

RESOLUTION NO. _____

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

WHEREAS, on June 12, 2018, this Council 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 José City Charter and Chapter 14.27 of the San Jose Municipal Code, which incorporates and references the Mello-Roos Community Facilities Act of 1982, as amended (collectively, the “Ordinance”); and

WHEREAS, the Resolution of Intention, incorporating a map of the proposed boundaries of the CFD and stating the services to be provided, and the rate and method of apportionment of the special tax to be levied within the CFD, is on file with the City Clerk and the provisions thereof are incorporated herein by this reference as if set forth in full herein; and

WHEREAS, on this date, this Council held a noticed public hearing as required by the Ordinance and the Resolution of Intention relative to the proposed formation of the CFD; and

WHEREAS, at said hearing all interested persons desiring to be heard on all matters pertaining to the formation of the CFD, the services to be provided therein and the levy of said special tax were heard and a full and fair hearing was held; and

WHEREAS, at said hearing evidence was presented to this Council on said matters before it, including a report caused to be prepared by the City Engineer (the "Report") as to the services to be provided through the CFD and the costs thereof, a copy of which is on file with the City Clerk, and this Council at the conclusion of said hearing is fully advised in the premises; and

WHEREAS, written protests with respect to the formation of the CFD, the furnishing of specified types of services and the rate and method of apportionment of the special taxes have not been filed with the City Clerk by fifty percent (50%) or more of the registered voters residing within the territory of the CFD or property owners of one-half (1/2) or more of the area of land within the CFD and not exempt from the special tax; and

WHEREAS, the special tax proposed to be levied in the CFD to pay for the proposed services to be provided therein, as set forth in Exhibit "B" hereto, has not been eliminated by protest by fifty percent (50%) or more of the registered voters residing within the territory of the CFD or the owners of one-half (1/2) or more of the area of land within the CFD are not exempt from the special tax;

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

1. The foregoing recitals are true and correct.

2. The proposed special tax to be levied within the CFD has not been precluded by majority protest pursuant to the Ordinance.
3. All prior proceedings taken by this Council in connection with the establishment of the CFD and the levy of the special tax have been duly considered and are hereby found and determined to be valid and in conformity with the Ordinance.
4. The community facilities district designated “Community Facilities District No. 17 (Capitol Expy- Evergreen Place)” of the City is hereby established pursuant to the Ordinance.
5. The boundaries of the CFD, as set forth in the map of the CFD heretofore recorded in the Santa Clara County Recorder’s Office on July 18, 2018 in Book 52 at Page 13 of Maps of Assessment and Community Facilities Districts, are hereby approved and are incorporated herein by reference and shall be the boundaries of the CFD.
6. The type of public services proposed to be financed by the CFD and pursuant to the Ordinance shall consist of those items listed in Exhibit “A” hereto and by this reference incorporated herein (the “Services”).
7. Except to the extent that funds are otherwise available to the CFD to pay for the Services, a special tax, as set forth in Exhibit “B” hereto and by this reference incorporated herein, sufficient to pay the costs thereof, is intended to be levied annually within the CFD, and collected in the manner set forth in Exhibit “B”, or in such other manner as the Council may prescribe.

8. It is hereby found and determined that the Services are necessary to meet increased demands placed upon local agencies as the result of development occurring in the CFD.
9. The Director of Public Works of the City, 200 East Santa Clara Street, Tower 5th floor, San Jose, California 95113, telephone number (408) 535-8300 is the officer of the City who will be responsible for preparing annually a current roll of special tax levy obligations by assessor's parcel number and who will be responsible for estimating future special tax levies pursuant to the Ordinance.
10. Upon recordation of a notice of special tax lien pursuant to Section 3114.5 of the Streets and Highways Code of California, a continuing lien to secure each levy of the special tax shall attach to all nonexempt real property in the CFD and this lien shall continue in force and effect until the special tax obligation is prepaid and permanently satisfied and the lien canceled in accordance with law or until collection of the tax by the City ceases.
11. In accordance with the Ordinance, the annual appropriations limit, as defined by subdivision (h) of Section 8 of Article XIII B of the California Constitution, of the CFD is hereby preliminarily established at \$121,928 and said appropriations limit shall be submitted to the voters of the CFD as hereafter provided. The proposition establishing said annual appropriations limit shall become effective if approved by the qualified electors voting thereon and shall be adjusted in accordance with the applicable provisions of the Ordinance.
12. 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.

13. Pursuant to the provisions of the Ordinance and the notice provided to the Qualified Electors, the proposition of the levy of the special tax and the proposition of the establishment of the appropriations limit specified above shall be submitted to the qualified electors of the CFD immediately following the adoption of this Resolution.

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

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

EXHIBIT A

CITY OF SAN JOSE COMMUNITY FACILITIES DISTRICT NO. 17 (CAPITOL EXPY – EVERGREEN PLACE)

DESCRIPTION OF SERVICES

The Services proposed to be financed by Community Facilities District No. 17 (Capitol Expy – Evergreen Place) (the “CFD No. 17”) of the City of San José will provide for the maintenance of various improvements associated and approved within the Evergreen Area. Maintenance of the improvements may include but will not be limited to necessary repairs, replacements, equipment, supplies, water, fuel, power, electricity, supervision and all other items needed for safe and proper maintenance of the items set forth below. This list of items identifies those improvements and amenities which are authorized to be funded by CFD No. 17; however, not all items on this list are guaranteed to be funded by the CFD.

Items Authorized to be Maintained

- Parkstrip landscape fronting the residential development and regional park along the public right-of-way (Quimby Road excluded)
- Median Island landscape
- Roundabout landscape
- Pork chop island landscape
- Tree maintenance within district maintained landscape
- Hardscape in district maintained median islands, roundabout, pork chop islands, and parkstrips
- Decorative crosswalks along residential development
- Graffiti removal on district maintained public improvements

EXHIBIT B

CITY OF SAN JOSE COMMUNITY FACILITIES DISTRICT NO. 17 (CAPITOL EXPY – EVERGREEN PLACE)

RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

A Special Tax, hereinafter defined, shall be levied on all Assessor's Parcels of Taxable Property in Community Facilities District No. 17 (Capitol Expy – Evergreen Place) of the City of San Jose ("CFD No. 17") and collected each Fiscal Year commencing in Fiscal Year 2019-2020 in an amount determined by the City Council of the City of San Jose, through the application of this Rate and Method of Apportionment as described below. All of the real property in CFD No. 17, unless exempted by law or by the provisions hereof, shall be taxed for the purposes, to the extent and in the manner herein provided.

A. DEFINITIONS

The terms hereinafter set forth have the following meanings:

"Acre" or "Acreage" means the land area of an Assessor's Parcel as shown on an Assessor's Parcel Map, or if the land area is not shown on an Assessor's Parcel Map, the land area shown on the applicable final map, parcel map, condominium plan, or other map or plan recorded with the County. The square footage of an Assessor's Parcel is equal to the Acreage of such parcel multiplied by 43,560.

"Act" means, collectively, the Mello-Roos Community Facilities Act of 1982, as amended, Chapter 2.5 of Part 1 of Division 2 of Title 5 commencing at Section 53311 of the California Government Code, as incorporated into and modified by Chapter 14.27 of Title 14 of the Municipal Code of the City.

"Administrative Expenses" means the following actual or reasonably estimated costs directly related to the administration of CFD No. 17: the costs of computing the Special Taxes and preparing the annual Special Tax collection schedules (whether by the City or designee thereof or both); the costs of collecting the Special Taxes (whether by the County or otherwise); the costs associated with preparing Special Tax disclosure statements and responding to public inquiries regarding the Special Taxes; the costs of the City, CFD No. 17, or any designee thereof related to an appeal of the Special Tax; and the City's annual administration fees and third party expenses. Administrative Expenses shall also include amounts estimated or advanced by the City or CFD No. 17 for any other administrative purposes of CFD No. 17, including attorney's fees and other costs related to commencing and pursuing to completion any foreclosure as a result of delinquent Special Taxes.

"Assessor's Parcel" or "Parcel" means a lot or parcel shown in an Assessor's Parcel Map with an assigned Assessor's Parcel number.

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“Assessor’s Parcel Map” means an official map of the Assessor of the County designating parcels by Assessor’s Parcel number.

“Authorized Maintenance Services” means, for each Fiscal Year, the street maintenance (including maintenance of trees, landscape and hardscape) and other maintenance services eligible to be funded by CFD No. 17, as defined in the Resolution of Intention.

“Building Permit” means, full structural building permits as well as partial permits such as foundation-only permits.

“CFD Administrator” means an official of the City, or designee thereof, responsible for determining the Special Tax Requirement and providing for the levy and collection of the Special Taxes.

“CFD No. 17” means Community Facilities District No. 17 (Capitol Expy – Evergreen Place) of the City of San José.

“City” means the City of San José.

“Consumer Price Index” or “CPI” means, for each Fiscal Year, the prior calendar year’s annual average consumer price index published by the U.S. Bureau of Labor Statistics for All Urban Consumers in the San Francisco-Oakland-San Jose Area. In the event this index ceases to be published, the Consumer Price Index shall be another index as determined by the CFD Administrator that is reasonably comparable to the Consumer Price Index for All Urban Consumers in the San Francisco-Oakland-San Jose Area.

“Council” means the City Council of the City, acting as the legislative body of CFD No. 17.

“County” means the County of Santa Clara.

“Developed Property” means, for each Fiscal Year, all Taxable Property for which a Planning or Building has been issued on or before June 30 of the prior Fiscal Year. Notwithstanding the foregoing, (a) if a building permit is revoked, expired or otherwise cancelled and a new building permit is issued for the same property, then the building type as indicated on the new building permit shall thereafter be used for purposes of determining the Land Use Class, and (b) if a building permit is revoked, expired or otherwise cancelled and no new building permit is issued for the same property, then the property will continue to be considered Developed Property and taxed based on the original building permit.

“Fiscal Year” means the period starting July 1 and ending on the following June 30.

“Land Use Class” means any of the classes in Section C below.

“Maximum Special Tax” means the maximum Special Tax, determined in accordance with Section C below, that can be levied in any Fiscal Year on each Assessor’s Parcel within the boundaries of CFD No. 17.

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“Non-Residential Property” means a Parcel of Developed Property within the boundaries of CFD No. 17 for which a Planning, Building, or Public Works permit(s) was issued for a non-residential use.

“Planning Permit” means a tentative map, parcel map, conditional use permit, site development permit, planned development permit, development agreement, or special use permit, or any discretionary permit excluding general plan amendments, zoning and rezoning, annexation, specific plans, and area development policies.

“Public Property” means property within the boundaries of CFD No. 17 owned by, dedicated to, or irrevocably offered for dedication to the federal government, the State of California, the County, the City, or any other public agency, provided that any property leased by a public agency to a private entity and subject to taxation under Section 53340.1 of the Act shall be taxed and classified according to its use.

“Rate and Method of Apportionment” means this Rate and Method of Apportionment for CFD No. 17.

“Residential Property” means any Parcel of Developed Property within the boundaries of CFD No. 17 for which a building permit for new construction has been issued for purposes of constructing one or more residential dwelling units.

“Resolution of Formation” means the Council resolution declaring the results of the special election for CFD No. 17.

“Special Tax” means the special tax to be levied in each Fiscal Year on each Assessor’s Parcel of Taxable Property within CFD No. 17 to fund the Special Tax Requirement, but in no event greater than the Maximum Special Tax.

“Special Tax Requirement” means that amount required in any Fiscal Year for CFD No. 17 to: (i) pay for Authorized Maintenance Services, (ii) create a sinking fund for replacement of facilities that will be maintained by Authorized Maintenance Services, (iii) pay Administrative Expenses of CFD No. 17, (iv) cure delinquencies in the payment of Special Taxes levied in prior Fiscal Years or (based on delinquencies in the payment of Special Taxes which have already taken place) are expected to occur in the Fiscal Year in which the tax will be collected

“State” means the State of California.

“Taxable Property” means all of the Assessor’s Parcels within the boundaries of CFD No. 17 which are not exempt from the Special Tax pursuant to law or Section E below.

“Undeveloped Property” means, for each Fiscal Year, all Taxable Property not classified as Developed Property or Property Owner Association Property.

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B. ASSIGNMENT TO LAND USE CLASSES

Each Fiscal Year, all Taxable Property shall be classified as Developed Property, Undeveloped Property and Public Property and shall be subject to Special Taxes in accordance with the Rate and Method of Apportionment determined pursuant to Sections C and D below.

C. MAXIMUM SPECIAL TAX RATES

The Maximum Special Tax for each Land Use Class for Fiscal Year 2019-2020 is as shown below.

| Land Use Class | Taxable Property | Taxable Unit | Maximum Special Tax |
|-----------------------|-------------------------|---------------------|----------------------------|
| 1 | Residential | Dwelling Unit | \$396.64 |
| 2 | Non-Residential | Acre | \$880.48 |
| 3 | Undeveloped | Acre | \$586.98 |

On each July 1, commencing on July 1, 2021, the Maximum Special Tax shall be adjusted based on the prior calendar year's average annual percentage change in the Consumer Price Index. Any increase in the Maximum Special Tax is subject to a maximum annual increase of five percent (5%) per Fiscal Year.

D. METHOD OF APPORTIONMENT OF THE SPECIAL TAX

Commencing with Fiscal Year 2019-2020 and for each following Fiscal Year, the Council or its designee shall determine the Special Tax Requirement and levy the Special Tax until the amount of Special Tax levy equals the Special Tax Requirement each Fiscal Year as follows:

- Step 1: Determine the Special Tax Requirement for the Fiscal Year in which the Special Tax will be collected.
- Step 2: Calculate the total Special Tax revenues that could be collected from Developed and Undeveloped Property within the CFD based on application of the Maximum Special Tax rates determined pursuant to Section C above.
- Step 3: If the amount determined in Step 1 is greater than the amount calculated in Step 2, levy the Maximum Special Tax on all Parcels of Developed and Undeveloped Property pursuant to Section C above. Even though the Special Tax Requirement is greater than the total Special Tax revenues that can be collected in the CFD, only the Maximum Special Tax may be collected unless a higher Maximum Special Tax

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is approved by two-thirds of the Electors voting in an election to increase the Maximum Special Tax.

If the amount determined in Step 1 is equal to the amount calculated in Step 2, levy the Maximum Special Tax on all Parcels of Developed and Undeveloped Property pursuant to Section C above.

If the amount determined in Step 1 is less than the amount calculated in Step 2, levy the Special Tax on all Parcels of Developed and Undeveloped Property in equal percentages up to 100% of the Maximum Special Tax for each Parcel until the amount of the Special Tax levy equals the Special Tax Requirement for that Fiscal Year

E. EXEMPTIONS / LIMITATIONS

Notwithstanding any other provision of this Rate and Method of Apportionment, no Special Tax shall be levied on land that is Public Property, except as otherwise provided in Sections 53317.3 and 53317.5 of the Mello-Roos Community Facilities Act of 1982.

F. MANNER OF COLLECTION

The Special Tax will be collected in the same manner and at the same time as ordinary *ad valorem* property taxes; provided, however, that CFD No. 17 may directly bill the Special Tax, may collect Special Taxes at a different time or in a different manner if necessary to meet its financial obligations, and may covenant to foreclose and may actually foreclose on delinquent Assessor's Parcels as permitted by the Act.

G. TERM OF SPECIAL TAX

The Special Tax shall be levied in perpetuity to fund the Special Tax Requirement, unless no longer required to pay for Authorized Maintenance Services as determined at the sole discretion of the Council or as may be otherwise terminated pursuant to the Act.