



Legislation Text

File #: 2019-0521, **Version:** 1

DATE: January 9, 2020

SUBJECT:

ORDINANCE AUTHORIZING (A) JOINT COMMUNITY FACILITIES AGREEMENT WITH THE CITY OF CHULA VISTA FOR THE BAYFRONT PROJECT SPECIAL TAX FINANCING DISTRICT; AND (B) VOTE IN FAVOR OF PROPOSITIONS A, B, AND C RELATED TO THE BAYFRONT PROJECT SPECIAL TAX FINANCING DISTRICT

EXECUTIVE SUMMARY:

The financing agreement¹ (Financing Agreement) for the Chula Vista Bayfront Master Plan (CVBMP) was entered into between the District and the City of Chula Vista (City) in 2012 and subsequently amended and restated on June 20, 2017 (Amended and Restated Financing Agreement). The Amended and Restated Financing Agreement sets forth the framework for the financing and development of the public improvements and infrastructure (Phase 1A Infrastructure) necessary for the development of a resort hotel and convention center (RHCC) within the CVBMP and the convention center component of the RHCC (Convention Center). The Convention Center and Phase 1A Infrastructure are referred to collectively as, the Public Improvements, and the RHCC and Phase 1 Infrastructure are collectively referred to as, the Project. The development of the Public Improvements is necessary for the implementation of the CVBMP in accordance with the certified Final Environmental Impact Report (FEIR)² and Port Master Plan Amendment, and for other development within the CVBMP to move forward.

The Amended and Restated Financing Agreement also contemplated that the City would contribute revenues generated by a special tax district toward the debt service for the Public Contribution. The special tax district contemplated here would be called the Bayfront Project Special Tax Financing District (Special Tax District). The funds from the Special Tax District (Special Tax Revenues) were expected to be used to pay for the costs of the Public Improvements. The Schedule of Performance attached to the Disposition and Development Agreement, entered into among RIDA Chula Vista, LLC (RIDA), the District, and the City dated May 7, 2018 (DDA) contemplated that the City would complete all documents and actions necessary to commence formation of the Special Tax District by November of 2018 and authorize the levy of the tax after certain actions had been taken by the parties to the DDA, such as the approval of the Plan of Finance and preparation of the bond documents for the bond issuance by the JEPA.

On November 5, 2019, the Board of Port Commissioners (BPC) authorized the Executive Director, or her designee, to enter into the Joint Community Facilities Agreement (Agreement) (Attachment A) with the City for the Special Tax District in substantially the form presented to the BPC at the November 5, 2019 meeting (Attachment B). During that meeting, the Board also authorized the Executive Director, or her designee, to vote in favor of the Special Tax District conditioned on the City

Council authorizing the Agreement in substantially the same form presented to the BPC on November 5, 2019, and approving the formation documents for the Special Tax District substantially in the form attached to the Agreement. A copy of Agenda Item No. 2019-0422 and related Resolution No. 2019-141 are attached as Attachment C.

On November 19, 2019, the City Council approved the Agreement and the formation of the Special Tax District (See Attachment B (City Council Resolutions)), with some modifications to the formation resolution attached to the Agreement when it was presented to the BPC (Formation Resolution). Attached as Attachment D is a redline showing the changes to the Formation Resolution presented to the BPC on November 5, 2019. Although many of the changes made to the Formation Resolution are minor updates (i.e., discussion of changes to council meeting dates and correction on amount of indebtedness), there are three major changes to the Formation Resolution. The first, is to extend the term of the Special Tax District for more than forty fiscal years to give the Special Tax District some flexibility to extend the term of the Special Tax District beyond the original 40 years should revenues from the Special Tax District be needed to help pay for the bonds that would be issued by the Chula Vista Bayfront Facilities Financing Authority (JEPA) to help pay for the public improvements for the Project. (Last Page of Redline, Attachment D.) Staff concurs with this change because it will allow the Project to move forward should the bond market require that the bond term be for a period longer than the currently contemplated 38 years. Second, the changes to the Formation Resolution further clarify that the improvements and services are only to be located within the CVBMP, or if located outside the CVBMP, only if they are required by the mitigation measures specified in the Project EIR (as defined in the Agreement) for which the City and District are responsible. Third, to further clarify that the special taxes are only levied on and constitute a lien against the operator's leasehold or possessory interest, and are not the obligation of the landowner. Since the Formation Resolution is not substantially the same as the Formation Resolution presented to the BPC in November 2019, staff is requesting that the Board authorize the Executive Director, or her designee, to execute the revised Agreement, as attached as Attachment A.

In addition, staff is requesting that the Executive Director, or her designee, be given the authority to vote in favor of Propositions A, B, and C (as further detailed in the Discussion section below) as follows: (1) Yes on Proposition A (Levy Special Taxes at Rates not to Exceed 5% of Rent charged on Hotel Property and Campsite Property); (2) Yes on Proposition B (Incur Indebtedness Not to Exceed \$175,000,000); and (3) Yes on Proposition C (Appropriations Limit Equal to \$125,000,000).

RECOMMENDATION:

Adopt ordinance authorizing (A) the Agreement with the City for the Special Tax District; and (B) Vote in Favor of Propositions A, B, and C Related to the Special Tax District.

FISCAL IMPACT:

The Agreement identifies the mechanics for the Special Tax District, a funding source that might be used by the District and the City to fund debt service for the public investment that would be needed for the Public Contribution (Public Contribution), which would pay for the Public Improvements required to implement the CVBMP. The Special Tax Revenues from the Special Tax District could also be used to offset the cost to the District of operations and maintenance for the various public improvements throughout the CVBMP and help fund the parking garage primarily serving Parcel H-3.

COMPASS STRATEGIC GOALS:

This agenda item supports the following Strategic Goal(s).

- A vibrant waterfront destination where residents and visitors converge.
- A Port with a healthy and sustainable bay and its environment.
- A Port with a comprehensive vision for Port land and water uses integrated to regional plans.
- A financially sustainable Port that drives job creation and regional economic vitality.

DISCUSSION:

On November 5, 2019, the Board approved the Agreement with the City which sets forth the terms upon which the District would agree that the City can proceed with the formation of the Special Tax District. Included as an attachment to the Agreement was the draft Formation Resolution. During the November 2019 meeting, the Board also authorized the Executive Director, or her designee, to vote in favor of the Special Tax District conditioned on the City Council authorizing the Agreement in substantially the form presented to the Board on November 5, 2019 and approving the formation documents for the Special Tax District substantially in the form attached to the Agreement. On November 19, 2019, the City Council approved the Agreement (as attached as Attachment A) and the formation of the Special Tax District.

Although many of the changes made to the Formation Resolution are minor updates (i.e., discussion of changes to council meeting dates and correction on amount of indebtedness), there are three major changes to the Formation Resolution. Attached as Attachment D is a redline showing the changes to the Formation Resolution presented to the BPC on November 5, 2019. The first, is to extend the term of the Special Tax District for more than forty fiscal years to give the Special Tax District some flexibility to extend the term of the Special Tax District beyond the original 40 years should revenues from the Special Tax District be needed to help pay for the bonds that would be issued by the JEPA to help pay for the public improvements for the Project. (Last Page of Redline, Attachment D.) Staff concurs with this change because it will allow the Project to move forward should the bond market require that the bond term be for a period longer than the currently contemplated 38 years. Second, the changes further clarify that the improvements and services are only to be located within the CVBMP or if located outside the CVBMP only if they are required by the mitigation measures specified in the Project EIR (as defined in the Agreement) for which the City and District are responsible. Third, to further clarify that the taxes would only be levied on and constitute a lien against the operator's leasehold or possessory interest, and not be the obligation of the landowner. Since the Formation Resolution is not substantially the same as the Formation Resolution presented to the BPC in November 2019, staff is requesting that the Board authorize the Executive Director, or her designee, to execute the revised Agreement, as attached as Attachment A.

Staff is also seeking specific direction from the Board on how the District should vote on each of the respective propositions for the Special Tax District. The following is the language of each of the Propositions as set forth in Attachment B for which the District, as a landowner, will vote:

PROPOSITION A

Shall the measure to authorize the Bayfront Project Special Tax Financing District (the "District") to

levy special taxes at rates not to exceed 5% of Rent charged on Hotel Property and Campsite Property (as such terms are defined in Resolution No. 2019-___ accompanying this ballot) within the District, until the end of the term set forth in such resolution, raising an estimated \$30,000,000 annually to finance Improvements and Services described in such resolution, be approved?

Yes _____
No _____

PROPOSITION B

Shall the measure to authorize the Bayfront Project Special Tax Financing District (the "District") to incur a bonded indebtedness of the District in an amount not to exceed \$175,000,000, to be secured by special taxes subject to the approval of Proposition A above, be approved?

Yes _____
No _____

PROPOSITION C

Shall the measure to establish an Article XIIIB appropriations limit equal to \$125,000,000 for the Bayfront Project Special Tax Financing District be approved?

Yes _____
No _____

Staff recommends that the Executive Director, or her designee, vote: (1) Yes on Proposition A (Levy Special Taxes at Rates not to Exceed 5% of Rent charged on Hotel Property and Campsite Property); (2) Yes on Proposition B (Incur Indebtedness Not to Exceed \$175,000,000); and (3) Yes on Proposition C (Appropriations Limit Equal to \$125,000,000). The landowners affected by the Special Tax District are slated to vote on the Special Tax District on February 18, 2020. If Proposition A for the levy of the special tax and Proposition B for incurring the bonded indebtedness receives the approval of two-thirds (2/3) or more of the votes cast on each respective Proposition, bonds may be authorized, issued and sold for the applicable purposes set forth in the Resolution Deeming It Necessary to Incur Bonded Indebtedness (Attachment B) and the applicable special tax may be levied as provided in the Formation Resolution (Attachment B). If Proposition C to establish the appropriations limit for the District receives the approval of a majority of the votes cast on such Proposition, such appropriations limit shall be established.

If the BPC authorizes the Agreement as revised and attached as Attachment A and authorizes the Executive Director, or her designee to vote in favor of Propositions A, B, and C, this action will supersede the action previously given by the BPC at the November 5, 2019 BPC meeting pursuant to Resolution 2019-141.

General Counsel's Comments:

The Office of the General Counsel has reviewed this agenda sheet and the Joint Community Facilities Agreement attached as Attachment A and approves them both as to form and legality.

Environmental Review:

The proposed Board action, including without limitation, an ordinance authorizing the Executive Director to execute the Joint Community Facilities Agreement with the City of Chula Vista, with minor modifications to the associated formation documents, for the implementation of a special tax financing district, was adequately covered in the Final Environmental Impact Report (FEIR) for the Chula Vista Bayfront Master Plan (CVBMP) (UPD #83356-EIR-658; SCH #2005081077; Clerk Document No. 56562), certified by the District on May 18, 2010 (Resolution No. 2010-78), the Addendum to the FEIR, which was adopted by the Board on August 13, 2013 (Resolution No. 2013-138), and the Second Addendum to the FEIR, which was adopted by the Board on April 10, 2018 (Resolution No. 2018-0069). The proposed Board action is not a separate “project” for CEQA purposes but is a subsequent discretionary approval related to a previously approved project. (CEQA Guidelines § 15378(c); *Van de Kamps Coalition v. Board of Trustees of Los Angeles Comm. College Dist.* (2012) 206 Cal.App.4th 1036.) Additionally, pursuant to CEQA Guidelines Sections 15162 and 15163, and based on the review of the entire record, including without limitation, the FEIR and Addendums, the District finds and recommends that the proposed Board action does not require further environmental review as: 1) no substantial changes are proposed to the project and no substantial changes have occurred that require major revisions to the FEIR and Addendums due to the involvement of new significant environmental effects or an increase in severity of previously identified significant effects; and 2) no new information of substantial importance has come to light that (a) shows the project will have one or more significant effects not discussed in the FEIR and Addendums, (b) identifies significant impacts would not be more severe than those analyzed in the FEIR and Addendums, (c) shows that mitigation measures or alternatives are now feasible that were identified as infeasible and those mitigation measures or alternatives would reduce significant impacts, and (d) no changes to mitigation measures or alternatives have been identified or are required. Pursuant to CEQA Guidelines §15162(b), the District finds and recommends that no further analysis or environmental documentation is necessary. Accordingly, the proposed Board action is merely a step in furtherance of the original project for which environmental review was performed and no supplemental or subsequent CEQA has been triggered, and no further environmental review is required.

The proposed Board action complies with Sections 21 and 35 of the Port Act which allow for the Board to pass resolutions and to do all acts necessary and convenient for the exercise of its powers. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board action is consistent with the Public Trust Doctrine.

The proposed Board action does not allow for “development,” as defined in Section 30106 of the California Coastal Act, or “new development,” pursuant to Section 1.a. of the District’s Coastal Development Permit (CDP) Regulations because they will not result in, without limitation, a physical change, change in use or increase the intensity of uses. Therefore, issuance of a Coastal Development Permit or exclusion is not required. However, development within the District requires processing under the District’s CDP Regulations. Future development, as defined in Section 30106 of the Coastal Act, will remain subject to its own independent review pursuant to the District’s certified CDP Regulations, PMP, and Chapters 3 and 8 of the Coastal Act. The proposed Board action in no way limits the exercise of the District’s discretion under the District’s CDP Regulations. Therefore, issuance of a CDP or exclusion is not required at this time.

Equal Opportunity Program:

Not applicable.

PREPARED BY:

Stephanie Shook
Department Manager, Real Estate

Attachment(s):

Attachment A: Joint Community Facilities Agreement
Attachment B: City Council Special Tax District Resolutions
Attachment C: November 5, 2019 Agenda Sheet (2019-0422) and Resolution 2019-141
Attachment D: Redline of Resolution of the City Council of the City of Chula Vista Forming and Establishing the Bayfront Project Special Tax District

1. Chula Vista Bayfront Master Plan Financing Agreement, dated May 8, 2012, on file in the Office of the District Clerk bearing Document No. 59001
2. Final Environmental Impact Report for the Chula Vista Bayfront Master Plan and Port Master Plan Amendment (UPD #83356-EIR-658, SCH #2005081077), dated June 18, 2010, on file in the Office of the District Clerk bearing Document No. 56562