

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF SAN JOSE LEVYING SPECIAL TAXES WITHIN
COMMUNITY FACILITIES DISTRICT NO. 8
(COMMUNICATIONS HILL)**

WHEREAS, on September 3, 2002, the City Council of the City of San José adopted Resolution No. 71194 ("Resolution of Formation"), pursuant to the San José City Charter and Chapter 14.27 of the San José Municipal Code which incorporates and modifies the Mello-Roos Community Facilities Act of 1982, as amended, sections 53311, et seq., of the California Government Code (collectively, the "Act"), thereby establishing Community Facilities District No. 8 (Communications Hill) ("CFD 8") and authorizing the levy of a special tax on taxable property within the District in accordance with a Rate and Method of Apportionment of Special Tax set out in the Resolution of Formation ("Original RMA"); and

WHEREAS, on September 3, 2002, the City Council adopted Ordinance No. 26727, which levied a special tax on all taxable parcels within CFD 8 in the amounts and at the rates authorized by the Resolution of Formation and the Original RMA; and

WHEREAS, on January 13, 2004, the City Council adopted Resolution No. 71907 stating its intention to annex territory ("Annexation Area No. 1") into CFD 8 ("Annexation Area No. 1 Resolution of Intention"); and

WHEREAS, on February 17, 2004, the City Council completed all actions necessary to include Annexation Area No. 1 in CFD 8 and on March 2, 2004, adopted Ordinance No. 27073 levying special taxes within Annexation Area No. 1 as specified in the Annexation Area No. 1 Resolution of Intention; and

WHEREAS, on May 3, 2016, the City Council adopted Resolution No. 77734 stating its intention to annex territory (“Annexation Area No. 2”) into CFD 8 (“Annexation Area No. 2 Resolution of Intention”); and

WHEREAS, on June 14, 2016, the City Council completed all actions necessary to include Annexation Area No. 2 into CFD 8 and adopted Ordinance No. 29748 levying special taxes within Annexation Area No. 2 as specified in the Annexation Area No. 2 Resolution of Intention; and

WHEREAS, on October 29, 2019, the City Council adopted Resolution No. 79284 (“Resolution of Consideration”), declaring its intention to add police protection services to the list of services authorized to be financed by CFD 8 and amend the Original RMA to allow the City to levy taxes to pay for the new services (collectively, “Alteration 1A”); and

WHEREAS, in accordance with the Resolution of Consideration, the City Council held a public hearing on November 19, 2019 to consider Alteration 1A. At the hearing, all persons interested in these matters were given an opportunity to appear and be heard, and the City Council heard and considered the testimony of all interested persons for or against the proposed changes; and

WHEREAS, the proposed changes set forth in Alteration 1A were not precluded by a majority protest at the public hearing under the Act. Accordingly, at the conclusion of the hearing the City Council adopted Resolution No. 79327, calling a special election to submit Alteration 1A to CFD 8’s qualified electors; and

WHEREAS, on March 10, 2020, the City Clerk conducted a special municipal election regarding Alteration 1A; and

WHEREAS, on April 7, 2020, the City Council reviewed and approved the canvass and Statement of Results of Election on file with the City Clerk and declared the results of the special municipal election showing that Alteration 1A was approved by CFD 8's qualified electors by more than two-thirds (2/3) of the votes cast and adopted Resolution No. _____ (the "Resolution of Change") and thereby changed the list of authorized services to be financed by CFD 8 and adopted a new Rate and Method of Apportionment to replace the Original RMA; and

WHEREAS, this ordinance supersedes Ordinance Nos. 26727, 27073 and 29748 to authorize the levy of special taxes in CFD 8 as set forth in the Resolution of Change.

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

SECTION 1. Pursuant to the Act, by the passage of this ordinance the City Council hereby authorizes and levies a special tax in CFD 8, including Annexation Area No. 1 and Annexation Area No. 2, at the rate and in accordance with the formula set forth in the Resolution of Change, which resolution is by this reference incorporated herein. The special tax is hereby levied commencing in fiscal year 2020-2021 in accordance with the Resolution of Change. The special tax on each eligible parcel within CFD 8 is contingent upon development of such parcel and shall be due and payable upon the conditions set forth in the Resolution of Change.

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 CFD 8 in the manner and as provided in the Resolution of Change.

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 Change 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 CFD 8 in excess of the maximum tax specified in the Resolution of Change.

SECTION 4. All of the special tax revenues shall be used as provided for in the Act and in the Resolution of Change including, but not limited to, the financing of authorized services, the payment of the costs of the City in administering CFD 8, 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 CFD 8 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 Act shall apply to delinquent special tax payments. The Director of Public Works or such other officer as designated by the City Manager 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 times necessary to satisfy the financial obligations of CFD 8 in each fiscal year and provision has been made for payment of all of the administrative costs of CFD 8.

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 CFD 8, if, in the judgment of the designated City official, such means of collection will reduce the

administrative burden on the City in administering CFD 8 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 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 CFD 8 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 CFD 8 shall not be affected except as otherwise provided in the Resolution of Formation or the Resolution of Change.

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

ADOPTED this _____ day of _____, 2020, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk