



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Matt Cano

**SUBJECT:** SEE BELOW

**DATE:** October 7, 2019

Approved

Date

10-16-19

**COUNCIL DISTRICT: 7**

**SUBJECT: ACTIONS RELATED TO THE ALTERATION OF COMMUNITY FACILITIES DISTRICT NO. 8 (COMMUNICATIONS HILL)**

## RECOMMENDATION

Adopt a resolution of consideration to:

- (a) Alter Community Facilities District No. 8 as proposed in Alteration No. 1A, repeal Resolution No. 79227 and set a public hearing regarding this matter for November 19, 2019 at 6:00 p.m.
- (b) Alter Community Facilities District No. 8 as proposed in Alteration No. 1B, repeal resolution No. 79228 and set a public hearing regarding this matter for November 19, 2019 at 6:00 p.m.

## OUTCOME

Approval of the recommendations will change the hearing date for consideration of the proposed additional services and work financed by CFD 8 from November 5, 2019 to November 19, 2019.

## EXCUTIVE SUMMARY

On September 10, 2019, Council adopted resolutions 79227 and 79228 to alter the list of authorized services of CFD 8 to include supplemental security services and the financing of planning, design and environmental clearance work for the potential future installation of a vineyard. The resolutions set a public hearing regarding the proposed alteration on November 5, 2019. Due to scheduling conflicts, and to avoid potential confusion, staff recommends that Council adopt new resolutions of consideration that set the public hearing on these matters for

November 19, 2019 and repeal resolutions 79227 and 79228 (thereby cancelling the November 5 public hearing date). The considerations for the alteration of CFD 8 follow below.

## **BACKGROUND**

In 1992, the City Council adopted a Specific Plan for Communications Hill to define the criteria to develop the area as a dense, highly urbanized residential neighborhood. This neighborhood is also expected to include a civic facility and a village center consisting of small shops and restaurants. The Specific Plan calls for numerous small parks, terraces, recreational paths, bicycle paths, and public staircases throughout the hilly neighborhood making Communications Hill a unique community in San José.

CFD 8 and the associated levy was approved by qualified electors in September 2002 to pay for the maintenance costs of certain public facilities on Communications Hill as specified in the CFD 8 Report. In February 2004, the northern portion of Communications Hill was annexed to CFD 8 with the same special tax levy ("Annexation Area No. 1"). The remainder of the residential portion of Communications Hill is currently developing under multiple phases. In June of 2016, the first two phases were annexed to CFD 8 also with the same special tax levy ("Annexation Area No. 2").

Over the past several years, a few of the many unique features of Communications Hill have drawn crowds to the area. The grand staircase, trail, and overlooks have become destination points. There have been many complaints from the residents including noise, loitering, misconduct, property damage, litter, and parking issues. The community has expressed interest in preventative measures ranging from closing the staircase to allowing only residents access to increasing police patrols.

In 2013, the community expressed interest in having vineyards installed in open space areas on Communications Hill, which was supported later through an online survey. Based on City staff's discussions with project proponents, the vineyard concept initially contemplated planting vineyards on the southwesterly hillsides of Communications Hill for the community's benefit as an aesthetic improvement to existing public open space lands, as well as their perceived fire and erosion advantage. The project proponents have stated their desire to finance the installation and maintenance of the proposed vineyards by an experienced vintner by utilizing funds received from the CFD 8 special tax levy. In addition, the harvested grapes would be sold in the private market and the revenue used to offset the vineyard's maintenance costs and privately utilized for the production of commercial wine.

In 2013, the project proponents presented the City with a prospective 10-year business plan for the installation and maintenance of the vineyard. The business plan contemplates the selected vintner installing 27 acres of vineyards at its own up-front cost, with CFD 8 reimbursing the vintner for the initial installation cost over a ten-year period. The business plan estimated that the cost of installation would be \$980,000 in 2013. Staff has not been presented with a cost estimate

for the current cost of installation. The business plan estimated the cost of maintenance to be \$86,000 for the first year, and rising steadily to \$184,000 for years four through ten. City staff also has not been presented with a cost estimate for the current cost of maintenance. Grape productivity was anticipated in the fourth year of maintenance.

On January 10, 2019, a petition was submitted to the City Clerk to expand the list of authorized services and work financed by CFD 8. A sample of the submitted petition is attached hereto as Attachment A. In summary, the petition requests that Council initiate proceedings to add supplemental security services to the list of authorized services as well as a feasibility analysis evaluating and formalizing a finance plan, performing an environmental review and performing design work necessary to analyze the installation and maintenance of a vineyard project. The actual construction, installation and maintenance of vineyards is not requested by the petition and public financing for these costs will not be authorized by these change proceedings. Instead, these facilities are anticipated to be the subject of a future petition and special ballot proceeding based on the results of the City's feasibility analysis. Pursuant to Article 3 of the Mello Roos Community Facilities Act of 1982, as modified by the Community Facilities District Financing Procedure contained in the San José Municipal Code (collectively, "Mello Roos"), when the City receives a petition signed by 25 percent of the registered voters or by the owners of 25 percent or more of the land within a community facilities district, the City must adopt a resolution of consideration after payment of the fee sufficient to compensate the City for the costs of conducting the proceedings to change the facilities or services authorized by the community facilities district. The Clerk's office tallied the signatures on the petition and determined that 18.27 percent of registered voters residing in CFD 8, and owners of 16.47 percent of developed residential property within CFD 8 not exempt from the special tax levy had signed the petition. Although the petition did not meet the required threshold, if Council determines that the public convenience and necessity require changes to the facilities and services in CFD 8, Council may adopt a resolution of consideration to alter the types of services and facilities to be financed by the district. Notwithstanding the lack of voter signatures, staff is recommending that Council move forward with altering CFD 8 on its own initiative.

Staff estimates that the cost of conducting the change proceedings will be approximately \$30,000. The City's General Fund provided advance funding of the \$30,000 in 2018-2019 to cover the costs of the alteration proceedings. On September 10, 2019, the City entered into an agreement with CFD 8 for the district to repay costs of the district change proceedings if the proposed changes are approved by the qualified electors.

### ANALYSIS

Staff recommends that Council repeal resolutions 79227 and 79228 adopted on September 10, 2019, cancelling the public hearing date on November 5, 2019 due to a scheduling conflict by adopting new resolutions of consideration setting a public hearing on the matter on November 19, 2019. The considerations for the alteration of CFD 8 follow below.

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Staff recommends Council proceed with the legislative process for altering CFD 8, in consideration of the public's convenience and necessity for the supplemental security and vineyard, as listed in Attachments B and C. As Communications Hill has become a destination point drawing crowds at different times throughout the day, local residents have expressed a variety of concerns. Since the staircases and trails are public areas, visitors cannot be denied access to these spaces. To help address some of the residents' concerns, staff is recommending that the district be modified to provide security services which might help with disorderly conduct and provide an additional sense of safety. The enhanced security would be supplemental to, and will not replace, the existing City services. The proponents have opined that a vineyard integrated through the hillside could improve marketability for future home sales, and would likely have a positive effect on property values. It might also create a comforting and attractive environment as the vineyard will be replacing the native grass along the open hillsides. As the hillsides have experienced wildfires, the proponents believe that a properly maintained and manicured vineyard can act as a natural fire buffer due to the amount of moisture that it would contain. However, the impact, if any, has not been reviewed by a fire fuel management expert for its efficacy as a fire buffer.

Resolution of Consideration 1A proposes to authorize CFD 8 to spend funds on supplemental security services. These services could be provided with various possible combinations of off-duty police officers, community service officers, park rangers, and/or private security services focused on staircases, trails, overlooks, and terraces on an as-need basis. The frequency, levels of service and locations covered by the supplemental security services would be determined by the City with input from the various home owners' associations. District provided security services are intended to supplement normal police services, focusing on responding to nuisance complaints in key trouble spots utilizing legally appropriate methods. If the supplemental security services are authorized by the qualified electors, then CFD 8 funds would be available to pay for these services. Staff's preliminary estimate for the cost of the supplemental security services could range from \$150,000 to \$250,000 for the first year. Depending on effectiveness, future year expenses may be more, but limited by budgeting/funding constraints and evaluated further by staff. More details on cost components of the supplemental security services will be made available prior to the public hearing.

Resolution of Consideration 1B addresses proposed additional work to be financed by CFD 8 related to studying the feasibility of installing a vineyard on open space lands within CFD 8. Staff believes that the initial scope of work required for a feasibility study will include analyzing the environmental clearance required for the project and generating and approving the appropriate CEQA document; producing an updated business plan with current cost estimates for construction, installation and maintenance; determining the appropriate legal and business structure for the installation and maintenance of the vineyards; soliciting vendors for the vineyard project; preliminary negotiations with vendor(s); and producing a CFD report that will be filed with the City Council describing the proposed structure and costs of the vineyard project. This additional work involves planning and design work; CEQA clearance, including defense of challenges to CEQA determinations; design and engineering services; cost estimating; services of subject matter experts, including legal services, as necessary; and other work related to the

planning and design for the construction, improvement, installation, operation and maintenance of the vineyard project. Estimates for the planning and design work for the proposed vineyard project are not well defined at this time because they necessarily involve a number of assumptions. The true cost of the vineyard feasibility analysis will come to light only once the City is in the analysis phase. However, staff's initial estimate of the costs for the various analyses is between \$290,000 to \$400,000. Staff anticipates consultant costs for the environmental review to be approximately \$180,000 to \$230,000; consultant costs for construction drawings, and a business and financing plan which includes, but is not limited to, costs estimates, a capital reimbursement contract, a maintenance and operations contract, procurement processing, and Request for Proposals to be approximately \$60,000 to \$100,000; City staff costs for coordination with consultants, public outreach and producing key elements of a CFD report to be approximately \$30,000 to \$40,000; and a contingency for unanticipated costs of approximately \$20,000 to \$30,000.

Based on staff's preliminary estimates, the existing special tax levy will fund the proposed additional services and work to be financed by CFD 8. The CFD 8 reserve funds will be drawn down to pay for authorized maintenance services that would otherwise have been paid for by the special tax levy. Staff estimates that the current reserve funds will be sufficient to pay for maintenance expenses for at least two years. The cost of supplemental security services after the first two years and/or the vineyard feasibility analysis costs may require an increase in the annual special tax levy in order to continue existing authorized maintenance services within CFD 8 and maintain an adequate reserve fund. Regardless of whether the costs of providing the additional services and work are greater than staff's preliminary estimate, there will not be an increase to the maximum special tax rate set when CFD 8 was originally formed. The maximum special tax is adjusted annually by the Consumer Price Index and for the 2019-2020 year is shown below in Table 1 along with the 2019-2020 tax levy. If the costs of the supplemental security services and/or vineyard feasibility analysis result in the City having to levy the maximum special tax, then the City would need to reevaluate the funding and service levels of all authorized services or work, including the currently authorized maintenance services. The Rate and Method of Apportionment will be modified accordingly to accommodate the proposed new services and work.

**Table 1**  
**Maximum Special Tax**

<b>Taxable Property</b>	<b>Taxable Unit</b>	<b>2019-2020 Maximum Special Tax</b>	<b>Actual 2019-2020 Special Tax Levy</b>
Residential	Dwelling Unit	\$989.19	\$323.74
Non-Residential	Acre	\$444.83	\$145.59
Subsequent Non-Residential	Equivalent Dwelling Unit	\$989.19	\$323.74

Under Mello Roos, two-thirds of the qualified electors within CFD 8 casting ballots are required to vote in favor of the proposal in order to modify the services or work financed by the district. In the case where 12 or more registered voters reside within the district boundary, those registered voters are the qualified electors.

The proposed schedule of events for the change proceedings to CFD 8 is shown below in Table 2. The following schedule assumes that the City Council submits the proposed changes to the voters after the public hearing and that the City Clerk will conduct the election on the City's behalf with ballots due on January 9, 2020, ballot tabulation on January 10, 2020, and confirmation of the election results on January 14, 2020. If at any time, the City Council determines not to submit changes to the voters or proceed with the modification process, then there will be no further activities.

**Table 2**  
**Proposed Schedule**

1.	City Council	Adopt a Resolution of Consideration Set Public Hearing	10/29/2019
2.	Public Works	Mail Notice of Public Hearing	11/04/2019
3.	City Clerk	Publish Notice of Public Hearing	11/12/2019
4.	City Council	Conduct Public Hearing	11/19/2019
5.	City Clerk	Mail Ballots	12/11/2019
6.	City Clerk	Election Date Deadline	01/09/2020
7.	City Clerk	Tabulation of Election Ballots	01/10/2020
8.	City Council	Certification of Election Results Adopt Resolution of Change (if approved by voters)	01/14/2020

The Notice of Public Hearing will be mailed on November 4, 2019 and published on or before November 12, 2019. The notice will include the text of the Resolution of Consideration, the time and place of the hearing, a statement that public testimony will be heard and a description of the voting procedure.

The Public Hearing on November 19, 2019 will allow for public testimony to be presented to Council. Council must consider all objections or protests to the proposed changes to services and work financed by CFD 8. If a majority of the registered voters or the property owners not exempt from the special tax file written protests against changing the public facilities or services financed by the district, Council must omit those changes from the resolution of consideration and they cannot be included in a resolution for one year from the date of Council's decision on the hearing. At the conclusion of the hearing, Council may terminate the proceedings or may, after passing on all protests, submit the proposed changes to the registered voters within CFD 8.

The below attachments provide additional detail for these change proceedings:

Attachment A	Sample of Petitions to Alter CFD 8
Attachment B	Alteration No. 1A Description of Additional Service
Attachment C	Alteration No. 1B Description of Work
Attachment D	Location Map

### **EVALUATION AND FOLLOW-UP**

On November 19, 2019, Council will conduct the public hearing on the proposed changes to services and work to be financed by CFD 8.

### **POLICY ALTERNATIVES**

*Alternative 1:* Require the proponents to submit a petition of at least 25 percent of registered voters or property owners as specified in Mello Roos.

**Pros:** Requires additional evidence that the community supports the proposal. The City would not be committing resources or funding to an effort that might not be fully supported by the community.

**Cons:** Increased staff costs and time associated with the petition vetting process, as well as a longer period of time before a public hearing is held on the change proceedings.

**Reason for not recommending:** The City has attempted several alternatives to address the community's concerns, including the installation of throttling gates to control foot traffic. The proponents have been continuously working on this effort for the past few years. In addition to the petition, the community has shown support via an informal internet-based survey that was circulated to all residents, in which over 75 percent of the respondents reacted favorably. However, this did not meet legal requirements, but shows general support. The time and expense associated with gathering signatures to achieve the requisite 25 percent seems excessive.

### **PUBLIC OUTREACH**

At least those property owners and homeowners' associations within CFD 8 that circulated and/or signed the petition are already aware of the change proceedings. In addition, staff will provide the public notice required under applicable statutes, and staff will mail the notice of the proposed alteration to CFD 8 to all of the property owners and registered voters within the district boundary.

**COORDINATION**

This memorandum, related documents and resolutions were prepared in coordination with the Department of Transportation, Parks, Recreations, and Neighborhood Services, the City Attorney's Office, the City Manager's Budget Office, and the City Clerk's Office.

**COMMISSION RECOMMENDATION/INPUT**

No commission recommendation or input is associated with this action.

**FISCAL/POLICY ALIGNMENT**

These actions are in alignment with the Mayor's June Budget Message for Fiscal Year 2018-2019, as approved by City Council, in that staff costs for conducting the election proceedings are being provided by a one-time allocation of funding from the General Fund. If the district alteration is approved by the qualified voters, the City will be reimbursed by the district. The costs of additional services will be funded from district reserves and the existing annual special tax on the properties within the district.

**COST SUMMARY/IMPLICATIONS**

The \$30,000 cost for the alterations proceedings is included in the Modified Public Works Non-Personal/Equipment appropriation budget in the General Fund. Any unused funds will be returned to the General Fund. If the alteration is approved by the qualified electors, CFD 8 will reimburse the City for the funds advanced. The budget actions to provide for the reimbursement, would be proposed as part of a future budget process.

**BUDGET REFERENCE**

Fund #	Appn #	Appn. Name	Current Appn.	Amt. for Contract	2019-2020 Proposed Operating Budget Page*	Last Budget Action (Date, Ord. No.)
001	0572	Non-Personal/Equipment	13,991,477	\$30,000	VIII-347	6/18/2019, 30286

\*The 2019-2020 Proposed Operating Budget was adopted by the City Council on June 18, 2019.



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**CEQA**

Not a Project, File No. PP17-001, Feasibility, and Planning Studies with no commitment to future actions.

/s/

MATT CANO

Director of Public Works

For questions please contact Thomas Borden, Program Manager, at (408) 535-6831.

Attachment A	Petition to Alter CFD 8
Attachment B	Alteration No. 1 Description of Additional Service
Attachment C	Alteration No. 2 Description of Work
Attachment D	Location Map

# ATTACHMENT A

## PETITION FOR EXPANSION OF FACILITIES AND SERVICE OF COMMUNITY FACILITIES DISTRICT NO. 8 (Communications Hill)

**To: City Of San Jose**

The undersigned by their signatures hereon REPRESENT, REQUEST and PETITION as follows:

1. That this proposal is made under the Mello-Roos Community Facilities Act, Gov. Code, § 53313.
2. That the City of San Jose should initiate proceedings to extend the facilities and service of Community Facilities District No. 8 (CFD No. 8), generally referred to as Communications Hill.
3. That the boundaries of CFD No. 8 are: the Original District, Annexation Area 1 and Annexation Area 2 as shown on the Annexation Map approved by the San Jose City Council on June 14, 2016.
4. That CFD No. 8 should provide the following services and facilities that are in addition to present services and facilities:
  - a. Evaluate the feasibility of installing vineyards to reduce fire danger and provide for more attractive landscaping, as may be approved by an election of the voters of CFD No. 8.
  - b. Evaluate the feasibility of entering into an operations agreement plan with a vendor to operate and manage the vineyard and the costs, if any, to CFD No. 8 for operations and maintenance of the vineyards.
  - c. Provide conceptual design drawings and assist the City with the environmental clearance for installing and operating vineyards under the California Environmental Quality Act.
  - d. Define or verify all costs for the vineyards project which may be needed for a project authorizing election to be submitted to the voters of CFD No. 8 following the feasibility evaluation,
  - e. Evaluate the feasibility and costs to provide supplemental security services within the CFD No. 8, including additional security for trails, parks, and common areas.
  - f. Develop a process for approval of the security services and costs from time-to-time by a majority of the homeowner associations representing the homeowners within CFD No. 8.
  - g. Pay for elections necessary to add additional services and facilities to CFD No. 8.

I am a resident of Santa Clara County and registered to vote at the address shown below.

My residence is correctly set forth after my signature hereto:

PRECINCT (To be entered by Elections Official)	NAME (As Registered)	RESIDENCE (As Registered - No P.O. BOX) WITH CITY & ZIP	VERIFICATION (To be entered by Elections Official)
1	Print	Residence Address ONLY	
	Sign	City or Town	
2	Print	Residence Address ONLY	
	Sign	City or Town	
3	Print	Residence Address ONLY	
	Sign	City or Town	
4	Print	Residence Address ONLY	
	Sign	City or Town	

## ATTACHMENT B

### CITY OF SAN JOSE COMMUNITY FACILITIES DISTRICT NO. 8 (COMMUNICATIONS HILL) ALTERATION NO. 1A

#### DESCRIPTION OF ADDITIONAL SERVICES

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The services shown below are proposed to be added to the existing list of services financed by Community Facilities District No. 8 (Communications Hill) (the "CFD No. 8") of the City of San Jose. This list of items identifies those services which are authorized to be funded by CFD No. 8; however, not all items on this list are guaranteed to be funded by the CFD.

#### Authorized Services

- Police protection services, including, without limitation, private security, community service officer and park ranger services for trails, terraces, overlooks, and staircases designated as parkland and common areas within CFD No. 8

## ATTACHMENT C

### CITY OF SAN JOSE COMMUNITY FACILITIES DISTRICT NO. 8 (COMMUNICATIONS HILL) ALTERATION NO. 1B

#### DESCRIPTION OF WORK

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The work shown below is proposed to be financed by Community Facilities District No. 8 (Communications Hill) (the "CFD No. 8") of the City of San Jose. This list of items identifies the work that would be authorized to be funded by CFD No. 8; however, not all items on this list are guaranteed to be funded by the CFD.

#### Authorized Work

- Planning, cost estimating, and design work only related to the purchase, construction, improvement, operation, expansion or rehabilitation of a vineyard and other open space facilities on public lands within CFD No. 8, including, without limitation, environmental evaluations.

# ATTACHMENT D

