

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
SAN JOSE DECLARING RESULTS OF SPECIAL  
ELECTION AND DIRECTING RECORDING OF NOTICE OF  
SPECIAL TAX LIEN FOR COMMUNITY FACILITIES  
DISTRICT NO. 17 (CAPITOL EXPY - EVERGREEN PLACE)**

**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 José Municipal Code, which incorporates and references the Mello-Roos Community Facilities Act of 1982, as amended (collectively, the “Ordinance”); 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**, as authorized by the unanimous waiver of special election requirements by all qualified electors pursuant to the Ordinance (California Government Code section 53326(a)), the special election is by ballot mailed to all of the property owners within the CFD by the City Clerk on July 18, 2018, to be tabulated by the City Clerk at 1:30 p.m. or as soon thereafter as the matter could be heard on August 14, 2018; and

**WHEREAS**, the City Clerk has certified that a ballot in the form set forth in Exhibit “A” hereto has caused to be delivered to each of the qualified electors in the CFD, that each ballot indicated the number of votes to be voted by the respective landowner to which it pertains, that each ballot was accompanied by all supplies and written instructions necessary for the use and return of the ballot, and that the envelopes to return the ballot were enclosed with the ballot, and contained the following: (a) the name and address of the landowner, (b) a declaration, under penalty of perjury, stating that the voter is the owner of record or authorized representative of the landowner entitled to vote and is the person whose name appears on the envelope, (c) the printed name, signature and address of the voter, (d) the date of signing and place of execution of the declaration pursuant to clause (b) above, and (e) a notice that the envelope contains an official ballot; and

**WHEREAS**, the City Clerk accepted the ballots of the qualified electors in her office upon and prior to 1:30 p.m. on August 14, 2018, or as soon thereafter as the matter could be heard, which is the special election date, whether said ballots be personally delivered or received by mail. The City Clerk also made available ballots to be marked at her office on the election day by said qualified electors; and

**WHEREAS**, the City Clerk has on file a canvass and Statement of Results of Election, a copy of which is attached hereto as Exhibit “B”; and

**WHEREAS**, the Council has reviewed that canvass and hereby approves it;

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

1. The above stated recitals are adopted herein as findings.

2. Notice of a Public Hearing of the City's intention to form the CFD was duly published in the *San Jose Post-Record* on August 7, 2018.
3. Said Public Hearing was held on August 14, 2018 at which less than 50 percent of the registered voters, (or less than six registered voters, whichever is more) residing in the CFD filed written protests against the proposed CFD; and the owners of less than 50 percent of the area in the CFD filed written protests against the proposed CFD.
4. This Council hereby accepts the Certification of the Public Works Department filed in these proceedings and hereby finds that it is not the case that at least 12 persons have been registered to vote within the CFD for each of the ninety (90) days preceding the close of the Public Hearing conducted and concluded by this Council for the purposes of these proceedings. Accordingly, and pursuant to the Ordinance, this Council finds that the qualified electors are the landowners within the CFD and that the vote is by such landowners or their authorized representatives, each having one vote for each acre or portion thereof such landowner owns in the CFD as of the close of the Public Hearing.
5. This Council hereby finds that Section 4000 of the California Elections Code, which generally governs elections by mail, does not apply to this special election because of the petition and waiver executed and filed with the City by all qualified electors in the CFD pursuant to the Ordinance.
6. The issue presented at said special election was the levy of a special tax within the CFD to be levied in accordance with the formula heretofore approved by the Council by its Resolution of Intention.

7. Pursuant to said Canvass by the City Clerk, the issue presented at said special election was approved by the qualified electors of the CFD by more than two-thirds (2/3) of the votes cast at said special election.
8. Pursuant to said voter approval, the CFD is hereby declared to be formed with full legal effect and the authority to levy special taxes as heretofore provided in these proceedings and in the Ordinance.
9. It is hereby found that all prior proceedings and actions taken by the City with respect to the CFD were valid and in conformity with the Ordinance.
10. The City Clerk is hereby directed to execute and cause to be recorded in the office of the County Recorder of the County of Santa Clara a notice of special tax lien in the form required by the Ordinance, said recording to occur no later than fifteen (15) days following adoption by the Council of this Resolution.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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SAM LICCARDO  
Mayor

ATTEST:

RD:TDM:LCP  
07-19-18

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TONI J. TABER, CMC  
City Clerk

**EXHIBIT A**

**REPLACEMENT BALLOT**

The original ballot issued for the August 14, 2018 election has been invalidated and will not be counted. Please use this yellow ballot to cast your vote.

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

**OFFICIAL BALLOT**  
(Mailed Ballot Election)

**Special Tax Election**  
**(August 14, 2018)**

This ballot is for a special landowner election in connection with the formation of Community Facilities District No. 17 (Capitol Expy - Evergreen Place), City of San José. In order to be counted, (1) this ballot must be executed and sealed inside the Ballot Return Envelope, (2) **the certification on the outside of the Ballot Return Envelope must be completely filled out and signed**; and (3) the Ballot Return Envelope must be returned to the City Clerk, by mail or in person, to be received by the City Clerk prior to 1:30 p.m. on August 14, 2018 at the San José City Hall at 200 East Santa Clara Street, Tower, 14th Floor, San José, California, 95113.

**Mailing on or before the due date will not be sufficient. Postmarks will not be accepted.** This ballot must be received by the City Clerk by time stated in order to be counted.

To vote, mark a cross (X) in the box after the word "YES" or after the word "NO". AN "X" OR OTHER MARK IN THE BOX AFTER THE WORD "YES" OR AFTER THE WORD "NO" WILL CAST ALL VOTES ASSIGNED TO THIS BALLOT All marks otherwise made are forbidden. All distinguishing marks are forbidden and make the ballot void.

If you wrongly mark, tear, or deface this ballot, return it to the City Clerk of the City of San José and obtain another.

**BALLOT MEASURE:**

"Shall the City of San José be authorized to levy annually, a special tax upon lands within Community Facilities District No. 17 (Capitol Expy - Evergreen Place), commencing in the City of San Jose's fiscal year 2019-2020, at the rates and method and for the authorized services, costs and expenses as described in the Community Facilities District Report; and shall the District's annual appropriations limit be established at \$121,928, with annual increases not to exceed the percentage change in the Consumer Price Index (CPI) as defined in City's Resolution 78630?"

MARK "YES"  
OR "NO"  
WITH AN "X":

YES:

NO:

Number of Votes: *XX (votes)*

*- List of properties and signature line on other side -*

EXHIBIT A

**REPLACEMENT BALLOT**

The original ballot issued for the August 14, 2018 election has been invalidated and will not be counted. Please use this yellow ballot to cast your vote.

Santa Clara County Assessor's Parcel Numbers *XXX-XX-XXX* (assessor's parcel numbers)  
of properties owned in the District

**Despite the necessary identification of the landowner-voter on this ballot, the secrecy of this ballot will be strictly protected. The ballot may not be disclosed to any person, including any City Councilmember, City officer or City employee other than the City Clerk and the City Clerk's staff that will count and tabulate the ballots and report the election results, and those persons may not reveal this ballot's contents to anyone unless ordered by a court of competent jurisdiction.**

Property Owner: *(property ownership)*

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT B**

**CANVASS AND STATEMENT OF RESULT OF ELECTION**

**COMMUNITY FACILITIES DISTRICT NO. 17  
(CAPITOL EXPY- EVERGREEN PLACE)**

I hereby certify that on August 14, 2018, I canvassed the returns of the special election held on August 14, 2018, in the City of San José Community Facilities District No. 17 (Capitol Expy- Evergreen Place) and the total number of ballots cast in said district and the total number of votes cast for and against the measure are as follows and the totals as shown for and against the measure are full, true and correct:

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	Landowner Ballots	Ballots Cast	Qualified Landowner Votes	Votes Cast	YES	NO
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City of San José Community Facilities District No. 17 (Capitol Expy- Evergreen Place) Special Election August 14, 2018						

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**BALLOT MEASURE:** Shall the City of San José be authorized to levy annually, a special tax upon lands within Community Facilities District No. 17 (Capitol Expy - Evergreen Place), commencing in the City of San Jose’s fiscal year 2019-2020, at the rates and method and for the authorized services, costs and expenses as described in the Community Facilities District Report; and shall the District’s annual appropriations limit be established at \$121,928, with annual increases not to exceed the percentage change in the Consumer Price Index (CPI) as defined in City’s Resolution 78630?”

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND this 14th day of August, 2018.

By:

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Toni J. Taber, CMC  
City Clerk