

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF
FRESNO, CALIFORNIA, CALLING SPECIAL MAILED-
BALLOT ELECTION

COMMUNITY FACILITIES DISTRICT NO. 9

ANNEXATION NO. 54

WHEREAS, on May 12, 2022, the Council of the City of Fresno (Council) adopted Council Resolution No. 2022-116 to annex Parcel Map No 2020-05 to City of Fresno Community Facilities District No. 9 (CFD No. 9) and to authorize the levy of a special tax; and

WHEREAS, Council Resolution No. 2022-116 identified the Services to be provided for Annexation No. 54 by CFD No. 9 and provided an estimate of the cost of providing those Services; and

WHEREAS, Council Resolution No. 2022-116 contemplated imposing a special tax upon those properties within Annexation No. 54 to CFD No. 9 receiving said Services; and

WHEREAS, a report has been filed with the City Clerk of the City of Fresno (City Clerk) that describes the proposed rate and method of apportionment of the special tax among the parcels of real property proposed to be annexed to CFD No. 9 in sufficient detail to allow all interested parties to estimate the maximum amount each property owner must pay; and

WHEREAS, the levy of said proposed Special Tax shall be subject to the

1 of 7

Date Adopted:

Date Approved:

Effective Date:

City Attorney Approval: 

Resolution No.

approval of the qualified electors of the territory proposed to be annexed to CFD No. 9 at a special election; and

WHEREAS, the Public Works Director has filed a Certificate (Certificate) in these proceedings providing that fewer than twelve (12) registered voters reside within the boundaries of the territory proposed for annexation to CFD NO. 9.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Fresno as follows:

1. The levy of a special tax proposed in Council Resolution No. 2022-116 shall be submitted to the voters pursuant to the City of Fresno Special Tax Financing Law, Chapter 8, Division 1, Article 3, of the Fresno Municipal Code (City Law).

2. The setting of the appropriations limit shall be submitted to the voters pursuant to City Law.

3. The two ballot items described above shall be combined into a single ballot measure pursuant to City Law. The ballot language shall be as shown on the ballot form attached as Exhibit A, which is hereby approved.

4. This Council accepts the Certificate of the Public Works Director filed in these proceedings and, based on the Certificate, finds that fewer than twelve (12) registered voters reside within the boundaries of the territory proposed to be annexed to CFD No. 9. Accordingly, under City Law the voters in this election shall be the landowners owning land within the territory proposed to be annexed to CFD No. 9.

5. The Council further finds that the landowners of record owning property within the territory proposed to be annexed to CFD No. 9 are those set forth in the attachment to the Certificate and that the attachment correctly sets forth how much

property owned by each landowner and the number of votes to which each is entitled.

6. This Council approves the form, attached as Exhibit B, entitled Waiver and Consent From Sole Property Owner Shortening Time Periods and Waiving Various Requirements for Conducting Mailed-Ballot Election in CFD No. 9, Annexation No. 54, City of Fresno, County of Fresno, State of California. This Council finds that the rights, procedures and time periods therein waived are solely for the protection of the voters, may be waived under City Law, and that the waiver constitutes a full and knowing waiver by any voter who has executed the form of these rights, procedures and time periods.

7. Accordingly, this Council calls the special election described herein and sets June 23, 2022, as Election Day. Pursuant to City Law, the election shall be conducted by mailed ballot.

8. The City Clerk or designee is directed to mail or to deliver the ballots, in the form of Exhibit A hereto, to the landowner(s) shown on the attachment to the Certificate. The City Clerk or designee shall fill in the names of the landowners and the number of votes to be cast on each ballot, according to the Certificate, before delivery or mailing.

9. The City Clerk or designee shall accept personal or mail delivery of the ballots at any time up to the hearing on Thursday, June 23, 2021, at 10:00 a.m. Upon receipt of all eligible ballots, however, the City Clerk or designee shall immediately close the election and declare the results to the Council.

Attachments: Exhibit A - Special Election Ballot
Exhibit B - Waiver and Consent From Sole Property Owner

* * * * *

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, TODD STERMER, City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____ 2022.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2022
Mayor Approval/No Return: _____, 2022
Mayor Veto: _____, 2022
Council Override Vote: _____, 2022

TODD STERMER, CMC
City Clerk

BY: _____ Date
Deputy

APPROVED AS TO FORM:
RINA M. GONZALES
Interim City Attorney

BY: _____ Date
Taylor W. Rhoan
Deputy City Attorney

EXHIBIT A

**SPECIAL ELECTION BALLOT
(Mailed-Ballot Election)**

**Community Facilities District No. 9
Annexation No. 49**

This ballot is for the use of BDM Builders LLC, the sole landowner owning land (Parcel Map No 2020-05) within Community Facilities District No. 9, Annexation No. 54, City of Fresno, County of Fresno, State of California.

According to the provisions of the City of Fresno Special Tax Financing Law, Chapter 8, Division 1, Article 3, of the City of Fresno Municipal Code, and the resolutions of the City Council of the City of Fresno, the above-named landowner is entitled to cast four (4) votes on this ballot.

In order to be counted, the ballot must be returned prior to the hearing on Thursday, June 23, 2022, at 10:00 a.m., to Todd Stermer, CMC, City Clerk, City of Fresno, 2600 Fresno Street, Room 2133, Fresno, CA 93721.

Mailing by that date will not be sufficient. **The ballot must be physically received by the City Clerk prior to the deadline in order to be counted.**

AN "X" OR OTHER MARK WILL CAST ALL VOTES ASSIGNED TO THIS BALLOT, OR THE VOTER MAY WRITE NUMBERS IN THE SPACES PROVIDED

BALLOT MEASURE

Shall the City of Fresno (City) be authorized to levy a special tax, and finance the authorized services, and costs and expenses by and through its Community Facilities District No. 9, Annexation No. 54, all as specified in its Council Resolutions No. _____ and No. _____; and shall the appropriations limit for Community Facilities District No. 9 Annexation No. 54 be established in accordance therewith?

Number of Votes
YES

Number of Votes
NO

EXHIBIT A

CERTIFICATION

The undersigned is the authorized representative of the above-named landowner and is the person legally authorized and entitled to cast this ballot on behalf of the above-named landowner.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____, 2022.

Company Name: _____

By: _____

Print Name: _____

Print Title: _____

(Attach Notary Acknowledgment)

EXHIBIT B

**WAIVER AND CONSENT FROM SOLE PROPERTY OWNER
SHORTENING TIME PERIODS AND WAIVING VARIOUS REQUIREMENTS
FOR CONDUCTING MAILED-BALLOT ELECTION**

Community Facilities District No. 9, Annexation No. 54

The undersigned is the person legally entitled and authorized to cast the ballots as the authorized representative of the sole owner of the property (Parcel Map No 2020-05) in this mailed-ballot election to be conducted within Community Facilities District No. 9 Annexation No. 54, to determine, among other things, whether the rate and method of apportionment of the annual special taxes shall be approved.

The undersigned hereby waives any and all minimum time periods relative to the election pursuant to the City of Fresno Special Tax Financing Law, Chapter 8, Division 1, Article 3, of the Fresno Municipal Code (City Law).

The undersigned hereby waives the preparation and distribution of an impartial analysis of the ballot measure, as well as arguments in favor and against, under the authority of City Law.

The undersigned hereby waives the requirement to publish notice of the election under City Law.

The undersigned hereby waives the requirements regarding the time to mail ballots to the qualified electors under Elections Code Section 4101, and agrees to accept either mailed service or personal service of the ballot.

The undersigned hereby waives the requirements regarding identification envelopes for the return of mailed ballots contained in City Law.

The undersigned hereby waives any and all defects in notice or procedure in the conduct of the election, whether known or unknown (other than the right to have ballots accurately counted), and states that the election is being expedited, pursuant to this waiver and consent, at the particular instance and request of the undersigned.

I declare, under penalty of perjury, under the laws of the State of California, that I am the person legally entitled and authorized to cast the ballot as the authorized representative of the landowner set forth in the first paragraph hereof, and to waive and consent to the above, that the foregoing waivers and consents are voluntarily given and that this declaration is executed on _____, 2022.

Company Name _____

By: _____

Print Name _____

Print Title _____

EXHIBIT A

CITY OF FRESNO

Community Facilities District No. 9 Formation

Description of Services currently financed by Community Facilities District No. 9

The services and operations (Services) that are to be financed by Community Facilities District No. 9 (CFD No. 9) are described below and are permitted by City of Fresno Special Tax Financing Law (Chapter 8, Division 1, Article 3 of the Fresno Municipal Code) and the Mello-Roos Community Facilities Act of 1982 (Chapter 2.5 commencing with Section 53311, of Part 1, Division 2, Title 5 of the California Government Code.)

- I. Services may include all costs attributable to maintaining, servicing, cleaning, repairing and/or replacing all landscaping facilities (including reserves), including stamped concrete paving in medians and landscaped areas in public street rights-of-way, public trails, and, in instances where a required sound wall abuts a local City street and public landscape easements are officially dedicated for public use.

General maintenance will include, without limitation, mowing, edging, fertilizing, seeding, aerating, and watering grass areas; repairing and replacing irrigation systems as necessary; staking, pruning, replacing and spraying of trees and shrubs; repairing and replacing paths, walkways and trails; repairing and replacing stamped concrete paving and removing litter, debris, and garbage.

- II. Services may include all costs attributable to cleaning, maintaining, servicing, repairing and/or replacing all local ground level street infrastructures (including reserves) within local street rights-of-way. Such facilities may include, without limitation, street paving, curbs and gutters, sidewalks, street lighting, hydrants, inlets, street trees, street signage and street furniture.

Maintenance costs will also include a proportionate share of all other expenses that the City may incur in administering the CFD No. 9.

All Services shall be provided by the City of Fresno, with its own forces or by contract with third parties, or any combination thereof, to be determined entirely by the City of Fresno.

Nothing in this exhibit or any other exhibit or provision of this Resolution shall be construed as committing the City or CFD No. 9 to provide all of the authorized Services or to provide for the payment of or reimbursement for all of the authorized incidental expenses. The provision of Services and/or payment or reimbursement of incidental expenses shall be subject to the continued existence of CFD No. 9 and the availability of sufficient proceeds of special taxes within the District.

EXHIBIT A

CITY OF FRESNO

Community Facilities District No. 9 Annexation No. 54

Description of Services to be Financed by Community Facilities District No. 9 For (Final Parcel Map No. 2020-05)

The services and operations described below (Services) to be financed by Community Facilities District No. 9 (CFD No. 9) for Final Parcel Map No. 2020-05, Annexation No. 54 are generally as described below and herewith Exhibit C, page C-1.

The Services that are to be financed will include all costs attributable to maintaining, servicing, cleaning, repairing and/or replacing all landscaping facilities (including reserves), including stamped concrete paving in medians and landscaped areas in public street rights-of-way, public trails, and, in instances where a required sound wall abuts a local City street, public landscape easements officially dedicated for public use and street trees.

General maintenance will include, without limitation, mowing, edging, fertilizing, seeding, aerating, and watering grass areas; repairing and replacing irrigation systems as necessary; staking, pruning, replacing, and spraying of trees and shrubs; repairing and replacing paths, walkways and trails; repairing and replacing stamped concrete paving and removing litter, debris, and garbage.

Services shall include all costs attributable to cleaning, maintaining, servicing, repairing and/or replacing all ground level infrastructure (including reserves for replacement) within the public street rights-of-way associated with Final Parcel Map No. 2020-05. Such facilities include, without limitation, concrete curbs, major street median hardscaping, entrance median curbs and hardscaping, valley gutters, curb ramps and sidewalks, street name signage and street lighting, and trail paving associated with this subdivision. Such facilities also include, without limitation, all hardscaping, bollards, decomposed granite, and decorative signage associated with the subdivision.

Services shall include all costs attributable to street lighting services.

Maintenance costs will also include a proportionate share of all other expenses that the City may incur in administering the CFD No. 9.

All Services shall be provided by the City of Fresno, with its own forces or by contract with third parties, or any combination thereof, to be determined entirely by the City of Fresno.

Nothing in this exhibit or any other exhibit or provision of this Resolution shall be construed as committing the City or CFD No. 9 to provide all of the authorized Services

EXHIBIT A

or to provide for the payment of or reimbursement for all of the authorized incidental expenses. The provision of Services and/or payment or reimbursement of incidental expenses shall be subject to the successful annexation of Annexation 54 to CFD No. 9 and the availability of sufficient proceeds of Special Taxes within CFD No. 9.

EXHIBIT B

CITY OF FRESNO

Community Facilities District No. 9 Annexation No. 54

Rate and Method of Apportionment of Special Tax

Cost Estimate

The estimate breaks down the costs of providing 1 year's Service for FY 2021-2022.

ITEM	DESCRIPTION	ESTIMATED COST
1	Landscape Operational Costs	\$13,281.00
2	Other Operational Costs	\$182.00
3	Reserve for Replacement	\$6,153.00
4	Incidental Expenses	\$165.00
	Total	\$19,781.00

Subdivision or Development Appropriation Limit

Subdivision/Development Permit No.	Total Maximum Special Tax for Services	Number of Lots	Appropriation Limit	Landowner
Parcel Map No. 2020-05	\$1,798.28 Per Lot	11	\$500,000.00	BDM Builders LLC
Assessor's Parcel Number 408-030-60				

EXHIBIT B

City of Fresno

Community Facilities District No. 9 Annexation No. 54

Rate and Method of Apportionment of Special Tax

A special tax applicable to each assessor's parcel in Community Facilities District No. 9 (CFD No. 9) shall be levied and collected according to the tax liability determined by the City Council of the City of Fresno, through the application of the appropriate amount or rate for taxable property, as described below. All of the property in CFD No. 9, unless exempted by law or by the provisions of Section E below, shall be taxed for the purposes, to the extent, and in the manner herein provided, including property subsequently annexed to CFD No. 9 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:

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

"Assessor's Parcel Map" means an official map of the County Assessor of the County of Fresno designating parcels by assessor's parcel number.

"City" means the City of Fresno.

"City Law" means the City of Fresno Special Tax Financing Law, Chapter 8, Division 1, Article 3, of the Fresno Municipal Code.

"Commercial or Industrial Developments or Subdivisions" means developments or subdivisions zoned for commercial or industrial uses.

"Council" means the City Council of the City of Fresno, acting as the legislative body of CFD No. 9.

"Developable Lot" means a lot that is anticipated development of residential or non-residential uses, and which is not an outlot, remainder parcel or other parcel which is not intended to be developed or which must be further subdivided before being developed.

"Development" means any assessor's parcel within the City of Fresno which is being developed for Industrial, Commercial, or Multi-Family purposes and requires a Building Permit.

EXHIBIT B

“Excluded Parcels” means those assessor’s parcels identified as ineligible for inclusion in CFD No. 9 as shown in “Attachment 1” of this Rate and Method of Apportionment of Special Tax.

“Final Map” means a final map, or portion thereof, approved by the Council pursuant to the Subdivision Map Act (California Government Code Section 66410 et seq.) that creates individual developable lots for which building permits may be issued. The term “Final Map” shall not include any assessor’s parcel map or subdivision map or portion thereof, that does not create individual developable lots for which a building permit may be issued, including assessor’s parcels that are designated as remainder parcels.

“Fiscal Year” means the period starting April 1 and ending on the following March 31.

“Maximum Special Tax” means the maximum special tax, determined in accordance with Section C, which can be levied in any Fiscal Year.

“Public Property” means any property within the boundaries of CFD No. 9 that is owned by the federal government, State of California or other local governments or public agencies.

“Reserve for Replacement” means a reasonable reserve pursuant to Fresno Municipal Code 8-1-303(e) (4), as a Service cost or expense and not as payment for public facilities under Government Code Section 53321(d).

“Residential Development or Subdivision” means developments or subdivisions zoned for residential multi-family uses.

“Residential Unit” means a multi-family residential dwelling unit and shall include condominiums, town homes, duplex, triplex and fourplex units, and individual apartment units in a multi-family subdivision. For purposes of the levy of special taxes pursuant to Section B below, “Residential Units” shall include dwelling units already built on taxable property in CFD No. 9, as well as dwelling units planned, but not yet built, when the special tax is levied each fiscal year.

“Shared Services” means the costs of services are paid equally by the property owners of two or more subdivisions.

“Special Tax” means any special tax to be levied each fiscal year on assessor’s parcels of taxable property to fund the Special Tax Requirement as defined below.

“Special Tax Requirement” means the amount necessary in any fiscal year to (i) pay authorized maintenance and improvement expenses, (ii) pay administrative expenses of CFD No. 9, and (iii) cure any delinquencies in the payment of special taxes levied in prior fiscal years or (based on delinquencies in the payment of special taxes which have already taken place) are expected to occur in the fiscal year in which the tax will be collected.

EXHIBIT B

“Subdivision” means the division, by any subdivider, of any unit or units of improved or unimproved land, or any portion thereof, shown on the latest equalized county assessment roll as a unit or as contiguous units, for the purpose of sale, lease, or financing whether immediate or future. Property shall be considered as contiguous units, even if it is separated by roads, streets, utility easement or railroad rights-of-way. “Subdivision” includes a condominium project, as defined in Section 4125 of the Civil Code, a community apartment project, as defined in Section 4105 of the Civil Code.

“Taxable Property” means all of the assessor’s parcels within the boundaries of CFD No. 9 which are not exempt from the special tax pursuant to law or Section E below.

B. CALCULATIONS

COMMERCIAL AND INDUSTRIAL DEVELOPMENTS OR SUBDIVISIONS

On or about April 1 of each fiscal year, the City of Fresno (City) or its designee shall determine how many square feet of taxable area are in each assessor’s parcels within each commercial or industrial development or subdivision of CFD No. 9.

For commercial or industrial developments or subdivisions, the area to be taxed is the total area within each assessor’s parcels of the subdivision or development not designated as public right-of-way and is not to exceed the Maximum Special Tax identified for the development or subdivision in Section C, Table 1 below.

RESIDENTIAL SUBDIVISIONS

On or about April 1 of each fiscal year, the City or its designee shall determine how many residential units are built, or allowed to be built, on assessor’s parcels within CFD No. 9. For parcels of undeveloped property zoned for development of multi-family units, the number of residential units shall be determined by referencing the condominium plan, apartment plan, site plan or other development plan, or by assigning the maximum allowable units permitted based on the underlying zoning for the parcel. Once a multi-family building or buildings have been built on an assessor’s parcel, the City or its designee shall determine the actual number of residential units contained within the building or buildings, and the special tax levied against the parcel in the next fiscal year shall be calculated by dividing the Special Tax Requirement by the actual number of residential units not to exceed the Maximum Special Tax per residential unit identified for the subdivision in Section C, Table 1 below.

C. MAXIMUM SPECIAL TAX

The Maximum Special Tax (MST) applicable to each assessor’s parcel in CFD No. 9 shall be specific to each development, subdivision, subdivisions, or portion thereof within CFD No. 9. When additional property is annexed into CFD No. 9, the rate and method adopted for the annexed property shall reflect the MST for the development, subdivision, subdivisions, or respective portion thereof then annexed.

EXHIBIT B

The MST applicable to each development, subdivision, subdivisions, or portion thereof in CFD No. 9 shall be the rate that is created at the time of CFD No. 9 annexation expressly for the individual development, subdivision, subdivisions, or portion thereof being annexed to CFD No. 9 at that time. Beginning in January of each year, the MST will be adjusted upward annually by 2% or by the rise of the Construction Cost Index (CCI), if it exceeds 2%, for the San Francisco Region for the prior 12-month period (December through December) as published in the Engineering News Record, or published in a comparable index if the Engineering News Record is discontinued or otherwise not available. Each annual adjustment of the MST shall become effective on the subsequent July 1.

Subject to the maximum limit set by the MST, the Special Tax for the commercial, industrial or multi-family development or subdivision assessor's parcels is calculated by spreading the Special Tax Requirement to the total taxable square footage of the development or subdivision and then apportioned proportionately by area to the individual assessor's parcels within the development or subdivision or by the number of residential units as applicable.

The total Maximum Special Tax for Fiscal Year 2021-2022 for Annexation No. 54 of CFD No. 9 is identified in Table 1 below:

Table 1 Maximum Special Tax (Fiscal Year 2021-2022)*	
<i>Commercial Development or Subdivision Number**</i>	<i>Total Maximum Special Tax</i>
PM 2020-05	\$19,781.00
Assessor's Parcel Number 408-030-60	
**A Special Tax shall be levied on all assessor's parcels within an identified development or subdivision except excluded parcels as identified in Attachment 1.	

D. METHOD OF LEVY AND COLLECTION OF THE SPECIAL TAX

Commencing with Fiscal Year 2021-2022, the Special Tax shall be levied on all parcels of taxable property as follows:

- Step 1: Determine the Special Tax Requirement (as defined in Section A above) for the fiscal year in which the special tax will be collected;
- Step 2: Calculate the total special tax revenues that could be collected from taxable property within CFD No. 9 based on applying the Maximum

EXHIBIT B

Special Tax rates determined pursuant to Section C above to each parcel of taxable property in CFD No. 9;

If the amount determined in Step 1 is greater than or equal to the amount calculated in Step 2, levy the Maximum Special Tax set forth in Table 1 above on all parcels of taxable property in CFD No. 9;

If the amount determined in Step 1 is less than the amount calculated in Step 2, levy the Special Tax proportionately against all parcels of taxable property up to 100% of the Maximum Special Tax for each subdivision as identified in Table 1, until the amount of the Special Tax levy equals the Special Tax Requirement for that fiscal year.

The Special Tax for CFD No. 9 shall be collected in the same manner and at the same time as ordinary ad valorem property taxes, provided, however, that CFD No. 9 may (under the authority of Government Code 53340), in any particular case, bill the taxes directly to the property owner off of the County of Fresno tax roll, and the Special Taxes will be equally subject to penalties and foreclosure if delinquent.

E. EXEMPTIONS

Notwithstanding any other provision of this Rate and Method of Apportionment of Special Tax, no Special Tax shall be levied on parcels that have been conveyed to a public agency, except as otherwise provided in City Law, and properties receiving a welfare exemption under subdivision (g) of Section 214 of the Revenue and Taxation Code. In addition, no Special Tax shall be levied on excluded parcels or parcels that are determined not to be developable lots.

EXHIBIT B

ATTACHMENT 1

City of Fresno

Community Facilities District No. 9
Annexation 54

Excluded Parcels

**THERE ARE NO EXCLUDED PARCELS IN
FINAL PARCEL MAP NO. 2020-05 -OR- WITHIN THE BOUNDARIES OF
ANNEXATION NO. 54**