



Steven S. Choi, Ph.D., Mayor

cityofirvine.org

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September 14, 2015

The Honorable Glenda Sanders
Presiding Judge
Orange County Superior Court
700 Civic Center Drive West
Santa Ana, CA 92701

RE: City of Irvine Response to Orange County Grand Jury Report
"Mello-Roos: Perpetual Debt Accumulation and Tax Assessment Obligation"

Dear Honorable Judge Sanders:

The City of Irvine has reviewed the Orange County Grand Jury Report, "Mello-Roos: Perpetual Debt Accumulation and Tax Assessment Obligation" released on June 29, 2015. The City of Irvine appreciates the role of the volunteer members of the Grand Jury and thanks them for their time and effort analyzing this important topic. As requested by the Grand Jury, and in accordance with California Penal Code Section 933, this letter constitutes the City of Irvine's response to the findings and recommendations contained in the report.

The City of Irvine agrees with the importance of transparency and oversight surrounding Community Facility District (CFD) financings. As a result, the City of Irvine will implement additional reporting and review for its CFD transactions, as detailed within this response, which surpass existing reporting requirements. Since 1993 all issuers of CFD bonds have been required by law to report specified information related to their CFD bond issues within a Yearly Fiscal Status Report. This information is gathered and is made available through Nationally Recognized Municipal Securities Information Repositories and, since 2009, on the public Electronic Municipal Market Access (EMMA) website. EMMA includes information on all bond issues, including CFDs, and encompasses Official Statements, trade activity bond ratings and other filings. The City of Irvine contracts with a third party to prepare its CFD annual reporting, thus, providing another professional review of this information. The City also has links on its website to its Bond Disclosure reports for its assessment district financings and will add a direct link to the EMMA website to make accessing this information easier for the public.

FINDINGS

***F.1.** There is a lack of transparency to homeowners relative to how CFD funds are being used.*

The City of Irvine agrees that, while it is not required by law, publishing this information on its website will make it easier to access. To provide easier access, the City will publish this information as described in its response to the second Grand Jury recommendation **(R.2.)**.

***F.2.** There does not seem to be appropriate oversight and auditing of CFDs and special tax expenditures within the County of Orange.*

The City of Irvine agrees that under state requirements there is no direction to establish an oversight committee as advised in the Grand Jury's first recommendation. The Irvine City Council recognizes the importance of economic and financial affairs with regard to the proper functioning of City government and the well-being of its citizens. The City's Finance Commission was formed in 1986, providing additional oversight significantly beyond the requirements of the law. As described in the City's response to the second Grand Jury recommendation **(R.2.)**, going forward, the Finance Commission will review the City's CFDs and special tax expenditures on an annual basis. Additionally, the City of Irvine follows Generally Accepted Accounting Principles (GAAP) with regard to its financial reporting and it annually procures a professional audit opinion on its financial statements, which encompass its CFDs.

***F.3.** While the assumption is that the CFD debt would be repaid in a finite period of time, there is a mechanism available to controlling entities to extend debt obligations and thereby extend the CFD special tax in perpetuity.*

The City of Irvine disagrees partially with the finding. The Mello-Roos Act allows for special taxes to be used to pay for facilities and services, bonds for facilities, or any combination of those. The amount and duration of the special tax is determined during the formation of the district and cannot be changed without a vote and approval by 2/3 of the property owners. Special taxes for services may be levied indefinitely, if approved in formation, similar to a homeowner's association that levies an assessment to pay for maintenance of its facilities.

However, there is no mechanism available to extend CFD debt obligations in perpetuity. CFD bonds can be refunded, but only if the total interest cost to maturity plus the principal amount of the new refunding bonds does not exceed the total interest cost to maturity plus the principal amount of the bonds to be refunded (Government Code section 53362.5). Under this scenario, the refunding must result in the same or reduced costs to the property owners, making it unlawful to extend the debt obligation in perpetuity through utilization of this mechanism.

RECOMMENDATIONS

R.1. *Each local agency that established the CFD should create an oversight committee and an audit committee to provide for an independent, transparent view of the manner in which CFD funds are being expended. (F.1, F.2)*

Irvine will implement the Grand Jury's recommendation, beginning at the close-out of this fiscal year, by providing the City's Finance Commission with an annual report of its CFD expenditures, in the format delineated in California Government Code, 1982 section 53343.1. Recognizing the importance of economic and financial affairs with regard to the proper functioning of City government and the well-being of its citizens, the Irvine City Council created the Finance Commission in 1986. This citizen oversight body, comprised of five appointed members, meets regularly to advise the City Council on financial matters. After review by the City's Finance Commission, the same information will be provided to the Irvine City Council. (F.1, F.2)

R.2. *Audit report information, as delineated in California Government Code, 1982 section 53343.1, should be made available to the CFD taxpayers on a website after each fiscal year for each CFD number. (F.1, F.2)*

While publishing this information on the City's website goes beyond the requirements of the law, the City of Irvine agrees with the recommendation and will implement it by proactively developing an annual report encompassing the information delineated in California Government Code, 1982 section 53343.1. This report will be presented to the City's Finance Commission and City Council as part of its year-end close-out reporting. The information will then be published on the City's website, www.cityofirvine.org for easy accessibility. In addition, as previously discussed, the City will also include a link to the EMMA website where other information on the City's CFDs is available to the public. These actions will be implemented with the close-out of this fiscal year.

Please contact me or City Manager Sean Joyce at (949)724-6249 if you have questions or if we can provide additional information.

Sincerely,



Steven S. Choi, Ph.D.
Mayor

cc: Irvine City Council
Paul S. Borzcik, Foreman, 2013-14 Orange County Grand Jury