

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF VALLEJO ENACTING CHAPTER 14.52 PROVIDING FOR THE FORMATION OF COMMUNITY BENEFITS DISTRICTS, INTO THE CITY OF VALLEJO MUNICIPAL CODE.

The City Council of the City of Vallejo does hereby ORDAIN as follows:

Section 1. Chapter 14.52 of the Vallejo Municipal Code is hereby enacted to read as follows:

**"Chapter 14.52
COMMUNITY BENEFITS DISTRICTS**

14.52.010. Findings and Purpose. The City Council shall have the authority to order the improvement, maintenance and activities of specifically defined neighborhood and mixed use commercial districts. The City shall determine and declare the property owners to be specially benefited by said improvement, maintenance and activities; and, to assess the cost and expenses of said improvements, maintenance and activities, including all expense incurred incidentally thereto, upon the lots or parcels of real property in proportion to the estimated special benefits to be received.

14.52.015. Alternative Procedures. The procedures established herein shall be in addition to or alternative to any other procedure established by ordinance or State law and shall apply to any proposed district which complies with this Chapter whether or not any of the procedures for formation required hereby is taken prior to the effective date of this ordinance. The election to proceed under this Article shall be expressed in the Resolution of Intention to form the district that shall be referred to as a Community Benefits District.

14.52.020. Definitions. The definitions contained in this Chapter govern the construction and interpretation of the provisions of this Chapter unless the context otherwise requires. The definition of a word or phrase applies to any variants thereof.

- A. "Benefit district" or "district" means a community benefits district formed pursuant to this Chapter.
- B. "City Council" or "council" means the City Council, the governing body of the city of Vallejo.
- C. "City clerk" or "clerk" means the city clerk of the city of Vallejo.
- D. "Construction" as used in this Chapter includes design, acquisition of right-of-way, administration of construction contracts and actual construction of the improvements.

- E. "Engineer" means a registered professional engineer certified by the State of California, and may include the public works director/city engineer of the city, engineer of the benefit district, or any other registered professional engineer designated by the City Council as the engineer for purposes of this Chapter, including any officer, board or employee of the city, or any private person or firm specially employed by the city as engineer for the purposes of this Chapter.
- F. "Notice" means any resolution, order, notice, or other instrument authorized or required by this Chapter to be published, posted, or mailed.
- G. "Improvement" means the acquisition, construction, installation, or maintenance of any tangible property with an estimated useful life of five years or more including, but not limited to, the following:
1. Parking facilities;
 2. Benches, booths, kiosks, display cases, pedestrian shelters and
 3. Signs, trash receptacles and public restrooms;
 4. Lighting and heating facilities;
 5. Decorations;
 6. Planning, building, development of public spaces;
 7. Planting areas or landscaping;
 8. Minor modification of existing streets;
 9. Facilities or equipment or both, to enhance security of persons and property within the area;
 10. Ramps, sidewalks, plazas, town centers or pedestrian malls;
 11. Rehabilitation or removal of existing public structures;
 12. Statuary, fountains and other ornamental structures and facilities;
 13. Any facilities which are appurtenant to any of the foregoing or which are necessary or convenient for the maintenance or servicing thereof, including, but not limited to, grading, clearing, removal of debris, the installation or construction of curbs, gutters, walls, sidewalks or paving, or water, irrigation, drainage or electrical facilities;
- H. "Maintain" or "maintenance" means the furnishing of services and materials for the ordinary and usual maintenance, operation, and servicing of any improvement, including:
1. Repair, removal, or replacement of any part of the improvement;
 2. Providing for the life, growth, health and beauty of landscaping including cultivation, irrigation, trimming, spraying, fertilizing, or treating for disease or injury;
 3. Removal of trimmings, rubbish, debris and other solid waste;

4. Cleaning, sandblasting and painting of walls and other improvements to remove or cover graffiti.
5. Maintenance of new public spaces funded by special benefit assessments;
- I. "Activities" which specially benefit real property located in the district may include, but are not limited to, the following:
 1. Promotion of public events which specially benefit residential or mixed-use buildings or real property in the district;
 2. Furnishing of music in any public place within the district;
 3. Promotion of tourism within the district;
 4. Promotion of district or neighborhood identity within the area;
 5. Marketing, planning, zoning and economic development, including business retention and recruitment;
 6. Providing security, sanitation, graffiti removal, street and sidewalk cleaning and other services supplemental to those provided by the municipality.

14.52.025. Establishment. Upon the written petition, signed and acknowledged, of the property owners in the proposed district who will pay more than thirty percent (30%) of the assessments proposed to be levied, the City Council may initiate proceedings to form a district by the adopting of a resolution expressing its intention to form a district. The amount of assessment attributable to property owned by the same property owner which is in excess of 20% of the amount of all assessments proposed to be levied shall not be included in determining whether the petition is signed by property owners who will pay more than 30% of the total amount of assessments proposed to be levied.

14.52.030. Community Benefits District Plan Contents. The petition of property owners shall be submitted to the City Council with a community benefits district plan that shall contain all of the following:

- A. A map of the district in sufficient detail to locate each parcel of property within the district;
- B. The neighborhood or business community name of the proposed district;
- C. A description of the boundaries of the district, including the boundaries of any benefit zones proposed for the establishment or extension of the district in a manner sufficient to identify the lands included. Under no circumstances shall the boundaries of a proposed district overlap with the boundaries of another existing district created pursuant to this Chapter. Nothing in this Chapter prohibits the boundaries of a district created pursuant to this part to overlap with other assessment districts established pursuant to other provisions of law including, but not limited to, the Parking and Business Improvement Area Law of 1989 and the Property and Business Improvement Law of 1994.
- D. The improvements and activities proposed for each year of operation of the district and the maximum cost thereof;

- E. The total annual amount proposed to be expended for improvements, maintenance and operations;
- F. The proposed source or sources of financing, including the proposed method and basis of levying the assessment in sufficient detail to allow each property owner to calculate the amount of the assessment to be levied against his or her property, including a statement setting forth the requirement to provide completion bonds for any improvements which are proposed to be constructed;
- G. The time and manner of collecting the assessments;
- H. Any proposed rules and regulations to be applicable to the district.
- I. The specific number of years in which assessments will be levied, which period cannot exceed 20 years without renewal of the district; provided, however, that assessments for the maintenance of improvements constructed by the district, if any, may continue to be levied on each parcel of land within the district for a period of time equal to the useful life of the improvement, as determined by the Engineer, on the condition that the community benefits district plan includes a statement, placed in a conspicuous place, stating such terms.
- J. A description of the organization or entity proposed to provide the improvements or activities. If an owners' association is proposed to provide the improvements or activities, the plan shall contain a description of the governance and operations of the non-profit association.
- K. Any other information or documentation required to be incorporated therein by the City Council.

14.52.035 District Formation Costs.

- A. Proponents of a district proposed to be formed pursuant to this Chapter shall provide a financial deposit for any reasonable and documented costs incurred by the City with the submittal of the petition and community benefits district plan to the City Council.
- B. The City Council may authorize a district formed pursuant to this Chapter to recover through assessments the costs incurred in forming the district, including:
 - 1. The costs of investigating the feasibility of forming a district;
 - 2. The costs of preparation of the community benefits district plan and engineer's report required by law;
 - 3. The cost of circulating and submitting the petition to the City Council seeking establishment of the district;
 - 4. The costs of printing, advertising and the giving of published, posted or mailed notices;

5. Compensation of any engineer or attorney or other consultant employed to render services in proceedings under this Chapter; and
 6. Costs associated with any ballot proceedings required by law for approval of a new or increased assessment.
- C. If the district will be authorized to recover these costs, the community benefits district plan shall specify the formation costs eligible for recovery through assessments, the schedule for recovery of those costs, and the basis for determining the amount of the additional assessment for recovery of costs, including the maximum amount of the additional assessment, expressed either as a dollar amount, or as a percentage of the underlying assessment.

14.52.040. Preliminary Report of the Engineer.

The engineer, as that term is defined by 14.52.020(E), shall prepare and file a report in writing, proposing that the proceeding be commenced as requested in the petition, designating the plans and specifications of the proposed maintenance, improvements and activities for the proposed district and an estimate of the cost and expenses of said work for each year during which the proposed work will be done; including a certified engineer's report stating that the district's establishment is consistent with the provisions of Article XIID of the State of Constitution in that no assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on that parcel; and containing a diagram showing the boundaries of the proposed district and each lot or parcel of land within said district proposed to be assessed.

14.52.045. Resolution of Intention Contents and Notice.

Before the City Council can establish a district pursuant to this Chapter, the City Council shall pass a resolution declaring its intention to do so. The Resolution of Intention shall do all of the following:

- A. State that a district is proposed to be established pursuant to this Chapter and describe the boundaries of the proposed district and boundaries of each separate benefit zone, if any, to be established within the district. The boundaries may be described by reference to the map and description contained in the Preliminary Report of the Engineer on file in the Office of the City Clerk.
- B. State the neighborhood or business community name of the proposed district.
- C. State the type or types of improvements and activities proposed to be funded by the levy of assessments on property owners within the district, including any improvements to be acquired.
- D. State the annual amount of the proposed assessment for the entire district, the annual amount chargeable to the owner's particular parcel, the duration of such payments, the reason for such assessment and the basis upon which the proposed assessment was calculated.
- E. State the date, time and location of a public hearing on the proposed assessment.

- F. Include a ballot as described in Section 14.52.050 below.
- G. State, in a conspicuous place, a summary of the procedures applicable to the completion, return and tabulation of the ballots, including a disclosure statement that the existence of a majority protest will result in the assessment not being imposed.
- H. State that at the public hearing the testimony of all interested persons for or against the establishment of the district, the boundaries of the district, or the furnishing of specified types of improvements or activities will be heard.
- I. Refer to the Preliminary Report of the Engineer on file in the Office of the City Clerk.
- J. State the manner of collection of the assessment.

In addition to the notice required by Section 14.52.050 below, the City Clerk shall cause a complete copy of the Resolution of Intention to be mailed by first-class mail to each local chamber of commerce and business organization known to be located within the proposed district, no later than 45 days before the public hearing. In addition to such mailed notice, the City Clerk shall publish the Resolution of Intention in a newspaper of general circulation in the City once, at least seven days before the public hearing.

14.52.050. Procedures.

- A. The engineer shall identify all parcels which will have a special benefit conferred upon them and upon which an assessment will be imposed. The proportionate special benefit derived by each identified parcel shall be determined in relationship to the entirety of the capital cost of a public improvement or the maintenance and operation expense of a public improvement or for the cost of the property service being provided. No assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on that parcel. Parcels within a district that are owned or used by any governmental agency, the State of California, or the United States shall not be exempt from assessment unless the City Council finds that it has been demonstrated, by clear and convincing evidence that such publicly owned parcels in fact receive no special benefit.
- B. All assessments must be supported by a detailed engineer's report prepared by a registered professional engineer certified by the State of California. The engineer's report may be incorporated in the community benefits district plan.
- C. The amount of the proposed assessment for each identified parcel shall be calculated and the recorded owner of each parcel shall be given written notice by mail of the proposed assessment, the total annual amount thereof chargeable to the entire district, the annual amount chargeable to the owner's particular parcel, the duration of such payments, the reason for such assessment and the basis upon which the proposed assessment was calculated together with the date, time and location of a public hearing on the proposed assessment. All parcels, regardless of ownership including publicly owned or tax exempt, shall pay their proportional assessment into the community benefits district.

- D. Each notice shall also include, in a conspicuous place thereon, a summary of the procedures applicable to the completion, return and tabulation of the ballots required including a disclosure statement that the existence of a majority protest will result in the assessment not being imposed.
- E. Each such notice mailed to owners of identified parcels within the district shall contain a ballot which includes the agency's address for receipt of any such ballot once completed by any owner receiving such notice, whereby each such owner may indicate his or her name, reasonable identification of the parcel and support or opposition to the proposed assessment.
- F. The City Council shall conduct a public hearing upon the proposed assessment not less than 45 days after mailing the notice of the proposed assessment to record owners of each identified parcel. At the public hearing, the agency shall consider all protests against the proposed assessment and tabulate the ballots. The City Council shall not impose an assessment if there is a majority protest. A majority protest exists if, upon the conclusion of the hearing, ballots submitted in opposition to the assessment exceed the ballots submitted in favor of the assessment. In tabulating the ballots, the ballots shall be weighted according to the proportional financial obligation of the affected property.

14.52.055. Establishment of District and Levying of Assessment.

If the City Council, following the public hearing, desires to establish the proposed district and levy assessments, the City Council may consider a resolution establishing the district as proposed in the Resolution of Intention. The adoption of the Resolution establishing the district and recordation of the notice and map pursuant to Section 14.52.045, above, shall constitute the levy of an assessment in each of the fiscal years referred to in the community benefits district plan. This Resolution shall contain all of the following:

- A. The community benefits district plan.
- B. The number, date of adoption, and title of the Resolution of Intention.
- C. The time and place where the public hearing was held concerning the establishment of the district or the levying of a new assessment.
- D. A determination regarding any protests received.
- E. A statement that a district has been established.
- F. A statement that the improvements and activities to be provided in the district will be funded by the levy of assessments. The revenue from the levy of assessments within a district shall not be used to provide improvements or activities outside the district or for any purpose other than the purposes specified in the Resolution of Intention, as modified by the City Council at the hearing concerning the establishment of the district.
- G. A finding that the property within the district will be specially benefited by the improvements and activities funded by the assessment to be levied.

H. A statement, if applicable, that a completion bond will be required for any improvements constructed by the district and that a continuing assessment in an amount sufficient to maintain the improvement throughout its useful life, as determined by the Engineer, will be levied on each parcel within the district.

14.52.060. Record of Notice and Map of Assessment District.

Following adoption of the resolution establishing the district, the City Clerk shall record a notice and map describing the assessment district pursuant to California Streets and Highways Code Division 4.5 (commencing with section 3100). All the provisions of that Division 4.5 apply to the district established pursuant to this Chapter.

14.52.065. Contesting the Validity of an Assessment.

The validity of an assessment levied under the provisions of this Chapter shall not be contested in any action or proceeding unless the same is commenced within 30 days after the time said assessment is levied, and any appeal from a final judgment in such action or proceeding must be perfected within 30 days after entry of such judgment.

14.52.070. Administration.

If the parcel owners designate an owners' association to provide the improvements or activities described in the district plan, the city may contract with the designated nonprofit corporation to provide services.

14.52.075. Special Fund Advance.

The City may temporarily advance funds for the first quarter of a new district so that the district can commence work prior to the initial collection of the assessments. The funds advanced shall not exceed one quarter of the total assessment for the first year and shall be repaid from the next annual assessments levied and collected within the district.

14.52.080. Collection of Assessment: Time and Manner.

The collection of assessments levied pursuant to this Chapter shall be made at the time and in the manner set forth by the City Council in the Resolution of Intention. The assessment may be collected at the same time and in the same manner as for the ad valorem property tax, and may provide for the same lien priority and penalties for delinquent payment.

14.52.085. Annual Report: Report, Contents.

A. If the district is governed by an owners' association, the owners' association shall cause to be prepared a report of each fiscal year for which assessments are to be

levied and collected to pay the costs of the improvements and activities described in the community benefits district plan. The report may propose changes, including, but not limited to, the boundaries of the district or any benefit zones within the district, the basis and method of levying the assessments, and any changes in the classification of property, if a classification is used.

- B. The report shall be filed with the City Clerk and shall refer to the district by name, specify the fiscal year to which the report applies, and with respect to that fiscal year, shall contain all of the following information:
 - 1. Any proposed changes in the boundaries of the district or in any benefits zones within the district.
 - 2. The improvements and activities to be provided for that fiscal year.
 - 3. An estimate of the cost of providing the improvements and the activities for that fiscal year.
 - 4. The method and basis of levying the assessment in sufficient detail to allow each real property owner to estimate the amount of the assessment to be levied against his or her property for that fiscal year.
 - 5. The amount of any surplus or deficit revenues to be carried over from a previous fiscal year.
 - 6. The amount of any contributions to be made from sources other than assessments levied pursuant to this part.
- C. The City Council may approve the report as filed by the owners' association or may modify any particular contained in the report and approve it as modified. Any modification shall be made pursuant to Section 14.52.090, below. The City Council shall not approve a change in the basis and method of levying assessments that would impair an authorized or executed contract to be paid from the revenues derived from the levy of assessment.

14.52.90. Modification of Boundaries, Assessments, Improvements or Activities.

- A. The owners' association may, at any time, request that the City Council modify the community benefits district plan. Any modification of the community benefits district plan shall be made pursuant to this section.
- B. Upon the written request of the owners' association, or on its own initiative, the City Council may consider a resolution of intention which states the proposed modification to the community benefits district plan and sets a date for a public hearing on such modification. The public hearing shall be held not more than 60 days after the adoption of the resolution of intention. The City Council may modify the community benefits district plan by adopting a resolution following the public hearing on the proposed modification. Notice of the public hearing shall be provided by publishing in a newspaper of general circulation in the City once, at least seven days before the public hearing, the resolution of intention to modify the community benefits district plan. If the proposed modification includes the levy of a

new or increased assessment, the City Council shall consider such modification pursuant to Section 14.52.050.

- C. Any subsequent modification of the community benefits district plan shall be reflected in subsequent notices and maps recorded pursuant to Division 4.5 (commencing with 3100) of the California Streets and Highways Code.

14.52.095. Renewal of District.

Any district previously established whose term has expired, may be renewed by following the procedures for establishment as provided in this Chapter and Parking and Business Improvement Area Law of 1989 and the Property and Business Improvement Law of 1994.

14.52.100. Dissolution of District.

- A. Any district established pursuant to the provisions of this Chapter, where there is no indebtedness incurred to accomplish any of the purposes of the district that is outstanding or unpaid, may be disestablished by resolution of the City Council in either of the following circumstances:
 - 1. If the City Council finds there has been misappropriation of funds, malfeasance, or a violation of law in connection with the management of the district, it shall publish notice and hold a public hearing on disestablishment.
 - 2. During the operation of the district, there shall be a 30-day period each year in which the assessed property owners may request disestablishment of the district. The first such period shall begin one year after the date of establishment of the district and shall continue for 30 days. The next such 30-day period shall begin two years after the date of the establishment of the district. Each successive year of operation of the district shall have such a 30-day period. Upon the written petition of the owners of real property in the area who pay 30 percent or more of the assessments levied, the City Council shall adopt a resolution of intention to disestablish the district and hold a public hearing pursuant to this section.
- B. The City Council shall adopt a resolution of intention to disestablish the district prior to the public hearing required by this section. The resolution shall state the reason for the disestablishment, shall state the time and place of the public hearing, and shall contain a proposal to dispose of any assets acquired with the revenues of the assessments levied within the property and business improvement district. The public hearing shall be held not less than 30 or more than 60 days after the adoption of the resolution of intention. Notice of the public hearing shall be provided by publishing the resolution of intention in a newspaper of general circulation in the City once, at least seven days before the public hearing.
- C. Upon the disestablishment of a district, any remaining revenues derived from the levy of assessments, or any revenues derived from the sale of assets acquired with

the revenues, shall be refunded to the owners of the property within the district in which assessments were levied by applying the same method and basis that was used to calculate the assessments levied in the fiscal year in which the district was disestablished. If the disestablishment occurs before and assessment is levied for the fiscal year, the method and basis that were used to calculate the assessment levied in the immediate prior fiscal year shall be used to calculate the amount of refund.

- D. Notice of the disestablishment of a district shall be published once in a newspaper of general circulation in the City, not later than 15 days after the resolution disestablishing the district is adopted.

14.52.105. Conflict of Law.

In the event of any conflict between the provisions of this Chapter or other provisions of the VMC and the provisions of state law, this Chapter shall govern.”

Section 2. The City Clerk shall certify to the adoption of this Ordinance and cause it to be published as required by law. This ordinance shall become effective on January 1, 2014.

PASSED and ADOPTED this _____ day of _____ 2013.

ATTEST:

City Clerk

Mayor

APPROVED AS TO FORM:

City Attorney