

RESOLUTION NUMBER R- 293975

ADOPTED ON OCT 16 2000

RESOLUTION OF INTENTION OF THE CITY COUNCIL TO ESTABLISH COMMUNITY FACILITIES DISTRICT NO. 4 (BLACK MOUNTAIN RANCH VILLAGES), TO AUTHORIZE THE LEVY OF SPECIAL TAXES TO PAY THE COSTS OF ACQUIRING OR CONSTRUCTING CERTAIN FACILITIES AND EXPENSES OF THE DISTRICT AND TO PAY DEBT SERVICE ON BONDED INDEBTEDNESS AND APPROVING A PURCHASE AND FINANCING AGREEMENT.

WHEREAS, the City of San Diego (the "City") has received a petition (the "Petition") signed by the owner of all of the land which is proposed for inclusion in a proposed community facilities district which meets the requirements of Sections 53318 and 53319 of the Government Code of the State of California; and

WHEREAS, the Council of the City (the "Council") desires to adopt this resolution of intention as provided in Section 53321 of the Government Code of the State of California to establish a community facilities district consisting of the territory described in Attachment "A" hereto and incorporated herein by this reference, which the Council hereby determines shall be known as "Community Facilities District No. 4 (Black Mountain Ranch Villages)" (the "Community Facilities District No. 4" or the "District") pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, commencing with Section 53311 of the Government Code (the "Act") to finance (1) the purchase, construction, modification, expansion, improvement or rehabilitation of certain real or other tangible property described in Attachment "B" hereto and incorporated herein by this reference, including all furnishings, equipment and supplies related

thereto (collectively, the "Facilities"), which Facilities have a useful life of five years or longer; and (2) the incidental expenses to be incurred in connection with financing the Facilities and forming and administering the District (the "Incidental Expenses"); and

WHEREAS, the Council further intends to approve an estimate of the costs of the Facilities and the Incidental Expenses for Community Facilities District No. 4; and

WHEREAS, it is the intention of the Council to consider financing the Facilities and the Incidental Expenses through the formation of Community Facilities District No. 4 and the sale of bonded indebtedness in an amount not to exceed \$25,000,000 and the levy of a special tax within the District to pay for the Facilities and the Incidental Expenses and to pay debt service on the bonded indebtedness incurred by the District, provided that the bond sales and special tax levies are approved at an election to be held within the District; and

WHEREAS, there has been presented to this Council the form of a Purchase and Financing Agreement to be entered into between the City and the property owner within the proposed boundaries of Community Facilities District No. 4 (the "Purchase Agreement");

NOW, THEREFORE,

BE IT RESOLVED, by the Council as follows:

1. That the above recitals are true and correct.
2. That a community facilities district is proposed to be established under the terms of the Act. It is further proposed that the boundaries of the community facilities district shall be as described in Attachment "A" hereto, which boundaries shall, upon recordation of the boundary map for the District, include the entirety of any parcel subject to taxation by the District. The proposed boundaries of the District are depicted on the map of the proposed Community

Facilities District No. 4 which is on file with the City Clerk. The City Clerk is hereby directed to sign the original map of the District and record it with all proper endorsements thereon with the County Recorder of the County of San Diego within 15 days after the adoption of this resolution, all as required by Section 3111 of the Streets and Highways Code of the State of California.

3. That the name of the proposed community facilities district shall be "Community Facilities District No. 4 (Black Mountain Ranch Villages)."

4. That the Facilities proposed to be provided within Community Facilities District No. 4 and to be financed by the District are public facilities as defined in the Act, which the City is authorized by law to construct, acquire, own and operate. The Council hereby finds and determines that the description of the Facilities herein is sufficiently informative to allow taxpayers within the proposed District to understand what the funds of the District may be used to finance. The Incidental Expenses expected to be incurred include the cost of planning and designing the Facilities, the costs of forming the District, issuing bonds and levying and collecting a special tax within the District. The Council hereby finds that the proposed Facilities are necessary to meet increased demands placed upon the City as a result of development planned to occur in the District. The Facilities may be acquired from one or more property owners as completed public improvements or may be constructed from bond or special tax proceeds. All or a portion of the Facilities may be purchased with District funds as completed public facilities pursuant to Section 53314.9 of the Act and/or constructed with District funds pursuant to Section 53316.2 of the Act. Any portion of the Facilities may be financed through a lease or lease-purchase arrangement if the District hereafter determines that such arrangement is of benefit to the District.

5. That except where funds are otherwise available, it is the intention of the Council to levy annually in accordance with the procedures contained in the Act a special tax, secured by recordation of a continuing lien against all nonexempt real property in the District, sufficient to pay for: (i) the Facilities and Incidental Expenses; and (ii) the principal and interest and other periodic costs on bonds or other indebtedness issued for the District to finance the Facilities and Incidental Expenses, including the establishment and replenishment of any reserve funds deemed necessary by the District, and any remarketing, credit enhancement and liquidity facility fees (including such fees for instruments which serve as the basis of a reserve fund in lieu of cash). The rate and method of apportionment and manner of collection of the special tax within the District are described in detail in Attachment "C" attached hereto, which Attachment "C" is incorporated herein by this reference. Attachment "C" allows each landowner within the District proposed to estimate the maximum amount that may be levied against each parcel. In the first year in which such special tax is levied, the levy shall include an amount sufficient to repay to the District all amounts, if any, transferred to the District pursuant to Section 53314 of the Act and interest thereon.

If special taxes of the District are levied against any parcel used for private residential purposes, (i) the maximum special tax rate shall not be increased over time except that it may be increased by an amount not to exceed two percent (2%) per year to the extent permitted in the rate and method of apportionment; (ii) such tax shall be levied for a period not to exceed 50 years commencing with Fiscal Year 2001-02, as further described in Attachment "C" hereto; and (iii) under no circumstances will such special tax be increased as a consequence of delinquency

or default by the owner of any other parcel or parcels within the District by more than ten percent.

The special tax within the District is based on the expected demand that each parcel of real property will place on the Facilities and on the benefit that each parcel derives from the right to access the Facilities. The Council hereby determines that the proposed Facilities are necessary to meet the increased demand placed upon the City and the existing infrastructure in the City as a result of the development of the land proposed for inclusion in the District. The Council hereby determines the rate and method of apportionment of the special tax set forth in Attachment "C" to be reasonable. The special tax is apportioned to each parcel on the foregoing basis pursuant to Section 53325.3 of the Act and such special tax is not on or based upon the value or ownership of real property. In the event that a portion of the property within the District shall become for any reason exempt, wholly or partially, from the levy of the special tax specified on Attachment "C," the Council shall, on behalf of the District, cause the levy to be increased, subject to the limitation of the maximum special tax for a parcel as set forth in Attachment "C," to the extent necessary upon the remaining property within the District which is not delinquent or exempt in order to yield the special tax revenues required for the purposes described in this Section 5. The obligation to pay special taxes may be prepaid as set forth in Attachment "C."

6. That a public hearing (the "Hearing") on the establishment of the proposed Community Facilities District No. 4, the proposed rate and method of apportionment of the special tax and the proposed issuance of bonds by the District to finance the Facilities and the Incidental Expenses shall be held at 10:30 a.m., or as soon thereafter as practicable, on November 21, 2000, at the Council Chambers, 202 C Street, San Diego, California 92101.

Should the Council determine to form the District, a special election will be held within the District to authorize the issuance of the bonds and the levy of the special tax in accordance with the procedures contained in Government Code section 53326. If held, the proposed voting procedure at the elections will be a landowner vote with each landowner who is the owner of record of land within the District at the close of the Hearing, or the authorized representative thereof, having one vote for each acre or portion thereof owned within the District. Ballots for the special elections may be distributed by mail or by personal service.

7. That at the time and place set forth above for the Hearing, the Council will receive testimony as to whether the proposed Community Facilities District No. 4 shall be established and as to the rate and method of apportionment of the special tax for the District and shall consider:

(a) if an *ad valorem* property tax is currently being levied on property within proposed Community Facilities District No. 4 for the exclusive purpose of paying principal of or interest on bonds, lease payments or other indebtedness incurred to finance construction of capital facilities; and

(b) if the capital facilities to be financed and constructed by Community Facilities District No. 4 will provide the same services as were provided by the capital facilities mentioned in subsection (a) above; and

(c) if the Council makes the findings specified in subsections (a) and (b) above, it will consider appropriate action to determine that the total annual amount of ad valorem property tax revenue due from parcels within Community Facilities District No. 4, for purposes of paying principal and interest on the debt identified in subsection (a) above,

shall not be increased after the date on which Community Facilities District No. 4 is created, or after a later date determined by the Council with the concurrence of the legislative body which levied the property tax in question.

8. That at the time and place set forth above for the Hearing, any interested person, including all persons owning land or registered to vote within proposed Community Facilities District No. 4, may appear and be heard.

9. That each District officer who is or will be responsible for providing the Facilities within proposed Community Facilities District No. 4, if it is established, is hereby directed to study the proposed District and, at or before the time of the above-mentioned Hearing, file a report with the Council containing a brief description of the public facilities by type which will in his or her opinion be required to meet adequately the needs of Community Facilities District No. 4 and an estimate of the cost of providing those public facilities, including the cost of environmental evaluations of such facilities and an estimate of the fair and reasonable cost of any Incidental Expenses to be incurred.

10. That the District may accept advances of funds or work-in-kind from any source, including, but not limited to, private persons or private entities, for any authorized purpose, including, but not limited to, paying any cost incurred in creating Community Facilities District No. 4. The District may enter into an agreement with the person or entity advancing the funds or work-in-kind, to repay all or a portion of the funds advanced, or to reimburse the person or entity for the value, or cost, whichever is less, of the work-in-kind, as determined by the Council, with or without interest. The District is hereby authorized to reimburse Black Mountain Ranch Limited Partnership for moneys advanced pursuant to that certain the Reimbursement Agreement

heretofore entered into by and between Black Mountain Ranch Limited Partnership and the City, but only under the circumstances permitting reimbursement under such Reimbursement Agreement.

11. That the City Clerk is hereby directed to publish a notice (the "Notice") of the Hearing pursuant to Section 6061 of the Government Code in a newspaper of general circulation published in the area of proposed Community Facilities District No. 4. The City Clerk is further directed to mail a copy of the Notice to each of the landowners within the boundaries of the District at least 15 days prior to the Hearing. The Notice shall contain the text or a summary of this Resolution, the time and place of the Hearing, a statement that the testimony of all interested persons or taxpayers will be heard, a description of the protest rights of the registered voters and landowners in the proposed District and a description of the proposed voting procedure for the elections required by the Act. Such publication shall be completed at least seven (7) days prior to the date of the Hearing.

12. That except to the extent limited in any bond resolution or trust indenture related to the issuance of bonds, the Council hereby reserves to itself all rights and powers set forth in Section 53344.1 of the Act (relating to tenders in full or partial payment).

13. That the Purchase and Finance Agreement, a copy of which is on file in the Office of the City Clerk as Document No. RR-293975 is hereby approved as to form, and the City Manager, his written designee, and the Financial, Organization Development and Management Services Deputy City Manager of the City each is hereby authorized to execute the Purchase and Finance Agreement on behalf of the City substantially in the form presented, together with such changes as are approved by the City Attorney.

14. That this Resolution shall be effective upon its adoption.

APPROVED: CASEY GWINN, City Attorney

By 
Kelly J. Salt
Deputy City Attorney

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