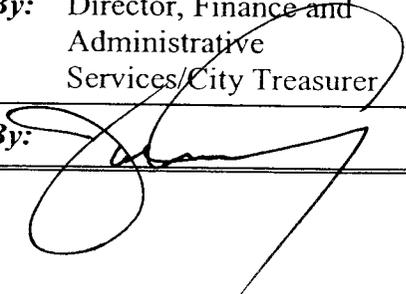




POLICY AND PROCEDURE

Subject: Policy Guidelines Regulating the Use of Public Financing Mechanisms to Finance Public Facilities and Services	Index: Financial Services Number: 204-04
Effective Date: April 19, 2005	Prepared By: Director, Finance and Administrative Services/City Treasurer
Supersedes: August 4, 1999 version	Approved By: 

1.0 **PURPOSE:**

The purpose of the City's Guidelines are to regulate the use of public financing mechanisms to finance public facilities pursuant to the requirements set forth in the Mello-Roos Community Facilities Act of 1982 and the Municipal Improvement Act of 1913/Improvement Bond Act of 1915.

2.0 **ORGANIZATIONS AFFECTED:**

List affected organizations

3.0 **REFERENCES:**

- Community Facilities Act of 1982
- Municipal Improvement Act of 1913/Improvement Bond Act of 1915

4.0 **POLICY:**

This policy document is intended to provide the City with guidelines for evaluating the merits of assisting in the financing of project-related public facilities in which a significant public benefit has been established. These project-related public facilities may be developer/proponent or City initiated. These Policies are also designed to comply with Section 53312.7(a) of the Government Code. The City reserves the right to amend or modify these Policies at any time as well as make exceptions or changes for specific financing projects, as facts and circumstances so warrant.

- 4.1 **Scope:** The public financing mechanisms subject to this policy document are limited to the Mello-Roos Community Facilities Act of 1982 for "CFDs", and Municipal Improvement Act of 1913 and the Improvement Bond Act of 1915 for fixed lien special assessment districts.

The City will exercise a fiscally conservative approach to the use of public financing assistance in order to maintain the City's good financial standing, minimize the impact on the City's general credit and to ensure the appropriate use of these financing mechanisms. The individual and cumulative financial impact of project-related public financing assistance upon the City's credit will be carefully evaluated. The City's fundamental reason for assisting the financing of project-related public facilities is to ensure that: 1) growth within the City occurs in a comprehensive, organized way consistent with the City's General Plan, and 2) existing City residents do not have to pay for new growth which does not directly benefit them.

It is the City's desire to make these Policy Guidelines available to the community at large so that: 1) the City's policies are clearly communicated, 2) the developer/proponent can make reasonable and realistic business decisions based upon their understanding of the City's willingness to assist in a public financing program, and 3) the significant public benefit requirement for eligibility of public financing is clearly identified.

The City shall make the determination as to which public financing mechanism, if any, shall be used to assist in the construction of a public facility or funding of municipal services. The City may confer with the applicant to learn of any unique District requirement, such as facilities serving the regional area or long term development phasing, prior to making any final determination.

When considering a proponent's request to utilize public financing, all costs associated with the process including the fees for all consultants and City staff expenses will be paid by the proponent. There will be no cost borne by the City. In order for the City to process the developer's/proponent's request and prepare the City-developer agreement for deposit of funds to cover the costs, the

proponent shall pay the current application fee as set forth in the Fees and Charges Schedule. (See Section 6.4 of this policy for additional information.)

5.0 DEFINITIONS:

Unless the context otherwise requires, the terms employed in the following policies shall have the meanings specified below:

- 5.1 “Act” means Mello-Roos Community facilities Act of 1982 or Improvement Bond Act of 1915 or Municipal Improvement Act of 1913.
- 5.2 “Backbone Infrastructure” means public improvements of a more regional nature than localized public improvements (i.e. sewer interceptor vs. sewer collector line).
- 5.3 “Sales Price” means an estimate of the sales price as of the date of analysis.
- 5.4 “Bonds” means bonds authorized and issued under any of the public financing mechanisms described herein.
- 5.5 “City” means the City of San Clemente.
- 5.6 “District” means a community facilities district formed under the Mello-Roos Community Facilities Act of 1982 (“Community Facilities District” or “CFD”) or a fixed lien special assessment district formed under the Municipal Improvement Act of 1913.
- 5.7 “Overlapping Debt” means other fixed lien assessment or other special tax debt encumbering the property within the District.
- 5.8 “Policy” or “Policy Guidelines” means these Policy Guidelines of the City.
- 5.9 “Public Facilities” means improvements authorized to be constructed or acquired under any of the public financing mechanisms described herein.
- 5.10 “Validation” means the legal action to validate actions taken to form the District and/or issue Bonds.
- 5.11 “Value” or “Fair Market Value” means the amount of cash or its equivalent which property would bring if offered for sale in the open market under conditions in which neither buyer nor seller could take advantage of a difficulty of the other and both have knowledge of all of the uses and purposes to which the property is adapted and for which it is capable of being used and of the enforceable restrictions upon uses and purposes.

- 5.12 "Value to Lien" means the value of property vs. the capitalized amount of special taxes and/or the amount of fixed special assessment liens.

6.0 PROCEDURE:

6.1 Public Financing Mechanisms and Eligible Public Facilities, Services and Priorities:

The public financing mechanisms subject to this policy document include the: 1) Municipal Improvement Act of 1913 and the Improvement Bond Act of 1915, and 2) the Mello-Roos Community Facilities Act of 1982.

The general types of facilities and services currently eligible to be financed are listed as follows for each public financing mechanism:

- A) Municipal Improvement Act of 1913 and Improvement Bond Act of 1915.
1. Arterial Streets
 2. Trunk Sewer Mains
 3. Master Area Storm Drains
 4. Water Transmission Mains
 5. Water, Sewer or Drainage Pumping Plants
 6. Non-Tract related Street Lighting
 7. Traffic Signals and Safety Lighting
 8. Grading necessary to accommodate "Backbone" Public Infrastructure; including Retaining Walls, Drainage Facilities and Stabilization of Land
 9. Government Facilities of specific benefit to the District
 10. Parks
 11. Ornamental Vegetation Installation and Maintenance
- B) Mello-Roos Community Facilities Act of 1982
1. Local Park, Recreation Programs, Parkway and Open-Space Facilities, Services and Maintenance
 2. Infrastructure to be acquired, improved, rehabilitated or maintained by the City
 3. Library Facilities and Services
 4. Child Care Facilities
 5. Water transmission and distribution facilities, natural gas pipeline facilities, telephone lines, facilities for the transmission and distribution of electrical energy and cable television lines*
 6. Cultural Facilities
 7. Police Fire, Flood and Storm Protection Services
 8. Services with respect to removal or remedial action of Hazardous Substances
 9. Any of the facilities listed under 6.1.A1 through 6.1.A10 above.

10. Statutory development fees can not be funded unless such fees are related to statutorily permitted capital facilities with a useful life of five years or longer. Amounts necessary to eliminate any fixed special assessment liens or to pay, repay or defease any obligation to pay, or any indebtedness secured by any tax, fee or charge levied within the area of the community facilities district will be permitted.

Any facility not noted in 6.1.A or 6.1.B above, but statutorily permitted will be reviewed and considered as an eligible facility or service on a case-by-case basis.

*Includes public, PUC-regulated and municipal utilities

6.2 **Priorities:** It is the City’s view that a comprehensive policy toward mitigating the service impacts of growth is the best way to foster cooperation in allocating available debt capacity. Therefore, it is the City’s intent to work closely with local school districts (and any other public agencies with District creating authority) to ensure that the maximum tax rate (see Section 6.3.1) is not exceeded and homeowners are not overburdened. In order to ensure that public financing is used in a comprehensive, organized way consistent with the City’s General Plan and the Policies outlined in Section 6.3.3, the aforementioned eligible public facilities are prioritized below:

1st Priority	Facilities needed to serve a community plan area that is currently deficient in off-site infrastructure needed to develop the area as planned; that is “backbone” public infrastructure to support already approved community plan areas.
2nd Priority	Other public facilities for which there is a clearly demonstrated public benefit.
3rd Priority	Other public facilities and services permitted by the Acts.

The City reserves the right to make exceptions to these priorities when circumstances warrant (the City is consciously establishing no priority for the use of the Acts in the case of populated areas and registered-voter elections).

6.3 **General Policies:** The City may allow the financing of public improvements under the provisions of this policy where the public facilities represent, in the City’s opinion, a significant general public benefit and a special benefit to the property burdened by the special assessment. Accordingly, this policy is established for evaluation of “impact” and determination of “public benefit.” Only facilities that provide “public benefit” will be considered for public financing. Public benefit, for the purpose of this policy, shall be as set forth in the various State statutes under which the financing is proposed to take place. However, all facilities or services set forth as providing “public benefit” in the

various State statutes may not necessarily be deemed appropriate for public financing by the City.

6.3.1 The projected property taxes, special taxes, ad valorem taxes associated with general obligation bond debt, and other direct and overlapping debt (excluding ad valorem property taxes) for the proposed development project (including projected special benefit assessments, anticipated levies for authorized but unissued debt and any other anticipated municipal charges which may be included on a property owner's annual tax bill), including the proposed projected annual maximum special tax or annual assessment, may not exceed a total annual maximum tax rate of eight tenths of one percent (0.8%) of the Sales Price of each improved parcel ("final use") upon completion of the private and public improvements to the parcel. The Sales Price of a parcel shall be estimated by the City in consultation with its consultants at the time of formation of the district and shall not include potential price appreciation or premiums. Exceptions may be granted for commercial, industrial and mixed-use portions of development projects. Projected special taxes and other direct and overlapping debt (excluding ad valorem property taxes) may exceed a maximum tax rate of one percent (1.0%) for commercial properties which provide economic benefits to the City.

Property will be considered in its final use when a certificate of occupancy has been issued. The City retains the right to withhold public financing if it determines that such financing is detrimental to its credit rating or to the issuance of other City-planned, land-secured debt.

NOTE The total annual maximum tax rate applies only to public financing debt : actually passed along to the "final use" parcel.

6.3.2 Project property Value to Lien ratio should be at least 3:1 including the value after the installation of the public improvements to be financed. The value of the property proposed to be assessed or taxed shall be determined by an M.A.I. (Member Appraisal Institute) appraisal, performed by an appraiser selected by the City. If a self-financing and self-liquidating escrow financing structure is proposed, the 3:1 project property Value to Lien ratio will be included as one of the escrow release provisions. Escrow bonds shall not be considered in determining the Value to Lien ratio of non-escrowed bonds.

In the case of a phased financing, a land value appraisal shall include the developed land value assuming only the infrastructure to be included in the current financing is completed.

6.3.3 The proposed development project must be consistent with the City's General Plan. Projects shall be at the stage where all criteria of this policy can be adequately assessed. Developments proposed for inclusion in a

District shall have already received environmental review and shall have already received legislative approvals such as zoning, master plans or specific plans. The City Council may approve a District that includes some lands without legislative approvals if the improvements to be constructed are consistent with the general plan and if the City Council finds the improvements required are in the public interest.

- 6.3.4 Facilities which are, upon completion, owned, operated or maintained by public agencies shall be considered public facilities. Limited exceptions will be made for certain facilities to be owned, operated or maintained by a public utility company. The funding of facilities to be owned and operated by agencies other than the City shall be considered on a case-by-case basis.
- 6.3.5 The City shall select and solely manage/coordinate/direct the work of the bond counsel, underwriter, appraiser, assessment engineer, financial advisor, assessment/special district administrator and other professionals and consultants it deems appropriate in accordance with City policy. All consultants shall comply with the regulations of the Fair Political Practices Commission and Section 87100 of the California Government Code.
- 6.3.6 Improvements shall be constructed and/or acquired, and bonds shall be issued, in accordance with the applicable state statutes.
- 6.3.7 The City will consider the apportionment of fixed lien special assessments to those properties found to be specially benefited by the assessment engineer. Notwithstanding the foregoing, the assessment engineer will review the special benefit to each parcel in order to comply with the requirements of Proposition 218 and applicable State statutes.
- 6.3.8 The rate and method of special taxes will be structured in such a manner as to result in a fair and reasonable taxing structure. The City and its special tax consultant will consider input from the proponent of the development project in evaluating the taxing structure.
- 6.3.9 The proponents of the District must demonstrate to the satisfaction of the City Council that interim financing, capitalized interest and/or other means are available for the development project(s) included within the District to fund public and private improvements and to meet all assessment or special tax obligations between the time that the District is formed and the Bonds are paid off or the parcels reach their "final use" and are held by "end users." As part of this review, the City Council may also consider any indebtedness presently existing against the properties to be assessed.

The District proponents must bring all property tax bills current prior to the formation of the District and agree to keep them current before any Bonds will be sold.

- 6.3.10 All statements and materials related to the sale of special assessment or Community Facilities District Bonds shall emphasize and state that neither the full faith and credit nor the taxing power of the City is pledged to security or repayment of the Bonds. The sole source of revenues to repay such bonds shall be the special taxes, annual assessments or funds derived from foreclosure proceedings.
- 6.3.11 As a part of the structuring of the financing for the District, an adequate reserve fund, surety or other credit enhancement satisfactory to the City shall be established to cover any potential defaults. The amount of the reserve fund shall be determined by the City with the advice of the financial advisor and shall not exceed the lesser of maximum annual debt service, one hundred twenty-five percent (125%) of average annual debt service, ten percent (10%) of the amount of the proceeds of any Bonds or as otherwise permitted by law.
- 6.3.12 It is the policy of the City Council in approving basic legislative authorization for developments such as master plans for planned communities, to give such approvals as a part of the City's on-going planning processes. That is, the City reserves the right to modify the approvals in the future as they determine the public interest may require; to the extent that it does not negatively impact the security of any Bonds sold. Such approvals when given are subject to a condition that the construction of any part of a development does not vest any rights to complete other portions of the development. Construction of public improvements pursuant to a Community Facilities District or assessment district on undeveloped land shall not vest any rights to future legislative approvals for the property to be assessed or to any particular level, type or intensity of use. Proponents of a District shall include an acknowledgment of this policy as a part of their petition and shall expressly waive on their behalf and on behalf of their successors and assigns any cause of action based on the case of Furey v. County of Sacramento which might be applicable to the properties to be taxed or assessed.
- 6.3.13 District proponents shall be responsible for compliance with all applicable federal and state statutory disclosure requirements in transactions with purchasers of properties within the District. District proponents shall provide full disclosure to all prospective, and actual, buyers/lessees of property (within the District) of the District's assessment/special tax levy in accordance with applicable law.
- 6.3.14 Subsequent to the sale and issuance of the Bonds, federal and state

statutes and/or regulations regarding the particular type of financing may require the preparation and reporting of certain information by an "obligated person," as that term is defined under Securities and Exchange Commission Rule 15c2-12, including any and all amendments thereunder.

- 6.3.15 The City Council adopts the requirements of Section 53345.8 of the Mello-Roos Community Facilities Act of 1982 as sufficient minimum standards for the credit quality of any Bonds issued pursuant to that Act.
- 6.3.16 The City in its discretion may require, and may employ a consultant for the purpose of conducting a market absorption study. The study, if required, shall include an estimate of the total number of units, land uses, pricing and rate of absorption, and will be used as a basis for verification that sufficient revenues can be generated, whether or not projected sales prices are appropriate and to determine if the financing of the infrastructure and public facilities is reasonable given the projected level and pace of development. The study will also be provided to the appraiser for use in the appraisal process.
- 6.3.17 All costs incurred by the City prior to formation of the District, including but not limited to consultant costs (e.g., legal counsel, engineering firms, appraisers, special tax consultants, financial advisors), City staff and administrative costs and related expenses, cost of providing notices, printing and publication costs, and all expenses directly or indirectly relating to these items, shall be advanced to the City by the applicant/developer/proponent prior to formation. Cost advances shall be facilitated by deposit increments in accordance with a required funding and reimbursement agreement between the City and the applicant/developer/proponent. Failure to advance funds as requested by the City will be sufficient justification to suspend further activity by City staff and its consultants. (See Section 6.4)
- 6.3.18 In the event that the District is not formed due to City disapproval or abandonment, or due to applicant/developer/proponent abandonment, or the District is formed and Bonds are not issued for any reason, the City will refund to applicant/developer/proponent any unexpended and unobligated portion of advance deposits posted with the City, subject to the City's prior and full reimbursement of all its direct and indirect costs. The City shall be entitled to pay any refund to the applicant/proponent listed on the application form, irrespective of any changes in the ownership or composition of the applicant/proponent.
- 6.3.19 The City, in conjunction with its financial advisors, shall determine whether the aggregate cost of public improvements and permitted indirect costs, allowable under statute, shall equal an amount which renders formation of a District, both economically, cost-effective and efficient.

The size of the bond issue, as determined by the City and its consultants, shall meet industry standards with respect to marketability.

6.4 Fees and Charges Schedule: The District developer/proponent shall be subject to the following fees and charges and will be applied in the following manner:

Any developer/proponent's financing request or petition to initiate the formation of a special assessment or community facilities district will only be considered after a deposit of a fee to compensate the City for all costs incurred in conducting proceedings has been received. The deposit shall be based on an estimate of all City staff costs coupled with financial feasibility study consultant, bond counsel, disclosure counsel (if used), assessment engineer/special tax consultant, financial advisor, and other costs which may not be retrievable through the bond issue, or are incurred and irretrievable due to nonformation of a district. It is the intent that all of the City's costs be covered. In the event the bond financing requires a Validation proceeding, all costs associated therewith will also be the responsibility of the proponent and be deposited with the City. After formation of the District and issuance of Bonds, the petitioner may be reimbursed from Bond proceeds for advances made by petitioners for costs of District-related consultants and City staff costs approved by the City.

If, in the judgment of the City, the costs incurred or projected will cause the proponent's deposit to fall below \$5,000, a written demand shall be made to the applicant to advance monies sufficient to bring the account to a balance that is projected to meet remaining costs required to establish the financing district.

Failure to advance the requested monies within 10 (ten) days of a written demand by the City will result in all processing of the application to cease and no further actions to be taken toward establishing the financing district until the monies have been received. Waiver of this requirement can be made only by formal action of the City Council.

Monies held are to be applied to pay the City and its staff in reviewing and processing the application as well as the costs of the assessment engineer, special tax consultant, appraiser, absorption consultant, financial advisor, legal counsel, all publication expenses, and any other costs determined by the City to be necessary to establish the District.

6.5 Application Process: Early communication with the City is encouraged to assist applicants in reviewing these City Policy Guidelines, allowing the City to evaluate the feasibility of available financing programs and to discuss program procedures.

6.5.1 PREAPPLICATION CONFERENCE: Applicant meets with City staff to discuss the proposed project and application procedures.

- 6.5.2 APPLICATION SUBMISSION: Applicant submits an initial application for review by City staff. Applicant pays the District Application Fee (See Section V, Fees and Charges Schedule).
- 6.5.3 PROJECT REVIEW: Applicant and City staff meet to discuss initial application, including any issues raised and further information that might be required. If necessary, applicant submits revised application.
- 6.5.4 APPLICATION PROCESSING: Upon City determination that application is complete, staff prepares a staff report which forwards the request for District formation and project financing and staff recommendation to the City Council.
- 6.5.5 CITY COUNCIL CONSIDERATION: The City Council makes any necessary findings and grants or denies the application, selects consultants (if approval is granted) and either approves contracts or directs staff to negotiate contracts.
- 6.5.6 PROJECT INITIATION: Staff submits consultant contracts, reimbursement agreements and other similar items for City Council consideration.
- 6.5.7 PROJECT IMPLEMENTATION: Applicant, staff and consultants meet to determine preliminary project schedule and begin work necessary to initiate District formation.

6.6 Criteria for Appraisals: A detailed complete appraisal shall reflect nationally recognized appraisal standards including, to the extent appropriate, the Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Foundation, the Code of Professional Ethics and the Standards of Professional Appraisal Practice of the Appraisal Institute. An appraisal should also generally conform to the Appraisal Standards for Land - Secured Financings provided by the California Debt and Investment Advisory Commission ("CDIAC"). Appraisals undertaken to establish value-to-lien ratios in CFD's should value the fee simple estate, subject to special assessment and special tax liens. At a minimum, the appraisal shall contain the following:

- 6.6.1 The estimate of Fair Market Value should be refined to reflect the retail value of fully improved and occupied properties and the bulk sale value of all vacant properties, including both unimproved properties and improved or partially improved but unoccupied properties. An appraisal must contain sufficient documentation including valuation data and the appraiser's analysis of the data to support his or her opinion of Value. Assessor market valuations may be used where, in the opinion of the City staff and the City's advisors, they require a conservative valuation of current Fair Market Value.

- 6.6.2 The purpose and/or function of the appraisal, an identification of the property being appraised, the intended use, the identity of the current and intended uses, and a statement of the assumptions and limiting conditions affecting the appraisal.
- 6.6.3 An adequate description of the physical characteristics of the property being appraised, location, zoning, present use, and an analysis of highest and best use. The appraiser should assume the presence of the public infrastructure to be financed with the Bonds.
- 6.6.4 Relevant and reliable approaches to value consistent with commonly accepted professional appraisal practices. If a discounted cash flow analysis is used, it should be supported with at least one other valuation method, such as a market approach using sales that are at the same stage of land development. In the discounted cash flow analysis, the appraiser is to take care that the inclusion of "developer/proponent profit" is treated as a cost, and the setting of the discount rate to include a "risk premium" for *equity* investors, does not amount to "double-counting" for the developer/proponent.

If more than one approach is utilized, there shall be an analysis and reconciliation of approaches to Value that are sufficient to support the appraiser's opinion of Value. The comparable sales method may be used whenever there is sufficient data available.

- 6.6.5 A description of comparable sales, including a description of all relevant, physical, legal and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction.
- 6.6.6 A statement of the Value of real property.
- 6.6.7 The effective date of valuation, date of appraisal, signature and certification of the appraiser.
- 6.6.8 The special tax lien need not be computed as the present value of the future tax payments if there is a pre-payment mechanism or other more appropriate measure.

6.7 Requirements for Special Tax Formulas: The proposed amount and apportionment of the special tax for community facilities districts shall comply with the following criteria:

- 6.7.1 The special tax formula shall be structured to produce sufficient annual special tax revenue to pay: a) annual debt service, and b) reasonable annual administrative expenses and the cost of any services and “pay as you go” programs funded by the CFD special tax. The total projected annual special tax revenues, less estimated annual administrative expenses, must exceed the projected annual gross debt service on the Bonds by at least ten percent (10%). The cost of any services and “pay as you go” programs funded by community facilities district special taxes shall either be subordinate to debt service, funded from special tax coverage or funded by a separate special tax.
- 6.7.2 A backup special tax will be required unless the special tax formula is structured in such a manner as to avoid special tax revenue loss from changes in densities or product type.
- 6.7.3 The rate and method of apportionment should not provide for an annual increase in the maximum special tax to exceed two percent (2%) for public facilities for any parcel subject to the special tax and used for private residential purposes.
- 6.7.4 The special tax shall be allocated and apportioned on the basis of reasonableness to property within the CFD.
- 6.7.5 A method to allow a property owner to partially prepay or completely pay off the special tax after District formation shall be included in the rate and method of apportionment, absent demonstrated impracticality. Any prepayment shall be reviewed by the City and/or its consultants to ensure that any outstanding bonds are not negatively impacted.
- 6.8 **Policy on Joint Financing Districts:** The City may enter into a joint exercise of powers agreement or may enter into a joint community facilities agreement or a utility agreement (pursuant to Section 10110 of the Street & Highways Code) with regard to any proposed District, if the District is in substantial compliance with the City’s public financing policies as contained herein.

ATTACHMENT A

§ 53312.7. Goals and policies to be adopted before initiation of proceedings to establish district

On an after January 1, 1994, a local agency may initiate proceedings to establish a district pursuant to this chapter only if it has first considered and adopted local goals and policies concerning the use of this chapter. The policies shall include at least the following:

- (1) A statement of the priority that various kinds of public facilities shall have for financing through the use of this chapter, including public facilities to be owned and operated by other public agencies, including school districts.
 - (2) A statement concerning the credit quality to be required of bond issues, including criteria to be used in evaluating the credit quality.
 - (3) A statement concerning steps to be taken to ensure that prospective property purchasers are fully informed about their taxpaying obligations imposed under this chapter.
 - (4) A statement concerning criteria for evaluating the equity of tax allocation formulas, and concerning desirable and maximum amounts of special tax to be levied against any parcel pursuant to this chapter.
 - (5) A statement of definitions, standards, and assumptions to be used in appraisals required by *Sections 53345.8*.
- (b) The goals and policies adopted by any school district pursuant to subdivision (a) shall include, but not be limited to, a priority access policy which gives priority attendance access to students residing in a community facilities district whose residents have paid special taxes which have, in whole or in part, financed the construction of school district facilities. The degree of priority shall reflect the proportion of each school's financing provided through the community facilities district, a school district may incorporate a school district attendance policy including criteria for student assignment such as goals to achieve ethnic, racial, or socioeconomic diversity; federal, state, or court mandates; transportation needs, safe pedestrian routes; grade levels for which facilities were designed; and ensuring students continuity of schooling within any single school year.

§ 53345.8. Determinations required before sale of bonds

- (a) The legislative body may sell bonds pursuant to this chapter only if it determines prior to the award of sale of bonds that the value of the real property that would be subject to the special tax to pay debt service on the bonds will be at least three times the principal amount of *the sum of the following*:
- (1) The *principal amount of the* bonds to be sold.
 - (2) The principal amount of all other bonds outstanding that are secured by a special tax levied pursuant to this chapter on property within the community facilities district or a special assessment levied on property within the community facilities district. *The legislative body shall estimate the principal amount of these other bonds that are secured by property within the district by assuming that the maximum allowable tax or assessment applicable to each parcel of property within the district will be levied until the date of maximum maturity of the*

bonds. Any determination made pursuant to this subdivision shall 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 adopted pursuant to paragraph (5) of subdivision (a) of Section 53312.7 by a state certified real estate appraiser, as defined in subdivision (c) of Section 11340 of the Business and Professions Code. The Treasurer may recommend definitions, standards, and assumptions to be used for these appraisals. These definitions, standards and assumptions are advisory only, and the definitions, standards, and assumptions to be applied to appraisals will be those adopted by the local agency pursuant to paragraph (5) of subdivision (a) of Section 53312.7.

- (b) Notwithstanding the provisions of subdivision (a), if the legislative body selling the bonds finds and determines that the proposed bonds do not present any unusual credit risk due to the availability of credit enhancements, *or because a sufficient portion of the principal amount of a bond issue has been deposited in a self-financing and self-liquidating escrow account under conditions such that it cannot be withdrawn until the value of real property subject to special taxes has increased sufficiently so that the requirements of subdivision (a) will be met* or for other reasons specified by the legislative body, the provisions of subdivision (a) may be disregarded.
- (c) Notwithstanding the provisions of subdivision (a), if the legislative body selling the bonds finds and determines by a vote of not less than four-fifths of all of its members that the proposed bond issue should proceed for specified public policy reasons, the provisions of subdivision (a) may be disregarded.

A finding and determination by the legislative body pursuant to this subdivision shall be final and conclusive upon all persons in the absence of actual fraud, and neither the legislative body nor the district shall have any liability of any kind whatsoever out of, or in connection with, any finding and determination.

(Government Code with 2005 revisions)