



STAFF REPORT

January 24, 2024
File Number 0685-10

SUBJECT

REPEAL OF ORDINANCES ESTABLISHING AND IMPLEMENTING THE CITY'S SERVICES COMMUNITY FACILITIES DISTRICT 2020-1

DEPARTMENT

Development Services

RECOMMENDATION

Request the City Council introduce Ordinance No. 2024-02 rescinding and repealing previously enacted ordinances and resolutions as follows:

1. Resolution No. 2020-44 Formation of CFD 2020-1, authorizing formation of the Services CFD;
2. Ordinance No. 2020-10 authorizing Levy of Special Taxes for CFD 2020-1, the Citywide Services Community Facilities District ("Services CFD"); and
3. Ordinance No. 2020-24 authorizing the establishment of funding mechanisms to offset financial impacts to the City of new residential development, including community facilities service districts.

4.

Staff also recommend the City Council adopt Resolution No. 2024-12 authorizing the City Manager to execute a Settlement Agreement with San Diego Building Industry Association of San Diego County ("BIASD") to resolve litigation brought by the BIASD challenging the Services CFD and related City enactments.

Staff Recommendation: Approval (Development Services: Christopher W. McKinney, Deputy City Manager / Director of Development Services)

Presenter: Christopher W. McKinney, Deputy City Manager / Director of Development Services

FISCAL ANALYSIS

Prior to the City Council's adoption of Resolution No. 2023-156 on December 15, 2023, which based upon a new Fiscal Impact Analysis set levies for all residential development categories to \$0, the annual revenue from the Citywide Services CFD was approximately \$443,000 from 556 parcels. However, setting the levies to \$0 for this year leaves open the option for a future City Council to re-impose levies via the Services CFD. If (1) the City develops as projected by SANDAG; (2) all future residential development is included in the Services CFD; and (3) a levy similar to the one in place prior to December 13, 2023 is imposed by the City Council, then projected annual revenue would be approximately \$4.6



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million. Enacting Ordinance 2024-02 will repeal the Services CFD and require reformation of a new CFD before any future levies could be imposed, resulting in no revenue from the Services CFD in the future.

The adoption of Ordinance No. 2024-02 and Resolution No. 2024-12 will settle pending litigation with the BIASD which both resolves a challenge to the lawfulness of the CFD but also includes a provision for all parties to waive the recovery of litigation costs and attorney's fees against the City.

PREVIOUS ACTION

On January 15, 2020, the City Council adopted Resolution No. 2020-02 directing staff to prepare documents necessary for the formation of a Citywide Community Facilities District (the Services CFD).

On April 8, 2020, the City Council adopted Resolution Nos. 2020-24 and 2020-25 declaring its intent to establish Community Facilities District ("CFD") No. 2020-1, a Citywide CFD.

On May 13, 2020, the City Council adopted Resolution No. 2020-44 (Attachment "4") establishing Community Facilities District ("CFD") No. 2020-1, a Citywide CFD. The City Council also considered, for the first time, Ordinance 2020-10 (Attachment "2") authorizing levy of special taxes. This Ordinance was formally enacted at a subsequent City Council meeting.

On October 21, 2020, the City Council adopted Ordinance No. 2020-24 (Attachment "3") which enacted Escondido Municipal Code § 6-457 (Other fees and exactions for public services) and § 6-434(g) which excluded such CFD fees and exactions from the City's development fee procedures under Article 17.

On November 16, 2022, the City Council received an informational update concerning the Services CFD and directed staff to initiate another FIA of Future Development.

On August 9, 2023, the City Council adopted Resolution No. 2023-82, setting the Special Tax Levy for Community Facilities District No. 2020-1 ("Public Services CFD") for Fiscal Year 2023/24. Adoption of this resolution was the most recent setting of the Services CFD levies.

On December 13, 2023, the City Council adopted Resolution No. 2023-156 setting all levies on properties in the Services CFD No. 2020-1 to \$0. The City Council also directed staff to bring forward for consideration an ordinance to repeal the Services CFD.

BACKGROUND

In November 2022, the City Council, based on public comments and an internal review of priorities and opportunities, directed staff to initiate another study of the fiscal impacts of development. Specifically, the City Council expressed concern about the reality of the future buildout projection used in the analysis, the negative impact on development that CFD levies might have, and the areas of the future General Fund budgets that would be funded (i.e., all the General Fund or the Public Safety departments



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only). The Staff Report prepared for the City Council on December 13, 2023 that details the new Fiscal Impact study is attached to this report for reference as Attachment “1”.

The resulting Report for Fiscal Impact Analysis of Future Development (“FIA”) was further analyzed by staff with options for only funding Public Safety Departments with Services CFD revenues. This analysis produced eight options described in the attached Staff Report from December 13, 2023. City staff recommended, and the City Council unanimously chose, the option that would set all Services CFD levies to \$0.

The process of setting levies is completed annually, typically in August. The resetting of levies in December 2023, i.e., outside the regular cycle, is allowed by San Diego County for a small fee per parcel. Setting the levies to \$0 effectively eliminated them for this year, but did not necessarily eliminate the Services CFD into the future because a future City Council could impose Services CFD levies in any future annual cycle by simple resolution. With this possibility in mind, the City Council directed staff to prepare an ordinance repealing Ordinance No. 2020-10, Ordinance No. 2020-24, and Resolution No. 2020-44. Adoption of Ordinance No. 2024-02 will repeal these ordinances and resolution, thus preventing imposition of any future Citywide Services CFDs unless the City completes another Services CFD formation.

Repeal of the Services CFD will also lead directly to settlement of ongoing litigation between the City and the SDBIA. The BIASD litigation claims that the Services CFD violates certain California statutes and is inconsistent with state law. The City disputes those claims. The SDBIA litigation was brought shortly after the adoption of Ordinance No. 2020-24 in 2020, and was then tolled (i.e., temporarily suspended by mutual agreement of the parties). The tolling agreement has expired and the litigation is poised to restart absent resolution of the case by the parties. Repeal of the Services CFD will render the litigation moot. A settlement agreement between the City and BIASD is necessary to dismiss the litigation and specify the responsibility for each party’s legal costs. Resolution No. 2024-12 will authorize the City Manager to execute such a settlement agreement. A tentative draft version of the settlement agreement is attached to Resolution No. 2024-12 as Exhibit “A” and subject to final negotiations by the parties.

RECOMMENDATION

Staff recommend that the City Council introduce Ordinance No. 2024-02 repealing the Citywide Services CFD and that the City Council adopt Resolution No. 2024-12 authorizing the City Manager to execute a Settlement Agreement with the Building Industry Association of San Diego County.

ATTACHMENTS

- a. Attachment “1” December 13, 2023 Staff Report on Fiscal Impact Analysis of Future Development



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- b. Attachment "2" Ordinance No. 2020-10 (adopted May 13, 2020 – ***under consideration for repeal***)
- c. Attachment "3" Ordinance No. 2020-24 (adopted October 21, 2020 – ***under consideration for repeal***)
- d. Attachment "4" Resolution No. 2020-44 (adopted May 13, 2020 – ***under consideration for repeal***)

RESOLUTIONS

- a. Resolution No. 2024-12
- b. Resolution No. 2024-12 - Exhibit "A" (Draft Settlement Agreement)

ORDINANCE

- a. Ordinance No. 2024-02