



County of Fresno

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Legislation Details (With Text)

File #: 17-0964 **Name:** Annexation No. 9A Protest Hearing / Special Election / First Reading

In control: Public Works & Planning

On agenda: 9/12/2017 **Final action:** 9/12/2017

Enactment date: **Enactment #:** Resolution No. 17-417, Resolution No. 17-418

Title: Conduct public protest hearing regarding proposed annexation of territory to Community Facilities District 2006-01; if there is no "majority protest" within Countywide Mello-Roos Community Facilities District 2006-01 or proposed annexation territory, overrule any protests, and adopt and authorize Chairman to sign Resolution Calling a Special Election for a vote of qualified electors within territory proposed for annexation to Countywide Mello-Roos Community Facilities District 2006-01 (Police Protection Services) of County of Fresno, for combined propositions of Levying a Special Tax to finance enhanced police protection services, and including such annexation territory in Countywide Mello-Roos Community Facilities District 2006-01 for purposes of appropriations limit of Countywide Mello-Roos Community Facilities District 2006-01; conduct landowner voter special election (landowners owning 2/3 of the area of proposed annexation territory must vote in favor) for territory included in Annexation Map No. 9A of Community Facilities District No. 2006-01 (Exhibit A); approve canvass of the votes, and if election is in favor of Special Tax Levy and including proposed annexation territory in Countywide Mello-Roos Community Facilities District 2006-01 for purposes of its appropriations limit, adopt and authorize Chairman to sign Resolution Declaring Results of landowner Special Election for proposed recordation of an Amendment to Notice of Special Tax Lien; and conduct first reading of "An Ordinance of the County of Fresno Levying a Special Tax within Annexation Territory No. 9A of Countywide Mello-Roos Community Facilities District 2006-01 (Police Protection Services) of the County of Fresno," waive reading of Ordinance in its entirety, and set September 26, 2017, as date for second reading and approval of such Ordinance by your Board

Sponsors:

Indexes:

Code sections:

Attachments: 1. Agenda Item, 2. Exhibit A, 3. Resolution No. 17-417, 4. Resolution No. 17-418, 5. Ordinance Levying Special Tax, 6. Certificate of Concurrence, 7. Ordinance Summary, 8. Additional Information

Date	Ver.	Action By	Action	Result
9/12/2017	1	Board of Supervisors	Conducted Hearings	Pass
9/12/2017	1	Board of Supervisors	Conducted Hearings	Pass
9/12/2017	1	Board of Supervisors	Conducted Hearings	Pass
9/12/2017	1	Board of Supervisors	Conducted Hearings	Pass

DATE: September 12, 2017

TO: Board of Supervisors

SUBMITTED BY: Steven E. White, Director
Department of Public Works and Planning

SUBJECT: Annex Proposed Tract No. 4968 to the Countywide Mello-Roos Community Facilities

District 2006-01 to Impose a Special Tax to Fund Enhanced Law Enforcement Services and Conduct a Public Hearing.

RECOMMENDED ACTION(S):

1. **Conduct public protest hearing regarding the proposed annexation of territory to Community Facilities District 2006-01.**
2. **If there is no “majority protest” within the Countywide Mello-Roos Community Facilities District 2006-01 or the proposed annexation territory, overrule any protests, and adopt and authorize the Chairman to sign the Resolution Calling a Special Election for a vote of the qualified electors within the territory proposed for annexation to Countywide Mello-Roos Community Facilities District 2006-01 (Police Protection Services) of the County of Fresno, for the combined propositions of Levying a Special Tax to finance enhanced police protection services, and including such annexation territory in the County-Wide Mello-Roos Community Facilities District 2006-01 for purposes of the appropriations limit of the Countywide Mello-Roos Community Facilities District 2006-01.**
3. **Conduct the landowner voter special election (landowners owning 2/3 of the area of the proposed annexation territory must vote in favor) for the territory included in the Annexation Map No. 9A of Community Facilities District No. 2006-01 (Exhibit A).**
4. **Approve the canvass of the votes, and if the election is in favor of the Special Tax Levy and including the proposed annexation territory in the Countywide Mello-Roos Community Facilities District 2006-01 for purposes of its appropriations limit, adopt and authorize the Chairman to sign the Resolution Declaring Results of landowner Special Election for proposed recordation of an Amendment to Notice of Special Tax Lien.**
5. **Conduct the first reading of “An Ordinance of the County of Fresno Levying a Special Tax within Annexation Territory No. 9A of Countywide Mello-Roos Community Facilities District 2006-01 (Police Protection Services) of the County of Fresno,” waive reading of the Ordinance in its entirety, and set September 26, 2017, as the date for the second reading and approval of such Ordinance by your Board.**

The recommended actions will allow your Board to annex Tentative Tract No. 4968 (Tract 4968) into Countywide Community Facilities District (CFD) No. 2006-01 (CFD 2006-01) and impose a Special Tax on real property for the financing of enhanced police protection services (hereinafter referred to as “Police Protection Services”) in accordance with the California Constitution and California Government Code Section 53311 (the proposed annexation is hereinafter referred to as “Annexation 9A”). The recommended actions require the conducting of a public protest hearing regarding the proposed annexation, adopting a resolution calling for a Special Election, and a special election authorizing the Special Tax and inclusion of the annexation territory in the CFD 2006-01 for the purposes of the appropriations limit of the CFD 2006-01.

ALTERNATIVE ACTION(S):

There are no viable alternatives under current County policy. Annexation 9A into CFD 2006-01 is a condition of approval of Tract 4968, imposed to satisfy the requirements of certain policies in the County General Plan. If the recommended action is not approved, the County will not be able to annex the subject territory to CFD 2006-01 or levy a special tax for financing Police Protection Services in Annexation 9A territory, and therefore, the conditions of approval for Tract 4968 will not have been met.

FISCAL IMPACT:

There will be no Net County Cost associated with the recommended actions. All annexation costs are paid by

the Developers/Landowners. The applicant has made an initial deposit of \$12,000 to cover costs incurred by the County to conduct Annexation 9A proceedings. The Developer's deposit is in Trust/Special Revenue Fund 0085/Subclass 17406. The Developer has entered into agreement with the County to deposit additional funds as necessary to cover any cost incurred beyond the initial deposit. Any funds remaining after the Annexation 9A proceedings are concluded will be returned to the Developer.

DISCUSSION:

County Policy: On February 9, 1993, your Board adopted a policy for the use of the Mello-Roos Community Facilities District Act of 1982 (Act) for bond financing of public facilities for private development projects.

The 2000 update to the Fresno County General Plan established, under Policy PF-G.2, that the County is to strive to maintain a minimum level of police protection services at two sworn officers per 1000 population in the unincorporated areas (excluding support positions, and sworn officers serving Countywide population, contract cities and grant specific populations). The Act provides the needed funding mechanism for the Police Protection Services.

The Department, on September 14, 2004, was directed to use the Act to fund Police Protection Services in developing unincorporated areas of the County, including later annexations, such as the area of the proposed Annexation 9A.

On February 7, 2006, your Board approved the use of a Countywide CFD with a standard tax rate to be used for subdivision maps. The Countywide CFD, now known as CFD 2006-01, is a single CFD based on a "seed" District with subsequent annexations to it. On January 11, 2011, your Board restated and adopted the goals and policies for use of the Act for financing Police Protection Services in developing unincorporated areas of the County.

On August 8, 2017, your Board adopted a Resolution of Intention, which authorized the Department of Public Works and Planning (Department) to proceed with the annexation requirements. Your Board also accepted and approved an Agreement with the developers/landowners, who petitioned for the annexation to the existing CFD 2006-01 for Tract 4968 and waived time limits and requirements for the protest hearing and special election. The Agreement also required that all proceedings to annex to the District and record the amendment to the Notice of Special Tax Lien be completed no later than November 14, 2017.

On September 4, 2017, the Notice of Public Hearing was published in a newspaper of general circulation, and on August 31, 2017, the Notice of Public Hearing was mailed to the affected landowner. It should be noted that the Sheriff's Department was notified on August 9, 2017, of your Board's approval of the Resolution of Intention on August 8, 2017, which authorized the Department to proceed with today's hearing for the annexation of the subject territory.

Services: The services to be financed will be County sworn officers providing Police Protection Services (including all related facilities, equipment, vehicles, and supplies for related to such service). While no individual sworn officer will be dedicated to this area exclusively, the Sheriff's Office Area Commander will assign officers to a dedicated number of hours and provide an accounting of related shifts and rates. Any proceeds from the special tax from Annexation 9A must be separately accounted for and spent on these Police Protection Services. By approving the recommended actions, your Board identifies that there will be an increased demand for services within CFD 2006-01 and that the services to be provided will not supplant any level of services currently being provided in the area.

Plan for Providing Services: The services to be financed through Annexation 9A are the same as those, which that may be provided through all of CFD 2006-01, as well as any other territory that may later, be annexed thereto. All of those services will be provided in common with each other.

Properties Taxed: All properties within Annexation 9A and described in Exhibit A will be taxed unless exempt by law (e.g., publicly owned property) or by provisions of the Special Tax Rate and Method of Apportionment (in the accompanying Resolution of Intention). The Special Tax Rate and Method of Apportionment for properties annexed thereto are the same special tax rate and method of apportionment for the existing properties of CFD 2006-01.

Who Votes in the Special Tax Election: The landowner voting procedures apply to the levy of the special tax within the territory proposed for annexation as long as there have been less than 12 registered voters residing in the combined territories proposed for annexation for each of the 90 days before the Public Protest Hearing. If there are 12 or more registered voters within this time limitation, the Mello-Roos Community Facilities Act of 1982 (Gov. Code, § 53311 et seq.) requires that the vote must be by registered voters residing within the proposed annexation territories. In this instance, the landowner procedures will be used.

Each landowner is able to cast one vote per acre of land or portion of an acre of land that he or she owns (area by Assessor's Parcel Number (APN)) within their respective CFD 2006-01 boundary areas. In this case, that portion of Tract 4968 to be annexed contains 20.35 acres and 20.35 votes with 36 residential lots.

Board Actions: the Act requires a series of County actions to annex to CFD 2006-01 and to levy the special tax to pay for the enhanced law enforcement services in the proposed annexation territory. These areas are not contiguous and the law allows for this separation. Staff recommends that the following necessary steps be taken:

1. Your Board will hold a noticed public "protest" hearing. At the hearing, if there is no "majority protest" in the proposed annexation territory and in the existing CFD 2006-01, your Board may proceed with the annexation to the District.

Note: a "majority protest" would occur under any one of the following conditions:

- In the proposed territory of Annexation 9A: if there are protests by landowners owning $\frac{1}{2}$ or more of the territory of land in the proposed annexation territory or,
 - In the existing CFD 2006-01: if there are protests by landowners owning $\frac{1}{2}$ or more of the territory of land in the existing CFD 2006-01 or,
 - If there are written protests from 50 percent or more registered voters, or six registered voters, whichever is more, residing within Annexation 9A; or if there are written protests from 50 percent or more of the registered voters, or six registered voters, whichever is more, residing in the existing CFD 2006-01; then registered voter protest rules also apply in each such separate instance.
2. Next, your board conducts a landowner voter special election regarding (1) the Special Tax levy and (2) whether the initial annual appropriations limit of the CFD 2006-01 should include the proposed annexation territory. The landowner voter special election may take place immediately after the protest hearing because the qualified electors (i.e., the developers/landowners) have unanimously consented to waive the election time requirements that are otherwise applicable. In addition, there is on file with the Clerk to the Board, the Certificate of Concurrence from the Clerk to the Board, as your Board's designated elections official, consenting to shortening the time for a special landowner election within the boundaries of the proposed Annexation Territory. If not all of the landowners are present at the hearing, the Clerk to your Board will mail out the ballots, and the vote shall be conducted at the next available Board meeting. If the landowner voters do not approve the special tax levy, no further action is needed and the matter is concluded.

3. If the landowner voters approve the special tax levy, your Board will then annex the territory to the CFD 2006-01, the Clerk to your Board will record an amendment to the existing Notice of Special Tax Lien for the CFD 2006-01 to include the lots in this annexation territory.
4. Your Board is being asked to adopt an ordinance authorizing the levying of the Special Tax for the annexation territory. If the election is completed today, as described above, the first reading of this ordinance will occur today.

Tax Levy: If approved, the special tax will be levied on the County's regular tax roll each year for each lot in the annexation territory starting upon the issuance of the Certificate of Occupancy for each dwelling that occurs between January 1st and May 1st of each year. The first possible tax year is 2018-19.

The initial maximum special tax rate for CFD 2006-01 for fiscal year 2017-2018 is \$691.27 per Single Family Dwelling (SFD) and \$519.99 per Multi-Family Dwelling (MFD). The special tax rate will be increased in accordance with an annual escalation factor for fiscal year 2017-2018. The annual factor is the sum of the Consumer Price Index (CPI) for Urban Wage Earners and Clerical Workers in the San Francisco-Oakland-San Jose Consolidated Metropolitan Statistical Area and three percent of the then-current police protection services costs. Administration costs are limited to ten percent of total special tax receipts. If administration costs do not exceed ten percent of service costs in any year, the savings may be applied toward the costs of the services.

CEQA: The implementation of the annexation of territory to the CFD 2006-01 carries out the County's General Plan (Policy PF-G.2). Therefore, no further action under CEQA is necessary. The creation of CFD 2006-01, including the annexation of territory to the CFD 2006-01, is a financing mechanism to allow for the financing of Police Protection Services; as such, it is not a project under CEQA. (CEQA Guidelines §15378(b) (4)).

REFERENCE MATERIAL:

BAI #21, September 14, 2004
BAI #15, February 7, 2006
BAI#10, January 11, 2011
BAI #50, August 8, 2017

ATTACHMENTS INCLUDED AND/OR ON FILE:

Exhibit A
On file with Clerk - Resolution Calling Special Election
On file with Clerk - Resolution Declaring Results Landowner Special Election
On file with Clerk - Ordinance Levying Special Tax
On file with Clerk - Certificate of Concurrence

CAO ANALYST:

John Hays