



## **BEAR VALLEY COMMUNITY SERVICES DISTRICT**

28999 South Lower Valley Road • Tehachapi, CA 93561-7460  
PHONE 661-821-4428 • FAX 661-821-0180

### **SPECIAL BOARD MEETING AGENDA**

DATE OF MEETING: August 4, 2022  
TIME OF OPEN SESSION MEETING: 6:00 pm

**In accordance with Assembly Bill 361 (AB 361) and the continuing state of emergency, including social distancing directives as a result of the threat of the COVID-19 virus, Board members and BVCS D staff will be participating in this meeting remotely. There will not be a physical location for this meeting. Members of the public may participate in the meeting in the following ways:**

- 1. Open Session Webinar Link:** <https://us02web.zoom.us/j/85425678690>
- 2. Phone:** Dial (for higher quality, dial a number based on your current location):  
US: +1 669 900 9128 or +1 253 215 8782 or +1 346 248 7799 or +1 312 626 6799 or +1 646 558 8656 or +1 301 715 8592  
**Webinar ID:** 854 2567 8690
- 3. International numbers available:** <https://us02web.zoom.us/j/85425678690>
- 4. Email:** We request that you send your email with comments at least one hour prior to the start of the Open Session meeting; however, members of the public may address the Board in real time during the course of the Open Session meeting.

**The Bear Valley Community Services District thanks you for your understanding and for doing your part to prevent the spread of COVID-19.**

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- 1. Call to Order**
  - 2. Attendance**
  - 3. Approval of Agenda**
  - 4. Pledge of Allegiance**

- 5. Disclosures by the Board of Directors**

Board Members are asked to disclose any outside communications with individuals and organizations that have an action item on this agenda that pertains directly to them or their specific personal or private interests and which communication is not included or disclosed in the agenda package, so that all interested persons have an equal opportunity to express and represent their interests.

August 4, 2022 Special Board Meeting

## 6. Action Items

- A. ADOPT Resolution 22/23-11 Authorizing the Continued Use of Teleconferencing Accessibility Procedures for Public Meetings (Ms. McEwen, Mr. Davis)
- B. RATIFICATION AND FINAL ADOPTION OF Resolution 22/23-09 Calling for an Election on a Special Tax Ballot Measure and Ordinance to Increase Funding for Police Services and Requesting Consolidation with the Statewide General Election on November 8, 2022: Public Hearing Item (Mr. Davis, Mr. Malinen)
- C. RATIFICATION AND FINAL ADOPTION OF Resolution 22/23-10 Calling for an Election on a Special Tax Ballot Measure and Ordinance to Increase Funding for Gate Operations and Requesting Consolidation with the Statewide General Election on November 8, 2022: Public Hearing Item (Mr. Davis, Mr. Malinen)

## 7. Adjournment

**INFORMATION REGARDING AGENDA ITEMS:** Copies of the staff reports and other disclosable public records related to each open session item of business referred to on the agenda are on file in the office of the District Secretary and are available for public information during regular business hours. Any person who has a question concerning any of the agenda items may call the District Secretary at 661.821.4428.

Signed, August 3, 2022



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Kristy McEwen, Secretary of the Board

STAFF REPORT

AGENDA ITEM #6A  
*Continued Use of Teleconferencing for Public Meetings*



MEETING DATE: August 4, 2022

PREPARED BY: Donald M. Davis, General Counsel

AGENDA TITLE: ADOPT Resolution 22/23-11 Authorizing the Use of Teleconferencing Accessibility Procedures for Public Meetings

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**RECOMMENDATION**

That the Board ADOPT Resolution No. 22/23-11 Authorizing the Use of Teleconferencing Accessibility Procedures for Public Meetings.

**BACKGROUND**

Assembly Bill 361 (AB 361) was signed into law by the Governor on September 16, 2021, and went into effect immediately as urgency legislation (codified under Government Code § 54953). The bill modified certain provisions of the Brown Act in order to allow local agencies to continue to meet remotely using modified teleconference procedures provided findings of certain emergency conditions are made and the procedural requirements of AB 361 are followed.

At the meeting of October 14, 2021, the Board adopted Resolution No. 21/22-13, which first made the requisite findings that conditions arising from a state of emergency as a result of the threat of COVID-19 existed and impacted the ability of members of the public, the Board of Directors, committees, District staff, and consultants to meet safely in person, and authorized the use of the modified teleconference procedures for remote meetings of the Board and all District legislative bodies subject to the Brown Act.

**DISCUSSION**

As new variants continue to emerge, the health and safety threat related to the spread of COVID-19 remains as do the associated health and safety measures in response to the virus. Because emergency conditions still exist, proposed Resolution No. 22/23-11 will authorize the use of emergency teleconference procedures for s 30 days, including this meeting.

The District has implemented and will continue to implement the procedural requirements for conducting public meetings under AB 361. These procedures include: teleconference accessibility via call-in option or an internet-based service option (via the Zoom Webinars platform) is listed on the published agenda for each meeting as well as on the District's website. Additionally, all Board meetings continue to be live-streamed. The District will also provide access for public comment opportunities in real time.

STAFF REPORT

AGENDA ITEM #6A  
*Continued Use of Teleconferencing for Public Meetings*

**FISCAL IMPACT**

None. Continued use of these procedures will actually result in some cost savings for the District in terms of avoidance of travel costs for contractors and the ability of staff members to participate remotely.

**RECOMMENDED MOTION**

“I move that the Board adopt Resolution No. 22/23-11 authorizing the General Manager to implement and utilize teleconference accessibility procedures to conduct public meetings pursuant to Assembly Bill 361.”

**Attachments:** Resolution No. 22/23-11

## RESOLUTION NO. 22/23-11

### **A RESOLUTION OF THE BOARD OF DIRECTORS OF THE BEAR VALLEY COMMUNITY SERVICES DISTRICT AUTHORIZING THE USE OF TELECONFERENCE ACCESSIBILITY PROCEDURES FOR CONDUCTING PUBLIC MEETINGS PURSUANT TO ASSEMBLY BILL 361**

The Board of Directors of the Bear Valley Community Services District resolves as follows:

#### SECTION 1. Findings. The Board finds as follows:

A. On October 14, 2021, the Board of Directors adopted Resolution No. 21/22-13, which authorized the use of emergency teleconference accessibility procedures for conducting public meetings pursuant to Assembly Bill (AB) 361, which amended Government Code section 54953 to establish such procedures.

B. The findings set forth in Resolution No. 21/22-13 are incorporated by this reference.

C. Under AB 361, the emergency use of teleconference accessibility procedures for conducting public meetings is only valid for a period of 30 days from the adoption of a resolution making findings that support the use of these teleconference procedures.

D. As the emergency conditions which led the Board to adopt Resolution No 21/22-13 still exist, the Board desires to again authorize the use of teleconference accessibility procedures for conducting public meetings under Government Code section 54953(e) for a 30-day period from the effective date of this Resolution.

SECTION 2. Continued Local Emergency. The Board hereby finds that a state and local state of emergency as a result of the threat of COVID-19 (including its variants and sub-variants) still exists and continues to impact the ability of members of the public, the Board, Board committees, District staff, and consultants to meet safely in person.

SECTION 3. Continued State, County and Local Health and Safety Measures. The State of California, the County of Kern, and the District continue to follow health and safety measures in response to COVID-19 as ordered or recommended by the Centers for Disease Control and Prevention (CDC), California Department of Public Health (DPH), and the Kern County Public Health Services Department, as applicable.

SECTION 4. Authorization to Use Modified Teleconferencing Accessibility under AB 361. The Board declares that pursuant to the findings set forth in this Resolution that the General Manager is authorized and directed to utilize teleconferencing to conduct public meetings pursuant to Government Code section 54953, as amended by AB 361. Accordingly, any "legislative body" of the District, including the Board of Directors and its standing committees, may meet by teleconference in accordance with modified teleconference accessibility procedures set forth in Government Code section 54953(e).

SECTION 5. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Resolution is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision will not affect the validity of the

remaining portions of this Resolution. The Board hereby declares that it would have adopted this Resolution and each and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared unconstitutional.

**SECTION 6. Effective Dates.** This Resolution takes effect immediately upon its adoption, and will continue in effect until the earlier of: (a) 30 days from the date of adoption of this Resolution; (b) such time the Board adopts a subsequent resolution in accordance with Government Code section 54953(e)(3) to extend the use of the modified teleconferencing accessibility procedures for another 30-day period; or (c) such time the Board decides to rescind such resolution(s).

PASSED, APPROVED AND ADOPTED on August 4, 2022 by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

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Gregory Hahn, President

ATTEST:

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Kristy McEwen, Board Secretary

## STAFF REPORT

### AGENDA ITEM #6B *Police Services Special Tax*



MEETING DATE: August 4, 2022

PREPARED BY: Donald M. Davis, General Counsel

AGENDA TITLE: RATIFICATION AND FINAL ADOPTION OF  
Resolution 22/23-09 Calling for an Election on a Special Tax Ballot  
Measure and Ordinance to Increase Funding for Police Services and  
Requesting Consolidation with the Statewide General Election on  
November 8, 2022

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### **RECOMMENDATION**

The Board of Directors hold a public hearing, review the revised version of Resolution 22/23-09, including the revised text of proposed Ordinance 22-255 (Police Services Special Tax Ordinance), to confirm that the changes reflect the Board's direction and approval at the Board Meeting on July 14, 2022, and ratify and adopt the revised version of Resolution 22/23-09.

### **BACKGROUND**

The Board held a public hearing on proposed Resolution 22/23-09 (Resolution) at its meeting on July 14, 2022. The Board was also presented with a draft of proposed Ordinance 22-255 (Ordinance), which staff recommended be presented to voters along with the Ballot Measure to increase the existing Police Services Special Tax, so that all provisions related to the proposed changes to the Police Services Special Tax be included in a single document for ease of reference and administration. The agenda materials for this item (11D) left the proposed amount of the maximum Police Services Special Tax blank pending Board review of the resident survey on this matter and direction from the Board. At the conclusion of the public hearing, the majority of the Board voted to adopt Resolution 22/23-09 with the following changes: (1) the proposed maximum tax rate be set at \$500 per parcel, and (2) such rate be subject to an annual inflationary adjustment not to exceed two percent (2%) based on changes in the Consumer Price Index-Urban Wage Earners and Clerical Workers, All Items, for the Riverside-San Bernardino-Ontario area ("CPI-W").

### **DISCUSSION**

To ensure that the final version of the Resolution and Ordinance reflect the Board's direction and approval, staff is bringing the documents back to the Board for review, ratification and final adoption of Resolution 22/23-09. The key changes are summarized below.

Section 4(B) of the Ordinance sets the maximum annual tax rate at \$500 per parcel, and Section 4(C) incorporates the Board's direction on the annual inflationary adjustment based on changes in the designated CPI-W – not to exceed 2%.

As the Board elected to propose to the voters a maximum tax rate that would come close to fully funding all aspects of police services, including administration, operations, equipment and facilities, the proposed uses of the tax have been expanded in Section 3 of the Ordinance to include those items, along with the associated costs of collecting the tax and the annual audit of the uses of the tax.

STAFF REPORT

AGENDA ITEM #6B  
*Police Services Special Tax*

To reflect the changes noted above and to conform to current Elections Code requirements for tax measures, the proposed text of the Ballot Measure has been revised to read as follows:

Shall the Police Services Special Tax Ordinance imposing a flat tax on each parcel of real property within the Bear Valley Community Services District at a maximum rate of \$500 per parcel, per year, and with an annual inflationary adjustment not to exceed two percent (2%) per year for the purpose of paying Bear Valley Police Department personnel, administration and operational costs, including the costs of associated Police Department equipment, supplies, and support facilities, which is estimated to generate \$1,800,000 annually until amended or repealed, with regular financial audits, be adopted?	YES	
	NO	

Finally, so that there is no confusion that upon voter approval of the Ordinance the prior special tax will be repealed, language has to Section 9 of the Ordinance stating that the Ordinance will “repeal and supersede the special tax approved by the voters of the District at an election on May 6, 1997, which approved a special tax in the maximum amount not to exceed \$80 per parcel of real property for police services, as well as District Ordinance 96-125 approved by the Board of Directors on December 14, 1996.”

**RECOMMENDED MOTION**

“I move the Board of Directors ADOPT the revised version of Resolution 22/23-09 Calling for an Election on a Special Tax Ballot Measure and Ordinance to Increase Funding for Police Services and Requesting Consolidation with the Statewide General Election on November 8, 2022.”

Attachments:

Resolution 22/23-09

Proposed Ordinance 22-255 (Police Services Special Tax Ordinance)

**RESOLUTION NO. 22/23-09**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE BEAR VALLEY COMMUNITY SERVICES DISTRICT CALLING FOR AN ELECTION ON A SPECIAL TAX MEASURE AND ORDINANCE REGARDING ADDITIONAL FUNDING FOR POLICE SERVICES, REQUESTING CONSOLIDATION OF THIS MEASURE AND ORDINANCE WITH THE GENERAL ELECTION ON NOVEMBER 8, 2022, REQUESTING THE PREPARATION OF AN IMPARTIAL ANALYSIS BY THE COUNTY COUNSEL OF KERN COUNTY AND PROVIDING FOR SUCH OTHER ACTIONS AS MAY BE NECESSARY OR CONVENIENT FOR THE ELECTION ON THE BALLOT MEASURE AND ORDINANCE**

THE BOARD OF DIRECTORS OF THE BEAR VALLEY COMMUNITY SERVICES DISTRICT RESOLVES AS FOLLOWS:

**Section 1.** Findings. The Board of Directors finds as follows:

A. The Bear Valley Community Services District is authorized to and has assumed responsibility for the provision of police protection and law enforcement services to the residents of the District through the establishment of a police department in accordance with the Community Services District Law (commencing with Government Code section 61000, and in particular, Section 61100(i)).

B. The Bear Valley Community Services District, as a community services district organized under the Community Services District Law, is authorized by Section 4 of Article XIII A and Section 2(d) of Article XIII C of the California Constitution, and Government Code section 61121, upon approval of two-thirds of the electorate voting on the ballot measure and ordinance, to levy a special tax for specified purposes.

C. On May 6, 1997, in accordance with applicable law, an election was conducted within the District at which time the voters approved a special tax in the maximum amount not to exceed \$80 per parcel for police services ("Police Services Special Tax").

D. The Police Services Special Tax has not been increased since the adoption of the special tax in 1997.

E. The Police Services Special Tax currently generates approximately \$288,000 in revenues per fiscal year. The full cost of providing police services under the 2021-2022 fiscal year budget was \$1,903,597.

F. Because the Police Services Special Tax does not generate sufficient revenues to cover existing expenditures for these services, the District has for many years had to draw on its reserve funds, including general funds, to cover such costs.

G. The Board of Directors concludes that it is advisable to request that the Kern County Registrar/County Clerk call an election and submit to the voters of the District the question of whether the District may increase the amount of the annual Police Services Special Tax within the District from \$80 per parcel to \$500 per parcel with an annual inflationary adjustment not to exceed two percent (2%) per year as provided in the ballot measure ("Ballot

Measure”) attached as Exhibit A (Text of Ballot Measure) and the implementing ordinance (“Ordinance”) attached as Exhibit B (Text of Police Services Special Tax Ordinance).

H. The proposed Ballot Measure and Ordinance, if approved by two-thirds of the voters, will significantly reduce the funding gap for police services to a sustainable level with respect to the anticipated reserves and general funds.

**Section 2. Special Tax Measure Election.** The Board of Directors is authorized pursuant to Government Code section 61121 to order an election for the increased Police Services Special Tax and, in accordance with that authority, calls and orders to be held in the territory of the Bear Valley Community Services District, within the County of Kern on Tuesday, November 8, 2022, an election on the special tax Ballot Measure attached as Exhibit A and Ordinance attached as Exhibit B.

**Section 3. Call for Election.** This Resolution serves as a request for the Kern County Registrar/County Clerk to call an election on this Ballot Measure and Ordinance within the boundaries of the District on November 8, 2022.

**Section 4. Consolidation of Election.** The Board of Directors, pursuant to Part 3, commencing with Section 10400, Division 10 of the Elections Code, requests that the Police Services Special Tax Ballot Measure and Ordinance referred to in this Resolution be consolidated with the statewide general election that is scheduled for Tuesday, November 8, 2022.

**Section 5. County to Provide Election Services.** Pursuant to Section 10002 of the Elections Code, the Board of Supervisors is requested to permit the County Registrar/County Clerk to render all services specified by Section 10418 of the Elections Code relating to the election, for which services the District agrees to reimburse the County, in accordance with current County proration and allocation procedures, such services to include the publication of notice.

**Section 6. Impartial Analysis.** The Board of Directors requests the County Counsel of Kern County prepare an impartial analysis of the Ballot Measure and Ordinance in accordance with Elections Code section 9313. In the event that it is determined that Elections Code section 9313 does not apply, and it is otherwise determined that an impartial analysis is necessary, the General Manager will cause the District’s general counsel to prepare an impartial analysis.

**Section 7. Ballot Argument.** The Board President is authorized to prepare an argument in favor of the Ballot Measure and Ordinance not exceeding 300 words in length. The argument will be included with other ballot materials. Any person may prepare an argument against the Ballot Measure and Ordinance not exceeding 300 words in length. If more than one argument is submitted against the Ballot Measure and Ordinance, Kern County Registrar/County Clerk may select the argument against the Ballot Measure and Ordinance. The Board President is further authorized to prepare any rebuttal argument.

**Section 8. Duty of District Secretary.** The District Secretary is hereby directed immediately to file a certified copy of this Resolution to the Kern County Registrar/County Clerk and the Clerk of the Kern County Board of Supervisors.

**Section 9.** Authorization to Execute Necessary Documents and Take Other Official Actions. The Board President and General Manager are hereby authorized and directed to do any and all things to execute, deliver and perform any and all agreements and documents that are deemed necessary or advisable to effectuate the purpose of this Resolution. This includes making alterations to the Ballot Measure and Ordinance to comply with requirements of law and the Kern County Registrar/County Clerk, or which are, in the best judgment of the Board President and General Manager, in the best interest of the District.

**Section 10.** Canvass of Election. The Board of Supervisors of Kern County is authorized to canvass the returns of the election pursuant to Elections Code section 10411.

**Section 11.** Required Vote. The Ballot Measure and Ordinance will pass if two-thirds of the votes are in favor.

**Section 12.** Environmental Review of Measure and Ordinance. The adoption of this Resolution and the proposed Ordinance is exempt from the requirements of the California Environmental Quality Act ("CEQA") (Public Resources Code Section 21000 and following) under State CEQA Guidelines Section 15378(b)(4), which provides that the creation of government funding mechanisms or other government fiscal activities that do not involve any commitment to a specific project that may result in a potentially significant physical impact on the environment, and Section 15061(b)(3), because it can be seen with certainty that there is no possibility that in itself the adoption of this Resolution and the proposed Ordinance may have a significant effect on the environment.

**Section 13.** Severability. If any section, subsection, sentence, clause, or phrase of this Resolution is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this resolution. The Board of Directors hereby declares that it would have passed this resolution and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the Resolution would be subsequently declared invalid or unconstitutional.

**Section 14.** Effective Date of Resolution. This Resolution will be effective upon adoption.

PASSED, APPROVED AND ADOPTED on \_\_\_\_\_, 2022, by the following vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

\_\_\_\_\_  
Gregory Hahn, President of the Board of Directors  
Bear Valley Community Services District

ATTEST:

\_\_\_\_\_  
Kristy McEwen, Board Secretary

**EXHIBIT A**

**TEXT OF POLICE SERVICES SPECIAL TAX BALLOT MEASURE**

**Police Services Special Tax Ballot Measure Question:**

Shall the Police Services Special Tax Ordinance imposing a flat tax on each parcel of real property within the Bear Valley Community Services District at a maximum rate of \$500 per parcel, per year, and with an annual inflationary adjustment not to exceed two percent (2%) per year for the purpose of paying Bear Valley Police Department personnel, administration and operational costs, including the costs of associated Police Department equipment, supplies, and support facilities, which is estimated to generate \$1,800,000 annually until amended or repealed, with regular financial audits, be adopted?	YES	
	NO	

**EXHIBIT B**

**TEXT OF POLICE SERVICES SPECIAL TAX ORDINANCE**

DRAFT

ORDINANCE NO. 22-255

**AN ORDINANCE OF THE BEAR VALLEY COMMUNITY SERVICES DISTRICT AUTHORIZING THE DISTRICT TO IMPOSE AND LEVY A SPECIAL TAX FOR POLICE SERVICES (Police Services Special Tax Ordinance)**

The people of the Bear Valley Community Services District ordain as follows:

**SECTION 1. Authority.** This ordinance is adopted pursuant to Article XIII A, section 4, Article XIII B, section 4 and Article XIII C section 2 of the California Constitution, Article 3.5 (commencing with Section 50075) of Chapter 1 of Part 1 of Division 1 of Title 5 of the California Government Code, Article 3.7 (commencing with Section 53720) of Chapter 4 of Division 2 of Title 5 of the California Government Code, and California Government Code sections 61100(i) and 61121.

**SECTION 2. Definitions.** For the purposes of this ordinance the following words and phrases will have the definition set forth in this section:

“Bear Valley Police Department” means Bear Valley Police Department, which is administered by the District.

“Board of Directors” means the Board of Directors of the Bear Valley Community Services District.

“District” means the Bear Valley Community Services District.

“Parcel of real property” means a unit of improved or unimproved real property held in separate ownership, including, but not limited to, any vacant property, commercial property, single-family residential property, and condominium unit as defined in California Civil Code section 783, or any other unit of real property subject to the California Subdivided Lands Act (California Business and Professions Code section 110000 and following).

“Special tax” means the special tax authorized and imposed pursuant to this ordinance.

**SECTION 3. Use of Special Tax.** The purpose for which the special tax may be imposed and levied is to raise revenue for the District to use in meeting Bear Valley Police Department personnel, administration and operational costs, including the costs of associated Police Department equipment, supplies, and support facilities. The revenues collected may also be used for the costs associated with collecting the special tax and to pay the costs of an independent third-party audit of the use of the funds collected.

**SECTION 4. Special Tax Authorization and Limit.**

A. The Board of Directors is authorized to impose and levy the special tax each year on each parcel of real property within the District, except parcels of real property owned by a federal, state, or local agency that are exempt from taxation.

B. The special tax may be levied at a rate not to exceed \$500 per parcel of real property.

C. The maximum special tax rate set forth in subsection (B) may be adjusted annually for inflation ("Annual Inflationary Adjustment") at the beginning of each fiscal year starting on July 1, 2023, in an amount not to exceed the lesser of: (A) the annual percentage increase, if any, in the Consumer Price Index-Urban Wage Earners and Clerical Workers, All Items, for the Riverside-San Bernardino-Ontario area ("CPI-W"), as determined by the United States Department of Labor Statistics, or its successor; or (B) 2%. The Annual Inflationary Adjustment based on the change in CPI-W will be calculated based on the percentage amount derived by comparing the CPI-W rate for May of the previous calendar year to the percentage amount derived by comparing the CPI-W rate for the most recent month of May. In the event the Board of Directors does not impose an Annual Inflationary Adjustment for a particular fiscal year, any Annual Inflationary Adjustment for the next fiscal year or thereafter may not exceed 2% as provided in the first sentence of this subsection (C), as any unused carryover or accumulation of the Annual Inflationary Adjustment will not be permitted.

D. The Board of Directors will set and impose the special tax annually by resolution, provided that in no year may the special tax rate exceed the maximum amount specified in this section.

**SECTION 5. Levy, Collection and Deposit of the Special Tax.** Unless otherwise ordered pursuant to a resolution of the Board of Directors, the special tax will annually be collected on the Kern County property tax bill in the same manner and subject to the same penalty as the county property taxes are collected. The Board of Directors will annually take such steps as are necessary to have the special tax collected through the property tax bill and will coordinate with the Kern County Tax Collector on such collections. All proceeds of the special tax will be deposited in a separate account for the uses provided in Section 3 of this ordinance.

**SECTION 6. Annual Report on and Audit of Special Tax Revenues.** Each year the special tax remains in effect, the General Manager will cause to be prepared and filed with the Board of Directors an annual report containing information regarding the amount of special tax revenues collected, the amount expended, and the purpose of the expenditures. In addition, the District will cause the annual report on the special tax to be audited on an annual basis for compliance with the provisions of this ordinance by an independent auditor that is a certified public accountant, and the findings of the audit will be presented to the Board of Directors at a public meeting and posted on the District's website.

**SECTION 7. Appropriations Limit Increase.** Pursuant to Article XIII B of the California Constitution, the appropriations limit for the District will be increased by the maximum projected collection authorized by the levy of this special tax for each year this tax remains in effect.

**SECTION 8. Severability.** If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this ordinance. The Board of Directors hereby declares that it would have passed this

ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

**SECTION 9. Effective Date and Repeal of Prior Police Special Tax.** If this ordinance is approved by at least two-thirds of the District's qualified voters voting on its approval at the election on November 8, 2022, then this ordinance will become effective 10 days following the date the vote is declared by the Board of Directors in accordance with California Elections Code section 9320. Upon the effective date, this ordinance will repeal and supersede the special tax approved by the voters of the District at an election on May 6, 1997, which approved a special tax in the maximum amount not to exceed \$80 per parcel of real property for police services, as well as District Ordinance 96-125 approved by the Board of Directors on December 14, 1996.

APPROVED, by a two-thirds vote of the voters of the Bear Valley Community Services District at the election held on November 8, 2022.

\_\_\_\_\_  
Gregory Hahn, President  
Board of Directors of the Bear Valley Community Services District

ATTEST:

BY: \_\_\_\_\_  
Kristy McEwen  
Secretary to the Board of Directors

## STAFF REPORT

### AGENDA ITEM #6C *Gate Operations Special Tax*



MEETING DATE: August 4, 2022

PREPARED BY: Donald M. Davis, General Counsel

AGENDA TITLE: RATIFICATION AND FINAL ADOPTION OF Resolution 22/23-10 Calling for an Election on a Special Tax Ballot Measure and Ordinance to Increase Funding for Gate Operations and Requesting Consolidation with the Statewide General Election on November 8, 2022

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### **RECOMMENDATION**

The Board of Directors hold a public hearing, review the revised version of Resolution 22/23-10, including the revised text of proposed Ordinance 22-256 (Gate Operations Special Tax Ordinance) to confirm that the changes reflect the Board's direction and approval at the Board Meeting on July 14, 2022, and ratify and adopt the revised version of Resolution 22/23-10.

### **BACKGROUND**

The Board held a public hearing on proposed Resolution 22/23-10 (Resolution) at its meeting on July 14, 2022. The Board was also presented with a draft of proposed Ordinance 22-256 (Ordinance), which staff recommended be presented to voters along with the Ballot Measure to increase the existing Gate Operations Special Tax, so that all provisions related to the proposed changes to the Gate Operations Special Tax be included in a single document for ease of reference and administration. The agenda materials for this item (11E) left the proposed amount of the maximum Gate Operations Special Tax blank pending Board review of the resident survey on this matter and direction from the Board. At the conclusion of the public hearing, the majority of the Board voted to adopt Resolution 22/23-10 with the following changes: (1) the proposed maximum tax rate be set at \$185 per parcel, and (2) such rate be subject to an annual inflationary adjustment not to exceed two percent (2%) based on changes in the Consumer Price Index-Urban Wage Earners and Clerical Workers, All Items, for the Riverside-San Bernardino-Ontario area ("CPI-W").

### **DISCUSSION**

To ensure that the final version of the Resolution and Ordinance reflect the Board's direction and approval, staff is bringing the documents back to the Board for review, ratification and final adoption of Resolution 22/23-10. The key changes are summarized below.

Section 4(B) of the Ordinance sets the maximum annual tax rate at \$185 per parcel, and Section 4(C) incorporates the Board's direction on the annual inflationary adjustment based on changes in the designated CPI-W – not to exceed 2%.

As the Board elected to propose to the voters a maximum tax rate that would come close to fully funding all aspects of gate operations, including administration, equipment and facilities, all those proposed uses of the tax are included in Section 3 of the Ordinance, along with the associated costs of collecting the tax and the annual audit of the uses of the tax.

STAFF REPORT

AGENDA ITEM #6C  
*Gate Operations Special Tax*

To reflect the changes noted above and to conform to current Elections Code requirements for tax measures, the proposed text of the Ballot Measure has been revised to read as follows:

Shall the Gate Operations Special Tax Ordinance imposing a flat tax on each parcel of real property within the Bear Valley Community Services District at a maximum rate of \$185 per parcel, per year, and with an annual inflationary adjustment not to exceed two percent (2%) per year for the purpose of paying gate personnel, administration and operational costs, including the cost of associated gate equipment and facilities, which is estimated to generate \$665,000 annually until amended or repealed, with regular financial audits, be adopted?	YES	
	NO	

Finally, so that there is no confusion that upon voter approval of the Ordinance the prior special tax will be repealed, language has to Section 9 of the Ordinance stating that the Ordinance will “repeal and supersede the special tax approved by the voters of the District at an election on June 6, 2006, which approved a special tax in the maximum amount not to exceed \$75 per parcel for gate operations, as well as Resolution 06-1205 approved by the Board of Directors on March 2, 2006.”

**RECOMMENDED MOTION**

“I move the Board of Directors ADOPT the revised version of Resolution 22/23-10 Calling for an Election on a Special Tax Ballot Measure and Ordinance to Increase Funding for Gate Operations and Requesting Consolidation with the Statewide General Election on November 8, 2022.”

Attachments:

Resolution 22/23-10

Proposed Ordinance 22-256 (Gate Operations Special Tax Ordinance)

**RESOLUTION NO. 22/23-10**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE BEAR VALLEY COMMUNITY SERVICES DISTRICT CALLING FOR AN ELECTION ON A SPECIAL TAX MEASURE AND ORDINANCE REGARDING ADDITIONAL FUNDING FOR GATE OPERATIONS, REQUESTING CONSOLIDATION OF THIS MEASURE AND ORDINANCE WITH THE GENERAL ELECTION ON NOVEMBER 8, 2022, REQUESTING THE PREPARATION OF AN IMPARTIAL ANALYSIS BY THE COUNTY COUNSEL OF KERN COUNTY AND PROVIDING FOR SUCH OTHER ACTIONS AS MAY BE NECESSARY OR CONVENIENT FOR THE ELECTION ON THE BALLOT MEASURE AND ORDINANCE**

THE BOARD OF DIRECTORS OF THE BEAR VALLEY COMMUNITY SERVICES DISTRICT RESOLVES AS FOLLOWS:

**Section 1.** Findings. The Board of Directors finds as follows:

A. The Bear Valley Community Services District is authorized to and has assumed responsibility for the provision of the operation of an entry gate in accordance with the Community Services District Law (commencing with Government Code section 61000, and in particular, Section 61105(g)).

B. The Bear Valley Community Services District, as a community services district organized under the Community Services District Law, is authorized by Section 4 of Article XIII A and Section 2(d) of Article XIII C of the California Constitution, and Government Code section 61121, upon approval of two-thirds of the electorate voting on the ballot measure and ordinance, to levy a special tax for specified purposes.

C. On June 6, 2006, in accordance with applicable law, an election was conducted within the District at which time the voters approved a special tax in the maximum amount not to exceed \$75 per parcel for the operation of the entry gate to restrict access to the District to property owners, residents and authorized visitors ("Gate Operations Special Tax").

D. The Gate Operations Special Tax has not been increased since the adoption of the special tax in 2006.

E. The Gate Operations Special Tax currently generates approximately \$270,000 in revenues per fiscal year. The full cost of operations and services associated with the entry gate under the 2021-2022 fiscal year budget was \$667,445.

F. Because the Gate Operations Special Tax does not generate sufficient revenues to cover existing expenditures for these services, the District has for many years had to draw on its reserve funds, including general funds, to cover such costs.

G. The Board of Directors concludes that it is advisable to request that the Kern County Registrar/County Clerk call an election and submit to the voters of the District the question of whether the District may increase the amount of the annual Gate Operations Special Tax within the District from \$75 per parcel to \$185 per parcel with an annual inflationary adjustment not to exceed two percent (2%) per year as provided in the ballot

measure (“Ballot Measure”) attached as Exhibit A and the implementing ordinance (“Ordinance”) attached as Exhibit B (Text of Gate Operations Special Tax Ordinance).

H. The proposed Ballot Measure and Ordinance, if approved by two-thirds of the voters, will significantly reduce the funding gap for gate operations to a sustainable level with respect to the anticipated reserves and general funds.

**Section 2. Special Tax Measure Election.** The Board of Directors is authorized pursuant to Government Code section 61121 to order an election for the increased Gate Operations Special Tax and, in accordance with that authority, calls and orders to be held in the territory of the Bear Valley Community Services District, within the County of Kern on Tuesday, November 8, 2022, an election on the special tax Ballot Measure attached as Exhibit A and Ordinance attached as Exhibit B.

**Section 3. Call for Election.** This Resolution serves as a request for the Kern County Registrar/County Clerk to call an election on this Ballot Measure and Ordinance within the boundaries of the District on November 8, 2022.

**Section 4. Consolidation of Election.** The Board of Directors, pursuant to Part 3, commencing with Section 10400, Division 10 of the Elections Code, requests that the Gate Operations Special Tax Ballot Measure and Ordinance referred to in this Resolution be consolidated with the statewide general election that is scheduled for Tuesday, November 8, 2022.

**Section 5. County to Provide Election Services.** Pursuant to Section 10002 of the Elections Code, the Board of Supervisors is requested to permit the County Registrar/County Clerk to render all services specified by Section 10418 of the Elections Code relating to the election, for which services the District agrees to reimburse the County, in accordance with current County proration and allocation procedures, such services to include the publication of notice.

**Section 6. Impartial Analysis.** The Board of Directors requests the County Counsel of Kern County prepare an impartial analysis of the Ballot Measure and Ordinance in accordance with Elections Code section 9313. In the event that it is determined that Elections Code section 9313 does not apply, and it is otherwise determined that an impartial analysis is necessary, the General Manager will cause the District’s general counsel to prepare an impartial analysis.

**Section 7. Ballot Argument.** The Board President is authorized to prepare an argument in favor of the Ballot Measure and Ordinance not exceeding 300 words in length. The argument will be included with other ballot materials. Any person may prepare an argument against the Ballot Measure and Ordinance not exceeding 300 words in length. If more than one argument is submitted against the Measure, Kern County Registrar/County Clerk may select the argument against the Ballot Measure and Ordinance. The Board President is further authorized to prepare any rebuttal argument.

**Section 8. Duty of District Secretary.** The District Secretary is hereby directed immediately to file a certified copy of this Resolution to the Kern County Registrar/County Clerk and the Clerk of the Kern County Board of Supervisors.

**Section 9. Authorization to Execute Necessary Documents and Take Other Official Actions.** The Board President and General Manager are hereby authorized and directed to do any and all things to execute, deliver and perform any and all agreements and documents that are deemed necessary or advisable to effectuate the purpose of this Resolution. This includes making alterations to the Ballot Measure and Ordinance to comply with requirements of law and the Kern County Registrar/County Clerk, or which are, in the best judgment of the Board President and General Manager, in the best interest of the District.

**Section 10. Canvass of Election.** The Board of Supervisors of Kern County is authorized to canvass the returns of the election pursuant to Elections Code section 10411.

**Section 11. Required Vote.** The Ballot Measure and Ordinance will pass if two-thirds of the votes are in favor.

**Section 12. Environmental Review of Measure and Ordinance.** The adoption of this Resolution and the proposed Ordinance is exempt from the requirements of the California Environmental Quality Act ("CEQA") (Public Resources Code Section 21000 and following) under State CEQA Guidelines Section 15378(b)(4), which provides that the creation of government funding mechanisms or other government fiscal activities that do not involve any commitment to a specific project that may result in a potentially significant physical impact on the environment, and Section 15061(b)(3), because it can be seen with certainty that there is no possibility that in itself the adoption of this Resolution and the proposed Ordinance may have a significant effect on the environment

**Section 13 Severability.** If any section, subsection, sentence, clause, or phrase of this Resolution is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this resolution. The Board of Directors hereby declares that it would have passed this resolution and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the Resolution would be subsequently declared invalid or unconstitutional.

**Section 14. Effective Date of Resolution.** This Resolution will be effective upon adoption.

PASSED, APPROVED AND ADOPTED on \_\_\_\_\_, 2022, by the following vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

\_\_\_\_\_  
Gregory Hahn, President of the Board of Directors  
Bear Valley Community Services District

ATTEST:

\_\_\_\_\_  
Kristy McEwen, Board Secretary

**EXHIBIT A**

**TEXT OF GATE OPERATIONS SPECIAL TAX BALLOT MEASURE**

**Gate Operations Special Tax Ballot Measure Question:**

Shall the Gate Operations Special Tax Ordinance imposing a flat tax on each parcel of real property within the Bear Valley Community Services District at a maximum rate of \$185 per parcel, per year, and with an annual inflationary adjustment not to exceed two percent (2%) per year for the purpose of paying gate personnel, administration and operational costs, including the cost of associated gate equipment and facilities, which is estimated to generate \$665,000 annually until amended or repealed, with regular financial audits, be adopted?	YES	
	NO	

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**EXHIBIT B**

**TEXT OF GATE OPERATIONS SPECIAL TAX ORDINANCE**

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ORDINANCE NO. 22-256

**AN ORDINANCE OF THE BEAR VALLEY COMMUNITY SERVICES DISTRICT AUTHORIZING THE DISTRICT TO IMPOSE AND LEVY A SPECIAL TAX FOR GATE OPERATIONS (Gate Operations Special Tax Ordinance)**

The people of the Bear Valley Community Services District ordain as follows:

**SECTION 1. Authority.** This ordinance is adopted pursuant to Article XIII A, section 4, Article XIII B, section 4 and Article XIII C section 2 of the California Constitution, Article 3.5 (commencing with Section 50075) of Chapter 1 of Part 1 of Division 1 of Title 5 of the California Government Code, Article 3.7 (commencing with Section 53720) of Chapter 4 of Division 2 of Title 5 of the California Government Code, and California Government Code sections 61105(g) and 61121.

**SECTION 2. Definitions.** For the purposes of this ordinance the following words and phrases will have the definition set forth in this section:

“Board of Directors” means the Board of Directors of the Bear Valley Community Services District.

“District” means the Bear Valley Community Services District.

“Gate” means the entry gate and associated facilities that can be used to restrict access to the District to property owners, residents and authorized visitors pursuant to Government Code section 61105(g).

“Parcel of real property” means a unit of improved or unimproved real property held in separate ownership, including, but not limited to, any vacant property, commercial property, single-family residential property, and condominium unit as defined in California Civil Code section 783, or any other unit of real property subject to the California Subdivided Lands Act (California Business and Professions Code section 11000 and following).

“Special tax” means the special tax authorized and imposed pursuant to this ordinance.

**SECTION 3. Use of Special Tax.** The limited purpose for which the special tax may be imposed and levied is to raise revenue for the District to use to pay gate personnel, administration and operational costs, including the cost of associated gate equipment and facilities. The revenues collected may also be used for the costs associated with collecting the special tax and to pay the costs of an independent third-party audit of the use of the funds collected.

**SECTION 4. Special Tax Authorization and Limit.**

A. The Board of Directors is authorized to impose and levy the special tax each year

on each parcel of real property within the District, except parcels of real property owned by a federal, state, or local agency that are exempt from taxation.

B. The special tax may be levied at a rate not to exceed \$185 per parcel of real property.

C. The maximum special tax rate set forth in subsection (B) may be adjusted annually for inflation ("Annual Inflationary Adjustment") at the beginning of each fiscal year starting on July 1, 2023, in an amount not to exceed the lesser of: (A) the annual percentage increase, if any, in the Consumer Price Index-Urban Wage Earners and Clerical Workers, All Items, for the Riverside-San Bernardino-Ontario area ("CPI-W"), as determined by the United States Department of Labor Statistics, or its successor; or (B) 2%. The Annual Inflationary Adjustment based on the change in CPI-W will be calculated based on the percentage amount derived by comparing the CPI-W rate for May of the previous calendar year to the percentage amount derived by comparing the CPI-W rate for the most recent month of May. In the event the Board of Directors does not impose an Annual Inflationary Adjustment for a particular fiscal year, any Annual Inflationary Adjustment for the next fiscal year or thereafter may not exceed 2% as provided in the first sentence of this subsection (C), as any unused carryover or accumulation of the Annual Inflationary Adjustment will not be permitted.

D. The Board of Directors will set and impose the special tax annually by resolution, provided that in no year may the special tax rate exceed the maximum amount specified in this section.

**SECTION 5. Levy, Collection and Deposit of the Special Tax.** Unless otherwise ordered pursuant to a resolution of the Board of Directors, the special tax will annually be collected on the Kern County property tax bill in the same manner and subject to the same penalty as the county property taxes are collected. The Board of Directors will annually take such steps as are necessary to have the special tax collected through the property tax bill and will coordinate with the Kern County Tax Collector on such collections. All proceeds of the special tax will be deposited in a separate account for the uses provided in Section 3 of this ordinance.

**SECTION 6. Annual Report on and Audit of Special Tax Revenues.** Each year the special tax remains in effect, the General Manager will cause to be prepared and filed with the Board of Directors an annual report containing information regarding the amount of special tax revenues collected, the amount expended, and the purpose of the expenditures. In addition, the District will cause the annual report on the special tax to be audited on an annual basis for compliance with the provisions of this ordinance by an independent auditor that is a certified public accountant, and the findings of the audit will be presented to the Board of Directors at a public meeting and posted on the District's website.

**SECTION 7. Appropriations Limit Increase.** Pursuant to Article XIII B of the California Constitution, the appropriations limit for the District will be increased by the maximum projected collection authorized by the levy of this special tax for each year this tax remains in effect.

**SECTION 8. Severability.** If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this ordinance. The Board of Directors hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

**SECTION 9. Effective Date and Repeal of Prior Gate Operations Special Tax.** If this ordinance is approved by at least two-thirds of the District's qualified voters voting on its approval at the election on November 8, 2022, then this ordinance will become effective 10 days following the date the vote is declared by the Board of Directors in accordance with California Elections Code section 9320. Upon the effective date, this ordinance will repeal and supersede the special tax approved by the voters of the District at an election on June 6, 2006, which approved a special tax in the maximum amount not to exceed \$75 per parcel for gate operations, as well as Resolution 06-1205 approved by the Board of Directors on March 2, 2006.

APPROVED, by a two-thirds vote of the voters of the Bear Valley Community Services District at the election held on November 8, 2022.

\_\_\_\_\_  
Gregory Hahn, President  
Board of Directors of the Bear Valley Community Services District

ATTEST:

BY: \_\_\_\_\_  
Kristy McEwen  
Secretary to the Board of Directors