



# CITY COUNCIL AGENDA STATEMENT



September 10, 2019

File ID: 18-0528

## TITLE

- A. RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA ADOPTING A MAP SHOWING THE BOUNDARIES OF THE TERRITORY PROPOSED TO BE INCLUDED IN THE BAYFRONT PROJECT SPECIAL TAX FINANCING DISTRICT
- B. RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA DECLARING ITS INTENTION TO ESTABLISH THE BAYFRONT PROJECT SPECIAL TAX FINANCING DISTRICT AND TO AUTHORIZE THE LEVY OF A SPECIAL TAX THEREIN TO FINANCE PUBLIC AND PRIVATE IMPROVEMENTS, AND MAINTENANCE AND SERVICES
- C. RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA DECLARING THE NECESSITY TO INCUR A BONDED INDEBTEDNESS OF THE BAYFRONT PROJECT SPECIAL TAX FINANCING DISTRICT TO BE SECURED BY SPECIAL TAXES LEVIED WITHIN SUCH DISTRICT TO FINANCE PUBLIC AND PRIVATE IMPROVEMENTS

## RECOMMENDED ACTION

Council adopt the resolutions.

## SUMMARY

Pursuant to the Amended and Restated Chula Vista Bayfront Master Plan Financing Agreement, dated June 20, 2017 (the "A&R Financing Agreement"), between the City of Chula Vista (the "City") and the San Diego Unified Port District (the "Port District") and the Disposition and Development Agreement entered into as of May 7, 2018 (the "DDA"), by and among the Port District, the City, and RIDA Chula Vista, LLC, the City is initiating proceedings to consider the formation of the Bayfront Special Tax Financing District (the "Bayfront District") for the purpose of financing the acquisition or construction of certain public and private improvements and the funding of certain public services within the Chula Vista Bayfront Master Plan area.

Tonight's actions will:

- (a) adopt a boundary map of the Bayfront District;
- (b) declare the intention of the City Council to:
  - (i) establish the Bayfront District;
  - (ii) finance certain authorized facilities and services through the Bayfront District;
  - (iii) authorize the levy of special taxes within the Bayfront District;

- (iv) request the applicable officer of the City prepare the Bayfront Project Special Tax Financing District Report; and
  - (v) set a public hearing related to the formation of the Bayfront District and the levy of special taxes for the Bayfront District for October 15, 2019 at 5:00 p.m.; and
- (c) declare the necessity of the Bayfront District to incur a bonded indebtedness to finance certain authorized facilities and set a public hearing related to the necessity of the Bayfront District to incur a bonded indebtedness to be held concurrently with the formation public hearing.

## **ENVIRONMENTAL REVIEW**

The Director of Development Services has reviewed the proposed activity for compliance with the California Environmental Quality Act (CEQA) and has determined that the activity is not a “Project” as defined under Section 15378 of the State CEQA Guidelines because the proposed activity consists of the creation of a governmental fiscal/funding mechanism which does not result in a physical change in the environment; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines, the activity is not subject to CEQA. Thus, no environmental review is required.

## **BOARD/COMMISSION/COMMITTEE RECOMMENDATION**

Not applicable.

## **DISCUSSION**

In 2002, the City and the Port District began a collaborative planning process to create a master plan for the approximately 535-acre Chula Vista Bayfront area. The Chula Vista Bayfront Master Plan (CVBMP) was designed to transform Chula Vista’s underutilized industrial Bayfront landscape into a thriving residential and world-class waterfront resort destination. The CVBMP represents the last significant waterfront development opportunity in Southern California and is the result of a decade-long joint planning effort by a broad coalition of stakeholders, the Port District, the City, and Pacifica Companies.

On May 8, 2012, the City and the Port District entered into a Bayfront Master Plan Financing Agreement (the “Original Financing Agreement”) for the CVBMP. The Original Financing Agreement identified the rights and obligations of each agency, with respect to the financing, development, and construction of public improvements, infrastructure, and a planned convention center in the CVBMP. To this end, the Original Financing Agreement identified revenue sources necessary to construct and maintain public improvements, infrastructure, and other facilities necessary to implement the CVBMP in accordance with the Final Environmental Impact Report (FEIR) approved by the City and the Port District on May 16, 2010. One of the revenue sources identified in the Original Financing Agreement was the City’s Tourism Marketing District (TMD). The TMD functioned in a similar manner to a transient occupancy tax (TOT) and included an assessment rate of 5% of hotel room rental revenues. Subsequent to the adoption of the Original Financing Agreement, the TMD was disestablished in 2012.

The Original Financing Agreement was subsequently amended and restated by the A&R Financing Agreement to recognize additional rights and obligations of the respective agencies. One such additional obligation acknowledged by the City in the A&R Financing Agreement was that the City would pursue creation of a mechanism to generate additional occupancy-based revenues, replacing the previous TMD

assessments. The A&R Financing Agreement contemplated creation of the desired public financing mechanism under the Mello-Roos Community Facilities Act of 1972 (the “Mello-Roos Act”), assessment laws pursuant to the City’s Charter authority, other applicable state assessment laws, Port District charges or surcharges, or other Developer-sponsored or imposed charges or surcharges.

The establishment of a special tax financing district that functions in a manner similar to the previous TMD has been determined to be the preferred revenue generation mechanism. Special tax districts may be established to provide funding for the acquisition and construction of public and private improvements and/or the provision of public services by levying an annual “special tax” on parcels within a special tax financing district and by issuing bonds secured by the levy of special taxes. The ongoing administrative costs of special tax financing districts are also payable from the special taxes levied at no cost to the City.

On January 13, 1998, Council adopted the “City of Chula Vista Statement of Goals and Policies regarding the establishment of Community Facilities Districts” (the “Goals and Policies”). The approval of this document ratified the use of Community Facilities Districts (CFDs) as a public financing mechanism for (1) the construction and/or acquisition of public infrastructure, and (2) the financing of authorized public services.

On April 28, 1998, Council, acting under its Charter authority, enacted the “Chula Vista Community Facilities District Ordinance” (the “CFD Ordinance”). The Ordinance adopted the Mello-Roos Act with modifications to accomplish the following: (1) incorporate all maintenance activities authorized by the “Landscaping & Lighting Act of 1972” (the “1972 Act”); (2) include certain maintenance activities not listed in the Mello-Roos Act or the 1972 Act; and (3) establish an operating reserve fund for open space districts.

On April 9, 2019, Council approved Resolution 2019-051 adopting the Goals and Policies as City Council Policy 505-04, with the following modifications:

- Minor textual edits;
- Updates to reflect standard practices;
- For districts issuing bonds, increases the maximum period of capitalized interest from 18 months to 24 months;
- For maintenance and/or service districts, requires the inclusion of life-cycle replacement costs for maintained facilities in the Rate and Method of Apportionment; and
- For maintenance and/or service districts, requires the authorization of annual inflationary adjustments to the maximum special tax rates, to be based on the most specific applicable index.

On July 9, 2019, the Council placed an ordinance codifying the CFD Ordinance as Chula Vista Municipal Code (CVMC) Chapter 3.60 (Community Facilities Districts – General) and creating the Bayfront Project Special Tax Financing District Procedural Ordinance (CVMC Chapter 3.61) on first reading. Second reading and adoption of the ordinance occurred on July 23, 2019 (the “July 2019 Ordinance”). The July 2019 Ordinance expanded the list of explicitly authorized services and facilities eligible to be financed pursuant to Chapters 3.60 and 3.61 to include the following:

- Transportation services;
- Promotion of public events and tourism;

- Security, sanitation, graffiti removal, street and sidewalk cleaning and other municipal services supplemental to those normally provided by the City or other service provider;
- Parking improvements;
- Energy efficiency, water conservation, and renewable energy improvements;
- Ecological and sustainability educational improvements; and
- Convention center facilities.

As adopted, Chapter 3.61 provides a procedure for financing certain public improvements and maintenance and services to serve the CVBMP area, through the establishment of the Bayfront Project Special Tax Financing District. Chapter 3.61 incorporates certain provisions of the Mello-Roos Act and the California Streets and Highways Code, while identifying certain other provisions that will not apply or that will be modified. Modifications and exclusions of the Mello-Roos Act provisions largely relate to the formation process for the future Bayfront District, which will require an election of landowners, not registered voters. The Bayfront District special tax will be levied by hotel and campsite operators on transient occupants (hotel and campsite visitors). The special tax will not be levied on traditional residential uses. As such, it is more appropriate for the Bayfront District electors to be the landowners, rather than the registered voters of the Bayfront District.

Staff recommends that Council adopt the Bayfront District boundary map, initiate formal proceedings to consider the formation of the Bayfront District, and declare the necessity of the Bayfront District to incur bonded indebtedness. The City has retained the services of Willdan Financial Services as special tax consultant (the “Special Tax Consultant”), Stradling Yocca Carlson & Rauth as bond counsel, and Best Best & Krieger LLP as legal counsel to provide assistance during the proceedings.

All expenses incurred by the City in undertaking the proceedings to consider the formation of the Bayfront District will be reimbursed from future Bayfront District special tax revenues. All ongoing expenses related to the administration of the Bayfront District (including levying and collecting the special taxes and administering bonds of the Bayfront District) are to be funded from the special taxes of the Bayfront District. The ultimate security for any future bonds issued by the Bayfront District are the properties located within the Bayfront District that are subject to the levy of special taxes by the Bayfront District, not the City’s General Fund or its ability to tax property within its jurisdiction outside of the Bayfront District. The Bayfront District will be formed in conformance with CVMC Chapter 3.61 (Bayfront Project Special Tax Financing District Procedural Ordinance).

#### District Boundaries

Staff has reviewed the boundary map of the Bayfront District prepared by the Special Tax Consultant and has found it acceptable and ready for approval by City Council. A reduced copy of the map is presented in Attachment 1.

The proposed boundaries of the Bayfront District include approximately 270 acres of taxable property. The Port District owns approximately 212 acres (79%) of taxable property, the City owns approximately 6 acres (2%) of taxable property, the San Diego Metropolitan Transit System (MTS) owns approximately 4 acres

(1.5%) of taxable property, and the remaining approximately 48 acres (17.5%) of taxable property are privately owned.

#### Eligible Improvements

Pursuant to the A&R Financing Agreement and CVMC Chapter 3.61, the Bayfront District will be authorized to finance transportation and pedestrian facilities, public parks, storm drain facilities, sewer facilities, and other public and private improvements. Attachment 2 lists the types of improvements to be financed by the Bayfront District. A final list and cost estimate of the improvements eligible for Bayfront District financing will be brought to Council in conjunction with a future Acquisition/Financing Agreement.

#### Eligible Services

In addition to authorizing the financing of certain public and private improvements, the Bayfront District will authorize the financing of certain public services within the CVBMP. Attachment 3 shows a preliminary list of services, including, but not limited to, operations and maintenance of roadways (including sidewalks, parkways, and medians), parks, and storm drain facilities. Tonight, Council will only be approving the types of services to be financed by the Bayfront District. A final list of the services eligible for District financing will be brought back to Council in conjunction with the Resolution of Formation.

#### Proposed Special Taxes

Tonight, Council will consider a Rate and Method of Apportionment (RMA) for the Bayfront District (Attachment 4) that establishes the procedures for levying the special taxes within the Bayfront District.

Property located in the Bayfront District would be subject to the levy of a special tax equivalent to 5% of occupancy-based room rate revenues generated from visitor serving accommodations located on such property that are subject to the City's TOT. Property located in the Bayfront District anticipated to be subject to the special tax include hotels and campsites, as well as private residences operating as hotels (i.e. properties offered to the public for short-term rental purposes through Airbnb, Vrbo, etc.). For those properties which do not offer visitor serving accommodations subject to the City's TOT, the Bayfront District would have no effect (i.e., private residences not offered to the public for short-term rental purposes, undeveloped land, other commercial uses, or non-operating hotels or campsites).

#### Collection of Taxes

The proposed special tax would be initially self-assessed and remitted to the City in the same time and manner as the City's TOT (monthly remittance per Chula Vista Municipal Code). However, should a property fail to self-assess and remit the Bayfront District special tax to the City for such owner's property, the Bayfront District would have the ability to place such special tax on the ad valorem property tax bill of such owner's (or leaseholder's) property. In this circumstance, the City's Finance Director would determine the amount of the special tax due, including penalties thereon.

#### Value-to-Lien Ratio Policy

The Goals and Policies requires a minimum 4:1 value-to-lien ratio as a precondition to the issuance of bonds of a CFD. A ratio of less than 4:1 but equal to or greater than 3:1 may be approved, in the sole discretion of Council, when it is determined that a ratio of less than 4:1 is financially prudent under the circumstances of

a particular CFD. A final appraisal and lien-to-value ratio analysis will be available for Council consideration prior to the sale of bonds for the Bayfront District. The first bond sale is projected to occur in calendar year 2020. If the final analysis shows parcels that fail to meet the 4:1 or 3:1 ratio, one or more of the following actions would be required:

- The principal amount of the bonds to be issued for the Bayfront District will be reduced to comply with the Goals and Policies; or
- Sufficient information must be provided to Council to substantiate the prudence of a lesser value-to-lien ratio.

### Resolutions

There are three resolutions on today's agenda that, if adopted, will accomplish the following:

The RESOLUTION ADOPTING THE BOUNDARY MAP is the formal action adopting the map and setting forth the boundaries of the proposed the Bayfront District.

The RESOLUTION OF INTENTION is the resolution declaring the intention of the City Council to establish the Bayfront District, authorizing the levy of special taxes, and setting the time and place for the public hearing on the formation of the Bayfront District for October 15, 2019.

The RESOLUTION DECLARING NECESSITY TO INCUR BONDED INDEBTEDNESS is the resolution of the City Council declaring that the public convenience and necessity requires that a bonded indebtedness of the Bayfront District be incurred to finance certain public facilities proposed by the Bayfront District and setting the time and place for a public hearing to be held concurrently with the formation public hearing on the necessity for the Bayfront District to incur an indebtedness for October 15, 2019. The proposed maximum indebtedness is \$125,000,000. The actual amount of the bond sale(s) will depend upon a number of factors, including interest rates on the bonds.

### Future Actions

Adoption of tonight's resolutions will set public hearings to be held concurrently on (a) the establishment of the Bayfront District and the authorization to levy the special tax therein and (b) the necessity for and authorization of the Bayfront District to incur a bonded indebtedness, to be held contemporaneously, for October 15, 2019. There will be an election following the public hearings for the landowners to vote on the authorization to levy special taxes, the authorization to incur a bonded indebtedness of the Bayfront District and to establish an appropriations limit. Once the votes are cast, Council will be requested to certify the results of the election.

Pursuant to CVMC Chapter 3.61, the qualified electors will be landowners, i.e., the owners of land within the Bayfront District with each such owner receiving one (1) vote for each acre or a portion of an acre located within the boundaries of the Bayfront District. The Bayfront District will be authorized to levy such special taxes and incur such bonded indebtedness if 2/3rds of the votes actually cast in the election approve the authorization to levy such special tax and the authorization for the Bayfront District to incur a bonded indebtedness secured by such special taxes. The San Diego County Registrar of Voters has certified that there are no voters registered to vote within the proposed boundaries of the Bayfront District (see Attachment 5).

Additional future actions include approval of an Acquisition/Financing Agreement with RIDA Chula Vista LLC to establish the terms and conditions pursuant to which the Bayfront District will finance the acquisition of public improvements required by the A&R Finance Agreement and the DDA to be constructed by RIDA Chula Vista LLC, the levy of special taxes, and actions associated with the issuance of bonds.

#### **DECISION-MAKER CONFLICT**

Staff has reviewed the property holdings of the City Council members and has found no property holdings within 1,000 feet of the boundaries of the property which is the subject of this action. Consequently, this item does not present a disqualifying real property-related financing conflict of interest under California Code of Regulations Title 2, section 18702.2(a)(7) or (8), for purposes of the Political Reform Act (Cal. Gov't Code §87100, et seq.).

Staff is not independently aware, and has not been informed by any City Council member, of any other fact that may constitute a basis for a decision-maker conflict of interest in this matter.

#### **CURRENT-YEAR FISCAL IMPACT**

All expenses incurred by the City in undertaking the proceedings to consider the formation of the Bayfront District and subsequently authorizing, issuing, and selling bonds of the Bayfront District to finance the acquisition and construction of eligible public facilities will be reimbursed from future Bayfront District bond proceeds or special tax revenues, resulting in no net impact to the General Fund or the Development Services Fund.

#### **ONGOING FISCAL IMPACT**

The cost to administer the Bayfront District, if established, and the issuance of bonds by the Bayfront District shall be paid from the proceeds of special taxes to be levied within the Bayfront District or the proceeds of bonds issued by the Bayfront District. There is, therefore, no ongoing fiscal impact to the City's General Fund or Development Services Fund as a result of this action.

#### **ATTACHMENTS**

1. Boundary Map
2. Authorized Improvements
3. Authorized Services
4. Rate and Method of Apportionment
5. Certification of Registered Voters

*Staff Contact: Tiffany Allen, Development Services Department*