

City of Calistoga

Staff Report

TO: Honorable Mayor and City Council
FROM: David W. Spilman, Administrative Services Director/City Treasurer
DATE: January 2, 2008
SUBJECT: Community Facilities District Goals and Policies

APPROVAL FOR FORWARDING:

James C. McCann, City Manager

1 **ISSUE:** To consider a Resolution adopting local goals and policies for a Community
2 Facilities District (CFD) established under the Mello-Roos Community Facilities Act of
3 1982 (the Act).

RECOMMENDATION: To adopt the Resolution.

4 **BACKGROUND / DISCUSSION:** State law provides the ability for Cities to finance
5 certain public improvements, maintenance and operations for a specific defined area
6 with an annual special tax applied to only those parcels within the defined area and
7 approved by the voters or landowners subject to the special tax. A Community Facilities
8 District can be established under the Mello-Roos Community Facilities Act of 1982
9 (Government code 53311, et seq) that can provide lower cost tax-exempt financing for
10 certain public improvements and or services.

11 In order to use this provision of State law, the City is required to adopt Local Goals and
12 Policies for Community Facilities Districts (Policies) to provide guidance and set the
13 conditions for the establishment of a CFD and the issuance of bonds secured by special
14 taxes levied only on property within the CFD. The Policies are intended to be general
15 in nature; specific details will depend on the nature of each particular CFD. These
16 Policies shall not apply to any other type of assessment financing or any certificate of
17 participation or similar financings involving leases of or security in public property. The
18 Policies can be amendment by the City Council at any time.

19 **CFD Goals and Policy Highlights**

20 The following is a summary of the significant features of the CFD Goals and Policies:

- 21 • New Development associated with a CFD must be consistent with the General
22 Plan and received necessary approvals of zoning or specific plans.
- 23 • Eligible improvements include all types of public facilities, Development Fees,
24 Refinancing of eligible improvements, certain public maintenance and operations,
25 and public facilities owned by other public agencies.

- 26 • Improvements can be constructed by the City or acquired from private
27 development as long as State required prevailing wages are paid.
- 28 • CFD financing shall not be issued unless the value of all of the properties is at a
29 minimum of 3 times the amount of the special tax lien – a 3 to 1 lien to value
30 ratio. The City may allow certain exceptions and additional security through a
31 letter of credit.
- 32 • Require an appraisal to determine property values and the City may require a
33 market absorption study.
- 34 • Requires full disclosure of CFD and special tax liens to property owners and
35 continuing disclosure to bond holders
- 36 • Provides for Special Tax formulas and maximum limits on properties
- 37 • Summarizes proceedings on establishment of a CFD according to State Law
- 38 • Requires the applicant/developer requesting the CFD reimburse the City for all
39 costs associated with formation.
- 40 • Sets the CFD bond financing terms established solely by the City and the
41 security pledged shall be only from the CFD properties and the special tax lien.
42 The City is not obligated to pay for the bonds.

43 Attached is a Resolution adopting the local goals and policies for a Community Facilities
44 District and a draft of the policies.

45 **Creation of First CFD for Terrano Napa Valley**

46 The City is required to adopt the CFD Policies prior to the initiation of first CFD
47 proceedings. The City Council has introduced Ordinance #649 to approve a
48 Development Agreement for the Terrano Napa Valley Resort development. One of the
49 terms of the Development Agreement is a request from the Developer to the City to
50 form a CFD within 120 days of the effective date of the Development Agreement. This
51 CFD would include only the resort properties for the purpose of financing eligible public
52 improvement costs. The repayment obligation will be solely from a special tax levied
53 only on the resort properties.

54 The Developer will be submitting a petition to the City to formally request formation of
55 the Terrano Napa Valley Community Facilities District #1. It is planned that staff will be
56 able to review the petition and bring to the City Council the recommendations, formation
57 process and various consultant agreements for review and approval at the next City
58 Council meeting.

59 **FISCAL IMPACT:** None from the adoption and implementation of the goals and
60 policies. Any City costs associated with the formation of a CFD under the goals and
61 policies will be reimbursed from the applicant/developer according to the goals and
62 policies.

63 **ATTACHMENTS:**

1. Resolution adopting local goals and policies for a Community Facilities District established under the Mello-Roos Community Facilities Act of 1982.
2. Draft Local Goals and Policies for Community Facilities Districts.

RESOLUTION NO. 2008-_____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALISTOGA,
COUNTY OF NAPA, STATE OF CALIFORNIA, ADOPTING LOCAL GOALS
AND POLICIES FOR COMMUNITY FACILITIES DISTRICTS ESTABLISHED
UNDER THE MELLO-ROOS COMMUNITY FACILITIES ACT OF 1982**

1 **WHEREAS**, the State of California adopted the Mello-Roos Community Facilities
2 Act of 1982 (Government Code 53311, et seq) to facilitate funding of public
3 improvements; and
4

5 **WHEREAS**, the State law provides the ability for Cities to finance certain public
6 improvements, maintenance and operations for specific defined areas within the City
7 with an annual special tax applied to only those parcels within the defined area and
8 approved by the voters or landowners subject to the special tax; and
9

10 **WHEREAS**, Section 53312.7(a) of the California Government Code requires that
11 the City adopt local goals and policies concerning the use of the Community Facilities
12 Act prior to the initiation of proceedings. The Policies are applicable to financings under
13 the Act and are intended to comply with Section 53312.7 (a) of the Government Code;
14 and
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16 **WHEREAS**, local goals and policies have been drafted to comply with the State
17 law and meet the needs of the City in the long term financing of needed public
18 improvements.
19

20 **NOW, THEREFORE BE IT RESOLVED** that the City Council of the City of
21 Calistoga hereby adopts the goals and policies for community facilities districts
22 established under the Mello-Roos Community Facilities Act of 1982 in Exhibit A,
23 attached hereto.
24

25 **PASSED, APPROVED, AND ADOPTED** by the City Council of the City of
26 Calistoga at a regular meeting held this 2nd day of January 2008 following vote:
27

28 **AYES:**

29 **NOES:**

30 **ABSTAIN/ABSENT:**
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JACK GINGLES, Mayor

33 **ATTEST:**
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36 **SUSAN SNEDDON, City Clerk**
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CITY OF CALISTOGA

LOCAL GOALS AND POLICIES FOR COMMUNITY FACILITIES DISTRICTS

Overview

State law provides the ability for Cities to finance public improvements and certain maintenance and operations for specific defined areas within the City with an annual special tax applied to only those parcels within the defined area and approved by the voters or landowners subject to the special tax.

In order to use this provision of State law, the City is required to adopt Local Goals and Policies for Community Facilities Districts (the "Policies") to provide guidance and conditions for the conduct by the City of Calistoga (the "City") of proceedings for, and the issuance of bonds secured by special taxes levied in, a community facilities district ("CFD") established under the Mello-Roos Community Facilities Act of 1982, Sections 53311 and following of the California Government Code (the "Act").

The Policies are intended to be general in nature; specific details will depend on the nature of each particular financing. Section 53312.7(a) of the Act requires that the City adopt local goals and policies concerning the use of the Act prior to the initiation of proceedings. The Policies are applicable to financings under the Act and are intended to comply with Section 53312.7 (a) of the Government Code. These Policies shall not apply to any other type of assessment financing or any certificate of participation or similar financings involving leases of or security in public property.

The Policies are subject to amendment by the City Council at any time.

Eligible Facilities and Priorities

The improvements eligible to be financed by a CFD must be owned by a public agency or public utility and must have a useful life of at least five (5) years, except that up to five percent (5%) of the proceeds of an issue may be used for facilities owned and operated by a privately-owned public utility. The City may acquire eligible public improvements from a private developer that is required to construct and dedicate such improvements to the City or other public agencies as a

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36 condition of development, as long as the private developer certifies that State required
37 prevailing wages were paid during construction.

38
39 The development proposed within a CFD must be consistent with the City's general plan and
40 must have received any required legislative approvals such as zoning or specific plan
41 approvals. The formation of a CFD shall not vest any rights to future land use on any
42 properties, including those which are responsible for paying special taxes.

43
44 The facilities and services eligible to be provided by CFD include, but are not limited to, the
45 following:

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47 Public Facilities

- 48 • Streets
- 49 • Street lighting
- 50 • Traffic signals and safety lighting
- 51 • Landscaping on public property or in public easements
- 52 • Sanitary sewer facilities
- 53 • Storm drain facilities
- 54 • Flood control facilities
- 55 • Potable and reclaimed water facilities
- 56 • Utility relocations
- 57 • Elementary and secondary school sites and facilities
- 58 • Libraries
- 59 • Parks and recreational facilities
- 60 • Public utilities
- 61 • Cultural facilities
- 62 • Police and fire protection facilities
- 63 • Governmental facilities

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65 Development Fees

66 The Act also permits the financing of Development and other fee obligations
67 imposed by governmental agencies as long as the fees are to be used to fund
68 public capital improvements of the nature listed above.

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Refinancing

A CFD may also be formed for the purpose of refinancing any fixed special assessment or other governmental lien on property, to the extent permitted under the Act, as applicable.

Eligible Services.

The services eligible to be financed by a CFD (the "Services") are those identified in the Act, including but not limited to Section 53313 of the Act. To the extent required by the Act, the CFD may only finance the Services to the extent they are in addition to those provided in the territory of the CFD before the CFD was created, and the additional Services may not supplant services already available within the territory of the CFD when the CFD was created.

Public Facilities Owned by Other Public Agencies

The funding of public facilities to be owned and operated by public agencies other than the City shall be considered on a case-by-case basis. If the proposed financing is consistent with a public facilities financing plan approved by the City, or the proposed facilities are otherwise consistent with approved land use plans for the property, the City shall consider entering into a joint financing agreement or joint powers authority in order to finance these facilities. In general, a joint agreement with the public agency that will own and operate any such facility must be entered into prior to the resolution of formation of any CFD.

Priority for CFD financing shall be given to public facilities which:

- (a) Are necessary for development to proceed in an orderly fashion, or
- (b) Are otherwise coordinated to correspond to the phasing of the related private development project.

If appropriate, the City shall prepare a public facilities financing plan as a part of the specific plan or other land use document that identifies the public facilities required to serve a project, and the type of financing to be utilized for each facility. The City will attempt to coordinate the construction of CFD-financed facilities, either by the City or private development, in a manner such that private development will not occur ahead of the installation of public infrastructure necessary to support that development.

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Credit Quality and Security for the Special Tax and Bond Issues

The City may sell bonds for the CFD only if it determines that the value of the real property that would be subject to the special tax to pay the annual debt service will be at least three times the principal amount of the bonds to be sold and the principal amount of all other bonds outstanding that are secured by a special tax or assessment lien (a 3:1 lien to value ratio).

This determination will be based upon the full cash value as shown on the ad valorem assessment roll or upon an appraisal of the subject property made in a manner consistent with the policies of the City, these Policies and the Act. Requirements of a higher value to lien ratio may be imposed by the City and will be determined by an appraisal with recommendations from the City's bond counsel, financial advisor, and bond underwriter with consideration of the facts pertaining to each particular project, including among others diversification of land ownership. Each project will be considered on its own merits.

At the time bonds are sold for a CFD, (a) the value to lien ratio of no more than 10% of the taxable parcels within a CFD may be less than 3 to 1, and (b) no taxable parcel may have a value to lien ratio of less than 1.5 to 1. The City may allow exceptions to its value to lien ratio requirements if it finds and determines that the proposed bonds do not present any unusual credit risk due to the availability of credit enhancements or for other reasons determined by the City in accordance with the Act.

The appraisal shall be coordinated by, under the direction of, and addressed to the City. The applicant shall pay all costs associated with the preparation of the appraisal report through the advance deposit mechanism described below. The appraisal shall be conducted in accordance with criteria, standards and assumptions established by the City, based upon the recommendations for each specific project received from the underwriter and financial advisor designated by the City. In every case, the appraisal shall reflect nationally and locally recognized appraisal standards for land-secured bond financing. The City prefers that the appraisal be prepared in accordance with the recommendations of the California Debt Advisory Commission as contained in the Disclosure Guidelines for Land-Based Securities, and deviations there from will only be considered upon recommendation from bond counsel, financial advisor, the underwriter and the appraiser, with consideration of the facts pertaining to each particular project.

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144 The City may require a market absorption study, and may retain a consultant to prepare a
145 report to verify market absorption assumptions and projected sales prices of the properties
146 subject to the special taxes in the CFD. The appraisal shall take into consideration and be
147 based upon the conclusions of the market absorption study.

148

149 Upon receiving an appraisal, determining the value-to-lien ratio, and evaluating the project and
150 current underwriting criteria, the City may require letters of credit from an "A" rated
151 counterparty, subject to the approval of the City, or other security to secure payment of the
152 special taxes to be levied annually on properties within the CFD. Letters of credit or other
153 security may also be required for individual parcels of specific property ownership within a CFD,
154 at the discretion of the City.

155

156 The City will require that all major land use approvals and governmental permits necessary for
157 development of land in the CFD be substantially in place before bonds are issued.

158

159 In most cases, a debt service reserve fund will be required for all bond issues, which will equal
160 the lesser of (i) ten percent of the original proceeds of the bond issue, (ii) the maximum annual
161 debt service on the bonds, or (iii) one hundred twenty-five percent of the average annual debt
162 service on the bonds. A smaller reserve fund may be allowed by the City, if and to the extent
163 that market conditions for the bonds allow, for bond issues where greater than 50% buildable
164 acreage has been developed or the lien to value ratio is greater than 10:1.

165

166 In cases where the lien to value ratio is less than 3:1, excessive tax delinquencies exist, or the
167 CFD encompasses a development project of poor economic viability, the City may disallow the
168 sale of bonds or require credit enhancement prior to bond sale.

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170 The City may consider exceptions to the above policies for bond issues that do not represent an
171 unusual credit risk, either due to credit enhancement or other reasons specified by the City,
172 and/or which otherwise provide extraordinary public benefits, to the extent permitted by and
173 subject to any applicable requirements of the Act.

174

175 **Disclosures**

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177 Purchasers of Property. As a minimum, any disclosures mandated by applicable state law to
178 inform prospective purchasers of their obligations under the CFD shall apply to each CFD. In
179 addition, there may be additional requirements mandated by the City for particular kinds of

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180 financings on a case-by-case basis. The City may prescribe specific forms to be used to
181 disclose the existence and extent of obligations imposed by a CFD.

182

183 Disclosure Requirements for the Resale of Lots. The City shall provide a notice of special taxes
184 to sellers of property (other than developers) which will enable them to comply with their notice
185 requirements under Section 1102.6 of the California Civil Code. This notice shall be provided by
186 the City within five working days of receiving a written request for the notice. A reasonable fee
187 may be charged for providing the notice, not to exceed any maximum fee specified in the Act.

188

189 Continuing Bond Disclosure. Landowners in a CFD that are responsible for 10% or more of the
190 annual special taxes must agree to provide: (i) initial disclosure at the time of issuance of any
191 bonds; and (ii) annual disclosure as required under Rule 15c2-12 of the Securities Exchange
192 Commission until the special tax obligation of the property owned by such owner drops below
193 10%.

194

195 **Equity Of Special Tax Formulas and Maximum Special Taxes**

196

197 Special tax formulas shall provide for minimum special tax levels which satisfy the following
198 payment obligations of a CFD:

199

- 200 (a) 110 % gross debt service coverage for all CFD bonded indebtedness,
- 201 (b) The administrative expenses of the CFD, and
- 202 (c) Amounts equal to the differences between expected earnings on any escrow fund
203 and the interest payments due on related bonds of the CFD.

204

205 In addition, the special tax formula may provide for the following to be included in the Special
206 Tax levels:

207

- 208 (a) Any amounts required to establish or replenish any reserve fund established in
209 association with the indebtedness of the CFD,
- 210 (b) The accumulation of funds reasonably required for future debt service,
- 211 (c) Amounts equal to projected delinquencies of special tax payments,
- 212 (d) The costs of remarketing, credit enhancement and liquidity facility fees,
- 213 (e) The cost of acquisition, construction, furnishing or equipping of authorized Facilities,
- 214 (f) Lease payments for existing or future facilities, including lease payments on
215 certificates of participation or similar financing,

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- 216 (g) Costs associated with the release of funds from an escrow account,
- 217 (h) The costs of Services, and
- 218 (i) Any other costs or payments permitted by law.

219

220 The special tax formula shall be reasonable in allocating the CFD's payment obligations to
221 parcels within the CFD. Exemptions from the special tax shall be given to parcels which are
222 publicly owned, and may be given to parcels which are held by a property owners' association,
223 are used for a public purpose such as open space or wetlands, are affected by public utility
224 easements making impractical their utilization for other than the purposes set forth in the
225 easements, or have insufficient value to support bonded indebtedness.

226

227 The total projected annual residential property tax levels (including ad valorem taxes, any
228 maintenance, landscaping or other impositions on the land in the CFD and other similar annual
229 government charges levied on parcels in the CFD, but excluding homeowners' association
230 annual levies and as to any special tax levies, based on the expected special tax rates and not
231 any "back-up" special taxes) for any CFD (or, if a CFD has multiple improvement areas, for
232 each improvement area and not the entire CFD) shall not exceed the lesser of (i) 2.0% of the
233 estimated sales prices of the respective developed property in the CFD (with such prices to be
234 determined by reference to an absorption study or appraisal prepared for the CFD or such other
235 information as the City shall determine), or (ii) any maximum specified in the Act. The annual
236 increase, if any, in the maximum special tax for any parcel shall not exceed any maximum
237 specified in the Act. The increase in the special tax levied on any parcel as a consequence of
238 delinquency or default by the owner of any other parcel shall not exceed any maximum
239 specified in the Act.

240

241 Special taxes will only be levied on an entire county assessor's parcel and any allocation of
242 special tax liability of a county assessor's parcel to leasehold or possessory interest in the fee
243 ownership of such county assessor's parcel shall be the responsibility of the fee owner of such
244 parcel and the City shall have no responsibility therefore and has no interest therein. Failure of
245 the owner of any county assessor's parcel to pay or cause to be paid any special taxes in full
246 when due, shall subject the entire parcel to foreclosure in accordance with the Act.

247

248 The City may retain a special tax consultant to prepare a report which: (a) recommends a
249 special tax for the proposed CFD, and (b) evaluates the special tax proposed to determine its
250 ability to adequately fund identified public facilities, City administrative costs, Services (if
251 applicable) and other related expenditures. Such analysis shall also address the resulting

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252 aggregate tax burden of all proposed special taxes plus existing special taxes, ad valorem
253 taxes and assessments on the properties within the CFD.

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255 **Appraisals**

256
257 The definitions, standards and assumptions to be used for appraisals shall be determined by
258 City staff on a case-by-case basis, with input from City consultants and CFD applicants, and by
259 reference to relevant materials and information promulgated by the State of California. The
260 appraiser shall be selected by or otherwise acceptable to the City, and the appraisal shall be
261 coordinated by and under the direction of, or otherwise as acceptable to, the City.

262
263 The appraisal must be dated within three months of the date the bonds are issued, unless the
264 City Council determines a longer time is appropriate.

265
266 All costs associated with the preparation of the appraisal report shall be paid by the entity
267 requesting the establishment of the CFD. If applicable, through the advance deposit mechanism
268 described below.

269
270 **City Proceedings**

271
272 Petition. For new development projects, a petition meeting the requirements of the applicable
273 authorizing law will be required. The applicant should obtain unanimous waivers of the election
274 waiting period. The applicant must specify in the application any reasonably expected
275 impediments to obtaining petitions, including from co-owners and/or lenders of record (where
276 required). The City may initiate a CFD proceeding, as authorized by law, depending on the
277 nature of the project and degree of public importance.

278 Deposits and Reimbursements. All City staff and consultant costs incurred in the evaluation of
279 CFD applications and the establishment of the CFD will be paid by the applicant, if any,
280 requesting the establishment of the CFD through a deposit agreement. The City shall not incur
281 any expenses for processing and administering a CFD that are not paid by the applicant or from
282 CFD bond proceeds. In general, expenses not chargeable to the CFD shall be directly borne by
283 the applicant.

284
285 Any petition for formation of a CFD shall be accompanied by an initial deposit in the amount
286 determined by the City to fund initial staff and consultant costs associated with initial CFD
287 review. If the City determines that further review is needed or the formation of the CFD is

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288 warranted, the applicant shall enter into a deposit agreement and provide estimated funds to
289 reimburse the City for the costs of formation. If additional funds are needed by the City, the City
290 shall make written demand upon the applicant for such funds, per the deposit agreement. If the
291 applicant fails to make any deposit of additional funds, the City may suspend all proceedings
292 until receipt of such additional deposit.

293
294 The City shall not accrue or pay any interest on any portion of the deposit of funds by the
295 applicant. Neither the City nor the CFD shall be required to reimburse any applicant or property
296 owner from any funds other than the proceeds of bonds issued by the CFD or special taxes
297 levied in the CFD. If the proceedings are suspended or cancelled, any remaining deposit funds,
298 after all costs have been reimbursed, shall be refunded to the applicant, without interest.

299
300 Representatives. The City and the applicant shall each designate a representative for the CFD
301 proceeding. The representatives shall be responsible for coordinating the activities of their
302 respective interests and shall be the spokespersons for each such interest. The purpose of this
303 requirement is to avoid duplication of effort and misunderstandings from failure to communicate
304 effectively. In the case of the City, it allows the City's consultants to report to a single official
305 who will, in turn, communicate with other staff members.

306
307 Time Schedule. The final schedule of events for any proceeding shall be determined by the
308 City, in consultation with its financing team and the applicant. Any changes will require approval
309 by the appropriate City official. Time schedules will (unless specific exceptions are allowed)
310 observe established City Council meeting schedules and agenda deadlines. To the extent
311 possible, financings will be scheduled to allow debt service to be placed on the tax rolls with a
312 minimum of capitalized interest.

313
314 **Financing Terms**

315
316 All terms and conditions of any CFD bonds shall be established by the City. The City will
317 control, manage and invest all CFD issued bond proceeds. Each bond issue shall be structured
318 to adequately protect bond owners and to not negatively impact the bonding capacity or credit
319 rating of the City through the special taxes, credit enhancements, foreclosure covenant, and
320 reserve funds.

321
322 All statements and material related to the sale of bonds shall emphasize and state that neither
323 the faith, credit nor the taxing power of the City is pledged to security or repayment of the

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324 Bonds. The sole source of pledged revenues to repay CFD bonds are special taxes, bond
325 proceeds and reserve funds held under the bond document, and the proceeds of foreclosure
326 proceedings and additional security instruments provided at the time of bond issuance.

327

328 The City shall select all consultants necessary for the formation of the CFD and the issuance of
329 bonds, including the underwriter(s), bond counsel, disclosure counsel, financial advisors,
330 appraiser and the special tax consultant. Prior consent of the applicant shall not be required in
331 the determination by the City of the consulting and financing team.

332

333 **Exceptions To These Policies**

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335 The City may find in limited and exceptional instances that a waiver to any of the above stated
336 policies is reasonable given identified special benefits to be derived from such waiver. Such
337 waivers only will be granted by action of the City Council.

