

RESOLUTION NO. 78561

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE ESTABLISHING THE SAN JOSE HOTEL BUSINESS IMPROVEMENT DISTRICT, APPROVING ITS BUDGET REPORT, AND AUTHORIZING THE LEVY OF ASSESSMENTS BEGINNING FISCAL YEAR 2018-2019

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 upon petition by a weighted majority of the business owners located within the boundaries of the district; and

WHEREAS, lodging business owners who will pay more than fifty percent (50%) of the proposed assessment, as weighted according to the amount of the assessment to be paid by the petitioner, within the boundaries of the proposed San José Hotel Business Improvement District (“SJHBID”) have petitioned the City Council to establish the SJHBID; and

WHEREAS, included with the petitions was a Management District Plan (“Plan”), dated January 17, 2018, that describes the proposed assessment to be levied on lodging businesses within the SJHBID to pay for sales promotion and marketing activities, and other improvements and activities set forth in the Plan; 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 March 6, 2018, the City Council adopted Resolution Nos. 78525 and 78526, declaring its intention to establish the SJHBID, preliminarily approving the Plan, and setting the dates for a public meeting and a public hearing on the establishment of the SJHBID, and finding that San José Hotels, Inc. will serve as the Owners’ Association for the SJHBID to implement the program; and

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

WHEREAS, on March 20, 2018, the City Council received a report and conducted a public meeting regarding the establishment of the SJHBID to provide an opportunity for public comment on the establishment of the SJHBID, and no written or verbal objections or protests were made at the public meeting; and

WHEREAS, on April 24, 2018 at 1:30 PM at the Council Chambers located at 200 E. Santa Clara Street, San José, CA 95113, the City Council conducted a public hearing, and no written or verbal objections or protests were made to the establishment 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, the City bears the burden of proving by a preponderance of the evidence that an assessment imposed for a specific benefit or specific government service is not a tax, that the amount is no more than necessary to cover the costs to the City in providing the specific benefit or specific government service, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the specific benefits or specific government services received by the payor;

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

1. The recitals set forth herein are adopted by the City Council as findings and they are true and correct.
2. The San José Hotel Business Improvement District is hereby established for a five (5) year term, beginning July 1, 2018 through June 30, 2023.
3. The Plan dated January 17, 2018 is hereby adopted and approved.
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 Resolution, 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.
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 reasonable 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 reasonable 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."
6. The assessments levied for the SJHBID shall be applied towards sales, promotions and marketing programs to market San José lodging businesses as tourist, meeting and event destinations, and other improvements and activities as set forth in the Plan.
 7. Assessments levied on lodging businesses pursuant to this Resolution 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.
 8. The assessments for the entire SJHBID will total approximately \$3,456,932 in year one.
 9. Bonds shall not be issued to fund the SJHBID.

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 and incorporated herein by reference.
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 five (5) year term, the assessment rate in each zone may be increased by the San José Hotels Inc. Board by a maximum of \$0.50 per paid occupied room per night. The maximum increase in any year shall be \$0.25 in each zone.

Zone	Initial Assessment Rate	Maximum Assessment Rate
A: Within one (1) mile of the San José McEnergy Convention Center	\$2.50	\$3.00
B: Within one and one-half (1.5) miles of the San José International Airport	\$1.25	\$1.75
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	\$1.50

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.
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").

14. The City Council, through adoption of this Resolution 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.
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.
16. The SJHBID established pursuant to this Resolution will be subject to any amendments to the Property and Business Improvement District Law of 1994 (California Streets and Highways Code §36600 et. seq.).
17. The City Clerk, or his or her designee, is directed to take all necessary actions to complete the establishment of the SJHBID and to levy the assessments.
18. This Resolution shall take effect immediately upon its adoption by the City Council.

ADOPTED this 24th day of April, 2018, by the following vote:

AYES: ARENAS, CARRASCO, DAVIS, DIEP, JONES, JIMENEZ,
KHAMIS, NGUYEN, PERALEZ, ROCHA; LICCARDO

NOES: NONE.

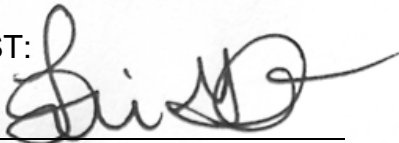
ABSENT: NONE.

DISQUALIFIED: NONE



SAM LICCARDO
Mayor

ATTEST:



TONI J. TABER, CMC
City Clerk

Boundary Map

