



# City of Chula Vista

## Legislation Details (With Text)

**File #:** 13-0190      **Name:** Resolution of Intent to Establish Millenia CFD  
**Type:** Action Item      **Status:** Passed  
**In control:** City Council  
**On agenda:** 1/7/2014      **Final action:** 1/7/2014  
**Title:** A. RESOLUTION NO. 2014-003 OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA ADOPTING A BOUNDARY MAP SHOWING THE BOUNDARIES OF THE TERRITORY PROPOSED FOR THE INCLUSION IN PROPOSED COMMUNITY FACILITIES DISTRICT NO. 14M (EASTERN URBAN CENTER/MILLENIA)  
B. RESOLUTION NO. 2014-004 OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA DECLARING ITS INTENTION TO ESTABLISH COMMUNITY FACILITIES DISTRICT NO. 14M (EASTERN URBAN CENTER/MILLENIA) AND TO AUTHORIZE THE LEVY OF A SPECIAL TAX WITHIN EACH IMPROVEMENT AREA THEREIN TO FINANCE CERTAIN SERVICES AND SETTING THE PUBLIC HEARING TO CONSIDER THE ESTABLISHMENT OF THE PROPOSED DISTRICT  
C. RESOLUTION NO. 2014-005 OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA ORDERING AND DIRECTING THE PREPARATION OF A COMMUNITY FACILITIES DISTRICT REPORT FOR PROPOSED COMMUNITY FACILITIES DISTRICT NO. 14M (EASTERN URBAN CENTER/MILLENIA)

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. ATTACHMENT 1, 2. ATTACHMENT 2, 3. ATTACHMENT 3, 4. ATTACHMENT 4, 5. ATTACHMENT 5, 6. RESOLUTION A, 7. RESOLUTION B, 8. Exhibit C to RESOLUTION B, 9. RESOLUTION C

Date	Ver.	Action By	Action	Result
1/7/2014	1	City Council	adopt	Pass

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**RECOMMENDED ACTION**

Council adopt the resolutions.

**SUMMARY**

McMillin Otay Ranch, LLC has requested that the City conduct proceedings to consider the approval of the formation of Community Facilities District No. 14M (Eastern Urban Center/Millenia) (CFD 14M). The conditions of approval of the tentative map for Eastern Urban Center/Millenia require that the community facilities district (CFD) be formed prior to issuance of the first production home building permit. This district will fund the maintenance and replacement of (a) landscaping, including, but not limited to, parkways and medians; (b) facilities that are directly related to storm water quality control; (c) walls and fencing; (d) trails; (e) pedestrian bridges, including, but not limited to, graffiti removal; (f) public lighting facilities, and (g) public parks. The City has retained the services of NBS as special tax consultant and Best, Best and Krieger, LLP as legal counsel to provide assistance during the proceedings. This action initiates the formal proceedings to consider the establishment of CFD No. 14M.

### **ENVIRONMENTAL REVIEW**

The Development Services Director 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 creation of government funding mechanism is not considered a project; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines the activity is not subject to CEQA. Thus, no environmental review is necessary.

### **BOARD/COMMISSION RECOMMENDATION**

Not Applicable

### **DISCUSSION**

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 CFDs as a public financing mechanism for (1) the construction and/or acquisition of public infrastructure, and (2) the financing of authorized public services. Taxes levied by maintenance districts, such as CFD No. 14M, are currently excluded from the 2% maximum tax criterion set forth in the Goals and Policies.

On April 28, 1998, Council, acting under its Charter authority, enacted the "Chula Vista Community Facilities District Ordinance" (the "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.

McMillin Otay Ranch, LLC has requested that the City conduct proceedings to consider the approval of the formation of Community Facilities District No. 14M (Eastern Urban Center/Millenia) (CFD 14M). The conditions of approval of the tentative map for Eastern Urban Center/Millenia require that said CFD be formed prior to issuance of the first production home building permit. This district will fund the maintenance and replacement of (a) landscaping, including, but not limited to, parkways and medians; (b) facilities that are directly related to storm water quality control; (c) walls and fencing; (d) trails; (e) pedestrian bridges, including, but not limited to, graffiti removal; (f) public lighting facilities, and (g) public parks. The City has retained the services of NBS as special tax consultant and Best, Best and Krieger, LLP as legal counsel to provide assistance during the proceedings. Tonight's action will initiate the formal proceedings to consider the establishment of CFD No. 14M.

CFD 14M will provide the necessary funding for the operation and maintenance of public landscaping, storm water quality, walls, fencing, trails, pedestrian bridges, lighting, and park improvements by levying an annual “special tax” which is collected from the property owners within CFD 14M in conjunction with property taxes or via direct billing. All expenses related to the district administration, including levying and collecting the special taxes, are also funded from such special taxes.

On September 15, 2009, Council approved an Agreement Regarding Construction of Parks in a Portion of Otay Ranch Eastern Urban Center (the “Parks Agreement”). The Parks Agreement states that the City and McMillin shall split equally (50-50) the costs of maintaining the Public Parks in the Eastern Urban Center based on preliminary cost estimates provided by both the City and McMillin. The City’s share (and thus McMillin’s basic share) shall be based on the average annual cost for 21.51 acres each fiscal year as calculated for the City’s budget for public parks.

To ensure collection of the City’s portion of the cost of the park maintenance, CFD 14M has been structured with two improvement areas with the City parks placed into the second improvement area. On December 17, 2013, Council, acting under its Charter authority, amended the Chula Vista Community Facilities District Ordinance to allow for the City park property to be placed into the improvement. Each year, the City will be assessed for its portion of the costs to maintain the parks based on the average annual citywide maintenance cost for 21.51 acres budgeted for that fiscal year multiplied by a ratio of the public park acres in the Eastern Urban Center that has been turned over to the City for maintenance. The ordinance was also amended to allow the CFD Administrator to directly bill the City each year for the assessment so the public parks remain off the County property tax rolls.

The proposed CFD 14M is consistent with the above-mentioned Ordinance as amended and the Goals and Policies. In addition, the staff and developer have met to discuss, review and clarify the intent of the Goals and Policies and Ordinance, the proposed special tax rates, and the methodology for the apportionment of the special taxes. Any matters raised by the developer have been discussed and solutions, satisfactory to all parties, have been incorporated into the “Rate and Method of Apportionment” (the “RMA”). The RMA has also been modeled after similar open space maintenance districts in the surrounding area.

Staff, the legal counsel, and the special tax consultant have reviewed the proposed RMA and consider it ready for City Council approval.

#### Area of Benefit

The proposed boundaries of CFD14M encompass parcels located within Millenia, an Urban Village of approximately two-hundred and six (206.6) acres located south of Birch Road Parkway, west of Eastlake Parkway, and east of State Route 125 (SR125). McMillin Otay Ranch, LLC owns 100% of the property within the proposed district. Millenia is proposed to contain approximately 2,983 multi-family units, 3,487 non-residential/commercial units, a public school (6.84 acres) and six neighborhood parks (12.88 acres). Staff has reviewed the proposed boundary map and has found it acceptable and ready for approval by Council. A reduced copy of the map is presented in Exhibit "B".

#### Description of the Improvements to be Maintained

The proposed CFD 14M will fund the operation, maintenance, and replacement of the public landscaping, storm water treatment, walls and fencing, trails, pedestrian bridges, lighting, and park improvements within Eastern Urban Center/Millenia. A complete list of such improvements is presented in Exhibit "C".

### Cost Estimate

The estimated annual budget for CFD 14M is approximately \$941,952. This budget includes a total of \$664,498 for landscape, storm water quality, walls and fencing, trails, pedestrian bridges, lighting, and park maintenance; and a total of \$191,014 that is set aside for the replacement of the amenities as they reach the end of their useful life. In addition, the budget includes \$20,000 for CFD administration (preparing reports, levying and collecting taxes, public assistance, etc.) by the Engineering Division of the Public Works Department or their designee, and an additional \$43,268 to fund an operating reserve for maintenance and \$23,181 to fund an operating reserve for replacement.

Staff (Public Works/Operations and Engineering) and NBS have reviewed and approved the proposed budget. Exhibit "D" contains a detailed annual budget for the district at build out. The actual City contribution for park maintenance will be based on the requirements in the Parks Agreement as noted above.

### Proposed Special Tax

CFD 14M has six proposed categories of taxable property, as follows:

- Developed Property (Apartment Property and Multi-Family Property are taxed based on the number of dwelling units and Non-Residential Property is taxed on the acreage of the parcel)
- Public Urban Parks Property (taxed on the acreage of the parcel)
- Approved Property, Undeveloped Property and Taxable Property Owner Association Property (taxed on the acreage of the parcel)
- Community Purpose Facility (CPF) Property not classified as exempt (taxed based on Non-Residential Property if classified as Developed Property and taxed as Undeveloped Property if undeveloped)

The Exempt Category that is not taxed includes all publicly owned parcels excluding City parks, CFP property owned by non-profit organizations, and parcels with public or utility easements making impractical their utilization for other than the purposes set forth in the easement.

Developed Parcels are those parcels for which a building permit has been issued. The proposed maximum special tax rate in the RMA on all Developed Parcels was determined by dividing the estimated annual budget at build out (plus an operating reserve allocation of 10% of the annual budget) by the total estimated development at build out. For residential property, residential building square footage was used and for non-residential property, industrial and commercial estimated acreage was used.

The proposed maximum special tax rate in the RMA on vacant land has been determined by dividing the estimated annual budget at build out (plus a reserve allocation of 10% of the annual budget) by the estimated net lot acreage within the district.

### Collection of Taxes

At the beginning of each fiscal year the City shall determine the amount of the Special Tax Liability (budget plus reserve) of the CFD. Then, the special taxes will first be levied on the Developed Property. If this pool of funds is not enough to fund the Special Tax Liability, as may be the case in the early years of development, the district will levy the special tax on the Approved Property, and then the Undeveloped Property, and finally the Taxable Property Owner Association Property.

The buffer of potentially having all of the other categories of property covering any portion of the Special Tax Liability not funded from special taxes levied on the Developed Property will disappear once the area has been fully developed (except for the City Park Property). If the Special Tax Liability for any fiscal year is less than the maximum special tax authorized to be levied on the Developed Parcels, the actual rate of the special taxes to be levied in that specific year will be reduced accordingly. Special taxes shall be levied each year on the City Park Property based on the requirements in the Parks Agreement as noted above.

Following is a brief discussion of some key issues regarding the “Rate and Method of Apportionment (RMA) of Special Taxes”: (See Exhibit "A" for full description of RMA)

- The maximum special taxes rates shall be adjusted each year for inflation using a factor equal to the greater of the annual percentage increase, if any, in the San Diego Metropolitan Area All Urban Price Index (CPI-U), or 0%. However, the maximum special taxes assessed to the City for the City Park Property shall be adjusted each year based on the average annual citywide maintenance cost for 21.51 acres budgeted for that fiscal year multiplied by a ratio of the public park acres in the Eastern Urban Center that has been turned over to the City for maintenance.
- The Ordinance requires that the developer maintain the landscape and park improvements for the minimum period of one year following their completion. During this period the District will collect the special taxes with the purpose of building up a six months operating reserve. The RMA provides that the annual budget for any year may include an amount deemed necessary to maintain an adequate level of this operating reserve fund.
- The maximum special tax rates are based on the best estimate by the developer of the building square footage of residential development and the acreage of non-residential (industrial and commercial) development within CFD 14M (reduced by 5%). This reduction in estimated total square footage of residential development and in estimated acreage of non-residential development has the net result of raising the maximum special tax that can be levied on future residential parcels and on future non-residential (industrial and commercial) parcels to avoid a possible shortfall in special tax revenue in the event that the actual square footage of residential development or the actual acreage of non-residential (industrial and commercial) development is less than the projected square footage or acreage on which the computation of the special tax rates has been based. If the actual square footage or acreage of development meets or exceeds the projections on which the special tax rates were based, the actual special tax rate necessary to be levied annually to fund the Special Tax Liability may be less than the authorized maximum special tax.
- The annual budget used to calculate the special tax rates are only the “best estimates” of the cost of maintenance at build out. There is always a risk that actual expenses in future years may be higher than the total maximum collectable special taxes. This may result in reduced levels of maintenance of landscaping and the parks, unless the property owners approve an

increase in the special tax rates (2/3 voter approval is required). It is anticipated, however, that the proposed maximum special tax rates contain enough of a cushion in the operating reserve, the inflation adjustment, and the assumed reduction of total square footage of residential development and total acreage of non-residential (industrial and commercial) development to minimize the risk of future special tax revenue shortfalls.

### Proposed Maximum Special Taxes

The proposed maximum special tax rates for fiscal year 20014/15 for a typical dwelling unit within CFD 14M are as follows:

Land Use Class	Description	Maximum Special Tax
1	Apartment Property	\$189.00 per Dwelling Unit
2	Multi-Family Property	\$252.00 per Dwelling Unit
3	Non-Residential Property	\$1,259.00 per Acre

### Resolutions

There are three resolutions on tonight’s agenda, which, 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 Community Facilities District No. 14M.

The RESOLUTION OF INTENTION is the jurisdictional resolution declaring the intention of the City Council to establish the proposed Community Facilities District No. 14M, authorize the levy of a Special Tax, and set the time and place for the public hearing.

The RESOLUTION ORDERING THE PREPARATION OF THE “COMMUNITY FACILITIES DISTRICT REPORT” is the formal action of the City Council directing the preparation of a detailed report containing a description of the services and its estimated cost for the proposed Community Facilities District No. 14M.

### Future Actions

The public hearing and consideration of the adoption of a resolution forming and establishing CFD No. 14M, and submitting the authorization for the levy of special taxes to the qualified electors are scheduled for the City Council meeting of February 11, 2014, at 2:00 P.M.

### DECISION-MAKER CONFLICT

Staff had reviewed the property holdings of the City Council and has found no property holding within 500 feet of the boundaries of the property which is the subject of this action. Staff is not independently aware, nor has staff been informed by any City Councilmember, of any other fact that may constitute a basis for a decision maker conflict of interest in this matter.

### LINK TO STRATEGIC GOALS

The City’s Strategic Plan has five major goals: Operational Excellence, Economic Vitality, Healthy Community, Strong and Secure Neighborhoods and a Connected Community. This action supports the goal of providing Healthy Communities, which includes maintaining and operating community and neighborhood facilities.

### **CURRENT YEAR FISCAL IMPACT**

All costs of formation of the district are being borne by the developers and the on-going administration will be funded entirely by the district. The City will recover the full cost of staff time expended in district formation and administration activities in perpetuity.

### **ONGOING FISCAL IMPACT**

The City and the CFD shall split equally (50-50) the costs of maintaining the Public Parks in the Eastern Urban Center based on preliminary cost estimates provided by both the City and McMillin. The City's share shall be based on the average annual cost for 21.51 acres each fiscal year as calculated for the City's budget for public parks. Annual maintenance costs to maintain the park(s) constructed will need to be budgeted in 2015.

### **ATTACHMENTS**

1. Rate and Method of Apportionment
2. Boundary Map
3. List of Public Facilities to be Maintained
4. Annual Budget
5. Agreement Regarding Construction of Parks in a Portion of Otay Ranch Eastern Urban Center