



COUNCIL AGENDA: 12/3/2019

ITEM: 3.8

FILE NO: 19-1144

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Toni J. Taber, CMC
City Clerk

SUBJECT: SEE BELOW

DATE: December 3, 2019

SUBJECT: Public Hearing on Community Facilities District No. 8 (Communications Hill)

RECOMMENDATION:

(a) Conduct a Public Hearing regarding proposed Alteration No. 1A and Alteration No. 1B of Community Facilities District No. 8 (Communications Hill).

(b) Adopt a resolution calling a special election regarding proposed Alteration No. 1A and Alteration No. 1B of Community Facilities District No. 8 (Communications Hill).

CEQA: Not a Project, File No. PP17-010, City Organizational & Administrative Activities resulting in no changes to the physical environment. Council District 7. (Public Works)

[Continued from 11/19/19 - Item 3.4 (19-1061)]

THIS ACTION REQUIRES 10 AFFIRMATIVE VOTES PER CITY CHARTER SECTION 1601(e).



COUNCIL AGENDA: 11/19/19
FILE: 19-1061
ITEM: 3.4

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Matt Cano

**SUBJECT: COMMUNITY FACILITIES
DISTRICT NO. 8 ALTERATION
NO. 1 PUBLIC HEARING**

DATE: October 28, 2019

Approved

D. D. S. L.

Date

11/7/19

COUNCIL DISTRICT: 7

RECOMMENDATION

- (a) Conduct a Public Hearing regarding proposed Alteration No. 1A and Alteration No. 1B of Community Facilities District No. 8 (Communications Hill).
- (b) Adopt a resolution calling a special election regarding proposed Alteration No. 1A and Alteration No. 1B of Community Facilities District No. 8 (Communications Hill).

OUTCOME

If there is no majority protest, then Council may proceed with the election process in regard to the proposed alterations to the district.

BACKGROUND

Community Facilities District No. 8 (Communications Hill) ("CFD 8") and the associated levy was approved by qualified electors in September 2002 to accommodate the maintenance needs of Communications Hill. 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").

On January 10, 2019, a petition was submitted to the City to expand the list of authorized services and work financed by CFD 8. 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 installation and maintenance of vineyards is not part of this consideration. 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 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. Also, if Council determines that the public convenience and necessity require changes to the facilities and services, Council may adopt a resolution of consideration to alter the district.

The petition did not meet the minimum requirement of 25 percent of either the property ownership or registered voters within the district boundary; however, staff determined that sufficient evidence of public convenience and necessity was present to recommend that Council consider altering the services and work financed by CFD 8. On September 10, 2019, Council adopted resolutions 79227 and 79228 to alter the list of authorized services and work financed by CFD 8 with a public hearing scheduled on November 5, 2019. On October 29, 2019, Council repealed resolutions 79227 and 79228, cancelled the November 5th public hearing date, adopted new resolutions of consideration to set the public hearing on these matters for November 19, 2019. The proposed alterations to CFD 8 will result in changes to the Rate and Method of Apportionment (Attachment C), but will not change the maximum special tax. The maximum special tax is adjusted annually by the Consumer Price Index and the adjusted maximum special tax for the 2019-2020 year is shown below along with the 2019-2020 tax levy.

Table 1
Maximum Special Tax

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

The estimated cost of providing supplemental security services is expected to range from \$150,000 to \$250,000 annually, while the planning, design, cost estimating, and environmental clearance work related to the potential installation and maintenance of a vineyard in CFD 8 is anticipated to be between \$290,000 and \$400,000. The CFD 8 reserve funds will be drawn down to pay for existing authorized maintenance services that would otherwise have been paid for by the special tax levy. Staff has determined that the CFD 8 reserve fund is sufficient to fund the maintenance costs for at least two years. The special tax levy will be used to pay for the proposed new services and work identified in the Resolution of Consideration. The amount of

the annual special tax levy may require increases after the first two years in order to fund both existing authorized maintenance expenses and supplemental security services and/or vineyard feasibility analysis. However, the maximum special tax will remain at the same rate set when the district was formed.

ANALYSIS

At this November 19, 2019 meeting, Council will open a public hearing to receive and record any public comments regarding Resolution of Consideration 1A (security services) and Resolution of Consideration 1B (vineyard feasibility and environmental work). The testimony of all interested persons for or against the CFD 8 alterations will be received at the hearing. At the hearing, protests against the proposed Additional Services or Work may be made orally, or in writing by any interested persons. Any protests pertaining to the regularity or sufficiency of the proceedings shall be in writing and shall clearly set forth the irregularities or defects to which objection is made. All written protests not personally presented by the author thereof at the hearing shall be filed with the City Clerk at or before the time fixed for the hearing. The Council may waive any irregularities in the form or content of any written protest and at the hearing may correct minor defects in the proceedings. Written protests may be withdrawn in writing at any time before the conclusion of the hearing. If 50 percent or more of the registered voters residing within CFD 8, or the owners of one-half or more of the area of the land in CFD 8 not exempt from the special tax, file written protests against changing the public facilities or services financed by the district, those changes in the facilities or services shall be eliminated from the resolution ordering changes in the types of public facilities or services to be financed and the changes shall not be included in a resolution for a period of one year from the date of the Council's decision on the hearing. If such protests are directed only against certain elements of the proposed additional services or work, only those elements shall be removed from the proceedings. At the conclusion of the hearing, Council may abandon the proceedings for either or both proposals or may, after passing upon all protests, submit the question of changing the types of facilities and services to be financed by the district to the qualified electors of CFD 8.

The qualified electors for the election to be held in these change proceedings shall be the registered voters within CFD 8 boundaries. 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 City Clerk is designated as the official to conduct the election. The voting procedure shall be by mailed or hand-delivered ballot among the registered voters in CFD 8, with each registered voter having one vote. The voting procedures and timelines shall be in accordance with City election laws and/or the Elections Code, as applicable. The City Clerk will provide deadlines and costs in a supplemental memo.

Three attachments as listed below provide detail for the change proceedings:

Attachment A	Alteration No. 1A Description of Additional Service
Attachment B	Alteration No. 1B Description of Work
Attachment C	Rate and Method of Apportionment
Attachment D	Location Map

EVALUATION AND FOLLOW-UP

If there is no majority protest, Council may submit the question of levying the special tax to pay for the additional services and work to the registered voters of CFD 8.

CLIMATE SMART SAN JOSE

The recommendation in this memo does not have any negative impact on Climate Smart San Jose energy, water, or mobility goals.

PUBLIC OUTREACH

Staff will publish the notice of public hearing regarding the proposed alteration to CFD 8 on or before November 12, 2019 and mail the notice to 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

This item does not require any input from a board or commission.

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 registered voters, the City will be reimbursed by the district. The costs of additional services and work will be funded by the special tax levy and district reserves will be used to pay for existing authorized maintenance services.

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.

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 - Alteration No. 1A Description of Additional Service
Attachment B - Alteration No. 1B Description of Work
Attachment C - Rate and Method of Apportionment
Attachment D - Location Map

ATTACHMENT A

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

DESCRIPTION OF ADDITIONAL SERVICES

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 B

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

DESCRIPTION OF ADDITIONAL WORK

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 C

CITY OF SAN JOSE COMMUNITY FACILITIES DISTRICT NO. 8 (COMMUNICATIONS HILL)

RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

A Special Tax applicable to each Assessor's Parcel in Community Facilities District No. 8 (Communications Hill) [herein "CFD No. 8"] shall be levied and collected according to the tax liability determined by the City Council, through the application of the appropriate amount or rate for Taxable Property, as described below. All of the property in CFD No. 8, 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. 8 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:

"Acre or Acreage" means the land area of an Assessor's Parcel as shown on an Assessor's Parcel Map, or if the land area is not shown on an Assessor's Parcel Map, the land area shown on the applicable final subdivision map or other parcel map recorded at the Santa Clara County Recorder's Office.

"Act" means, collectively, the Mello-Roos Community Facilities Act of 1982, as amended, Chapter 2.5 of Part 1 of Division 2 of Title 5 commencing at Section 53311 of the California Government Code, and Chapter 14.27 of Title 14 of the Municipal Code of the City.

"Administrator" means the individual(s) designated by the City to administer the CFD in accordance with the authority and powers granted by the City Council.

"Airspace Parcel" means an Assessor's Parcel that shares common vertical space of an underlying land parcel with other parcels that have been assigned Assessor's Parcel numbers.

"Assessor's Parcel" or "Parcel" means a lot, parcel or Airspace 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 of the County of Santa Clara designating parcels by Assessor's Parcel number.

ATTACHMENT C

“Church Property” means any Parcel within the CFD that meets both of the following criteria: (1) a structure has been built that is used as a place of worship, rectory, convent or private school, and (2) the Parcel is exempt from ad valorem property taxes because it is owned by a religious organization.

“City” means the City of San Jose.

“City Council” means the City Council of the City of San Jose, acting as the legislative body of CFD No. 8.

“Developed Property” means, in any Fiscal Year, all Taxable Property for which a building permit for new construction has been issued prior to June 30 of the preceding Fiscal Year.

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

“Index” means the Consumer Price Index of the San Francisco-Oakland-San Jose area for all urban consumers.

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

“Non-Residential Property” means Parcels of Developed Property within CFD No. 8 that are not Residential Property.

“Public Agency” means the federal government, State of California or other local governments or public agencies.

“Residential Property” means Parcels of Developed Property for which a building permit was issued for construction of a residential structure, including single family detached, duplex, triplex, fourplex, townhome, condominium or apartment units.

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

“Special Tax Requirement” means the amount necessary in any Fiscal Year to (i) pay authorized expenses, (ii) create a sinking fund for replacement of facilities, (iii) pay administrative expenses of CFD No. 8, (iv) cure delinquencies in the payment of Special Taxes levied in prior Fiscal Years or (based on delinquencies in the payment of Special Taxes which have already taken place) are expected to occur in the Fiscal Year in which the tax will be collected.

ATTACHMENT C

“Subsequent Non-Residential Property” means (i) a Parcel of Non-Residential Property which had, in any prior Fiscal Year, been taxed as Residential Property, or (ii) a Parcel that was, in the City’s sole discretion, expected to be Residential Property and subsequently had a building permit issued for a non-residential use. Notwithstanding the foregoing, if the City determines that, in conjunction with a particular Parcel being changed from a residential to a non-residential designation, there was a corresponding transfer of the residential land uses to another Parcel in CFD No. 8, the City may but is not required to categorize that Parcel as Subsequent Non-Residential Property.

“Taxable Property” means all Assessor’s Parcels within the boundaries of CFD No. 8 which are not exempt from the Special Tax pursuant to law or Section E below.

“Unit” means a residential dwelling unit, including individual single-family detached, duplex (2 units), triplex (3 units), fourplex (4 units), townhome, condominium, or apartment units.

B. DATA FOR ANNUAL ADMINISTRATION OF SPECIAL TAX

After July 1 of each Fiscal Year, the Administrator shall categorize all Parcels of Taxable Property in CFD No. 8 as either Residential Property, Non-Residential Property or Subsequent Non-Residential Property, as defined in Section A above. For each Parcel of Residential Property, the Administrator shall determine the number of Units on the Parcel by referencing the building permit, site plan, condominium plan, apartment plan or other development plan for the Parcel. If an individual Assessor’s Parcel contains both Residential Property and Non-Residential Property, the Administrator shall determine both the number of Units on the Parcel and the Acreage of the Parcel for purposes of applying the Maximum Special Tax as set forth in Section C.3 below.

C. MAXIMUM SPECIAL TAX

1. Residential Property

The Maximum Special Tax for Residential Property in CFD No. 8 is \$667 per Unit for Fiscal Year 2002-03. Beginning January 2, 2003 and each January 2 thereafter, this Maximum Special Tax shall be adjusted by applying the increase, if any, in the Index that has occurred since January of the prior year. Each annual adjustment of the Maximum Special Tax shall become effective on the subsequent July 1.

ATTACHMENT C

2. *Non-Residential Property*

The Maximum Special Tax for Non-Residential Property in CFD No. 8 is \$300 per Acre for Fiscal Year 2002-03. Beginning January 2, 2003 and each January 2 thereafter, this Maximum Special Tax shall be adjusted by applying the increase, if any, in the Index that has occurred since January of the prior year. Each annual adjustment of the Maximum Special Tax shall become effective on the subsequent July 1.

3. *Subsequent Non-Residential Property*

The Maximum Special Tax for Subsequent Non-Residential Property shall be determined in the first Fiscal Year in which the property is categorized as Subsequent Non-Residential Property. If the Parcel had been taxed as Residential Property in the prior Fiscal Year, the Maximum Special Tax for the Parcel shall be equal to the Maximum Special Tax levied on the Parcel in the prior Fiscal Year adjusted by the increase, if any, in the Index that has occurred since January of the prior year. Beginning the next January 2, and each January 2 thereafter, the Maximum Special Tax on the Parcel shall again be adjusted by the increase, if any, in the Index that has occurred since January of the prior year. Each annual adjustment of the Maximum Special Tax shall become effective on the subsequent July 1.

If the Parcel of Subsequent Non-Residential Property had never been taxed as Residential Property, but had been expected to be developed as Residential Property, the Administrator shall apply the following steps to determine the Maximum Special Tax for the Parcel:

Step 1: Estimate the number of Units that were expected to be developed on the Parcel before the land use changed to a non-residential use;

Step 2: Multiply the Maximum Special Tax per Unit for Residential Property for the then current Fiscal Year by the number of anticipated Units from Step 1 to determine the Maximum Special Tax for the Parcel.

Beginning the next January 2, and each January 2 thereafter, the Maximum Special Tax on the Parcel shall again be adjusted by the increase, if any, in the Index that has occurred since January of the prior year. Each annual adjustment of the Maximum Special Tax shall become effective on the subsequent July 1.

ATTACHMENT C

D. METHOD OF LEVY AND COLLECTION OF THE SPECIAL TAX

Each Fiscal Year, the Special Tax shall be levied on all Parcels of Developed Property as follows:

- Step 1:* Determine the Special Tax Requirement (see definition in Section A above) for the Fiscal Year in which the Special Tax will be collected;
- Step 2:* Calculate the total Special Tax revenues that could be collected from Developed Property within the CFD based on application of the Maximum Special Tax rates determined pursuant to Section C above;
- Step 3:* If the amount determined in Step 1 is **greater than** the amount calculated in Step 2, levy the Maximum Special Tax on all Parcels of Developed Property in the CFD. Even though the Special Tax Requirement is greater than the total Special Tax revenues that can be collected in CFD No. 8, only the Maximum Special Tax may be collected unless a higher Maximum Special Tax is approved by two-thirds of the registered voters voting in an election to increase the Maximum Special Tax.

If the amount determined in Step 1 **is equal to** the amount calculated in Step 2, levy the Maximum Special Tax on all Parcels of Developed Property in the CFD.

If the amount determined in Step 1 is **less than** the amount calculated in Step 2, levy the Special Tax against all Parcels of Developed Property in equal percentages up to 100% of the Maximum Special Tax for each Parcel until the amount of the Special Tax levy equals the Special Tax Requirement for that Fiscal Year.

The Special Tax for CFD No. 8 shall be collected in the same manner and at the same time as ordinary ad valorem property taxes, provided, however, that CFD No. 8 may (under the authority provided in the Act), in any particular case, bill the taxes directly to the property owner off the County tax roll, and the Special Taxes will be equally subject to penalties and foreclosure if delinquent.

E. LIMITATIONS

Notwithstanding any other provision of this Rate and Method of Apportionment of Special Tax, no Special Tax shall be levied on land that has been conveyed to a Public Agency, except as otherwise provided in Sections 53317.3 and 53317.5 of the Mello-Roos

ATTACHMENT C

Community Facilities Act of 1982. In addition, no Special Tax shall be levied on Church Property except that, if a Parcel that had been taxed in any prior Fiscal Year as Residential Property, Non-Residential Property or Subsequent Non-Residential Property becomes Church Property, the City has the discretion to levy a Special Tax against such Parcel if the Special Tax revenues generated from the Parcel are needed to meet the Special Tax Requirement.

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. 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 ordinance or resolution for purposes of clarifying any vagueness or ambiguity in this Rate and Method of Apportionment.

ATTACHMENT D

