

**CITY OF INDIAN WELLS**  
**GOALS AND POLICIES CONCERNING**  
**THE USE OF**  
**THE MELLO-ROOS COMMUNITY FACILITIES ACT**  
**OF 1982 TO FINANCE PUBLIC FACILITIES AND SERVICES**

**Adopted April 6, 2023**

**ATTACHMENT #2**

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GOALS AND POLICIES CONCERNING THE USE OF  
THE MELLO-ROOS COMMUNITY FACILITIES ACT OF 1982  
TO FINANCE PUBLIC FACILITIES AND SERVICES**

**Introduction.**

The City Council of the City of Indian Wells (the "City Council") hereby establishes and states its goals and policies concerning the use of the Mello-Roos Community Facilities Act of 1982, as amended, (the "Act"), being Chapter 2.5 of Part I of Division 2 of Title 5 of the Government Code of the State of California in providing adequate public infrastructure improvements and services for the City of Indian Wells (the "City"). The following goals and policies shall apply to all Community Facilities Districts (the "CFD") hereafter formed or proposed to be formed by the City. Any policy or goal stated herein may be supplemented or amended by resolution of the City Council.

The purpose of the "City of Indian Wells Goals and Policies Concerning the Use of the Mello-Roos Community Facilities Act of 1982 to Finance Public Facilities and Services" (the "CFD Goals and Policies") is to provide City staff, the residents of the City, and the owners and developers of property located within the City with guidance in the application for and consideration of the establishment of CFDs within the City for the purpose of financing or assisting in financing the acquisition or construction of public infrastructure to benefit and serve either existing or new development or a combination thereof, and to finance ongoing costs of providing service and maintenance to public infrastructure. The underlying principals behind this policy are the protection of the public interest, assuring fairness in the application of special taxes to current and future property owners, assuring full disclosure of the existence of any special tax liens, insuring the creditworthiness of any CFD municipal bonds ("CFD Bonds"), protecting the City's credit rating and financial position and assuring that applicants for all CFD proceedings other than City initiated proceedings pay all costs associated with the formation of any CFD.

The scope of this policy is limited to the proposed formation of CFDs for the limited purpose of financing or assisting in financing the acquisition or construction of public infrastructure or to provide funding for services or maintenance.

The City is under no obligation to issue CFD Bonds. The ability to issue CFD Bonds depends upon the particular facts and circumstances of each CFD. When issuing CFD Bonds, the developer or property owners must agree to cooperate in connection with any covenants or other requirements that may be necessitated by tax-exempt bonds.

**Priorities for CFD Financing/Funding.**

The priority that various kinds of public facilities or services will have for financing or funding through the City's use of the Act is as follows:

- (a). public facilities to be owned and operated by the City that provide a demonstrated public benefit;
- (b). public services to be performed by the City; and
- (c). public facilities to be owned and operated by a public agency other than the City.

Examples of a demonstrated public benefit may include, but are not limited to, the following:

1. Construction of a major public facility which meets a community need, for example a major arterial which will provide a vital roadway facility to alleviate congestion, park or recreational facilities intended to serve residents throughout the City, water distribution facilities, and storm drainage facilities which are a part of the storm drainage master plan.
2. Construction of public infrastructure sooner than would otherwise be required for a particular development project.
3. Construction of public infrastructure to serve commercial or industrial projects that will expand the City's employment and/or sales tax base.

### **Equity of Special Tax Formulas and Maximum Special Taxes for CFDs.**

**Reasonable Basis of Apportionment.** Special taxes must be allocated and apportioned on a reasonable basis to all categories and classes of property (other than exempt property) within the CFD. Exemptions from the special tax may be given to parcels which are publicly-owned, are held by property owners associations, are used for a public purpose such as open space or wetlands, or are affected by public utility easements making impractical their utilization for other than the purposes set forth in the easement.

**Total Tax Burden.** The total tax burden (that is, the anticipated maximum annual CFD special tax, together with *ad valorem* property taxes, special assessments, special taxes for any overlapping community facilities district, and any other taxes, fees and charges payable from and secured by the property) on any residential owner-occupied parcel in a CFD shall not exceed two percent (2.00%) of the estimated base sales price of such parcel upon completion of the public and private improvements relating thereto.

**Rate and Method of Apportionment.** The rate and method of apportionment ("RMA") for CFD special taxes must be structured so as to produce special tax revenues sufficient to pay: (a) scheduled debt service on all CFD Bonds, if applicable; (b) pay annual services or maintenance expense, if applicable; and (c) reasonable and necessary annual administrative expenses of the CFD. Additionally, the RMA may be structured so as to produce amounts sufficient to fund: (a) any amounts required to establish or replenish any reserve fund established for a CFD Bond issue; (b) any amounts required to establish or replenish any capital improvement plan or reserve and contingency fund established for CFD services and maintenance; (c) amounts to pay directly the costs of public facilities authorized to be financed by the CFD; (d) the accumulation of funds reasonably required for future debt service on CFD bonds; (e) amounts equal to projected delinquencies in special tax payments; (f) remarketing, credit enhancement or liquidity fees; and (g) any other costs or payments permitted by law.

In any case, the RMA must be structured such that the projected maximum special tax that could be levied in any fiscal year would produce special tax revenues at least equal to (a) 110% of projected annual debt service on all CFD Bonds for the calendar year commencing in such fiscal year, plus (b) projected administrative expenses of the CFD for the calendar year commencing in such fiscal year. Generally, the RMA for CFD special taxes will be required to include a back-up tax so that changes in development within the CFD would not result in the inability to levy special taxes that would produce special tax revenues in such amounts.

**Increases in Special Tax.** The maximum special tax for services and maintenance for any taxable parcel within a CFD shall escalate at the greater of three percent (3.00%) or the annual percentage increase of a published Consumer Price Index (“CPI”). For facilities CFDs issuing CFD Bonds, the maximum special tax for any one taxable parcel within a CFD shall not escalate more than two percent (2%) per year. The increase in the special tax levied on any taxable parcel within a CFD as a consequence of delinquency or default by the owner on any other parcel may not be increased by more than ten percent (10.00%) of the rate that would have been levied had no delinquency or default existed, but in no event shall any special tax levied on any taxable parcel exceed any maximum specified in the Act or the RMA.

**Prepayment of Special Tax Obligation.** Generally, the RMA of a special tax for a facilities CFD issuing CFD Bonds will be structured so as to allow the prepayment of the full amount of the special tax obligation by property owners or any partial amount desired by the property owner. CFDs for services shall not have the ability to be prepaid.

**Use of Special Tax Proceeds.** Generally, the RMA of a special tax for a CFD will be structured to prohibit the use of special tax coverage to be used to reimburse a developer for acquired public facilities.

**Credit Quality Requirements for CFD Bond Issues.**

All terms and conditions of any CFD Bonds, including, without limitation, the sizing, timing, term, interest rates, discount, redemption features, flow of funds, investment provisions and foreclosure covenants, shall be established by the City. Each CFD Bond issue shall be structured to adequately protect bond owners and to avoid negatively impacting the bonding capacity or credit worthiness of the City.

Unless otherwise approved by the City Council, the following shall serve as minimum CFD Bond requirements:

**Project Viability.** The viability of the development project within a CFD is a critical component of the credit quality of a CFD Bond issue. Accordingly, the viability of each such development project will be reviewed and evaluated by the City. Under most circumstances, the viability of a development project is enhanced as the project moves further through the development process. Therefore, generally, a CFD will be established only if tract or parcel maps for the development project to be undertaken therein have been approved by the City Council and the project is consistent with the City’s General Plan.

**Statutory Requirements.** The City will require that the credit quality of any CFD Bond issue be such that the requirements of Section 53345.8 of the Government Code will be met.

**Reserve Fund.** In order to enhance the credit quality of CFD Bond issues, the City will require that each such bond issue be secured by a reserve fund. Generally, each such reserve fund will be required to be funded (with cash or an acceptable reserve surety or other credit facility) in an amount no less than the least of: (a) 10% of the initial principal amount of the bonds of such issue; (b) maximum annual debt service on the bonds of such issue; and (c) 125% of the average annual debt service on the bonds of such issue. Any reserve surety or other credit facility funding such a reserve fund will generally be required to be issued or guaranteed by an entity, the long term unsecured

obligations of which are rated at least "A" by Moody's Investors Service or Standard & Poor's Ratings Service.

**Credit Enhancement.** Where a substantial amount of the property within a CFD is undeveloped, there is a concentration of ownership or insufficient value to lien the City may require credit enhancement in the form of bank letter of credit or other form of financial institution guarantee to increase the credit quality of such CFD Bond issue. The credit enhancement will be in the amount equivalent to a minimum of two (2) years of debt service payments on the bonds as security for the amount of future taxes to be paid. The credit enhancement shall remain in place until the special tax burden of the property owner providing the credit enhancement falls below twenty percent (20%) of the special tax burden.

**Capitalized Interest.** Interest shall be capitalized for a bond issue only so long as necessary to place the special tax installments on the assessment roll; provided, however, interest may be capitalized for a term to be established in the sole discretion of the City Council on a case-by-case basis, not to exceed an aggregate of eighteen (18) months, taking into consideration the value-to-debt ratio, the expected timing of initial residential occupancies, expected absorption and build out of the project, the expected construction and completion schedule for the public improvements to be funded from the proceeds of the bond issue in question, the size of the bond issue, the development pro forma and the equity position of the applicant and such other factors as the City Council may deem relevant.

**Bond Structure.** The term to maturity of any CFD Bonds shall not exceed the maximum term specified in the Act. Principal amortization of CFD Bonds shall commence no later than the end of the second bond year. CFD Bonds shall be structured such that, once principal amortization thereof has commenced, debt service thereon will be substantially level subject to annual increase as described under "Increase in Special Taxes".

**Limited Obligations.** Neither the faith, credit or taxing power of the City shall be pledged to the payment of CFD Bonds. The sole source of revenue for the payment of CFD Bonds shall be the special taxes (net of a reasonable amount determined by the City to pay the annual costs of administration of the CFD and the CFD Bonds), capitalized interest, if any, credit enhancement, if any, and moneys on deposit in the reserve fund established for such bonds. The City shall not be required or expected to make any payment of the bonds out of its General Fund or other available funds.

**Development Milestones.** The City may require certain development milestones be reached prior to the issuance of bonds. The City desires to have at least 50% of the properties subject to special taxes within either the CFD or an improvement area boundary to have received building permits and be completed to substantially completed prior to the issuance of bonds secured by the property's special taxes.

The City will require bond financings be structured so that bonds are purchased and owned by suitable investors. For example, the City may require placement of bonds with a limited number of sophisticated investors, large bond denominations, and/or transfer restrictions in situations where there is an insufficient value-to-lien ratio, where a substantial amount of the property within a CFD is undeveloped, where tax delinquencies are present in parcels within the CFD, and in any other situation identified by the City.

**Value-to-Debt Ratio.** It is the City's policy that the value-to-debt ratio, *i.e.*, the full market value of the properties subject to the levy of special taxes, including the value of the improvements to be financed from the proceeds of the issue or series of special tax bonds for which the value-to-debt ratio is being computed, compared to the aggregate amount of the special tax lien proposed to be created, plus any fixed assessment liens and/or special tax liens, for a CFD, must be at least 4:1. A CFD with a value-to-debt ratio of less than 4:1, but equal to or greater than 3:1, may be approved, in the sole discretion of the City Council, upon a determination by the City Manager, after consultation with, the bond counsel, the underwriter, and the municipal advisor, a value-to-debt ratio of less than 4:1 is acceptable in light of the circumstances of the particular CFD and/or credit enhancement such as a letter of credit, or the escrow of bond proceeds to offset a deficiency in the required value-to-debt ratio as it applies to the taxable property within the CFD in the aggregate or with respect to any development area.

### **Acquisition or Construction Districts.**

The construction of public improvements may be funded by a developer or property owner and acquired by the City upon inspection and completion from the CFD bonds or and/or special tax proceeds ("Acquisition") or funded by public contract led by the City or other public agency ("Construction") or, in appropriate cases, both. The City may consider acquisition of discrete usable components of improvements or facilities or require all the improvement to be complete prior to Acquisition. Any work performed by Acquisition must be done under prevailing wage contracts and the applicant shall be responsible for such compliance.

### **Appraisals for CFD Bond Issues.**

The definitions, standards and assumptions to be used in appraisals required in connection with the City's use of the Act for CFDs are as set forth in Section 53345.8 of the Act and the Appraisal Standards for Land Secured Financings published by the California Debt Advisory Commission and originally dated May 1994 and modified July 2004 (the "CDIAC Guidelines").

Notwithstanding the foregoing, if there is a conflict between the definitions, standards or assumptions in the CDIAC Guidelines or the corresponding definitions, standards or assumptions in the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation ("USPAP"), the definitions, standards, and assumptions of Section 53312.7(a)(5) shall govern.

**Independent Absorption Study.** An independent absorption study of the proposed residential development project shall be required for the formation of any CFD. The independent absorption study shall be used: 1) as a basis to verify proposed base pricing of the residential units subject to the levy of the special tax; and 2) to determine if the public financing of the public facilities is appropriate given the timing of development. Additionally, the projected absorption rates will be provided to the appraiser for use in the appraisal.

The appraiser shall be selected by the City and the appraisal shall be coordinated under the direction of the City. The selected appraiser must be willing to consent to the use of the appraisal in the official statement. The appraisal must be dated within three months of the date the bonds are priced, unless the City determines a longer time is appropriate.

### **Disclosure for CFD Bond Issues.**

**Initial Disclosure.** Each owner of property within a CFD that has not reached its planned development stage and that will be responsible for a substantial portion (as determined by the City) of annual debt service on an issue of CFD Bonds will be required to provide for inclusion in the official statement or other offering materials distributed in connection with the offering and sale of such bonds such information as may be required for the City to comply with, satisfy any requirements of, or avoid any liability under, any applicable federal or state securities laws.

**Continuing Disclosure.** Each owner of property within a CFD, and each subsequent owner of property therein, that has not reached its planned development stage and that will be responsible for a substantial portion (as determined by the City) of annual debt service on an issue of CFD Bonds will be required to provide such information, on an ongoing basis, as may be required for the underwriter of such bonds to satisfy the requirements imposed on it pursuant to Rule 15c2-12 promulgated under the Securities Exchange Act of 1934.

### **Joint Financing Agreements/Joint Powers Authority.**

The City will not participate in a Joint Powers Authority nor will it enter into a Joint Financing Agreement for a CFD with regard to a non-City initiated CFD unless there is compliance with all City policies and the City receives the largest share of facilities to be funded by the CFD Bond proceeds not factoring in the special taxes to be collected over time.

### **Disclosure to Prospective Property Purchasers in CFDs.**

The applicant for the formation of a CFD will be required to demonstrate to the satisfaction of the City Manager (when the term City Manager is used herein it shall mean the City Manager or his designee) that there will be full disclosure of the special tax obligation for such CFD and of any and all other special taxes or assessments on individual parcels to prospective purchasers or lessees of property within such CFD, including merchant builders, residential homeowners and commercial or industrial purchasers or lessees.

Such notice must include all of the following in addition to such other provisions as may be required by the Act or the applicant may deem necessary:

- (a). Provide for full disclosure of the existence of the special tax lien and any other assessment or special tax obligation applicable to the properties within the CFD (whether imposed by the City or any other public agency), including the principal amount of the special tax obligation and any other applicable assessment or special tax obligation, term of each of the assessment or special tax liens and the amount of the expected payments of the special taxes and the maximum authorized special tax.
- (b). Disclose the option to prepay the special tax obligation or allow the special tax to pay for public facilities to be passed through to the purchaser of such property and the adjustment, if any, in the sales price of the homes or other property which will apply if the special tax lien is passed through. Provide the ability for the prospective purchaser to elect to exercise the option either to prepay the special tax obligation at the close of escrow or to have the special taxes

included in the property taxes for the property. Such disclosure shall be placed in all sales brochures, all other on-site advertising and all purchase documents.

(c). Specify in all disclosure documents the name, title, telephone number and address of a representative of the City as provided to the applicant who may be contacted by any prospective purchaser of property within the CFD for further information regarding the CFD and the special tax lien.

The applicant must agree to provide an original copy of all applicable disclosure documents to the City prior to initiating property sales.

### **Advance of Funds to Pay Formation and Issuance Costs.**

Except for those applications for CFDs where the City is the applicant, all City and consultant costs incurred in the evaluation of applications and the proceedings to form a CFD and issue CFD Bonds therefore will be paid by the applicant by advance deposit with the City of moneys sufficient to pay all such costs.

Each application for the formation of a CFD shall be accompanied by an initial deposit in an amount to be determined by the City Manager to be adequate to fund the evaluation of the application and undertake the proceedings to form the CFD and issue the CFD Bonds therefore (collectively, the "Formation and Issuance Costs"). The City Manager may, in his or her sole discretion, permit an applicant to make periodic deposits to cover the Formation and Issuance Costs rather than a single lump sum deposit; provided, however, no such costs shall be incurred by the City in excess of the amount then on deposit for such purposes. If additional funds are required to pay the required Formation and Issuance Costs, the City Manager may make written demand upon the applicant for such additional funds and the applicant shall deposit such additional funds with the City within five (5) working days of the date of receipt of such demand. Upon the depletion of the funds deposited by applicant for Formation and Issuance Costs, all proceedings to form the CFD and/or issue the CFD Bonds shall be suspended until receipt by the City of such additional funds as the City Manager may demand.

The deposits shall be used by the City to pay for Formation and Issuance Costs incurred by the City incident to the evaluation of the application and the proceedings for the formation of the CFD and the issuance of the CFD Bonds therefore, including, but not limited to, legal, special tax consultant, engineering, appraisal, market absorption, financial advisor, administrative and staff costs and expenses, required notifications, printing and publication costs.

The City shall refund any unexpended portion of the deposits, after payment or provision for payment of all Formation and Issuance Costs previously incurred, upon the occurrence of one of the following events:

- (a). The formation of the CFD and the issuance of the CFD Bonds;
- (b). The formation of the CFD or the issuance of the CFD Bonds is disapproved by the City Council;
- (c). The proceedings for the formation of the CFD and the issuance of the CFD Bonds are abandoned at the written request of the applicant; or



(d). The CFD Bonds may not be issued and sold.

Except as otherwise provided herein, the applicant shall be entitled to reimbursement of all amounts deposited with the City to pay for Formation and Issuance Costs upon the formation of the CFD and the successful issuance and sale of the CFD Bonds for the CFD. Any such reimbursement shall be payable solely from the proceeds of the CFD Bonds.

The City shall not accrue or pay interest on any moneys deposited with the City.

### **Selection of Consultants.**

The City shall select, in its sole discretion, and retain all consultants necessary for the evaluation of any application and the proceedings for the formation of a CFD and the issuance of the special tax bonds therefore, including, but not limited to, special tax consultant, bond counsel, municipal advisor, underwriter, appraiser, and market absorption consultant after consultation with the applicant and consideration of any recommendations of the applicant.

### **Development Rights.**

Properties proposed to be included in a CFD must have received such discretionary land use approvals as may, in the determination of the City, be necessary to enable the City to adequately evaluate the CFD including the properties to be included and the improvements proposed to be financed. The City will issue bonds secured by the levy of special taxes within a CFD only when: (i) the properties included within such CFD have received those applicable discretionary land use approvals which would permit the development of such properties consistent with the assumptions utilized in the development of the RMA of the special taxes for such CFD and (ii) applicable environmental review has been completed.

It is the policy of the City Council in granting approval for development such as zoning, specific plan or subdivision approval to grant such approval as a part of the City's ongoing planning and land use approval process. In granting such approval, the City reserves such rights as may be permitted by law to modify such approvals in the future as the City Council determines the public health, safety, welfare and interest may require. Such approval when granted is subject to a condition that the construction of any part of the development does not, standing alone, grant any rights to complete the development of the remainder of such development. Construction of public improvements to serve undeveloped land financed through a CFD shall not vest any rights to the then existing land use approvals for the property taxed for such improvements or to any particular level, type or intensity of development or use. Applicants for a CFD must provide an express acknowledgment of this policy and shall expressly waive on their behalf and on behalf of their successors and assigns any cause of action at law or in equity including, but not limited to, taking or damaging of property, for reassessment of property or denial of any right protected by USC Section 1983 which might be applicable to the properties to be assessed.

### **Application Procedure for CFD's.**

Any application for the establishment of a CFD shall contain such information and be submitted in such form as the City Manager may require. In addition to such information as the City Manager may require, each application must contain:

- (a). Proof of authorization to submit the application on behalf of the owner of the property for which the application is submitted if the applicant is not the owner of such property;
- (b). Evidence satisfactory to the City Manager that the applicant represents or has the consent of the owners of not less than 67%, by area, of the property proposed to be subject to the levy of the special tax; and
- (c). For any CFD proposed to finance improvements to benefit new development, a business plan for the development of the property within the proposed CFD and such additional financial information as the City Manager may deem necessary to adequately review the financial feasibility of the CFD. For any CFD proposed to finance improvements to benefit new development, the applicant must demonstrate to the satisfaction of the City Manager the ability of the owner of the property proposed to be developed to pay the special tax installments for the CFD and any other assessments, special taxes and *ad valorem* taxes on such property until full build out of the property.

It is the intention of the City Council that applicants for a CFD have an early opportunity to have the application reviewed by City staff for compliance with this policy. In that regard, the City Council may consider, but is not obligated, to create a CFD application review committee composed of such staff members and additional persons as the City Manager may deem necessary. The committee may meet with the applicant for the purpose of reviewing an application to form a CFD following the determination by the City Manager that the information contained in the application complies with the requirements of this policy. Following the review of such an application, the City Manager shall prepare and submit a report to the City Council containing the findings and recommendations of the committee regarding the application.

Following completion of the committee report, the City Manager shall place the application on the City Council agenda for review. After review of the application and consideration of the committee report, the City Council shall determine whether or not to approve the initiation of proceedings to form the CFD. The decision of the City Council pertaining to the application shall be final.