authorized Public Facilities

Improvements proposed to be financed through a community facilities district must be public improvements which will be owned, operated or maintained by the City or another public agency or public utility or to which the City is authorized to contribute revenue. The types of improvements eligible to be financed must serve a whole neighborhood or commercial or industrial area or greater. Such improvements include:

1. Streets and highways satisfying one or more of the following criteria:

- A. identified in the Circulation Element of the City as collectors or arterials;
- B. no direct access by abutting properties; or
- C. minimum daily traffic volume of 3,500 ADT.

2. Sewer lines or other sewer facilities serving a minimum of 500 single family dwellings or equivalent dwelling units or such other area of the community as the City Manager, or his or her designee, may determine to otherwise be consistent with the intent of these goals and policies to be located within authorized streets and highways or within other public rights-of-way shown on the master plan of sewer facilities.

3. Water mains with a minimum diameter of 10" or other water facilities to be located within authorized streets and highways or within other public rights-of-way shown on the master plan of water facilities.

4. Drainage facilities serving a minimum of 100 acres or such other area of the community as the City Manager, or his or her designee, may determine to otherwise be consistent with the intent of these goals and policies or draining an eligible street.

5. Landscaping and irrigation facilities meeting one of the following criteria:

- A. Located within the right-of-way of a street or highway shown on the

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Circulation Element of the City's General Plan;

- B. Located adjacent to an adopted scenic route; or
- C. Located within dedicated open space.

6. Reclaimed water facilities serving an area which benefits the area within the proposed community facilities district.

7. Dry utilities serving a minimum of 500 single family dwelling units or equivalent dwelling units or such other area of the community as the City Manager, or his or her designee, may determine to otherwise be consistent with the intent of these goals and policies; provided, however, the amount of special tax bond proceeds allocable to such dry utilities may not exceed that amount permitted under Federal tax law and regulations to ensure the tax exempt status of interest on the applicable special tax bonds.

8. Grading for eligible public streets; provided, however, grading for a Development Related CFD must meet one of the following criteria:

- A. Grading within the vertical planes of the right-of-way;
- B. Slopes to City-owned open space or open space easement areas; or
- C. Offsite roadway grading.

If the cut and fill within (A) and (B) do not balance, the cost of excavating, hauling and compacting fill in the street is authorized to be financed. If there is excess material in the street right-of-way, only the cost of excavating and hauling to private property within the development project is eligible to be financed. The determination of balance will be made on a total eligible street grading basis, not on an individual street basis.

9. Such other improvements as may be authorized by law and which the City Council determines are consistent with the policies herein.

The City Council shall have the final determination as to the eligibility of any improvement for financing, as well as the prioritization of financing of such improvements. Generally, "in-tract" (e.g., local streets or utilities) improvements which serve residential development will not be considered eligible to be financed through a community facilities district unless requested by the owners or registered voters of an existing residential development to remedy a threat, found to exist by the City Council, to the public health or safety resulting from an existing deficiency in public improvements to serve such existing development.

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Any public improvements proposed to be financed through a community facilities district must meet all design and construction requirements and standards as may be established by the City. Any public improvement, the construction of which is completed following the adoption of the resolution of formation of a community facilities district, proposed to be acquired by the City from the owner or developer of property within a Development Related CFD must be constructed as if such improvements had been constructed under the direction and supervision, or under the authority of, the City.

Public improvements proposed to be acquired from the proceeds of special tax bonds or special taxes shall not be acquired until all improvements for a particular Project (as defined below) are completed and accepted by the City and the City Manager, or his or her designee, has certified the final cost of such improvements. For purposes of this paragraph, a "Project" shall be defined as all improvements within a particular street or easement including street improvements, sewer, drainage, utilities and grading and which are authorized to be acquired by the community facilities district pursuant to an acquisition and financing agreement by and between the City, acting on behalf of itself and the community facilities district, and the property owner or developer who is responsible for the construction of the public improvements (the "Acquisition/Financing Agreement"). If improvements within more than one (1) Project are authorized to be acquired through the community facilities district, then the improvements within each Project may be acquired separately as all improvements within such Project are completed and accepted by the City and the final costs certified. Each Project established for any community facilities district and all improvements included within each such Project must be described in the Acquisition/Financing Agreement for such community facilities district. If the Acquisition/Financing Agreement has established more than one (1) Project for any community facilities district, the Acquisition/Financing Agreement may authorize the partial release of funds to pay for the acquisition of each Project when such Project is completed and accepted by the City.

The City Council may, in its sole discretion, elect to deviate from or waive the foregoing policy in its consideration of the approval of an Acquisition/Financing Agreement for a community facilities district to authorize the payment of the purchase price for each discrete component of a Project, i.e., an individual improvement within a Project such as a sewer line within a Project which also includes street, water and drainage improvements. In electing to deviate from or waive the foregoing policy, the City Council may condition the payment of the purchase price for discrete components as the City Council deems necessary to ensure the financial integrity of the community facilities district financing.

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Prioritization of Public Improvements

It is the policy of the City to give first priority to the provision of public improvements benefiting the City in any community facilities district established by the City. It is secondarily the policy of the City, in any community facilities district established by the City, to assist in the provision of other public improvements to be owned, operated or maintained by other public agencies or public utilities.

Authorized Public Services

Public services proposed to be financed through a community facilities district may include:

1. Maintenance of parkways, medians and open space, including but not limited to, maintenance of walls, fences, trail systems, pedestrian access systems and other facilities within such open space, maintenance and preservation of habitat within such open space, and biota and other forms of monitoring of plants, wildlife, use of wildlife corridors and habitat quality as a part of any such open space maintenance program.
2. Maintenance of naturalized drainage and flood control facilities including, but not limited to, channels and detention and desiltation basins.
3. Such other services as may be authorized by the Mello-Roos Act or by ordinance of the City adopted pursuant to the charter authority of the City and which the City Council determines are consistent with the goals and policies herein and are in the best interest of the City and the residents and property owners within the community facilities district.

Incidental Costs

Eligible Incidental Costs

Eligible incidental costs which may be financed from the proceeds of special tax bonds issued for a Development Related CFD or the special tax levied within a Development Related CFD shall be limited to those incidental costs directly related to the improvements financed from the proceeds of such special tax bonds or special tax revenues and may include:

1. Usual and customary design and engineering costs not to exceed the following percentages:
 - A. Civil engineering - 7.5% of the cost of the improvements for which the engineering was performed.

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- B. Soils engineering - 15% of the cost of the applicable grading.
 - C. Landscape architecture - 10% of the cost of the applicable landscaping and irrigation.
 - D. Surveying and construction staking - 2% of the combined cost of the civil engineering improvements and grading for the applicable street and wet utilities.
 - E. Utility engineering/coordination - 3% of the cost of the applicable dry utilities.
2. Construction administration and supervision not to exceed, in aggregate, 1.75% of the total construction cost of the applicable public improvements.
 3. Special engineering studies related to "collector" or "transmission" facilities. Eligibility of such studies must be reviewed and approved by the Director of Development Services, or his or her designee.
 4. Plan check and inspection fees (less any refunds).
 5. Capacity or connection fees related solely to the public improvements being acquired or constructed as permitted under the Mello-Roos Act.
 6. Capitalized interest on any community facilities district special tax bonds as authorized by the City Council pursuant to these goals and policies.
 7. Costs of acquisition of off-site rights-of-way and/or easements including the following:
 - A. Appraisal costs, including title reports.
 - B. Costs of preparing acquisition plats.
 - C. Appraised value or actual cost of right-of-way or easement, whichever is less.
 - D. Legal fees and cost related to eminent domain proceedings approved by the City Attorney.
 8. Reimbursement of funds advanced by the applicant to pay for (i) preformation costs and/or (ii) costs of issuance incurred by or on behalf of the City.
 9. Costs of environmental review, permitting and mitigation limited to the specific public improvements proposed to be financed through the community facilities district.

Unless specified otherwise above, the City Manager, or his or her designee, shall review all incidental

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costs to ensure that such costs are customary and reasonable.

Ineligible Incidental Costs

The following costs are not eligible to be financed from the proceeds of community facilities district special tax bonds:

1. Development impact fees; provided, however, the City Council may, in its sole discretion, grant credit in an amount not to exceed the obligation for the payment of such fees if improvements which would otherwise be financed from the proceeds of such fees are financed from the proceeds of community facilities district special tax bonds or special taxes.

2. Administrative or overhead expenses, financial or legal fees incurred by an applicant for the formation of a community facilities district. This limitation does not apply to amounts advanced by the applicant to the City pursuant to the provisions of this policy to pay for preformation costs incurred by the City. (See "Preformation Cost Deposits and Reimbursements" below.)

3. Land use planning and subdivision costs and environmental review costs related to such land use planning and subdivision.

4. Planning Studies unless off-site.

5. Environmental impact reports unless off-site.

6. Construction loan interest.

7. Subdivision financial analysis.

8. Attorneys' fees related to the land use entitlement or subdivision process unless off-site.

9. On site right-of-way and easements.

10. Any compensation payable to the City as consideration for the City's agreement to provide the financing mechanism for the financing of the authorized improvements and eligible incidental expenses and to acquire the authorized improvements pursuant to the terms and conditions of an agreement with the City and the property owner or developer as appropriate.

11. Other overhead expenses incurred by the applicant.

Required Value-To-Debt Ratio

It is the policy of the City that the value-to-debt ratio for a community facilities district must be at

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least 4:1. The calculated value-to-debt ratio shall reflect the full cash value of the properties subject to the levy of special taxes, including the value of the improvements to be financed from the proceeds of the issue or series of special tax bonds for which the value-to-debt ratio is being computed, compared to the aggregate amount of the special tax lien proposed to be created plus any prior fixed assessment liens and/or special tax liens. The required value-to-debt ratio shall be determined with respect to all taxable property within the community facilities district in the aggregate and with respect to each development area for which no final subdivision map has been filed.

A community facilities district with a value-to-debt ratio of less than 4:1 but equal to or greater than 3:1 may be approved, in the sole discretion of the City Council, upon a determination by the City Manager, after consultation with the Finance Director, the bond counsel, the underwriter and the financial advisor, that a value-to-debt ratio of less than 4:1 is financially prudent under the circumstances of the particular community facilities district. In addition, the City Council may, in its sole discretion, accept a form or forms of credit enhancement such as a letter of credit, bond insurance or the escrow of bond proceeds to offset a deficiency in the required value-to-debt ratio as it applies to the taxable property within the community facilities district in the aggregate or with respect to any development area.

The value-to-debt ratio shall be determined based upon the full cash value of the properties subject to the levy of the special tax as shown on the ad valorem assessment roll or upon an appraisal of the properties proposed to be assessed; provided, however, the City Manager may require that the value-to-debt ratio be determined by an appraisal if, in his or her judgement, the assessed values of the properties proposed to be assessed do not reflect the current full cash value of such properties. The appraisal shall be coordinated by, done under the direction of, and addressed to the City. The appraisal shall be undertaken by a state certified real estate appraiser, as defined in Business and Professions Code Section 11340. The appraiser shall be selected and retained by the City or the City's financial advisor. The costs associated with the preparation of the appraisal report shall be paid by the applicant for the community facilities district and shall be subject to possible reimbursement as provided for herein. The appraisal shall be conducted in accordance with assumptions and criteria established by the City, based upon generally accepted appraisal standards or state recommended standards for similar appraisals conducted for the same purpose.

The City reserves the right to require a market absorption study for any Development Related CFD. In any such case the City shall retain, at the applicant's sole expense but subject to reimbursement as provided for herein, a consultant to prepare a report to verify or establish the projected market absorption for and the projected sales prices of the properties proposed to be included within the

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community facilities district. If a market absorption study is conducted, the appraiser shall utilize the conclusions of the market absorption study in conducting the appraisal of the properties within the proposed community facilities district or shall justify, to the satisfaction of the City Manager, why such conclusions were not utilized in conducting such appraisal.

Criteria for Appraisals

Definition of Appraisal

For purposes of these goals and policies, an appraisal shall mean a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

Contents of the Appraisal

An appraisal should reflect nationally recognized appraisal standards, including, to the extent appropriate, the Uniform Standards of Professional Appraisal Practice. An appraisal must contain sufficient documentation, including valuation data and the appraiser's analysis of such data, to support the appraiser's opinion of value. At a minimum, the appraisal shall contain the following:

1. Purpose of the Appraisal. This should include the reason for the appraisal, a definition of all values required, and the property rights being appraised.
2. Area, City and Neighborhood Data. These data should include such information as directly affects the appraised property together with the appraiser's conclusions as to significant trends.
3. Property Data. This should include a detailed physical description of the property, its size, shape, soil conditions, topography, improvements, and other physical characteristics which affect the property being appraised. The availability, capacity of, and proximity to, utilities and other infrastructure should also be discussed.
4. Title Condition. The condition of title to the property appraised should be discussed based upon the appraiser's examination of a title report of the property appraised. The appraiser should analyze and discuss those title issues which are concluded to impact the value of the property being appraised.
5. Improvement Condition.
 - A. The appraiser shall value the property within the community facilities district

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on an “as-is” basis taking into consideration the value associated with the public improvements to be funded from the proceeds of the issue of bonds for which the appraisal is being undertaken. The property in the community facilities district shall be valued as if it were free and clear of any special taxes and assessments, if any, so that a proper comparison of value-to-debt can be determined. In determining his or her conclusion of value, the appraiser may consider the value of the property in the community facilities district under different market conditions. This may consist of valuing the property as if it were sold to a single purchaser in bulk or sold to several purchasers in portions or pieces.

- B. Land parcels which have been developed with residences and subsequently sold should at a minimum indicate land parcel size, number of lots, density, number of plans, square footage, room counts, year construction was initiated, year of completion, and when sales were initiated.
- C. Land parcels with residential product under construction or with standing inventory should be described as in A. above and include a summary of the stage of development regarding the number of units completed, number of models, status of units under construction, finished lots and mass-graded or raw lots. In addition, a comment on the marketability of the units (architecture, size, etc.) is appropriate.
- D. Land parcels which have been developed with income-producing (or owner-occupied) commercial/retail, industrial, hotels, apartments, offices, etc., should be described as follows:
 - i. Commercial-Retail - Land parcel size; basic construction type; typical tenant improvements (and who is responsible for their construction); leasable area, when construction was initiated; and date of completion.
 - ii. Industrial - Land parcel size; basic construction type, whether single or multi-tenant; typical office build-out as percentage of total area, when construction was initiated; and date of completion.
 - iii. Hotels – Land parcel size; basic construction type; number of rooms; dining, recreation, convention space, meeting rooms, and other amenities.

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iv. Apartments - Land parcel size; basic construction type; number of stories; number of units; unit mix; size; total rentable area, when construction was initiated; and date of completion.

v. Office - Land parcel size; basic construction type; typical tenant improvements/allowance; net rentable area, when construction was initiated; and date of completion.

6. General Plan Classification. Describe the General Plan classification of the subject and comparable properties.

7. Zoning. Describe the zoning for the subject and comparable properties. Note any discrepancy between General Plan classification and zoning. If rezoning is imminent, discuss further under Item 8 below.

8. Analysis of Highest and Best Use. The report should state and support the highest and best use to which a property can be put and recognize that land is appraised as though vacant and available for development to its highest and best use, and the improvements are based on their actual contribution to the site.

9. Statement of Value. The appraiser's opinion of the value of the specified property rights, prepared according to all relevant and reliable approaches to value consistent with commonly accepted professional appraisal practices. If a discounted cash flow analysis is used, it should be supported by at least one other valuation method such as sales comparison approach utilizing sales of properties that are in the same stage of development. If more than one valuation approach is used, the appraiser shall include an analysis and reconciliation of such approaches to support the appraiser's opinion of value.

10. Certification. Certification of appraiser and permission to reproduce and use the appraisal report as required for bond issuance.

Maximum Aggregate Taxes and Assessments

It is the policy of the City that the maximum annual special tax installment applicable to any parcel used for residential purposes (not including motels, hotels, campsites, or other short-term lodging, as determined by the City) shall not exceed one percent (1%) of the sale price of newly developed properties subject to the levy of the special tax (the "Newly Developed Properties") as of the date of the close of escrow of the initial sale of any residential dwelling unit to such residential home owner. As a distinct and separate requirement, the total of the following taxes, assessments described in 4.

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below and special taxes appearing on the property tax bill, shall not exceed two (2%) of such initial sales price of Newly Developed Properties:

1. Ad valorem property taxes.
2. Voter approved ad valorem property taxes in excess of one percent (1%) of the assessed value of the subject properties.
3. The maximum annual special taxes levied by the community facilities district under consideration and any other community facilities district or other public agency excepting therefrom special taxes levied by a community facilities district formed or under consideration for formation for the purpose of providing services such as open space maintenance, landscape maintenance and preserve maintenance.
4. The annual assessment installments, including any administrative surcharge, for any existing assessment district where such assessment installments are utilized to pay debt service on bonds issued for such assessment district. Annual assessment installments for maintenance and services shall not be included in the assessments calculated in determining the aggregate tax, assessment and special tax obligation for a parcel.

The applicant for the establishment of any Development Related CFD which includes residential development subject to the foregoing limitations shall be required to enter into an agreement with the City or the community facilities district requiring the prepayment by the applicant of that portion of the special tax obligation applicable to any parcel used for residential purposes in order to reduce the annual maximum special tax obligation so that the maximum annual special tax installment shall not exceed 1% of the sales price for such parcel and the total taxes, assessments and special taxes does not exceed 2% of such sales price.

Special Tax Requirements

The rate and method of apportionment of the special tax for any community facilities district shall adhere to the following requirements:

1. The maximum special tax shall be adequate to include an amount necessary to pay for the expenses incurred by such community facilities district in the levy and collection of the special tax and the administration of the special tax bonds and the community facilities district.
2. The maximum projected annual special tax revenues must equal 110% of the projected annual gross debt service on any bonds of the community facilities district.

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3. A backup special tax shall be required for any Development Related CFD to protect against changes in density resulting in the generation of insufficient special tax revenues to pay annual debt service and administrative expenses, unless the City Manager, or his or her designee, based on the advice of the financial advisor, special tax consultant or underwriter determines that a backup special tax is not needed under the special tax formula for such Development Related CFD. The City Council may additionally or alternatively require that as a condition of approval of the downsizing of the development in a Development Related CFD at the request of the applicant or the applicant's successor-in-interest, the applicant or the applicant's successor-in-interest, as applicable, may be required to prepay such portion of the special tax obligation as may be necessary in the determination of the City to ensure that adequate debt service coverage exists with respect to any outstanding bonds or otherwise provides security in a form and amount deemed necessary by the City Council to provide for the payment of debt service on the bonds.

4. All developed and undeveloped property within any community facilities district which is not otherwise statutorily exempt from the levy of special taxes shall bear its appropriate share of the community facilities district's aggregate special tax obligation from the date of formation of the community facilities district consistent with the other goals and policies set forth herein.

5. A partial and/or total prepayment option shall be included in any rate and method of apportionment of special taxes to pay for public facilities. No prepayment shall be permitted of a special tax levied to finance authorized services and/or maintenance.

6. The maximum special tax to pay for public facilities shall be levied against any parcel used for private residential purposes in the first fiscal year following the fiscal year in which the building permit for the construction of a residential dwelling unit on such parcel is issued and such maximum special tax may not escalate after the first fiscal year in which such special tax is so levied.

7. The rate and method of apportionment of a special tax to pay for public facilities shall specify a fiscal year beyond which the special tax may not be levied on any parcel used for private residential purposes. A special tax to pay for public services and/or maintenance shall have no termination date unless established by the City Council.

8. The rate and method of apportionment of a special tax to pay for public services and/or maintenance shall include life-cycle replacement costs for maintained facilities, as determined by the City Manager, or his or her designee.

9. The rate and method of apportionment of a special tax to pay for public services and/or maintenance shall authorize annual inflationary adjustments to the maximum special tax. The

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authorized adjustments shall be based upon industry standard published indices, or such other data as may be approved by the City Manager, or his or her designee. In all instances, it shall be the policy of the City to employ the most specific applicable index. Examples include applying the Consumer Price Index for Urban Wage Earners and Clerical Workers to labor costs and applying the Construction Cost Index to asset replacement costs.

Terms and Conditions of Special Tax Bonds

All terms and conditions of any special tax bonds issued by the City for any community facilities district, including, without limitation, the sizing, timing, term, interest rates, discount, redemption features, flow of funds, investment provisions and foreclosure covenants, shall be established by the City. Each special tax bond issue shall be structured to adequately protect bond owners and to avoid negatively impacting the bonding capacity or credit worthiness of the City. Unless otherwise approved by the City Council, the following shall serve as minimum bond requirements:

1. A reserve fund shall be established for each bond issue to be funded out of the bond proceeds in an amount equal to 10% of the original proceeds of the bonds or such lesser amount as may be required by federal tax law.

2. Interest shall be capitalized for a bond issue only so long as necessary to place the special tax installments on the assessment roll; provided, however, interest may be capitalized for a term to be established in the sole discretion of the City Council on a case-by-case basis, not to exceed an aggregate of 24 months, taking into consideration the value-to-debt ratio, the expected timing of initial occupancy dates for the private improvements being constructed, expected absorption and buildout of the project, the expected construction and completion schedule for the public improvements to be funded from the proceeds of the bond issue in question, the size of the bond issue, the development pro forma and the equity position of the applicant and such other factors as the City Council may deem relevant.

3. In instances where multiple series of bonds are to be issued, the City shall determine what improvements shall be financed from the proceeds of each series of bonds.

4. Neither the faith, credit or taxing power of the City shall be pledged to the payment of the bonds. The sole source of revenue for the payment of the bonds shall be the special taxes, capitalized interest, if any, and moneys on deposit in the reserve fund established for such bonds.

Discharge of Special Tax Obligation

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It is the policy of the City that the special tax obligation related to the financing of the acquisition or construction of public improvements may be prepaid and discharged in whole or in part at any time. The applicant for the formation of a Development Related CFD must provide notice and opportunity for the purchasers of property within such community facilities district to prepay the special tax obligation applicable to such property at the time of the close of escrow.

The applicant for the formation of a Development Related CFD must prepare and present a plan, satisfactory to the City Council, prior to the public hearing to consider the formation of such community facilities district describing how the prospective purchaser will be notified of the existence of the special tax lien and the options which the prospective purchaser has regarding the prepayment and discharge of the special tax obligation.

Disclosure to Property Purchasers in Development Related CFD's

The applicant for the formation of a Development Related CFD will be required to demonstrate to the satisfaction of the City Manager (when the term City Manager is used herein it shall mean the City Manager or his or her designee) that there will be full disclosure of the special tax obligation for such community facilities district and of any and all other special taxes or assessments on individual parcels to prospective purchasers or lessees of property within such community facilities district, including interim purchasers, merchant builders, residential homeowners and commercial or industrial purchasers or lessees.

Such notice must include all of the following in addition to such other provisions as may be required by the Mello-Roos Act, the Municipal Code of the City or the applicant may deem necessary:

1. Provide for full disclosure of the existence of the special tax lien and any other assessment or special tax obligation applicable to the properties within the community facilities district (whether imposed by the City or any other public agency), including the principal amount of the special tax obligation and any other applicable assessment or special tax obligation, term of each of the assessment or special tax liens and the amount of the expected payments of the special taxes and the maximum authorized special tax.

2. Disclose the option to prepay the special tax to pay for public facilities or allow the special tax to pay for public facilities to be passed through to the purchaser of such property and the adjustment, if any, in the sales price of the homes or other property which will apply if the special tax lien is passed through. Provide the ability for the prospective purchaser to elect to exercise the option either to prepay the special tax obligation for facilities at the close of escrow or to have the special taxes included in the property taxes for the property. Such disclosure shall be placed in all sales

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brochures, all other on-site advertising and all purchase documents.

3. Specify in all disclosure documents the name, title, telephone number and address of a representative of the City as provided to the applicant who may be contacted by any prospective purchaser of property within the community facilities district for further information regarding the community facilities district and the special tax liens.

The applicant must agree to provide an original copy of all applicable disclosure documents to the City prior to initiating property sales.

Preformation Cost Deposits and Reimbursements

Except for those applications for community facilities districts where the City is the applicant, all City and consultant costs incurred in the evaluation of applications and the proceedings to form a community facilities district and issue special tax bonds therefor will be paid by the applicant by advance deposit with the City of moneys sufficient to pay all such costs.

Each application for the formation of a community facilities district shall be accompanied by an initial deposit in an amount to be determined by the City Manager to be adequate to fund the evaluation of the application and undertake the proceedings to form the community facilities district and issue the special tax bonds therefor. The City Manager may, in his or her sole discretion, permit an applicant to make periodic deposits to cover such expenses rather than a single lump sum deposit; provided, however, no preformation costs shall be incurred by the City in excess of the amount then on deposit for such purposes. If additional funds are required to pay required preformation costs, the City Manager may make written demand upon the applicant for such additional funds and the applicant shall deposit such additional funds with the City within five (5) working days of the date of receipt of such demand. Upon the depletion of the funds deposited by applicant for preformation costs, all proceedings shall be suspended until receipt by the City of such additional funds as the City Manager may demand.

The deposits shall be used by the City to pay for costs and expenses incurred by the City incident to the evaluation of the application and the proceedings for the formation of the community facilities district and the issuance of the special tax bonds therefor, including, but not limited to, legal, special tax consultant, engineering, appraisal, market absorption, financial advisor, administrative and staff costs and expenses, required notifications, printing and publication costs.

The City shall refund any unexpended portion of the deposits upon the occurrence of one of the following events:

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1. The formation of the community facilities district or the issuance of the special tax bonds;
2. The formation of the community facilities district or the issuance of the special tax bonds is disapproved by the City Council;
3. The proceedings for the formation of the community facilities district and the issuance of the special tax bonds are abandoned at the written request of the applicant; or
4. The City has determined that the special tax bonds will not be issued and sold.

Except as otherwise provided herein, the applicant shall be entitled, at the option of the applicant, to reimbursement of, or credit against, special taxes for all amounts deposited with the City to pay for costs incident to the evaluation of the application and the proceedings for the formation of the community facilities district and the issuance of the special tax bonds therefor upon the formation of the community facilities district and the successful issuance and sale of the special tax bonds for the community facilities district. Any such reimbursement shall be payable solely from the proceeds of the special tax bonds.

The City shall not accrue or pay interest on any moneys deposited with the City.

Selection of Consultants

The City shall select and retain all consultants necessary for the evaluation of any application and the proceedings for the formation of a community facilities district and the issuance of the special tax bonds therefor, including, but not limited to, special tax consultant, bond counsel, financial advisor, underwriter, appraiser, and market absorption analyst after consultation with the applicant.

Land Use Approvals

Properties proposed to be included in a Development Related CFD must have received such discretionary land use approvals as may, in the determination of the City Manager, or his or her designee, be necessary to enable the City to adequately evaluate the community facilities district including the properties to be included and the improvements proposed to be financed. The City will issue bonds secured by the levy of special taxes within a Development Related CFD when (i) the properties included within such community facilities district have received those applicable discretionary land use approvals which would permit the development of such properties consistent with the assumptions utilized in the development of the rate and method of apportionment of the special taxes for such community facilities district; (ii) applicable environmental review has been

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completed; and (iii) the City has determined that the other prerequisites to a bond sale have been satisfied.

It is the policy of the City Council in granting approval for development such as zoning, specific plan or subdivision approval to grant such approval as a part of the City's ongoing planning and land use approval process. In granting such approval, the City reserves such rights as may be permitted by law to modify such approvals in the future as the City Council determines the public health, safety, welfare and interest may require. Such approval when granted is subject to a condition that the construction of any part of the development does not, standing alone, grant any rights to complete the development of the remainder of such development. Construction of public improvements to serve undeveloped land financed through a community facilities district shall not vest any rights to the then existing land use approvals for the property assessed for such improvements or to any particular level, type or intensity of development or use. Applicants for a Development Related CFD must include an express acknowledgment of this policy and shall expressly waive on their behalf and on behalf of their successors and assigns any cause of action at law or in equity including, but not limited to, taking or damaging of property, for reassessment of property or denial of any right protected by USC Section 1983 which might be applicable to the properties to be assessed.

Application Procedure for Development Related CFD's

Any application for the establishment of a community facilities district shall contain such information and be submitted in such form as the City Manager may require. In addition to such information as the City Manager may require, each application must contain:

1. Proof of authorization to submit the application on behalf of the owner of the property for which the application is submitted if the applicant is not the owner of such property.
2. Evidence satisfactory to the City Manager that the applicant represents or has the consent of the owners of not less than 67%, by area, of the property proposed to be subject to the levy of the special tax.
3. For any Development Related CFD proposed to finance improvements to benefit new development, a business plan for the development of the property within the proposed community facilities district and such additional financial information as the City Manager may deem necessary to adequately review the financial feasibility of the community facilities district. For Development Related CFD's proposed to finance improvements to benefit new development, the applicant must demonstrate to the satisfaction of the City Manager the ability of the owner of the property proposed to be developed to pay the special tax installments for the community facilities district and any other

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assessments, special taxes and ad valorem taxes on such property until full build out of the property.

It is the intention of the City Council that applicants for a community facilities district have an early opportunity to have the application reviewed by City staff for compliance with this policy. In that regard, the City Council hereby directs the City Manager to create a community facilities district application review committee composed of the City Attorney, Director of Public Works, City Engineer, Director of Development Services, and Finance Director, or their designees, and such additional persons as the City Manager may deem necessary. The committee may meet with the applicant for a community facilities district for the purpose of reviewing an application to form a community facilities district following the determination by the City Manager, or his or her designee, that the information contained in the application for such community facilities district complies with the requirements of this policy. Following the review of such an application, the committee shall prepare and submit a report to the City Manager containing the findings and recommendations of the committee regarding the application.

Following review of the committee report, the City Manager shall place the application on the City Council agenda for review. After review of the application and consideration of the committee report, the City Council shall determine whether or not to approve the initiation of proceedings to form the community facilities district. The decision of the City Council pertaining to the application shall be final.

The ability of a property owner or developer to obtain financing of public improvements from the proceeds of tax-exempt bonds provides substantial economic benefits to such owner or developer not the least of which may be the financing of such improvements at interest rates substantially lower than conventional financing interest rates, if such conventional financing is available, and/or the ability to obtain financing without providing equity compensation to the lender. In providing such financing for a Development Related CFD the City Council believes that the City is providing valuable consideration to the property owner or developer and should be receive consideration in exchange. It is the goal of the City to ensure that the City and the remainder of its residents, property owners and taxpayers are compensated for the consideration provided to the property owner or developer of a Development Related CFD and that such compensation should be one percent (1%) of the total authorized bonded indebtedness for such a community facilities district. Prior to the issuance of special tax bonds for any Development Related CFD, the applicant shall pay to the City the pro rata amount of any compensation payable to the City as consideration for the City's agreement to provide the financing mechanism for the financing of the authorized improvements and eligible incidental expenses and to acquire the authorized improvements pursuant to the terms and conditions of an

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agreement between the City and the property owner or developer as appropriate. For example, if the compensation payable to the City for such consideration is \$100,000 for a Development Related CFD where the total authorized bonded indebtedness is \$10,000,000 and the series of special tax bonds to be initially issued is \$5,000,000, the compensation payable to the City prior to the issuance of the initial series of bonds will be the principal amount of the initial bond issue (\$5,000,000) divided by the total amount of the authorized bonded indebtedness (\$10,000,000) multiplied by the total compensation for such Development Related CFD (\$100,000). In this example, the compensation payable prior to the issuance of the first series of bonds would be:

$$\frac{\$5,000,000}{\$10,000,000} \times \$100,000 = \$50,000$$

Community Facilities Districts for Energy Efficiency, Water Conservation, and Renewable Energy Improvements

Introductory Statement

Senate Bill No. 555 (Statutes 2011, Chapter 493) amended the Mello-Roos Act to authorize the use of community facilities districts for financing energy efficiency, water conservation, and renewable energy improvements to privately or publicly owned real property and buildings.

In particular, Senate Bill No. 555 added section 53328.1 to the Mello-Roos Act, thereby authorizing special taxes to be levied only with the unanimous consent of all owners of property to be taxed by such a district.

In light of the legislative findings in section 8 of Senate Bill No. 555, the City Council may determine to establish one or more programs through which the City may use section 53328.1 of the Mello-Roos Act and the related provisions added to the Mello-Roos Act by Senate Bill No. 555 to provide special tax financing for improvements and properties that meet the criteria set forth in the hearing report prepared in connection with the establishment of any such program (each a "Program"). The City will administer each Program or contract with a third-party to administer such program (a "Program Administrator").

With respect to financings done through a Program, the goals and policies set forth in this section, as such goals and policies may be amended from time to time, supersede any other goals and policies adopted by the City concerning the use of the Mello-Roos Act.

1. Eligible Improvements. A program may be used to finance or refinance the acquisition, installation, and improvement of energy efficiency, water conservation, and renewable

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energy improvements on real property and in or on buildings, whether the real property or buildings are privately or publicly owned, subject to the following:

- A. For privately owned real property and buildings, each owner must consent in advance to the financing, in writing.
- B. Financing through a Program is not available for the initial construction of privately-owned residential buildings unless that initial construction is undertaken by the intended owner or occupant.

The City is not establishing any priorities with respect to the financing of Eligible Improvements. Priority for financing shall be considered on a case by case basis as determined by the City or the applicable Program Administrator in accordance with the hearing report prepared in connection with the related Program, as amended or modified from time to time (each a "Hearing Report"). No services (as defined by Government Code Section 53313) will be financed through any Program.

1. Notice to Prospective Owners. To ensure that prospective purchasers of property subject to a special tax levied through a Program are fully informed about the tax, the related Program Administrator will record a notice of special-tax lien for each participating property as required by the Mello-Roos Act and will provide the seller of each with a disclosure notice that satisfies section 53340.2 of the Mello-Roos Act and California Civil Code section 1102.6b.

2. Financing Limits. For each property, the minimum funding request and maximum amount financed shall be determined in accordance with the Hearing Report. It is not expected that the City will issue bonds in connection with any Program. If the City issues bonds in connection with a Program, the City will establish policies concerning the credit quality of such bonds on a case by case basis.

3. Underwriting Requirements for Financings. For each property, the financing of Eligible Improvements on that property must meet the eligibility requirements set forth in the Hearing Report. The Hearing Report may be amended or modified from time to time as specified therein or the City Council may waive or modify any requirement in the Hearing Report on a case by case basis.

4. Maximum Annual Special Tax. The total annual aggregate amount of property taxes and assessments on each property that participates in a Program, including the special tax imposed through such Program may not exceed five percent (5%) of the value of the property. The value of the property will be derived from the assessed value, the appraised value, or an estimate of value based upon data supplied by a reputable real estate information service. If appraisals are used to determine value for any purpose of a Program, the definitions, standards, and assumptions to be used

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in such appraisals shall be determined on a case by case basis by the City or the related Program Administrator.

5. Administration Costs. The annual special tax for each property that participates in a Program must be in an amount sufficient (i) to finance or refinance the Eligible Improvements for such property and (ii) to pay the property's pro-rata share of the City's and the related Program Administrators costs to administer such Program.

6. Minimum Standards; Waiver and Amendment. The policies set forth in this section reflect the minimum standards under which the City will make use of the Mello-Roos Act to finance Eligible Improvements. The City may, in its discretion, require additional measures and procedures, enhanced security and higher standards in particular cases. The City may, in its discretion and to the extent permitted by law, waive any of the policies set forth herein. Such waivers are granted only by action of the City Council. The goals and policies set forth in this section may be amended at any time and from time to time by the City.