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ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING TITLE 4 OF THE SAN JOSE MUNICIPAL CODE TO ADD A NEW CHAPTER 4.55 TO CONSOLIDATE AND CLARIFY THE PERMITTED EXPENDITURES OF TAXES COLLECTED PURSUANT TO CHAPTERS 4.54 AND 4.58 AND TO AMEND CHAPTERS 4.54 AND 4.58 OF TITLE 4 OF THE SAN JOSE MUNICIPAL CODE TO ADD SECTIONS 4.54.105 AND 4.58.238 TO MAKE CONFORMING CHANGES

WHEREAS, Chapters 4.54 and 4.58 of the San José Municipal Code set forth the San José Construction Tax Ordinance (the "Construction Tax") and the San José Real Property Conveyance Tax Ordinance (the "Conveyance Tax"), respectively; and

WHEREAS, the Construction Tax and the Conveyance Tax each specify the expenditures of the proceeds of these taxes for the same categories of capital purposes, which, in general terms, are: libraries, fire protection, park and recreation improvements, maintenance yards for park and recreation improvements; public works maintenance facilities; communication facilities; and other municipal improvements as determined by the City Council; and

WHEREAS, in 1991, the City Council of the City of San José (alternatively, "this Council" or "the Council") adopted Ordinance No. 23756 which amended Chapters 4.54 and 4.58 to, among other things, re-allocate the distribution of the revenue from both the Construction Tax and the Conveyance Tax (collectively, the "C&C Revenues") designated for parks and recreation improvements; and

WHEREAS, also pursuant to Ordinance No. 23756, commencing in Fiscal Year 1992-93, the amount of C&C Revenues allocated for operating maintenance costs and overhead for the capital improvements eligible for such funding was limited to no more than ten percent of C&C Revenues allocated to each category of capital improvements and, in each subsequent fiscal year, C&C Revenues allocated for operating

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maintenance costs and overhead was to be reduced until no C&C Revenues were to be allocated for such purposes; and

WHEREAS, the phase-out of operating maintenance costs and overhead as specified in Ordinance No. 23756 commenced with respect to the parks and recreation improvements, but such phase-out was not implemented for the other categories of capital improvements eligible to be funded with C&C Revenues (the "General Improvements"); and

WHEREAS, each fiscal year since Fiscal Year 1992-93, this Council has adopted an annual appropriation ordinance which appropriated C&C Revenues for either or both operating maintenance expenses and overhead costs associated with the General Improvements; and

WHEREAS, in June 1994, the Council approved a suspension of the phase-out of operating maintenance costs and overhead as specified in Ordinance No. 23756 and adopted the annual appropriation ordinance for Fiscal Year 1994-95 which transferred fifteen percent of the portion of C&C Revenues allocated for parks and recreation purposes to the General Fund for operating maintenance costs of parks and recreation improvements; and

WHEREAS, in Fiscal Year 1994-95 and in each subsequent fiscal year, the Council has adopted an annual appropriation ordinance which transferred fifteen percent of the portion of C&C Revenues allocated for parks and recreation purposes to the General Fund for operating maintenance costs of parks and recreation improvements; and

WHEREAS, on January 9, 1996, the Council approved a policy, that in addition to the annual appropriation of fifteen percent of C&C Revenues to the General Fund for operating maintenance costs for parks and recreation improvements, up to five percent of the C&C Revenues annually appropriated to each Council District for parks and recreation purposes within the respective Council Districts be authorized to be

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expended on enhanced maintenance costs of the parks and recreation improvements located within the respective Council Districts and further directed that such policy be codified; and

WHEREAS, in order to clarify and codify the City Council's practices as described above with respect to the appropriation and expenditure of C&C Revenues, this Council desires to adopt a new Chapter 4.55 of the San José Municipal Code as set forth in this Ordinance;

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

SECTION 1. Chapter 4.54 of Title 4 of the San José Municipal Code is amended to add a new section, to be numbered, titled and to read as follows:

4.54.105 Alternative Use of Tax Revenues

Notwithstanding the provisions of Sections 4.54.090 and 4.54.100, the use of the tax revenues collected under this Chapter shall be governed by Chapter 4.55.

SECTION 2. Chapter 4.58 of Title 4 of the San José Municipal Code is amended to add a new section, to be numbered, titled and to read as follows:

4.58.238 Alternative Use of Tax Revenues

Notwithstanding the provisions of Sections 4.58.230 and 4.58.235, the use of the tax revenues collected under this Chapter shall be governed by Chapter 4.55.

SECTION 3. Title 4 of the San José Municipal Code is amended to add a new Chapter to be numbered, titled and to read as follows:

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CHAPTER 4.55
USE OF CONSTRUCTION TAX AND REAL PROPERTY CONVEYANCE TAX
REVENUES

Part 1
Purpose and Deposit of Proceeds

4.55.010 Purpose

Notwithstanding the provisions of Sections 4.54.090, 4.54.100, 4.58.230 and 4.58.235, the provisions of this Chapter shall govern the expenditure of the taxes collected pursuant to Chapter 4.54, the San José Construction Tax Ordinance and pursuant to Chapter 4.58, the San José Real Property Conveyance Tax Ordinance.

4.55.020 Deposit of Proceeds

- A. All taxes collected under Chapters 4.54 and 4.58 of this Code shall be placed in the "Construction Tax and Property Conveyance Tax Fund" established by Section 4.80.300.
- B. The Director of Finance shall establish and keep such accounts as may be necessary to account for said taxes.

Part 2
Definitions

4.55.200 Definitions

The definitions set forth in this Part shall govern the application and interpretation of this Chapter.

4.55.205 C&C Revenues

“C&C Revenues” means the proceeds of the taxes collected pursuant to Chapter 4.54, the San José Construction Tax Ordinance, and pursuant to Chapter 4.58, the San José Real Property Conveyance Tax Ordinance.

4.55.210 Capital Support Costs

“Capital Support Costs” means the costs of the resources used in the acquisition or development of a capital improvement, including without limitation, the costs of personnel, supplies, equipment, facilities and information technology.

4.55.215 Central Fund

The “Central Fund” means an account within the Construction Tax and Property Conveyance Tax Fund in which the Parks Allocation is deposited and from which certain Fixed Costs are paid and the Parks Allocation is distributed.

4.55.220 Developed Park Acre

“Developed Park Acre” means any degree of improvements made to City land for the purpose of making it accessible and usable by the public for park and recreation purposes. Acreage in this category includes, without limitation, fully developed and minimally developed land.

4.55.225 District

“District” means a council election district established pursuant to Section 403 of the Charter of the City of San José; provided, however, that if the boundaries of said council

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districts are changed during any fiscal year, those districts in effect at the beginning of that fiscal year shall, for the purposes of administering the provisions of this Chapter, be continued to be used for the remainder of that fiscal year.

4.55.230 District of Origin

“District of Origin” means the District in which C& C Revenues are collected in any fiscal year on account of construction in the District pursuant to Chapter 4.54 or on account of transfers of real property situate in the District pursuant to Chapter 4.58.

4.55.235 Fixed Costs

“Fixed Costs” means the following costs of Park Improvements: capital equipment for maintenance; recreational hardware; trees and shrubs; preventive capital maintenance costs; and Non-Construction costs.

4.55.240 General Allocation

“General Allocation” has the meaning set forth in Section 4.55.410.

4.55.245 General Improvements

“General Improvements” means the improvements listed in Section 4.55.300 B.1, B.2, B.4, B.5, B.6 and B.7.

4.55.250 Good Condition

“Good Condition” means, in the opinion of the City Manager, functional and safe for use by the public, pursuant to an adopted park master plan or phased development plan, and satisfactorily maintainable with a standard level of maintenance.

4.55.255 Non-Construction Costs

“Non-Construction Costs” means the preliminary costs and Capital Support Costs associated with the acquisition, construction, reconstruction, replacement, remodeling, modification, alteration, enlargement, renovation, furnishing and refurnishing of the improvements listed in Section 4.55.300 B, including preventive capital maintenance and energy efficient capital improvements to the improvements listed in Section 4.55.300 B.

4.55.260 Operating Maintenance Costs

“Operating Maintenance Costs” has the meaning set forth in Section 4.55.440.

4.55.265 Park Improvements

“Park Improvements” means the improvements listed in Section 4.55.300 B.3.

4.55.270 Parks Allocation

“Parks Allocation” has the meaning set forth in Section 4.55.410.

4.55.275 Parks Maintenance Costs

“Parks Maintenance Costs” means the costs of routine maintenance of the Park Improvements including the costs of cleaning and repairing of Parks Improvements. Parks Maintenance Costs also include the costs of volunteer programs related to the maintenance of Park Improvements and contractual services for the routine maintenance of the Park Improvements.

4.55.280 Undeveloped Park Acre

“Undeveloped Park Acre” means parkland not improved for recreation purposes, pursuant to an adopted park master plan or phased development plan as applicable.

Part 3 Eligible Expenditures of C&C Revenues

4.55.300 Eligible Costs and Improvements

- A. C&C Revenues shall be expended for the costs of acquisition, construction, reconstruction, replacement, remodeling, modification, alteration, enlargement, renovation, furnishing and refurnishing of the improvements listed in Subsection B, below, including Non-Construction Costs, preventive capital maintenance and energy efficient capital improvements.
- B. The improvements eligible for the expenditure of C&C Revenues are:
1. City public library facilities, equipment and materials, including land and interests in land, library buildings, furniture, books, circulating or reference nonbook library materials, furnishings, equipment, parking areas, streets and sidewalks adjacent to City public library facilities, and other works, properties, structures and facilities necessary or convenient for the public library system of the City. Expenditure may also be made for the leasing, renting and processing of books.
 2. City fire protection facilities, including land and interests in land, fire stations, fire engines and trucks, other motorized and nonmotorized firefighting equipment, streets and sidewalks adjacent to the City fire protection facilities, and other works, properties, structures and facilities necessary or convenient for the fire protection of the City. Expenditures

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may be made for improvements listed in this subsection B. 2 which are located outside of the City except that expenditures for public streets and sidewalks may be made only for public streets and sidewalks situated in the City.

3. City public park, recreation areas and facilities, equipment and materials, including land and interests in land, swimming pools, courts, children's play areas, turf, sprinkler systems, community center and recreation buildings, streets and sidewalks adjacent to City park, playground and recreation facilities, and equipment for maintenance, security and recreation purposes at City parks, playgrounds and recreation facilities and other works, properties, structures and facilities necessary or convenient for public park, playground and recreation purposes; and for any of the facilities described in this Subsection B.3 constructed or installed within or upon any public school grounds or other public properties where the City is given a right to use the same for public playground or recreation purposes.
4. City maintenance yards for park, playground and recreation facilities, including land and interests in land, buildings, streets and sidewalks adjacent to City maintenance yards for park, playground and recreation facilities, and other structures or works necessary or convenient for the maintenance of the City park, playground and recreation facilities.
5. City public works maintenance facilities, including land and interests in land, buildings, streets and sidewalks adjacent to City public works maintenance facilities, and other structures and works necessary or convenient for the maintenance of the City's public works.
6. Communication facilities, including land and interests in land, buildings, structures, radio and other equipment, streets and sidewalks adjacent to

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City communication facilities, and other works, properties or structures necessary or convenient for the communication facilities of the City and also including a communication services study to determine the future communication facilities needs of the City.

7. General municipal improvements only as specified in an ordinance or resolution adopted by the City Council.
- C. Subject to the limitations set forth in this Chapter, C&C Revenues may be expended on Parks Maintenance Costs and Operating Maintenance Costs.

4.55.310 Interest Earnings Expenditures

The City Council in its discretion may transfer part or all of the interest earned on money deposited into the Construction Tax and Property Conveyance Tax Fund into any special fund or into the General Fund.

4.55.320 Public Art Expenditures

The provisions of Chapter 22.08 of Title 22 of this Code, entitled "Art in Public Places," shall apply to the construction or reconstruction of Park Improvements.

Part 4

Allocation of C&C Revenues

4.55.400 Allocation of C&C Revenues-General

C&C Revenues shall be allocated among the purposes specified in Section 4.55.300 B as set forth in this Part without regard to District of Origin.

4.55.410 Allocation of C&C Revenues for Parks Improvements and General Improvements

- A. At least sixty-four percent (64%) of C&C Revenues collected in any fiscal year, shall be allocated for Parks Improvements. The C&C Revenues allocated for Park Improvements shall be referred to as the Parks Allocation.
- B. Not more than thirty-six percent (36%) of the C&C Revenues collected in any fiscal year may be allocated for General Improvements. The C&C Revenues allocated for General Improvements shall be referred to as the General Allocation.

4.55.420 Distribution of Parks Allocation

- A. Each fiscal year, the Parks Allocation shall be deposited in the Central Fund and then shall be distributed according to the methodology set forth in this Section.
- B. The City Council may appropriate up to fifteen percent (15%) of the Parks Allocation in the Central Fund to the General Fund for Parks Maintenance Costs or to a reserve account within the General Fund established for Parks Maintenance Costs.
- C. Following the appropriation, if any, described in Subsection B, above, the City Council may appropriate funds for Fixed Costs within the Central Fund or to the General Fund. The amount appropriated for such Fixed Costs shall be subject to the annual determination of the City Council.
- D. The City Council may appropriate up to and including, but not more than, thirty-four percent (34%) of the Parks Allocation remaining after the appropriations, if any, described in Subsections B and C, above, for Park Improvements located in

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any part of the City, for natural open space area intended to be left in a natural state, or for San Jose Family Camp located in Tuolumne County, California.

- E. The City Council shall appropriate the Parks Allocation remaining after the appropriations, if any, described in Subsections B and C, above, and the appropriation described in Subsection D above, as follows:
1. Twenty percent (20%) of such funds shall be equally appropriated to each District to meet the District's special needs.
 2. Eighty percent (80%) of such funds is to be appropriated to the Districts, with the amount appropriated to each District as determined by the City Council taking into consideration the following: neighborhood and community serving Undeveloped Park Acres per population of one thousand; neighborhood and community serving Developed Park Acres per population of one thousand; neighborhood and community serving Developed Park Acres in Good Condition per population of one thousand; and square feet of neighborhood and community serving center space per population of one thousand.
- F. Commencing on July 1, 1996, the City Council may appropriate up to five percent (5%) of the amount appropriated to each District pursuant to Subsection E, above, for the purpose of Parks Maintenance Costs for the Park Improvements located in the particular District.

4.55.430 Distribution of General Allocation

- A. Each fiscal year, the General Allocation is to be appropriated for each category of General Improvements as determined by the City Council.

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- B. Of the amount of the General Allocation allocated for the improvements listed in Section 4.55.300 B. 4, the City Council may appropriate up to fifteen percent (15%) of such allocation to the General Fund for Parks Maintenance Costs.

4.55.440 Operating Maintenance Costs—General Improvements

- A. Subject to the limitations set forth in this Section, for each category of General Improvements, not more than ten percent (10%) of the amount appropriated for such category of General Improvements shall be expended for purposes of Operating Maintenance Costs of the improvements included in such category. Expenditures of C&C Revenues for Operating Maintenance Costs of a particular General Improvement are limited to a period of not more than five (5) years.
- B. For purposes of this Section, Operating Maintenance Costs shall be limited to salary and nonpersonnel expenses including equipment costs associated with building and grounds maintenance necessary to preserve the value of the physical plant. Only those General Improvements which were acquired or constructed with C&C Revenues are eligible for the expenditure of C&C Revenues for Operating Maintenance Costs.

SECTION 4. Nothing in this Ordinance shall be construed as establishing or imposing a general or special tax of any kind whatsoever.

SECTION 5. If Chapter 4.55 is determined to be invalid, in whole or in part, the City Council shall cause the tax revenues collected pursuant to Chapter 4.54 and Chapter 4.58 to be expended as set forth in Section 4.54.100 and Section 4.58.235, respectively. If either Section 4.54.100 or Section 4.58.235 is determined to be invalid, in whole or in part, the City Council shall cause the tax revenues collected pursuant to Chapter 4.54 and Chapter 4.58 to be expended as set forth in Section 4.54.090 and Section 4.58.230, respectively.

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SECTION 6. The provisions of Section 4.55.320, entitled " Public Art Expenditures," will become effective on the effective date of this Ordinance. Except as otherwise provided in Ordinance, this Ordinance shall be effective retroactive to July 1, 1994, *nunc pro tunc*.

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

AYES:

NOES:

ABSENT:

DISQUALIFIED:

RON GONZALES
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk