

ORDINANCE NO. 15-_____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EMERYVILLE
ADDING CHAPTER 9 TO TITLE 3 OF THE EMERYVILLE MUNICIPAL CODE
ESTABLISHING PROCEDURES RELATING TO THE FORMATION OF
ASSESSMENT DISTRICTS**

RECITALS

WHEREAS, on November 4, 2014 the Emeryville City Charter was ratified by the voters of the City of Emeryville; and

WHEREAS, Section 200 of Article II of the Emeryville City Charter provides as follows:

The City of Emeryville adopts this Charter to exercise all constitutional powers conferred on cities under Article XI sections 7 and 5 of the California Constitution solely with respect to the powers over municipal affairs in relation to municipal revenues including taxation and assessment, and a system for the imposition, levy and collection of a tax on the conveyance of real property based on the value of the real property in addition to the amount authorized by California Revenue and Taxation Code section 11911; and

WHEREAS, in accordance with Section 200 of Article II of the Emeryville City Charter and consistent with the exercise of constitutional powers conferred on cities under Article XI sections 7 and 5 of the California Constitution, the City Council of the City of Emeryville desires to establish procedures to form property and business improvement assessment districts; now, therefore, be it

**RESOLVED, THAT THE CITY COUNCIL OF THE CITY OF EMERYVILLE
HEREBY ORDAINS AS FOLLOWS:**

**SECTION ONE. ADDING CHAPTER 9 TO TITLE 3 OF THE EMERYVILLE
MUNICIPAL CODE.**

CHAPTER 9. ASSESSMENT DISTRICTS

ARTICLE 1: PROPERTY AND BUSINESS IMPROVEMENT DISTRICTS

SECTION 3-9.01. PURPOSE.

(a) State law provides procedures to form property and business improvement districts. This Article provides authority for the City to invoke those state procedures and in addition to apply those procedures to residential property that

would not be covered were the City to follow the state law exclusively. This Article incorporates the state law and then specifies how the City Council may choose to augment the state law provisions by choosing to: (1) reduce the percentage of petitions required from owners in order to initiate formation and allow the City Council to initiate formation by adoption of a resolution; (2) extend the term of the district to a maximum of 15 years, unless a longer term is authorized by state law; or (3) have the district encompass and assess residential property; (4) specifically affirm that shuttle bus services constitute an activity that may benefit businesses or real property in a district; or (5) authorize the district to recover through assessments the costs incurred in its formation. In addition, this Article augments state law by authorizing the City Council to disestablish a district upon a supermajority vote of the Council.

(b) Through proceedings under this Article, the City Council may establish property and business improvement districts and may finance enhancements through annual assessments apportioned among parcels of real property within such districts. It is the intent of this Article to provide a vehicle for financing enhancements which supplement and complement existing services. District formation and assessment proceedings may not be initiated under this Article to finance replacing or supplanting existing City services. Nothing herein shall be construed as prohibiting the establishment of districts to finance local capital improvements under any other ordinance or any other law of the State of California.

SECTION 3-9.02. EMERYVILLE PROCEDURAL AND SUBSTANTIVE AUGMENTATION OF STATE LAW REQUIREMENTS GOVERNING PROPERTY AND BUSINESS IMPROVEMENT DISTRICTS.

(a) In forming assessment districts that will fund improvements and services that confer special benefit on businesses, residential, commercial or residential and commercial property, the City Council may elect to use the procedures set forth in California Streets & Highways Code Sections 36600 et seq., or may elect to use those procedures as modified herein. The City Council shall be bound by, and comply with, the applicable state law governing the formation of property and business improvement and maintenance districts in all other respects not inconsistent with this Article when forming an assessment district to fund improvements and services that provide special benefits to businesses, commercial and/or residential property.

(b) Notwithstanding Streets & Highways Code Section 36621(a) or any other provision of state law, the City Council may initiate proceedings to establish a property and business improvement district by adoption of a resolution on its own motion at a regular or special meeting, or upon receipt of a petition signed by property owners, business owners, or a combination of property owners and business owners in the proposed district who will pay at least 30 percent of the

assessments proposed to be levied. The amount of assessment attributable to property and businesses owned by the same owner that is in excess of 40 percent of the amount of all assessments proposed to be levied, shall not be included in determining whether the petition is signed by the property owners, business owners, or combination of property owners and business owners, as the case may be, who will pay the requisite percentage of assessments. Where the City Council initiates proceedings pursuant to this subsection, the City Council shall conduct a protest ballot proceeding in accordance with Article XIII D of the California Constitution notwithstanding any language to the contrary in Streets & Highways Code Section 36623.

(c) Notwithstanding Streets & Highways Code Section 36622(h) or any other provision of state law, the City Council may form a district authorized to levy assessments for a maximum term of up to 15 years, except where a longer term is authorized by state law.

(d) Notwithstanding Streets & Highways Code Section 36632(c) or any other provision of state law, the City Council may establish an assessment district pursuant to this Article that encompasses, and levies assessments upon, and funds improvements and services that specially benefit, properties zoned for residential use.

(e) Notwithstanding Streets & Highways Code Section 36606 or any other provision of state law, activities that may benefit businesses or real property in a district include the provision of shuttle bus services.

(f) The City Council may authorize an assessment district formed pursuant to this Article to recover through assessments the costs incurred in forming the district, including:

- (1) The costs of preparation of the management plan and engineer's report required by state law;
- (2) The cost of circulating and submitting the petition to the City Council seeking establishment of the district;
- (3) The costs of printing, advertising and the giving of published, posted or mailed notices;
- (4) Compensation of any engineer or attorney employed to render services in proceedings under this Article or Streets & Highways Code Sections 36600 et seq.; and
- (5) Costs associated with any ballot proceedings required by law for approval of a new or increased assessment.

If the district will be authorized to recover these costs, the management plan required pursuant to Streets & Highways Code Section 36622 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.

(g) Notwithstanding Streets & Highways Code Section 36670 or any other provision of state law, the City Council may, by a supermajority vote of four or more members, notice a hearing and initiate proceedings to disestablish for any reason a district formed after the effective date of this section. Where the City Council seeks to disestablish a district in circumstances not authorized under Streets & Highways Code Section 36670, both the resolution of intention to disestablish the district and any final resolution to disestablish the district shall be subject to a supermajority vote of four or more members. This paragraph shall not be applicable where the district has outstanding bonded indebtedness.

SECTION 3-9.03. SEVERABILITY.

If any provision of this Article or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect any other provision or such other application of such provision which can be given effect without such provision or application, and to this end the provisions of this Article are declared to be severable.

SECTION TWO. CEQA DETERMINATION

The City Council finds, pursuant to Title 14 of the California Administrative Code, section 15061(b)(3) and section 15378(a), that this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project that has the potential for causing a significant effect on the environment. This action is further exempt from the definition of a Project in section 15378(b)(3) in that it concerns general policy and procedure making.

SECTION THREE. SEVERABILITY

Every section, paragraph, clause, and phrase of this Ordinance is hereby declared severable. If, for any reason, any section, paragraph, clause, or phrase is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining section, paragraphs, clauses, or phrases.

SECTION FOUR. EFFECTIVE DATE

This Ordinance shall take effect thirty (30) days following its posting or publication as required by law. The City Clerk is directed to cause copies of this Ordinance to be posted or published as required by Government Code section 33693.

SECTION FIVE. CODIFICATION

Section One of this Ordinance shall be codified in the Emeryville Municipal Code. Sections Two, Three, Four and Five shall not be so codified.

This Ordinance was introduced and first read by the City Council of the City of Emeryville at a regular meeting held on Tuesday, March 17, 2015, and **PASSED AND ADOPTED** by the City Council at a regular meeting held on Tuesday, April 7, 2015.

MAYOR

ATTEST:

APPROVED AS TO FORM:



CITY CLERK

CITY ATTORNEY