



City of Sacramento City Council

915 I Street, Sacramento, CA, 95814
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Meeting Date: 5/15/2012

Report Type: Consent

Title: Amending the Policies and Procedures for Use of Special Assessment and Mello-Roos Community Facility District Financing for Infrastructure and Public Facilities

Report ID: 2012-00466

Location: Citywide

Recommendation: Pass a Resolution amending the Policies and Procedures for Use of Special Assessment and Mello-Roos Community Facility District Financing for Infrastructure and Public Facilities.

Contact: Joseph Cerullo, Senior Deputy City Attorney, (916) 808-5346, Office of the City Attorney

Presenter: None

Department: City Attorney

Division: City Attorney

Dept ID: 03001011

Attachments:

- 1-Description/Analysis
- 2-Attachment 1 Background
- 3-Resolution

City Attorney Review

Approved as to Form
Joseph Cerullo
5/10/2012 1:55:29 p.m.

City Treasurer Review

Reviewed for Impact on Cash and Debt
Russell Fehr
5/8/2012 6:25:42 PM

Approvals/Acknowledgements

Department Director or Designee: Joseph Cerullo - 5/10/2012 11:09:19 AM

Description/Analysis

Issue: As amended effective January 1, 2012, the Mello Roos Community Facilities Act of 1982 (the “**Mello-Roos Act**”) authorizes the establishment of community facility districts for use in financing the installation of energy-efficiency, water-conservation, and renewable-energy improvements to residential, commercial, industrial, or other property. Special-tax financing of such improvements through a community facilities district offers several advantages over the special-assessment financing offered under the PACE Program approved last September. Staff thus is recommending, in a companion report to this one, that the City Council use the Mello-Roos Act to establish a community facilities district through with the City may implement a replacement for the PACE Program: the Clean Energy Sacramento Program (the “**CES Program**”).

One statutory prerequisite for initiating proceedings under the Mello-Roos Act is that the City Council must first adopt and consider its “local goals and policies.” Although the City has such goals and policies, titled *Policies and Procedures for Use of Special Assessment and Mello-Roos Community Facility District Financing for Infrastructure and Public Facilities* (the “**Policies & Procedures**”), they do not reflect the recent amendment to the Mello-Roos Act. So the City Council needs to amend the Policies & Procedures before moving forward.

Policy Considerations: The proposed amendment to the Policies & Procedures and the concomitant establishment of a community facilities district to implement the CES Program are consistent with City Council’s approved policies for the PACE Program back in September 2011.

Environmental Considerations:

California Environmental Quality Act (CEQA): Adoption of a resolution amending the Policies & Procedures is not a “project” subject to CEQA because (a) it has no potential to cause a significant effect on the environment and (b) it pertains to creation of a government-funding mechanism not involving a commitment to a specific project that may result in a potentially significant physical impact on the environment. (Cal. Code Regs. title. 14, §§ 15061(b)(3) & 15378(b)(4).)

Sustainability: Establishing and implementing the CES Program as a replacement for the PACE Program will play a major role in helping the City meet its climate-action plan goals for reducing greenhouse-gas emissions from the second largest greenhouse-gas emitting sector, existing buildings.

Commission/Committee Action: None

Rationale for Recommendation: Amending the Policies & Procedures is a necessary procedural step to establishing and implementing the CES Program under the Mello-Roos Act and is consistent with City Council’s approval of the PACE Program in September 2011. In addition, establishing the CES Program not only will expand to the pool of participants (residential properties and public buildings will now be eligible) but also will provide a more familiar financing structure to the financial markets, which we hope will translate to lower interest rates for program participants.

Financial Considerations: There are no financial impacts to any City funds.

Emerging Small Business Development (ESBD): None

Background

Last September, the City Council approved formation of the Property Assessed Clean Energy Program (the “**PACE Program**”), through which the City would provide special-assessment financing for the installation of energy-efficiency, water-conservation, and renewable-energy improvements to commercial and industrial properties but not to residential properties.

In 2011, the Legislature passed and the Governor signed Senate Bill No. 555, which became effective January 1, 2012, and amended the Mello Roos Community Facilities Act of 1982 (the “**Mello-Roos Act**”). The amendment authorizes the establishment of community facility districts through which special-tax financing may be offered for the installation of energy-efficiency, water-conservation, and renewable-energy improvements to residential, commercial, industrial, or other property. Importantly, no property may be levied with the special tax unless its owners unanimously consent.

Staff believes that establishing a community facilities district to provide special-tax financing for the installation of such improvements offers several advantages over the special-assessment financing offered under the PACE Program. Accordingly, staff is recommending, in a companion report to this one, that the City Council use the Mello-Roos Act, as amended by Senate Bill No. 555, to establish a community facilities district through which the City may implement a replacement for the PACE Program: the Clean Energy Sacramento Program (the “**CES Program**”).

But before the City Council may initiate proceedings to establish such a district, the Mello-Roos Act requires the City Council to adopt and consider “local goals and policies” that satisfy specified criteria. The City’s existing local goals and policies, titled *Policies and Procedures for Use of Special Assessment and Mello-Roos Community Facility District Financing for Infrastructure and Public Facilities* (the “**Policies & Procedures**”), were adopted in 1993 and last amended in 1994 (Resolution Nos. 93-381 and 94-491). Thus, the Policies & Procedures do not reflect the 2011 amendment to the Mello-Roos Act, and the City Council needs to amend them before adopting a resolution of intention to establish a community facilities district for the CES Program. To that end, staff recommends adoption of the attached amendatory resolution, which will add to the Policies & Procedures a section that addresses the use of community facilities districts to finance energy-efficiency, water-conservation, and renewable-energy improvements on property within the City.



RESOLUTION NO.

Adopted by the Sacramento City Council

AMENDING THE POLICIES-AND-PROCEDURES MANUAL FOR FINANCING INFRASTRUCTURE AND PUBLIC FACILITIES THROUGH SPECIAL ASSESSMENT DISTRICTS AND COMMUNITY FACILITIES DISTRICTS

Background

- A. The Mello Roos Community Facilities Act of 1982, set out in the California Government Code beginning at section 53311 (the “**Act**”), provides that a local agency may initiate proceedings to establish a community facilities district (a “**CFD**”) only after first adopting and considering local goals and policies concerning the use of the Act.
- B. On June 29, 1993, in compliance with section 53311 of the Act, the City Council adopted *Policies and Procedures for Use of Special Assessment and Mello-Roos Community Facilities District Financing for Infrastructure and Public Facilities* (the “**Policies & Procedures**”). The City Council updated the Policies & Procedures on August 9, 1994. (See Resolution Nos. 94-491 and 93-381).
- C. In 2011, the Legislature passed and the Governor signed Senate Bill No. 555, which became effective on January 1, 2012 (Stats. 2011, ch. 493). Senate Bill No. 555 amended the Act to authorize the establishment of CFDs for use in financing the installation of energy-efficiency, water-conservation, and renewable-energy improvements to residential, commercial, industrial, or other property. The City Council desires to amend the Policies & Procedures so that the City may avail itself of this new authority.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

The Policies & Procedures are hereby amended by adding a new section 19, to read in its entirety as follows:

19. COMMUNITY FACILITIES DISTRICTS FOR ENERGY-EFFICIENCY, WATER-CONSERVATION, AND RENEWABLE-ENERGY IMPROVEMENTS

Senate Bill No. 555 (Statutes 2011, chapter 493) amended the Mello-Roos Community Facilities Act of 1982 (Gov. Code, §§ 53311-53368.3) (the “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 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 has determined to establish a program through which the City may use section 53328.1 of the Act and the related provisions added to the Act by Senate Bill No. 555 to provide special-tax financing for improvements and properties that meet the criteria set forth below (the “Program”). The City will contract with a third party that has the requisite expertise and wherewithal to administer and fund the Program in accordance with the Act and the goals and policies set forth in this section 19 (the “Program Administrator”).

With respect to financings done through the Program, the goals and policies set forth in this section 19 supersede the goals and policies set forth in section 1 through 18 and exhibits A through F.

- a. **Eligible Property.** The Program may be used to finance or refinance the acquisition, installation, and improvement of energy-efficiency, water-conservation, and renewable-energy improvements on real property and buildings within the City, whether the real property or buildings are privately or publicly owned, subject to the following:
 - (i) For privately owned real property and buildings, each owner must consent in advance to the financing, in writing.
 - (ii) Financing through the Program is not available for the initial construction of privately owned residential buildings unless the initial construction is undertaken by the intended owner or occupant.

- b. **Eligible Improvements.** Financing through the Program is available for the following:
 - (i) **Energy-efficiency measures.** Air sealing and ventilation; air filtration; building envelope; duct leakage and sealing; bathroom, ceiling, attic, and whole-house fans; insulation; defect correction; attic, floor, walls, roof, ducts; weather-stripping; sealing; geothermal exchange heat pumps; HVAC systems; evaporative coolers (coolers must have a separate ducting system from air conditioning and heating ducting system); natural-gas-storage water heater (Energy Star listed); tank-less water heater; solar-water-heater system; reflective insulation or radiant barriers; cool roof; windows and glass doors (U value of 0.40 or less and solar-heat-gain coefficient of 0.40 or less); window film; skylights; solar tubes; additional building openings to provide additional natural light; lighting (Energy Star listed – no bulb, only retrofits); and pool equipment (e.g., pool-circulating pumps).

- (ii) **Other non-residential building measures.** Occupancy-sensor lighting fixtures; SMART parking-lot bi-level fixture; SMART parking-garage bi-level fixtures; SMART pathway lighting; SMART wall-pack fixtures; task ambient office lighting; classroom lighting; refrigerator case LED lighting with occupancy sensors; wireless daylight-lighting controls; kitchen exhaust variable air-volume controls; and wireless HVAC controls & fault detection.
 - (iii) **Photovoltaic and solar-thermal equipment.** Solar-thermal hot-water systems; solar-thermal systems for pool heating; photovoltaic systems (electricity); and emerging technologies (see section 19(a)(vi) below, concerning custom projects).
 - (iv) **Water-conservation measures.** Faucet aerators; core-plumbing system; gray-water system; instantaneous hot-water heater; recirculation hot-water system; demand initiated hot-water system; hot-water pipe insulation; irrigation-control system; irrigation system; rainwater cistern; low-flow showerhead; high-efficiency toilets; demand water softener; and whole-house water-manifold system.
 - (v) **Water-conservation measures for non-residential applications.** Cooling-condensate reuse; cooling-tower conductivity controllers; deionization; filter upgrades; foundation drain water; industrial-process water-use reduction; pre-rinse spray valves; recycled water source; urinals; and waterless urinals.
 - (vi) **Custom projects.** A contractor may evaluate and, in consultation with the City, approve funding for projects that are not “off the shelf” Eligible Improvements. Such “Custom Projects” may involve large-scale industrial or commercial energy-efficiency improvements; processing or industrial mechanical systems; and renewable energy-generation from sources such as geothermal and fuel cells. Examples of Custom Projects that will be considered for funding through a district established in accordance with this section 19 are building energy-management controls; HVAC duct zoning-control systems; irrigation pumps and controls; lighting controls; industrial- and process-equipment motors and controls; Fuel cells; wind-turbine power system; natural gas; hydrogen fuel; other fuel sources (emerging technologies); and co-generation (heat and energy).
- c. **Notice to Prospective Owners.** To ensure that prospective purchasers of property subject to a special tax levied through the Program are fully informed about the tax, the Program Administrator will record a notice of special-tax lien for each participating property as required by the Act and will provide the seller of each property with a disclosure notice that satisfies section 53340.2 of the Act and California Civil Code section 1102.6b.

- d. **Financing Limits.** For each property, the minimum funding request is \$2,500, and the amount financed for Eligible Improvements may not exceed 10% of the property's fair-market value unless the City approves higher limits.
- e. **Financings of \$250,000 or Less.** For Program financings of \$250,000 or less, the following underwriting requirements apply:
- (i) Only Eligible Improvements may be financed.
 - (ii) The property to be improved must be located within the City.
 - (iii) The owner of the property must provide each lender that has a lien on the property with notice (in a form approved by the City) that a special-tax lien will be recorded against the property.
 - (iv) Each holder of fee-simple title to the property must sign the Program documents approved by the City and the Program Administrator. Before submitting an application for special-tax financing, the property owner must ensure that anybody with a recorded ownership interest in the property will agree to participate in the Program in accordance with the Program requirements.
 - (v) The property owner must participate in applicable federal-, state-, utility-, and City-sponsored incentive programs, to the extent the improvement project qualifies for such incentive programs at the time of application and the programs do not conflict with Program requirements.
 - (vi) The property owner must agree to provide the Program Administrator with access to the property's utility-usage records for up to two years prior to and following project processing to enable the Program Administrator to monitor energy savings.
 - (vii) The property owner must be current in the payment of all obligations secured by the property (including loans, property taxes, assessments, and tax liens) and must have been current for all such obligations during the three years before the date of the application (or, if the owner has held title less than three years, during the time the property owner has held title to the property). The Program Administrator may review public records and private credit histories, including county real-property records, to verify compliance with this requirement. Certain allowances may be made for delays in property-tax payment that do not reflect financial distress. The application of a property owner who is appealing a property-tax assessment will be reviewed, and the property owner's eligibility will be determined, on a case-by-case basis.

- (viii) The total mortgage debt on the property may not exceed 85% of the market value of the property, derived from the assessed value, the appraised value, or an estimate of value based upon data supplied by CoStar Group, Inc. The phrase “total mortgage debt” means the total debt secured by the property before recordation of the notice of special-tax lien, including mortgages, promissory notes, equity lines of credit, the current values of all fixed-lien special assessments, and the calculated equivalent principal values of all prior special-tax liens on the property.
- (ix) Unless approved by the City, the special-tax financing may not exceed 10% of the market value of the property, derived from the assessed value, the appraised value, or an estimate of value based upon data supplied by CoStar Group, Inc.
- (x) The total annual aggregate amount of property taxes and assessments on each property that participates in the Program, including the special-tax imposed through the Program, may not exceed the following percentages of the property’s market value:

Residential Property			
Financing Term	Maximum Program Special Tax	Maximum for Other Taxes & Assessments	Total Annual Aggregate
20 years	1.1%	2.0%	3.1%
10 years	1.5%	2.0%	3.5%
5 years	2.5%	2.0%	4.5%

Commercial, Industrial, and Other Property (including Public)			
All terms	3.0%	2.0%	5.0%

The market value will be derived from the assessed value, the appraised value, or an estimate of value based upon data supplied by CoStar Group, Inc.

- (xi) Property owners must pay in full, on a timely basis, all ad valorem property taxes, all special taxes, and all special assessments and other obligations related to the property. Consequently, the City and the Program Administrator reserve the right, in their sole discretion, to request supplemental information from owners and to deny applications based on any negative reports.
- (xii) If the City so directs, the Program Administrator will require an energy audit for all properties that can estimate the utility-cost savings resulting from the Eligible Improvements. For commercial and industrial properties, the audit must show that the utility-cost savings will be greater than the cost of installing the improvements over the useful life of the improvements. This will define a savings-to-investment ratio of greater than one (SIR>1) and ensure that, over the life of the improvements, the owners of commercial and industrial properties have more money

available to pay the expenses of the property, including total mortgage debt (defined above in section 19.e(viii)), than was the case before the SB 555 Program financing.

- f. **Financings between \$250,000 and \$500,000.** For Program financings of more than \$250,000 but less than \$500,000 the following underwriting requirements apply:
- (i) All of the requirements listed under section 19.e above.
 - (ii) The Program Administrator will open an escrow with a local title company and require that the property owner obtain title insurance that will protect the property owner and investors if there is a defect in the title to the property.
 - (iii) The property owner must submit a Natural Hazard Zone Disclosure Report on the property. If the report indicates the possible presence of environmental contaminants, then Program Administrator will require that the property owner submit a Phase I Environmental Assessment for review by Program Administrator. Based on that review, the Program Administrator may disapprove the property owner's participation in the Program.
- g. **Financings of \$500,000 or More.** For Program financings of \$500,000 or more, the following underwriting requirements apply:
- (i) All of the requirements listed under sections 19.e and 19.f above.
 - (ii) The required energy audit and the determination of estimated energy savings must be conducted by an engineering firm that the Program Administrator determines is qualified in the fields of energy-efficiency and renewable-energy analysis.
 - (iii) The Program Administrator will encourage property owners to obtain insurance that will guarantee the energy-cost savings, as predicted by the engineered audit, for at least ten years.
- h. **Administration Costs.** The special-tax rate for each property that participates in the Program must be in an amount sufficient (i) to finance or refinance the Eligible Improvements and (ii) to pay the property's pro-rata share of the City's and the Program Administrators costs to administer the Program.