

DATE SUBMITTED 09/26/18
 SUBMITTED BY COMMUNITY DEVELOPMENT DIRECTOR
 DATE ACTION REQUIRED 10/3/18

COUNCIL ACTION
 PUBLIC HEARING REQUIRED
 RESOLUTION
 ORDINANCE 1ST READING
 ORDINANCE 2ND READING
 CITY CLERK'S INITIALS [Signature]

**IMPERIAL CITY COUNCIL
 AGENDA ITEM**

SUBJECT: DISCUSSION/ACTION: DECLARING ITS INTENTION TO CONSIDER AN AMENDMENT TO THE RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX FOR IMPROVEMENT AREA NO. 2 MONTERREY PARK

1. APPROVAL OF RESOLUTION FOR CONSIDERATION OF INTENT TO AMEND THE RATE METHOD

DEPARTMENT INVOLVED: COMMUNITY DEVELOPMENT

BACKGROUND/SUMMARY:

The City of Imperial has received a petition by Jupiter Ventures I, LP, a California limited partnership (the "Owner"), which owns all of the taxable land within Improvement Area No. 2, requesting that the City initiate proceedings to approve an amended rate and method of apportionment for Improvement Area No. 2 to exclude the special tax for Improvements.

Please see attachments.

FISCAL IMPACT:	ADMIN SERVICES SIGN INITIALS <u>[Signature]</u>
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STAFF RECOMMENDATION: APPROVE OF RESOLUTION FOR CONSIDERATION	DEPT. INITIALS <u>OM</u>
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MANAGER'S RECOMMENDATION:	CITY MANAGER'S INITIALS <u>al</u> <i>office</i>
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MOTION:

SECONDED: APPROVED () REJECTED ()
 AYES: DISAPPROVED () DEFERRED ()
 NAYES:
 ABSENT: REFERRED TO:

RESOLUTION 2018-60

**RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF IMPERIAL, ACTING AS THE LEGISLATIVE BODY
OF THE CITY OF IMPERIAL COMMUNITY
FACILITIES DISTRICT NO. 2006-1 (MONTERREY
PARK), DECLARING ITS INTENTION TO CONSIDER
AN AMENDMENT TO THE RATE AND METHOD OF
APPORTIONMENT OF SPECIAL TAX FOR
IMPROVEMENT AREA NO. 2 THEREIN**

WHEREAS, on February 1, 2006, the City Council of the City of Imperial (the “City Council”) adopted Resolution No. 2006-03 (the “Resolution of Intention”) stating its intention to (i) form the City of Imperial Community Facilities District No. 2006-1 (Monterrey Park) (“Community Facilities District No. 2006-1” or the “District”), and Improvement Area Nos. 1 and 2 therein, pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California (the “Act”), and (ii) to incur bonded indebtedness within the District in the amount not to exceed \$23,000,000 to finance the facilities and improvements identified therein (collectively, the “Improvements”) and the incidental expenses to be incurred in financing the Improvements and forming and administering the District and the Improvement Areas therein (the “Incidental Expenses”); and

WHEREAS, the Resolution of Intention also called a public hearing for March 15, 2006 on the formation of the District and the Improvement Areas therein and the incurrence of bonded indebtedness thereby; and

WHEREAS, a notice calling a public hearing on March 15, 2006 was published as required by law relative to the intention of the City Council to establish Community Facilities District No. 2006-1 and the Improvement Areas therein and to incur bonded indebtedness within Community Facilities District No. 2006-1 and the Improvement Areas therein; and

WHEREAS, on March 15, 2006, the City Council conducted a noticed public hearing to determine whether it should proceed with the establishment of the District and the Improvement Areas therein, issue bonds by the District on behalf of each Improvement Area to pay for the Improvements and Incidental Expenses and authorize a rate and method of apportionment of a special tax for each Improvement Area (each a “Rate and Method”) to be levied within each Improvement Area for the purposes described in the Resolution of Intention; and

WHEREAS, at the March 15, 2006 public hearing, all persons desiring to be heard on all matters pertaining to the establishment of the District and the Improvement Areas therein, the levy of special taxes in accordance with each Rate and Method and the issuance of bonds within the District on behalf of each Improvement Area to pay for the cost of the proposed Improvements and Incidental Expenses were heard and a full and fair hearing was held; and

WHEREAS, after the March 15, 2006 public hearing, the City Council called a special election within the District and the Improvement Areas therein relating to the levying of a special tax

within each Improvement Area and the incurring of bonded indebtedness by the District on behalf of each Improvement Area, which were approved by more than two-thirds vote by the qualified electors on March 15, 2006; and

WHEREAS, on April 5, 2006, the City Council adopted Ordinance No. 716 (the “Ordinance of Formation”) which formed the District and the Improvement Areas therein, authorized the levying of a special tax within each Improvement Area in accordance with the Rate and Method applicable to such Improvement Area, and authorized bonded indebtedness to be issued by the District on behalf of each Improvement Area in an aggregate principal amount not to exceed \$23,000,000; and

WHEREAS, in 2007, the District issued its City of Imperial Community Facilities District No. 2006-1 (Monterrey Park) (Improvement Area No. 1) 2007 Special Tax Bonds in the aggregate principal amount of \$10,620,000 (the “2007 Bonds”), which were refunded by the District’s City of Imperial Community Facilities District No. 2006-1 (Monterrey Park) (Improvement Area No. 1) Special Tax Refunding Bonds, Series 2016A, issued in the aggregate principal amount of \$7,370,000 (the “2016 Bonds”); and

WHEREAS, no bonds have been issued by the District secured by special taxes within Improvement Area No. 2; and

WHEREAS, the District has received a petition signed by Jupiter Ventures I, LP, a California limited partnership (the “Owner”), which owns all of the taxable land within Improvement Area No. 2, requesting that the District initiate proceedings to approve an amended rate and method of apportionment for Improvement Area No. 2 to exclude the special tax for Improvements, in the form attached hereto as Attachment “A” (the “First Amended Rate and Method”).

NOW, THEREFORE, the City Council, acting in its capacity as the legislative body of the District, does hereby resolve, determine and order as follows:

SECTION 1. Each of the above recitals is true and correct and is adopted by the legislative body of the District.

SECTION 2. The City Council, acting as the legislative body of the District, declares its intention to conduct proceedings pursuant to the Act to consider amending and restating the Rate and Method with respect to Improvement Area No. 2 with the First Amended Rate and Method in order to eliminate the special tax within Improvement Area No. 2 for Improvements.

SECTION 3. A public hearing (the “Hearing”) on the levy of special taxes in Improvement Area No. 2 in accordance with the First Amended Rate and Method shall be held at 7:00 p.m., or as soon thereafter as practicable, on November 7, 2018, at the City Council Chambers, 200 West 9th Street, Imperial, California 92251. Should the City Council determine to submit the proposed First Amended Rate and Method to the qualified electors of Improvement Area No. 2, a special election will be held to authorize the First Amended Rate and Method in accordance with the procedures contained in Government Code Section 53326. If such election is held, the proposed voting procedure at the elections will be a landowner vote with each landowner who is the owner of record of land within Improvement Area No. 2 at the close of the Hearing, or the authorized representative thereof, having one vote for each acre or portion thereof owned within the District. Ballots for the special election may be distributed by mail or by personal service.

SECTION 4. At the time and place set forth above for the Hearing, any interested person, including all persons owning lands or registered to vote within Improvement Area No. 2, may appear and be heard.

SECTION 5. The City Clerk is hereby directed to publish a notice (the "Notice") of the Hearing pursuant to Section 6061 of the Government Code in a newspaper of general circulation published in the area within Community Facilities District No. 2006-1. The City Clerk is further directed to mail a copy of the Notice to each of the landowners within the boundaries of Improvement Area No. 2 at least 15 days prior to the Hearing. The Notice shall contain the text or a summary of this Resolution, the time and place of the Hearing, a statement that the testimony of all interested persons or taxpayers will be heard, a description of the protest rights of the registered voters and landowners in the proposed district and a description of the proposed voting procedure for the election required by the Act. Such publication shall be completed at least seven (7) days prior to the date of the Hearing.

SECTION 6. This Resolution shall be effective upon its adoption.

The City Clerk shall certify the adoption of this resolution.

PASSED, APPROVED and ADOPTED this 3rd day of October, 2018.

Geoff Dale, Mayor

ATTEST:

Debra Jackson, City Clerk

ATTACHMENT "A"
PROPOSED FIRST AMENDED AND RESTATED
RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX
CITY OF IMPERIAL
COMMUNITY FACILITIES DISTRICT NO. 2006-1 (MONTERREY PARK)
IMPROVEMENT AREA NO. 2

The following sets forth the First Amended and Restated Rate and Method of Apportionment for the levy and collection of Special Taxes for Services of the City of Imperial ("City") Community Facilities District No. 2006-1 (Monterrey Park) ("CFD No. 2006-1") Improvement Area No. 2. The Special Tax for Services shall be levied on and collected in Improvement Area No. 2 each Fiscal Year, in an amount determined through the application of the First Amended and Restated Rate and Method of Apportionment described below. All of the real property within Improvement Area No. 2, unless exempted by law or by the provisions hereof, shall be taxed for the purposes, to the extent, and in the manner herein provided.

SECTION A
DEFINITIONS

The terms hereinafter set forth have the following meanings:

"Acre or Acreage" means the land area of an Assessor's Parcel as shown on an Assessor's Parcel Map, or if the land area is not shown on an Assessor's Parcel Map, the land area shown on the applicable final map, parcel map, condominium plan, or other recorded County parcel map. The square footage of an Assessor's Parcel is equal to the Acreage multiplied by 43,560.

"Act" means the Mello-Roos Communities 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 any ordinary and necessary expense incurred by the City on behalf of Improvement Area No. 2 related to the determination of the amount of the levy of Special Taxes, the collection of Special Taxes including the expenses of collecting delinquencies, the payment of salaries and benefits of any City employee whose duties are directly related to the administration of Improvement Area No. 2, and costs otherwise incurred in order to carry out the authorized purposes of Improvement Area No. 2.

"Assessor's Parcel" means a lot or parcel of land designated on an Assessor's Parcel Map with an assigned Assessor's Parcel Number within the boundaries of Improvement Area No. 2.

"Assessor's Parcel Map" means an official map of the Assessor of the County designating parcels by Assessor's Parcel Number.

"Assessor's Parcel Number" means that number assigned to an Assessor's Parcel by the County for purposes of identification.

"Building Permit" means a permit for new construction for a residential dwelling. For purposes of this definition, "Building Permit" shall not include permits for construction or installation of retaining walls, utility improvements, or other such improvements not intended for human habitation.

"Calendar Year" means the period commencing January 1 of any year and ending the following

December 31.

“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. 2006-1” means Community Facilities District No. 2006-1 (Monterrey Park) Improvement Area No. 2 established by the City under the Act.

“City” means the City of Imperial.

“City Council” means the City Council of City of Imperial, acting as the Legislative Body of CFD No. 2006-1, or its designee.

“Consumer Price Index” means the index published monthly by the U.S. Department of Labor Statistics for all urban consumers in the Riverside-San Bernardino-Ontario area.

“County” means the County of Imperial.

“Developed Property” means all Assessor’s Parcels for which Building Permits were issued on or before May 1 of the prior Fiscal Year, provided that such Assessor’s Parcels were included in a Final Map that was recorded on or before January 1 of the prior Fiscal Year and that each such Assessor’s Parcel is associated with a Lot, as reasonably determined by the City.

“Exempt Property” means all Assessors’ Parcels designated as being exempt from Special Taxes in Section E.

“Final Map” means a subdivision of property evidenced by the recordation of a final map, parcel map, or lot line adjustment, pursuant to the Subdivision Map Act (California Government Code Section 66410 et seq.) or the recordation of a condominium plan pursuant to California Civil Code 1352 that creates individual lots for which Building Permits may be issued without further subdivision.

“Fiscal Year” means the period commencing on July 1 of any year and ending the following June 30.

“Improvement Area” means Improvement Area No. 2.

“Improvement Area No. 2” means the specific area identified on the boundary map as Improvement Area No. 2 of CFD No. 2006-1.

“Lot” means an individual legal lot created by a Final Map for which a Building Permit could be issued.

“Maximum Special Tax for Services” means the maximum Special Tax, determined in accordance with Section C that can be levied by Improvement Area No. 2 in any Fiscal Year on any Assessor’s Parcel.

“Non-Residential Property” means all Assessor’s Parcels of a Final Map designated for any type of non-residential use.

“Operating Fund” means a fund that shall be maintained for CFD No. 2006-1 for any Fiscal Year to pay for the actual costs of maintenance, repair, and replacement of the Service Area, and the Administrative Expenses.

“Operating Fund Balance” means the amount of funds in the Operating Fund at the end of the preceding

Fiscal Year.

“Proportionately” means that the ratio of the actual Special Tax for Services levy to the applicable Maximum Special Tax for Services is equal for all applicable Assessor’s Parcels.

“Residential Property” means all Assessor’s Parcels of Developed Property for which a Building Permit has been issued for purposes of constructing one or more residential dwelling units.

“Service Area” means public safety services, the landscape parkways, neighborhood park, easements and green belts within the boundaries of the City, and Improvement Area No. 2’s fair share of storm drain and flood control facilities.

“Special Tax for Services” means any of the special taxes authorized to be levied by Improvement Area No. 2 pursuant to the Act to fund the Special Tax Requirement for Services.

“Special Tax Requirement for Services” means the amount determined in any Fiscal Year for Improvement Area No. 2 equal to (i) the budgeted costs of the maintenance, repair and replacement of the Service Area which have been accepted and maintained or are reasonably expected to be accepted and maintained during the current Fiscal Year, (ii) Administrative Expenses, and (iii) anticipated delinquent Special Taxes for Services based on the delinquency rate in Improvement Area No. 2 for the previous Fiscal Year, less (iv) the Operating Fund Balance.

“Taxable Property” means all Assessor’s Parcels within Improvement Area No. 2 which are not Exempt Property.

“Undeveloped Property” means all Assessor’s Parcels of Taxable Property which are not Developed Property.

SECTION B CLASSIFICATION OF ASSESSOR’S PARCELS

Each Fiscal Year, beginning with Fiscal Year 2018-19, each Assessor’s Parcel within Improvement Area No. 2 shall be classified as Taxable Property or Exempt Property. In addition, each Fiscal Year, each Assessor’s Parcel of Taxable Property shall be further classified as Developed Property or Undeveloped Property.

SECTION C MAXIMUM SPECIAL TAXES

1. Developed Property

- a. The Maximum Special Tax for Services for each Assessor’s Parcel of Residential Property that is classified as Developed Property for Fiscal Year 2018-19 shall be \$159.35 per unit. On each July 1, commencing July 1, 2019, the Maximum Special Tax for Services for the prior Fiscal Year shall be adjusted by an amount equal to the percentage change in the Consumer Price Index for the Calendar Year, shown as the Annual amount, ending in December of the prior Fiscal Year.

2. Undeveloped Property

- a. The Maximum Special Tax for Services for each Assessor’s Parcel of Undeveloped

Property for Fiscal Year 2018-19 shall be \$637.42 per acre. On each July 1, commencing July 1, 2019, the Maximum Special Tax for Services for the prior Fiscal Year shall be adjusted by an amount equal to the percentage change in the Consumer Price Index for the Calendar Year, shown as the Annual amount, ending in December of the prior Fiscal Year.

**SECTION C
METHOD OF APPORTIONMENT OF THE SPECIAL TAX FOR SERVICES**

Commencing Fiscal Year 2018-19 and for each subsequent Fiscal Year, the City Council shall levy a Special Tax for Services on all Taxable Property within Improvement Area No. 2 until the amount of Special Tax for Services equals the Special Tax Requirement for Services in accordance with the following steps:

Step One: The Maximum Special Tax for Services shall be levied Proportionately on each Assessor's Parcel of Developed Property at up to 100% of the applicable Maximum Special Tax for Services as needed to satisfy the Special Tax Requirement for Services.

Step Two: If additional moneys are needed to satisfy the Special Tax Requirement for Services after the first step has been completed, the Maximum Special Tax for Services shall be levied Proportionately on each Assessor's Parcel of Undeveloped Property within a Final Map, at up to 100% of the Maximum Special Tax for Services applicable to each such Assessor's Parcel as needed to satisfy the Special Tax Requirement for Services.

Under no circumstances will the Special Tax for Services levied against any Assessor's Parcel used as a private residence be increased as a consequence of delinquency or default by the owner of any other Assessor's Parcel or Parcels within Improvement Area No. 2 by more than ten (10) percent of the Special Tax that would be levied in that Fiscal Year, if there were no delinquencies, pursuant to California Government Code Section 53321(d), as in effect on the date of formation of CFD No. 2006-1.

**SECTION D
TERMINATION OF SPECIAL TAX**

The Special Tax for Services shall be levied for as long as it is needed to meet the Special Tax Requirement for Services, as determined at the sole discretion of the City Council.

**SECTION E
EXEMPTIONS**

The City shall classify as Exempt Property (i) Assessor's Parcels owned by the State of California, Federal or other local governments, (ii) Assessor's Parcels which are used as places of worship and are exempt from ad valorem property taxes because they are owned by a religious organization, (iii) Assessor's Parcels used exclusively by a homeowners' association, (iv) Assessor's Parcels with public or utility easements making impractical their utilization for other than the purposes set forth in the easement, or (v) Assessor's Parcels of Non Residential Property, provided that no such classification would reduce the sum of all Taxable Property to less than 41.23 Acres for Improvement Area No. 2. Notwithstanding the above, the City Council shall not classify an Assessor's Parcel as Exempt Property if such classification would reduce the sum of all Taxable Property to less than 41.23 Acres for Improvement Area No. 2. Assessor's Parcels which cannot be classified as Exempt Property because such classification would reduce the Acreage of all Taxable Property to less than 41.23 Acres for Improvement Area No. 2 will be classified as Provisional Undeveloped Property, and will continue to be subject to Special Taxes

accordingly.

**SECTION F
APPEALS**

Any property owner claiming that the amount or application of the Special Tax for Services is not correct may file a written notice of appeal with the City Council not later than twelve months after having paid the first installment of the Special Tax for Services that is disputed. A representative(s) of CFD No. 2006-1 shall promptly review the appeal, and if necessary, meet with the property owner, consider written and oral evidence regarding the amount of the Special Tax for Services, and rule on the appeal. If the representative's decision requires that the Special Tax for Services for an Assessor's Parcel be modified or changed in favor of the property owner, a cash refund shall not be made (except for the last year of levy), but an adjustment shall be made to the Special Tax for Services on that Assessor's Parcel in the subsequent Fiscal Year(s).

The City Council may interpret this First Amended and Restated Rate and Method of Apportionment of Special Taxes for Services for purposes of clarifying any ambiguity and make determinations relative to the annual administration of the Special Tax for Services and any landowner or resident appeals. Any decision of the City Council shall be binding as to all persons.

**SECTION G
MANNER OF COLLECTION**

The Special Tax for Services shall be collected in the same manner and at the same time as ordinary ad valorem property taxes, provided, however, that Improvement Area No. 2 may collect the Special Tax for Services at a different time or in a different manner if necessary to meet its financial obligations.