

ORDINANCE NO.

**AN UNCODIFIED ORDINANCE OF THE CITY OF
SAN JOSE RENEWING THE SAN JOSE HOTEL
BUSINESS IMPROVEMENT DISTRICT, APPROVING ITS
ASSESSMENT RATE AND BUDGET REPORT, AND
AUTHORIZING THE LEVY OF ASSESSMENTS
BEGINNING FISCAL YEAR 2023-2024**

WHEREAS, the Property and Business Improvement District Law of 1994, Streets and Highways Code §36600 et seq., authorizes the City of San José (“City”) to establish business improvement districts for the purposes of promoting tourism; and

WHEREAS, in 2006, the Hotel Business Improvement District was approved by property owners and adopted by the City Council of the City of San José pursuant to Streets and Highways Code §36500 et seq., commonly referred to as the Property and Business Improvement Area Law of 1989 (“’89 Law”) to provide revenues for marketing efforts and event opportunities for hotels located in San José; and

WHEREAS, the ’89 Law required the Hotel Business Improvement District to be renewed annually, and in 2018, in an effort to implement long-range and larger-scale marketing and visitor attraction programs, the City Council established a new San José Hotel Business Improvement District (“SJHBID”) pursuant to Streets and Highways Code §36600 et seq., commonly referred to as the Property and Business Improvement Area Law of 1994 (“’94 Law”) for a five (5)-year term beginning July 1, 2018 through June 30, 2023, and selected San José Hotels, Inc. (“SJHI”) as the Owners’ Association for the SJHBID to implement the Management District Plan; and

WHEREAS, the ’94 Law provides that the SJHBID may be renewed for a term not to exceed ten (10) years; and

WHEREAS, lodging business owners who will pay more than fifty percent (50%) of the proposed assessment under the SJHBID have petitioned the City Council to renew the SJHBID; and

WHEREAS, included with the petitions was a Management District Plan for the renewal of the SJHBID (“Plan”) dated August 1, 2022, attached to the Memorandum to Council dated November 14, 2022, which sets forth the proposed boundary of the SJHBID, a service plan and budget, and a proposed means of governance; and

WHEREAS, the assessed lodging businesses within the SJHBID will receive a specific benefit from the activities and improvements set forth in the Plan; and

WHEREAS, on October 18, 2022, the City Council adopted Resolution No. 80708 (“Resolution of Intention”), declaring its intention to renew the SJHBID, preliminarily approving the Plan, setting the dates for a public meeting and a public hearing on the renewal of the SJHBID, finding that SJHI will continue to serve as the Owners’ Association for the SJHBID, and authorizing the City Manager to negotiate and execute an agreement with SJHI to implement the program described in the Plan; and

WHEREAS, the public meeting and public hearing to consider the renewal of the SJHBID were properly noticed in accordance with Streets and Highways Code §36623; and

WHEREAS, on November 1, 2022, the City Council received a report and conducted a public meeting to provide an opportunity for public comment on the renewal of the SJHBID, and no written or verbal objections or protests were made at the public meeting; and

WHEREAS, on December 6, 2022 at 1:30 p.m. at the Council Chambers located at 200 E. Santa Clara Street, San José, CA 95113, the City Council conducted a public hearing, and ___ written or verbal objections or protests were made to the renewal of the SJHBID and the levy of the proposed assessment; and

WHEREAS, the City Clerk has determined that there was no majority protest within the meaning of Streets and Highways Code §36623. A majority protest is defined as written protests received from owners or authorized representatives of businesses in the proposed district which would pay fifty percent (50%) or more of the assessments proposed to be levied. Protests are weighted based on the assessment proposed to be levied on each lodging business; and

WHEREAS, pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines and Title 21 of the San José Municipal Code (collectively, "CEQA"), the Director of Planning, Building and Code Enforcement has determined that the provisions of this Ordinance do not constitute a project, under File No. PP17-004 (Government Funding Mechanism or Fiscal Activity with no commitment to a specific project which may result in a potentially significant physical impact on the environment); and

WHEREAS, the City Council of the City of San José is the decision-making body for this Ordinance; and

WHEREAS, this Council has reviewed and considered the "not a project" determination under CEQA prior to taking any approval actions on this Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. The recitals set forth herein are adopted by the City Council as findings and they are true and correct.

SECTION 2. The San José Hotel Business Improvement District is hereby renewed for a ten (10) year term, beginning July 1, 2023 through June 30, 2033.

SECTION 3. The Plan dated August 1, 2022 is hereby adopted and approved.

SECTION 4. The activities to be provided to benefit assessed lodging businesses in the SJHBID will be funded by the levy of the assessment. The revenue from the assessment levy shall not be used: to provide activities that directly benefit businesses outside the SJHBID; to provide activities or improvements outside the SJHBID; or for any purpose other than the purposes specified in this Ordinance, the Resolution of Intention, and the Plan. Notwithstanding the foregoing, activities that must be provided outside the SJHBID boundaries to create a specific benefit to the assessed lodging businesses may be provided, but shall be limited to marketing or signage pointing to the SJHBID.

SECTION 5. The City Council finds as follows:

- A. The activities funded by the assessment will provide a specific benefit to assessed lodging businesses within the SJHBID that is not provided to those not paying the assessment.
- B. The assessment is a charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the costs to the local government of conferring the benefit or granting the privilege.

- C. The assessment is a charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the costs to the local government of providing the service or product.
- D. Assessments imposed pursuant to the SJHBID are levied solely upon the assessed business, and the business owner is solely responsible for payment of the assessment when due. If the owner chooses to collect any portion of the assessment from a transient, that portion shall be specifically called out and identified for the transient in any and all communications from the business owner as the "SJHBID Assessment."

SECTION 6. The assessments levied for the SJHBID shall be applied towards sales, promotions and marketing programs to market assessed San José lodging businesses as tourist, meeting and event destinations, and other improvements and activities as set forth in the Plan.

SECTION 7. Assessments levied on lodging businesses pursuant to this Ordinance shall be levied on the basis of benefit. Because the services provided are intended to increase room rentals, an assessment based on room rentals is the best measure of benefit.

SECTION 8. The assessments for the entire SJHBID will total approximately \$3,174,276.32 in year one.

SECTION 9. Bonds shall not be issued to fund the SJHBID.

SECTION 10. The SJHBID shall include all lodging businesses with eighty (80) rooms or more located within the boundaries of the City of San José. A boundary map is attached hereto as Exhibit A and incorporated herein by reference.

SECTION 11. The annual assessment rate for lodging businesses with eighty (80) rooms or more is a fixed dollar amount per paid occupied room per night as shown in the table below. During the ten (10) year term, the assessment rate in each zone may be increased by the San José Hotels Inc. Board by a maximum of \$1.50 per paid occupied room per night. The maximum increase in any year shall be \$0.50 in each zone. Based on the benefit received, assessments will not be collected on: stays of more than thirty (30) consecutive days; stays by any federal or state officer or employee when on official business; and stays by any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty.

Zone	Initial Assessment Rate	Maximum Assessment Rate
A: Within one (1) mile of the San José McEnergy Convention Center	\$2.50	\$4.00
B: Within one and one-half (1.5) miles of the San José International Airport	\$1.25	\$2.75
C: Over one (1) mile from the San José McEnergy Convention Center and over one and one-half (1.5) miles from the San José International Airport	\$1.00	\$2.50

SECTION 12. The assessments shall be used for the purposes set forth above and any funds remaining at the end of any year may be used in subsequent years in which the SJHBID assessment is levied as long as they are used consistent with the requirements set forth herein.

SECTION 13. The assessments to fund the activities and improvements for the SJHBID will be collected by the City on a monthly basis, and in accordance with Streets and Highways Code §36631 and at the same time and in the same manner as the City's transient occupancy tax ("TOT").

SECTION 14. The City Council, through adoption of this Ordinance and the Plan, has the right pursuant to Streets and Highways Code §36651 to identify the entity that shall implement the proposed program, which shall be the Owners' Association of the SJHBID as defined in Streets and Highways Code §36612. The City Council has determined that San José Hotels, Inc., shall be the Owners' Association.

SECTION 15. San José Hotels, Inc., pursuant to Streets and Highways Code §36650, shall cause to be prepared a report for each fiscal year, except the first year, for which assessments are to be levied and collected to pay the costs of the improvement and activities described in the report. The first report shall be due after the first year of operation of the SJHBID.

SECTION 16. The SJHBID established pursuant to this Ordinance will be subject to any amendments to the Property and Business Improvement District Law of 1994 (California Streets and Highways Code §36600 et. seq.).

SECTION 17. The City Clerk, or his or her designee, is directed to take all necessary actions to complete the renewal of the SJHBID and to levy the assessments.

SECTION 18. This Ordinance shall take effect thirty (30) days after its adoption by the City Council.

PASSED FOR PUBLICATION of title this _____ day of _____, 2022, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

Exhibit A Boundary Map

