

TO: JAMES L. APP, CITY MANAGER

FROM: BOB LATA, COMMUNITY DEVELOPMENT DIRECTOR

SUBJECT: FISCAL NEUTRALITY REQUIREMENT
FOR NEW DEVELOPMENT PROJECTS

DATE: NOVEMBER 16, 2004

Needs: For the City Council to consider authorizing conditions of approval requiring new residential development to implement the fiscal neutrality policy contained in the General Plan.

Facts:

1. The General Plan approved on December 16, 2003, includes a goal to “Strive to ensure that City services and facilities are maintained at current levels and/or in accordance with adopted standards.” (Pages iv and LU-10 of the General Plan)
2. In City Council Resolution No. 03-232, adopting the updated General Plan, the City Council established that “...fiscal neutrality would involve (but not be limited to) using various techniques to off-set adverse financial impacts on the City through the creation of Community Facilities Districts, Home Owners’ Associations, and payment of Endowment Fees (or a combination of techniques)...”.
3. At the November 11, 2003, City Council meeting, the City received a Fiscal Impact Summary that identified the need to recover, on average, \$862 per dwelling unit, per year, to cover the incremental cost of services to new residential development.
4. At the Council meeting of October 19, 2004, the City Council adopted Goals and Policies for public finance, establishing a basis for forming Community Facilities Districts (CFDs). CFDs are a tool through which the City can collect the \$862 per dwelling unit, per year, to achieve “fiscal neutrality” for services. A copy is attached.
5. In follow-up to the City Council’s adoption of Goals and Policies, the City is taking steps to provide public information on CFDs and to establish the mechanism to form one or more CFDs. Attached is a copy of the scope of work describing the form of a proposed CFD.

6. With each discretionary approval of new residential dwelling units, the City moves further from achieving fiscal neutrality.
7. In order to take an additional substantive step toward achieving fiscal neutrality, it is suggested that the City Council authorize the Planning Commission to require participation in a CFD as a condition of approval for new residential developments (parcel maps, subdivision, and Development Plan approvals).

Analysis
and

Conclusion:

As the attached scope of work indicates, the intent is not to impact existing vacant lots or dwelling units with a requirement to participate in a CFD. It is proposed that the City establish a CFD to cover the incremental costs of City services to new residential development. The CFD would be based on \$862 per dwelling unit per year (plus an escalation factor) to cover the incremental costs of City services (Police, Emergency Services, Parks, etc.).

At the developer's option, he / she can request the City to use the CFD to pay for school fees. If that request is made, it is proposed that school mitigation occur at a higher rate than the basic fee payment. The final amount is to be established with formation of the CFD.

Depending upon the nature of the project and the type of infrastructure needs, there may also be an opportunity to request the City to utilize a CFD to finance (and pass on) the cost of backbone infrastructure, consistent with the adopted Goals and Policies. (For a relatively small residential development, this opportunity can be mutually investigated, but may or may not be practical.)

A requirement to participate in a CFD can take the following forms:

1. Apply to all discretionary approvals (parcels maps, subdivisions, or Development Plans) that are subsequently approved by the Planning Commission or City Council. This is the most inclusive approach and will minimize the adverse fiscal impact on the City and help insure that services are provided without a decrease in the level of services to the balance of the City. This approach would apply to projects that have been filed with the City, but not yet acted upon by the Planning Commission.
2. Apply to all projects that are the subject of a complete application filed with the City after November 16, 2004 (or any other specified date). This approach would exclude projects that have, to date, been filed. The

disadvantage is that the City would not receive the same level of mitigation of fiscal impacts.

Policy

Reference: General Plan; adopted Goals and Policies

Fiscal

Impact: The intent is to utilize a Community Facilities District to help insure Fiscal Neutrality. A CFD would address incremental costs of City services, and potentially help mitigate impacts on the Paso Robles School District. An update of Development Impact Fees and establishment of applicable Specific Plan fees would address the balance of the fiscal neutrality issue.

Options:

- a.** Direct staff to request the Planning Commission to establish a condition of approval on all new residential developments for the property owner to participate in a Community Facilities District for the purposes of at least addressing the incremental costs of City services. This would apply to any new discretionary approval considered by the Planning Commission following November 16, 2004, including applications currently on file, but not yet heard by the Planning Commission.
- b.** Direct staff to request the Planning Commission to establish a condition of approval on all new residential developments for the property owner to participate in a Community Facilities District for the purposes of at least addressing the incremental costs of City services. This would apply to any complete application for a new residential development received by the City after November 16, 2004.
- c.** Amend, modify or reject the foregoing options.

CITY OF PASO ROBLES
PUBLIC FINANCE
LOCAL GOALS AND POLICIES

I. INTRODUCTION

The City of Paso Robles (the “City”), in its General Plan Update, has recognized the need for new development located within the City to be fiscally neutral, and to pay for all public facilities and services necessary to serve its needs. These City policies have been formally recognized by the City Council in the adoption of Resolution 03-032, which states, in part, the following:

“WHEREAS, in terms of insuring adequate resources to accommodate potential growth and development, the 2003 General Plan update program included preparation of a Fiscal Impact Analysis Model to evaluate the potential impacts (costs) of providing services to new development within the current City boundaries, within areas of potential expansion, and the combination of growth in City and expansion areas; and

WHEREAS, the proposed 2003 General Plan update includes policies that would call for potential annexation areas and Specific Plans to be "fiscally neutral" in terms of their impact on the City's ability to provide services and impacts on City and School District facilities/infrastructure, and the City Council would have the ability to extend this policy to include "fiscal neutrality" for all new development, including infill; and

WHEREAS, a demonstration of "fiscal neutrality" would involve (but not be limited to) using various techniques to off-set adverse financial impacts on the City through the creation of Community Facilities Districts, Home Owners' Associations, and payment of Endowment Fees (or combinations of techniques); and

WHEREAS, providing adequate facilities to support areas of potential growth and development is an essential part of the land use planning process; and

WHEREAS, for areas of growth beyond current City boundaries, Specific Plans would be used to identify detailed land use patterns/distributions of density, development standards, infrastructure requirements, and financing mechanisms for improvements and on-going operations and maintenance (consistent with the policy parameters provided by the General Plan); and

WHEREAS, within current City boundaries, project-level reviews would determine infrastructure improvement needs and Specific Plan fees and/or conditions of approval would supplement standard City impact mitigation requirements related to infrastructure needs; and

WHEREAS, through the Specific Plan and development project review process more detailed mitigation measures addressing facilities phasing, parks and trails, project amenities, coordinated architecture, and the location and mix of land uses would be identified and implemented through project design and Conditions of Approval....

NOW, THEREFORE, BE IT FOUND, DETERMINED AND RESOLVED by the City Council of the City of Paso Robles as follows:

5. 2003 General Plan Implementation. As part of its action in approving the 2003 General Plan Update, the City Council directed that implementation include, but not be limited to, the following:

To deal with these issues, the City Council has directed staff to do the following:

- Updating the City's Development Impact Fee schedule to reflect the full potential growth and infrastructure needs outlined in the General Plan.
- Utilizing the City's Fiscal Impact Analysis Model to evaluate all Specific Plans, including those that are to be prepared for proposed Annexation Areas, to insure fiscal neutrality in terms of impacts on the City's ability to provide services.
- Pursuing formation of one or more Community Facility Districts (“CFDs”) to supplement Development Impact Fees and Specific Plan Fees to mitigate both infrastructure and service impacts of new development, including but not limited to Specific Plan and annexation areas, for both the City and the School District. Policy options will be presented to the City Council and Planning Commission addressing financial impacts on affordable housing projects as defined in the City's Housing Element.”

The Public Finance Local Goals and Policies delineated below have been prepared to serve two functions. First, they are intended to provide guidelines for the implementation of the City Council’s requirement that all new development be fiscally neutral, which would include the use of Community Facilities Districts (“CFDs”) and other financing mechanisms. Second, if the City decides to establish one or more CFDs to help fund public facilities and services, Section 53312.7(a) of the California Government Code provides that a local agency must first have considered and adopted local goals and policies concerning the use of CFDs. The goals and policies delineated below are therefore also intended to meet the requirements of Section 53312.7(a).

II. PUBLIC FINANCE PROGRAM PRIORITIES AND LIMITATIONS

The City shall consider the use of land-secured public financing districts (“Financing Districts”) to fund public facilities and public services required by new and existing development, but under no circumstances shall the City General Fund be used to guarantee payments if the special taxes or

assessments utilized by such districts are inadequate to cover the obligations of such districts. Both CFDs and Assessment Districts (“ADs”) may be utilized to fund public facilities through the sale of bonds, or in the case of a CFD, through the levy of special taxes to fund public facilities on a pay-as-you-go basis. CFDs shall be the preferred mechanism to finance public facilities due to the larger variety of facilities that are eligible for CFD financing, but ADs may also be utilized when the City determines that they are appropriate for a specific situation. CFDs, ADs, and Landscaping and Lighting Districts (“LLDs”) may each be utilized when the City decides to fund public services.

A. PRIORITIES FOR FINANCING PUBLIC FACILITIES

The use of Financing Districts to fund public facilities is an option that may be made available by the City to proponents of new development and existing property owners to assist in the timely provision of such facilities. The Financing Districts are intended to complement development impact fees (“DIFs”), which are the revenue source that is currently being utilized by the City to finance a portion of the City’s future backbone facilities. The public facilities that will be eligible for funding through the City’s use of Financing Districts shall be as follows:

- (a) backbone infrastructure and facilities required to serve proposed and existing development, as specified in the General Plan Update and eligible for financing under the Mello-Roos Community Facilities Act of 1982 (the “CFD Act”) and the Municipal Improvement Acts of 1913 and 1915 (the “1913/1915 Acts”);
- (b) school facilities owned and operated by Paso Robles Unified School District (the “School District”);
- (c) development impact fees to fund regional facilities necessary to provide water for proposed and existing development

Generally, in-tract infrastructure, facilities that are being required as a condition for annexation of a property to the City, and development impact fees (other than those for regional water, sewer and school facilities) will not be publicly financed by the City, except as approved by the City Council on a case-by-case basis. Public facilities to be owned and/or operated by a public agency other than the City or the School District, including such public facilities financed *in lieu* of the payment of development fees imposed by such public agency, will also be considered on a case-by-case basis.

B. PRIORITIES FOR FINANCING PUBLIC SERVICES

All proposed residential development requesting new entitlements from the City shall be required to fully fund all recurring costs to the City related to the provision of public services. To achieve this goal, the City shall require new residential development to form or annex to a Financing District that will provide revenues on an annual basis to fund such services, thereby supplementing those revenue sources traditionally provided by residential development. As commercial development frequently has a positive fiscal impact on the City General Fund, it will not be required to form or annex to a Financing District for

services unless specifically conditioned to do so by the City. Parcels owned by public agencies, property owner associations, religious groups or certified non-profit corporations (e.g., Section 501 (c)(3)) shall also not be required to form or annex to a Financing District for services.

The specific services to be funded shall be dependent upon the type of Financing District appropriate for a proposed development project. It is anticipated that the City will utilize one or more of the following three types of Financing Districts to assure that its annual costs to provide services to a proposed development are fully covered:

- (a) Community Facilities District
- (b) Assessment District under the Benefit Assessment Act of 1982
- (c) Landscaping and Lighting District under the Landscaping and Lighting Act of 1972

While both CFD and AD financing under the 1913/1915 Acts may both be used to fund public facilities, it is the City's expectation that CFDs will be used more frequently due to their ability to finance a greater variety of facilities and their flexibility in the apportionment of special taxes. Therefore, the policies listed below refer specifically to CFDs. To the extent legally permissible, these same policies shall also apply to all future Assessment Districts utilized to fund infrastructure. In cases where State law contradicts these policies in terms of their application to Assessment Districts, State law shall prevail.

III. COMMUNITY FACILITIES DISTRICT POLICIES

Proceedings to establish a CFD to fund public facilities shall generally be initiated by a petition submitted to the City Council by property owners, as provided in Section 53318 of the Government Code. Proceedings to establish a CFD to fund public services may be initiated by a petition of property owners or by the City through a resolution adopted by the City Council. It is anticipated that the City may establish one CFD to fund public services, and then require new development to annex to that CFD at some point in the development process.

A. BOND ISSUE CREDIT QUALITY REQUIREMENTS

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 generally 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. The City may require credit enhancement to increase the credit quality of a CFD Act or 1913/1915 Act bond issue, particularly where the value-to-lien ratio of a significant portion of the property in such CFD is less than three-to-one or, in the case of commercial property, where a substantial amount of such property is undeveloped or has a value-to-lien ratio of less than four-to-one. Such credit enhancement will usually be in the form of an irrevocable letter of credit, will be required to be in an amount not less than two times the amount of annual special taxes levied on such undeveloped property and will be required to remain in effect until such property is developed or the value thereof has otherwise been sufficiently increased. Such letter of credit 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.

Capitalized Interest. The amount of capitalized interest funded for an issue of CFD bonds may not exceed any maximum specified in the CFD Act.

Bond Structure. The term to maturity of any CFD Act bonds shall not exceed the maximum term specified in the Act. In determining appropriate debt service schedules, bonds must be structured such that debt service thereon escalates by no more than 2% per bond year.

B. DISCLOSURE TO PROSPECTIVE PROPERTY PURCHASERS

In order to ensure that prospective property purchasers are fully informed about their taxpaying or assessment paying obligations imposed under the Act, the City will require that the requirements of disclosure to prospective property purchasers contained in the Government and Streets and Highways Codes, including, but not limited to, Sections 53328.3, 53328.5 (including the referenced sections of the California Streets and Highways Code), 53340.2, 53341.5 and 53754 of the Government Code, be met.

C. EQUITY OF SPECIAL TAX FORMULAS AND MAXIMUM SPECIAL TAXES

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 a CFD. Exemptions from the special tax may be given to parcels that are publicly-owned, are held by property owners associations, religious groups or non-profit entities, 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 (consisting of the anticipated maximum annual CFD special tax, together with *ad valorem* property taxes, special assessments, special taxes for any overlapping CFD, and any other taxes, fees and charges payable from and secured by the property) on any parcel in a CFD on which a for-sale residential unit has been, is being or is

to be constructed shall not exceed 2% 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 for CFD special taxes must be structured so as to produce special tax revenues sufficient to pay (a) debt service on all CFD bonds, and (b) reasonable and necessary annual administrative expenses of the CFD. Additionally, the rate and method of apportionment 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) amounts to pay directly the costs of public facilities authorized to be financed by the CFD, (c) amounts to pay the costs of services 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 CFD special tax rate and method of apportionment 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 rate and method of apportionment 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 levied to finance the construction of public facilities for any parcel within a CFD for which a building permit for the construction of a for-sale residential unit has been issued shall not escalate by more than two percent annually. The annual increase, if any, in the maximum special tax levied to finance public facilities for any other residential or non-residential parcel within a CFD, and the annual increase, if any, in the maximum special tax levied to finance services for any parcel within a CFD, may not exceed any maximum specified in the Act. The increase in the special tax levied on any parcel within a CFD as a consequence of delinquency or default by the owner on any other parcel may not exceed any maximum specified in the Act.

Prepayment of Special Tax. Generally, the special tax rate and method of apportionment for a CFD that finances public facilities will be structured so as to allow the prepayment of special taxes by property owners. No prepayment shall be allowed for any special tax that finances public services.

Administrative Expenses The special tax levied in a CFD shall include an amount for administrative expenses relating to the CFD, including expense necessary for the enrollment and collection of the annual special taxes and any necessary bond administration.

D. APPRAISALS

Except as provided below, 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 the Appraisal Standards for Land Secured Financings published by the California Debt and Investment Advisory Commission and dated May 1994 (the "CDIAC Guidelines"), with the following modifications:

- (a) the independent review appraiser is an option, and not a requirement;
- (b) the comparable sales method may be used whenever there is sufficient data available;
- (c) the appraiser should assume the presence of the public facilities to be financed with the bonds in connection with which the appraisal is being prepared; and
- (d) the special tax lien need not be computed as the present value of the future tax payments if there is a prepayment mechanism or other appropriate measure.

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

E. DISCLOSURE FOR 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.

F. DEPOSITS

The costs of the proceedings for a CFD financing initiated by petition of landowners will be borne by the petitioners. No action will be taken on any petition unless and until a deposit of funds is made by the petitioners with the City. The deposit must be sufficient to cover the expense of City member staff time, the costs of non-contingent outside consultants retained for the financing and the costs of recordings, filings, duplication,

mailings and deliveries. The deposit must be increased upon demand of the City if at any time the City determines that the remaining amount is not sufficient to cover anticipated remaining expenses and costs. If the additional amount is not paid within ten business days of the mailing of a written demand by the City to the petitioners, the City will cease all activities with respect to the CFD financing until the additional amount is paid. The initial deposit and any additional amounts will be held by the City and used only for the expenses and costs incurred in connection with the CFD proceedings. Any balance of such deposit remaining upon completion of the CFD proceedings, or the abandonment thereof, and not needed to pay expenses and costs relating thereto will be returned to the petitioner. The use of the deposit shall in no way be construed as requiring the City to issue CFD bonds or to provide reimbursement from the proceeds thereof for portions of the deposit that are expended.

If bonds are issued by a CFD, the petitioners will be reimbursed from bond proceeds for the portion of such deposit that has been expended or encumbered.

G. CONSULTANTS

The City will select all consultants to be retained by the City for a CFD financing, including, but not limited to, the financial advisor, special tax consultant, bond counsel, disclosure counsel, underwriter, market absorption analyst, appraiser and trustee. Providers of letters of credit, bond insurance policies, surety bonds or other credit enhancements are also subject to City approval. Consultants, including legal counsel, to the applicant or any financing team member other than the City will be selected, retained and paid by the applicant or such member; such consultants will not be paid from the proceeds of the financing.

IV. OTHER FINANCING DISTRICTS TO FUND PUBLIC SERVICES

For purposes of financing public services, CFDs will also be the type of Financing District utilized most frequently by the City, due to the wide variety of public services that are eligible for funding through this type of district. However, in cases where it is necessary to fund public services that are not eligible for CFD funding (e.g., road maintenance and lighting services), the City may choose to utilize other types of Financing Districts. The two most likely other types of Financing Districts to be utilized are an Assessment District established under the 1982 Benefit Assessment Act and a Landscaping and Lighting District (“LLD”) established under the Landscaping and Lighting Act of 1972. Proceedings to establish an AD or LLD to fund public services may be initiated by a petition of landowners or by the City through a resolution adopted by the City Council. The following guidelines are to be utilized when establishing ADs and LLDs to fund public services.

A. DISCLOSURE TO PROSPECTIVE PROPERTY PURCHASERS

In order to ensure that prospective property purchasers are fully informed about their taxpaying or assessment paying obligations imposed under the Act, the City will require that the requirements of disclosure to prospective property purchasers contained in the Government and Streets and Highways Codes, including, but not limited to, Sections

53328.3, 53328.5 (including the referenced sections of the California Streets and Highways Code), 53340.2, 53341.5 and 53754 of the Government Code, be met.

B. EQUITY OF SPECIAL TAX FORMULAS AND MAXIMUM SPECIAL TAXES

Direct and Special Benefit The apportionment of the assessments among the parcels included within an AD or LLD shall be based upon the direct and special benefit each parcel receives from the public services to be financed.

Total Tax Burden. The total tax burden (consisting of the anticipated maximum annual AD or LLD Assessment, together with *ad valorem* property taxes, special assessments for any overlapping AD, special taxes for any CFD, and any other taxes, fees and charges payable from and secured by the property) on any parcel in an AD or LLD on which a for-sale residential unit has been, is being or is to be constructed shall not exceed 2% of the estimated base sales price of such parcel upon completion of the public and private improvements relating thereto.

Increases in Assessment. The annual increase, if any, in the assessment levied to finance services for any parcel within an AD or LLD may not exceed any maximum specified in the Act.

V. MINIMUM STANDARDS, WAIVERS AND AMENDMENTS

The policies set forth herein reflect the minimum standards under which the City will make use of Financing Districts to fund public facilities. The City may, in its discretion, require additional measures and procedures, enhanced security and higher standards in particular cases.

The City may, in its discretion and to the extent permitted by law, waive any of the policies set forth herein in particular cases.

The goals and policies set forth herein may be amended at any time and from time to time by the City.

Draft Scope of CFD

Goal:

To establish a CFD (or CFDs) that will accomplish the following, in this priority order:

- a. cover the incremental cost of City services to new residential development
- b. provide an opportunity for developers to pay school fees through the CFD(s) and thereby allow the schools to substantially increase the amount of mitigation that they can receive (\$1,000 per d.u. proposed for discussion)
- c. to the extent feasible / practical, allow developers to propose to fund backbone infrastructure through the remaining taxing capacity of the CFD.

Intent:

1. To apply the CFD requirement to pay for the increased services cost to all new residential units created through a discretionary review process (e.g. parcel maps, subdivisions, Planned Developments).
2. CFD participation requirements would not apply to existing dwelling units or vacant parcels where issuance of a building permit would be a ministerial act. Also exempted would be ministerial approvals for second dwelling units and conversion of existing multi-family dwellings to condominium dwelling units.
3. To establish the structure of a CFD or CFDs as soon as feasible so as to include any pending discretionary project approvals.
4. To allow developers to voluntarily utilize the CFD to pay school fees, thereby meeting the above described goal.
5. When feasible / practical, to pursue developer financing of infrastructure, based on priorities established by the City Council.