

CITY OF MODESTO
COMMUNITY FACILITIES DISTRICT NO. 2016-1
(KIERNAN BUSINESS PARK EAST)

RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

Special Taxes applicable to each Assessor's Parcel in the City of Modesto Community Facilities District No. 2016-1 (Kiernan Business Park East) shall be levied and collected according to the tax liability determined by the Administrator through the application of the appropriate amount or rate for Taxable Property, as described below. All of the property in CFD No. 2016-1, unless exempted by law or by the provisions of Section F below, shall be taxed for the purposes, to the extent, and in the manner herein provided, including property subsequently annexed to the CFD, unless a separate Rate and Method of Apportionment of Special Tax is adopted for the annexation area.

A. DEFINITIONS

The terms hereinafter set forth have the following meanings:

“Acre” or “Acreage” means the land area of an Assessor's Parcel as shown on an Assessor's Parcel Map, or if the land area is not shown on an Assessor's Parcel Map, the land area shown on the applicable Final Map or other recorded County parcel map.

“Act” means the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5 (commencing with Section 53311), Division 2, of Title 5 of the Government Code of the State of California.

“Administrative Expenses” means any or all of the following: expenses incurred by the City in carrying out its duties with respect to CFD No. 2016-1, including, but not limited to, levying and collecting the Special Taxes; the fees and expenses of legal counsel; charges levied by the County Auditor's Office, Tax Collector's Office, and/or Treasurer's Office; costs related to annexing property into the CFD; costs related to property owner inquiries regarding the Special Taxes; and all other costs and expenses of the City in any way related to the establishment or administration of the CFD.

“Administrator” means the person or firm designated by the City to administer the Special Taxes according to this RMA.

“Annual Maintenance Special Tax” means a special tax levied in any Fiscal Year to pay the Annual Maintenance Special Tax Requirement, as defined below.

“Annual Maintenance Special Tax Requirement” means the amount of revenue needed in any Fiscal Year to pay for: (i) Authorized Services, (ii) establishment of reserves, (iii) Administrative Expenses, and (iv) amounts needed to cure any delinquencies in the payment of Annual Maintenance Special Taxes which have occurred in prior Fiscal Years.

“Assessor’s Parcel” or **“Parcel”** means a lot or parcel shown on an Assessor’s Parcel Map with an assigned Assessor’s Parcel Number.

“Assessor’s Parcel Map” means an official map of the County Assessor designating parcels by Assessor’s Parcel Number.

“Assessor’s Parcel Number” or **“APN”** means a unique number assigned to an Assessor’s Parcel by the County Assessor for purposes of identifying a property.

“Authorized Services” means the public services authorized to be funded by the CFD as set forth in the documents adopted by the City Council when the CFD was formed.

“CFD” or **“CFD No. 2016-1”** means the City of Modesto Community Facilities District No. 2016-1 (Kiernan Business Park East).

“CFD Formation” means the date on which the Resolution of Formation to form CFD No. 2016-1 was adopted by the City Council.

“City” means the City of Modesto.

“City Council” means the City Council of the City of Modesto, acting as the legislative body of CFD No. 2016-1.

“County” means the County of Stanislaus.

“Escalation Factor” means, in any Fiscal Year, the greater of (i) the percentage increase, if any, in the construction cost index for the San Francisco region for the prior twelve (12) month period as published in the Engineering News Record or other comparable source if the Engineering News Record is discontinued or otherwise not available, or (ii) four percent (4.0%).

“Final Map” means a final map approved by the City pursuant to the Subdivision Map Act (California Government Code Section 66410, *et seq.*) that creates individual lots on which a building permit can be issued for construction of residential units without further subdivision of the lots.

“Fiscal Year” means the period starting on July 1 and ending on the following June 30.

“Maximum Annual Maintenance Special Tax” means the Maximum Annual Maintenance Special Tax, determined in accordance with Section C, that can be levied in any Fiscal Year.

“Maximum One-Time Facilities Special Tax” means the greatest amount of One-Time Facilities Special Tax that can be levied on an Assessor’s Parcel in any Fiscal Year determined in accordance with Section C below.

“Maximum Special Taxes” means, collectively, the Maximum One-Time Facilities Special Tax and the Maximum Annual Maintenance Special Tax.

“One-Time Facilities Special Tax” means a special tax levied and collected in full by the City prior to a structural building permit being issued for new construction on a Parcel of Taxable Property.

“Proportionately” means the ratio of the actual Annual Maintenance Special Tax levied in any Fiscal Year to the Maximum Annual Maintenance Special Tax authorized to be levied in that Fiscal Year is equal for all Assessor’s Parcels of Taxable Property.

“Public Property” means, in any Fiscal Year: (i) all Parcels within the boundaries of the CFD that are owned by or irrevocably offered for dedication to the federal government, the State of California, the City or any other public agency; provided, however, that any property leased by a public agency to a private entity and subject to taxation under Section 53340.1 of the Act (as such section may be amended or replaced) shall be taxed and classified in accordance with its use; or (ii) all Parcels within the boundaries of the CFD that are encumbered by an unmanned utility easement making impractical its utilization for other than the purpose set forth in the easement.

“RMA” means this Rate and Method of Apportionment of Special Tax.

“Special Taxes” means, collectively, the One-Time Facilities Special Tax and the Annual Maintenance Special Tax.

“Taxable Property” means all Assessor’s Parcels within the boundaries of the CFD that are not exempt from the Special Taxes pursuant to law or Section F below.

“Taxable Public Property” means, in any Fiscal Year, all Parcels of Public Property within the CFD that, (i) based on a tentative map or other development plan, were expected to be Taxable Property and, (ii) based on this expectation, Maximum Annual Maintenance Special Taxes were assigned to the Parcels in prior Fiscal Years.

“Tax Zone” means a mutually exclusive geographic area within which the Special Taxes may be levied pursuant to this RMA. *All of the property within CFD No. 2016-1 at the time of CFD Formation is within Tax Zone 1.* Additional Tax Zones may be created when property is annexed to the CFD, and separate Maximum Special Taxes shall be identified for property within the new Tax Zone at the time of such annexation. The Assessor’s Parcels included within a new Tax Zone established when such Parcels are annexed to the CFD shall be identified by Assessor’s Parcel Number in the Unanimous Approval Form that is signed by the owner(s) of the Parcels at the time of annexation.

“Unanimous Approval Form” means that form executed by the record owner of fee title to a Parcel or Parcels annexed into the CFD that constitutes the property owner’s approval and unanimous vote in favor of annexing into the CFD and the levy of Special Taxes against his/her Parcel or Parcels pursuant to this RMA.

B. DATA FOR ANNUAL TAX LEVY

Each Fiscal Year, the Administrator shall identify the current Assessor’s Parcel Numbers for all Parcels of Taxable Property within the CFD. The Administrator shall also determine: (i) in which Tax Zone each Parcel of Taxable Property is located, (ii) the Acreage for each Parcel of Taxable Property, and (iii) the Annual Maintenance Special Tax Requirement for the then-current Fiscal Year.

In any Fiscal Year, if it is determined that (i) a Final Map or parcel map for a portion of property in the CFD was recorded after the last date upon which the Assessor will incorporate the newly-created Parcels into the then current tax roll, (ii) because of the date the Final Map or parcel map was recorded, the Assessor does not yet recognize the new Parcels created by the Final Map or parcel map, and (iii) one or more of the newly-created Parcels meets the definition of Taxable Property, the Administrator shall calculate the Special Tax for the property affected by recordation of the Final Map or parcel map by determining the Special Taxes that apply separately to each newly-created Parcel, then applying the sum of the individual Special Taxes to the Parcel that was subdivided by recordation of the Final Map or parcel map.

C. MAXIMUM SPECIAL TAXES

1. Tax Zone 1

Table 1 below identifies the Maximum One-Time Facilities Special Tax and Maximum Annual Maintenance Special Tax assigned to all Parcels of Taxable Property in Tax Zone 1 at CFD Formation and all Parcels that annex into Tax Zone 1 after CFD Formation.

**TABLE 1
MAXIMUM SPECIAL TAXES FOR TAX ZONE 1
FISCAL YEAR 2015-16**

| <i>Fiscal Year 2015-16 Assessor’s Parcel Number (s)</i> | <i>Fiscal Year 2015-16 Maximum One-Time Facilities Special Tax*</i> | <i>Fiscal Year 2015-16 Maximum Annual Maintenance Special Tax*</i> |
|---|---|--|
| 078-015-029 078-015-030 | \$0 | \$2,872 per Acre |

** On January 1, 2016 and each January thereafter, the Maximum One-Time Facilities Special Tax and Maximum Annual Maintenance Special Tax rates shall be adjusted by the Escalation Factor. Each annual adjustment of the Maximum One-Time Facilities Special Tax and the Maximum Annual Maintenance Special Tax shall become effective on the subsequent July 1.*

2. Additional Tax Zones

If property is annexed into the CFD and a separate Tax Zone is established for such property, a Maximum One-Time Facilities Special Tax and a Maximum Annual Maintenance Special Tax will be identified for Taxable Property in the new Tax Zone in the Unanimous Approval Form signed by the annexing property owner.

D. METHOD OF LEVY OF SPECIAL TAXES

1. One-Time Facilities Special Tax

The Maximum One-Time Facilities Special Tax determined pursuant to Section C above shall be levied on all Taxable Property in CFD No. 2016-1 and shall be collected as set forth in Section E below.

2. Annual Maintenance Special Tax

Each Fiscal Year, the Administrator shall determine the Annual Maintenance Special Tax Requirement for that Fiscal Year. The Annual Maintenance Special Tax shall be levied on all Parcels of Taxable Property as follows:

Step 1: The Annual Maintenance Special Tax shall be levied Proportionately on each Parcel of Taxable Property that is not Taxable Public Property up to 100% of the Maximum Annual Maintenance Special Tax for each Parcel for such Fiscal Year;

Step 2: If additional revenue is needed after Step 1, the Annual Maintenance Special Tax shall be levied Proportionately on each Parcel of Taxable Public Property up to 100% of the Maximum Annual Maintenance Special Tax for each Parcel for such Fiscal Year.

E. COLLECTION OF SPECIAL TAXES

The Maximum One-Time Facilities Special Tax shall be collected prior to a building permit being issued for new construction of a structure on a Parcel of Taxable Property within CFD No. 2016-1, and shall be immediately delinquent if not so paid.

The Annual Maintenance Special Tax for CFD No. 2016-1 shall be collected in the same manner and at the same time as ordinary ad valorem property taxes, provided, however, that the City may directly bill, collect at a different time or in a different manner, and/or collect delinquent Annual Maintenance Special Taxes through foreclosure or other available methods. The Annual Maintenance Special Tax shall be levied and collected in perpetuity unless and until the City determines that the Annual Maintenance Special Tax no longer needs to be levied to pay for Authorized Services and Administrative Expenses.

F. EXEMPTIONS

Notwithstanding any other provision of this RMA, no Special Tax shall be levied on Parcels of Public Property except Taxable Public Property, as defined herein.

G. INTERPRETATION OF SPECIAL TAX FORMULA

The City reserves the right to make minor administrative and technical changes to this document that do not materially affect the rate and method of apportioning Special Taxes. In addition, the interpretation and application of any section of this document shall be left to the City's discretion. Interpretations may be made by the City by resolution of the City Council for purposes of clarifying any vagueness or ambiguity in this RMA.

H. ENFORCEMENT

All delinquent One-Time Facilities Special Taxes, and delinquent Annual Maintenance Special Taxes billed off the County tax roll, shall be subject to an immediate 10% penalty plus interest charges of 1.5 % as of the first day of the month after the delinquency date and on the first day of each month thereafter. Any such delinquent Special Taxes shall, at the City's discretion, be placed on the next secured property tax roll. The amount placed on the roll shall include the 10% penalty and the interest charges through the following January 1. This shall not prevent the City from simultaneously pursuing the delinquency by an action on a contract of guarantee against a third party who promised to pay the taxes, or from assigning such right of action to the property owner or other appropriate party.

CFD No. 2016-1 (Kiernan Business Park East #2)

LIST OF FACILITIES

Water System:

Water system improvements include, but are not limited to, wells, water transmission pipelines, interior water mains, other water distribution lines, wellhead treatment systems, surface water supply pipelines, tanks, booster pumps, connections to existing water system, other water supply accessories and land acquisition. Water system improvements may be on-site or off-site.

Wastewater System:

Wastewater system improvements may include, but are not limited to, distribution pipelines, land acquisition, lift station(s), force main(s) and other wastewater system infrastructure. Wastewater system improvements may be on-site or off-site.

Transportation, Landscaping and Lighting System:

Transportation, lighting and landscaping system improvements include, but are not limited to, land acquisition, arterials and collector streets, roundabouts, traffic control devices, gateways, and other traffic related infrastructure. Landscaping and lighting improvements may include, but are not limited to, land acquisition and the construction of pavement, curb, gutter, sidewalk, irrigation improvements, separated bike paths and landscaping and lighting. Landscaping is included within the street right-of-way, landscape lots and gateways. Transportation, landscaping and lighting system improvements may be on-site or off-site.

Storm Drain System:

Storm drain system improvements include, but are not limited to, land acquisition, storm drainage facilities including pump station, dual-use detention basin and landscaping, fencing, lift stations, discharge mains and outfall structures, force mains, gravity collection storm water lines, infiltration pipes and trenches, bio-swales, storm water treatment devices and other storm drain infrastructure. Storm drain system improvements may be on-site or off-site. (the “Storm Drain System Facilities,” and together with the Water System Facilities, the Wastewater System Facilities and the Transportation, Landscaping and Lighting System Facilities, the “Facilities”).

Incidental Expenses:

Facilities include incidental expenses to be incurred, including (a) the cost of engineering, planning and designing the Facilities; (b) all costs incurred in connection with financing the Facilities, and (c) all costs associated with the creation of the Community Facilities District, the determination of the amount of special taxes to be levied and costs otherwise incurred in order to carry out the authorized purposes of the Community Facilities District and administering the Community Facilities District (collectively, the “Incidental Expenses”).

Community Facilities District No. 2016-2 (Kiernan Business Park East #2)

LIST OF SERVICES

Authorized services include, but are not limited to, maintenance, repair and replacement of parkways, landscaped medians, storm drainage pump and basin facilities, catch basins, manholes, underground infiltration trenches and pipes, landscaped bio-swale lots and medians, storm water treatment devices and filters, shrubs, vines, ground cover, and irrigation systems. The services to be provided include, but are not limited to, litter and debris removal, pruning, staking, fertilizing, mowing, plant replacement and restoration, fire and weed control, erosion control, trimming of vegetation, and storm drain system and bio-swale maintenance. Services also include the following: (i) related reserves for the replacement of plants and materials, replacement of storm water treatment filters and other storm drainage facilities, or (ii) a sinking fund for services that could not otherwise be funded in a given fiscal year, or (iii) administrative fees of the City related to the Community Facilities District, including costs associated with preparing the annual special tax levy, or (iv) costs associated with legal services, advertising, legal notices, and mailings related to formation or administration of the Community Facilities District (collectively, the “Services”).