

# Management District Plan

## TriValley Tourism Marketing District



*December 15, 2014*



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Prepared by  
Civitas



(800)999-7781  
[www.civitasadvisors.com](http://www.civitasadvisors.com)  
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## 1. OVERVIEW

Developed by Visit TriValley (VTV), the TriValley Tourism Marketing District (TVTMD) is an assessment district proposed to provide specific benefits to payors, by funding marketing and sales promotion efforts for assessed businesses. The TVTMD was formed in 2005 as the Tri-Valley TBID for a five-year term and renewed in 2010 for a five-year term; lodging businesses now wish to renew it for an additional seven years.

**Location:** The proposed TVTMD includes all lodging businesses located within the boundaries of the town of Danville, the cities of Dublin, Livermore, and Pleasanton and those portions of the unincorporated areas of Contra Costa and Alameda Counties shown on the map below, which include the communities of Alamo, Blackhawk, and Sunol, the portion of the counties that lies between the cities of Pleasanton and Livermore, and that portion of Alameda County which lies southeast of Interstate 580 as shown on the map in Section IV.

**Services:** The TVTMD is designed to provide specific benefits directly to payors by increasing room night sales. Marketing and sales promotions will increase overnight tourism and market payors as tourist, meeting and event venues, thereby increasing room night sales.

**Budget:** The total TVTMD annual budget for the initial year of its seven (7) year operation is anticipated to be approximately \$1,822,000. This budget is expected to fluctuate as room sales do.

**Cost:** The annual assessment rate is \$2.00 per paid occupied room per night. Based on the benefit received, assessments will not be collected on stays of more than thirty (30) consecutive days, nor on stays by any Federal or State of California officer or employee when on official business who makes a claim that they are exempt, nor on stays by any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty. The annual assessment rate may be subject to an increase each year starting in the third year, the amount of which shall be determined by the VTV Board. The annual assessment rate shall not exceed \$3.00 per paid occupied room per night.

**Collection:** Each City and County will be responsible for collecting the assessment on a quarterly basis (including any delinquencies, penalties and interest) from each lodging business located in their respective jurisdictions. Each City and County shall take all reasonable efforts to collect the assessments from each lodging business. On a quarterly basis, each City and County shall forward the assessment collected to the City of Pleasanton which shall forward the assessments collected to the Owners' Association.

**Duration:** The renewed TVTMD will have a seven (7)-year life. The TVTMD assessment will be implemented beginning July 1, 2015 through June 30, 2022. Once per year, beginning on the anniversary of district renewal, there is a 30-day period in which owners paying more than fifty percent (50%) of the assessment may protest and initiate a Pleasanton City Council hearing on district termination.

**Management:** The Tri-Valley Convention and Visitors Bureau (also known as Visit TriValley) will serve as the TVTMD's Owners' Association. The Owners' Association is charged with managing funds and implementing programs in accordance with this Plan, and must provide annual reports to the Pleasanton City Council.

## 11. IMPETUS

There are several reasons why now is the right time to renew a TMD in TriValley; the most compelling reasons are as follows:

### 1. *The Need to Increase Occupancy*

The renewal of the TVTMD is a proactive effort to secure funding for tourism marketing. The funding will ensure that adequate financing exists for the investment required to increase occupancy in the lodging industry and be competitive in the tourism market. The investment will cover an expanded marketing and promotional budget needed to reach this market segment.

### 2. *An Opportunity for Increasing City Tax Revenues*

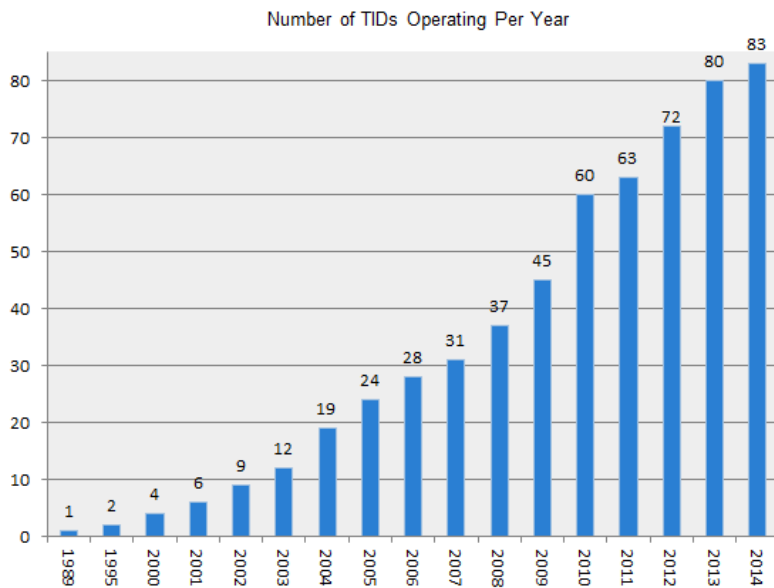
As occupancy rates increase, so too will the cities' TOT revenue. With stable public/private funding for tourism marketing efforts, annual occupancy rates should increase as new marketing and sales promotion programs are implemented. Greater occupancy will also produce an increase in sales tax revenues from tourist spending. This represents a substantial return to the cities. The renewal of the TVTMD in partnership with the VTV creates a stable funding source tied directly to tourism promotion.

### 3. *Stable Funding for Tourism Promotion*

The TVTMD will provide a stable source of funding for consistent tourism promotion efforts. The TVTMD will provide funding for tourism promotion free of the political and economic circumstances that can reduce or eliminate government funding for tourism promotion.

### III. BACKGROUND

TMDs are an evolution of the traditional Business Improvement District. The first TMD was formed in West Hollywood, California in 1989. Since then, more than eighty California destinations have followed suit. In recent years, other states have begun adopting the California model – Washington, Montana, and Texas have adopted TMD laws. Several other states are in the process of adopting their own legislation. And, some cities, like Portland, Oregon, have utilized their charter powers to create TMDs without a state law.



California's TMDs collectively raise more than \$150 million for local destination marketing. With competitors raising their budgets, and increasing rivalry for visitor dollars, it is important that the TriValley lodging businesses invest in stable, lodging-specific marketing programs.

TMDs utilize the efficiencies of private sector operation in the market-based promotion of tourism districts. TMDs allow

lodging business owners to organize their efforts to increase room night sales. Lodging business owners within the TMD pay an assessment and those funds are used to provide services that increase room night sales.

In California, TMDs are formed pursuant to the Property and Business Improvement District Law of 1994. This law allows for the creation of a benefit assessment district to raise funds within a specific geographic area. *The key difference between TMDs and other benefit assessment districts is that funds raised are returned to the private non-profit corporation governing the district.*

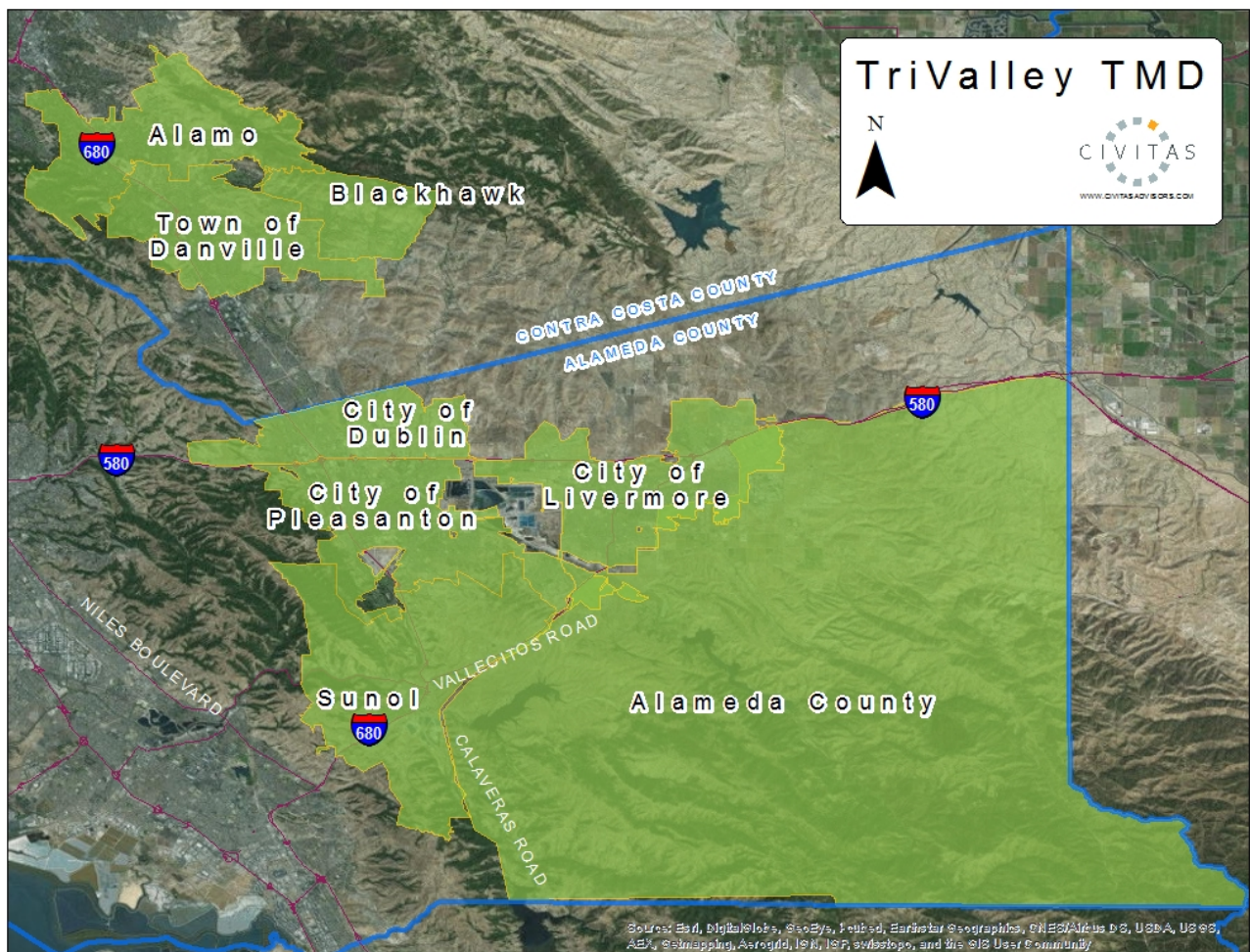
There are many benefits to TMDs:

- Funds must be spent on services and improvements that provide a specific benefit only to those who pay;
- Funds cannot be diverted to general government programs;
- They are customized to fit the needs of payors in each destination;
- They allow for a wide range of services;
- They are *designed, created and governed by those who will pay* the assessment; and
- They provide a stable, long-term funding source for tourism promotion.

## IV. BOUNDARY

The TVTMD will include all lodging businesses, existing and in the future, available for public occupancy within the boundaries of the town of Danville, the cities of Dublin, Livermore, and Pleasanton and those portions of the unincorporated areas of Contra Costa and Alameda Counties which include the communities of Alamo, Blackhawk, and Sunol, the portion of the counties that lies between the cities of Pleasanton and Livermore, and that portion of Alameda County which lies southeast of Interstate 580 as shown on the map below.

The boundary, as shown in the map below, currently includes 36 lodging businesses. A complete listing of lodging businesses within the proposed TVTMD can be found in Appendix 2.



## V. BUDGET AND SERVICES

### A. Annual Service Plan

Assessment funds will be spent to provide specific benefits conferred, or privileges granted directly to, the payors that are not provided to those not charged, and which do not exceed the reasonable cost to the City of conferring the benefits or granting the privileges. The privileges and services provided with the TVTMD funds are sales, marketing, advertising, and promotional programs available only to assessed businesses. Administration costs that support the provision of the services are also allowed.

A service plan budget has been developed to deliver services that benefit businesses throughout the District. A detailed annual budget will be developed and approved by the Owners' Association. The table below illustrates the initial annual budget allocations.

Category	Percent of Budget	Dollar Amount
<b>Marketing</b>	50%	\$911,000
<b>Sales</b>	25%	\$455,500
<b>Administration</b>	18%	\$327,960
<b>City Collection Costs</b>	2%	\$36,440
<b>Contingency/Renewal</b>	5%	\$91,100
<b>Total Annual Budget</b>	<b>100%</b>	<b>\$1,822,000</b>

Although actual revenues will fluctuate due to market conditions, the proportional allocations of the budget shall remain the same. However, the VTV board shall have the authority to adjust budget allocations between the categories by no more than fifteen percent (15%) of the total budget per year. For instance, the sales item could be reduced by 15% of the total budget (from a 25% allocation to a 10% allocation) and the marketing item could be increased by 15% of the total budget (from a 50% allocation to a 65% allocation); no other changes could be made because this is a 15% adjustment. A description of the proposed improvements and activities for the initial year of operation is below. The same activities are proposed for subsequent years. In the event of a legal challenge against the TVTMD, any and all assessment funds may be used for the costs of defending the TVTMD.

#### *Marketing*

The marketing program will be designed to raise awareness of assessed lodging businesses as overnight venues, using both digital and traditional channels. Marketing programs may include:

- Generating media coverage for assessed businesses by hosting journalists, pitching media stories, and writing press releases
- Partnerships with national and international travel organizations to benefit assessed businesses
- Participating in press trips with partners, including Visit California and SF Travel, to increase coverage of assessed businesses as overnight venues
- Developing and expanding social media promotions for assessed businesses, including Facebook, Twitter, Instagram, and Pinterest
- Creating cooperative marketing opportunities for assessed lodging businesses

- Advertising to drive room night sales at assessed businesses, including print, billboard, television and Internet
- Digital media campaigns to drive room night sales at assessed businesses
- Producing written and online collateral to promote assessed businesses to visitors

### *Sales*

The sales program will focus on activities that drive weekend traffic, including efforts that draw group business. The sales programs may include:

- Sport and similar competition attraction to generate room night sales at assessed businesses
- Bridal and wedding event attraction to generate room night sales at assessed businesses
- Regional, national, and international tourism development to generate room night sales at assessed businesses
- Sales missions and trade shows to attract overnight visitors
- Host familiarization tours for potential clients of assessed businesses

### *Administration and Operations*

The administrative and operations portion of the budget shall be utilized for administrative staffing costs, office costs, rent, and other general administrative costs such as insurance, legal, and accounting fees.

### *City Administration Fees*

The cities of Danville, Dublin, and Livermore and the Counties of Alameda and Contra Costa shall each be paid a fee equal to 1% of the amount of assessment collected within their jurisdiction to cover their costs of collection and administration. The City of Pleasanton shall be paid a fee equal to 1% of the amount of assessment collected in within its jurisdiction, plus 1% of the total assessment collected from all jurisdictions, to cover its costs of collection and administration.

### *Contingency/Renewal*

A prudent portion of the budget will be set aside in a contingency fund, to be used for unforeseeable costs in carrying out the sales and marketing programs. The reserved amount each year shall be up to five percent (5%) of the annual budget, at the discretion of the Board. If near the expiration of the district there are contingency funds remaining, and business owners wish to renew the district, the remaining contingency funds may be used for renewal costs. Unless they are needed for programs, at the discretion of the Board, contingency funds will be banked until such time as the total fund reaches an amount equal to six months of operating expenses, which amount will be determined by the VTV Board. After that balance has been achieved, contingency funds may be re-allocated to sales and marketing programming.

### *B. Determination of Specific Benefit*

State law requires that assessment funds be expended on specific benefits conferred directly to the payors that are not provided to those not charged, and which do not exceed the reasonable cost to the City of conferring the benefits. The services in this Management District Plan are designed to provide targeted benefits directly to assessed lodging businesses. These services are tailored not to serve the general public, but rather to serve the specific lodging businesses within the District, e.g., the proposed activities are specifically targeted to increase room night sales for assessed lodging businesses within the boundaries of the District, and are narrowly tailored. TVTMD funds will be used exclusively to provide the specific benefit of increased room night sales directly to the

assesseees. For example, non-assessed businesses will not receive room night sales leads from the TVTMD programs. The activities paid for from assessment revenues are business services constituting and providing specific benefits to the assessed businesses.

Further, the assessment may be utilized to provide specific government services directly to the payors that are not provided to those not charged, and which do not exceed the reasonable costs to the City of providing the services. The legislature has recognized that marketing and promotions services like those to be provided by the TVTMD are, in the context of assessment districts, government services. Further, the amount of the assessment is no more than necessary to cover the reasonable costs of the proposed activities, and the manner in which the costs are allocated to a business owner bear a fair share or reasonable relationship to the businesses' benefits received from the proposed activities.

District services will be implemented carefully to ensure they do not exceed the reasonable cost of such services. Funds will be managed by the Owners' Association, and reports submitted on an annual basis to the City. Only assessed businesses will receive room night sales leads generated from district-funded activities, receive room night sales from advertising campaigns, and directly receive the specific benefit of room night sales from other district-funded services. Non-assessed businesses will not directly receive these, nor any other, district-funded services and benefits. The legislature has recognized that tourism district assessments are not taxes "merely because they might generate indirect, secondary benefits for nonpayers, provided that those indirect, secondary benefits occur incidentally and without cost to the payors of the assessment."

### **C. Assessment**

The annual assessment rate is \$2.00 per paid occupied room per night. Based on the benefit received, assessments will not be collected on stays of more than thirty (30) consecutive days, nor on stays by any Federal or State of California officer or employee when on official business who makes a claim that they are exempt, nor on stays by any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty.

The annual assessment rate may be subject to an increase each year starting in the third year, the amount of which shall be determined by the VTV Board. The annual assessment rate shall not exceed \$3.00 per paid occupied room per night. For instance, the rate could be increased \$0.10 (to \$2.10) in year three, \$0.80 (to \$2.90) in year four, and \$0.10 (to \$3.00) in year five; thereafter it could not be increased further. Any increase in the assessment rate must be approved by the Visit TriValley Board of Directors, including a majority of the hotels then on the Board, and included in the annual report.

The amount of assessment, if passed on to each transient, shall be disclosed in advance and separately stated from the amount of rent charged and any other applicable taxes, and each transient shall receive a receipt for payment from the business. The assessment shall be disclosed as the "TVTMD Assessment." The assessment shall not be considered revenue for any purposes, including calculation of transient occupancy taxes.

Bonds may not be issued.

#### **D. Penalties and Interest**

1. Any business which fails to pay any assessment within the time required shall pay a penalty of ten percent (10%) of the amount of the assessment in addition to the amount of the assessment.
2. Any business which fails to remit any delinquent assessment on or before a period of 30 days following the date on which the assessment first became delinquent shall pay a second delinquency penalty of ten percent (10%) of the amount of the assessment in addition to the amount of the assessment and the ten percent (10%) penalty first imposed.
3. If it is determined that the nonpayment of any assessment is due to fraud, a penalty of twenty-five percent (25%) of the amount of the assessment shall be added thereto in addition to the penalties stated above.
4. In addition to the penalties imposed, any business which fails to remit any assessment shall pay interest at the rate of one-half of one percent (0.5%) per month or fraction thereof on the amount of the assessment, exclusive of penalties, from the date on which the assessment first became delinquent until paid.
5. Every penalty imposed and such interest as accrues shall become a part of the assessment required to be paid.

#### **E. Time and Manner for Collecting Assessments**

The TVTMD assessment will be implemented beginning July 1, 2015 and will continue for seven (7) years through June 30, 2022. Each City and County will be responsible for collecting the assessment on a quarterly basis (including any delinquencies, penalties and interest) from each lodging business located in the boundaries of the TVTMD. Each City and County shall take all reasonable efforts to collect the assessments from each lodging business. On a quarterly basis, each City and County shall forward the assessment collected to the City of Pleasanton. The City of Pleasanton shall forward the assessments collected to the Owners' Association.

#### **F. Annual Budget**

The total seven year improvement and service plan budget is projected at approximately \$1,822,000 annually, or \$12,754,000 through 2022. This amount may fluctuate as sales and revenue increase at assessed businesses, or if the assessment rate is increased.

## VI. GOVERNANCE

### A. Owners' Association

The Pleasanton City Council, through adoption of this Management District 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 TVTMD as defined in Streets and Highways Code §36614.5. The City Council has determined that the Tri-Valley Convention and Visitors Bureau (also known as Visit TriValley) will serve as the Owner's Association for the TVTMD.

More than one-half of the members of the Visit TriValley Board of Directors shall be representatives of assessed lodging businesses.

### B. Brown Act and California Public Records Act Compliance

An Owners' Association is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose. The Owners' Association is, however, subject to government regulations relating to transparency, namely the Ralph M. Brown Act and the California Public Records Act. These regulations are designed to promote public accountability. The Owners' Association is considered a legislative body under the Ralph M. Brown Act (Government Code §54950 et seq.). Thus, meetings of the VTV board and certain committees must be held in compliance with the public notice and other requirements of the Brown Act. The Owner's Association is also subject to the record keeping and disclosure requirements of the California Public Records Act. Accordingly, the Owner's Association shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

### C. Annual Report

VTV shall present an annual report at the end of each year of operation to the Pleasanton City Council pursuant to Streets and Highways Code §36650 (see Appendix 1). The annual report will include:

- Any proposed changes in the boundaries of the tourism improvement district or in any benefit zones or classification of businesses within the district.
- The improvements and activities to be provided for that fiscal year.
- An estimate of the cost of providing the improvements and the activities for that fiscal year.
- The method and basis of levying the assessment in sufficient detail to allow each business owner to estimate the amount of the assessment to be levied against his or her business for that fiscal year.
- The amount of any surplus or deficit revenues to be carried over from a previous fiscal year.
- The amount of any contributions to be made from sources other than assessments levied.

## APPENDIX 1 – LAW

### Property And Business Improvement District Law of 1994

*Cal Sts & Hy Code § 36600 (2013)*

\*\*\* This document is current through the 2014 Supplement \*\*\*  
(All 2013 legislation)

#### **§ 36600. Citation of part**

This part shall be known and may be cited as the "Property and Business Improvement District Law of 1994."

#### **§ 36601. Legislative findings and declarations**

The Legislature finds and declares all of the following:

(a) Businesses located and operating within the business districts of this state's communities are economically disadvantaged, are underutilized, and are unable to attract customers due to inadequate facilities, services, and activities in the business districts.

(b) It is in the public interest to promote the economic revitalization and physical maintenance of the business districts of its cities in order to create jobs, attract new businesses, and prevent the erosion of the business districts.

(c) It is of particular local benefit to allow cities to fund business related improvements, maintenance, and activities through the levy of assessments upon the businesses or real property that benefits from those improvements.

(d) Assessments levied for the purpose of providing improvements and promoting activities that benefit real property or businesses are not taxes for the general benefit of a city, but are assessments for the improvements and activities which confer special benefits upon the real property or businesses for which the improvements and activities are provided.

#### **§ 36602. Purpose of part**

The purpose of this part is to supplement previously enacted provisions of law that authorize cities to levy assessments within a business improvement area. This part does not affect or limit any other provisions of law authorizing or providing for the furnishing of improvements or activities or the raising of revenue for these purposes.

#### **§ 36603. Preemption of authority or charter city to adopt ordinances levying assessments**

Nothing in this part is intended to preempt the authority of a charter city to adopt ordinances providing for a different method of levying assessments for similar or additional purposes from those set forth in this part. A property and business improvement district created pursuant to this part is expressly exempt from the provisions of the Special Assessment Investigation, Limitation and Majority Protest Act of 1931 (Division 4 (commencing with Section 2800)).

#### **§ 36603.5. Part prevails over conflicting provisions**

Any provision in this part that conflicts with any other provision of law shall prevail over the other provision of law.

#### **§ 36604. Severability**

This part is intended to be construed liberally and, if any provision is held invalid, the remaining provisions shall remain in full force and effect. Assessments levied under this part are not special taxes.

#### **§ 36605. [Section repealed 2001.]**

#### **§ 36606. "Assessment"**

"Assessment" means a levy for the purpose of acquiring, constructing, installing, or maintaining improvements and promoting activities which will benefit the properties or businesses located within a property and business improvement district.

#### **§ 36607. "Business"**

"Business" means all types of businesses and includes financial institutions and professions.

#### **§ 36608. "City"**

"City" means a city, county, city and county, or an agency or entity created pursuant to Article 1 (commencing with *Section 6500*) of *Chapter 5 of Division 7 of Title 1 of the Government Code*, the public member agencies of which includes only cities, counties, or a city and county, or the State of California.

#### **§ 36609. "City council"**

"City council" means the city council of a city or the board of supervisors of a county, or the agency, commission, or board created pursuant to a joint powers agreement and which is a city within the meaning of this part.

#### **§ 36610. "Improvement"**

"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:

- (a) Parking facilities.
- (b) Benches, booths, kiosks, display cases, pedestrian shelters and signs.
- (c) Trash receptacles and public restrooms.
- (d) Lighting and heating facilities.
- (e) Decorations.
- (f) Parks.
- (g) Fountains.
- (h) Planting areas.
- (i) Closing, opening, widening, or narrowing of existing streets.
- (j) Facilities or equipment, or both, to enhance security of persons and property within the area.
- (k) Ramps, sidewalks, plazas, and pedestrian malls.
- (l) Rehabilitation or removal of existing structures.

**§ 36611. "Property and business improvement district"; "District"**

"Property and business improvement district," or "district," means a property and business improvement district established pursuant to this part.

**§ 36612. "Property"**

"Property" means real property situated within a district.

**§ 36613. "Activities"**

"Activities" means, but is not limited to, all of the following:

- (a) Promotion of public events which benefit businesses or real property in the district.
- (b) Furnishing of music in any public place within the district.
- (c) Promotion of tourism within the district.
- (d) Marketing and economic development, including retail retention and recruitment.
- (e) Providing security, sanitation, graffiti removal, street and sidewalk cleaning, and other municipal services supplemental to those normally provided by the municipality.
- (f) Activities which benefit businesses and real property located in the district.

**§ 36614. "Management district plan"; "Plan"**

"Management district plan" or "plan" means a proposal as defined in Section 36622.

**§ 36614.5. "Owners' association"**

"Owners' association" means a private nonprofit entity that is under contract with a city to administer or implement activities and improvements specified in the management district plan. An owners' association may be an existing nonprofit entity or a newly formed nonprofit entity. An owners' association is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose. Notwithstanding this section, an owners' association shall comply with the Ralph M. Brown Act (Chapter 9 (commencing with *Section 54950*) of *Part 1 of Division 2 of Title 5 of the Government Code*), at all times when matters within the subject matter of the district are heard, discussed, or deliberated, and with the California Public Records Act (Chapter 3.5 (commencing with *Section 6250*) of *Division 7 of Title 1 of the Government Code*), for all documents relating to activities of the district.

**§ 36615. "Property owner"; "Business owner"; "Owner"**

"Property owner" means any person shown as the owner of land on the last equalized assessment roll or otherwise known to be the owner of land by the city council. "Business owner" means any person recognized by the city as the owner of the business. "Owner" means either a business owner or a property owner. The city council has no obligation to obtain other information as to the ownership of land or businesses, and its determination of ownership shall be final and conclusive for the purposes of this part. Wherever this part requires the signature of the property owner, the signature of the authorized agent of the property owner shall be sufficient. Wherever this part requires the signature of the business owner, the signature of the authorized agent of the business owner shall be sufficient.

## **§ 36616. "Tenant"**

"Tenant" means an occupant pursuant to a lease of commercial space or a dwelling unit, other than an owner.

## **§ 36617. Alternate method of financing certain improvements and activities; Effect on other provisions**

This part provides an alternative method of financing certain improvements and activities. The provisions of this part shall not affect or limit any other provisions of law authorizing or providing for the furnishing of improvements or activities or the raising of revenue for these purposes. Every improvement area established pursuant to the Parking and Business Improvement Area Law of 1989 (Part 6 (commencing with Section 36500) of this division) is valid and effective and is unaffected by this part.

## **§ 36620. Establishment of property and business improvement district**

A property and business improvement district may be established as provided in this chapter.

### **§ 36620.5. Requirement of consent of city council**

A county may not form a district within the territorial jurisdiction of a city without the consent of the city council of that city. A city may not form a district within the unincorporated territory of a county without the consent of the board of supervisors of that county. A city may not form a district within the territorial jurisdiction of another city without the consent of the city council of the other city.

## **§ 36621. Initiation of proceedings; Petition of property or business owners in proposed district**

(a) Upon the submission of a written petition, signed by the property or business owners in the proposed district who will pay more than 50 percent of the assessments proposed to be levied, the city council may initiate proceedings to form a district by the adoption of a resolution expressing its intention to form a district. The amount of assessment attributable to property or a business owned by the same property or business 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 property or business owners who will pay more than 50 percent of the total amount of assessments proposed to be levied.

(b) The petition of property or business owners required under subdivision (a) shall include a summary of the management district plan. That summary shall include all of the following:

- (1) A map showing the boundaries of the district.
- (2) Information specifying where the complete management district plan can be obtained.
- (3) Information specifying that the complete management district plan shall be furnished upon request.
- (c) The resolution of intention described in subdivision (a) shall contain all of the following:

(1) A brief description of the proposed activities and improvements, the amount of the proposed assessment, a statement as to whether the assessment will be levied on property or businesses within the district, a statement as to whether bonds will be issued, and a description of the exterior boundaries of the proposed district. The descriptions and statements do not need to be detailed and shall be sufficient if they enable an owner to generally identify the nature and extent of the improvements and activities and the location and extent of the proposed district.

(2) A time and place for a public hearing on the establishment of the property and business improvement district and the levy of assessments, which shall be consistent with the requirements of Section 36623.

## **§ 36622. Contents of management district plan**

The management district plan shall contain all of the following:

- (a) If the assessment will be levied on property, a map of the district in sufficient detail to locate each parcel of

property and, if businesses are to be assessed, each business within the district. If the assessment will be levied on businesses, a map that identifies the district boundaries in sufficient detail to allow a business owner to reasonably determine whether a business is located within the district boundaries. If the assessment will be levied on property and businesses, a map of the district in sufficient detail to locate each parcel of property and to allow a business owner to reasonably determine whether a business is located within the district boundaries.

(b) The name of the proposed district.

(c) A description of the boundaries of the district, including the boundaries of benefit zones, proposed for establishment or extension in a manner sufficient to identify the affected lands and businesses included. The boundaries of a proposed property assessment district shall not overlap with the boundaries of another existing property assessment district created pursuant to this part. This part does not prohibit 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 (Part 6 (commencing with Section 36500)). This part does not prohibit the boundaries of a business assessment district created pursuant to this part to overlap with another business assessment district created pursuant to this part. This part does not prohibit the boundaries of a business assessment district created pursuant to this part to overlap with a property assessment district created pursuant to this part.

(d) The improvements and activities proposed for each year of operation of the district and the maximum cost thereof. If the improvements and activities proposed for each year of operation are the same, a description of the first year's proposed improvements and activities and a statement that the same improvements and activities are proposed for subsequent years shall satisfy the requirements of this subdivision.

(e) The total annual amount proposed to be expended for improvements, maintenance and operations, and debt service in each year of operation of the district. If the assessment is levied on businesses, this amount may be estimated based upon the assessment rate. If the total annual amount proposed to be expended in each year of operation of the district is not significantly different, the amount proposed to be expended in the initial year and a statement that a similar amount applies to subsequent years shall satisfy the requirements of this subdivision.

(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 or business owner to calculate the amount of the assessment to be levied against his or her property or business. The plan also shall state whether bonds will be issued to finance improvements.

(g) The time and manner of collecting the assessments.

(h) The specific number of years in which assessments will be levied. In a new district, the maximum number of years shall be five. Upon renewal, a district shall have a term not to exceed 10 years. Notwithstanding these limitations, a district created pursuant to this part to finance capital improvements with bonds may levy assessments until the maximum maturity of the bonds. The management district plan may set forth specific increases in assessments for each year of operation of the district.

(i) The proposed time for implementation and completion of the management district plan.

(j) Any proposed rules and regulations to be applicable to the district.

(k) A list of the properties or businesses to be assessed, including the assessor's parcel numbers for properties to be assessed, and a statement of the method or methods by which the expenses of a district will be imposed upon benefited real property or businesses, in proportion to the benefit received by the property or business, to defray the cost thereof, including operation and maintenance.

(l) Any other item or matter required to be incorporated therein by the city council.

### **B 36623. Procedure to levy assessment**

(a) If a city council proposes to levy a new or increased property assessment, the notice and protest and hearing procedure shall comply with *Section 53753 of the Government Code*.

(b) If a city council proposes to levy a new or increased business assessment, the notice and protest and hearing procedure shall comply with *Section 54954.6 of the Government Code*, except that notice shall be mailed to the owners of the businesses proposed to be assessed. A protest may be made orally or in writing by any interested

person. Every written protest shall be filed with the clerk at or before the time fixed for the public hearing. The city council may waive any irregularity in the form or content of any written protest. A written protest may be withdrawn in writing at any time before the conclusion of the public hearing. Each written protest shall contain a description of the business in which the person subscribing the protest is interested sufficient to identify the business and, if a person subscribing is not shown on the official records of the city as the owner of the business, the protest shall contain or be accompanied by written evidence that the person subscribing is the owner of the business or the authorized representative. A written protest that does not comply with this section shall not be counted in determining a majority protest. If written protests are received from the owners or authorized representatives of businesses in the proposed district that will pay 50 percent or more of the assessments proposed to be levied and protests are not withdrawn so as to reduce the protests to less than 50 percent, no further proceedings to levy the proposed assessment against such businesses, as contained in the resolution of intention, shall be taken for a period of one year from the date of the finding of a majority protest by the city council.

(c) If a city council proposes to conduct a single proceeding to levy both a new or increased property assessment and a new or increased business assessment, the notice and protest and hearing procedure for the property assessment shall comply with subdivision (a), and the notice and protest and hearing procedure for the business assessment shall comply with subdivision (b). If a majority protest is received from either the property or business owners, that respective portion of the assessment shall not be levied. The remaining portion of the assessment may be levied unless the improvement or other special benefit was proposed to be funded by assessing both property and business owners.

### **§ 36624. Changes to proposed assessments**

At the conclusion of the public hearing to establish the district, the city council may adopt, revise, change, reduce, or modify the proposed assessment or the type or types of improvements and activities to be funded with the revenues from the assessments. Proposed assessments may only be revised by reducing any or all of them. At the public hearing, the city council may only make changes in, to, or from the boundaries of the proposed property and business improvement district that will exclude territory that will not benefit from the proposed improvements or activities. Any modifications, revisions, reductions, or changes to the proposed assessment district shall be reflected in the notice and map recorded pursuant to Section 36627.

### **§ 36625. Resolution of formation**

(a) If the city council, following the public hearing, decides to establish the proposed property and business improvement district, the city council shall adopt a resolution of formation that shall contain all of the following:

(1) A brief description of the proposed activities and improvements, the amount of the proposed assessment, a statement as to whether the assessment will be levied on property, businesses, or both within the district, a statement about whether bonds will be issued, and a description of the exterior boundaries of the proposed district. The descriptions and statements do not need to be detailed and shall be sufficient if they enable an owner to generally identify the nature and extent of the improvements and activities and the location and extent of the proposed district.

(2) The number, date of adoption, and title of the resolution of intention.

(3) The time and place where the public hearing was held concerning the establishment of the district.

(4) A determination regarding any protests received. The city shall not establish the district or levy assessments if a majority protest was received.

(5) A statement that the properties, businesses, or properties and businesses in the district established by the resolution shall be subject to any amendments to this part.

(6) A statement that the improvements and activities to be provided in the district will be funded by the levy of the 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 establishment of the district.

(7) A finding that the property or businesses within the area of the property and business improvement district will be benefited by the improvements and activities funded by the assessments proposed to be levied.

(b) The adoption of the resolution of formation and, if required, recordation of the notice and map pursuant to Section 36627 shall constitute the levy of an assessment in each of the fiscal years referred to in the management district plan.

#### **§ 36626. Resolution establishing district**

If the city council, following the public hearing, desires to establish the proposed property and business improvement district, and the city council has not made changes pursuant to Section 36624, or has made changes that do not substantially change the proposed assessment, the city council shall adopt a resolution establishing the district. The resolution shall contain all of the information specified in paragraphs (1) to (8), inclusive, of subdivision (b) of Section 36625, but need not contain information about the preliminary resolution if none has been adopted.

#### **§ 36626.5. [Section repealed 1999.]**

#### **§ 36626.6. [Section repealed 1999.]**

#### **§ 36626.7. [Section repealed 1999.]**

#### **§ 36627. Notice and assessment diagram**

Following adoption of the resolution establishing district assessments on properties pursuant to Section 36625 or Section 36626, the clerk of the city shall record a notice and an assessment diagram pursuant to Section 3114. No other provision of Division 4.5 (commencing with Section 3100) applies to an assessment district created pursuant to this part.

#### **§ 36628. Establishment of separate benefit zones within district; Categories of businesses**

The city council may establish one or more separate benefit zones within the district based upon the degree of benefit derived from the improvements or activities to be provided within the benefit zone and may impose a different assessment within each benefit zone. If the assessment is to be levied on businesses, the city council may also define categories of businesses based upon the degree of benefit that each will derive from the improvements or activities to be provided within the district and may impose a different assessment or rate of assessment on each category of business, or on each category of business within each zone.

#### **§ 36628.5. Assessments on businesses or property owners**

The city council may levy assessments on businesses or on property owners, or a combination of the two, pursuant to this part. The city council shall structure the assessments in whatever manner it determines corresponds with the distribution of benefits from the proposed improvements and activities.

#### **§ 36629. Provisions and procedures applicable to benefit zones and business categories**

All provisions of this part applicable to the establishment, modification, or disestablishment of a property and business improvement district apply to the establishment, modification, or disestablishment of benefit zones or categories of business. The city council shall, to establish, modify, or disestablish a benefit zone or category of business, follow the procedure to establish, modify, or disestablish a property and business improvement district.

#### **§ 36630. Expiration of district; Creation of new district**

If a property and business improvement district expires due to the time limit set pursuant to subdivision (h) of Section 36622, a new management district plan may be created and a new district established pursuant to this part.

**§ 36631. Time and manner of collection of assessments; Delinquent payments**

The collection of the assessments levied pursuant to this part shall be made at the time and in the manner set forth by the city council in the resolution levying the assessment. Assessments levied on real property 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. All delinquent payments for assessments levied pursuant to this part shall be charged interest and penalties.

**§ 36632. Assessments to be based on estimated benefit; Classification of real property and businesses; Exclusion of residential and agricultural property**

(a) The assessments levied on real property pursuant to this part shall be levied on the basis of the estimated benefit to the real property within the property and business improvement district. The city council may classify properties for purposes of determining the benefit to property of the improvements and activities provided pursuant to this part.

(b) Assessments levied on businesses pursuant to this part shall be levied on the basis of the estimated benefit to the businesses within the property and business improvement district. The city council may classify businesses for purposes of determining the benefit to the businesses of the improvements and activities provided pursuant to this part.

(c) Properties zoned solely for residential use, or that are zoned for agricultural use, are conclusively presumed not to benefit from the improvements and service funded through these assessments, and shall not be subject to any assessment pursuant to this part.

**§ 36633. Time for contesting validity of assessment**

The validity of an assessment levied under this part shall not be contested in any action or proceeding unless the action or proceeding is commenced within 30 days after the resolution levying the assessment is adopted pursuant to Section 36626. Any appeal from a final judgment in an action or proceeding shall be perfected within 30 days after the entry of judgment.

**§ 36634. Service contracts authorized to establish levels of city services**

The city council may execute baseline service contracts that would establish levels of city services that would continue after a property and business improvement district has been formed.

**§ 36635. Request to modify management district plan**

The owners' association may, at any time, request that the city council modify the management district plan. Any modification of the management district plan shall be made pursuant to this chapter.

**§ 36636. Modification of plan by resolution after public hearing; Adoption of resolution of intention; Modification of improvements and activities by adoption of resolution after public hearing**

(a) Upon the written request of the owners' association, the city council may modify the management district plan after conducting one public hearing on the proposed modifications. The city council may modify the improvements and activities to be funded with the revenue derived from the levy of the assessments by adopting a resolution determining to make the modifications after holding a public hearing on the proposed modifications. If the modification includes the levy of a new or increased assessment, the city council shall comply with Section 36623. Notice of all other public meetings and public hearings pursuant to this section shall comply with both of the following:

(1) The resolution of intention shall be published in a newspaper of general circulation in the city once at least seven days before the public meeting.

(2) A complete copy of the resolution of intention shall be mailed by first class mail, at least 10 days before the public meeting, to each business owner or property owner affected by the proposed modification.

(b) The city council shall adopt a resolution of intention which states the proposed modification prior to the public hearing required by this section. The public hearing shall be held not more than 90 days after the adoption of the resolution of intention.

#### **§ 36637. Reflection of modification in notices recorded and maps**

Any subsequent modification of the resolution shall be reflected in subsequent notices and maps recorded pursuant to Division 4.5 (commencing with Section 3100), in a manner consistent with the provisions of Section 36627.

#### **§ 36640. Bonds authorized; Procedure; Restriction on reduction or termination of assessments**

(a) The city council may, by resolution, determine and declare that bonds shall be issued to finance the estimated cost of some or all of the proposed improvements described in the resolution of formation adopted pursuant to Section 36625, if the resolution of formation adopted pursuant to that section provides for the issuance of bonds, under the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500)) or in conjunction with Marks-Roos Local Bond Pooling Act of 1985 (Article 4 (commencing with *Section 6584*) of *Chapter 5 of Division 7 of Title 1 of the Government Code*). Either act, as the case may be, shall govern the proceedings relating to the issuance of bonds, although proceedings under the Bond Act of 1915 may be modified by the city council as necessary to accommodate assessments levied upon business pursuant to this part.

(b) The resolution adopted pursuant to subdivision (a) shall generally describe the proposed improvements specified in the resolution of formation adopted pursuant to Section 36625, set forth the estimated cost of those improvements, specify the number of annual installments and the fiscal years during which they are to be collected. The amount of debt service to retire the bonds shall not exceed the amount of revenue estimated to be raised from assessments over 30 years.

(c) Notwithstanding any other provision of this part, assessments levied to pay the principal and interest on any bond issued pursuant to this section shall not be reduced or terminated if doing so would interfere with the timely retirement of the debt.

**§ 36641. [Section repealed 2001.]**

**§ 36642. [Section repealed 2001.]**

**§ 36643. [Section repealed 2001.]**

#### **§ 36650. Report by owners' association; Approval or modification by city council**

(a) The owners' association 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 improvements and activities described in the report. The owners' association's first report shall be due after the first year of operation of the district. The report may propose changes, including, but not limited to, the boundaries of the property and business improvement district or any benefit zones within the district, the basis and method of levying the assessments, and any changes in the classification of property, including any categories of business, if a classification is used.

(b) The report shall be filed with the clerk and shall refer to the property and business improvement 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 property and business improvement district or in any benefit zones or classification of property or businesses 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 or business owner, as appropriate, to estimate the amount of the assessment to be levied against his or her property or business 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 Sections 36635 and 36636.

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 assessments, including any commitment to pay principal and interest on any bonds issued on behalf of the district.

#### **§ 36651. Designation of owners' association to provide improvements and activities**

The management district plan may, but is not required to, state that an owners' association will provide the improvements or activities described in the management district plan. If the management district plan designates an owners' association, the city shall contract with the designated nonprofit corporation to provide services.

#### **§ 36660. Renewal of district; Transfer or refund of remaining revenues; District term limit**

- (a) Any district previously established whose term has expired, may be renewed by following the procedures for establishment as provided in this chapter.
- (b) Upon renewal, any remaining revenues derived from the levy of assessments, or any revenues derived from the sale of assets acquired with the revenues, shall be transferred to the renewed district. If the renewed district includes additional parcels or businesses not included in the prior district, the remaining revenues shall be spent to benefit only the parcels or businesses in the prior district. If the renewed district does not include parcels or businesses included in the prior district, the remaining revenues attributable to these parcels shall be refunded to the owners of these parcels or businesses.
- (c) Upon renewal, a district shall have a term not to exceed 10 years, or, if the district is authorized to issue bonds, until the maximum maturity of those bonds. There is no requirement that the boundaries, assessments, improvements, or activities of a renewed district be the same as the original or prior district.

#### **§ 36670. Circumstances permitting disestablishment of district; Procedure**

(a) Any district established or extended pursuant to the provisions of this part, where there is no indebtedness, outstanding and unpaid, incurred to accomplish any of the purposes of the district, may be disestablished by resolution by 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 notice a hearing on disestablishment.
- (2) During the operation of the district, there shall be a 30-day period each year in which assessees 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 or authorized representatives of real property or the owners or authorized representatives of businesses in the area who pay 50 percent or more of the assessments levied, the city council shall pass a resolution of intention to disestablish the district. The city council shall notice a hearing on disestablishment.
- (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 notice of the hearing on disestablishment required by this section shall be given by mail to the property owner of each parcel or to the owner of each business subject to assessment in the district, as appropriate. The city shall conduct the public hearing not less than 30 days after mailing the notice to the property or business owners. The public hearing shall be held not more than 60 days after the adoption of the resolution of intention.

**§ 36671. Refund of remaining revenues upon disestablishment or expiration without renewal of district; Calculation of refund; Use of outstanding revenue collected after disestablishment of district**

(a) Upon the disestablishment or expiration without renewal of a district, any remaining revenues, after all outstanding debts are paid, derived from the levy of assessments, or derived from the sale of assets acquired with the revenues, or from bond reserve or construction funds, shall be refunded to the owners of the property or businesses then located and operating 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 is disestablished or expires. All outstanding assessment revenue collected after disestablishment shall be spent on improvements and activities specified in the management district plan.

(b) If the disestablishment occurs before an assessment is levied for the fiscal year, the method and basis that was used to calculate the assessments levied in the immediate prior fiscal year shall be used to calculate the amount of any refund.

## APPENDIX 2 – ASSESSED BUSINESSES

Business Name	Street Address	City	State	Zip
America's Best Value Inn	1421 First St	Livermore	CA	94550
Best Western - Pleasanton Inn	5375 Owens Ct	Pleasanton	CA	94588
Best Western Sycamore Inn	803 Camino Ramon	Danville	CA	94526
Best Western Vineyard Inn	7600 Southfront Rd	Livermore	CA	94551
Comfort Inn	2625 Constitution Dr	Livermore	CA	94551
Courtyard by Marriott	2929 Constitution Dr	Livermore	CA	94551
Courtyard by Marriott	5059 Hopyard Rd	Pleasanton	CA	94588
Doubletree by Hilton	720 Las Flores Rd	Livermore	CA	94551
Extended Stay America	2380 Nissen Dr	Livermore	CA	94550
Extended Stay America	4500 Dublin Blvd	Dublin	CA	94568
Extended Stay Deluxe	4555 Chabot Dr	Pleasanton	CA	94588
Four Points by Sheraton	5115 Hopyard Rd	Pleasanton	CA	94588
Hampton Inn Livermore	2850 Constitution Dr	Livermore	CA	94551
Hawthorn Suites by Wyndham	1700 N. Livermore Ave	Livermore	CA	94551
Hilton Garden Inn Livermore	2801 Constitution Dr	Livermore	CA	94551
Hilton Pleasanton at the Club	7050 Johnson Dr	Pleasanton	CA	94588
Holiday Inn Dublin	6680 Regional St	Dublin	CA	94568
Holiday Inn Express Hotel & Suites	3000 Constitution Dr	Livermore	CA	94551
Hyatt House	4545 Chabot Dr	Pleasanton	CA	94588
Hyatt Place	4950 Hacienda Dr	Dublin	CA	94568
La Quinta Inn	7700 Southfront Rd	Livermore	CA	94551
La Quinta Inn & Suites	6275 Dublin Blvd	Dublin	CA	94568
Larkspur Landing Hotel	5535 Johnson Dr	Pleasanton	CA	94588
Marriott Pleasanton	11950 Dublin Canyon Rd	Pleasanton	CA	94588
Motel 6	4673 Lassen Rd	Livermore	CA	94550
Motel 6 - Pleasanton	5102 Hopyard Road	Pleasanton	CA	94588
Quality Inn & Suites	5959 Preston Ave	Livermore	CA	94551
Residence Inn by Marriott	1000 Airway Blvd	Livermore	CA	94551
Residence Inn by Marriott	11920 Dublin Canyon Rd	Pleasanton	CA	94588
Sands Motel	3787 First St	Livermore	CA	94551

Business Name	Street Address	City	State	Zip
Sheraton Pleasanton	5990 Stoneridge Mall Rd	Pleasanton	CA	94588
Springtown Inn	933 Bluebell Dr	Livermore	CA	94550
Studio Inn	1321 Portola Ave	Livermore	CA	94551
The Purple Orchid Wine Country Resort & Spa	4549 Cross Rd	Livermore	CA	94550
The Rose Hotel	807 Main St	Pleasanton	CA	94566
Tri-Valley Inn & Suites	2025 Santa Rita Rd	Pleasanton	CA	94566