

**DRAFT**

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF SAN JOSE  
ESTABLISHING THE HOTEL BUSINESS IMPROVEMENT  
DISTRICT PURSUANT TO THE PARKING AND  
BUSINESS IMPROVEMENT AREA LAW OF 1989 AND  
LEVYING AN ASSESSMENT THEREIN FOR PROMOTING  
THE AREA**

**WHEREAS**, under and pursuant to the provisions of the Parking and Business Improvement Area Law of 1989, Section 36500 et seq. of the California Streets and Highways Code (“BID Law”), this Council on November 15, 2005 adopted Resolution No. 72969, titled “Resolution of the Council of the City of San Jose declaring its intent to establish the Hotel Business Improvement District pursuant to the parking and business improvement area law of 1989; appointing an advisory board to advise the City Council on all issues related to the Hotel Business Improvement District, and fixing the time and place of a public meeting and public hearing and giving notice thereof”; and

**WHEREAS**, Resolution No. 72969 was duly published, and copies of Resolution No. 72969 were mailed to the affected businesses, as required by BID Law; and

**WHEREAS**, as specified in Resolution No. 72969, a public meeting concerning the formation of the Hotel Business Improvement District (“HBID”) was held before this Council on November 29, 2005 at the hour of 1:30 p.m. in the Council Chambers in City Hall located at 200 East Santa Clara Street in the City of San Jose; and

**WHEREAS**, as specified in Resolution No. 72969, a public hearing concerning the formation of the HBID was held before this Council on January 10, 2006 at the hour of 1:30 p.m. in the Council Chambers in City Hall located at 200 East Santa Clara Street in the City of San Jose; and

**WHEREAS**, written protests from the affected businesses in the proposed HBID paying fifty percent (50%) or more of the proposed assessment have **[not]** been received; and

**WHEREAS**, at said public hearing, all protests, both written and oral, made or filed, were considered **[and duly overruled and denied]**, and this Council determined that there was **[no]** majority protest within the meaning of Section 36525 of the BID Law; and

**WHEREAS**, on January 10, 2006, the City entered into an agreement with San Jose Hotels, Inc. ("SJH") for the administration of the HBID;

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

1. Pursuant to BID Law, a parking and business improvement area is hereby established, to be known as the Hotel Business Improvement District ("HBID"), and will include all hotels with eighty (80) or more guest rooms located within the city limits of the City of San Jose.

2. The purpose for forming the HBID is to provide revenues for marketing efforts and event opportunities. The improvements and activities to be provided in the HBID will be funded by the levy of assessments. The revenue from the levy of assessments shall not be used to provide improvements or activities outside the HBID or for any purpose other than the purposes specified in the HBID's annual budget as approved by the City Council.

3. All businesses operating within the HBID will be charged a flat fee per occupied room per night. Hotels within a one-mile radius of the San Jose McEnery Convention Center will be assessed Two Dollars (\$2.00) per occupied room per night, hotels located one to three miles from the San Jose McEnery Convention Center will be

assessed One Dollar (\$1.00) per occupied room per night, and hotels located outside the three-mile radius of the San Jose McEnery Convention Center will be assessed Seventy-Five Cents (\$0.75) per occupied room per night.

4. Assessments will be collected from the HBID businesses at the same time and in the same manner as the City's transient occupancy tax ("TOT"). If a HBID business charges the transient an amount equal to the assessment at the same time as the rent is collected from a transient, the amount of the assessment shall be separately stated from the amount of the rent charged and the TOT. Assessments will not be included in gross room rental revenue for the purpose of determining the amount of transient occupancy tax.

5. Any HBID business who fails to remit the assessments within the time required shall pay a first penalty of ten percent (10%) of the amount of the delinquent assessment in addition to the amount of the delinquent assessment. Any HBID business who fails to remit any assessment on or before thirty (30) days after its due date shall pay a second penalty of ten percent (10%) of the amount of the delinquent assessment in addition to the amount of the delinquent assessment and the first penalty. If the City's Director of Finance or SJH determines that the failure to remit the assessment is because of an intentional, material misrepresentation or omission, or fraud by the HBID business, an additional penalty will be imposed on the HBID business in the amount of twenty-five percent (25%) of the delinquent tax. Any hotel business who fails to remit on or before the due date any assessment shall pay interest on the delinquent assessment and on any assessed penalty or penalties as set forth in Chapter 1.17 of Title 1 of the SJMC. Any penalty or interest collected by the City from delinquent assessments shall be forwarded to SJH.

6. The City shall disburse to SJH all collected HBID assessments and all penalties and interest collected on delinquent HBID assessments. Disbursements shall be made in such manner as the parties mutually agree upon in writing. SJH may expend any

funds received only for the purposes authorized by this Ordinance and only in accordance with the budget as approved by the City Council.

7. The City will charge an administrative fee for its costs to collect the HBID assessment. The City's monthly administrative charge will be One Thousand One Hundred Thirty-Three Dollars (\$1,133), and the amount will be reviewed annually as part of the annual report submitted by the Board of Directors of SJH ("Advisory Board") to the City. The administrative charge will be made to the City as a deduction from the assessments the City will forward to SJH.

8. The HBID's fiscal year shall be from July 1 through June 30. Funds remaining at the end of any fiscal year may be used in the subsequent fiscal year if the levy of an assessment is approved by Council for that fiscal year and the funds are used in accordance with BID Law.

9. New businesses within the HBID will not be exempt from the levy of assessments as authorized by Section 36531 of BID Law.

10. The Council finds that the businesses within the HBID will be benefited by the improvements and activities funded by the assessment to be levied.

11. All protests, both written and oral, **[are overruled and denied]**, and the Council finds that there is **[no]** majority protest within the meaning of Section 36525 of BID Law.

12. All of the businesses in the HBID established by this Ordinance shall be subject to any amendments to the provisions of the BID Law.

PASSED FOR PUBLICATION of title this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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RON GONZALES  
Mayor

ATTEST:

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LEE PRICE, CMC  
City Clerk