

TO: Honorable Mayor and City Council
Attention: David J. Van Kirk, City Manager

FROM: Ken Campo, Finance Director

**SUBJECT: RESOLUTION APPROVING LOCAL GOALS AND POLICIES FOR
COMMUNITY FACILITIES DISTRICTS**

DISCUSSION:

I. GENERAL.

Mello-Roos Community Facilities Districts are an important tool for growing communities, like Vacaville, that need to find ways to assist with financing of facilities and services related to growth and development. This is a trend that will likely continue given the ongoing struggle to maintain a balanced budget while continuing to deliver essential public services at current levels.

The Mello-Roos Community Facilities Act of 1982 (the "Act") authorizes public agencies to form Community Facilities Districts ("CFDs") to issue bonds, secured by the levy of special taxes, to finance public services and facilities (a list of eligible facilities is provided below.) CFDs can be used to finance services, such as public safety, flood and storm protection, recreation and library services, or maintenance of public improvements such as landscaping, lighting, streets and roads, and parks and open space. Vacaville has used CFDs to help offset the added cost of providing essential public safety services to areas of new residential development.

Section 53312.7(a) of the California Government Act, as amended by AB 373 in 2007, requires that we (the "City") consider and adopt local goals and policies concerning the use of the Act prior to the initiation of proceedings to establish a new CFD under the Act.

These Local Goals and Policies for Community Facilities Districts (the "Policies") provide guidance and conditions for the use of CFDs for services, and for the conduct by the City of proceedings for, and the issuance of bonds secured by, special taxes levied in a CFD established under the Act. The Policies are intended to be general in nature; specific details will depend on the nature of each particular financing. The Policies are applicable to financings under the Act and are intended to comply with Section 53312.7 (a), as amended, of the Government Code. These Policies shall not apply to any assessment financing or any certificate of participation or similar financings involving leases of or security in public property. The Policies are subject to amendment by the City Council at any time.

II. FINANCING PRIORITIES.

Eligible Facilities. The improvements eligible to be financed by a CFD must be owned by a public agency or public utility and must have a useful life of at least five (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 City's 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 eligible public facilities includes, but is not limited to, the following:

- Streets
- Street lighting
- Traffic signals and safety lighting
- Landscaping on public property or in public easements
- Sanitary sewer facilities
- Storm drain facilities
- Flood control facilities
- Potable and reclaimed water facilities
- Utility relocations
- Elementary and secondary school sites and facilities
- Libraries
- Parks and recreational facilities
- Public utilities
- Cultural facilities
- Police and fire protection facilities
- Governmental facilities

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 funding of public facilities to be owned and operated by public agencies other than the City shall be considered on a case-by-case basis. If the proposed financing is consistent with a public facilities financing plan approved by the City, or the proposed facilities are otherwise consistent with approved land use plans for the property, the City shall consider entering into a joint financing agreement or joint powers authority in order to finance these facilities. In general, a joint agreement with the public agency that will own and operate any such facility must be entered into prior to the resolution of formation of any CFD.

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

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

Eligible 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 which are (a) necessary for the public health, safety and welfare and (b) would otherwise be paid from the City's general fund. If appropriate, the City shall prepare a public services financing plan as a part of the specific plan or other land use document that identifies the public services required to serve a project and the source of funding for each such service.

III. CREDIT QUALITY OF BOND ISSUES.

All CFD bond issues should have at least a three-to-one property value to public lien ratio after calculating the value of the financed public improvements to be installed, unless otherwise specifically approved by the City Council as provided in Section 53345.8(b) or (c) of the Act. Property value may be based on either an appraisal (as described in VI below) or on assessed values as indicated on the County Assessor's tax roll. The public lien amount shall include the bond issue currently being sold plus any public indebtedness secured by a lien on the properties to be taxed.

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

In most cases, a reserve fund equal to the lesser 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 will be required for all bond issues where less than fifty percent of the buildable acreage has been developed. A smaller reserve fund may be required by the City for bond issues where over fifty percent of the buildable acreage has been developed.

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

If the City requires letters of credit or other security, the credit enhancement shall be issued by an institution, in a form and upon terms and conditions satisfactory to the City. Any security required to be provided by the applicant may be discharged by the City upon the opinion of a qualified appraiser, retained by the City, that a value-to-lien ratio of three to one has been attained or based upon other criteria (such as diversity in ownership) specified by the City.

As an alternative to providing other security, the applicant may request that a portion of the bond proceeds be placed in escrow with a trustee or fiscal agent in an amount sufficient to assure a value-to-lien ratio of at least three to one on the outstanding proceeds. The escrowed proceeds shall be released at such times and in such amounts as may be necessary to assure a value-to-lien ratio of at least three to one on the aggregate outstanding bond proceeds and other indebtedness secured by real property liens as required.

IV. DISCLOSURES

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

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

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

V. EQUITY OF SPECIAL TAX FORMULAS AND MAXIMUM SPECIAL TAXES

Special tax formulas shall provide for minimum special tax levels which satisfy the following payment obligations of a CFD: (a) 110 percent gross debt service coverage for all CFD bonded indebtedness, (b) the administrative expenses of the CFD, and (c) amounts equal to the differences between expected earnings on any escrow fund and the interest payments due on related bonds of the CFD. In addition, the special tax formula may provide for the following to be included in the Special Tax levels: (a) any amounts required to establish or replenish any reserve fund established in association with the indebtedness of the CFD, (b) the accumulation of funds reasonably required for future debt service, (c) amounts equal to projected delinquencies of special tax payments, (d) the costs of remarketing, credit enhancement and liquidity facility fees, (e) the cost of acquisition, construction, furnishing or equipping of authorized Facilities, (f) lease payments for existing or future facilities, (g) costs associated with the release of funds from an escrow account, (h) the costs of Services, and (i) any other costs or payments permitted by law.

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

The total projected residential property tax levels (including ad valorem taxes, any maintenance, landscaping or other impositions on the land in the CFD and other similar annual government charges levied on parcels in the CFD, but excluding homeowners' association annual levies and as to any special tax levies, based on the expected special tax rates and not any "back-up" special taxes) for any CFD (or, if a CFD has multiple improvement areas, for each improvement area and not the entire CFD) shall not exceed the lesser of (i) 2.0% of the estimated sales prices of the respective homes to be constructed in the CFD (with such prices to be determined by reference to an absorption study or appraisal prepared for the CFD or such other information as the City shall determine), or (ii) 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 will only be levied on an entire County Assessor's parcel, and any allocation of special tax liability of a County Assessor's parcel to leasehold or possessory interest in the fee ownership of such County Assessor's parcel shall be the responsibility of the fee owner of such parcel and the City shall have no responsibility 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.

The City 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, City administrative costs, services (if applicable) and other related expenditures. Such analysis shall also address the resulting

aggregate tax burden of all proposed special taxes plus existing special taxes, ad valorem taxes and assessments on the properties within the CFD.

VI. APPRAISALS

The definitions, standards and assumptions to be used for appraisals shall be determined by City staff on a case-by-case basis, with input from City consultants and CFD applicants, and by reference to relevant materials and information promulgated by the State of California. The appraiser shall be selected by or otherwise acceptable to the City, and the appraisal shall be coordinated by and under the direction of, or otherwise as acceptable to, the City.

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

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

VII. CITY PROCEEDINGS.

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

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

Any petition for formation of a CFD shall be accompanied by an initial deposit in the amount determined by the City to fund initial staff and consultant costs associated with CFD review and implementation. If additional funds are needed to off-set costs and expenses incurred by the City, the City shall make written demand upon the applicant for such funds. If the applicant fails to make any deposit of additional funds for the proceedings, the City may suspend all proceedings until receipt of such additional deposit.

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

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

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

VIII. FINANCING TERMS

All terms and conditions of any CFD bonds shall be established by the City. The City will control, manage and invest all CFD issued bond proceeds. Each bond issue shall be structured to adequately protect bond owners and to not negatively impact the bonding capacity or credit rating of the City through the special taxes, credit enhancements, foreclosure covenant, and reserve funds.

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

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

IX. EXCEPTIONS TO THESE POLICIES

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

RECOMMENDATION:

By simple motion, to adopt the Resolution Approving Local Goals and Policies for Community Facilities Districts.

RESOLUTION NO. 2008-19

A RESOLUTION APPROVING LOCAL GOALS AND POLICIES FOR COMMUNITY
FACILITIES DISTRICTS

CITY OF VACAVILLE

RESOLVED by the City Council (the "Council") of the City of Vacaville (the "City"), County of Solano, State of California, that:

1. **Authority.** This Council is intending to consider the conduct of proceedings under the Mello-Roos Community Facilities Act of 1982 (Chapter 2.5, commencing with Section 53311 of Part 1, Division 2, Title 5 of the California Government Code) (the "Act").

2. **Goals and Policies.** Under the Act, the City may initiate proceedings to establish a community facilities district only if it has first considered and adopted local goals and policies (the "Goals and Policies"), and a form of such Goals and Policies are on file with the City Clerk.

3. **Approval.** The Goals and Policies are hereby found to meet the requirements of the Act and are hereby adopted by this Council for purposes of compliance with the Act, subject to further amendment by this Council as may be required from time to time.

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

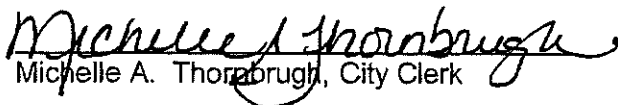
I HEREBY CERTIFY that the foregoing resolution was introduced and passed at a regular meeting of the City Council of the City of Vacaville, held on the 11th day of March, 2008, by the following vote:

AYES: Council members Clancy, Hunt, Wilkins, Vice-Mayor Dimmick,
and Mayor Augustine

NOES: None

ABSENT: None

ATTEST:


Michelle A. Thornbrugh, City Clerk