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September \_\_\_\_, 2023

Via Email: 

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Mr. Scott Mozier  
City of Fresno  
Public Works Department  
2600 Fresno Street  
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**SUBJECT:** Community Facilities District No. 18  
(Public Safety Services)

Dear Directors:

This letter is being provided on behalf of The Building Industry Association for the Counties of Fresno and Madera (the "BIA"), which is composed of more than 90 companies and individuals involved in developing residential housing in the Fresno/Madera area. Established in 1947, the BIA is a membership-based organization representing builders, developers, subcontractors, and affiliated businesses in the residential, commercial, and industrial building industry.

This letter is being provided to raise objections about the requirements recently imposed on new housing development projects, to mandate their annexation into Community Facilities District No. 18 (Public Safety Services) (the "Special Tax District").

### **Legislative Findings Regarding California's Housing Crises.**

This letter is also being provided with consideration of the findings that the California Legislature adopted as part of the Housing Crises Act of 2019 (Government Code Section 65589.5), which confirms the following:

(A) California housing has become the most expensive in the nation. The excessive cost of the state's housing supply is partially caused by activities and policies of many local governments that limit the approval of housing, increase the cost of land for housing, and require that high fees and exactions be paid by producers of housing.

(B) Among the consequences of those actions are discrimination against low-income and minority households, lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration.

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(C) Many local governments do not give adequate attention to the economic, environmental, and social costs of decisions that result in disapproval of housing development projects, reduction in density of housing projects, and excessive standards for housing development projects.

(D) California has a housing supply and affordability crisis of historic proportions. The consequences of failing to effectively and aggressively confront this crisis are hurting millions of Californians, robbing future generations of the chance to call California home, stifling economic opportunities for workers and businesses, worsening poverty and homelessness, and undermining the state's environmental and climate objectives.

(E) The crisis has grown so acute in California that supply, demand, and affordability fundamentals are characterized in the negative: underserved demands, constrained supply, and protracted unaffordability.

(F) When Californians have access to safe and affordable housing, they have more money for food and health care; they are less likely to become homeless and in need of government-subsidized services; their children do better in school; and businesses have an easier time recruiting and retaining employees.

(G) An additional consequence of the state's cumulative housing shortage is a significant increase in greenhouse gas emissions caused by the displacement and redirection of populations to states with greater housing opportunities, particularly working- and middle-class households. California's cumulative housing shortfall therefore has not only national but international environmental consequences.

### **History of Adoption of Community Facilities District No. 18 (Public Safety Services)**

The Fresno City Council initiated activities to adopt the Special Tax District on the heels of its termination of tax sharing agreements with the County of Fresno that are required to annex new properties into the boundaries of the City. The Council believed that the tax-sharing split disadvantaged the City and resulted in a violation of the City's General Plan policies that required such annexations to be "revenue neutral".<sup>1</sup>

At that time, certain properties in an area designated as the West Area Region were pending action by the City Council to initiate their annexation into the City. Without the tax sharing updates that the City believes are necessary for a fair apportionment of taxes, the City intended to address the requirements of its revenue neutral policies through the establishment of the Special Tax District for those properties. The City commissioned a study, intended to confirm the extent of the lack of revenue neutrality, and the extent of special taxes to be assessed to fund the provision of City

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<sup>1</sup> See Public Works Department's Report to the City Council as part of an agenda item on its January 13, 2022 Council Meeting, under ID 22-54.

public services to those areas within the West Area Region that were then pending annexation (the “West Area Neighborhood Project Area Study”). The commissioned study confirmed the narrowness of its intended analysis, by confirming that the study related solely to the areas of annexation, which it described as the “Project Area”.<sup>2</sup>

After the “West Area Neighborhood Project Area Study” was completed, the City relied on the study to satisfy the requirements of Government Code Section 53321.5. That statute requires that the City determined the estimate of the costs of providing the intended public safety services that the Special Taxes are intended to fund. The City then adopted the Special Tax District, and imposed the special taxes on the Project Area as a condition of that area’s annexation to the City.

#### **Extension of the Reach of the Special Tax District.**

As stated above, that the genesis of the Special Tax District was to address the need to assure revenue neutrality for new annexations in a limited study area. Despite that fact, the Public Works Department and Planning Department have subsequently imposed the Special Tax District condition on a wide range of other housing development projects, and upon the future residences of those neighborhoods.

The City’s stated purpose for the Special Tax District was to address policy LLU-1-e of the General Plan, which seeks to assure revenue neutrality for annexation of new properties into the City’s boundaries. However, in applying the Special Tax District to projects within the City’s boundaries, including infill projects, the arrangement is entirely unmoored from any reasonable policy goals adopted by City Council.

#### **No Designated Future Annexation Areas.**

When approving the Special Tax District, the City adopted Resolution No. 2022-325, which referenced a map that designated the intended boundaries of that District. The map included in the agenda package for the adoption of that Resolution is provided with this letter. That Map indicates that both the initial and proposed future boundaries of the Special Taxes District. Both of those boundaries were limited solely to the project area evaluated in the West Area Neighborhood Project Area Study.

Nevertheless, the City Departments are now taking the position that residents in a much larger boundary will be required to pay the intended special taxes. Specifically, the Departments seek to impose the Special Tax District on all new housing to be

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<sup>2</sup> See Revised Fiscal Impact Analysis of West Area Neighborhoods Project Area Residential Development, dated March 2023, prepared by NBS, Introduction, p.1 See also Exhibit A to Consultant Service Agreement approved by the City Council on January 13, 2022, at page 1, “NBS will gather and review data relevant to the project area”).

developed on lands annexed into the City boundaries over the prior 20 years. It thereby seeks to apply special taxes retroactively to all such annexed lands as a condition of their further development for housing uses.

These actions are not based upon any policy that was deliberated and adopted by the City Council in public sessions. Instead, without reference to any stated policy or ordinance adopted by the Council, the staff asserts that “The requirement for properties to annex into CFD No. 18 is applicable to projects on properties that have been incorporated into the City of Fresno since January 6, 2003 (date of now expired Memorandum of Understanding between the County and City of Fresno).” (See staff report submitted to the City Council for agenda item ID 23-1226 scheduled for consideration on September 24, 2023).

The staff is thereby seeking to impose a policy that retroactively affects lands annexed 20 years ago. This is not based on a need to address revenue neutrality goals of General Plan policy LLU-1-e for annexed lands. That is because the 20 years of retroactivity that the staff seeks to apply includes periods that precede the adoption of the General Plan. The General Plan, and its policy LLU-1-e, was adopted approximately 10 years ago, not 20 years ago.

In addition, had City intended to apply the Special Taxes to all lands annexed during the prior 20 years, the map that designates the Special Tax District Future Annexation Area would have presumably included those areas. The Resolution adopting the Special Tax Districts also made no reference to that intention.

If the policy goal of the City Council was to impose the Special Tax District on all housing development occurring on all lands annexed during the past 20 years, it certainly kept that hidden from the public. There was no reference to that purpose in any of the Staff Reports, Consultant Reports, or Council Resolutions issued as part of the Special Tax District’s adoption. The public was led to believe this was a program to be applied solely to newly annexed properties.

**The Intended Public Safety Services Funded by the Special Taxes Supplant, Rather than Supplement, the Services Provided to the Affected Home Owners.**

The Mello Roos Act, which authorizes the Special Tax Districts, requires that additional services funded by special taxes approved by a vote of landowners, to be in addition to services provided in the Special District territory before the district was created. The additional services may not supplant services already available within that territory. (Government Code Section 53313).

It is fair to assume that the lands annexed into the City over the past 20 years, even when not yet developed with housing, receive public safety services, and at the same level of protection as is provided to all other landowners within the City. Therefore,

despite the requirements of Government Code Section 53313, no additional services not previously provided within the Special Tax District is being funded by the District's Special Taxes.

We understand that there is one published legal decision, from the First District Court of Appeal, that discusses the requirements of Government Code Section 53313.<sup>3</sup> That Court conducted a fairly tortured analysis of the difference between providing services "in addition to" existing services, versus using the special taxes to "supplant" the provision of existing services.

Even if courts in other Appellate District's concur in that Court's analysis, the Special Taxes the City currently seeks to impose will clearly supplant, and not augment, existing levels of public safety services available to the subject homeowners. That is because the special taxes the City seeks to impose is based on the West Area Neighborhood Project Area Study that analyzed the costs of providing services to a defined study area of lands outside the City boundaries. That study area was therefore limited to lands where no level of City public safety services had ever been provided.

It is undisputable that lands within the City boundaries are presently receiving higher levels of service from the City than lands that have not yet been annexed. Yet, if homeowners in both areas pay the same taxes, the Special Taxes are clearly merely supplanting service levels that the previously annexed lands are already receiving. This is a circumstance that was not addressed by the prior court decision that evaluated the prohibitions on special taxes included in Government Code Section 53313.

Furthermore, the Council should be provided the right to exercise its independent judgment in evaluating the proper application of Government Code Section 53313 to these circumstances. The Council may very well rightly conclude that the revenue from the Special Tax District will not be used to pay for any added, extra, or supplementary service. It will be used to pay for services at a level adequate to meet the demand for those services. Those are the same services that parcels throughout the City already receive from the City.

The Council may also rightfully find that an increased overall demand for existing services by new homeowner's does not convert those services into something "additional." Unfortunately, such a policy choice has not been deliberated or adopted by the City Council. The West Area Neighborhood Project Area Study that it commissioned nowhere addressed the issue because the study area it focused on was limited solely to lands that had never been annexed into the City.

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<sup>3</sup> Building Industry Association of the Bay Area v. City of San Ramon (2016) 4 Cal.App.5th 62.

**The West Area Neighborhood Project Area Study Is Woefully Inadequate for Its Intended Uses.**

As previously discussed, the West Area Neighborhood Project Area Study that the City relied upon to establish the Special Tax District was limited to an assessment of the cost of providing services to a specific study area that was limited to lands that had not been annexed. The assumptions in that study, even if adequate for that purpose, is not adequate for the newly espoused purposes of specially taxing new homeowners whose new homes happen to be developed on lands annexed over 20 years ago. The assumptions of the study simply do not support the stated level of tax.

The West Area Neighborhood Project Area Study assumed that the taxes paid by new homeowners, and allocable to public safety services, results in a deficit to the City of \$164.00 per household. The West Area Neighborhood Project Area Study based its analysis, in significant part, on an analysis on Zillow's stated Home Value Index. Zillow publishes several such indexes. The most common Zillow Home Index report, and the one likely relied upon by that Study, is based on the value of all homes (including condominiums) with values in the 35th to 65th percentile range. However, a relevant study for the analysis the City now intends, should be based on the typical value of all new homes constructed within the City over the recent period.

The more relevant Zillow report for that purpose should be based on data for Zillow's report on top tier homes in Fresno. As of July 2023 that report states that the typical value of such homes is \$503,476.22. This is significantly greater than the \$399,000.00 assumed by the West Area Neighborhood Project Area Study. This factor alone demonstrates that the 1% ad valorem property tax generation from the current new neighborhood is more than 30% greater than the West Area Neighborhood Project Area Study's assumption. The City's share of an additional \$1,000.00 of property taxes per annum (1% of the \$100,000 higher typical value of new homes) is approximately \$200.00 per annum.

In addition, the Study assumed the City would benefit from approximately \$200.00 of sales tax generation payable to the City coffers from each household in the new neighborhood. That assumption was based on the 2022 average household income throughout the City, which it states is \$101,908.00.

However, that average household income for the buyer of the typical new home in Fresno is greater than \$101,908. It is more likely \$150,000, simply because a household purchasing a \$500,000 home will pay a monthly mortgage of \$3,000.00 per month, based on a 10% down payment and a 7% interest rate. When you include the costs of taxes and homeowner's insurance, it is the underwriting required to obtain such a mortgage will be closer to \$150,000.00. Of course, this does not take into account the fact that the proposed Special Taxes will increase that housing cost burden.

The sales tax generation payable to the City coffers from a household with 50% more income than the West Area Neighborhood Project Area Study assumed will be 50% more, and total approximately \$300.00 per household, or an additional \$100.00,

Taking into account solely the additional property and sales taxes payable by a homeowner in a typical new home in Fresno (and disregarding such income sources as Property tax in lieu of VLF revenues, and other taxes and fees), the City receives taxes \$300.00 more than the West Area Neighborhood Project Area Study's assumptions. The 64% of those taxes allocable to Public Safety services totals \$192.00. This amount more than makes up for the presumed \$164.00 per household deficit. Again, this analysis disregards In Lieu VLF and Documentary Transfer taxes, and all other per capita revenue generation assumed in the West Area Neighborhood Project Area Study.

New housing projects cover more than their share of the costs of public safety services. The underpinning of the City's demands for new revenues from these residents is based on unreasonable assumptions, and a false perspective on the benefits of the development of new housing. The City's erroneous fiscal study and the fiscal policies it has attempted to justify, contribute to exacerbation of California's present housing crises.

### **Conclusion**

There are substantial legal infirmities in the City's attempts to impose Public Safety Special Taxes on new homeowners.

- The Resolution adopted for that Special Tax District did not reflect its intended future annexation boundaries that the City now intends.
- Its reliance on the West Area Neighborhood Project Area Study results in the City seeking to impose taxes that clearly supplant, rather than supplement, existing public safety services provided to lands in the City.
- The assumptions in that fiscal analysis have no bearing on the taxes contributed towards public safety purposes by a new homebuyer of a typical new home in Fresno.
- The General Plan policy of revenue neutrality for new annexations that was its initial justification does not apply to lands that have been annexed over the past 20 years.

These infirmities are the result of an effort to pursue additional tax revenues using approaches, and analysis, in a manner that has never been deliberated by the City's governing body.

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Public Works Department and  
Planning and Development Department  
September \_\_, 2023  
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The City Council should conduct hearings and outreach to its citizenry concerning these matters before the staff extends these new Special Taxes beyond the properties and taxpayers intended by the West Area Neighborhood Project Area Study. The Council should also, in its deliberations, heed the findings of the State Legislature, and work to ameliorate, rather than exacerbate, the housing crises that is creating such negative consequences for the community.

Sincerely,  
McCORMICK, BARSTOW, SHEPPARD,  
WAYTE & CARRUTH LLP

Jeffrey M. Reid

Enc. Map of boundaries, and future boundaries, of the Special Tax District, included with its adopting resolution.