

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF SAN JOSE LEVYING SPECIAL TAXES WITHIN
COMMUNITY FACILITIES DISTRICT NO. 17
(CAPITOL EXPY – EVERGREEN PLACE)**

WHEREAS, on June 12, 2018, this Council of the City of San José adopted Resolution No. 78630 entitled "A Resolution of the Council of the City of San José of Intention to Establish a Community Facilities District and to Authorize the Levy of Special Taxes - Community Facilities District No. 17 (Capitol Expy- Evergreen Place)" (the "CFD") (the "Resolution of Intention") stating its intention to form the CFD pursuant to the San Jose City Charter and Chapter 14.27 of the San José Municipal Code which incorporates and references the Mello-Roos Community Facilities Act of 1982, as amended, sections 53311, *et seq.*, of the California Government Code (collectively, the "Ordinance"), to finance public services in the CFD (the "Services"); and

WHEREAS, notice was published as required by the Ordinance relative to the intention of the Council to establish the CFD and to finance Services within the CFD; and

WHEREAS, all requirements, including but not limited to any time limit, pertaining to the conduct of the special election have been waived by unanimous consent of the qualified electors of the CFD as authorized by the Ordinance, which executed Landowner Petition and Waiver from each qualified elector is on file with the Department of Public Works, and with the concurrence of the City Clerk as the designated election official conducting the election; and

WHEREAS, the Council has held a noticed public hearing as required by the Ordinance relative to the determination to proceed with the formation of the CFD and the rate and method of apportionment of the special tax to be levied within the CFD to finance the Services; and

WHEREAS, at said hearing all persons desiring to be heard on all matters pertaining to the formation of the CFD and the levy of said special taxes were heard, substantial evidence was presented and considered by this Council and a full and fair hearing was held; and

WHEREAS, on August 14, 2018, this Council of the City of San José adopted Resolution No. XXXXX entitled: “A Resolution of the City Council of the City of San Jose of Formation of Community Facilities District No. 17 (Capitol Expy- Evergreen Place), Authorizing the Levy of a Special Tax Therein, Preliminarily Establishing an Appropriations Limit Therefor and Submitting Levy of the Special Tax and the Establishment of the Appropriations Limit to the Qualified Electors Thereof” forming the CFD pursuant to the Ordinance; and

WHEREAS, on August 14, 2018, a special election was held for property owners within the CFD in which the eligible landowner electors approved said proposition by the two-thirds vote required by the Ordinance; and

WHEREAS, on August 14, 2018, the results of the election were reported to and confirmed by this City Council, and this Council adopted Resolution No. XXXXX declaring the results of the special election and directing the City Clerk to record a notice of special tax lien upon adoption of this ordinance;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of San José:

SECTION 1. By the passage of this ordinance the Council hereby authorizes and levies a special tax within the CFD pursuant to the Ordinance, at the rate and in accordance with the formula set forth in the Resolution of Formation, which Resolution is by this reference incorporated herein. The special tax is hereby levied commencing in fiscal

year 2019-2020 in accordance with the Resolution of Formation. The special tax on each eligible parcel within the CFD is contingent upon development of such parcel and shall be due and payable upon the conditions set forth in the Resolution of Formation.

SECTION 2. The City's Director of Public Works or such other officer as designated by the City Manager is hereby authorized and directed each fiscal year to determine the specific special tax rate and amount to be levied for each parcel of real property within the CFD in the manner and as provided in the Resolution of Formation.

SECTION 3. Properties or entities of the State, federal or local governments and any other properties or entities designated as exempt in the Resolution of Formation shall be exempt from any levy of the special tax; however, the special tax shall be levied on any leasehold or possessory interest granted by a public agency in such property. In no event shall the special tax be levied on any parcel within the CFD in excess of the maximum tax specified in the Resolution of Formation.

SECTION 4. All of the special tax revenues shall be used as provided for in the Ordinance and in the Resolution of Formation including, but not limited to, the financing of the Services, the payment of the costs of the City in administering the CFD, and the costs of collecting and administering the special tax.

SECTION 5. The special taxes shall be collected from time to time as necessary to meet the financial obligations of the CFD on the secured real property tax roll in the same manner as ordinary *ad valorem* taxes are collected. The special taxes shall have the same lien priority and be subject to the same penalties and the same procedure and sale in cases of delinquency as provided for *ad valorem* taxes. The provisions of the Ordinance shall apply to delinquent special tax payments. The Director of Finance or such other City Manager designee is hereby authorized and directed to provide all necessary information to the auditor/tax collector of the County of Santa Clara and to

otherwise take all actions necessary in order to effect proper billing and collection of the special tax, so that the special tax shall be levied and collected in sufficient amounts and at the time necessary to satisfy the financial obligations of the District in each fiscal year and provision has been made for the payment of all of the administrative costs of the District.

Notwithstanding the foregoing, the City may collect one or more installments of the special tax by means of direct billing by the City of the property owners within the CFD if, in the judgment of the designated City official, such means of collection will reduce the administrative burden on the City in administering the CFD or is otherwise appropriate in the circumstances. In such event, the special taxes shall become delinquent if not paid when due as set forth in any such respective direct billing to the property owners.

SECTION 6. If for any reason any portion of this ordinance is found to be invalid, or if the special tax is found inapplicable to any particular parcel within the CFD including any territories that may annexed thereto, by a Court of competent jurisdiction, the balance of this ordinance shall not be affected and the application of the special tax to the remaining parcels within the CFD shall not be affected except as otherwise provided in the Resolution of Formation of the CFD or the Resolution of Intent.

SECTION 7. This ordinance shall take effect immediately upon adoption under Section 605(c) of the San José City Charter.

RD:TDM:LCP
7-19-18

ADOPTED this ____ day of _____, 2018, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk