



Public Financing Authority of the Placentia Enhanced Infrastructure Financing District

AGENDA REPORT

TO: PUBLIC FINANCING AUTHORITY OF THE PLACENTIA ENHANCED
INFRASTRUCTURE FINANCING DISTRICT

VIA: CITY ADMINISTRATOR

FROM: DIRECTOR OF DEVELOPMENT SERVICES

DATE: May 13, 2021

SUBJECT: **SECOND READING OF ORDINANCE APPROVING THE INFRASTRUCTURE
FINANCING PLAN AND FORMING THE PLACENTIA ENHANCED
INFRASTRUCTURE FINANCING DISTRICT, ADOPT RESOLUTION
AUTHORIZING JUDICIAL VALIDATION PROCEEDINGS**

FISCAL
IMPACT: \$25,000 for Judicial Validation (Payable from EIFD Tax Increment)

SUMMARY:

The Placentia Enhanced Infrastructure Financing District ("Placentia EIFD") is being formed as a partnership between the City of Placentia and the County of Orange. The Placentia EIFD is being established as a means to fund critical infrastructure of communitywide and regional significance with a focus on the Old Town Placentia Revitalization Plan area, by providing a means to capture property tax increment revenue ("TI") generated by new development within the district. The City and County formed the Public Financing Authority of the Placentia Enhanced Infrastructure Financing District ("PFA") to act as the governing body of the Placentia EIFD in accordance with EIFD statutes.

On January 1, 2020, California EIFD legislation was revised to incorporate Assembly Bill 116 ("AB 116"), which modified both the process by which EIFDs are formed and the requirements to achieve approval to issue debt secured by EIFD revenues. Pursuant to the revised EIFD statute, the PFA conducted a series of public meetings and hearings from August 2020 through January 2021. On January 6, 2021, a majority protest opportunity was conducted during the final public hearing as required, and no protests were filed. An ordinance was then introduced to culminate the Infrastructure Financing Plan ("IFP") approval and EIFD formation process.

The second reading of the ordinance introduced on January 6, 2021 is required to occur at a "regular meeting" of the PFA. As today is the first official regular meeting of the PFA, the second reading and adoption of the ordinance is proposed for action today.

Additionally, as discussed during the previous PFA meeting on March 31, 2021, under EIFD law, the authority for the City and County to transfer property tax increment to the EIFD on an ongoing basis is statutory, not constitutional. A challenge could be made that such transfers amount to a

“debt” and are therefore unconstitutional as the California Constitution requires “debt” to be approved by 2/3 of the voters. In order to issue bonds, investors require an “unqualified legal opinion” from a law firm recognized as an expert in such matters that the bonds are valid and legally binding obligations. Under current circumstances, such legal opinion would contain a qualification that the outcome of any challenge to the constitutionality of the transfer of tax increment would be uncertain. Bond counsel, staff, and the finance team are recommending that the PFA “validate” the authority of the City and County to make transfers of tax increment to the EIFD. Validation would enable the issuance of such unqualified legal opinion and clear the way for a variety of financing approaches, to be discussed in the future. A validation action must be brought to Superior Court within 60 days of the adoption by the PFA of the EIFD approval ordinance proposed for adoption today.

The action proposed for PFA consideration today is to adopt a resolution formally authorizing judicial validation proceedings. The validation proceedings require a 7-step sequential process (assuming default judgement), which can take approximately 90 days or more. The process and estimated timeline are outlined below:

1. File Validation Action with Orange County Superior Court
2. Receive Order for Publication of Summons from the Court – 1-2 weeks
3. Publication in the local newspaper once a week for 3 successive weeks
4. Waiting period to file petition – minimum of 10 days, typically 2-3 weeks
5. Court Clerk enters hearing for a default judgement, schedules a hearing 15 days
6. Hearing for default judgement
7. 30-day Appeal Period

Lastly, as an update for the PFA, a meeting was recently held including staff from multiple City departments, the City Attorney’s office, bond counsel, the Kosmont team, County public finance staff, County Counsel, and the County Auditor-Controller’s office regarding tax increment calculation methodology and ongoing reporting. It was determined that the appropriate base year for calculation of incremental property tax would be the 2020-2021 tax roll. The alternative of the 2018-2019 base year was considered (based on original district formation proceedings conducted in 2019), however the 2020-2021 tax roll was chosen based on superior legal defensibility at the expense of immaterial loss of funding capacity. Upon adoption of the January 6th ordinance approving the IFP and formation the EIFD, the office of the County Auditor-Controller will issue a consensus memorandum documenting relevant terms for tax increment calculation and ongoing reporting. As there will be no EIFD revenue in the current fiscal year 2020-2021, there will be no annual report required for presentation at a public hearing and adoption by the PFA until May/June 2022.

RECOMMENDATION:

It is recommended that the PFA take the following actions:

1. Second Reading of Ordinance No. EIFD PFA-2021-01 approving the IFP and forming the Placentia EIFD; and
2. Adopt Resolution No. EIFD PFA-2021-03 authorizing judicial validation proceedings.

FISCAL IMPACT:

The fiscal impact includes \$25,000 for Nixon Peabody LLP and Jones & Mayer for the Judicial Validation. These expenses are payable from EIFD tax increment funding.

Prepared by:

Reviewed and approved:



Jeannette Ortega
Assistant to the City Administrator/
Economic Development Manager



Joseph M. Lambert
Director of Development Services

Reviewed and approved:

Reviewed and approved:



Jessica Brown
Director of Finance



Damien R. Arrula
City Administrator

Attachments:

1. Ordinance No. EIFD PFA-2021-01 (Resolution No. EIFD PFA-2021-01)
2. Resolution No. EIFD PFA-2021-03

**ORDINANCE NO. EIFD PFA-2021-01
RESOLUTION NO. EIFD PFA-2021-01**

AN ORDINANCE AND RESOLUTION OF THE PUBLIC FINANCING AUTHORITY OF THE PLACENTIA ENHANCED INFRASTRUCTURE FINANCING DISTRICT APPROVING THE INFRASTRUCTURE FINANCING PLAN FOR THE PLACENTIA ENHANCED INFRASTRUCTURE FINANCING DISTRICT AND FORMING THE PLACENTIA ENHANCED INFRASTRUCTURE FINANCING DISTRICT TO FINANCE THE CONSTRUCTION AND/OR ACQUISITION AND/OR MAINTENANCE OF CAPITAL IMPROVEMENTS

WHEREAS, pursuant to Chapter 2.99 of Part 1 of Division 2 of Title 5 of the California Government Code (commencing with Section 53398.50) (the "EIFD Law"), the City Council of the City of Placentia (the "Council") formed a Public Financing Authority (the "Authority"); and

WHEREAS, the Authority has prepared the Infrastructure Financing Plan (the "IFP") which is attached hereto as Exhibit "A"; and

WHEREAS, the IFP was sent to the Council, the City Planning Commission, to all landowners in the proposed district and to all affected taxing entities pursuant to EIFD Law; and

WHEREAS, the Council, on June 18, 2019, by Resolution No. 2019-28, approved the IFP; and

WHEREAS, the Orange County Board of Supervisors, on June 25, 2019, by Resolution No. 19-060, approved the IFP; and

WHEREAS, three public hearings on the IFP were duly noticed and held on October 14, 2020, November 18, 2020, and January 6, 2021, in accordance with Government Code Section 53398.66; and

WHEREAS, the Authority has heard and passed upon written and oral objections, if any, and has considered the recommendations, if any, of affected taxing agencies and testimony for and against the adoption of the IFP.

NOW, THEREFORE, THE PUBLIC FINANCING AUTHORITY FOR THE PLACENTIA ENHANCED INFRASTRUCTURE FINANCING DISTRICT DOES HEREBY ORDAIN AS FOLLOWS:

1. Adoption of Infrastructure Financing Plan. The IFP attached hereto as Exhibit "A" is hereby adopted.

2. **Formation of Placentia Enhanced Infrastructure Financing District.** The Placentia Enhanced Infrastructure Financing District is hereby formed.

3. **Environmental Determination.** The IFP is exempt from the California Environmental Quality Act (15378(b)(4)) because a "Project" does not include government funding mechanisms and also (15061(b)(3)) because CEQA does not apply where it can be determined with certainty that there is no possibility that there will be a significant effect on the environment and that no additional environmental review is required.

4. **Ordinance to Serve as a Resolution.** In accordance with the authority provided by Government Code Section 53398.69(a)(1) this ordinance shall also be given effect as a resolution approving the IFP.

5. **Severability.** If any provision of this ordinance is found to be unconstitutional or otherwise invalid by any court of competent jurisdiction, that invalidity shall not affect the remaining provisions of this ordinance which can be implemented without the invalid provisions, and to this end, the provisions of this ordinance are declared to be severable. The Authority declares that it would have adopted this ordinance and each provision thereof irrespective of whether any one or more provisions are found invalid, unconstitutional or otherwise unenforceable.

6. **Effective Date.** This Ordinance shall become effective 31 days following its enactment and shall be subject to referendum as prescribed by law.

7. **Certification.** The Chairperson shall sign, and the Authority Secretary shall certify to the passage and adoption of this Ordinance and shall cause the same to be published and posted pursuant to the provisions of law in that regard.

INTRODUCED at a regular meeting of the Enhanced Infrastructure Financing Authority Public Finance Authority held on the 6th day of January 2020.

PASSED, APPROVED AND ADOPTED this 13th day of May 2021.

Chad P. Wanke, Chairman

ATTEST:

Robert S. McKinnell, City Clerk

I, Robert S. McKinnell, City Clerk of the City of Placentia, do hereby certify that the foregoing Ordinance was adopted at a regular meeting of the Enhanced Infrastructure Financing Authority Public Finance Authority, held on the 13th day of May 2021 by the following vote:

AYES: Authority Members:
NOES: Authority Members:
ABSENT: Authority Members:
ABSTAIN: Authority Members:

Robert S. McKinnell, City Clerk

APPROVED AS TO FORM:

Christian L. Bettenhausen, City Attorney

RESOLUTION NO. EIFD PFA-2021-03

A RESOLUTION OF THE PUBLIC FINANCING AUTHORITY OF THE PLACENTIA ENHANCED INFRASTRUCTURE FINANCING DISTRICT AUTHORIZING JUDICIAL VALIDATION PROCEEDINGS RELATING TO THE FORMATION OF THE ENHANCED INFRASTRUCTURE FINANCING DISTRICT AND ADOPTION OF AN INFRASTRUCTURE FINANCING PLAN, INCLUDING A DIVISION OF TAXES THEREUNDER

A. Recitals

(i). Pursuant to Chapter 2.99 of Part 1 of Division 2 of Title 5 of the California Government Code (commencing with Section 53398.50) (the “EIFD Law”), the City Council of the City of Placentia (the “Council”) formed a Public Financing Authority (the “Authority”); and

(ii). The Authority has prepared an Infrastructure Financing Plan (“IFP”); and

(iii). The IFP was sent to the Council, the City Planning Commission, to all landowners in the proposed district and to all affected taxing entities pursuant to EIFD Law; and

(iv). The Council, on June 18, 2019, by Resolution No. 2019-28, approved the IFP; and

(v). The Orange County Board of Supervisors, on June 25, 2019, by Resolution No. 19-060, approved the IFP; and

(vi). Three public hearings on the IFP were duly noticed and held on October 14, 2020, November 18, 2020, and January 6, 2021, in accordance with Government Code Section 53398.66; and

(vii). The Authority has heard and passed upon written and oral objections, if any, and has considered the recommendations, if any, of affected taxing agencies and testimony for and against the adoption of the IFP; and

(viii). The Authority adopted Resolution No. EIFD PFA-2021-01 and Ordinance No. EIFD PFA-2021-01 approving the IFP and forming the Placentia Enhanced Infrastructure Financing District.

B. Resolution

NOW, THEREFORE, BE IT RESOLVED that the PUBLIC FINANCING AUTHORITY FOR THE PLACENTIA ENHANCED INFRASTRUCTURE FINANCING DISTRICT does hereby resolve as follows:

1. **Judicial Validation Proceedings.** In order to determine the validity of the creation of the Placentia Enhanced Infrastructure Financing District and the adoption of the IFP, including a division of property taxes thereunder, and the actions authorized hereby to be taken in connection therewith (the "Matter"), the Authority hereby authorizes the Counsel to the Authority, in concert with Nixon Peabody LLP, Special Counsel, to prepare and cause to be filed and prosecuted to completion all proceedings required for the judicial validation of the Matter in the Superior Court of Orange County, under and pursuant to the provisions of Sections 860 *et seq.* of the California Code of Civil Procedure. The Authority further authorizes the authorized officers to take any and all actions, including the execution and delivery of appropriate documentation, as may be required to conclude such judicial validation proceedings.

2. **Effective Date.** This Resolution shall become effective upon adoption.

3. **Certification.** The Chairperson shall sign and the Authority Secretary shall certify to the passage and adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 13th day of May 2021.

Chad P. Wanke, Chairman

ATTEST:

Robert S. McKinnell, Secretary

STATE OF CALIFORNIA
COUNTY OF ORANGE

I, Robert S. McKinnell, Secretary of the Public Financing Authority for the Placentia Enhanced Infrastructure Financing District, do hereby certify that the foregoing Resolution was adopted at a special meeting of the Members of the Public Financing Authority for the Placentia Enhanced Infrastructure District, held on the 13th day of May 2021 by the following vote:

AYES: Authority Members:
NOES: Authority Members:
ABSENT: Authority Members:
ABSTAIN: Authority Members:

Robert S. McKinnell, Secretary

APPROVED AS TO FORM:

Christian L. Bettenhausen, Authority Counsel