

City Council Report

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File ID: 2019-00184

March 5, 2019

Consent Item 02

Title: Interpretation of Rate and Method of Apportionment of Special Tax for McKinley Village Community Facilities District No. 2015-04 (Improvements)

Location: District 3

Recommendation: Adopt a Resolution: 1) finding that the Rate and Method of Apportionment of Special Taxes for McKinley Village Community Facilities District (the "RMA") is vague on how the City should classify and tax parcels that are within two tax zones and that RMA § G.3 authorizes the City Council, by resolution, to interpret the RMA so as to clarify this vagueness; 2) interpreting RMA § G.3 so that a parcel within two tax zones is classified and taxed by applying to the entire parcel the tax rate of the zone that includes more than half of the parcel; and 3) finding that this interpretation is reasonable because it is fair and equitable to all property owners.

Contact: Brian Wong, Debt Manager, (916) 808-5811; Colin Bettis, Senior Debt Analyst, (916) 808-8292, Office of the City Treasurer

Presenter: None

Attachments:

1-Description/Analysis

2-Resolution

Description/Analysis

Issue Detail: Encore McKinley Village, LLC (the “**Developer**”) proposes to file a new subdivision map that creates 32 new parcels (by dividing 16 existing parcels) and alters the mix of housing it is currently developing within the McKinley Village Community Facilities District (the “**CFD**”). As part of that proposal, the Developer would like to partially prepay the special taxes on the 32 new parcels so as to align the special tax on those parcels with the taxes on other, similar housing within the CFD.

The RMA approved when the CFD was formed (adopted by Resolution No. 2015-0242) identifies five tax zones that are based on the RMA’s original boundary map. Of the 32 new parcels, 16 will fall within—or straddle—two different tax zones. Unfortunately, the RMA does not clearly explain how the City should calculate the special tax for zone-straddling parcels.

City staff consulted with NBS, the City’s special-tax administrator, and Goodwin Consulting Group, the consultant that developed the RMA, to determine if there is a reasonable way to determine the apportionment of special taxes on the 16 zone-straddling parcels. We concluded that a reasonable approach is to interpret the RMA as follows: determine which tax zone contains the majority of the parcel (in terms of square feet) and apply to the *entire* parcel the special tax for that tax zone.

For each of 16 zone-straddling parcels, the majority of the area (well over 50%) falls within Tax Zone 2, so the *entirety* of each parcel would be taxed at the rate for that tax zone.

Because the new subdivision map will increase by 16 the number of parcels that will be subject to the CFD’s special tax, the *total* special-tax revenues expected to be collected in the CFD will similarly increase. But the special tax on each of the 32 new parcels will be reduced by 25% because of the Developer’s partial prepayment. As a result, and because of the smaller size of the 32 new parcels, the special tax for those parcels will be nearly in line with the tax on parcels in Tax Zone 3.

It is worth noting that City staff reached out to bond counsel, Orrick, Herrington & Sutcliffe LLP, to determine whether the approach developed by City staff, NBS, and Goodwin conflicts with the Mello-Roos law, which governs the CFD. Orrick advised that the recommended approach is a reasonable interpretation of the RMA.

Policy Considerations: Although the recommended action does not formally establish policy, it does constitute a precedent that, although nonbinding, may nevertheless be invoked should the City have to apply similarly vague RMAs to zone-straddling parcels in other Mello-Roos

districts. However, each prepayment calculation request is evaluated independently to ensure that bond holders and the City are not harmed.

Economic Impacts: Not applicable.

Environmental Considerations: Approval of the recommendation is not a “project subject to CEQA because it (a) has no potential to cause a significant effect on the environment; (b) approves a continuing administrative activity and is thus excluded from the definition of a “project”; and (c) concerns governmental fiscal activities that do not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment. (14 Cal. Code Regs. §§ 15061(b)(3), 15378(b)(2), and 15378(b)(4))

Sustainability: Not applicable.

Commission/Committee Action: Not applicable.

Rationale for Recommendation: It is reasonable and equitable to interpret the RMA so that a tax-zone-straddling parcel is taxed at the rate for the tax zone that covers more than 50% of the parcel.

Financial Considerations: There is no effect on the City’s General Fund. Any costs related to the new subdivision map or to the changes in total special taxes will be paid for either by the Developer or by the tax payers within the CFD.

Local Business Enterprise (LBE): Not applicable.

RESOLUTION NO. 2018-

Adopted by the Sacramento City Council
March 5, 2019

APPROVING THE INTERPRETATION OF SECTION G.3 IN THE RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX FOR MCKINLEY VILLAGE COMMUNITY FACILITIES DISTRICT NO. 2015-04 (IMPROVEMENTS)

BACKGROUND

- A. The City Council established the McKinley Village Community Facilities District No. 2015-04 (Improvements) (the “**CFD**”) on July 28, 2015 (Resolution No. 2015-0242). At the same time, the City Council approved the rate and method of apportionment for the CFD’s special tax (the “**RMA**”).
- B. Among other things, the RMA authorizes the partial prepayment of special taxes on parcels. (RMA § G.3.) It also provides that the City Council may, by resolution, interpret the RMA for purposes of clarifying any vagueness or ambiguity in the RMA’s special-tax rates, method of apportionment, classification of properties, and definitions. (RMA § I.)
- C. The primary developer of the CFD, Encore McKinley Village, LLC, has requested a preliminary calculation of the partial prepayment of special tax for parcels that fall within—or straddle—two tax zones. Working with NBS (the City’s special tax administrator), the Treasurer’s Office and the City Attorney’s Office determined that the RMA is unclear on the procedure for calculating the special tax on a tax-zone-straddling parcel.
- D. After consulting with NBS, Goodwin Consulting Group (which drafted the RMA), and Orrick, Herrington & Sutcliffe LLP (bond counsel or the CFD), the Treasurer’s Office and the City Attorney’s Office determined that a reasonable way to apportion the special tax on zone-straddling parcels in the CFD is to interpret the RMA as follows: determine which tax zone contains the majority of the parcel and apply to the entire parcel the special tax for that tax zone.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The facts in the background are true.
- Section 2. RMA § G.3 is vague on how the City should classify and tax parcels that are within two tax zones.

- Section 3. RMA § G.3 is hereby interpreted as follows: a parcel that is within two tax zones will be classified as being in the zone that contains more than 50% of the parcel (measured in square feet), and the entire parcel will be taxed at the rate for that zone.
- Section 4. This interpretation of RMA § G.3 is fair and equitable to all owners of property within the CFD and thus is consistent with Government Code § 53325.3, which says that the tax may be apportioned on any “reasonable basis as determined by the legislative body [i.e., the City Council].”