



TOWN OF PARADISE  
Resolution No. 11-39

**SECTION 1.** Resolution No. 08-56 and all prior resolutions in conflict with this resolution are rescinded.

**SECTION 2.** The Paradise Town Council hereby adopts Local Goals, Policies, and Procedures for use of Mello-Roos Community Facilities District Financing as enumerated in Exhibit "A" and Exhibit "B". This resolution is effective immediately upon adoption.

**SECTION 3.** This resolution is effective immediately upon adoption.

**PASSED AND ADOPTED** by the Town of Paradise this 15<sup>th</sup> day of September, 2011 by the following vote:

AYES: Steve "Woody" Culleton, Joe DiDuca, Scott Lotter, Tim Titus and Alan White, Mayor

NOES: None

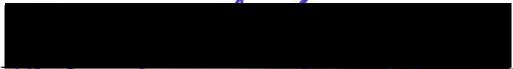
ABSENT: None

NOT VOTING: None



Alan White, Mayor

ATTEST: 9.19.2011



JOANNA GUTIERREZ, TOWN CLERK

APPROVED AS TO LEGAL FORM:



DWIGHT L. MOORE, TOWN ATTORNEY

## "Exhibit A"

### **TOWN OF PARADISE Local Goals, Policies and Procedures for Use of Mello-Roos Community Facilities District Financing**

#### **1. INTRODUCTION**

The Town of Paradise has adopted this document to set forth the Town's local goals, policies and procedures for the use of Chapter 2.5 of Part 1 of Title 5 of the California Government Code, the Mello-Roos Community Facilities Act of 1982 (the "Act"), to finance public facilities, and/or their ongoing maintenance, as well as public services, required as a condition of development approval or otherwise. This document will assist developers in making realistic business and planning decisions concerning development and redevelopment within the Town.

The Town will consider property-owner or developer-initiated applications requesting formation of a community facilities district pursuant to the Act to finance the construction, or maintenance, or acquisition of eligible public facilities, or providing of applicable public services, or a combination thereof. The decision as to whether or not to utilize the Town's authority to form any such districts rests solely in the discretion of the Town based on the amended Town policy attached as Exhibit "B" and made a part hereto.

All costs, including consultant costs, incurred by the Town in the evaluation of new development (or redevelopment) projects and district formation applications, and in the establishment of a district pursuant to the Act, and the issuance of bonds shall be paid by the applicant/developer by advance deposit increments. It is the expressed intention of the Town in adopting this policy, that the Town shall be reimbursed for all of its costs associated with the formation of districts, the issuance of bonds and otherwise implementing the public financing. Where provision has been made to reimburse the applicant/developer from bond proceeds for those amounts paid to the Town hereunder, such reimbursement shall be limited to expenses legally chargeable to the district according to the opinion of bond counsel. To the extent that such expenses are not legally chargeable to the district, they shall be borne by the applicant/developer.

#### **2. APPLICATION PROCESS**

The following comprises the Town's application process for the formation of a district covered by this policy.

- a. Application: The property owner or applicant/developer shall submit an initial application to the Town in a form acceptable to the Town, together with a non-refundable fee in the amount specified by the Town's adopted Master Fee Schedule. This fee is for the purpose of application processing, and other preliminary costs. The Town will conduct an initial evaluation of the application to determine whether additional information is required.

- b. Application processing: Upon Town staff determination that an application is complete, staff will prepare a transmittal report to the Town Council, forwarding the application for Council consideration, with staff's recommendation. If the Council approves the application, Council will direct staff to select consultants and negotiate necessary contracts with the applicant/developer , including but not limited to a deposit and reimbursement agreement.

### **3. DISTRICT COSTS AND REIMBURSEMENT POLICIES**

- a. Costs incurred by the Town prior to formation: All costs incurred by the Town prior to formation of the district, including but not limited to, consultant costs (e.g., legal counsel, engineer firms, appraisers, special tax consultants, financial advisors), Town staff and administrative costs and related expenses, cost of providing notices, printing and publication costs, and all expenses directly or indirectly relating to these items, shall be advanced by the applicant/developer prior to formation. The Town may require the applicant/developer to enter into a deposit and reimbursement agreement with the Town in a form satisfactory to the Town.
- b. Costs incurred by the Town subsequent to formation: All Town administrative and consultant costs related to administration of the district and incurred after formation shall be included within the special tax in accordance with applicable provisions of law.
- c. Reimbursement to applicant/developer:
  - (i) Where district is formed and bonds are issued. If the district is formed and bonds are issued, the applicant/developer shall be entitled to reimbursement from bond proceeds for all reasonable costs and expenses incident to the proceedings and construction of the public improvements, subject to approval of bond counsel, and subject to any applicable restrictions contained in the Act. With regard to applicant/developer paid consultant costs, reimbursement shall be limited to those district-related consultants which were hired by the Town. Eligibility for reimbursement for any otherwise eligible expense is conditioned upon the applicant/developer providing paid invoices therefor to the Town's satisfaction.
  - (ii) Where district is not formed, or where district is formed and bonds are not issued. In the event that the district is not formed for any reason, or the district is formed and bonds are not issued for any reason, the Town will refund to applicant/developer any remaining unexpended and unobligated portion of advance deposits posted with the Town, subject to the Town's full reimbursement of all its direct and indirect costs. The Town shall be entitled to pay any refund to the applicant/developer listed on the application form, irrespective of any changes in ownership or composition of the applicant/developer, unless otherwise specified in a deposit and reimbursement agreement.

#### **4. USE OF CONSULTANTS**

The Town shall retain any consultants necessary for the formation of a district, review of the financing, and issuance of bonds, including but not limited to, the underwriter(s) and underwriters' counsel; bond counsel; disclosure counsel; financial advisor; special tax consultant; engineer; appraiser; market absorption study consultant; and any other consultant deemed necessary by the Town in its judgment to complete the district proceedings and/or the issuance of bonds. The cost reimbursement provisions of this policy shall apply to all costs and expenses incurred by the Town in employing such consultants.

An applicant/developer may retain consultants for its own benefit, but will still be required to work through those consultants hired by the Town. If the applicant/developer does retain its own consultants, all costs associated therewith shall be borne exclusively by the applicant/developer, without reimbursement from bond proceeds or otherwise.

No firm may serve as both design engineer and assessment engineer (or special tax consultant) in proceedings relating to the same district (see Government Code § 87100.1).

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

Facilities eligible for district financing are those permitted to be financed by the Act and must be owned by the Town or another public agency or public utility and must have a useful life of at least five years. Eligible improvements include, but are not limited to, streets and arterials; right-of-way acquisitions; street lights; traffic signals and safety lighting; water, storm drain, drainage and sewer improvements; landscape and irrigation facilities; fire and police stations; parks and recreational facilities, open space improvements; public parking; bicycle and pedestrian facilities; utility relocations; public utilities; libraries; cultural facilities; child care facilities; transit/transportation improvements; maintenance of new facilities; and the provision of certain services (if applicable), that may be eligible for financing under this document, and which are authorized improvements under the Act.

Public right-of-way easements and/or lands which are dedicated by a developer as a condition of a development entitlement will not be eligible for bond financing.

#### **6. PRIORITY FOR FINANCING**

The eligibility of a facility, ongoing maintenance of eligible facilities, and/or services, for financing and the priority for the financing of facilities, maintenance, and/or services will be determined at the sole discretion of the Town. In general none of these types of improvements or services will have priority over any others.

## **7. LAND USE APPROVALS**

The development proposed within the district must be consistent with the Town's adopted General Plan, Redevelopment Plan, and any other applicable, adopted Town plan. All property within the proposed district must possess land use determinations of sufficient certainty, and facility and/or service requirements of sufficient specificity, assuring that each parcel can be adequately taxed pursuant to the Act.

## **8. AGREEMENTS REQUIRED**

Each applicant/developer will be required to enter into all agreements incident to district processing which the Town deems necessary, in a form acceptable to the Town.

Agreements that might be required by the Town, depending on the nature and type of district formation, may include, but not be limited to:

- Disposition and Development Agreement
- Acquisition and Disclosure Agreement
- Funding and Reimbursement Agreement
- Advance and Deposit Agreement
- Land Dedication Agreement (where required)
- Agreement to use the Town as the sole issuer of bonds in the District. No other governmental entity may be used to issue any additional bonds in the future.
- Other Agreements (where required)

As a condition to the issuance and sale of bonds, all agreements required by the Town shall be duly approved and executed by the parties thereto. Prior to execution of any agreements, such agreements shall be reviewed by the bond counsel and Town Attorney, and such other consultants as the Town believes are appropriate.

## **9. SECURITY: CREDIT ENHANCEMENT**

- a. Financial Plan: For new development, prior to the issuance of bonds, the applicant/developer must submit a financial plan which demonstrates to the Town's satisfaction the applicant/developer's ability to pay all assessments and/or special taxes through the build out of the project.
- b. Credit Enhancement: In general, where credit enhancement is required for the bond issue as a whole, in the opinion of the Town, the applicant/developer shall provide such enhancement in a form satisfactory to the Town, the underwriter and the Town's financial advisor. Such enhancement may be required in cases where the value-to-lien ratio for property within the district is insufficient or to otherwise improve the credit worthiness of the proposed financing, and may take the form of letters of credit, or policies of insurance, or other vehicles. The Town reserves the right, in its sole discretion, to determine the acceptability of both the credit facility and its provider.

## **10. VALUE-TO-LIEN RATIOS/PROPERTY APPRAISALS**

It is the policy of the Town to comply with all provisions of the Act including, but not limited to, Section 53345.8, as such Section may be amended from time to time. It is the goal of the Town to conform, as nearly as practicable, to the California Debt and Advisory Commission's Appraisal Standards for Land-Secured Financings, as such standards may be amended from time to time, provided, however, that this Town Council may additionally amend such standards from time to time as it deems necessary and reasonable, in its own discretion, to provide needed public improvements and/or services within the Town, while still accomplishing the goals set forth herein.

Unless otherwise specifically approved by the Town Council as provided in Section 53345.8(b) or (c) of the Act, the district property value-to-lien ratio shall be at least 3:1 after calculating the value of the public facilities and/or services to be financed, and considering any prior or pending special taxes or assessment liens. The Town may require a higher value-to-lien ratio in its discretion, in consideration of current market and related conditions.

Property value may be based either on an appraisal or on full cash value as indicated on the County Assessor's tax roll. Appraisals shall be conducted by an MAI (Member, Appraisal Institute) appraiser under contract with the Town. All appraisals shall be prepared in conformance with the Appraisal Standards for Land-Secured Financing prepared by the California Debt Advisory Committee dated May 1994, as revised July 2004. The appraisal criteria and methodology will follow the guidelines as specified by the Town in its contract with the appraiser.

In instances where the value-to-lien ratio is less than 3:1, or less than some higher ratio selected by the Town in its discretion, credit enhancement will be required in accordance with the provisions of Section 9 of this policy. The actual form of credit enhancement shall be in the discretion of the Town Manager and financial advisor(s).

In the event that the overall value-to-lien ratio for the district is at least 3:1 (or a higher ratio selected by the Town), but one or more individual properties demonstrate less than the required ratio, the Town, at its discretion, may require a credit enhancement for these properties.

## **11. MARKET ABSORPTION STUDY**

The Town in its discretion may require, and may employ a consultant for the purpose of conducting a market absorption study. The study, if required, shall include an estimate of the total number of units, land uses and rate of absorption, and will be used as a basis for verification that sufficient revenues can be generated, and to determine if the financing of the improvements is appropriate given the projected level and pace of development.

## **12. SPECIAL TAXES AND TAX FORMULAS**

The rate and method of apportionment of the special tax must be reasonable **in the allocation of special taxes to parcels within the proposed district.**

The rate and method of apportionment of the special tax is to provide for the administrative expenses of the proposed district, including, but not limited to, those expenses necessary for the enrollment and collection of the special tax and bond administration.

The rate and method of apportionment may provide for exemptions to be extended to parcels that are dedicated at a future date to public entities, held by a home owner's association, or designated open space.

The maximum annual special tax, together with ad valorem property taxes, special assessments or special taxes for an overlapping financing district, including such potential taxes and assessments relating to authorized but unissued debt of public entities other than the Town (collectively, the "Overlapping Debt Burden"), in relation to the expected assessed value of each parcel upon completion of the private improvements to the parcel is of great importance to the Town in evaluating the proposed financing.

For the residential parcels, the Overlapping Debt Burden shall not exceed two percent (2.0%) of the projected assessed value of each improved parcel within the district. As it pertains to commercial, industrial, or other parcels within the district, the Town reserves the right to exceed the two percent (2.0%) limit if, in the Town's sole discretion, it is fiscally prudent.

This evaluation will be based in part on information obtained from other taxing entities that have jurisdiction to impose a levy on the affected parcels.

The total maximum annual special taxes that can be collected from taxable property in a district, taking into account any potential changes in land use or development density or rate, and less all projected administrative expenses, must be equal to at least one hundred ten percent (110%) of the gross annual debt service on the bonds issued by or on behalf of the district in each year that said bonds will remain outstanding.

The rate and method of apportionment of the special tax shall include a provision for a backup tax to protect against any changes in development that would result in insufficient special tax revenues to meet the debt service requirements of the district. Such backup tax shall be structured in such a manner that it shall not violate any provisions of the Act regarding cross-collateralization limitations for residential properties.

A formula to provide for the prepayment of the special tax may be provided; however, neither the Town nor the district shall be obligated to pay for the cost of determining the prepayment amount which is to be paid by the applicant.

### **13. DISCLOSURE REQUIREMENTS**

The applicant/developer shall be responsible for compliance with all applicable federal and state statutory disclosure requirements in transactions with purchasers of properties within the district, including, but not limited to, the provisions of Section 53341.5 of the Act. The Town will make available the information required to be made available by the Town necessary for the applicant/developer to make the required disclosures in connection with the sale or lease of

property in the district. The Town shall use all reasonable means to ensure compliance with applicable federal securities laws in connection with the issuance of bonds and the provision of annual information regarding any district established by the Town with respect to which bonds have been issued, including requiring any developer whose development is material to the bond issue to transmit appropriate information to the Town or its designee for disclosure to bond investors.

#### **14. EXCEPTIONS TO THESE POLICIES**

Any policy or goal stated herein may be supplemented or amended or deviated from, and new goals and policies may be added hereto, from time to time upon the determination by the Town Council that such supplement, amendment, deviation, or addition is necessary or desirable; and any policy or goal stated herein shall be deemed amended or supplemented in the event, and as of the date, if ever, that such amendment or supplement is required to ensure compliance with the Act or any laws of the State of California or federal laws of the United States of America.

## **Exhibit “B”**

### **TOWN OF PARADISE**

**Planning/Fiscal Policy:** In order to ensure that future large and/or moderate commercial and residential development does not become a long term financial drain on Town's limited financial resources and capacity to meet existing infrastructure or public service needs; and that these developments pay their fair share not just for the short term, but for the long term; and to promote the town's ability to provide needed infrastructure improvements and/or to provide or augment needed public services, the establishment of a Mello-Roos Community Facilities Assessment District for the affected land area shall be required via the assignment of land use permit conditions of approval whenever the Town of Paradise determines that formation of such a district is necessary to provide future infrastructure and public service needs directly attributable to new development.

#### **CRITERIA FOR THE ESTABLISHMENT OF MELLO-ROOS COMMUNITY FACILITIES DISTRICTS**

In determining whether a proposed development project shall be required to be established, the Town shall make findings based upon substantial evidence relating to the following criteria:

1. The need to maintain and replace additional public improvements required for the project.
2. The need for additional public services associated with the project.