



CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

**ORDINANCE AUTHORIZING LEVYING SPECIAL TAXES
WITHIN THE CITY OF OAKLAND COMMUNITY
FACILITIES DISTRICT NO. 2023-1 (BROOKLYN BASIN
FACILITIES AND SERVICES); AND ADOPTING
APPROPRIATE FINDINGS UNDER THE CALIFORNIA
ENVIRONMENTAL QUALITY ACT**

WHEREAS, the City of Oakland (the “City”) approved a development now known as Brooklyn Basin (and formerly known as the Oak-to-Ninth Avenue Mixed Use Development) on approximately 64.2 acres of land area (and 7.95 acres of water surface area) along the Oakland Estuary, which included up to 3,100 residential units, up to 200,000 square feet of commercial space, a minimum of 3,534 parking spaces, approximately 31 acres of open space, two renovated marinas, as well as shoreline improvements, new roads, and other infrastructure and improvement (the “Original Brooklyn Basin Project”); and

WHEREAS, the City, as an original party and as successor to the Redevelopment Agency of the City of Oakland, and Zarsion-OHP I, LLC, a California limited liability company (“Developer”), as successor by assignment from Oakland Harbor Partners, LLC, are parties to that certain Development Agreement, dated August 24, 2006, approved by Ordinance No. 12760 C.M.S. adopted on July 18, 2006, related to development of the Original Brooklyn Basin Project (as amended and assigned, the “Development Agreement”); and

WHEREAS, the Development Agreement required the formation of a community facilities district for the Original Brooklyn Basin Project; and

WHEREAS, under the Mello-Roos Community Facilities Act of 1982, as amended (Government Code Section 53311 et seq.) (“Act”), the City Council is authorized to establish a community facilities district and to act as the legislative body for a community facilities district; and

WHEREAS, on May 16, 2023, the City Council adopted Ordinance No. 13789 C.M.S., which approved a Third Amendment to the Development Agreement, which together with the related additional entitlements approved by the City Council, permits the development of an additional six hundred (600) residential units within the Original Brooklyn Basin Project (the “Updated Brooklyn Basin Project”); and

WHEREAS, the Original Brooklyn Basin Project was analyzed under the certified 2009 Brooklyn Basin Environmental Impact Report (“2009 EIR”), which is comprised of the following documents: Oak to Ninth Avenue Project Draft EIR, August 2005; Oak to Ninth Avenue Project, 2006 Addendum #1 to the Certified Environmental Impact Report, June 7, 2006; Oak to Ninth Avenue Project Final EIR, August 2006; Revisions to the Analysis in the Oak to Ninth Project EIR (SCH. No. 2004062013) Prepared to Comply with the Alameda County Superior Court Order Case No. RG06-280345 and Case No. RG06-280471, November 2008; Oak to Ninth Avenue Project Responses to Comments on the Revisions, December 2008; and City of Oakland Resolution No. 81769 C.M.S., approved January 20, 2009; and

WHEREAS, in accordance with Public Resources Code Section 21166 and California Environmental Quality Act (“CEQA”) Guidelines Sections 15162 and 15163, the City examined whether the additional 600 units proposed in the Updated Brooklyn Basin Project would result in “substantial changes” that would trigger the need for a major modification to the previously certified 2009 EIR due to a new significant impact or a substantial increase in the severity of previously identified significant impacts. An Initial Study was not prepared for the Updated Brooklyn Basin Project, as authorized under Section 15060(d) of the CEQA Guidelines. The City, as the Lead Agency, determined that a Supplemental Environmental Impact Report (SEIR) for the Updated Brooklyn Basin Project would be required; and

WHEREAS, as further set forth in the City’s Resolution No. 89707 C.M.S., adopted on May 2, 2023 certifying the SEIR, the Updated Brooklyn Basin Project did not identify any new or more severe potentially significant or significant and unavoidable impacts than analyzed in the previous 2009 EIR for the Original Brooklyn Basin Project; and

WHEREAS, in accordance with CEQA Guidelines sections 15162 and 15163, the City hereby finds that, based on substantial evidence in the record, this action does not represent a substantive change to the Updated Brooklyn Basin Project and thus none of the circumstances necessitating preparation of a subsequent or supplemental Environmental Impact Report are present. In addition, each as a separate and independent basis, this action is otherwise exempt from CEQA review under CEQA Guidelines section 15183 (projects consistent with a community plan, general plan or zoning), 15301 (existing facilities), and 15308 (actions by regulatory agencies for the protection of the environment); and

WHEREAS, on September 19, 2023, after holding noticed public hearings, the City Council adopted: (i) a resolution entitled “Resolution Authorizing the Formation of the City of Oakland Community Facilities District No. 2023-1 (Brooklyn Basin Facilities and Services) to Finance Public Improvements and Public Services for the Brooklyn Basin Project and Related Documents and Actions; and Adopting Appropriate Findings under the California Environmental Quality Act” (the “Resolution of Formation”); and (ii) a resolution entitled “Resolution Determining the Necessity to Incur Bonded and Other Indebtedness for the City of Oakland Community Facilities District No. 2023-1 (Brooklyn Basin Facilities and Services); and Adopting Appropriate Findings under the California Environmental Quality Act” (the “Resolution Determining Necessity”); and

WHEREAS, pursuant to the Resolution of Formation and the Act, the City Council established the “City of Oakland Community Facilities District No. 2023-1 (Brooklyn Basin Facilities and Services)”, for the purpose of financing certain public improvements (“Facilities”) and public services (“Services”) described in the Resolution of Formation; and

WHEREAS, pursuant to the Resolution of Formation and the Act, the City Council further authorized the levy of special taxes (“Special Taxes”) on property within CFD No. 2023-1 according to the rate and method of apportionment (“Rate and Method”) shown in Exhibit B to the Resolution of Formation; and

WHEREAS, pursuant to the Resolution of Formation and the Act, the City Council further preliminarily established an appropriations limit for CFD No. 2023-1; and

WHEREAS, in the Resolution Determining Necessity, the City Council determined the necessity to incur bonded indebtedness in the maximum aggregate principal amount of \$50,000,000 for CFD No. 2023-1 upon the security of the Special Taxes to be levied within CFD No. 2023-1 pursuant to the Act; and

WHEREAS, in the Resolution Determining Necessity, the City Council also determined the necessity to incur other debt as defined in the Act; and

WHEREAS, also on September 19, 2023, under the provisions of the Resolution of Formation and the Resolution of Necessity and pursuant to a resolution entitled “Resolution Calling a Special Election for City of Oakland Community Facilities District No. 2023-1 (Brooklyn Basin Facilities and Services); and Adopting Appropriate Findings under the California Environmental Quality Act” (“Election Resolution”), the City Council submitted the propositions of the levy of the Special Taxes, the establishment of the appropriations limit for CFD No. 2023-1 and the incurring of the bonded indebtedness and other debt (as defined in the Act) to the qualified electors as required by the provisions of the Act; and

WHEREAS, on September 19, 2023, pursuant to a resolution of the City Council entitled “Resolution Determining Results of the Special Election for City of Oakland Community Facilities District No. 2023-1 (Brooklyn Basin Facilities and Services); and Adopting Appropriate Findings under the California Environmental Quality Act,” the City Council determined that a special election was held at which the eligible landowner-electors approved such propositions by the two-thirds vote required by the Act; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. By the passage of this Ordinance, the City Council hereby authorizes and levies the Special Taxes described in the Rate and Method within CFD No. 2023-1, pursuant to the Act, at the rate and in accordance with the Rate and Method. The Special Taxes are hereby levied commencing in fiscal year 2024-25 and in each fiscal year thereafter for as long as it is needed to pay authorized costs; provided, however, in no event shall the Facilities Special Tax

described in the Rate and Method be levied on any Parcel in CFD No. 2023-1 after Fiscal Year 2072-73.

SECTION 2. The City Administrator is hereby authorized and directed each fiscal year to determine the rate and amount of the Special Taxes to be levied for the next ensuing fiscal year for each parcel of real property within CFD No. 2023-1, in the manner and as provided in the Resolution of Formation and the Rate and Method.

SECTION 3. With respect to CFD No. 2023-1, (a) properties or entities of the State, federal or local governments shall be exempt from any levy of the Special Taxes, except as provided in the Rate and Method and (b) other parcels shall be exempt from the levy of the Special Taxes as provided in the Rate and Method. In no event shall the Special Taxes be levied on any parcel within the CFD No. 2023-1 in excess of the maximum Special Taxes specified in the Resolution of Formation.

SECTION 4. All of the collections of the Special Taxes shall be used as provided for in the Act and in the Resolution of Formation including, but not limited to, the payment of principal and interest on the Bonds and other debt, the replenishment of the reserve fund for the Bonds and other debt, the payment of the costs of the Facilities and the Services, the payment of the costs of the City in administering CFD No. 2023-1, and the costs of collecting and administering the Special Taxes.

SECTION 5. The Special Taxes shall be collected in the same manner as ordinary ad valorem taxes are collected and shall have the same lien priority, and be subject to the same penalties and the same procedure and sale in cases of delinquency as provided for ad valorem taxes; provided, however, that the City Council may provide for other appropriate methods of collection by resolutions of the City Council. In addition, the provisions of Section 53356.1 of the Act shall apply to delinquent special tax payments. The City Administrator is hereby authorized and directed to provide all necessary information to the auditor/tax collector of the County of Alameda in order to effect proper billing and collection of the Special Taxes, so that the Special Taxes shall be included on the secured property tax roll of the County of Alameda for fiscal year 2024-25 and for each fiscal year thereafter authorized by the Rate and Method.

SECTION 6. The City Council independently finds and determines that CFD No. 2023-1 is subject to the 2009 EIR for the Original Brooklyn Basin Project and the SEIR for the Updated Brooklyn Basin Project and, because the formation of CFD No. 2023-1 is not a substantive change to the Updated Brooklyn Basin Project, that no further environmental review is required. None of the circumstances that require a supplemental or subsequent EIR pursuant to CEQA Guidelines Sections 15162 or 15163 have occurred. In addition, with each serving as a separate and independent basis, this action creating CFD No. 2023-1 is otherwise exempt from CEQA review under CEQA Guidelines section 15183 (projects consistent with a community plan, general plan or zoning), 15301 (existing facilities), and 15308 (actions by regulatory agencies for the protection of the environment).

SECTION 7. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of

competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional

SECTION 8. Effective Date. This Ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA,

AYES – FIFE, GALLO, JENKINS, KALB, KAPLAN, RAMACHANDRAN, REID, AND
PRESIDENT FORTUNATO BAS

NOES –

ABSENT –

ABSTENTION –

ATTEST: _____

ASHA REED
City Clerk and Clerk of the Council of the
City of Oakland, California

Date of Attestation: _____

NOTICE AND DIGEST

**ORDINANCE AUTHORIZING LEVYING SPECIAL TAXES
WITHIN THE CITY OF OAKLAND COMMUNITY
FACILITIES DISTRICT NO. 2023-1 (BROOKLYN BASIN
FACILITIES AND SERVICES); AND ADOPTING
APPROPRIATE FINDINGS UNDER THE CALIFORNIA
ENVIRONMENTAL QUALITY ACT**

This Ordinance establishes the City's ability to levy special taxes within the City of Oakland Community Facilities District No. 2023-1 (Brooklyn Basin Facilities and Services) and adopts appropriate California Environmental Quality Act findings.