

**CITY OF CARMEL-BY-THE-SEA
CITY COUNCIL**

ORDINANCE NO. 2023-005

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA RENEWING THE CARMEL RESTAURANT IMPROVEMENT DISTRICT (CRID) FOR A TERM OF NINE (9) YEARS AND SIX (6) MONTHS, BEGINNING JANUARY 1, 2024 OR AS SOON AS POSSIBLE THEREAFTER, AND ENDING ON JUNE 30, 2033

WHEREAS, the City of Carmel-by-the-Sea created the Carmel Restaurant Improvement District (CRID) for a five (5) year term by Resolution No. 2018-107; and

WHEREAS, the initial five (5) year term of the CRID ends on December 31, 2023; and

WHEREAS, full service restaurant businesses who will pay more than fifty percent (50%) of the proposed assessment have petitioned the Council to renew the CRID; and

WHEREAS, included with the petitions was a Management District Plan (Plan) summary that describes the proposed assessment to be levied on full service restaurant businesses to pay for sales and marketing services, and other improvements and activities set forth in the Plan; and

WHEREAS, the assessed full service restaurant businesses within the CRID will receive a specific benefit from the activities and improvements set forth in the Plan; and

WHEREAS, on May 2, 2023, at 4:30 PM at the Council Chambers located at City Hall, east side of Monte Verde Street between Ocean and Seventh Avenues, the Council adopted a Resolution of Intention, Resolution No. 2023-050; and

WHEREAS, the public meeting and public hearing to consider the renewal of the CRID have been properly noticed in accordance with Streets and Highways Code §36623; and

WHEREAS, on June 6, 2023 at 4:30 PM at the at the Council Chambers located at City Hall, east side of Monte Verde Street between Ocean and Seventh Avenues, the Council will hold a public meeting regarding the renewal of the CRID, and subsequently held the first reading of this Ordinance to renew the CRID and continue the levy of assessments, and the Council will hear and receive objections and protests, if any, to the renewal of the CRID and the levy of the proposed assessment; and

WHEREAS, it is scheduled that on July 11, 2023 at 4:30 PM at the Council Chambers located at City Hall, east side of Monte Verde Street between Ocean and Seventh Avenues, the Council will hold a public hearing to renew the CRID and continue the levy of assessments, and the Council will hear and receive all objections and protests, if any, to the renewal of the CRID and the levy of the proposed assessment; and

WHEREAS, it is scheduled that on July 11, 2023, following the receipt of all objections and protests and the adoption of the Resolution of Formation, Resolution No. 2023-050 a second reading of this Ordinance to renew the CRID and to continue the levy of assessments will be heard. At the conclusion of the second reading of the Ordinance, the Council may adopt the Ordinance, renewing the CRID and levying the assessment; and

WHEREAS, it is scheduled that the City Clerk will confirm by July 11, 2023, that there was no majority protest. A majority protest is defined as written protests received from owners of full service restaurant businesses in the renewed CRID which would pay fifty percent (50%) or more of the assessments proposed to be levied. Protests are weighted based on the assessment proposed

to be levied on each assessed full service restaurant business; and

WHEREAS, pursuant to the Taxpayer Protection and Government Accountability Act (TPGAA), an initiative certified eligible for qualification for the November 5, 2024, general election ballot, the proposed assessment is an exempt charge as the CRID is a restaurant improvement district formed under the provisions of the Property and Business Improvement District Law of 1994, as set forth in the Streets and Highways Code §36600, et seq.; and

WHEREAS, the amount of the proposed assessment for the entire CRID in each full fiscal year (July 1 – June 30) will total approximately \$240,000. The initial “year” of operations will be a partial year consisting of six (6) months, with an anticipated assessment budget of \$96,000. Pursuant to the TPGAA, the City has found the proposed assessment amount is reasonable given the scope of services to be provided and shall not exceed the actual cost of providing the CRID services to the payors; and

WHEREAS, adoption of this Ordinance does not diminish the legal effect of the adoption of the Resolution of Formation.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Findings. The City Council of the City of Carmel-by-the-Sea does hereby find that the above referenced recitals are true and correct and material to the adoption of this Ordinance; and

Section 2. Codification. This Ordinance shall not be codified in the Carmel-by-the-Sea Municipal Code.

Section 3. Enacted. **All provisions of the Carmel Restaurant Improvement District (“CRID”) are made effective through this Ordinance as follows:**

3.1 Renewed. The City hereby renews the CRID for a nine (9) year and six (6) months life, beginning January 1, 2024 or as soon as possible thereafter, and ending on June 30, 2033, under the provisions of the Property and Business Improvement District Law of 1994, as set forth in the Streets and Highways Code of the state, Section 36600 et seq.

3.2 Management District Plan. The Management District Plan (Plan) dated July 11, 2023 is hereby adopted and approved.

3.3 Activities and Improvements. The activities to be provided to benefit full service restaurant businesses in the CRID will be funded by the levy of the assessment. The revenue from the assessment levy shall not be used: to provide activities that directly benefit businesses outside the CRID; to provide activities or improvements outside the CRID; or for any purpose other than the purposes specified in this Ordinance, the Resolution of Intention, the Resolution of Formation, and the Plan. Notwithstanding the foregoing, improvements and activities that must be provided outside the CRID boundaries to create a specific benefit to the assessed full service restaurant businesses may be provided, but shall be limited to marketing or signage pointing to the CRID.

The Council finds as follows:

- A. The activities funded by the assessment will provide a specific benefit to assessed full service restaurant businesses within the CRID that is not provided to those not paying the assessment.
- B. The assessment is a charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed

the reasonable costs to the local government of conferring the benefit or granting the privilege.

- C. The assessment is a charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.
- D. Assessments imposed pursuant to the CRID are levied solely upon the assessed full service restaurant business, and the full service restaurant business owner is solely responsible for payment of the assessment when due. The amount of assessment, if passed on to each customer, shall be disclosed in advance and separately stated from the amount of consideration charged and any other applicable taxes, and each customer shall receive a receipt for payment from the business.
- E. The assessments levied for the CRID shall be applied toward sales and marketing services, and other improvements and activities as set forth in the Plan.
- F. Assessments levied on full service restaurant businesses pursuant to this Ordinance shall be levied on the basis of benefit. Because the services provided are intended to increase restaurant food and drink sales, an assessment based on gross food and drink sales revenue is the best measure of benefit.

3.4 Budget. The assessments for the entire CRID in each full fiscal year (July 1 – June 30) of operations will total approximately \$240,000. The initial “year” of operations will be a partial year consisting of six (6) months, with an anticipated assessment budget of \$96,000.

3.5 Bonds. Bonds shall not be issued to fund the CRID.

3.6 Boundaries. The renewed CRID includes all full service restaurant businesses, existing and in the future, located within the City boundaries of the City of Carmel-by-the-Sea as described in the Plan.

3.7 Assessments.

- A. The annual assessment rate is one quarter of one percent (0.25%) of gross food and drink sales revenue. During the CRID’s term, the assessment rate may be increased by the CRID Management Committee to a maximum rate of one percent (1%) of gross food and drink sales revenue for assessed full service restaurant businesses. The maximum increase or decrease in any year shall be one quarter of one percent (0.25%). If the assessment rate is increased, it may subsequently be decreased but shall not be decreased below a minimum of one quarter of one percent (0.25%) of gross food and drink sales revenue.
- B. The assessments shall be used for the purposes set forth herein and any funds remaining at the end of any year may be used in subsequent years in which the CRID assessment is levied as long as they are used consistent with the requirements set forth herein.

3.8 Collections. The City will be responsible for collecting the assessment on a quarterly basis (including any delinquencies, penalties and interest) from each assessed full service restaurant business located in the boundaries of the CRID. The City shall take all reasonable efforts to collect the assessments from each assessed full service restaurant business.

3.9 Owners’ Association. The Council through adoption of this Ordinance and the Plan, has the right pursuant to Streets and Highways Code §36651, to identify the body that shall implement the proposed program, which shall be the Owners’ Association of the CRID as defined in Streets and Highways Code §36612. The City Council has determined that Visit Carmel will continue to serve as the Owners’ Association for the CRID. The CRID Management Committee, comprised of a minimum of three (3) business owners, or their representatives, paying the CRID assessment, will continue to be responsible for implementing the Plan. Passage of this Ordinance authorizes the

Council to contract with Visit Carmel to administer the CRID.

3.10 Annual Report. Visit Carmel, pursuant to Streets and Highways Code §36650, shall cause to be prepared a report for each fiscal year, except the first year, for which assessments are to be levied and collected to pay the costs of the improvement and activities described in the report. The first report shall be due after the first year of operation of the CRID.

3.11 Amendments to Enabling Legislation. The CRID renewed pursuant to this Ordinance shall be subject to any amendments to the Property and Business Improvement District Law of 1994 (California Streets and Highways Code §36600 et. seq.).

Section 4. Severability. If any section, subsection, phrase, or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

The City Council hereby declares that it would have passed this Ordinance and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrases, or clauses be declared unconstitutional.

Section 5. Publication. The City Clerk shall publish or post this ordinance in the manner required by law.

Section 6. Effective Date. This Ordinance of the City of Carmel-by-the-Sea shall be effective thirty (30) days after its passage.

INTRODUCED at a Regular meeting of the City Council of the City of Carmel-by-the-Sea on the 6th day of June, 2023.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA this _____ day of _____, 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVE:

ATTEST:

Dave Potter, Mayor

Nova Romero, MMC, City Clerk