Meeting Date: 5/25/10

AGENDA REPORT

City of Santa Clara, California

Agenda Item # 6B.1

Santa Clara
All-America City
2001

DATE: May 19, 2010

TO: City Manager for Council Action

FROM: Elizabeth H. Silver, Interim City Attorney

SUBJECT: Adoption of Ordinance No. 1859 Levying Special Taxes within the City Of Santa Clara Community Facilities District No. 2010-1

EXECUTIVE SUMMARY:

Ordinance No. 1859 (Levying Special Taxes within the City Of Santa Clara Community Facilities District No. 2010-1) was passed for the purpose of publication ("passed to print") on May 11, 2010. Pursuant to City Charter Sections 808 and 812, proposed Ordinance No. 1859 was published once on May 19, 2010 and copies were posted in at least three public places.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

Adopting the ordinance is in furtherance of the larger financing plan for the proposed stadium. Construction of the proposed stadium through a public-private partnership with the 49ers is in keeping with the Council's goals of creating an entertainment destination in the Redevelopment Project Area, and is expected to provide economic benefits to the City and its residents and businesses. In particular, it is anticipated that a stadium in the Bayshore North Area will significantly benefit the weekend business of local hotels and increase overall TOT revenues in the City.

ECONOMIC/FISCAL IMPACT:

Any City costs associated with administering the CFD in the future will be paid from the special taxes.
For the two parcels owned by the Agency that are leased to hotels, the CFD tax will be levied on and secured by the hotel owners' leasehold interest in the parcels. The Agency is exempt from the special tax; no obligation or lien for the special taxes can be levied against the Agency's fee ownership interest in the parcels.

RECOMMENDATION:

That the Council adopt Ordinance No. 1859 Levying Special Taxes within the City Of Santa Clara Community Facilities District No. 2010-1.

Elizabeth H. Silver
Interim City Attorney

APPROVED:

Jennifer Sparacino
City Manager

Documents Related to this Report:
1) Ordinance No. 1859
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ORDINANCE NO. 1859

AN ORDINANCE OF THE CITY OF SANTA CLARA, CALIFORNIA, LEVYING SPECIAL TAXES WITHIN THE CITY OF SANTA CLARA COMMUNITY FACILITIES DISTRICT NO. 2010-1

BE IT ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, on March 30, 2010, the City Council adopted its Resolution No. 10-7707 entitled "A Resolution of the City of Santa Clara, California, Intention to Establish Community Facilities District: City of Santa Clara Community Facilities District No. 2010-1" (the "Resolution of Intention"), stating its intention to form "City of Santa Clara Community Facilities District No. 2010-1" (the "CFD"), including a "City of Santa Clara Community Facilities District No. 2010-1 (Future Annexation Area)" (the "Future Annexation Area"), pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, Chapter 2.5 of Part 1 of Division 2 of Title 5, commencing with Section 53311, of the California Government Code (the "Act");

WHEREAS, notice was published as required by the Act relative to the intention of this City Council to form the CFD, to provide for certain public facilities and public services and to incur bonds or other indebtedness for the CFD (the "Bonds") in an amount not to exceed $38,000,000;

WHEREAS, Council has held noticed public hearings as required by the Act relative to (i) the determination to proceed with the formation of the CFD and the rate and method of apportionment of the special tax to be levied within the CFD to finance a portion of the costs of the public facilities and public services and (ii) the issuance of not to exceed $38,000,000 of bonds or other indebtedness for the CFD;

WHEREAS, at said hearing all persons desiring to be heard on all matters pertaining to the formation of the CFD and the levy of the special taxes were heard, substantial evidence was presented and considered by this City Council and a full and fair hearing was held;

WHEREAS, subsequent to the hearing, this City Council adopted its Resolution No. 10-7727 entitled "A Resolution of the City of Santa Clara, California, Formation of Community Facilities District: City of Santa Clara Community Facilities District No. 2010-1" (the "Resolution of Formation"), its Resolution No. 10-7728 entitled "A Resolution of the City of Santa Clara, California, Determining Necessity to Incur Bonded Indebtedness: City of Santa Clara Community Facilities District No. 2010-1" (the "Resolution of Necessity") and its Resolution No. 10-7729 entitled "A Resolution of the City of Santa Clara, California, Calling Special Election: City of Santa Clara Community Facilities District No. 2010-1" which resolutions defined the public facilities to be financed by the CFD (the "Facilities") and the public services to be funded by the CFD (the "Services"), established the CFD, authorized the levy of a special tax with the CFD, determined the necessity to incur bonds or other indebtedness in the CFD and called an election within the CFD on the propositions of incurring indebtedness, levying a special tax, and establishing an appropriations limit within the CFD; and,

WHEREAS, on May 11, 2010, a special election was held within the CFD at which the eligible landowner electors approved such propositions by the two-thirds vote required by the Act.

NOW THEREFORE, BE IT FURTHER ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

SECTION 1: By the passage of this Ordinance this City Council hereby authorizes and levies special taxes within the CFD pursuant to the Act, at the rate and in accordance with the formula (the "Rate and Method") set forth in the Resolution of Formation, which Resolution of Formation is by this reference incorporated herein. The special taxes are hereby levied starting in the calendar quarter after the Stadium Opening Date (as that term is defined in the Rate and Method) and continuing until principal and interest on the Bonds have been repaid, the City's costs of constructing or acquiring the Facilities have been paid, and all administrative expenses and Services have been paid or reimbursed; provided, however, that in no event shall the special tax be levied for more than 40 years beginning with the first calendar quarter after the Stadium Opening Date (as that term is defined in the Rate and Method).

SECTION 2: The Director of Finance of the City is hereby authorized and directed to determine the specific special tax rate and amount to be levied for each parcel of real property within the CFD, in the manner and as provided in the Resolution of Formation and the Rate and Method.

SECTION 3: Properties or entities of the state, federal or local governments shall be exempt from any levy of the special taxes. In no event shall the special taxes be levied on any parcel within the CFD in excess of the maximum tax specified in the Resolution of Formation and the Rate and Method.

SECTION 4: All of the collections of the special tax shall be used as provided for in the Act and in the Resolution of Formation including, but not limited to, the payment of principal and interest on the Bonds, the replenishment of any reserve fund for the Bonds, the payment of the costs of the Facilities and the Services, the payment of the costs of the City in administering the CFD, and the costs of collecting and administering the special tax.

SECTION 5: The special taxes shall be collected in the same manner as ordinary ad valorem taxes are collected and shall have the same lien priority, and be subject to the same penalties and the same procedure and sale in cases of delinquency as provided for ad valorem taxes; provided, however, that the Director of Finance is hereby authorized to collect the special taxes by other appropriate methods of collection, including direct billing to the affected property owners at such intervals deemed appropriate. In addition, the provisions of Section 53356.1 of the Act shall apply to delinquent special tax payments.

SECTION 6: Constitutionality, severability.

If any section, subsection, sentence, clause, phrase, or word of this ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

SECTION 7: Effective date.

This ordinance shall take effect thirty (30) days after its final adoption; however, prior to its final adoption it shall be published in accordance with the requirements of Section 808 and 812 of "The Charter of the City of Santa Clara, California."

PASSED FOR THE PURPOSE OF PUBLICATION this 11^{th} day of May, 2010, by the following vote:

AYES:	COUNCILORS:	Caserta, Kornder, Matthews and Moore and Mayor Mahan
NOES:	COUNCILORS:	Kennedy and McLeod
ABSENT:	COUNCILORS:	None
ABSTAINED:	COUNCILORS:	None

ATTEST: ______________________
ROD DIRIDON, JR.
CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference:
1. Resolution No. 10-7727 entitled "A Resolution of the City of Santa Clara, California, Formation of Community Facilities District: City of Santa Clara Community Facilities District No. 2010-1"

RESOLUTION NO. 10-7727

A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA, FORMATION OF COMMUNITY FACILITIES DISTRICT: CITY OF SANTA CLARA COMMUNITY FACILITIES DISTRICT NO. 2010-1

BE IT RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, on March 30, 2010, the City Council adopted its Resolution No. 10-7707 entitled "A Resolution of the City of Santa Clara, California, Intention to Establish Community Facilities District: City of Santa Clara Community Facilities District No. 2010-1" (the "Resolution of Intention"), stating its intention to form "City of Santa Clara Community Facilities District No. 2010-1" (the "CFD"), including a "City of Santa Clara Community Facilities District No. 2010-1 (Future Annexation Area)" (the "Future Annexation Area"), pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, Chapter 2.5 of Part 1 of Division 2 of Title 5, commencing with Section 53311, of the California Government Code (the "Act");

WHEREAS, the Resolution of Intention, incorporating a map of the proposed boundaries of the CFD and the Future Annexation Area and stating the facilities and the services to be provided (as set forth in the list attached hereto as Exhibit A), the cost of providing such facilities and the services, and the rate and method of apportionment of the special tax to be levied within the CFD to pay the principal and interest on bonds proposed to be issued with respect to the CFD, the cost of the facilities and the cost of the services, is on file with the City Clerk and the provisions thereof are incorporated herein by this reference as if fully set forth herein;

WHEREAS, on this date, Council held a noticed public hearing as required by the Act and the Resolution of Intention relative to the proposed formation of the CFD and the Future Annexation Area;

WHEREAS, at the hearing all interested persons desiring to be heard on all matters pertaining to the formation of the CFD and the Future Annexation Area, the facilities to be provided therein, the services to be provided therein and the levy of said special tax were heard and a full and fair hearing was held;

WHEREAS, at the hearing evidence was presented to Council on said matters before it, including a report caused to be prepared by the Assistant City Manager (the "Report") as to the facilities and the services to be provided through the CFD and the costs thereof, a copy of which is on file with the City Clerk, and Council at the conclusion of said hearing is fully advised in the premises;

WHEREAS, written protests with respect to the formation of the CFD, the furnishing of specified types of facilities and services and the rate and method of apportionment of the special taxes have not been filed with the City Clerk by 50% or more of the registered voters residing within the territory of the CFD or property owners of one-half or more of the area of land within the CFD and not exempt from the proposed special tax;

WHEREAS, the special tax proposed to be levied in the CFD to pay for the proposed facilities and services to be provided therein has not been eliminated by protest by 50% or more of the registered voters residing within the territory of the CFD or the owners of one-half or more of the area of land within the CFD and not exempt from the special tax; and

WHEREAS, prior to the time fixed for the hearing, written protests had not been filed with the City Clerk against the proposed annexation of the Future Annexation Area to the CFD by (i) 50% of more of the registered voters, or six registered voters, whichever is more, residing in the proposed boundaries of the CFD, or (ii) 50% or more of the registered voters, or six registered voters, whichever is more, residing in the Future Annexation Area, (iii) owners of one-half or more of the area of land in the proposed CFD or (iv) owners of one-half or more of the area of land in the Future Annexation Area.

NOW THEREFORE, BE IT FURTHER RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

1. Recitals. The City Council finds that the above Recitals are true and correct.

2. No Majority Protest. The proposed special tax to be levied within the CFD has not been precluded by majority protest pursuant to section 53324 of the Act.

3. Prior Proceedings Valid. All prior proceedings taken by this City Council in connection with the establishment of the CFD and the Future Annexation Area and the levy of the special tax have been duly considered and are hereby found and determined to be valid and in conformity with the Act.

4. Establishment of CFD and Future Annexation Area. The "City of Santa Clara Community Facilities District No. 2010-1" (the "CFD") and the "City of Santa Clara Community Facilities District No. 2010-1 (Future Annexation Area)" (the "Future Annexation Area") are hereby established pursuant to the Act.

5. Boundaries Described. The boundaries of the CFD and the Future Annexation Area as set forth in the map of the CFD heretofore recorded in the Santa Clara County Recorder's Office on April 7, 2010, as Document No. 20670542, in Book 45 at Pages 40 through 42, of Maps of Assessment and Community Facilities Districts, are hereby approved, are incorporated herein by reference and shall be the boundaries of the CFD and the Future Annexation Area.

Parcels within the Future Annexation Area shall be annexed to the CFD only with the unanimous approval (each, a "Unanimous Approval") of the owner or owners of each parcel or parcels at the time that parcel or those parcels are annexed, without any requirement for further public hearings or additional proceedings.

6. Facilities and Services. The type of public facilities proposed to be financed and funded by the CFD and the Future Annexation Area pursuant to the Act shall consist of those listed as facilities on Exhibit A hereto and hereby incorporated herein (the "Facilities"). The type of services proposed to be funded by the CFD and the Future Annexation Area and pursuant to the Act shall consist of those listed in Exhibit A hereto and hereby incorporated herein (the "Services").

7. Special Tax. Except to the extent that funds are otherwise available, the City will levy a special tax (the "Special Tax") to pay directly for the Facilities, to pay the principal and interest on bonds or other indebtedness of the City issued to finance the Facilities, to pay for the Services, and to reimburse third parties for the costs of Facilities. The Special Tax will be secured by recordation of a continuing lien against all non-exempt real property in the CFD, will be levied periodically within the CFD, and will be collected in such manner as Council or its designee may determine, which may include direct billing of the affected property owners, or collection in the same manner as ordinary ad valorem property taxes.

The proposed rate and method of apportionment of the Special Tax among the parcels of real property within the CFD are described in Exhibit B attached hereto and hereby incorporated herein (the "Rate and Method"), which contains sufficient detail to allow each landowner within the proposed CFD to estimate the maximum amount such owner will have to pay.

The Special Tax shall not be levied in the CFD after the fiscal year specified in the Rate and Method except that a Special Tax that was lawfully levied in or before the final tax year and that remains delinquent may be collected in subsequent years. Under no circumstances shall the

Special Tax levied against any parcel in the CFD to be used for private residential purposes be increased as a consequence of delinquency or default by the owner of any other parcel or parcels within the CFD by more than 10%.

8. Future Annexation Area. Territory in the Future Annexation Area will be annexed into the CFD and a special tax will be levied on such territory only with the Unanimous Approval of the owner or owners of each parcel or parcels at the time that parcel or those parcels are annexed into the CFD. Except to the extent that funds are otherwise available, the City will levy the Special Tax to pay directly for the Facilities, to pay the principal and interest on bonds or other indebtedness of the City issued to finance the Facilities, to pay for the Services, and to reimburse third parties for the costs of Facilities. The Special Tax will be secured by recordation of a continuing lien against all non-exempt real property in the Future Annexation Area, will be levied periodically within the Future Annexation Area, and will be collected in such manner as Council or its designee may determine, which may include direct billing of the affected property owners, or collection in the same manner as ordinary ad valorem property taxes.

As required by Section 53339.3(d) of the Act, Council hereby determines that the Special Tax proposed to pay for one or more Facilities to be supplied within the Future Annexation Area will be equal to the Special Taxes levied to pay for the same Facilities in previously-existing areas of the CFD, except that (i) a higher Special Tax may be levied within the Future Annexation Area to pay for the same Facilities to compensate for the interest and principal previously paid from Special Taxes in the original area of the CFD, less any depreciation allocable to the financed Facilities and (ii) a higher Special Tax may be levied in the Future Annexation Area to pay for new or additional Facilities, with or without bond financing. As required by Section 53339.3(d) of the Act, the Council hereby further determines that the Special

Tax proposed to pay for Services to be supplied within the Future Annexation Area shall be equal to any Special Tax levied to pay for the same Services in the existing CFD, except that a higher or lower tax may be levied within the Future Annexation Area to the extent that the actual cost of providing the Services in the Future Annexation Area is higher or lower than the cost of providing those Services in the existing CFD. In so finding, Council does not intend to limit its ability to levy a Special Tax within the Future Annexation Area to provide new or additional services beyond those supplied within the existing CFD.

9. Increased Demands. It is hereby found and determined that the Facilities and the Services are necessary to meet increased demands placed upon local agencies as the result of development occurring in the CFD and the Future Annexation Area.

10. Responsible Official. The City Manager is the officer of the City who will be responsible for preparing annually a current roll of special tax levy obligations by assessor's parcel number and who will be responsible for estimating future special tax levies pursuant to the Act. The City Manager can be contacted at City of Santa Clara, 1500 Warburton Avenue, Santa Clara, CA 95050, 408-615-2200.

11. Tax Lien. Upon recordation of a notice of special tax lien pursuant to Section 3114.5 of the Streets and Highways Code of California, a continuing lien to secure each levy of the special tax shall attach to all nonexempt real property in the CFD and this lien shall continue in force and effect until the special tax obligation is permanently satisfied and the lien canceled in accordance with law or until collection of the tax by the City ceases.

12. Appropriations Limit. In accordance with the Act, the annual appropriations limit, as defined by subdivision (h) of Section 8 of Article XIII B of the California Constitution, of the CFD is hereby preliminarily established at $38,000,000, and said appropriations limit shall be

submitted to the voters of the CFD as hereafter provided. The proposition establishing the annual appropriations limit shall become effective if approved by the qualified electors voting thereon and shall be adjusted in accordance with the applicable provisions of the Act.

13. Election. Pursuant to the Act, the proposition of the levy of the special tax and the proposition of the establishment of the appropriations limit specified above shall be submitted to the qualified electors of the CFD at an election. The time, place and conditions of the election shall be as specified by a separate resolution of this City Council.

14. Further Action. The City Manager is hereby authorized and directed to take all actions necessary or advisable to give effect to the transactions contemplated by this Resolution.

15. Constitutionality, severability. If any section, subsection, sentence, clause, phrase, or word of this resolution is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the resolution. The City of Santa Clara, California, hereby declares that it would have passed this resolution and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

16. Effective date. This resolution shall become effective immediately.

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I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE 11th DAY OF MAY, 2010, BY THE FOLLOWING VOTE:

AYES:	COUNCILORS:	Caserta, Kornder, Matthews and Moore and Mayor Mahan
NOES:	COUNCILORS:	Kennedy and McLeod
ABSENT:	COUNCILORS:	None
ABSTAINED:	COUNCILORS:	None

ATTEST:

ROD DIRIDON, JR.
CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference:
1. Exhibit A: Authorized Facilities and Services
2. Exhibit B: Rate and Method of Apportionment of Special Tax

EXHIBIT A

CITY OF SANTA CLARA
Community Facilities District No. 2010-1

AUTHORIZED FACILITIES AND SERVICES

DESCRIPTION OF AUTHORIZED FACILITIES TO BE FINANCED BY THE CFD

The Facilities shown below are proposed to be financed or funded in whole or in part by the CFD. The Facilities shall be owned and operated by the City or by another public agency, and shall be constructed, whether or not acquired in their completed states, pursuant to the plans and specifications approved by the City and its officials, including the City Engineer.

(a) utility improvements

(b) streets, parking lots and paving

(c) sidewalks, pedestrian pathways and pedestrian bridges

(d) fencing

(e) landscaping and lighting

(f) storm drain and flood protection facilities

The Facilities to be financed or funded shall include, without limitation, the following costs: earthwork related to the Facilities; appurtenances to and improvements related to the Facilities; related landscaping and irrigation; acquiring rights-of-way (including any right-of-way intended to be dedicated by the recording of a final map); design, architecture, engineering and planning; any environmental review or environmental studies, traffic studies, surveys, geotechnical studies, soils testing, or other studies related to the Facilities; permits, plan check and inspection fees; insurance, legal and related overhead costs; project management, coordination and supervision; and any other costs or appurtenances related to any of the foregoing.

The CFD may also finance or fund, and the special taxes may also be used, for any of the following purposes:

1. To pay for the purchase, construction, expansion, improvement or rehabilitation of any of the Facilities, and to reimburse the City or any third parties for advances made to purchase, construct, expand, improve or rehabilitate any of the Facilities.

2. To pay principal of, interest on, and any premium due with respect to, any bonds or other indebtedness issued or entered into by the City with respect to the CFD, and to pay lease payments or installment sale payments with respect to any of the Facilities.

3. To pay all expenses related to the issuance of bonds or other indebtedness by the City with

respect to the CFD, including without limitation: underwriters discount; reserve fund; capitalized interest; fees, expenses and premium associated with any letter of credit or other credit enhancement; fees and expenses of bond counsel, disclosure counsel and issuer's counsel; fees and expenses of the City's financial advisors and special tax consultants, and other City consultants; and all other incidental expenses.

4. To pay annual or periodic administrative fees of the City and the bond trustee or fiscal agent related to the CFD and the bonds, and to reimburse the City for its costs and expenses related to the administration of the CFD and the bonds.

5. To reimburse the City or any third parties for actual costs advanced that are related to the formation of the CFD.

DESCRIPTION OF AUTHORIZED SERVICES TO BE FINANCED BY THE CFD

The Services shown below and authorized to be funded by the CFD and paid by the special taxes shall incorporate and have the meaning given to the term "services" in the Mello-Roos Community Facilities Act of 1982. The cost of the Services include all related administrative costs and expenses, and related reserves for replacement of vehicles, equipment and facilities.

(a) Police protection services.

(b) Fire protection and suppression services, and ambulance and paramedic services.

EXHIBIT B

CITY OF SANTA CLARA
Community Facilities District No. 2010-1

RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

A Special Tax applicable to each Assessor's Parcel in the City of Santa Clara Community Facilities District No. 2010-1 shall be levied and collected according to the tax liability determined by the Administrator through the application of the appropriate amount or rate for Hotel Property, as described below. All of the property in CFD No. 2010-1, unless exempted by law or by the provisions of Section D below, shall be taxed for the purposes, to the extent, and in the manner herein provided, including property subsequently annexed to CFD No. 2010-1, 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:

"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 California Government Code.

"Administrative Expenses" means any or all of the following: the fees and expenses of any fiscal agent or trustee (including any fees or expenses of its counsel) employed in connection with any Bonds, and the expenses of the City carrying out its duties with respect to CFD No. 2010-1 and the Bonds, including, but not limited to, levying and collecting the Special Tax, the fees and expenses of legal counsel, charges levied by the County in connection with the levy and collection of Special Taxes, costs related to property owner inquiries regarding the Special Tax, amounts needed to pay rebate to the federal government with respect to the Bonds, costs associated with complying with any continuing disclosure requirements for the Bonds and the Special Tax, and all other costs and expenses of the City in any way related to the establishment or administration of CFD No. 2010-1 or administration of the Bonds.

"Administrator" means the Director of Finance for the City, or such other person or entity designated by the Director of Finance of the City to administer the Special Tax according to this RMA.

"Assessor's Parcel" or **"Parcel"** means a lot or parcel shown on an official map of the County Assessor designating parcels by Assessor's Parcel numbers.

"Authorized Facilities" means those public facilities authorized to be funded by CFD No. 2010-1 as set forth in the CFD formation documents.

"Authorized Services" means those public services authorized to be funded by CFD No. 2010-1 as set forth in the formation documents.

"Base Special Tax" means the Special Tax levied pursuant to this RMA, which equals two percent (2%) of the Rent that is used in the calculation of the Transient Occupancy Tax for Hotel Property.

"Bonds" means bonds or other debt (as defined in the Act), whether in one or more series, issued or assumed by CFD No. 2010-1 to pay for Authorized Facilities.

"CFD No. 2010-1" or **"CFD"** means the City of Santa Clara Community Facilities District No. 2010-1.

"City" means the City of Santa Clara and/or any joint powers agency that becomes the governing authority for issues related to the new professional National Football League Stadium in the City of Santa Clara.

"City Code" means the Santa Clara City Code.

"City Council" means the City Council of the City of Santa Clara, acting as the legislative body of CFD No. 2010-1.

"County" means the County of Santa Clara.

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

"Future Annexation Areas" means the areas designated for potential future annexation to CFD No. 2010-1 as shown in the CFD No. 2010-1 boundary map that was recorded in the County Recorder's Office.

"Hotel" or **"Hotel Property"** means any structure, or any portion of any structure within the CFD, that is occupied or intended or designed for occupancy by Transients for dwelling, lodging, or sleeping purposes, including but not limited to, any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobile home, or house trailer at a fixed location, or other similar structure or portion thereof. This definition incorporates by reference and shall be deemed to be amended to incorporate any changes made from time to time to Section 3.25.020(b) of the TOT Chapter.

"Indenture" means the bond indenture, fiscal agent agreement, trust agreement, resolution, or other instrument pursuant to which Bonds are issued, as modified, amended, and/or supplemented from time to time, and any instrument replacing or supplementing the same.

"Maximum Special Tax" means the greatest amount of Special Tax that can be collected in accordance with Section B below.

"**Operator**" means the person or entity who is proprietor of any Hotel Property, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, or licensee, or in any other capacity. Where this person performs his/her functions through a managing agent of any type or character other than as an employee of an operator, the managing agent shall also be deemed an Operator for the purposes of this RMA and shall have the same duties and liabilities as his/her principal. Compliance with the provisions of this RMA by either the principal or the managing agent shall, however, be considered to be compliance by both. This definition incorporates by reference and shall be deemed to be amended to incorporate any changes made from time to time to Section 3.25.020(d) of the TOT Chapter.

"**Rent**" means the consideration charged, whether or not actually received by Operator, for the occupancy of space in a Hotel valued in money, whether said Rent is received in money, goods, labor, or otherwise, including all receipts, cash, credits, and property and services of any kind or nature, without any deduction therefrom whatsoever. This definition incorporates by reference and shall be deemed to be amended to incorporate any changes made from time to time to Section 3.25.020(f) the TOT Chapter.

"**RMA**" means this Rate and Method of Apportionment of Special Tax.

"**Special Tax**" means a special tax collected pursuant to this RMA.

"**Stadium Opening Date**" means the date of the first pre-season, regular season, or post-season game, whichever comes first, held at the new professional National Football League Stadium located in the City.

"**TOT Chapter**" means the Transient Occupancy Tax chapter, being Chapter 3.25 (commencing with Section 3.25.010) of the City Code, as it may be amended from time to time.

"**Transient**" means any person who exercises occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty (30) consecutive days or less, counting portions of days as full days. Any such person exercising occupancy in a Hotel shall be deemed to be a Transient until the period of thirty (30) consecutive days has expired. If such person enters into a written agreement with a Hotel pursuant to Section 3.25.020(g) of the TOT Chapter, and such agreement requirements are satisfied, such person shall not be considered a Transient and will not be subject to the Special Tax. This definition incorporates by reference and shall be deemed to be amended to incorporate any changes made from time to time to Section 3.25.020(g) of the TOT Chapter.

"**Transient Occupancy Tax**" means a tax imposed for the privilege of occupancy in Hotel Property, which each Transient is subject to and is required to pay in accordance with the TOT Chapter.

B. MAXIMUM SPECIAL TAX

In any Special Tax reporting period, the Maximum Special Tax for each Operator shall be equal to the sum of (i) the then-current Base Special Tax, (ii) any Base Special Taxes from prior reporting periods that have not yet been paid, and (iii) penalties and interest that have accrued on the delinquent Special Taxes.

C. COLLECTION OF THE SPECIAL TAXES

Starting in the calendar quarter after the Stadium Opening Date, Special Taxes shall be levied on and collected from each Hotel Property pursuant to this RMA. Each Operator of Hotel Property shall report and remit the Special Taxes in the same manner as outlined in Section 3.25.090 of the TOT Chapter. Specifically, the Operators' duties shall include the following:

(i) Each Operator shall, on or before the last day of the month following the close of each calendar quarter (or at the close of any shorter reporting period, which may be established by the Administrator), file a Special Tax return with the Administrator, on forms and pursuant to guidelines provided by the Administrator, of the total Rents charged and received and the amount of Special Tax collected for transient occupancies. The Special Tax collected shall be the Maximum Special Tax, unless the Administrator determines a lesser amount shall be collected pursuant to the Indenture or pursuant to any provisions in a term sheet, disposition and development agreement, or other such agreement between the City and the Operators that provide for a reduction of, or credit against, Special Taxes.

(ii) At the time the return is filed, the full amount of the Special Tax collected shall be remitted to the Administrator.

(iii) The Administrator may establish shorter reporting periods for any Operator if the Administrator deems it necessary in order to ensure timely collection of the Special Tax, and the Administrator may require further information in the Special Tax return. Special Tax returns and payments of all Special Taxes are due immediately upon cessation of business for any reason.

(iv) All Special Taxes collected by Operators shall be held by the Operators in trust for the account of the CFD until payment thereof is made to the Administrator.

Special Taxes for CFD No. 2010-1 shall be collected in the same manner and at the same time as Transient Occupancy Taxes, provided, however, that the City may collect Special Taxes at a different time or in a different manner, and may collect delinquent Special Taxes through foreclosure or other available methods as set forth in the Indenture. Special Taxes levied pursuant to this RMA shall be subject to the same penalties and interest applied to delinquent Transient Occupancy Taxes pursuant to Sections 3.25.100 and 3.25.110 of the TOT Chapter.

Additionally, Special Taxes will be subject to the same audit, appeal, and refund procedures as set forth in Sections 3.25.120, 3.25.130, and 3.25.150 of the TOT Chapter.

The Special Tax shall be levied and collected until principal and interest on Bonds have been repaid, the City's costs of constructing or acquiring Authorized Facilities from Special Tax proceeds have been paid, and all Administrative Expenses and Authorized Services have been paid and/or reimbursed. However, in no event shall a Special Tax be levied for more than 40 years beginning with the first calendar quarter after the Stadium Opening Date.

D. EXEMPTIONS

Notwithstanding any other provision of this RMA, no Special Tax shall be collected from (i) any Parcel that is not Hotel Property, and (ii) any person who is exempt from the Transient Occupancy Tax pursuant to Section 3.25.040 of the TOT Chapter.

E. INTERPRETATION OF SPECIAL TAX FORMULA

The City may amend or supplement this RMA, including without limitation changes to mechanisms for collecting the Special Taxes, to clarify or make this RMA consistent with the TOT Chapter. No such amendment, supplement, or change shall increase the Maximum Special Tax that can be collected.

ORDINANCE NO. 1859

AN ORDINANCE OF THE CITY OF SANTA CLARA, CALIFORNIA, LEVYING SPECIAL TAXES WITHIN THE CITY OF SANTA CLARA COMMUNITY FACILITIES DISTRICT NO. 2010-1

BE IT ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, on March 30, 2010, the City Council adopted its Resolution No. 10-7707 entitled "A Resolution of the City of Santa Clara, California, Intention to Establish Community Facilities District: City of Santa Clara Community Facilities District No. 2010-1" (the "Resolution of Intention"), stating its intention to form "City of Santa Clara Community Facilities District No. 2010-1" (the "CFD"), including a "City of Santa Clara Community Facilities District No. 2010-1 (Future Annexation Area)" (the "Future Annexation Area"), pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, Chapter 2.5 of Part 1 of Division 2 of Title 5, commencing with Section 53311, of the California Government Code (the "Act");

WHEREAS, notice was published as required by the Act relative to the intention of this City Council to form the CFD, to provide for certain public facilities and public services and to incur bonds or other indebtedness for the CFD (the "Bonds") in an amount not to exceed $38,000,000;

WHEREAS, Council has held noticed public hearings as required by the Act relative to (i) the determination to proceed with the formation of the CFD and the rate and method of apportionment of the special tax to be levied within the CFD to finance a portion of the costs of the public facilities and public services and (ii) the issuance of not to exceed $38,000,000 of bonds or other indebtedness for the CFD;

WHEREAS, at said hearing all persons desiring to be heard on all matters pertaining to the formation of the CFD and the levy of the special taxes were heard, substantial evidence was presented and considered by this City Council and a full and fair hearing was held;

WHEREAS, subsequent to the hearing, this City Council adopted its Resolution No. 10-7727 entitled "A Resolution of the City of Santa Clara, California, Formation of Community Facilities District: City of Santa Clara Community Facilities District No. 2010-1" (the "Resolution of Formation"), its Resolution No. 10-7728 entitled "A Resolution of the City of Santa Clara, California, Determining Necessity to Incur Bonded Indebtedness: City of Santa Clara Community Facilities District No. 2010-1" (the "Resolution of Necessity") and its Resolution No. 10-7729 entitled "A Resolution of the City of Santa Clara, California, Calling Special Election: City of Santa Clara Community Facilities District No. 2010-1" which resolutions defined the public facilities to be financed by the CFD (the "Facilities") and the public services to be funded by the CFD (the "Services"), established the CFD, authorized the levy of a special tax with the CFD, determined the necessity to incur bonds or other indebtedness in the CFD and called an election within the CFD on the propositions of incurring indebtedness, levying a special tax, and establishing an appropriations limit within the CFD; and,

WHEREAS, on May 11, 2010, a special election was held within the CFD at which the eligible landowner electors approved such propositions by the two-thirds vote required by the Act.

NOW THEREFORE, BE IT FURTHER ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

SECTION 1: By the passage of this Ordinance this City Council hereby authorizes and levies special taxes within the CFD pursuant to the Act, at the rate and in accordance with the formula (the "Rate and Method") set forth in the Resolution of Formation, which Resolution of Formation is by this reference incorporated herein. The special taxes are hereby levied starting in the calendar quarter after the Stadium Opening Date (as that term is defined in the Rate and Method) and continuing until principal and interest on the Bonds have been repaid, the City's costs of constructing or acquiring the Facilities have been paid, and all administrative expenses and Services have been paid or reimbursed; provided, however, that in no event shall the special tax be levied for more than 40 years beginning with the first calendar quarter after the Stadium Opening Date (as that term is defined in the Rate and Method).

SECTION 2: The Director of Finance of the City is hereby authorized and directed to determine the specific special tax rate and amount to be levied for each parcel of real property within the CFD, in the manner and as provided in the Resolution of Formation and the Rate and Method.

SECTION 3: Properties or entities of the state, federal or local governments shall be exempt from any levy of the special taxes. In no event shall the special taxes be levied on any parcel within the CFD in excess of the maximum tax specified in the Resolution of Formation and the Rate and Method.

SECTION 4: All of the collections of the special tax shall be used as provided for in the Act and in the Resolution of Formation including, but not limited to, the payment of principal and interest on the Bonds, the replenishment of any reserve fund for the Bonds, the payment of the costs of the Facilities and the Services, the payment of the costs of the City in administering the CFD, and the costs of collecting and administering the special tax.

SECTION 5: The special taxes shall be collected in the same manner as ordinary ad valorem taxes are collected and shall have the same lien priority, and be subject to the same penalties and the same procedure and sale in cases of delinquency as provided for ad valorem taxes; provided, however, that the Director of Finance is hereby authorized to collect the special taxes by other appropriate methods of collection, including direct billing to the affected property owners at such intervals deemed appropriate. In addition, the provisions of Section 53356.1 of the Act shall apply to delinquent special tax payments.

SECTION 6: Constitutionality, severability.

If any section, subsection, sentence, clause, phrase, or word of this ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

SECTION 7: Effective date.

This ordinance shall take effect thirty (30) days after its final adoption; however, prior to its final adoption it shall be published in accordance with the requirements of Section 808 and 812 of "The Charter of the City of Santa Clara, California."

PASSED FOR THE PURPOSE OF PUBLICATION this 11th day of May, 2010, by the following vote:

AYES:	COUNCILORS:	Caserta, Kornder, Matthews and Moore and Mayor Mahan
NOES:	COUNCILORS:	Kennedy and McLeod
ABSENT:	COUNCILORS:	None
ABSTAINED:	COUNCILORS:	None

ATTEST: ____________________

ROD DIRIDON, JR.

CITY CLERK

CITY OF SANTA CLARA

Attachments incorporated by reference:

1. Resolution No. 10-7727 entitled "A Resolution of the City of Santa Clara, California, Formation of Community Facilities District: City of Santa Clara Community Facilities District No. 2010-1"

Pub.: 5/19/2010