

ORDINANCE NO. 3403

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
CHULA VISTA ACTING AS THE LEGISLATIVE BODY OF  
COMMUNITY FACILITIES DISTRICT NO. 19M (FREEWAY  
COMMERCIAL 2), AUTHORIZING THE LEVY OF A  
SPECIAL TAX IN SUCH COMMUNITY FACILITIES  
DISTRICT

WHEREAS, the City Council of the City of Chula Vista, California (the "City Council"), has initiated proceedings, held a public hearing, conducted an election, and received a favorable vote from the qualified electors authorizing the levy of special taxes in a community facilities district, all as authorized pursuant to the terms and provisions of the "Mello-Roos Community Facilities Act of 1982," being Chapter 2.5, Part 1, Division 2, Title 5 of the Government Code of the State of California (the "Act") and the City of Chula Vista Community Facilities District Ordinance enacted pursuant to the powers reserved by the City of Chula Vista under Sections 3, 5 and 7 of Article XI of the Constitution of the State of California (the "Ordinance") (the Act and the Ordinance may be referred to collectively as the "Community Facilities District Law"). This community facilities district shall hereinafter be referred to as Community Facilities District No. 19M (Freeway Commercial 2) ("CFD No. 19M").

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CHULA VISTA, CALIFORNIA, ACTING AS THE LEGISLATIVE BODY OF COMMUNITY FACILITIES DISTRICT NO. 19M (FREEWAY COMMERCIAL 2), DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. This City Council does, by the passage of this ordinance, authorize the levy of special taxes on taxable properties located in CFD No. 19M pursuant to the Rate and Method of Apportionment of Special Taxes as set forth in Exhibit "A" attached hereto and incorporated herein by this reference (the "Rate and Method").

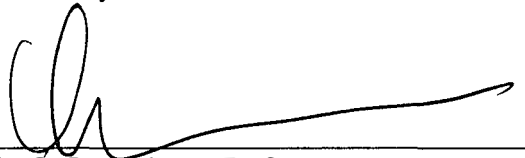
SECTION 2. This City Council, acting as the legislative body of CFD No. 19M, is hereby further authorized, by resolution, to annually determine the special tax to be levied within CFD No. 19M for the then current tax year or future tax years; provided, however, the special tax to be levied shall not exceed the maximum special tax authorized to be levied pursuant to the Rate and Method.

SECTION 3. The special taxes herein authorized to be levied, to the extent possible, shall be collected in the same manner as ad valorem property taxes and shall be subject to the same penalties, procedure, sale and lien priority in any case of delinquency as applicable for ad valorem taxes; provided, however, CFD No. 19M may utilize a direct billing procedure for any special taxes that cannot be collected on the County tax roll or may, by resolution, elect to collect the special taxes at a different time or in a different manner if necessary to meet its financial obligations.

SECTION 4. The special taxes authorized to be levied shall be secured by the lien imposed pursuant to Sections 3114.5 and 3115.5 of the Streets and Highways Code of the State of California, which lien shall be a continuing lien and shall secure each levy of the special taxes. The lien of the special taxes shall continue in force and effect until the special tax ceases to be levied by the City Council in the manner provided in Section 53330.5 of said Government Code.

SECTION 5. This Ordinance shall be effective thirty (30) days after its adoption. Within fifteen (15) days after its adoption, the City Clerk shall cause this Ordinance to be published in a newspaper of general circulation in the City pursuant to the provisions of Chula Vista's City Charter, Section 312(b).

Presented by

A handwritten signature in dark ink, appearing to be 'Kelly G. Broughton', written over a horizontal line.

Kelly G. Broughton, FASLA  
Director of Development Services

Approved as to form by

A handwritten signature in dark ink, appearing to be 'Glen R. Googins', written over a horizontal line.


Glen R. Googins  
City Attorney

PASSED, APPROVED, and ADOPTED by the City Council of the City of Chula Vista, California, this 23rd day of May 2017, by the following vote:

AYES: Councilmembers: Diaz, McCann, and Padilla

NAYS: Councilmembers: None

ABSENT: Councilmembers: Aguilar and Salas

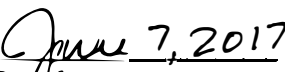
  
\_\_\_\_\_  
John McCann, Deputy Mayor

ATTEST:

  
\_\_\_\_\_  
Donna R. Norris, CMC, City Clerk

STATE OF CALIFORNIA       )  
COUNTY OF SAN DIEGO    )  
CITY OF CHULA VISTA      )

I, Donna R. Norris, City Clerk of Chula Vista, California, do hereby certify that the foregoing Ordinance No. 3403 had its first reading at a regular meeting held on the 16th day of May 2017 and its second reading and adoption at a regular meeting of said City Council held on the 23rd day of May 2017; and was duly published in summary form in accordance with the requirements of state law and the City Charter.

  
\_\_\_\_\_  
Dated

  
\_\_\_\_\_  
Donna R. Norris, CMC, City Clerk

EXHIBIT A

**RATE AND METHOD OF APPORTIONMENT FOR  
CITY OF CHULA VISTA  
COMMUNITY FACILITIES DISTRICT NO. 19M  
(FREEWAY COMMERCIAL 2)**

A Special Tax as hereinafter defined shall be levied on each Assessor's Parcel of Taxable Property within the City of Chula Vista Community Facilities District No. 19M (Freeway Commercial 2) ("CFD No. 19M") and collected each Fiscal Year commencing in Fiscal Year 2017-2018 in an amount determined by the CFD Administrator through the application of the Special Tax for Taxable Property as described below. All of the Taxable Property within CFD No. 19M, unless exempted by law or by the provisions hereof, shall be taxed for the purposes to the extent and in the manner herein provided.

**A. GENERAL DEFINITIONS**

The terms hereinafter set forth have the following meaning:

**"Acre" or "Acreage"** means the land area of an Assessor's Parcel as shown on County records, such as an Assessor's Parcel Map or secured roll data, or if the land area is not shown on an Assessor's Parcel Map, the land area shown on the applicable Final Subdivision Map, condominium plan, record of survey, or other recorded document creating or describing the parcel. If the preceding maps for a land area are not available, the Acreage of such land area may be determined utilizing available spatial data and GIS. The square footage of an Assessor's Parcel is equal to the Acreage multiplied by 43,560.

**"Act"** means the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5, Division 2 of Title 5 of the Government Code of the State of California.

**"Administrative Expenses"** means the actual or reasonably estimated costs incurred by the City acting for and on behalf of the CFD as administrator thereof, to determine, levy and collect the Special Taxes, in responding to public inquiries regarding the Special Taxes, including salaries of City employees and a proportionate amount of the City's general administrative overhead related thereto; the fees of consultants and legal counsel providing services related to the administration of the CFD; any amounts estimated or advanced by the City or CFD for any other administrative purposes; and any other costs required to administer the CFD as determined by the City.

**"Assessor's Parcel"** means a lot or parcel shown in an Assessor's Parcel Map with an assigned assessor's parcel number.

**"Assessor's Parcel Map"** means an official map of the County Assessor of the County designating lots or parcels by an Assessor's Parcel number.

**"Authorized Services"** means those authorized maintenance activities and/or services, and expenses that may be funded by CFD No. 19M pursuant to the Act as amended, including, without limitation, those services authorized to be funded by CFD No. 19M as set forth in the documents adopted by the City Council at the time CFD No. 19M was formed.

**“Building Square Foot” or “Square Footage”** means the square footage as shown on a building permit for an Assessor’s Parcel of Non-Residential Property.

**“Capital Replacement Reserve Fund”** means a fund that shall be maintained for the CFD for each Fiscal Year to provide for the accumulation and holding of funds for long-term capital projects, asset replacement, or other large anticipated expenditures.

**“CFD Administrator”** means an official of the City, or designee thereof, responsible for determining the Special Tax Requirement and providing for the levy and collection of the Special Taxes.

**“CFD No. 19M” or “CFD”** means City of Chula Vista Community Facilities District No. 19M (Freeway Commercial 2).

**“City”** means the City of Chula Vista.

**“City Council”** means the City Council of the City, acting as the legislative body of CFD No. 19M.

**“City Finance Director”** means the Finance Director of the City or his or her designee.

**“City Manager”** means the City Manager of the City or his or her designee.

**“County”** means the County of San Diego.

**“County Assessor”** means the Assessor of the County or his or her designee.

**“County Recorder”** means the Recorder of the County or his or her designee.

**“Community Purpose Facility Property” or “CPF Property”** means all Assessor’s Parcels that are classified as community purpose facilities and meet the requirements of Chula Vista Municipal Code Section 19.48.025, as amended from time to time.

**“Construction Cost Index”** means, for any Fiscal Year, the applicable Construction Cost Index for the Los Angeles Area as set forth in the Engineering News Record for July of the preceding Fiscal Year. In the event that this rate is no longer published or provided, the CFD Administrator shall choose a comparable rate to use in its place.

**“Consumer Price Index for Urban Wage Earners and Clerical Workers” or “CPI-W”** means the applicable CPI-W as set forth by the United States Department of Labor, Bureau of Labor Statistics for July of the preceding Fiscal Year. In the event that this rate is no longer published or provided, the CFD Administrator shall choose a comparable rate to use in its place.

**“Density”** means for each Assessor’s Parcel of Single Family Property the number of Dwelling Units per gross Acre as determined based on the approved tentative map or approved tentative parcel map entitling the development unless otherwise approved in writing by the City Manager.

**“Developed Property”** means all Taxable Property for which a building permit was issued prior to the March 1<sup>st</sup> preceding the Fiscal Year in which the Special Tax is being levied.

**"Dwelling Unit" or "DU"** means each separate residential dwelling unit that comprises an independent facility capable of conveyance or rental separate from adjacent residential dwelling units.

**"Estimated Special Tax Delinquency Amount"** a reasonable estimate of delinquencies expected to occur in the Fiscal Year in which the Special Tax will be levied based on the delinquency rate for Special Taxes levied in the previous Fiscal Year.

**"Exempt Property"** means all Assessors' Parcels that are exempt from the Special Tax pursuant to law or Section E herein.

**"Final Subdivision Map"** means a subdivision of property creating residential or non-residential buildable lots by recordation of a Final Subdivision Map or parcel map pursuant to the Subdivision Map Act (California Government Code Section 66410 et seq.), or recordation of a condominium plan pursuant to the California Civil Code 1352, that creates individual lots for which building permits may be issued without further subdivision and is recorded prior to March 1<sup>st</sup> preceding the Fiscal Year in which the Special Tax is being levied.

**"Fiscal Year"** means the period starting July 1<sup>st</sup> and ending on the following June 30<sup>th</sup>.

**"Hotel Property"** means all Assessor's Parcels of Developed Property for which a building permit(s) has been issued for purposes of constructing one or more structures comprising of individual sleeping or living units, except as otherwise provided herein, for the accommodation of transient guests.

**"Land Use Class"** means any of the classes listed in Table 1.

**"Maximum Special Tax"** means the Maximum Special Tax, determined in accordance with Section C, which may be levied in any Fiscal Year on any Assessor's Parcel of Taxable Property.

**"Multi-Family Property"** means all Assessor's Parcels of Residential Property consisting of two or more for-rent Dwelling Units that share common walls, including, but not limited to, apartments and Residential Property that are not for sale to an end user and are under common management.

**"Non-Residential Property"** means all Assessor's Parcels of Developed Property, for which a building permit(s) has been issued for a structure or structures for non-residential use, excluding Hotel Property.

**"Otay Water District Commodity Rate"** means the maximum rate charged by the Otay Water District for recycled water on the preceding July 1<sup>st</sup> of any Fiscal Year. In the event that this rate is no longer published or provided, the CFD Administrator shall choose a comparable rate to use in its place.

**"Property Owner Association Property"** means any Assessor's Parcel within the boundaries of the CFD that is owned by, or irrevocably dedicated as indicated in an instrument recorded with the County Recorder to, a property owner association, including any master or sub-association.

**"Proportionately"** means for Taxable Property that the ratio of the Special Tax to the Maximum Special Tax is equal for all Taxable Property levied within each Land Use Class within CFD No. 19M.

**"Public Property"** means any property within the boundaries of CFD No. 19M which (i) is owned by a public agency or expected to be owned by a public agency at the time of CFD formation, (ii) has been irrevocably offered for dedication to a public agency, or (iii) is designated with specific boundaries and acreage on a Final Subdivision Map as property which will be owned by a public agency. For purposes of this definition, a public agency includes the federal government, the State of California, the County, the City, or any other public agency.

**"Operating Reserve Fund"** means a fund that shall be maintained for the CFD each Fiscal Year to provide necessary cash flow for the first six months of each Fiscal Year, working capital to cover monitoring, maintenance and repair cost overruns and delinquencies in the payment of Special Taxes and a reasonable buffer to prevent large variations in annual Special Tax levies.

**"Residential Property"** means all Assessor's Parcels of Developed Property for which a building permit(s) has been issued for purposes of constructing one or more residential Dwelling Unit(s).

**"Single Family Property"** means all Assessor's Parcels of Residential Property consisting of one or more Dwelling Unit(s) that may or may not share common walls with one or more other Dwelling Unit(s), including, but not limited to, duplexes, triplexes, townhomes, condominiums, and other Residential Properties that are for sale to an end user and are not under common management.

**"Special Tax"** means the Special Tax levied in each Fiscal Year on each Assessor's Parcel of Taxable Property to fund the Special Tax Requirement.

**"Special Tax Requirement"** means the amount, as determined by the CFD Administrator, for any Fiscal Year to: (i) pay the costs of providing the Authorized Services during such Fiscal Year, (ii) pay Administrative Expenses associated with the Special Tax, (iii) establish or replenish the Operating Reserve Fund, (iv) establish or replenish the Capital Replacement Reserve Fund, (v) pay for the replacement costs of park or other public improvements within the CFD, (vi) pay incidental expenses related to the Authorized Services as authorized pursuant to the Act, (vii) fund an amount equal to the Estimated Special Tax Delinquency Amount, and (viii) fund the shortfall, if any, in the Special Tax revenues collected in the preceding Fiscal Year where such shortfall resulted from delinquencies in the payment of Special Taxes in such Fiscal Year that exceeded the Estimated Special Tax Delinquency Amount included in the Special Tax Requirement for the preceding Fiscal Year, less (ix) any excess funds available in the Operating Reserve Fund, Capital Replacement Reserve Fund, or other funds associated with CFD No. 19M as determined by the City Finance Director.

**"State"** means the State of California.

**"Taxable Property"** means all of the Assessor's Parcels within the boundaries of CFD No. 19M, that are not Exempt Property from the CFD No. 19M Special Tax pursuant to law or Section E.

**"Undeveloped Property"** means for each Fiscal Year, all Taxable Property not classified as Developed Property.

**B. ASSIGNMENT TO CATEGORIES OF SPECIAL TAX**

Each Fiscal Year, beginning with Fiscal Year 2017-2018, using the definitions above, each Assessor's Parcel within CFD No. 19M shall be classified by the CFD Administrator as Taxable Property or Exempt Property. Commencing with Fiscal Year 2017-2018 and for each subsequent Fiscal Year, Taxable Property shall be subject to the levy of Special Taxes pursuant to Section C. In addition, in each such Fiscal Year, each Assessor's Parcel of Taxable Property shall be further classified by the CFD Administrator as Developed Property or Undeveloped Property.

Developed Property shall be further assigned to a Land Use Class as specified in Table 1 of Section C. The Land Use Class of each Assessor's Parcel shall be determined based on the records of the County Assessor or other such information provided by the City. In some instances, an Assessor's Parcel of Developed Property may contain more than one Land Use Class. The Maximum Special Tax determined on such Assessor's Parcel shall be the sum of the Maximum Special Taxes for all Land Use Classes located on that Assessor's Parcel.



**C. MAXIMUM SPECIAL TAX RATE**

The Maximum Special Tax for any Assessor's Parcel classified as Developed Property or Undeveloped Property shall be determined by reference to Table 1 and the paragraphs that follow Table 1.

**TABLE 1**  
**Maximum Special Tax for Developed and Undeveloped Property**  
**Community Facilities District No. 19M**  
**Fiscal Year 2017-2018**

<b>Land Use Class</b>	<b>Maximum Special Tax Component for Labor</b>	<b>Maximum Special Tax Component for Water</b>	<b>Maximum Special Tax Component for Asset Replacement</b>	<b>Fiscal Year 2017-2018 Maximum Special Tax</b>
Single Family Property with Density (DU/Acre) of $\leq 19$	\$803.23 per DU	\$223.47 per DU	\$43.30 per DU	\$1,070.00 per DU
Single Family Property with Density (DU/Acre) of $>19$	\$481.94 per DU	\$134.08 per DU	\$25.98 per DU	\$642.00 per DU
Multi-Family Property	\$2,614.63 per Acre	\$727.41 per Acre	\$140.96 per Acre	\$3,483.00 per Acre
Non-Residential Property	\$0.32 per Building Square Foot	\$0.09 per Building Square Foot	\$0.02 per Building Square Foot	\$0.43 per Building Square Foot
Hotel Property	\$4,329.94 per Acre	\$1,204.62 per Acre	\$233.44 per Acre	\$5,768.00 per Acre
Undeveloped Property	\$7,314.65 per Acre	\$2,034.99 per Acre	\$394.36 per Acre	\$9,744.00 per Acre

The Maximum Special Tax shall be equal to the sum of the Maximum Special Tax Component for Labor, Maximum Special Tax Component for Water and Maximum Special Tax Component for Asset Replacement as shown in Table 1.

In determining the Maximum Special Tax, the Maximum Special Tax Components for each Land Use Class shall be increased in the 2018-2019 Fiscal Year and each Fiscal Year thereafter, as follows:

1. The annual percentage change of the Maximum Special Tax Component for Labor shall be equal to the annual percentage change for the July immediately preceding the current Fiscal

Year and compared to the previous year's Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W); and

2. The annual percentage change of the Maximum Special Tax Component for Water shall be equal to the annual percentage change for the July immediately preceding the current Fiscal Year and compared to the previous year's Otay Water District Commodity Rate; and
3. The annual percentage change of the Maximum Special Tax Component for Asset Replacement shall be equal to the annual percentage change for the July immediately preceding the current Fiscal Year and compared to the prior year's Construction Cost Index.

The Fiscal Year 2017-2018 Maximum Special Tax shall be equal to the Fiscal Year 2017-2018 Maximum Special Tax rates listed in Table 1. In each subsequent Fiscal Year, the Maximum Special Tax Components shall be increased by the escalation factor outlined above in Section C (1, 2, and 3), provided the Maximum Special Tax Component for Labor, the Maximum Special Tax Component for Water and the Maximum Special Tax Component for Asset Replacement shall never be less than two percent (2%) and not greater than six percent (6%) of the maximum amounts in the preceding Fiscal Year, respectively.

**D. METHOD OF APPORTIONMENT OF SPECIAL TAX**

Commencing with Fiscal Year 2017-2018, and for each subsequent Fiscal Year, the CFD Administrator shall levy the Special Tax at the rates established in Section C on all Taxable Property within CFD No. 19M until the total amount of Special Tax levied equals the Special Tax Requirement. The Special Tax shall be levied each Fiscal Year as follows:

1. The Special Tax shall be levied Proportionately on each Assessor's Parcel of Developed Property within the CFD up to one hundred percent (100%) of the applicable Maximum Special Tax.
2. If additional monies are needed to satisfy the Special Tax Requirement after Developed Property has been levied one hundred percent (100%) of their Maximum Special Tax, the remaining amount needed to satisfy the Special Tax Requirement shall be levied Proportionately on each Assessor's Parcel of Undeveloped Property at up to one hundred percent (100%) of the Maximum Special Tax on Undeveloped Property.

Notwithstanding the above, under no circumstances will the Special Tax levied against any Assessor's Parcel of Residential Property be increased because of delinquency or default by the owner of any other Assessor's Parcel within the CFD by more than ten percent (10%) above what such Special Tax would have been in the absence of delinquencies.

**E. EXEMPTIONS**

The CFD Administrator shall classify the following as Exempt Property: Public Property, Property Owner Association Property, Community Purpose Facility Property, and Assessor's Parcels with

public or utility easements making impractical their utilization for any use other than the purposes set forth in the easement.

If the use of an Assessor's Parcel changes so that such Assessor's Parcel is no longer eligible to be classified as Exempt Property under this section, such Assessor's Parcel shall be deemed to be Taxable Property.

**F. PREPAYMENT OF SPECIAL TAX**

The Maximum Special Tax may not be prepaid and shall continue to be levied in accordance with Section D of this Rate and Method of Apportionment on an annual basis on all Taxable Property in CFD No. 19M for the purpose of funding ongoing Authorized Services.

**G. REVIEW/APPEALS**

The CFD Administrator may establish such procedures, as it deems necessary to undertake the review of any such appeal. The CFD Administrator shall interpret this Rate and Method of Apportionment and make determinations relative to the annual administration of the Special Tax and any property owner appeals, as herein specified.

Any property owner who feels that the amount of the Special Tax levied on their Assessor's Parcel is in error shall first consult with the CFD Administrator regarding such error. If following such consultation, the CFD Administrator determines that an error has occurred; the CFD Administrator in consultation with the City Finance Director shall take any of the following actions to correct the error:

- Amend the Special Tax levy on the property owner's Assessor's Parcel(s) for the current Fiscal Year,
- Require the CFD to reimburse the property owner for the amount of the overpayment for the current Fiscal Year to the extent of available CFD funds, or
- Grant a credit against, eliminate or reduce the future Special Taxes on the property owner's Assessor's Parcel(s) for overpayment for the current Fiscal Year.

If following such consultation and action (if any by the CFD Administrator), the property owner believes such error still exists, such person may file a written notice with the City Finance Director appealing the amount of the Special Tax levied on such Assessor's Parcel. If following such consultation and action (if any by the City Finance Director), the property owner believes such error still exists, such person may file a written notice with the City Council appealing the amount of the Special Tax levied on such Assessor's Parcel. If the City's Finance Director, City Council or designee determines an error exists; the CFD Administrator shall take any actions as described above, in order to correct the error. The decision of the City Council shall be final and binding to all persons.

**H. INTERPRETATIONS**

The CFD Administrator may make interpretations. If necessary, interpretations may be made by the City Council, by ordinance or resolution, for purposes of clarifying any vagueness or ambiguity as it relates to this Rate and Method of Apportionment.

**I. MANNER OF COLLECTION**

The annual Special Tax shall be collected in the same manner and at the same time as ordinary ad valorem property taxes; provided, however, that CFD No. 19M, may, at the sole discretion of the City, directly bill the Special Tax, and may collect the Special Taxes at a different time or in a different manner as necessary to meet its financial obligations.

**J. REPEAL OF SPECIAL TAX**

If the levy of the Special Tax is repealed by initiative or any other action participated in by the property owners of Assessor's Parcels in CFD No. 19M, the City shall cease to levy the Special Tax and shall cease to be obligated to provide the Authorized Services for which the Special Tax was levied. The obligation to provide the Authorized Services previously funded by the repealed Special Tax shall become the joint obligations of the property owners of Assessor's Parcels within CFD No. 19M.

**K. TERM OF SPECIAL TAX**

The Maximum Special Tax shall be levied commencing in Fiscal Year 2017-2018 and shall be levied in perpetuity, unless and until such time the City determines that revenues are no longer needed to pay the Special Tax Requirement.