

## **RESOLUTION NO. 79-2008**

*Adopted July 15, 2008*

### **APPROVAL OF THE AMENDED AND RESTATED LOCAL GOALS AND POLICIES FOR COMMUNITY FACILITIES DISTRICTS FOR THE AGENCY FOR THE PURPOSE OF: 1) SATISFYING THE MINIMUM REQUIREMENTS OF THE MELLO-ROOS COMMUNITY FACILITIES ACT OF 1982; AND 2) ESTABLISHING APPROPRIATE POLICIES WITH RESPECT TO THE FORMATION OF COMMUNITY FACILITIES DISTRICTS; ALL REDEVELOPMENT PROJECT AREAS**

#### **BASIS FOR RESOLUTION**

1. 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, a local agency must adopt goals and policies as provided in the Act.
2. In accordance with the Act, the Agency Commission approved "Local Goals and Policies for Community Facilities Districts" on November 16, 1999 (the "Existing Goals and Policies").
3. Effective January 1, 2008, the Act was amended, which requires that the Redevelopment Agency of the City and County of San Francisco (the "Agency") modify its local goals and policies.
4. The Agency wishes to amend and restate the Existing Goals and Policies for the purpose of satisfying the minimum requirements of the Act and to establish appropriate policies with respect to the formation of community facilities districts.
5. Agency approval of the amendment and restatement of the Existing Goals and Policies is not a Project, as defined by the California Environmental Quality Act Guidelines Section 15378. The proposed action would not result in a significant physical effect on the environment.

#### **RESOLUTION**

**ACCORDINGLY, IT IS RESOLVED** by the Redevelopment Agency of the City and County of San Francisco that the Amended and Restated Local Goals and Policies for Community Facilities Districts (the "Goals and Policies"), which is attached hereto as Exhibit A (and on file with the Commission Secretary of the Agency), is hereby found to meet the requirements of the Act and is hereby adopted by the Agency for purposes of compliance with the Act, subject to further amendment by the Agency from time to time.

**IT IS FURTHER RESOLVED**, that this Resolution and the Goals and Policies shall be effective from and after the date of the adoption of this Resolution.

**APPROVED AS TO FORM:**

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James B. Morales  
Agency General Counsel

## EXHIBIT A

### REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO

#### AMENDED AND RESTATED LOCAL GOALS AND POLICIES FOR COMMUNITY FACILITIES DISTRICTS (Adopted \_\_\_\_\_, 2008)

These Amended and Restated Local Goals and Policies for Community Facilities Districts amend and restate in their entirety the "Local Goals and Policies for Community Facilities Districts" adopted pursuant to Resolution No. 178-99 on November 16, 1999.

**1. INTRODUCTION.** 1.1 Section 53312.7(a) of the California Government Code requires that the Redevelopment Agency of the City and County of San Francisco (the "Agency") 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. The following goals and policies are intended to satisfy the minimum requirements of the Act, and may be amended or supplemented by resolution of the Agency at any time.

**2. GOALS.** 2.1 The Agency will consider the use of the Act for financing of public facilities and services only in connection with development projects which are the subject of a written owner participation agreement with the Agency. Any request for a CFD which is not integral to a development project that is the subject of an owner participation agreement will be considered on a case by case basis.

#### **3. ELIGIBLE PUBLIC FACILITIES AND SERVICES.**

3.1 Eligible Facilities; Priority Facilities. The improvements eligible to be financed by a CFD must be owned and operated by the Agency, or, subject to the provisions of the second following paragraph, by a public agency or public utility, and must have a useful life of at least five (5) 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 proposed within a CFD must be consistent with the applicable general plan and must have received any required legislative approvals such as zoning or specific plan approvals. 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 public facilities eligible to be financed by a CFD include, but are not limited to, the following:

- Streets, highways and bridges
- Street lighting
- Traffic signals and safety lighting
- Parks
- Governmental facilities
- Sanitary sewer facilities
- Storm drain facilities
- Flood control facilities
- Potable and reclaimed water facilities
- Libraries
- Public utilities
- Police and fire protection facilities
- Recreation facilities
- Railroad infrastructure improvements
- Public transit facilities

The funding of public facilities to be owned and operated by public agencies other than the Agency shall be considered on a case-by-case basis. If the proposed financing is consistent with a public facilities financing plan or owner participation agreement approved by the Agency, or the proposed facilities are otherwise deemed to be appropriate for financing by a CFD and are consistent with approved land use plans for the property, the Agency shall consider entering into a joint community facilities agreement or joint powers authority in order to finance these facilities. A joint community facilities agreement with the public agency that will own and operate any such facility must be entered into at the time required by the Act.

Priority for CFD financing of public facilities shall be given to public facilities which: (a) are necessary for development to proceed in an orderly fashion, or (b) are otherwise coordinated to correspond to the phasing of the related private development project. If appropriate and not otherwise provided for in the applicable owner participation agreement, the Agency 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 Agency 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.

3.2 Financing of Fees. It is acknowledged that the Act permits the financing of fee obligations imposed by governmental agencies the proceeds of which fees are to be used to fund public capital improvements of the nature listed above. The Agency will consider an application to finance fee obligations on a case-by-case basis. The Agency will prioritize financing fees to be paid to the Agency or the City and County of San Francisco (the “City and County”) because of the administrative burden associated with financing fees payable to other local agencies.

3.3 Eligible Services; Priority Services. The services eligible to be financed by a CFD (the “Services”) are those identified in the Act. Subject to the conditions set forth in the Act, priority for public services to be financed by a CFD shall be given to Services that are (a) necessary for the public health, safety and welfare and (b) would otherwise be paid from the general fund of the Agency or the City and County. The Agency 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 Agency prioritizes financing services to be provided by the Agency and the City and County. If appropriate and not otherwise provided for in an applicable owner participation agreement (if any), the Agency 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.

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

#### **4. CREDIT QUALITY REQUIREMENTS FOR CFD BOND ISSUES.**

4.1 Subject to the provisions of Section 4.7, CFD bond issues should have at least a three to one value of property in the CFD as a whole to public lien ratio after calculating the value of the financed public improvements to be installed. Property value may be based on either an appraisal or on assessed values as indicated on the County Assessor's tax roll. The appraiser shall be selected by the Agency, and the appraisal shall be based on standards promulgated by the State of California and otherwise determined applicable by Agency staff and consultants. The appraisal should be dated within six months of the date the bonds are issued. The public lien amount shall include the bond issue currently being sold plus any public indebtedness (including assessments and special taxes) secured by a recorded lien on real property currently existing against the properties to be taxed.

4.2 Subject to the provisions of Section 4.7, the Agency may engage a consultant to provide an absorption study for any CFD involving major land development. The Agency will require that all major land use approvals and governmental permits necessary for development of the public facilities to be financed be substantially in place relative to any such CFD, before bonds may be issued.

4.3 Subject to the provisions of Section 4.7, a reserve fund equal to the least of (i) ten percent of the original proceeds of the bond issue, (ii) the maximum annual debt service on the bonds, or (iii) one hundred twenty-five percent of the average annual debt service on the bonds shall be required for all bond issues for CFDs where less than fifty percent of the buildable acreage has been developed. A smaller reserve fund may be allowed by the Agency for bond issues in CFDs where development thresholds identified by the Agency have been met (for example, more than 50% of the buildable acreage has been developed). The reserve fund may be funded in whole or in part with cash or some other form of security instrument acceptable to the Agency, such as a surety bond policy or letter of credit, in any case from a financial institution and otherwise in a form acceptable to the Agency.

4.4 In situations where there is less than a uniform three to one property value to public lien ratio for parcels in the CFD, tax delinquencies in respect of parcels in the CFD, or projects of poor economic viability, the Agency may require additional credit enhancement prior to bond sale. The Agency 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 Agency, or which otherwise provide identified public benefits, to the extent permitted by and subject to any applicable requirements of the Act.

4.5 If the Agency 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 Agency. Any security required to be provided by the applicant may be discharged by the Agency upon satisfaction of the applicable credit criteria specified by the Agency.

4.6 As an alternative to providing other security, the applicant may request that a portion of the bond proceeds be placed in escrow with a corporate trust 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 bonds. The portion of any bond proceeds held in escrow shall be subtracted from the principal amount of the bonds outstanding in determining the amount of the lien in respect of the value to lien ratio for the CFD. The escrowed proceeds shall be released from the escrow at such times and in such amounts as may be necessary to assure the applicable credit criteria have been met.

4.7 In the event that a letter of credit is provided which secures the timely payment of all of the principal of and interest on a CFD bond issue, and the letter of credit is from a financial institution whose long term unsecured debt obligations are rated "A" or its equivalent or better, and whose letter of credit results in variable rate debt that is rated by a national rating agency having a rating of at least A-1 or its equivalent or better, in each case by one or more national rating agencies, then the provisions of Section 4.1 (requiring a three to one value of property to lien ratio), Section 4.2 (regarding absorption studies), Section 4.3 (requiring a reserve fund), and Section 6.2 (requiring certain allocations of special taxes), shall be inapplicable to the CFD bonds so secured. The foregoing sentence shall not be interpreted to require that a rating be obtained for any CFD bonds so secured by such a letter of credit, and shall be subject to, in any event, the provisions of Section 53345.8 of the Government Code.

4.8 The Agency will require that bond financings be structured so that bonds are purchased and owned by suitable investors. For example, the Agency 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 Agency.

**5. DISCLOSURE REQUIREMENTS.** 5.1.1 Disclosure Requirements for Developers. Developers who are selling lots or parcels that are within a CFD shall provide disclosure notice to prospective purchasers that complies with all of the requirements of Section 53341.5 of the Government Code. The Agency expects to prepare the form of disclosure notice to be provided to purchasers of privately owned residences within the CFD, and, in any event, developers shall submit all prospective

CFD disclosure notices to Agency staff and its special tax consultant for review and comment. Developers shall not use forms of disclosure notices disapproved in writing by Agency staff.

5.1.2 All such disclosure notices must be provided to prospective purchasers of property at or prior to the time the contract or deposit receipt for the purchase of property is executed. Developers shall keep an executed copy of each disclosure document as evidence that disclosure has been provided to all purchasers of property within a CFD.

5.2. Disclosure Requirements for the Resale of Lots. The Deputy Executive Director, Finance Administration of the Agency (or designee) 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 Civil Code. This notice shall be provided by the Deputy Executive Director, Finance and Administration of the Agency (or designee) 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.

5.3. Compliance With Federal Securities Laws. The Agency shall use all reasonable means to ensure compliance with applicable federal securities laws in connection with the issuance of debt and the provision of annual information regarding any CFD established by the Agency with respect to which bonds have been issued, including requiring any landowner or developer in a CFD who is material to the bond issue to enter into a continuing disclosure agreement or certificate requiring that appropriate information be transmitted periodically to the Agency or its designee for disclosure to bond investors.

**6. EQUITY OF SPECIAL TAX FORMULAS AND MAXIMUM SPECIAL TAXES.** 6.1 Special tax formulas for CFDs 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 (taking into account any sources of revenue, other than special taxes, pledged to the payment of the debt), (b) all administrative expenses of the Agency related to the CFD, and (c) amounts equal to the differences between expected earnings on any escrow fund and the interest payments due on bonds of the CFD. Additionally, the special tax formula may provide for the following to be included in the special tax: (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 authorized facilities, (g) costs associated with the release of funds from an escrow account, (h) the costs of Services and (i) any other costs or payments permitted by the Act.

6.2 Subject to the provisions of Section 4.7, 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, parcels to be used for affordable housing projects or parcels affected by public utility easements making impractical their utilization for other than the purposes set forth in the easements, or otherwise parcels that have insufficient value to support bonded indebtedness.

6.3 The total projected property tax levels for any CFD shall not exceed any maximum specified in the Act. 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 parcel as a consequence of delinquency or default by the owner of any other parcel shall not exceed any maximum specified in the Act.

Special taxes may be subject to prepayment in whole or in part.

6.4 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 Agency shall have no responsibility therefore 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.

6.5 The Agency may retain a special tax consultant to prepare a report 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, Agency and CFD 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.

**7. APPRAISALS.** 7.1 The definitions, standards and assumptions to be used for appraisals shall be determined by Agency staff on a case-by-case basis, with input from Agency consultants and CFD proponents, and by reference to relevant materials and information promulgated by the State of California (including, but not limited to, the California Debt Investment and Advisory Commission). The appraisal shall be coordinated by and under the direction of the Agency. The Agency may retain a consultant to prepare a report to verify market absorption assumptions and projected sales prices of the properties which may be subject to the maximum special tax in the CFD.

**8. TERMS AND CONDITIONS OF BONDS.** 8.1 All terms and conditions of any CFD bonded indebtedness shall be approved by the Agency. The Agency will control, manage and invest, or cause to be controlled, managed and invested, all CFD bond proceeds. Each bond issue shall be structured to not negatively impact the

bonding capacity or credit rating of the Agency through the special taxes, credit enhancements, foreclosure covenant and reserve funds, as determined by the Agency but subject to any applicable agreement between the Agency and the landowners in the CFD.

8.2 All statements and offering materials related to the sale of bonds shall emphasize and state that neither the faith and credit nor the general fund of the Agency or the City and County is pledged to the security or repayment of the bonds. The sole source of pledged revenues to repay CFD bonds shall be 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, unless otherwise specifically agreed to by the Agency in an owner participation agreement relating to land in the CFD.

**9. USE OF CONSULTANTS.** 9.1 The Agency shall select all consultants necessary for the formation of the CFD and the issuance of bonds, including the underwriter(s), bond counsel, financial advisor(s), appraiser(s), market absorption study consultant and the special tax consultant, after reasonable consultation with the primary proponent for the CFD. While the Agency will consult with the proponent of a CFD as to the consulting and financing team to be selected for the CFD, prior consent of any such proponent or any land owner within a CFD shall not be required in the determination by the Agency of the consulting and financing team.

9.2 All Agency staff and consultant costs incurred in the evaluation of CFD applications and the establishment of the CFD will be paid by the proponents of the CFD or from unencumbered assets of the Agency. Agency staff shall use all reasonable efforts not to incur any expenses for processing or administering a CFD that are not eligible to be reimbursed from CFD special taxes or CFD bond proceeds. Expenses incurred by the Agency that are not chargeable to the CFD shall be borne by the proponents of the CFD to the greatest extent possible.

**10. AGENCY PROCEEDINGS.** 10.1 The final schedule of events for any proceeding shall be determined by the Agency, in consultation with its financing team and the proponent of the CFD. Any changes will require approval by the appropriate Agency official. Time schedules will (unless specific exceptions are allowed by Agency staff) observe established Agency 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.

**11. EXCEPTIONS TO THESE POLICIES.** 11.1 The Agency may find in limited instances that a waiver of any of the above stated policies is reasonable given identified benefits to be derived from such waiver. Such waivers only will be granted by action of the Agency.