

IN THE CITY COUNCIL OF THE CITY OF SAN LEANDRO

**RESOLUTION NO. 2022-**

**RESOLUTION OF INTENTION OF THE CITY OF SAN LEANDRO CITY COUNCIL TO ESTABLISH THE CITY OF SAN LEANDRO COMMUNITY FACILITIES DISTRICT NO. 2022-1 (MONARCH BAY SHORELINE FACILITIES & SERVICES), AND TO LEVY A SPECIAL TAX IN THE COMMUNITY FACILITIES DISTRICT TO FINANCE THE ACQUISITION AND CONSTRUCTION OF PUBLIC FACILITIES AND THE PROVISION OF PUBLIC SERVICES**

**WHEREAS**, the City Council has duly considered the advisability and necessity of establishing a community facilities district within its jurisdictional boundaries and levying a special tax therein to finance the acquisition and construction of certain public facilities and the provision of certain public services under the Mello-Roos Community Facilities Act of 1982, set forth at Government Code sections 53311 through 53368.3 (the “**Act**”).

**WHEREAS**, the public facilities and public services to be financed are necessary to meet increased demands on the City or other governmental agencies as the result of development occurring or expected to occur within the community facilities district; and

**WHEREAS**, the City Council has determined that the establishment of the community facilities district is consistent with and follows the local goals and policies concerning the use of the Act that have been adopted by the City Council and are now in effect.

**NOW, THEREFORE**, the City Council of the City of San Leandro does **RESOLVE** as follows:

**SECTION 1.** The City Council finds that the statements in the Background are true.

**SECTION 2.** The City Council hereby proposes to establish a community facilities district under the Act, to be known and designated as the “City of San Leandro Community Facilities District No. 2022-1 (Monarch Bay Shoreline Facilities & Services)” (the “**CFD**”).

**SECTION 3.** The proposed boundaries of the CFD are more particularly described and shown on a map titled “Proposed Boundaries of City of San Leandro Community Facilities District No. 2022-1 (Monarch Bay Shoreline Facilities & Services), City of San Leandro, County of Alameda, State of California,” which is now on file in the office of the City Clerk (the “**Clerk**”) and which the City Council hereby preliminarily approves and refers to for further particulars. A reduced copy of the map is attached as Exhibit A to this resolution. The City Council finds that the map is in the form and contains the matters prescribed by Streets and Highways Code section 3110 and directs the Clerk to certify the adoption of this resolution on the face of the map. The Clerk is hereby authorized and directed to record a copy of the map with the Alameda County Auditor-Controller/Clerk-Recorder in accordance with Streets and Highways Code section 3111.

**SECTION 4.** The City Council hereby finds that property, if any, included within the boundary of the CFD that is currently devoted primarily to agricultural, timber, or livestock uses and used for the commercial production of agricultural, timber, or livestock products will be benefited by the proposed public facilities and public services.

**SECTION 5.** The City Council intends, in accordance with the Act, to finance the acquisition and construction of the public facilities, including through the financing of governmentally imposed development impact fees used to finance public facilities, listed on Exhibit B to this resolution (the “**Facilities**”). All of the Facilities have an estimated useful life of five years or longer and are public facilities that—

(a) the City or other governmental agencies are authorized by law to construct, own, or operate, or to which they may contribute revenue; and

(b) are necessary to meet increased demands on the City or other governmental agencies as the result of development occurring or expected to occur within the CFD.

**SECTION 6.** The City Council intends, in accordance with the Act, to finance the provision of the public services listed on Exhibit C to this resolution (the “**Services**”). All of the Services—

(a) are necessary to meet increased demands on the City or other governmental agencies as the result of development occurring or expected to occur within the CFD; and

(b) are in addition to those provided in the territory of the CFD as of the date hereof and will not supplant services already available within the territory of the CFD as of the date hereof.

**SECTION 7.** The City Council intends that, except where funds are otherwise available, the City will levy a special tax within the CFD (the “**Special Tax**”) to pay directly for the Services and the Facilities and to pay the principal and interest on bonds and other debt (as defined in the Act) of the City issued for the CFD to finance the Facilities. The Special Tax will be secured by recordation of a continuing lien against all non-exempt real property in CFD. The non-exempt real property subject to the Special Tax consists of both fee title interests and leasehold or possessory interests in land currently owned by the City. The proposed rate and method of apportionment of the Special Tax is attached as Exhibit D to this resolution (the “**RMA**”) and is in sufficient detail to allow each landowner or resident within the CFD to estimate the maximum amount the landowner or resident will have to pay.

**SECTION 8.** Among other things, the Special Tax will be used—

(a) to make payments on bonds or other debt (as defined in the Act) to be issued to finance the acquisition and construction of the Facilities, including the payment of interest on, and principal of, the bonds or other debt, and to pay directly for Facilities or to finance the making of lease payments for Facilities (whether in conjunction with the issuance of certificates of participation or not);

(b) to pay for Services; and

(c) to repay funds advanced by the City for the CFD, including the repayment under any agreement (which will not constitute a debt or liability of the City) of advances of funds or reimbursement for the lesser of the value or cost of work in-kind provided by any person for the CFD and any administrative costs paid by the City related to the CFD.

**SECTION 9.** The City Council, acting as the legislative body for the CFD, intends to cause bonds of the City to be issued for the CFD in accordance with the Act to finance or refinance in whole or in part the construction and acquisition of the Facilities. The bonds or other debt will be issued in such series, will bear interest payable semi-annually (or in any other manner as the City Council determines) at a rate not to exceed the maximum rate of interest authorized by applicable law at the time of sale of the bonds or other debt, and must mature not later than 40 years after the date of issuance.

**SECTION 10.** When a Notice of Special Tax Lien is recorded under Streets and Highways Code section 3114.5 for the CFD, a continuing lien to secure the levy of the Special Tax will attach to all non-exempt real property in the CFD, and this lien will continue in force and effect until the special-tax obligation is permanently satisfied and the lien is cancelled in accordance with law, or until the City ceases levying the Special Tax.

**SECTION 11.** The City Council intends that the proposed Special Tax will be collected through the regular secured property-tax bills of the County of Alameda and will be subject to the same enforcement mechanism, and the same penalties and interest for late payment, as regular ad valorem property taxes. But the City Council reserves the right to use any other lawful means of billing, collecting, and enforcing the Special Tax, including direct billing, supplemental billing, and, when lawfully available, judicial foreclosure of the special-tax lien, including accelerated foreclosure remedies set forth in the Act.

**SECTION 12.** The RMA, included as Exhibit D, provides that the Special Tax may not be prepaid. As required by the Act, with respect to the portion of the Special Tax used for Facilities that is levied against any parcel used for private residential purposes (which use begins no later than the date on which an occupancy permit for private residential use is issued) —

(a) the maximum Special Tax will be specified as a dollar amount that (1) will be calculated and thereby established no later than the date on which the parcel is first subject to the Special Tax because of its use for private residential purposes and (2) will not increase by more than two percent each year;

(b) the Special Tax will not be levied against such property for Facilities beyond 100 years from the initial levy of the Special Tax (but the Special Tax lawfully levied in or before that year and that remains delinquent may be collected in subsequent years); and

(c) under no circumstances will the Special Tax levied against such property in any fiscal year be increased, because of delinquency or default by the owner of any other parcel or parcels within the CFD, by more than ten percent above the amount that would have been levied in that fiscal year had no delinquencies or defaults occurred.

**SECTION 13.** The City Council intends, under Government Code section 53340.1, to levy the proposed Special Tax on certain leasehold or possessory interests in property owned by a public agency, to be payable by the owner of the leasehold or possessory interests.

**SECTION 14.** The City Council intends, under Government Code section 53325.7, to establish the appropriations limit, as defined by subdivision (h) of section 8 of Article XIII B of the California Constitution, for Fiscal Year 2022-23 for the CFD in the amount of \$91 million.

**SECTION 15.** The City Council hereby fixes Tuesday, September 6, 2022, at 6:30 p.m., as the time for a public hearing to be held by the City Council to consider the establishment of the CFD; the proposed rate and method of apportionment of the special tax for the CFD; the financing of the Facilities and the Services; and all other matters as set forth in this resolution. The public hearing will be held in the City Council Chambers in the San Leandro City Hall, 835 East 14th Street, San Leandro, California 94577, with electronic and telephonic access provided as set forth in the agenda for the meeting. At the public hearing, any persons interested, including all taxpayers, property owners, and registered voters within the CFD (if any) may appear and be heard, and the City Council will hear and consider the testimony of all interested persons for and against the establishment of the CFD; the extent of the CFD; the levy of the special tax within the CFD; the acquisition and construction of any of the Facilities; the provision of the Services; the establishment of the appropriations limit for the CFD; and all other matters set forth in this resolution.

**SECTION 16.** Any protests to the proposals in this resolution may be made orally or in writing by any interested persons, including all taxpayers, property owners, and registered voters within the CFD (if any), except that any protests pertaining to the regularity or sufficiency of these proceedings must be in writing and clearly set forth the irregularities and defects to which objection is made. The City Council may waive any irregularities in the form or content of any written protest and at the public hearing may correct minor defects in the proceedings. All written protests not presented in person by the protester at the public hearing must be filed with the Clerk at or before the time fixed for the public hearing in order to be received and considered. Any written protest may be withdrawn in writing at any time before the conclusion of the public hearing.

**SECTION 17.** Proceedings with respect to the establishment of the CFD will be suspended for at least one year if written protests are submitted by fifty percent or more of the registered voters or six registered voters, whichever is more, residing within the CFD or by the owners of one-half or more of the land area within the CFD not exempt from the proposed Special Tax. If protests are directed only against certain elements of the proposed Special Tax, the proposed Facilities, the proposed Services, or any of the other proposals contained in this resolution, then only those matters need be excluded from the proceedings.

**SECTION 18.** The public hearing may be continued from time to time but must be completed within 30 days, except that if the City Council finds that the complexity of the CFD or the need for public participation requires additional time, then the public hearing may be continued from time to time for a period not to exceed six months.

**SECTION 19.** At the end of the public hearing, the City Council may abandon these proceedings or may, after passing upon all protests, determine to proceed with establishing the CFD and identifying the extent of the CFD. If the City Council determines at the end of the public hearing to proceed with establishing the CFD, then it expects that the proposed voting procedure will be by landowners within the CFD voting in accordance with the Act, as the City Council is informed that during the 90 days before the date set for the hearing there have been times when there were fewer than 12 registered voters residing within the CFD. The City Council will require this information to be confirmed before ordering the election.

**SECTION 20.** The Economic Development Manager (the “**Manager**”) or their designee is hereby directed to study the CFD and, at or before the time of the public hearing, to cause to be prepared and filed with the City Council a report briefly describing by type the facilities and services that, in the Manager’s opinion, will be required to adequately meet the needs of the CFD, together with estimates of the cost of financing the acquisition and construction of the Facilities and providing the Services, and an estimate of the incidental expenses related thereto. The report will be available for inspection by the public and will be made a part of the record of the public hearing. The Manager may retain consultants to prepare the report.

**SECTION 21.** In the opinion of the City Council, the public interest will not be served by allowing the property owners in the CFD to enter into a contract under Government Code section 53329.5, subdivision (a), to do the work to be financed under the Act. Notwithstanding the foregoing, the City Council, on behalf of CFD, may enter into one or more contracts directly with any of the property owners with respect to the construction or acquisition of all or any portion of the Facilities.

**SECTION 22.** The City Council intends to reserve to itself the right and authority to allow bond tenders from any interested landowner within the CFD to be accepted under Government Code sections 53344.1 and 53356.8 in full or part payment of any installment of the Special Tax or the interest or penalties thereon, as applicable.

**SECTION 23.** The Clerk shall give notice of the time and place of the public hearing by publishing once in the East Bay Daily Review, a newspaper of general circulation published in the area of the CFD, a notice of public hearing in the form required by the Act (publication to be complete at least seven days before the date set for the public hearing).

**SECTION 24.** This resolution takes effect when adopted.

Introduced by \_\_\_\_\_ and passed and adopted this 18<sup>th</sup> day of July 2022, by the following vote:

Members of the Council:

AYES:

NOES:

ABSENT:

ATTEST: \_\_\_\_\_  
Kelly B. Clancy, Acting City Clerk