

RESOLUTION NUMBER R- 307693

DATE OF FINAL PASSAGE SEP 19 2012

A RESOLUTION OF THE CITY COUNCIL AUTHORIZING THE CITY OF SAN DIEGO TO JOIN THE CALIFORNIA FIRST PROGRAM; AUTHORIZING THE CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY TO ACCEPT APPLICATIONS FROM ELIGIBLE PROPERTY OWNERS, CONDUCT CONTRACTUAL ASSESSMENT PROCEEDINGS AND LEVY CONTRACTUAL ASSESSMENTS WITHIN THE TERRITORY OF THE CITY OF SAN DIEGO; AND AUTHORIZING RELATED ACTIONS

WHEREAS, the California Statewide Communities Development Authority (California Communities) is a joint exercise of powers authority the members of which include numerous cities and counties in the State of California, including the City of San Diego (City); and

WHEREAS, California Communities has established the CaliforniaFIRST program (CaliforniaFIRST Program) to allow the financing of certain renewable energy, energy efficiency and water efficiency improvements (Improvements) through the levy of contractual assessments pursuant to Chapter 29 of Division 7 of the Streets & Highways Code (Chapter 29) and the issuance of improvement bonds (Bonds) under the Improvement Bond Act of 1915 (Streets and Highways Code Sections 8500 and following) (1915 Act) upon the security of the unpaid contractual assessments; and

WHEREAS, Chapter 29 provides that assessments may be levied under its provisions only with the free and willing consent of the owner of each lot or parcel on which an assessment is levied at the time the assessment is levied; and

WHEREAS, the City desires to allow the owners of commercial property as described in this Resolution that is located within its jurisdiction (Participating Property Owners) to participate in the CaliforniaFIRST Program and to allow California Communities to conduct

assessment proceedings under Chapter 29 and to issue Bonds under the 1915 Act and any other applicable California laws and regulations consistent therewith, to finance the Improvements; and

WHEREAS, California Communities will conduct assessment proceedings under Chapter 29 and issue Bonds under the 1915 Act to finance Improvements; and

WHEREAS, there has been presented to this meeting a Resolution of Intention adopted by California Communities in connection with such assessment proceedings (ROI), a copy of which is attached hereto as Exhibit A, and the territory within which assessments may be levied for the CaliforniaFIRST Program includes all of the territory within the City's official boundaries of record (Proposed Boundaries); and

WHEREAS, California Communities shall be solely responsible for, and the City will not be responsible for: the conduct of any assessment proceedings; the levy or collection of assessments or any required remedial action in the case of delinquencies in such assessment payments; or the offer, issuance, sale or administration of the Bonds or any other bonds issued by the CaliforniaFIRST Program; and to protect the City in connection with the operation of the CaliforniaFIRST Program the City intends to obtain the agreement of California Communities that it will indemnify and hold the City, its officers, employees and attorneys harmless in connection with the foregoing matters before proceeding with the CaliforniaFIRST Program, and the City reserves the right to not proceed without appropriate indemnification; and

WHEREAS, the CaliforniaFIRST Program shall only be available to commercial property within the Proposed Boundaries including multifamily property with five units or more, and the CaliforniaFIRST Program will not accept applications from residential property owners within the Proposed Boundaries until such time as the issues raised by Fannie Mae and Freddie

Mac regarding Property Assessed Clean Energy (PACE) programs are resolved to the satisfaction of the City Attorney of the City of San Diego (City Attorney); and

WHEREAS, in order to receive financing from the CaliforniaFIRST Program, the property to be assessed and each property owner must meet certain minimum requirements as provided in the Program Report (as hereinafter defined), including that each property owner must obtain the affirmative written acknowledgement of its existing lender regarding the PACE lien of the CaliforniaFIRST Program and confirm that the PACE lien will not trigger a default or the exercise of remedies under the mortgage for the subject property; that the property owner must be current in the payment of all obligations secured by the subject property; that there must be no notices of default filed against the subject property; that the private loan to value ratio must comply with the terms in the Program Report and the Program Handbook referred to therein; that each owner of the fee simple title to the subject property must sign the CaliforniaFIRST Program documents; that the property owner must certify that it has not declared bankruptcy within the time period set forth in the Program Handbook; and the Program Report and Program Handbook criteria may be modified from time to time by the CaliforniaFIRST Program administrator to conform to changes in law, emerging best practices or as otherwise deemed necessary or appropriate; and

WHEREAS, pursuant to Government Code Section 6586.5, a notice of public hearing has been published once at least five days prior to the date hereof in a newspaper of general circulation in the City and a public hearing has been duly conducted by this City Council concerning the public benefits of the CaliforniaFIRST Program and the financing of the Improvements; NOW, THEREFORE,

BE IT RESOLVED by the City Council of the City of San Diego as follows:

Section 1. On the date hereof, the City Council held a public hearing and the City Council hereby finds and declares that the issuance of bonds by California Communities in connection with the CaliforniaFIRST Program are designed to provide significant public benefits, including without limitation, savings in effective interest rate, bond preparation, bond underwriting and bond issuance costs and reductions in effective user charges levied by water and electricity providers within the boundaries of the City.

Section 2. In connection with the CaliforniaFIRST Program, the City hereby consents to the conduct of special assessment proceedings by California Communities pursuant to Chapter 29 on any commercial property within the Proposed Boundaries and the issuance of Bonds under the 1915 Act; provided, that

(1) Such proceedings are conducted pursuant to one or more Resolutions of Intention in substantially the form of the ROI;

(2) The Participating Property Owners, who shall be the legal owners of such property, execute a contract pursuant to Chapter 29 and comply with other applicable provisions of California law in order to accomplish the valid levy of assessments; and

(3) The City will not be responsible for the conduct of any assessment proceedings; the levy or collection of assessments or any required remedial action in the case of delinquencies in such assessment payments; or the offer, issuance, sale or administration of the Bonds or any other bonds issued in connection with the CaliforniaFIRST Program, and to protect the City in connection with the operation of the CaliforniaFIRST Program the City intends to obtain the agreement of California Communities that it will indemnify and hold the City, its officers, employees and attorneys harmless in connection with the foregoing matters before proceeding

with the CaliforniaFIRST program, and the City reserves the right to not proceed without appropriate indemnification.

(4) The CaliforniaFIRST Program will only accept applications from Participating Property Owners within the Proposed Boundaries and the offer, sale and issuance of Bonds will only occur after: (i) the receipt by California Communities (with a copy to the City) of a final judgment from the appropriate court in connection with the pending validation action that has been filed by California Communities pursuant to Code of Civil Procedure Section 860 and that states, among other things, that the Bonds are legal obligations of California Communities, and such final judgment was filed and signed by the appropriate court on August 17, 2012 and the City has received a copy, and (ii) the 30 day period for filing appeals to such final judgment has passed without any adverse action in connection therewith.

Section 3. Pursuant to the requirements of Chapter 29, California Communities has prepared or will prepare as and when required, and will update from time to time as necessary or appropriate the "Program Report" for the CaliforniaFIRST Program (Program Report), and California Communities will undertake assessment proceedings and the financing of Improvements as set forth in the Program Report.

Section 4. The CaliforniaFIRST Program is only available to commercial property located within the Proposed Boundaries including multifamily property with five units or more, and the CaliforniaFIRST Program will not accept applications from residential property owners within the Proposed Boundaries until such time as the issues raised by Fannie Mae and Freddie Mac regarding PACE programs are resolved to the satisfaction of the City Attorney.

Section 5. That in order to receive financing from the CaliforniaFIRST Program, the property to be assessed and each property owner must meet certain minimum requirements as

provided in the Program Report, including that each property owner must obtain the affirmative written acknowledgement of its existing lender regarding the PACE lien of the CaliforniaFIRST Program and confirm that the PACE lien will not trigger a default or the exercise of remedies under the mortgage for the subject property; that the property owner must be current in the payment of all obligations secured by the subject property; that there must be no notices of default filed against the subject property; that the private loan to value ratio must comply with the terms in the Program Report and the Program Handbook referred to therein; that each owner of the fee simple title to the subject property must sign the CaliforniaFIRST Program documents; that the property owner must certify that it has not declared bankruptcy within the time period set forth in the Program Handbook; and the Program Report criteria may be modified from time to time by the CaliforniaFIRST Program administrator to conform to changes in law, emerging best practices or as otherwise deemed necessary or appropriate.

Section 6. The appropriate officials and staff of the City as determined by the City are hereby authorized to make applications for the CaliforniaFIRST program available to the eligible commercial property owners as set forth herein who wish to finance Improvements upon satisfaction of the conditions herein, including in Section 2 herein; provided, that California Communities shall be solely responsible for providing such applications and related materials at the sole cost and expense of California Communities. The following staff person, together with any other staff persons chosen by the City from time to time, is hereby designated as the contact persons for California Communities in connection with the CaliforniaFIRST Program:

Eric Engelman or his designees or in his absence, designees of the Mayor.

Section 7. The appropriate officials and staff of the City are hereby authorized to execute and deliver such closing certificates, requisitions, agreements and related documents,

with such additions and changes as such City officials and staff deem necessary or desirable, as are reasonably required by California Communities in accordance with the Program Report to implement the CaliforniaFIRST Program for Participating Property Owners.

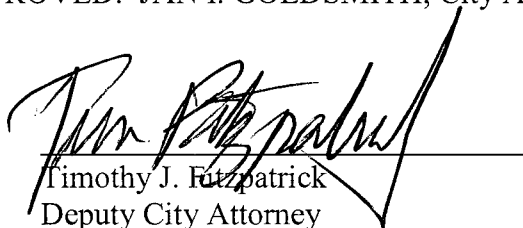
Section 8. The City Council hereby finds that adoption of this Resolution is not a “project” under the California Environmental Quality Act, because the Resolution does not involve any commitment to a specific project which may result in a potentially significant physical impact on the environment, as contemplated by Title 14, California Code of Regulations, Section 15378(b)(4)).

Section 9. The officers of the City and their authorized representatives are, and each of them acting along is, hereby authorized to execute any and all documents and do and perform any and all acts and things, from time to time, consistent with this Resolution and the Program Report, as they deem necessary or desirable to carry the Resolution and the Program Report into effect and to carry out the respective purposes of each.

Section 10. The City Clerk is hereby authorized and directed to transmit a certified copy of this Resolution to the Secretary of California Communities.

APPROVED: JAN I. GOLDSMITH, City Attorney

By


Timothy J. Fitzpatrick
Deputy City Attorney

TJF:sc;jdf
09/04/12
Or.Dept: Debt Management
Doc. No. 405525

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of 9/18/2012.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: _____

9.19.12

(date)


JERRY SANDERS, Mayor

Vetoed: _____

(date)

JERRY SANDERS, Mayor

RECEIVED

12 SEP - 7 AM 11:39

CITY CLERK'S OFFICE
425 BRIGGS BLVD
SAN DIEGO, CA