

DATE: April 21, 2009

TO: Mayor and City Council

FROM: Director of Finance

SUBJECT: Resolution of Intention to Create Proposed Community Facilities District Intended to Finance Police Protection Services in the Cannery Place Area, and Adoption of Local Goals and Policies for the Community Facilities Districts

RECOMMENDATION

That Council approves the attached resolution amending the Local Goals and Policies for Community Facilities Districts (CFD) and the resolution of intention to form the CFD for the Cannery Place Area (CFD No. 2).

BACKGROUND

The City has approved a major development, the Cannery Place Project, in the City's Downtown Redevelopment Area. The Developers, Citation Homes and Weyerhauser Realty Investors (WRI), and the City have been working together to assure the success of this Project. The Project includes the development of approximately 575 residential units, a retail parcel, a new elementary school, and major new parks and open space. The Developers and the City have explored the use of a CFD to assure the delivery of police protection services to the Downtown Corridor and the Cannery Project in perpetuity. The Burbank Elementary School was opened on August 25, 2008; the Cannery Park has also been open since last Summer. Some residential units are built and currently leased, with the full build out expected to occur by 2015.

CFDs are created by local governments in California under State authorizing legislation known as the Mello-Roos Community Facilities Act of 1982, California Government Code 53311 et. seq. (Act) and may also be created by charter cities by ordinance. The Act provides financing for certain public capital facilities and services eligible under the Act. The City is planning the formation of the Cannery Place Area CFD and future CFDs for other projects within the City.

In October 2008, the Council awarded a professional services contract to CSG Advisors for Financial Advisor services. Since then a Finance Team has been created to add Goodwin Consulting Group as special tax consultant, and Jones Hall as special legal counsel, and senior staff. The Finance Team has been working with the Developers to form CFD No. 2.

DISCUSSION

Purpose of the Cannery Place CFD – The objective of CFD No. 2 is to create a funding source for police protection services required to meet the demands of this new development. As required under the Act, the police services to be provided are in addition to those currently provided within the CFD No. 2 boundary and will not supplant services already available. The City has determined that the new development will create an additional cost burden to provide police protection services beyond that which is currently available. The Council has received petitions from the land owners of the Cannery Place development requesting that the City proceed with the establishment of a CFD that would specifically fund the eligible costs.

Determination of CFD Boundary – The CFD No. 2 boundary includes the property owned by Citation Homes and Weyerhaeuser Realty Investors; east of the Southern Pacific Railroad tracks, within the streets of Filbert, Myrtle, Meek, and Winton Avenue, south of the Burbank Elementary School. The Cannery Place area development has approval for approximately 575 residential units and a retail parcel, all which would be within the CFD boundary.

There are two future annexation areas: 1) the residual (previous) Burbank School site, owned by the Hayward Redevelopment Agency; and 2) the large parcel west of Filbert Street, owned by Libitzky Holdings LP et al (Libitzky). They are not included in the CFD boundary due to the uncertainty as to how these areas will be developed in the future, specifically if there will be below market value units. Future development of these sites will be conditioned upon the landowners agreeing to pay for public services through a community facilities district like CFD No. 2. By including the two properties in the CFD No. 2 future annexation areas, the City will be able to use a streamlined annexation procedure if the properties are going to be included in CFD No. 2 and the City will be able to identify the appropriate special tax for those properties at the time they are developed. The future annexation areas will be annexed to CFD No. 2 only if there is unanimous approval of the owners of each parcel at the time of the annexation.

Proposed Special Tax Rates – Maximum annual tax rate is set at \$484 per residential market-rate unit. Beginning July 1, 2010, and each July 1 thereafter, the tax rate shall be increased by the greater of 4% or the Bay Area CPI. The tax will be levied annually, and collected in the same manner as regular property taxes.

The Rate and Method of Apportionment (RMA) outlines the methodology used to calculate these taxes due for all parcels of taxable properties in the district boundaries, after a Certificate of Occupancy has been issued by the City. Government-owned properties and vacant land are not subject to the tax.

Local Goals and Policies – The Government Code requires the local agency to adopt Local Goals and Policies prior to initiating a Mello-Roos District. In October 2001 (at the time the Eden Shores CFD (CFD No. 1) was created, the City adopted these Goals and Policies and incorporated them into the Hayward Municipal Code. Local Goals and Policies provide guidance by: 1) establishing the City's priorities for the financing of public facilities and public services using community facilities districts; 2) defining the public services eligible to be financed by the City using the community facilities districts; 3) defining the public facilities

eligible to be financed by the City using community facilities districts; and (4) outlining bond issue requirements, and other procedures relating to special tax financings. The primary purpose of the proposed revised Local Goals and Policies is to comply with recent amendments of the Mello-Roos Act and to update the Local Goals and Policies consistent with best practices.

Process to Create CFD No. 2 – The following steps are necessary to create CFD No. 2:

- Council adopts the Resolution Approving an Amendment and Restatement of the Local Goals and Policies for CFDs.
- City has received petitions from the owners of at least 10% of the area of land, requesting the formation of a CFD to finance public safety services. In the petition, the property owners, as the eligible voters in CFD No. 2, also waive otherwise applicable election waiting periods and procedures.
- Council adopts the “Resolution of Intention to Establish Community Facilities District No. 2 and Future Annexation Area,” which establishes the CFD No. 2 boundaries and defines certain future annexation areas. This action formally starts the formation process and sets the public hearing date for May 26, 2009. This resolution also approves the RMA, subject to voter approval.
- Staff and the Finance Team complete the following: record the CFD No. 2 boundary map, publish the notice of public hearing, and prepare the CFD Report outlining the services and costs to be financed by the CFD.
- Council holds a public hearing on Tuesday, May 26, 2009. During this public hearing, the Council hears any protests against the formation of the CFD No. 2.
- After the public hearing on May 26, the Council takes the following action:
 - a. Adopt the “Resolution of Formation of CFD No. 2 and Establishment of the Future Annexation Area”
 - b. Adopt the “Resolution Calling the Special Land Owner Election”
 - c. Hold the landowner election and canvass the results of the election. A two-thirds vote of those voting at the election (based on a one voter per acre basis) is required to approve the special taxes.
 - d. Adopt the “Resolution Confirming Results of the Election and Directing Recording of the Notice of Special Tax Lien”
 - e. Introduce the “Ordinance Ordering the Levy of Special Taxes.”
- On June 2, 2009, Council will approve the Ordinance after the second reading and the Special Tax will be effective 30 days thereafter.

CFD Administrative Requirements – On an annual basis the City will need to confirm the special tax rates to be applied within CFD No. 2 including application of the escalation rate, and enroll the taxes with the County Auditor-Controller. When the City collects the special taxes, certain accounting measures will be required to ensure that the revenues are not commingled with City funds used to pay for other City operating costs. If property owners are delinquent in the payment of special taxes, the City may decide to foreclose on such property owners in a process separate from County foreclosure process for ad valorem delinquencies. Costs to administer CFD No. 2, including any foreclosure action, are paid from the special taxes revenues.

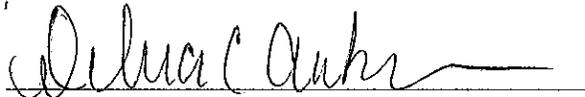
FISCAL AND ECONOMIC IMPACT

The City expects to fund additional police protection services from the CFD No. 2 special taxes collected. There are currently 16 units built for which Certificates of Occupancy have been issued, which is expected to generate \$7,744 in FY 2009-10. The City has issued a total of 38 building permits to date within the CFD No. 2 boundary and the planned full build-out according to the associated final maps, includes a total of 575 residential market rate units. If full build-out is achieved the City projects the tax to be \$278,300 based on the FY 2009-10 rates. These rates are subject to an annual growth rate based on the Bay Area CPI. The City expects full build out to occur by 2015.

SCHEDULE

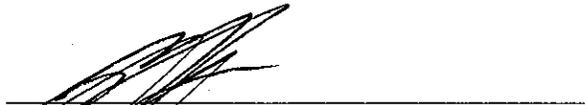
If the Council approves the Resolution of Intention on April 21, and the Public Hearing is held May 26, 2009; CFD No. 2 should be established by May 26, 2009, with a legally effective authority to levy special taxes on or about July 2, 2009. The City will prepare the tax levy and submit to the County by the August due date, in order to receive FY 2009-10 taxes.

Recommended by:



Debra C. Auker, Director of Finance

Approved by:



Gregory T. Jones, City Manager

Attachments:

- A. Draft Resolution Approving Amended and Restated Local Goals and Policies
 - a. Local Goals and Policies for Community Facilities Districts
- B. Draft Resolution of Intention
 - a. Description of Services
 - b. Rate and Method of Apportionment
 - c. Boundary Map

CITY OF HAYWARD

RESOLUTION NO. _____

mae

4/15/09

Introduced by Council Member _____

RESOLUTION APPROVING AMENDED AND RESTATED
LOCAL GOALS AND POLICIES FOR COMMUNITY FACILITIES DISTRICTS

WHEREAS, under the Mello-Roos Community Facilities Act of 1982, as amended, being Sections 53311 and following of the California Government Code (the "Act"), and prior to the institution of any proceedings thereunder, the legislative body of a local agency must adopt goals and policies as provided in the Act; and

WHEREAS, the City Council of the City of Hayward previously approved "Local Goals and Policies for Community Facilities Districts" by Ordinance No. 01-13, entitled "An Ordinance Adding Article 17 to Chapter 8 of the Hayward Municipal Code Relating to Adopting Local Goals and Policies for the Establishment of Community Facilities Districts," adopted on October 9, 2001 (the "Existing Goals and Policies"); and

WHEREAS, the Existing Goals and Policies provide that they may be amended or supplemented by resolution of the City Council; and

WHEREAS, the City Council wishes to amend and restate the Existing Goals and Policies for the purpose of complying with the requirements of the Act and to further update the Existing Goals and Policies.

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

1. Approval. The "Amended and Restated Local Goals and Policies for Community Facilities Districts" (the "Amended Goals and Policies") on file with the City Clerk, which amend and restate the Existing Goals and Policies, are hereby found to meet the requirements of the Act and are hereby adopted by the Council for the purposes of compliance with the Act, subject to further amendment by the Council as may be required from time to time.

2. Effective Date. This resolution and the Amended Goals and Policies shall be effective from and after the date of the adoption of this resolution by the City Council.

IN COUNCIL, HAYWARD, CALIFORNIA, _____, 2009

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

CITY OF HAYWARD

**AMENDED AND RESTATED
LOCAL GOALS AND POLICIES FOR
COMMUNITY FACILITIES DISTRICTS
AND SPECIAL TAX DISTRICTS**

I. GENERAL.

Section 53312.7(a) of the California Government Code requires that the City of Hayward (the "City") consider and adopt local goals and policies concerning the use of the Mello-Roos Community Facilities Act of 1982 (the "Act") prior to the initiation of proceedings on or after January 1, 1994 to establish a new community facilities district ("CFD") under the Act.

These Amended and Restated Local Goals and Policies for Community Facilities Districts (the "Policies") amend and supercede prior Local Goals and Policies adopted by the City on October 9, 2001.

These Policies provide guidance and conditions for the conduct by the City of proceedings for, and the issuance of bonds secured by special taxes levied in, a special tax district or a community facilities district ("CFD") established under the Act or an ordinance adopted by the City in its capacity as a charter city pursuant to Section 3, 5 and 7 of Article XI of the California Constitution (an "Ordinance"). The Policies are intended to be general in nature; specific details will depend on the nature of each particular financing. The Policies are applicable to financings under the Act or an Ordinance and are intended to comply with Section 53312.7 (a) of the Government Code. These Policies shall not apply to any assessment financing or any certificate of participation or similar financings involving leases of or security in public property. The Policies are subject to amendment by the City Council at any time.

In each and every circumstance, the decision as to whether or not the City will make use of the Act or an Ordinance is a decision that will be made solely by the City. Nothing contained herein shall be construed as obligating the City to make use of the Act or an Ordinance in any circumstance or as granting to any person any right to have the City make use of the Act or an Ordinance in any circumstance.

II. FINANCING PRIORITIES.

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

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

- Cultural facilities
- Elementary and secondary school sites and facilities
- Flood control facilities
- Governmental facilities

- Landscaping on public property or in public easements
- Libraries
- Parks and recreational facilities
- Police and fire protection facilities
- Potable and reclaimed water facilities
- Public utilities
- Sanitary sewer facilities
- Storm drain facilities
- Streets and street lighting
- Traffic signals and safety lighting
- Utility relocations
- Other facilities as may be permitted pursuant to the Act or an Ordinance as it may be amended from time to time.

If appropriate, the City shall prepare a public facilities financing plan as a part of the specific plan or other land use document that identifies the public facilities required to serve a project, and the type of financing to be utilized for each facility. The City will attempt to schedule construction of CFD-financed facilities in a manner such that private development will not occur ahead of the installation of public infrastructure necessary to support that development.

Eligible Public Services. In general, the services eligible to be financed by a CFD (the "Services") are those identified in the Act or an Ordinance which are provided by the City, including:

- Fire protection and suppression services and ambulance and paramedic services
- Flood and storm protection including operation and maintenance of storm drainage systems and sandstorm protection systems
- Library services
- Maintenance and lighting of streets and roads
- Maintenance and lighting of parks, parkways and open space
- Operation and maintenance of museums and cultural facilities
- Police protection services
- Recreation program services
- Services related to removal or remedial reation for the cleanup of hazardous substance released or threatened to be released in the environment
- Other services as may be permitted pursuant to the Act or an Ordinance as it may be amended from time to time.

The City may finance services to be provided by another local agency if it determines the public convenience and necessity require it to do so, although the City prioritizes financing services to be provided by the City as described below. If appropriate, the City shall prepare a public services financing plan as a part of the specific plan or other land use document that identifies the public services required to serve a project and the source of funding for each such service.

Eligible Private Facilities. Financed improvements may be privately-owned in the specific circumstances, and subject to the conditions, set forth in the Act or an Ordinance.

Eligible Prior Debt. A CFD may also be formed for the purpose of refinancing any fixed special assessment or other governmental lien on property, to the extent permitted under the Act or an Ordinance, as applicable.

Priorities for Financing. The priority that various kinds of public facilities and services will have for financing through the City's use of the Act or an Ordinance is as follows:

- (a) City services authorized to be financed pursuant to the Act or an Ordinance;
- (b) Backbone infrastructure to be owned and/or operated by the City that is required to serve proposed development and that is identified in an infrastructure master plan, specific plan or other appropriate document approved by the City as a major backbone infrastructure element;
- (c) Other public facilities to be owned and/or operated by the City for which there is a clearly demonstrated public benefit; and
- (d) Public facilities to be owned and/or operated by a public agency other than the City, including such public facilities financed *in lieu* of the payment of development fees imposed by such public agency. If the proposed financing is consistent with a public facilities financing plan approved by the City, or the proposed facilities are otherwise consistent with approved land use plans for the property, the City shall consider entering into a joint financing agreement or joint powers authority in order to finance these facilities. A joint agreement with the public agency that will own and operate any such facility must be entered into at the time specified in the Act or an Ordinance.
- (e) Fee obligations imposed by government agencies the proceeds of which fees are to be used to fund public capital improvements of the nature listed above. The City will not, generally, consider an application to finance fee obligations, but may consider such financing on a case-by-case basis.
- (f) Services provided by a public agency other than the City. If the proposed financing is consistent with a public services financing plan approved by the City, or the proposed facilities are otherwise consistent with approved land use plans for the property, the City shall consider entering into a joint financing agreement or joint powers authority in order to finance these services. A joint agreement with the public agency providing the services must be entered into at the time specified in the Act or an Ordinance.
- (g) Privately owned facilities (that is, facilities not owned by a local agency) will, generally, not be financed through the City's use of the Act or an Ordinance; provided, however, that the City may consider the financing of such facilities on a case by case basis.

In-tract infrastructure will, generally, not be financed through the City's use of the Act or an Ordinance, provided however, that the City may consider the financing of such facilities on a case by case basis.

III. BOND ISSUE CREDIT QUALITY REQUIREMENTS

The following are minimum requirements related to issuance of CFD bond issues by the City. Under extraordinary real estate or bond market conditions, the City may, at its own discretion, require more restrictive criteria or additional credit enhancement to improve credit quality.

Value-to-Public Lien Ratio. Generally, CFD bond issues should have at least a three-to-one property value to public lien ratio after calculating the value of the financed public improvements to be installed, unless otherwise specifically approved by the City Council as provided in Section 53345.8(b)

or (c) of the Act. Property value may be based on either an appraisal (as described in VI below) or on assessed values as indicated on the county assessor's tax roll. The public lien amount shall include the bond issue currently being sold plus the portion of any existing public indebtedness secured by a lien on the properties to be taxed.

Entitlement Status. The City will require all major land use approvals and governmental permits necessary for development of land in the CFD to be substantially in place before bonds may be issued.

Reserve Fund. In order to enhance the credit quality of CFD bond issues, the City generally will require that each such bond issue be secured by a reserve fund. Generally, each such reserve fund will be required to be funded with cash in an amount no less than the least of (a) 10% of the initial principal amount of the bonds of such issue, (b) maximum annual debt service on the bonds of such issue, or (c) 125% of the average annual debt service on the bonds of such issue.

Bond Structure for Owner-Occupied Residential Property. Generally, for a CFD created by a landowner vote where special taxes will be received primarily from owner-occupied residential properties, bonds for such CFD will be structured such that, once principal amortization thereof has commenced, debt service thereon will be substantially level.

Failure to Meet Credit Criteria. Less than a three-to-one property value to public lien ratio, excessive tax delinquencies, or projects of uncertain economic viability may cause the City to disallow the sale of bonds, or require additional credit enhancement prior to bond sale. The City may consider exceptions to the above policies for bond issues that do not represent an unusual credit risk, either due to credit enhancement or other reasons specified by the City, and/or which otherwise provide extraordinary public benefits, to the extent permitted by and subject to any applicable requirements of the Act.

If the City requires letters of credit or other security, the credit enhancement shall be issued by an institution, in a form and upon terms and conditions satisfactory to the City. Any security required to be provided by the applicant may be discharged by the City upon satisfaction of the applicable credit criteria specified by the City.

As an alternative to providing other security, and subject to federal tax law, the applicant may request that a portion of the bond proceeds be placed in escrow with a trustee or fiscal agent in an amount sufficient to assure the financing will meet the applicable credit criteria, including, but not limited to, meeting a value-to-lien ratio of at least three-to-one on the outstanding proceeds. The escrowed proceeds shall be released at such times and in such amounts as may be necessary to assure the applicable credit criteria has been met. Generally, in the event escrow bonds are issued, all interest during the escrow period shall be gross funded. Generally, an escrow bond structure for CFD bonds will not be employed unless such a structure advances an extraordinary City development or financial objective.

Suitable Investors. The City will require that bond financings be structured so that bonds are purchased and owned by suitable investors. For example, the City may require placement of bonds with a limited number of sophisticated investors, large bond denominations and/or transfer restrictions in situations where there is an insufficient value-to-lien ratio, where a substantial amount of the property within a CFD is undeveloped, where tax delinquencies are present in parcels within the CFD, and in any other situation identified by the City.

IV. DISCLOSURES

Purchasers of Property. As a minimum, any disclosures mandated by applicable state law to inform prospective purchasers of their obligations under the CFD shall apply to each CFD. In addition, there may be additional requirements mandated by the City for particular kinds of financings on a case-by-case basis. The City may prescribe specific forms to be used to disclose the existence and extent of obligations imposed by CFD.

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

Continuing Bond Disclosure. Landowners in a CFD that are responsible for ten percent (10%) or more of the annual special taxes must agree to provide: (i) initial disclosure at the time of issuance of any bonds; and (ii) annual disclosure as required under Rule 15c2-12 of the Securities Exchange Commission until the special tax obligation of the property owned by such owner drops below 10%.

V. EQUITY OF SPECIAL TAX FORMULAS AND MAXIMUM SPECIAL TAXES

Minimum Special Tax Levels. Special tax formulas shall provide for minimum special tax levels which satisfy the following payment obligations of a CFD: (a) 110 percent gross debt service coverage for all CFD bonded indebtedness, (b) the administrative expenses of the CFD. Administrative costs of the CFD shall be prioritized ahead of all CFD bonded indebtedness. Generally, the rate and method of apportionment for CFD special taxes will be required to include a back-up tax so that changes in development within the CFD would not result in the inability to levy special taxes that would produce special tax revenues in such amounts.

In addition, the special tax formula may provide for the following to be included in the special tax levels: (a) any amounts required to establish or replenish any reserve fund established in association with the indebtedness of the CFD, (b) the accumulation of funds reasonably required for future debt service, (c) amounts equal to projected delinquencies of special tax payments, (d) the costs of remarketing, credit enhancement and liquidity facility fees, (e) the cost of acquisition, construction, furnishing or equipping of authorized facilities, (f) lease payments for existing or future facilities, (g) costs associated with the release of funds from an escrow account, and (h) the costs of services, (i) the costs incurred to resolve or foreclose on delinquent parcels, and (i) any other costs or payments permitted by law. In structuring the special tax, projected annual interest earnings on bond reserve funds may not be included as revenue for purposes of the calculation.

Generally, the special tax rate and method of apportionment for a CFD will be structured so as to allow the prepayment by property owners of special taxes levied to finance facilities.

Reasonable Basis of Apportionment. The special tax formula shall be reasonable in allocating the CFD's payment obligations to parcels within the CFD. Exemptions from the special tax may be given to parcels which are publicly owned, are held by a property owners' association, are used for a public purpose such as open space or wetlands, are affected by public utility easements making impractical their utilization for other than the purposes set forth in the easements, or have insufficient value to support bonded indebtedness.

Aggregate Tax Burden. For Non-residential Property. The total projected non-residential property tax levels for any CFD (including ad valorem taxes, any maintenance, landscaping or other impositions on the land in the CFD and other similar annual government charges levied on parcels in the CFD, but excluding property owners' association annual levies and as to any special tax levies, based on the expected special tax rates and not any "back-up" special taxes) must be reasonable, and will be considered by the City on a case-by-case basis.

For Residential Property. The total projected residential property tax levels (including ad valorem taxes, any maintenance, landscaping or other impositions on the land in the CFD and other similar annual government charges levied on parcels in the CFD, but excluding homeowners' association annual levies and as to any special tax levies, based on the expected special tax rates and not any "back-up" special taxes) for any CFD (or, if a CFD has multiple improvement areas, for each improvement area and not the entire CFD) shall not exceed, at the time of CFD formation, the lesser of (i) 2.0% of the estimated sales prices of the respective homes to be constructed in the CFD (with such prices to be determined by reference to an absorption study or appraisal prepared for the CFD or such other information as the City shall determine), (ii) any maximum specified in the Act, or (iii) lesser amount as may be determined by the City on a case-by-case basis. The annual increase, if any, in the maximum special tax for any parcel shall not exceed any maximum specified in the Act. The increase in the special tax levied on any residential parcel as a consequence of delinquency or default by the owner of any other parcel shall not exceed any maximum specified in the Act.

Levy on Entire Parcels. Special taxes will only be levied on an entire county assessor's parcel, and any allocation of special tax liability of a county assessor's parcel to leasehold or possessory interest in the fee ownership of such county assessor's parcel shall be the responsibility of the fee owner of such parcel and the City shall have no responsibility therefor and has no interest therein. Failure of the owner of any county assessor's parcel to pay or cause to be paid any special taxes in full when due, shall subject the entire parcel to foreclosure in accordance with the Act.

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

VI. APPRAISALS

The definitions, standards and assumptions to be used for appraisals shall be determined by City staff on a case-by-case basis, with input from City consultants and CFD applicants, and by reference to relevant materials and information promulgated by the State of California, (including, but not limited to, the California Debt and Investment and Advisory Commission). The appraiser shall be selected by or otherwise acceptable to the City, and the appraisal shall be coordinated by and under the direction of, or otherwise as acceptable to, the City.

The appraisal must be dated within three months of the date the bonds are priced, unless the City Council determines a longer time is appropriate.

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

VII. CITY PROCEEDINGS

Petition. For new development projects, a petition meeting the requirements of the applicable authorizing law will be required. The applicant is urged to obtain unanimous waivers of the election waiting period. In applying to the City for formation of a CFD, the applicant must specify any reasonably expected impediments to obtaining petitions, including from co-owners and/or lenders of record (where required). Waiver of the petition shall be made only upon showing of extraordinary hardship. For existing development, petitions are preferred, but may be waived, depending on the nature of the project and degree of public importance.

Deposits and Reimbursements. All City staff and consultant costs incurred in the evaluation of CFD applications and the establishment of the CFD will be paid by the entity, if any, requesting the establishment of the CFD by advance deposit increments. The City shall not incur any expenses for processing and administering a CFD that are not paid by the applicant or from CFD bond proceeds. In general, expenses not chargeable to the CFD shall be directly borne by the proponents of the CFD.

Generally any petition for formation of a CFD to fund Public Facilities shall be accompanied by an initial deposit in the amount not less than \$75,000 to fund initial staff and consultant costs associated with CFD review and implementation. If additional funds are needed to off-set costs and expenses incurred by the City, the City shall make written demand upon the applicant for such funds. If the applicant fails to make any deposit of additional funds for the proceedings, the City may suspend all proceedings until receipt of such additional deposit.

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

Representatives. The City and the applicant shall each designate a representative for each financing district proceeding. The representatives shall be responsible for coordinating the activities of their respective interests and shall be the spokespersons for each such interest. The purpose of this requirement is to avoid duplication of effort and misunderstandings from failure to communicate effectively. In the case of the City, it allows the City's consultants to report to a single official who will, in turn, communicate with other staff members.

Time Schedule. The final schedule of events for any proceeding shall be determined by the City, in consultation with its financing team and the applicant. Any changes will require approval by the appropriate City official. Time schedules will (unless specific exceptions are allowed) observe established City Council meeting schedules and agenda deadlines. To the extent possible, financings will be scheduled to allow debt service to be placed on the tax rolls with a minimum of capitalized interest.

VIII. FINANCING TERMS AND CONDITIONS OF BONDS.

No Impact On City's Credit. All terms and conditions of any CFD bonds shall be established by the City. The City will control, manage and invest all CFD issued bond proceeds. Each bond issue shall be structured to adequately protect bond owners and to not negatively impact the bonding capacity or credit rating of the City through the special taxes, credit enhancements, foreclosure covenant, and reserve funds.

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

Finance Team Selection. The City shall select all consultants necessary for the formation of the CFD and the issuance of bonds, including the underwriter(s), bond counsel, disclosure counsel, financial advisors, appraiser, market absorption/pricing consultant, and the special tax consultant. Prior consent of the applicant shall not be required in the determination by the City of the consulting and financing team.

IX. EXCEPTIONS TO THESE POLICIES.

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

DRAFT

CITY OF HAYWARD

RESOLUTION NO. _____

Introduced by Council Member _____

mae
4115109

RESOLUTION OF INTENTION TO ESTABLISH COMMUNITY FACILITIES DISTRICT

CITY OF HAYWARD
Communities Facilities District No. 2
(Cannery Place Public Services)

WHEREAS, under the Mello-Roos Community Facilities Act of 1982, Chapter 2.5 of Part 1 of Division 2 of Title 5, commencing at Section 53311, of the California Government Code (the "Act"), the City Council (the "Council") of the City of Hayward (the "City") is authorized to establish a community facilities district and to act as its legislative body; and

WHEREAS, this Council, having received petitions from the owners of not less than 10% of the area of land proposed to be included in the proposed community facilities district, now desires to proceed with the establishment of such community facilities district to finance costs of public safety services required to meet the demands of development of lands in the City; and

WHEREAS, pursuant to Section 53339.2 of the Act, this Council further desires to undertake proceedings to provide for future annexation of territory to the proposed community facilities district.

NOW, THEREFORE, be it resolved as follows:

1. Authority. This Council proposes to conduct proceedings to establish a community facilities district pursuant to the Act, and hereby determines that public convenience and necessity require that a future annexation area be established pursuant to the Act.
2. Name of CFD; Future Annexation Area. The name proposed for the community facilities district is "City of Hayward Community Facilities District No. 2 (Cannery Place Public Services)" (the "CFD").

The name proposed for the territory proposed to be annexed into the CFD in the future is "City of Hayward Community Facilities District No. 2 (Cannery Place Public Services) (Future Annexation Area)" (the "Future Annexation Area").

3. **Boundaries Described.** The proposed boundaries of the CFD and the Future Annexation Area are as shown on the map of them on file with the City Clerk, which boundaries are hereby preliminarily approved and to which map reference is hereby made for further particulars. The City Clerk is hereby directed to record, or cause to be recorded, the map of the boundaries of the CFD and the Future Annexation Area in the office of the County Recorder within 15 days of the date of adoption of this Resolution.

Parcels within the Future Annexation Area shall be annexed to the CFD only with the unanimous approval (each, a "Unanimous Approval") of the owner or owners of each parcel or parcels at the time that parcel or those parcels are annexed, without any requirement for further public hearings or additional proceedings.

4. **Services.** The type of services proposed to be financed by the CFD and the Future Annexation Area and pursuant to the Act shall consist of those listed in Exhibit A hereto and hereby incorporated herein (the "Services"). The Council hereby determines that the Services are necessary to meet increased demands for such services placed upon local agencies as the result of development occurring within the area of the CFD and the Future Annexation Area. The Services are in addition to those provided in the territory of the CFD and the Future Annexation Area as of the date hereof and will not supplant services already available within the territory of the CFD and the Future Annexation Area as of the date hereof. The City intends to provide the Services on an equal basis in the original territory of the CFD and, when it has been annexed to the CFD, the Future Annexation Area.

5. **Special Tax.** Except to the extent that funds are otherwise available to the CFD to pay for the Services, a special tax (the "Special Tax") sufficient to pay the costs thereof, secured by recordation of a continuing lien against all non-exempt real property in the CFD, will be levied annually within the CFD, and collected in the same manner as ordinary ad valorem property taxes, or in such other manner as this Council or its designee shall determine, including direct billing of the affected property owners. The proposed rate and method of apportionment of the Special Tax among the parcels of real property within the CFD in sufficient detail to allow each landowner within the proposed CFD to estimate the maximum amount such owner will have to pay, are described in Exhibit B attached hereto and hereby incorporated herein (the "Rate and Method"). This Council hereby finds that the provisions of Section 53313.6, 53313.7 and 53313.9 of the Act (relating to adjustments to ad valorem property taxes and schools financed by a community facilities district) are inapplicable to the proposed CFD.

As required by Section 53339.3(d) of the Act, the Council hereby determines that the special tax proposed to pay for Services to be supplied within the Future Annexation Area shall be equal to any special tax levied to pay for the same Services in the existing CFD, except that a higher or lower tax may be levied within the Future Annexation Area to the extent that the actual cost of providing the Services in the Future Annexation Area is higher or lower than the cost of providing those Services in the existing CFD. In so finding, the Council does not intend to limit its ability to levy a special tax within the Future Annexation Area to provide new or additional services beyond those supplied within the existing CFD.

6. Exempt Property. Except as may otherwise be provided by law or by the rate and method of apportionment of the Special Tax for the CFD, all lands owned by any public entity, including the United States, the State of California, the County and/or the City, or any departments or political subdivisions thereof, shall be omitted from the levy of the Special Tax to be made to cover the costs and expenses of the Services and the CFD. In the event that a portion of the property within the CFD shall become for any reason exempt, wholly or in part, from the levy of the Special Tax, this 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 annual expenses of the CFD, if any, subject to the provisions of the rate and method of apportionment of the Special Tax.

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

A special tax shall be levied in the Future Annexation Area only with the Unanimous Approval of the owner or owners of each parcel or parcels at the time that parcel or those parcels are annexed, without any requirement for further public hearings or additional proceedings.

8. CFD Report. The City Manager (or deputy or designee thereof) is hereby directed to study the proposed Services and to make, or cause to be made, and file with the City Clerk a report in writing (the "CFD Report"), which shall be a part of the record of the public hearing hereinafter specified and which report shall present the following:

(a) A description of the Services that will be required to adequately meet the needs of the CFD.

(b) An estimate of the fair and reasonable cost of the Services and incidental expenses in connection therewith, and all other related costs.

9. Public Hearing. Tuesday, May 26, 2009, at 8:00 p.m. or as soon as possible thereafter, in the City Hall, Council Chambers, 777 B Street, Hayward, California, be, and the same are hereby appointed and fixed as the time and place when and where this Council, as legislative body for the CFD and the Future Annexation Area, will conduct a public hearing on the establishment of the CFD and consider and finally determine whether the public interest, convenience and necessity require the formation of the CFD, the Future Annexation Area and the levy of the Special Tax.

10. Notice of Hearing. The City Clerk is hereby directed to cause notice of the public hearing to be given by publication one time in a newspaper published in the area of the CFD and the Future Annexation Area. The publication shall be completed at least 7 days before the date of the public hearing specified above.

The City Clerk may also cause notice of the hearing to be given to each property owner within the CFD by first class mail, postage prepaid, to each such owner's address as it appears on the most recent tax records of the County or as otherwise known to the City Clerk to be correct. Such mailing shall be completed not less than 15 days before the date of the public hearing.

The notice of the public hearing shall be substantially in the form specified in Section 53322 of the Act, with the form summarizing the provisions hereof hereby specifically approved.

11. Further Action. The Mayor, City Manager, Assistant City Manager, Finance Director, City Attorney, City Clerk and all other officers and agents of the City are hereby authorized and directed to take all actions necessary or advisable to give effect to the transactions contemplated by this Resolution.

12. Effective Date. This resolution shall take effect upon its adoption.

IN COUNCIL, HAYWARD, CALIFORNIA, _____, 2009

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

EXHIBIT A

**CITY OF HAYWARD
Communities Facilities District No. 2
(Cannery Place Public Services)**

DESCRIPTION OF SERVICES

The captioned Community Facilities District 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), including all related administrative costs, expenses and related reserves for replacement of vehicles, equipment and facilities:

- Police protection services.

EXHIBIT B

CITY OF HAYWARD COMMUNITY FACILITIES DISTRICT NO. 2 (CANNERY PLACE PUBLIC SERVICES)

RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

Special Taxes applicable to each Assessor's Parcel in Community Facilities District No. 2 (Cannery Place Public Services) [herein "CFD No. 2" or "CFD"] shall be levied and collected according to the tax liability determined by the City Council of the City of Hayward, acting in its capacity as the legislative body of CFD No. 2, through the application of the appropriate Special Taxes, as described below. All of the property in CFD No. 2, unless exempted by law or by the provisions of Section E below, shall be taxed for the purposes, to the extent, and in the manner herein provided, including property subsequently annexed to CFD No. 2, unless a separate Rate and Method of Apportionment of Special Tax is adopted for the annexation area.

A. DEFINITIONS

The terms hereinafter set forth have the following meanings:

"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 following actual or reasonably estimated costs directly related to the administration of CFD No. 2: the costs of computing the Special Taxes and preparing the annual Special Tax collection schedules (whether by the City or any designee thereof or both); the costs of collecting the Special Taxes (whether by the City or otherwise); the costs to the City, CFD No. 2, or any designee thereof of complying with City, CFD No. 2, or obligated persons disclosure requirements associated with the Act; the costs associated with preparing Special Tax disclosure statements and responding to public inquiries regarding the Special Taxes; the costs of the City, CFD No. 2, or any designee thereof related to an appeal of the Special Tax; and the City's annual administration fees and third party expenses. Administrative Expenses shall also include amounts estimated or advanced by the City or CFD No. 2 for any other administrative purposes of CFD No. 2, including attorney's fees and other costs related to commencing and pursuing to completion any foreclosure of delinquent Special Taxes.

"Administrator" means an official of the City, or any designee thereof, responsible for determining the Special Tax Requirement and providing for the levy and collection of the Special Taxes.

“Assessor’s Parcel” or **“Parcel”** means a lot or parcel shown on an Assessor’s Parcel Map with an assigned Assessor’s Parcel Number.

“Assessor’s Parcel Map” means an official map of the County Assessor designating parcels by Assessor’s Parcel Number.

“Assessor’s Parcel Number” or **“APN”** means a unique number assigned to an Assessor’s Parcel by the County Assessor for purposes of identifying a property.

“Authorized Services” means the public services authorized to be funded by the CFD as set forth in the documents adopted by the Council when the CFD was formed.

“Below Market-Rate Unit” means a Dwelling Unit within CFD No. 2 that has a deed restriction recorded on title of the property that: (i) limits the rental price or sales price of the Dwelling Unit; (ii) limits the appreciation that can be realized by the owner of such Dwelling Unit; or (iii) in any other way restricts the current or future rental rate or value of the Dwelling Unit.

“City” means the City of Hayward.

“Council” means the City Council of the City, acting as the legislative body of CFD No. 2.

“County” means the County of Alameda.

“CPI” means, for each Fiscal Year, the Consumer Price Index published by the U.S. Bureau of Labor Statistics for All Urban Consumers in the San Francisco – Oakland – San Jose Area, measured as of the month of December in the calendar year that ends in the previous Fiscal Year. In the event this index ceases to be published, the CPI shall be another index as determined by the Administrator that is reasonably comparable to the Consumer Price Index for the San Francisco – Oakland – San Jose Area.

“Dwelling Unit” means a building or portion thereof designed for and occupied in whole or in part as a residence or sleeping place, either permanently or temporarily, by one family and its guests, with sanitary facilities and one kitchen provided within the unit. Boarding or lodging houses, dormitories, and hotels shall not be defined as Dwelling Units unless the land use permit specifies a residential use.

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

“Future Annexation Area” means the area designated for future annexation to CFD No. 2 as shown in the proposed CFD No. 2 boundary map in Exhibit A of this RMA.

“Market-Rate Unit” means a Dwelling Unit within CFD No. 2 that is not a Below Market-Rate Unit.

“Maximum Special Tax” means the maximum Special Tax, determined in accordance with Section C, that can be levied in any Fiscal Year.

“Proportionately” means that the ratio of the actual annual Special Tax levy to the Maximum Special Tax is equal for all Assessors’ Parcels of Residential Property.

“Public Property” means, for each Fiscal Year: (a) any property within the boundaries of CFD No. 2 that is owned by or irrevocably offered for dedication to the federal government, the State, the City or any other public agency; provided, however, that any property leased by a public agency to a private entity and subject to taxation under Section 53340.1 of the Act, as such section may be amended or replaced, shall be taxed and classified in accordance with its use; or (b) any property within the boundaries of CFD No. 2 that is encumbered by an unmanned utility easement making impractical its utilization for other than the purpose set forth in the easement.

“Residential Property” means, for each Fiscal Year, all Assessor’s Parcels for which a certificate of occupancy was issued by the City on or prior to June 1 of the preceding fiscal year for a residential Dwelling Unit.

“RMA” means this Rate and Method of Apportionment of Special Tax.

“Special Tax” means a special tax levied pursuant to the Act in any Fiscal Year to pay the Special Tax Requirement.

“Special Tax Requirement” means the amount of revenue needed in any Fiscal Year to pay for the following: (i) Authorized Services; (ii) Administrative Expenses; and (iii) amounts needed to cure any delinquencies in the payment of Special Taxes which have occurred or, based on delinquency rates in prior years, may be expected to occur in the Fiscal Year in which the Special Tax will be collected.

“Taxable Property” means all Residential Property within the boundaries of CFD No. 2.

B. DATA COLLECTION FOR ANNUAL TAX LEVY

Each Fiscal Year, the Administrator shall identify the current Assessor’s Parcel Numbers for all Parcels of Taxable Property within CFD No. 2. The Administrator shall also determine: (i) whether each Assessor’s Parcel of Residential Property contains Market-Rate Units and/or Below Market-Rate Units; and (ii) the number of Dwelling Units on each Parcel of Residential Property.

In any Fiscal Year, if it is determined that (i) a final map or parcel map for a portion of property in CFD No. 2 was recorded after January 1 of the prior Fiscal Year (or any other date after which the Assessor will not incorporate the newly-created Parcels into the then current tax roll), (ii) because of the date the final map or parcel map was recorded, the Assessor does not yet recognize the new parcels created by the final map or parcel map, and (iii) one or more of the newly-created parcels meets the definition of Residential Property, the Administrator shall

calculate the Special Tax for the property affected by recordation of the final map or parcel map by determining the Special Tax that applies separately to each newly-created parcel, then applying the sum of the individual Special Taxes to the Parcel that was subdivided by recordation of the final map or parcel map.

C. MAXIMUM SPECIAL TAXES

1. Initial Boundary of CFD No. 2

a. Maximum Special Tax

The Maximum Special Tax for Fiscal Year 2009-10 for all Parcels of Taxable Property with Market-Rate Units shall be \$484 per Dwelling Unit.

b. Maximum Special Tax Increases

On July 1, 2010, and each July 1 thereafter, the Maximum Special Tax shall be increased by a percentage equal to the greater of: (i) the increase, if any, in the prior calendar year's change in the CPI; or (ii) 4.0%.

2. Future Annexation Area

a. Maximum Special Tax

A separate Maximum Special Tax per Market-Rate Unit and/or per Below Market-Rate Unit may be identified for Parcels of Taxable Property with such Dwelling Units within the Future Annexation Area at the time such area is annexed to CFD No. 2.

b. Maximum Special Tax Increases

On July 1, 2010, and each July 1 thereafter, the Maximum Special Tax shall be increased by a percentage to be identified at the time Parcels within the Future Annexation Area are annexed to CFD No. 2.

D. METHOD OF LEVY AND COLLECTION OF SPECIAL TAXES

Each Fiscal Year, the Special Tax shall be levied Proportionately on each Parcel of Taxable Property in the CFD up to 100% of the Maximum Special Tax determined pursuant to Section C above until the total amount levied is equal to the Special Tax Requirement for the Fiscal Year.

The Special Tax for the CFD shall be collected at the same time and in the same manner as ordinary ad valorem property taxes provided, however, that the City may (under the authority of Government Code Section 53340) collect Special Taxes at a different time or in a different

manner if necessary to meet the financial obligations of CFD No. 2, and the Special Tax shall be equally subject to foreclosure if delinquent.

E. EXEMPTIONS

Notwithstanding any other provision of this RMA, no Special Tax shall be levied on Parcels within the CFD that are not Taxable Property. Furthermore, no Special Tax shall be levied on Public Property, except as otherwise provided in the Act.

F. INTERPRETATION OF SPECIAL TAX FORMULA

The City reserves the right to make minor administrative and technical changes to this document that do not materially affect the rate and method of apportioning Special Taxes or the definition of Taxable Property. In addition, the interpretation and application of any section of this document shall be left to the City's discretion. Interpretations may be made by the City by resolution of the Council for purposes of clarifying any vagueness or ambiguity in this RMA.

G. APPEAL OF SPECIAL TAX LEVY

Any property owner claiming that the amount or application of the Special Tax is not correct may file a written notice of appeal with the Administrator not later than one calendar year after having paid the Special Tax that is disputed. The Administrator 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 property owner disagrees with the Administrator's decision relative to the appeal, the owner may then file a written appeal with the Council whose subsequent decision shall be binding. If the decision of the Administrator (if the appeal is not filed with the Council) or the Council (if the appeal is filed with the Council) requires the Special Tax to be modified or changed in favor of the property owner, no cash refund shall be made for prior years' Special Tax levies, but an adjustment shall be made to the next Special Tax levy(ies). This procedure shall be exclusive and its exhaustion by any property owner shall be a condition precedent to any legal action by such owner.

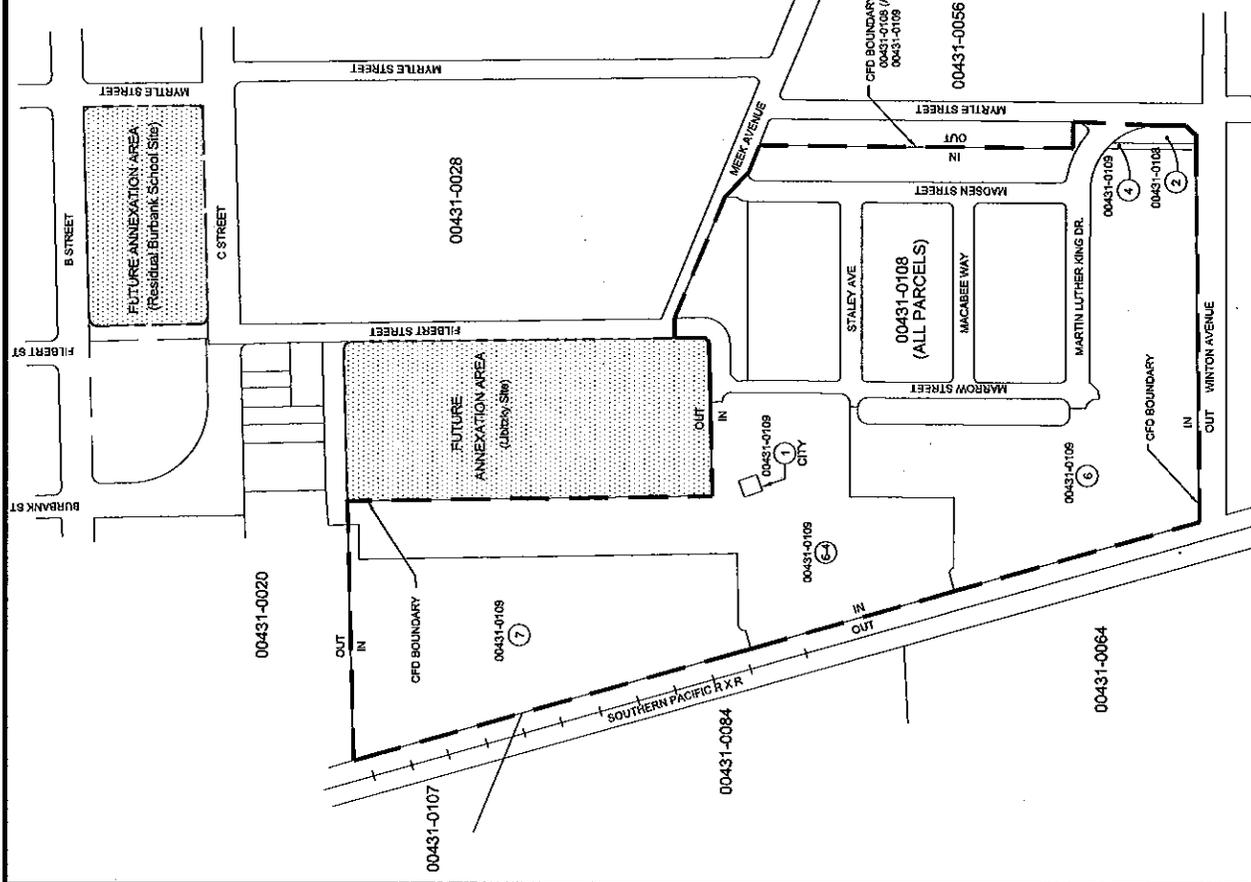
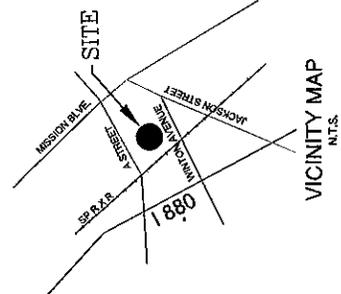
H. TERM OF SPECIAL TAX

The Special Tax shall be levied in perpetuity as necessary to pay the Special Tax Requirement.

EXHIBIT A

CFD No. 2 BOUNDARY MAP

PROPOSED BOUNDARIES OF
CITY OF HAYWARD
COMMUNITY FACILITIES DISTRICT NO. 2
 (Cannery Place Public Services)
 Alameda County, State of California



1. Filed in the office of the City Clerk of the City of Hayward this _____ day of _____, 2009.

City Clerk
 City of Hayward

2. I hereby certify that the within map showing proposed boundaries of City of Hayward, Community Facilities District No. 2 (Cannery Place Public Services), County of Alameda, State of California, was approved by the City Council of the City of Hayward, at a meeting thereof, held on the _____ day of _____, 2009, by its Resolution No. _____.

City Clerk
 City of Hayward

3. Filed this _____ day of _____, 2009, at the hour of _____ o'clock _____ m., in Book _____ of Maps of Assessment and Community Facilities Districts at Page _____ in the Office of the County Recorder in the County of Alameda, State of California.

County Recorder
 County of Alameda

LEGEND

- 00431-0109 ASSESSOR'S BOOK AND PAGE
- (6) ASSESSOR PARCEL NUMBER
- COMMUNITY FACILITIES DISTRICT BOUNDARY