

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSÉ,
CALLING SPECIAL MAILED-BALLOT ELECTION WITHIN
CONVENTION CENTER FACILITIES DISTRICT NO. 2008-1, CITY OF
SAN JOSÉ, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA**

WHEREAS, the City Council of the City of San José (the "City"), on February 3, 2009, adopted its Resolution No. 74783 (the "Resolution of Intention") and its Resolution No. 74784 (the "Resolution to Incur Bonded Indebtedness") thereby initiating proceedings for consideration of the establishment of a convention center facilities district under and pursuant to the terms and provisions of Chapter 14.32 of the San José City Municipal Code (the "Chapter"), to be known and designated as "Convention Center Facilities District No. 2008-1, City of San José, County of Santa Clara, State of California" (the "Convention Center Facilities District"); and

WHEREAS, both the Resolution of Intention and the Resolution to Incur Bonded Indebtedness set public protest hearings to be held concurrently on March 10, 2009 (the "Public Hearing"); and

WHEREAS, at the close of the Public Hearing, the City Council determined that there was no majority protest under the provisions of the Chapter; and

WHEREAS, at the conclusion of the Public Hearing, the City Council adopted its Resolution No. _____ establishing the Convention Center Facilities District (the "Resolution of Formation") pursuant to Section 53325.1 of the "Act" (as defined in the Chapter), and its Resolution No. _____ Deeming It Necessary To Incur Bonded Indebtedness (the "Resolution Deeming it Necessary to Incur Bonded Indebtedness") pursuant to Section 53351 of the Act; and

WHEREAS, in order (1) to confer authorization upon the City Council to proceed with the levy of the special tax as specified in the Resolution of Formation; (2) to establish an appropriations limit for the Convention Center Facilities District, as provided by the Resolution of Formation, and (3) to confer authorization upon the City Council to incur indebtedness as provided by the Resolution Deeming it Necessary to Incur Bonded Indebtedness, the three matters must be submitted to an election of the qualified electors of the Convention Center Facilities District; and

WHEREAS, the three questions just described may be combined into a single ballot measure pursuant to Section 53353.5 of the Act, as provided in the form of special election ballot attached hereto as Exhibit A and by this reference incorporated herein; and

T-5865.001/537501
Council Agenda: 3-10-2009
Item No.:

WHEREAS, a Certificate Re Landowners and Hotel Rooms (the "Certificate Re Landowners") has been filed with the City Clerk (the "Clerk") and submitted to the City Council, identifying all Landowners (as that term is defined in Section 14.32.230 of the Chapter) within the Convention Center Facilities District together with their mailing addresses, and the number of hotel rooms on each parcel within the territory of the Convention Center Facilities District; and

WHEREAS, the City Council is fully advised in this matter;

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

1. The City hereby specifically finds and declares that the actions authorized hereby constitute and are with respect to public affairs of the City and that the statements, findings and determinations of the City set forth above are true and correct and that the consideration of the authorization of a special tax, the establishment of an appropriations limit, and the issuance of bonds all in connection with the Convention Center Facilities District is important to the public welfare of the residents of the City, and may result in significant public benefits.

2. The City Council has reviewed the Rate and Method of Apportionment of the Special Tax proposed to be levied within the Convention Center Facilities District and finds that the proposed Special Tax will not be apportioned in any tax year on any portion of property in residential use in that tax year. Accordingly, under Section 53326(c) of the Act, the qualified electors of the Convention Center Facilities District for the proposed special election shall be the "Landowners" (as defined in Section 14.32.230 of the Chapter) within the Convention Center Facilities District.

3. The City Council accepts the Certificate Re Landowners filed in these proceedings and further finds and determines that the Landowners within the Convention Center Facilities District are set forth in the attachment to the Certificate Re Landowners and that the attachment correctly sets forth the number of hotel rooms on the property owned by each Landowner, which is equal to the number of votes each Landowner is entitled to cast in this election pursuant to Section 14.32.430 of the Chapter.

4. Pursuant to Sections 53326 and 53351 of the Act, and Section 12001 of the California Elections Code, the City Council hereby calls a special election to be held and conducted upon adoption of this Resolution, and sets June 9, 2009, as the election date.

5. The proposition to be submitted to the qualified electors of the Convention Center Facilities District shall be as set forth in the form of special election ballot attached hereto as Exhibit A.

6. The City Clerk is hereby designated as the official to conduct the special mailed-ballot election pursuant to the Chapter and California Elections Code Sections 307 and 320 and the following provisions:

(a) The special election shall be held and conducted, and the votes canvassed and the returns made, and the results determined, as provided herein; and in all particulars not prescribed by this Resolution the special election shall be held and conducted and the votes received and canvassed in the manner provided by law for the holding of special elections consistent with the Chapter.

(b) All Landowners within the Convention Center Facilities District as of the close of the Public Hearing shall be qualified to vote upon the proposition to be submitted at the special election.

(c) Pursuant to authority granted by Section 53326 of the Act, the election shall be conducted by mailed ballot, there shall be no polling places for the special election, and 8 p.m. on the election date is set as the deadline for returning ballots. The special election shall be conducted in accordance with the provisions of the Chapter and the prior proceedings of the City taken thereunder.

(d) The City Clerk is authorized and directed to publish the notice of election, in substantially the form attached hereto as Exhibit B, as soon as possible, in the *SAN JOSÉ MERCURY NEWS*.

(e) The deadline for ballot arguments for or against the ballot measure, not to exceed 300 words in length, to be submitted to the City Clerk in accordance with Elections Code Section 9282 is hereby established as March 24, 2009 in accordance with Elections Code Section 9286. If opposing arguments are submitted, the City Clerk shall send a copy of an argument in favor of the ballot measure to the authors of any argument against the measure and a copy of an argument against the measure to the authors of any argument in favor of the measure immediately upon receiving the arguments. The deadline for submission of rebuttal arguments, not to exceed 250 words in length, to the City Clerk is hereby established as April 3, 2009 in accordance with Elections Code Section 9285.

(f) The City Attorney is authorized and directed to prepare and submit to the City Clerk an impartial analysis of the ballot measure pursuant to Section 9280 of the California Elections Code. Bond Counsel is authorized to assist the City Attorney.

(g) The City Clerk shall prepare the ballots pursuant to Section 53326(c) of the Act as modified by Section 14.32.430 of the Chapter, including the specification of the number of votes assigned to each ballot, and to mail the ballots, and to prepare and to mail the ballot pamphlets, pursuant to Sections 3010, 3011, 3023 and 4101 of the California Elections Code.

T-5865.001/537501
Council Agenda: 3-10-2009
Item No.:

(h) Each voter desiring to vote in favor of the proposition to be submitted at the special election shall mark a cross (x) or similar mark in the blank space next to the word "YES" on the ballot to the right of the proposition; and each voter desiring to vote against the proposition shall mark a cross (x) or similar mark in the blank space next to the word "NO" on the ballot to the right of the proposition. The cross (x) or similar mark may be marked with either pen or pencil, and shall cast all of the votes assigned to that ballot

(i) All ballots shall be mailed by the Clerk to the Landowners no sooner than May 11, 2009 and no later than May 30, 2009, and all voted ballots are required to be received by the City Clerk not later than 8:00, p.m., on the day of the election in order to be counted. However, if at any time the City Clerk determines that all votes have been cast, the City Clerk shall immediately declare the election closed pursuant to Section 53351(j) of the Act.

(j) The City Clerk shall commence the canvass of the returns of the special election as soon as possible, and shall report the returns to the City Council at its next meeting following the conclusion of the canvass.

(k) The City Council may thereupon declare the results of the special election, and shall cause to be spread upon its minutes a statement of the results of the special election as ascertained by the canvass.

7. This Resolution shall take effect upon its adoption.

ADOPTED this _____ day of _____, 2009, by the following

vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED, Mayor

ATTEST:

T-5865.001/537501
Council Agenda: 3-10-2009
Item No.:

LEE PRICE, MMC
City Clerk

T-5865.001/537501
Council Agenda: 3-10-2009
Item No.:

- 5 -

DRAFT -- Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document

EXHIBIT A

CONVENTION CENTER FACILITIES DISTRICT NO. 2008-1
CITY OF SAN JOSÉ,
COUNTY OF SANTA CLARA, STATE OF CALIFORNIA

SPECIAL ELECTION BALLOT

(Mailed-Ballot Election)

This ballot is for the use of the authorized representative of the following owner of land within Convention Center Facilities District No. 2008-1, City of San José, County of Santa Clara, State of California ("the Convention Center Facilities District"):

<u>Name of Landowner</u>	<u>Number of Hotel Rooms</u>	<u>Total Votes</u>
_____	[]	[]

According to the provisions of Chapter 14.32 of the San José City Municipal Code, and resolutions of the City Council (the "Council") of the City of San José (the "City"), the above-named Landowner is entitled to cast the number of votes shown above under the heading "Total Votes," representing the total votes for the property owned by the Landowner.

In order to be counted, this ballot must be executed and certified below and be returned to the City Clerk, by mail or in person, to be received by the City Clerk prior to 8:00 p.m. on June 9, 2009 at the San José City Hall at 200 East Santa Clara Street, Council Wing, 2nd Floor, San José, California, 95113.

Mailing by that time will not be sufficient. This ballot must be received by the time stated in order to be counted.

AN "X" OR OTHER MARK WILL CAST ALL VOTES ASSIGNED TO THIS BALLOT. All distinguishing marks or erasures are forbidden and make the ballot void. If you wrongly mark, tear, or deface this ballot, return it to the City Clerk and obtain another.

BALLOT MEASURE

Shall the San Jose City Council be authorized to: levy a permanent Convention Center Facilities District special tax of 4% of hotel room rentals (and, under specified circumstances, an additional 1%); issue bonds secured by the tax to finance expansion and renovation of Convention Center facilities, with advice from hotel representatives; and establish an appropriations limit; all as specified in Resolutions ___ and ___ adopted March 10, 2009?

MARK "YES" OR "NO"

WITH AN "X":

YES:

NO:

Certification for Special Election Ballot

The undersigned is the authorized representative of the above-named Landowner and is a person legally authorized and entitled to cast this ballot on behalf of the above-named Landowner.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____, 2009.

Signature

Print Name

EXHIBIT B
CONVENTION CENTER FACILITIES DISTRICT NO. 2008-1
CITY OF SAN JOSÉ,
COUNTY OF SANTA CLARA, STATE OF CALIFORNIA

NOTICE OF ELECTION

Notice is hereby given that a mailed-ballot, landowner-vote election will be held within the above-entitled Convention Center Facilities District within the City of San José with ballots returnable to the office of the City Clerk of the City of San José until 8:00 o'clock p.m. on June 9, 2009. There will be no polling places, and the ballots are to be tallied at the Office of the San José City Clerk.

The Convention Center Facilities District was formed under Chapter 14.32 of the San José Municipal Code. Only owners of property within the Convention Center Facilities District are eligible to vote, and only properties within the Convention Center Facilities District will be subject to the special tax if the ballot measure is passed. The only properties within the Convention Center Facilities District are hotel properties within the City of San José. Under Chapter 14.32, votes are allocated to the owners of hotel property on the basis of one vote for each hotel room located on their property. There is an exception to the foregoing if the property is owned by a public governmental agency; in that event the hotel operator is considered the owner for purposes of voting, and the leasehold interest in the property is the property interest subject to the special tax.

The measure to be voted upon is as follows:

"Shall the San Jose City Council be authorized to: levy a permanent Convention Center Facilities District special tax of 4% of hotel room rentals (and, under specified circumstances, an additional 1%); issue bonds secured by the tax to finance expansion and renovation of Convention Center facilities, with advice from hotel representatives; and establish an appropriations limit; all as specified in Resolutions ___ and ___ adopted March 10, 2009?"

Ballot arguments, not exceeding 300 words in length, for or against the ballot proposition, must be received by the City Clerk by close of business on March 24, 2009 in order to be eligible for inclusion in the ballot pamphlet.

Dated: March 11, 2009

Lee Price, City Clerk, City of San José