

ORDINANCE NO. 28387

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING TITLE 14 OF THE SAN JOSE MUNICIPAL CODE TO ADD A NEW CHAPTER 14.32 TO ESTABLISH A PROCEDURE FOR THE FINANCING OF CERTAIN PUBLIC CAPITAL FACILITIES THROUGH THE ESTABLISHMENT OF CONVENTION CENTER FACILITIES DISTRICTS, THE LEVY OF SPECIAL TAXES AND THE ISSUANCE OF BONDS SECURED BY SUCH SPECIAL TAXES

WHEREAS, the Mello-Roos Community Facilities Act of 1982 (the "Act") provides great flexibility and a well-tested structure for local special taxation for the purpose of financing public facilities; and

WHEREAS, the City of San José ("City") wishes to arrange for financing the improvement of its Convention Center facilities through local special taxation of hotel properties; and

WHEREAS, the Act, in its general application, does not specifically address the special taxation of hotel properties for this purpose; and

WHEREAS, it is the intent of the City to follow the substance and procedures of the Act, except as it can be improved in this particular context, for fairness and ease of administration; and

WHEREAS, the City wishes to implement improvements to the Act as set forth in this Ordinance for purposes of its local affairs through the exercise of its charter powers;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of San José:

Title 14 of the San José Municipal Code is hereby amended by adding a new Chapter to be numbered, entitled and to read as follows:

CHAPTER 14.32
CONVENTION CENTER FACILITIES DISTRICT FINANCING PROCEDURE

Part 1
Purpose and Construction

14.32.010 Purpose and Intent

The purpose and intent of this Chapter is to establish a procedure for financing certain public capital facilities through the establishment of Convention Center Facilities Districts, the levy of special taxes within such Districts and the issuance of bonds secured by such special taxes or to be paid from the proceeds of such special taxes.

14.32.020 Special Tax Proceedings

Proceedings for the formation of a Convention Center Facilities District or Districts for the purposes set forth in Section 14.32.300 may be conducted pursuant to this Chapter whether or not provided in any state law.

14.32.030 Nonexclusivity

- A. This Chapter is not, in any way, exclusive.
- B. The procedures provided in this Chapter are alternative to any other procedure provided in this Code or under state law.
- C. The resolution of intention in any proceedings under any state law or other provision of the Municipal Code may provide that such provisions are supplemented by this Chapter.

14.32.040 Construction

This Chapter is to be liberally construed.

14.32.050 Incorporation of the Mello-Roos Community Facilities Act of 1982

- A. The Mello-Roos Community Facilities Act of 1982 (Chapter 2.5, commencing with Section 53311, of Part 1 of Division 2 of Title 5 of the Government Code, as in effect on the effective date of this ordinance) (the "Act"), is incorporated in and made a part of this Chapter.

- B. Except as otherwise provided by this Chapter, the mode and manner for making improvements, for levying and collecting special taxes and for issuing bonds shall be as prescribed in the Act.

**Part 2
Definitions**

14.32. 200 Definitions

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

14.32. 210 Hotel

"Hotel" has the meaning set forth in Section 4.72.020.C of Chapter 4.72 of this Code. Hotel shall not be deemed to include any residential use.

14.32. 220 Convention Center Facility

“Convention Center Facility” means any building, improvement to real property, equipment or personal property (in each case having an expected useful life of five years or longer) that comprises any portion of the existing Convention Center and any expansion, construction, reconstruction, rehabilitation, replacement or upgrade thereto.

14.32. 230 Landowner, Owner of Land or Property Owner

“Landowner,” “Owner of Land” and “Property Owner” all mean the owner of the real property upon which a Hotel is located, except that if the fee owner of the real property is a government entity, these terms mean the lessee of the government entity.

14.32. 240 Operator

“Operator” has the meaning set forth in Section 4.72.020.E of Chapter 4.72 of this Code.

14.32. 250 Rent

“Rent” has the meaning set forth in Section 4.72.020.G of Chapter 4.72 of this Code.

Part 3

Authorized Expenditures

14.32.300 Authorized Expenditures

- A. A special tax imposed pursuant to this Chapter may finance the acquisition, construction, reconstruction, replacement, rehabilitation, upgrade and maintenance of any Convention Center Facility.

- B. Revenues from any special tax imposed under this Chapter may be spent on the following: debt service; lease payments; cost of issuance of securities issued for the purpose of financing or refinancing Convention Center Facilities; administrative costs of the District; prepayment of such securities; direct costs of acquisition, design and construction of Convention Center Facilities; ongoing capital repairs and maintenance of Convention Center Facilities.

Part 4 Formation

14.32.400 Hearing, Continuances

All hearings called for under the Act shall apply to this Chapter, except that they may be continued from time to time without further notice, but shall be completed within one (1) year of the original hearing date.

14.32.410 Apportionment of Special Tax

Any special tax imposed pursuant to this Chapter shall be imposed on the Property Owner for the use of property as a Hotel, and shall be apportioned as a percentage of Rent charged by the Hotel for the Occupancy (as defined in Section 4.72.020.D of Chapter 4.72 of this Code) of the Hotel rooms.

14.32.420 Written Protests

All protest procedures set forth in the Act shall apply to this Chapter, except that the protests shall be weighted based on number of Hotel rooms instead of area of land.

14.32.430 Special Tax Levy; Election; Voter Qualifications; Ballots

All election procedures set forth in the Act shall apply to this Chapter, except that the votes shall be weighted based on number of Hotel rooms each Property Owner controls at the time the election is called instead of acreage of real property.

Part 5

Collection of the Special Tax

14.32. 500 Special Tax Due with Transient Occupancy Tax

All special taxes imposed pursuant to this Chapter shall be due and remitted with the Operator's payment of the Transient Occupancy Tax as set forth in Section 4.72.080 of Chapter 4.72 of this Code. In the event that the Property Owner is not the Operator, the Property Owner shall cause the Operator to remit the special taxes imposed pursuant to this Chapter with the Operator's payment of the Transient Occupancy Tax.

Part 6

Bonds

14.32.600 Refunding Bonds, Use Of Savings

Any savings achieved through the issuance of refunding bonds may be used in any manner that is consistent with the purposes for which the special tax was imposed.

Part 7
Miscellaneous Provisions

14.32.700 Goals and Policies

The provisions of Section 53312.7 of the Government Code, concerning the adoption of local goals and policies, shall be permissive and not mandatory in connection with any proceedings taken, special tax levied or bonds issued pursuant to this Chapter.

14.32.710 Reports to CDIAC

Section 53359.5(b) (c) of the Government Code requiring the submission of reports to the California Debt and Investment Advisory Commission is not applicable to this Chapter.

14.32.720 Compliance with Chapter

Any proceedings taken, special tax levied or bonds issued pursuant to this Chapter shall not be held invalid for failure to comply with the provisions of this Chapter provided such failure is not a constitutional defect.

14.32.730 Conflict of Law

In the event of any conflict between the provisions of this Chapter or other provisions of the Municipal Code and the provisions of the Act, this Chapter shall govern.

PASSED FOR PUBLICATION of title this 19th day of August, 2008, by the following vote:

AYES: CHIRCO, CHU, CONSTANT, CORTESE, LICCARDO,
NGUYEN, OLIVERIO, PYLE, WILLIAMS, REED.

NOES: NONE.

ABSENT: CAMPOS.

DISQUALIFIED: NONE.

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk