

**RESOLUTION NO. 74505**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSÉ ORDERING THE REORGANIZATION OF CERTAIN UNINHABITED TERRITORY DESIGNATED AS BURBANK NO. 40, SUBJECT TO LIABILITY FOR GENERAL INDEBTEDNESS OF THE CITY**

WHEREAS, a petition for the annexation of certain territory to the City of San José and detachment of said territory from the appropriate special districts including Central Fire Protection, Area No. 01 (Library Services) County Services, Burbank Sanitary; and County Lighting County Services, consisting of 2.78 + acres on the northwest corner of West San Carlos Street and Brooklyn Avenue and public right-of-way along West San Carlos Street, Brooklyn Avenue, and Topeka Avenue, San Jose (APN(s) 274-17-085, -011, -012, -013) has been filed by Will Judy, 99 Cent Only Stores, Inc.; and

WHEREAS, the distinctive short form designated by the territory proposed to be reorganized is **Burbank No. 40**; and

WHEREAS, the City of San José, by its Resolution No. 74366, adopted on May 20, 2008, duly initiated reorganization proceedings for annexations and detachment of certain uninhabited territory and set the time and place for consideration of such reorganization in accordance with the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000; and

WHEREAS, the Council of the City of San José was duly designated as the conducting authority for further proceedings to reorganize the territory described therein by said Resolution; and

WHEREAS, said territory is uninhabited and all land owners of land included in the proposal consent to this annexation; and

WHEREAS, Government Code Section 56663(a) provides that if a petition for annexation is signed by all land owners within the affected territory, the City Council may approve or disapprove the annexation without public hearings; and

WHEREAS, Section 56757 of the California Government Code states that the Local Agency Formation Commission shall not review an annexation proposal to any City in Santa Clara County of unincorporated territory which is within the urban service area of the City if initiated by resolution of the legislative body and therefore the City Council of the City of San José is now the conducting authority for said annexation; and

WHEREAS, the reason(s) for the proposed reorganization, as set forth in the City's resolution initiating reorganization proceedings is to facilitate subsequent development for commercial uses; and

WHEREAS, the following special districts would be affected by the proposed annexation: Central Fire Protection, Area No. 01 (Library Services) County Services, Burbank Sanitary, and County Lighting County Services; and

WHEREAS, annexation would provide for the use of City Services;

WHEREAS, the City's Resolution No. 74366 fixed June 17, 2008 at 1:30 p.m., in the Council Chambers of the City of San José, City Hall, 200 East Santa Clara Street, San José, California, as the date, time and place said Council would consider said reorganization, which hearing date was deferred by City Council action taken on June 17, 2008 to June 24, 2008; and

WHEREAS, the regular County assessment roll is utilized by the City; and

WHEREAS, land and improvements within the territory shall be liable for the general indebtedness of the City of San José existing at the time of annexation; and

WHEREAS, the environmental impacts related to this project are addressed under the San Jose 2020 General Plan Environmental Impact Report, together with related Resolution No. 65459 which became final on August 16, 1994 and this Council has considered and approved said Environmental Impact Report and Resolution No. 65459 prior to taking any action on this proposed annexation; and

WHEREAS, if required or necessary, the property owner has waived any Proposition 218 election that may pertain to this reorganization proposal that they have requested of the City; and

WHEREAS, the following facts pertain to the findings required by the Council in accordance with Government Code Section 51757:

1. The unincorporated territory proposed for reorganization is within the City's Urban Service Area, as adopted by the Santa Clara Local Agency Formation Commission.
2. The County Surveyor has determined the boundaries of the proposed to be definite and certain, and in compliance with the Santa Clara County Local Agency Formation Commission's road annexation policies.
3. The proposal does not split lines of assessment or ownership in that all affected parcels are being organized in their entirety.
4. The proposal does not create islands or areas in which it would be difficult to provide municipal services in that completion of reorganization proceedings would result in the reduction of a pocket of unincorporated territory.
5. The proposal is consistent with the City's adopted General Plan in that existing and future urban development be located within cities.
6. The territory is contiguous to existing City limits.
7. The City has complied with all conditions imposed by the Commission for inclusion of the territory in the City's Urban Service Area as follows:
  - A. No such conditions imposed.
8. The rezoning on the subject territory is proposed to be CP Commercial Pedestrian zoning designation on one parcel along West San Carlos (APN 274-17-085) and R-1-8 Single Family Residence zoning designation on three parcels along Brooklyn Avenue (APN's 274-17-011, -012, -013); and the City Council on March 18, 2008 enacted an ordinance rezoning the subject territory.

WHEREAS, evidence was presented to the City Council;

**NOW, THEREFORE, BE IT RESOLVED THAT THE COUNCIL OF THE CITY OF SAN JOSE HEREBY FINDS:**

1. That it is the conducting authority pursuant to Section 56757 of the Government Code for the annexation of property designated "**Burbank No. 40**," more particularly described in Exhibit "A" and more particularly shown upon that certain

map attached hereto as Exhibit "B," both of which are incorporated herein by this reference;

2. That the following findings are made by the City Council for the City of San José:
  - a. That said territory is uninhabited and comprises approximately 2.78 acres.
  - b. That the annexation is consistent with the orderly annexation of territory within the City's urban service area and is consistent with the City policy for annexation when annexed (providing City Services).
  - c. The Director of Planning, Building and Code Enforcement has determined that this proposal constitutes a project under CEQA and that the environmental impacts of this proposed project are analyzed under the "San Jose 2020 General Plan Environmental Impact Report", together with related Resolution No. 65459, and the City Council has considered and approved said Environmental Impact Report and Resolution No. 65459 prior to taking action on this annexation.
  - d. The City Council on March 18, 2008 enacted an ordinance pre-zoning the subject territory with CP Commercial Pedestrian zoning designation on one parcel along West San Carlos (APN 274-17-085) and R-1-8 Single Family Residence zoning designation on three parcels along Brooklyn Avenue (APNs 274-17-011, -012, -013).
  - e. That the territory is within the City's urban service area as adopted by the Local Agency Formation Commission of Santa Clara County.
  - f. That the County Surveyor has determined the boundaries of the proposed annexation to be definite and certain, and in compliance with the Commission's road annexation policies. The City shall reimburse the County for the actual cost incurred by the County Surveyor in making this determination.
  - g. That the proposed annexation does not create islands or areas in which it would be difficult to provide municipal services.
  - h. That the proposed annexation does not split lines of assessment or ownership.
  - i. That the proposed annexation is consistent with the City's General Plan.
  - j. That the territory to be annexed is contiguous to existing City limits.

- k. That the City has complied with all conditions imposed by the Commission for inclusion of the territory in the City urban service area.
- 3. That all property owners and registered voters have been provided written notice of this proceeding and no opposition has been received.
- 4. That said annexation is hereby ordered without any further protest of these reorganization proceedings pursuant to Section 56663(c/d) and is subject to the following additional terms and conditions: None.

BE IT FURTHER RESOLVED that upon completion of these reorganization proceedings the territory reorganized will be taxed on the regular County assessment roll, including taxes for existing bonded indebtedness.

- 1. Hereby orders the territory designated **Burbank No. 40** reorganized and organized to include the following changes of organization: (a) the following districts are hereby detached: Central Fire Protection, Area No. 01 (Library Services) County Services, Burbank Sanitary, and County Lighting County Services; and (b) the designated territory **Burbank No. 40** shall be annexed into the City of San José. The City of San José, as conducting authority, reorganized such territory as indicated above it being found and concurred in that the territory involved in the reorganization is uninhabited and all the owners of land within the territory have filed a written petition for the City Council to initiate said reorganization.

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2. Describes the exterior boundaries of the territory reorganized as all that real property in the County of Santa Clara, State of California, described in Exhibit A, attached hereto and incorporated herein by this reference.

**ADOPTED** this 24th day of June 2008 by the following vote:

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

NOES: NONE.

ABSENT: CONSTANT.

DISQUALIFIED: NONE.

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CHUCK REED  
Mayor

ATTEST:

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LEE PRICE, MMC  
City Clerk

100% Ord.Res