

**RESOLUTION NO. 2022-**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FONTANA ESTABLISHING COMMUNITY FACILITIES DISTRICT NO. 110M OF THE CITY OF FONTANA, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AND ESTABLISHING THE BOUNDARIES THEREOF**

**WHEREAS**, the City Council (the "City Council") of the City of Fontana (the "City") has heretofore adopted on July 26, 2022, Resolution No. 2022-089 stating that a community facilities district to be known as "Community Facilities District No. 110M of the City of Fontana, County of San Bernardino, State of California" (the "Community Facilities District"), is proposed to be established under the terms of Chapter 2.5 (commencing with § 53311) of Part 1 of Division 2 of Title 5 of the California Government Code, commonly known as the "Mello-Roos Community Facilities Act of 1982" (the "Act"), and fixing the time and place for a public hearing on the establishment of the Community Facilities District; and

**WHEREAS**, notice was published and mailed to the owner of property in the Community Facilities District as required by law relative to the intention of the City Council to establish the Community Facilities District, the levy of the special taxes therein, the financing of public services therein by the Community Facilities District, and of the time and place of said public hearing; and

**WHEREAS**, on September 13, 2022, at the time and place specified in said published and mailed notices, the City Council opened and held a public hearing as required by law relative to the formation of the Community Facilities District, the levy of the special taxes therein and the financing of services by the Community Facilities District; and

**WHEREAS**, prior to said hearing there was filed with the City Council a report (the "Report") containing a description of the services being financed within and for the Community Facilities District, and an estimate of the cost of providing such services, as required by Section 53321.5 of the Act; and

**WHEREAS**, at the public hearing all persons desiring to be heard on all matters pertaining to the establishment of the Community Facilities District, the levy of the special taxes and the financing of services therein were heard, and a full and fair hearing was held; and

**WHEREAS**, the City Council may therefore proceed to establish the Community Facilities District;

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Fontana, as follows:

**Section 1. Findings.** The City Council finds as follows: (i) all of the preceding recitals are correct, (ii) on September 13, 2022, pursuant to notice thereof duly given as provided by law, the City Council conducted a public hearing with respect to the establishment of the Community Facilities District and the annual levying of specified special taxes on the taxable property within the Community Facilities District to pay the costs of services for the Community Facilities District which are described in Section 3 hereof, (iii) the boundary map of the Community Facilities District has been recorded pursuant to Section 3111 of the Streets and Highways Code as Instrument No. 2022-0260094 at page number 47 of book number 90 in the Book of Maps of Assessment and Community Facilities Districts of the official records of the County of San Bernardino (the "County"), (iv) all prior proceedings prior to and during the hearing with respect to the establishment of the Community Facilities District conducted by the City Council on September 13, 2022, were valid and in conformity with the requirements of the Act, (v) no written protests were received at or prior to the time of said hearing against the establishment of the Community Facilities District or the levying of said special taxes by the Community Facilities District, and, therefore, a majority protest does not exist pursuant to Section 53324 of the Act, (vi) the services described in Section 3 hereof are not replacing services available within the boundaries of the Community Facilities District and are necessary to meet increased demands placed upon the City as a result of new development occurring within the boundaries of the Community Facilities District, and (vii) the City Council is, therefore, authorized to adopt a resolution of formation pursuant to Section 53325.1 of the Act for the establishment of Community Facilities District No. 110M of the City of Fontana, County of San Bernardino, State of California, and the Community Facilities District should be established.

**Section 2. Establishment of Community Facilities District.** Community Facilities District No. 110M of the City of Fontana, County of San Bernardino, State of California, is hereby established. The boundaries of the Community Facilities District are set forth in Exhibit "A" attached hereto and are also shown on the map entitled "Proposed Boundaries of Community Facilities District No. 110M of the City of Fontana, County of San Bernardino, State of California" which is on file with the City Clerk and said boundaries are hereby established.

**Section 3. Types of Services; Incidental Expenses.** The Community Facilities District will finance the costs of services to maintain street lighting, landscaping, park maintenance, detention basins/water quality systems, and open space facilities within and surrounding the area of the Community Facilities District, mailboxes located within the Community Facilities District owned by the City with an estimated useful life of five or more years, and the costs associated with the determination of the amount, levy, and collection of special taxes, which are levied to provide such services, the costs associated with the creation of the Community Facilities District and costs otherwise incurred in order to carry out the authorized purposes of the Community Facilities District.

"Maintenance" means the furnishing of services and materials for the ordinary and usual maintenance, operation and servicing of such street lighting, landscaping, parks, parkways, detention basins/water quality systems, open space facilities, mailboxes, and the incidental costs related thereto, including:

- a) Repair, removal, or replacement of all or any part of any improvement.
- b) Providing for the life, growth, health, and beauty of landscaping, including cultivation, irrigation, trimming, spraying, fertilizing, or treating for disease or injury.
- c) The removal of trimmings, rubbish, debris, and other solid waste.
- d) The cleaning, sandblasting, and painting of walls and other improvements to remove or cover graffiti.

**Section 4. Special Taxes.** Except where funds are otherwise available, special taxes sufficient to pay the costs of services specified in Section 3 above of the Community Facilities District, and the annual administrative expenses of the City and the Community Facilities District in determining, apportioning, levying and collecting such special taxes shall be annually levied within the Community Facilities District. The rate and method of apportionment (the "Rate and Method") of said special taxes shall be as set forth in Exhibit "B" attached hereto and by this reference made a part hereof. The Rate and Method sets forth in sufficient detail to allow each landowner or resident within the Community Facilities District to clearly estimate the maximum amount of special taxes that such person will have to pay for the services in Section 3 hereof.

The City Council finds that the methodology for determining and apportioning annual and maximum amounts of special taxes, set forth in the Rate and Method is based upon the cost of making the services available to each lot and parcel in the Community Facilities District. The special taxes will be apportioned to each lot or parcel on the foregoing basis in accordance with the Rate and Method. Pursuant to Section 53325.3 of the Act such special taxes are not a special assessment nor apportioned on the basis of benefit to any of real property.

Pursuant to Section 53340 of the Act, the special taxes shall be collected in the same manner as ordinary ad valorem property taxes are collected and shall be subject to the same penalties and the same procedure, sale, and lien priority in case of delinquency as is provided for ad valorem taxes; provided however, the Community Facilities District may utilize a direct billing procedure for any special taxes that cannot be collected on the County tax roll or may, by resolution, elect to collect the special taxes at a different time or in a different manner if necessary to meet its financial obligations.

Upon recordation of a notice of special tax lien pursuant to Section 3114.5 of the Streets and Highways Code, a continuing lien to secure each levy of the special tax

shall attach to all non-exempt real property in the Community Facilities District and this lien shall continue in full force and effect until collection of the special tax by the legislative body ceases. The special tax may not be prepaid.

The Management Services Department of the City of Fontana, 8453 Sierra Avenue, Fontana, California, 909-350-6608 is designated as the office responsible for preparing annually a current roll of special tax levy obligations by assessor's parcel numbers and for estimating future special tax levies pursuant to Section 53340.2 of the Act.

**Section 5. Annexation of Territory.** Other property within the corporate boundaries of the City of Fontana may be annexed into the Community Facilities District in accordance with the Act.

**Section 6. Exempt Property.** Pursuant to Section 53340 of the Act, and except as provided in Section 53317.3 of the Act, properties of entities of the state, federal and local governments shall be exempt from the levy of special taxes of the Community Facilities District, unless the entity is a landowner within the meaning of Section 53317(f) of the Act.

**Section 7. Report.** The Report is hereby approved and is made a part of the record of the public hearing regarding the formation of the Community Facilities District, and is ordered to be kept on file with the City Clerk as part of the transcript of these proceedings.

**Section 8. Repayment of Funds Advanced or Work-in-Kind.** Pursuant to Section 53314.9 of the Act, the City Council proposes to accept advances of funds or work-in-kind from private persons or private entities and to provide, by resolution, for the use of those funds or that work-in-kind for any authorized purpose, including but not limited to, paying any costs incurred by the City in creating the proposed community facilities district, and to enter into an agreement, by resolution, with the person or entity for the value, or cost, whichever is less, of the work-in-kind, as determined by the City Council.

**Section 9. Description of Voting Procedures.** The voting procedures to be followed in conducting the consolidated special elections on (i) the proposition with respect to the levy of special taxes on the parcels of taxable property within the Community Facilities District to pay the annual costs of services described in Section 3 hereof, and (ii) the proposition with respect to the establishment of an appropriations limit for the Community Facilities District in the amount of \$1,000,000, (the "consolidated special elections") are held, shall be as follows:

(a) If at least 12 persons have been registered to vote within the territory of the Community Facilities District for each of the 90 days preceding the close of the public or protest hearing (the "protest hearing"), the vote in the consolidated special elections shall be by the registered voters of the Community Facilities District with each voter having one vote. In that event, the consolidated special elections shall be

conducted by the City Clerk, and shall be held on a date selected by the City Council in conformance with the provisions of Section 53326 of the Act and pursuant to the provisions of the California Elections Code governing elections of cities, insofar as they may be applicable, and pursuant to said Section 53326 the ballots for the consolidated special elections shall be distributed to the qualified electors of the Community Facilities District by mail with return postage prepaid or by personal service, and the consolidated special elections shall be conducted as a mail ballot election.

(b) If 12 persons have not been registered to vote within the territory of the Community Facilities District for each of the 90 days preceding the close of the protest hearing, pursuant to Section 53326 of the Act, the vote is therefore to be by the landowners of the Community Facilities District, with each landowner of record at the close of the protest hearing having one vote for each acre or portion of an acre of land that he or she owns within the Community Facilities District, the consolidated special elections shall be conducted by the City Clerk as follows:

(1) The consolidated special elections shall be held on the earliest date, following the adoption by the City Council of the resolution of formation establishing the Community Facilities District pursuant to Section 53325.1 of the Act, and a resolution pursuant to Section 53326 of the Act submitting the propositions with respect to (i) the levy of special taxes to pay the costs of services described in Section 3 hereof of the Community Facilities District, and (ii) the establishing of an appropriations limit therefor to the qualified electors of the community facilities district, upon which such elections can be held pursuant to said Section 53326 which may be selected by the City Council, or such earlier date as the owners of land within the Community Facilities District and the City Clerk agree and concur is acceptable.

(2) Pursuant to said Section 53326, the consolidated special elections may be held earlier than 90 days following the close of the protest hearing if the qualified electors of the Community Facilities District waive the time limits for conducting the elections set forth in said Section 53326 by unanimous written consent and the City Clerk concurs in such earlier election date as shall be consented to by the qualified electors.

(3) Pursuant to said Section 53326, ballots for the consolidated special elections shall be distributed to the qualified electors by the City Clerk by mail with return postage prepaid, or by personal service.

(4) Pursuant to applicable sections of the California Elections Code governing the conduct of mail ballot elections of cities, and specifically Division 4 (commencing with §4000 of the California Elections Code with respect to elections conducted by mail), the City Clerk shall mail (or deliver) to each qualified elector an official ballot in a form specified by the City Council in the resolutions calling and consolidating the consolidated special elections, and shall also mail to all such qualified electors a ballot pamphlet and instructions to voter,

including a sample ballot identical in form to the official ballot but identified as a sample ballot, an impartial analysis by the City Attorney pursuant to Section 9280 of said Code with respect to the ballot propositions contained in the official ballot, arguments and rebuttals, if any, pursuant to Sections 9281 to 9287, inclusive, and 9295 of said Code, a return identification envelope with prepaid postage thereon addressed to the City Clerk for the return of voted official ballots, and a copy of the form of resolution of formation establishing the community facilities district, adopted by the City Council pursuant to Section 53325.1 of the Act, and the exhibits thereto; provided, however, that such analysis and arguments may be waived with the unanimous consent of all the landowners, and in such event a finding regarding such waivers shall be made in the resolution adopted by the City Council calling the consolidated special elections.

(5) The official ballot to be mailed (or delivered) by the City Clerk or her designee to each landowner-voter shall have printed or typed thereon the name of the landowner-voter and the number of votes to be voted by the landowner-voter and shall have appended to it a certification to be signed by the person voting the official ballot which shall certify that the person signing the certification is the person who voted the official ballot, and if the landowner-voter is other than a natural person, that he or she is an officer of or other person affiliated with the landowner-voter entitled to vote such official ballot, that he or she has been authorized to vote such official ballot on behalf of the landowner-voter, that in voting such official ballot it was his or her intent, as well as the intent of the landowner-voter, to vote all votes to which the landowner-voter is entitled based on its land ownership on the propositions set forth in the official ballot as marked thereon in the voting square opposite each such proposition, and further certifying as to the acreage of the landowner-voter's land ownership within the Community Facilities District.

(6) The return identification envelope delivered by the City Clerk or her designee to each landowner-voter shall have printed or typed thereon the following: (i) the name of the landowner, (ii) the address of the landowner, (iii) a declaration under penalty of perjury stating that the voter is the landowner or the authorized representative of the landowner entitled to vote the enclosed ballot and is the person whose name appears on the identification envelope, (iv) the printed name and signature of the voter, (v) the address of the voter, (vi) the date of signing and place of execution of said declaration, and (vii) a notice that the envelope contains an official ballot and is to be opened only by the City Clerk.

(7) The instruction to voter form to be mailed by the City Clerk or her designee to the landowner-voters shall inform them that the official ballots shall be returned to the City Clerk properly voted as provided thereon and with the certification appended thereto properly completed and signed in the sealed return identification envelope with the certification thereon completed and signed and all other information to be inserted thereon properly inserted by no later than 7:00 p.m. on the date of the election.

(8) Upon receipt of the return identification envelopes which are returned prior to the voting deadline on the date of the elections, the City Clerk shall canvass the votes cast in the consolidated special elections, and shall file a statement with the City Council as to the results of such canvass and the election on each proposition set forth in the official ballot.

The procedures set forth in this section for conducting the consolidated special elections, if they are held, may be modified as the City Council may determine to be necessary or desirable by a resolution subsequently adopted by the City Council.

**APPROVED AND ADOPTED** this 13<sup>th</sup> day of September 2022.

**READ AND APPROVED AS TO LEGAL FORM:**

\_\_\_\_\_  
City Attorney

I, Germaine McCellan Key, City Clerk of the City of Fontana, and Ex-Officio Clerk of the City Council do hereby certify that the foregoing resolution is the actual resolution duly and regularly adopted by the City of Fontana at a regular meeting on the 13<sup>th</sup> day of September 2022, by the following vote to wit:

**AYES:**  
**NOES:**  
**ABSENT:**

\_\_\_\_\_  
City Clerk of the City of Fontana

\_\_\_\_\_  
Mayor of the City of Fontana

**ATTEST:**

\_\_\_\_\_  
City Clerk