REPLACEMENT

COUNCIL AGENDA: 6/26/07
ITEM: 4.4

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Joseph Horwedel

SUBJECT: **SEE BELOW**

DATE: June 11, 2007

Approved Kay Winer Date 6/13/07

COUNCIL DISTRICT: 3

SUBJECT: APPROVAL OF REFUND OF CONSTRUCTION TAXES AND FEE OVERPAYMENTS RECEIVED FOR CERTAIN PROJECTS IN THE PARK CENTER PLAZA, PUEBLO UNO AND SAN ANTONIO PLAZA REDEVELOPMENT PROJECT AREAS

REASON FOR THE REPLACEMENT

The original Council memo distributed through the Early Distribution process addressed only tax and fee refunds. The project at 88 E. San Fernando Street made an overpayment and asked us to hold the funds until the permit was issued, assuming the additional money would be put toward fees. The project now has a balance of $52,986.64 in overpayment that was not used toward any fees and can be returned to the customer. This amount should be reflected in the Council memo.

RECOMMENDATION

It is recommended that the San Jose City Council approve refunds and fee overpayments to Block 3 Development Partners ($1,030,212.51) and Wilcox Block LLC ($51,050.57) in a total amount of $1,081,263.08 for construction taxes erroneously collected pursuant to certain sections the San Jose Municipal Code.

OUTCOME

Approval of the refunds will allow staff to process a refund of taxes and fee overpayments paid in error on two construction projects in Downtown.

BACKGROUND

Construction taxes are excise taxes that have been imposed by the City Council to fund specific city operations as set forth in Title 4 of the San Jose Municipal Code. San Jose has four different construction taxes:

- Building and Structure Tax
- Commercial-Residential-Mobilehome Park Building Tax

- Construction Tax
- Residential Construction Tax

Each of the above construction taxes are assessed at the time of Building Permit issuance. However, the Municipal Code also provides that certain Redevelopment Project Areas are exempt from these taxes for the new construction which is: 1) done subject to and in accordance with the redevelopment plan for the project area and 2) part of the initial development of the site under the redevelopment plan. The exemption does not apply to any subsequent construction of the property or to any repairs/alterations. This exemption for certain Redevelopment Project Areas remains in effect until the termination of that redevelopment plan.

The Municipal Code identifies that the tax exemption applies to new construction in three specific Redevelopment Project Areas: Pueblo Uno, Park Center Plaza, and San Antonio Plaza. The redevelopment plans in these areas expire:

- Park Center Plaza – January 1, 2012
- Pueblo Uno – July 8, 2018
- San Antonio Plaza – January 1, 2012

In June 2006, the City Council adopted a claims presentation and processing ordinance, which was added as Chapter 4.82 to the Municipal Code, requiring claimants seeking a tax refund and fee overpayments to file their claims within one year of the date of payment to the City. The claimant is required to file his or her claim with the City official charged with the requirements for administering the tax. In this instance, the Director of Planning, Building & Code Enforcement (PBCE) is the City official charged with collecting the construction taxes. The Director of PBCE is authorized to allow, compromise, or settle a tax refund claim if the claimant has demonstrated that all or a portion of the amount claimed has been overpaid, paid more than once, or has been erroneously or illegally collected or received by the City and the amount to be refunded does not exceed $25,000, and up to $50,000 with the consent of the City Attorney. In the event the amount to be paid exceeds $50,000, the approval of the City Council is required.

ANALYSIS

In May 2007, four new construction projects were identified as being charged certain construction taxes over the previous 12 months although they qualified the construction tax exemption as outlined above. These projects include:

- Bijan Bakery (170 South Market Street)
- Tower 88 (88 East San Fernando Street)
- 360 Residences Sales Office (170 South Market Street)
- Wilcox Block (99 South First Street)

Each of these four projects have filed the appropriate claim with the Building Official and PBCE staff have determined that these projects are eligible for a refund based on the exemption outlined in Section 4.47.085 of the Municipal Code. Additionally, the Tower 88 project overpaid its service fees by

$52,986.64. The aggregate amount due to the projects is $1,132,496.57. A break out of the refund is provided in Attachment A.

As the Director of PBCE and the City Attorney have authority to settle two of the four claims, City Council approval of the recommended action would allow staff to finalize the refunds for Block 3 Development Partners and Wilcox Block LLC.

PUBLIC OUTREACH/INTEREST

This report meets Criteria 1 outlined below as it involves the use of public funds in an amount exceeding $1 million.

✓ **Criteria 1:** Requires Council action on the use of public funds equal to $1 million or greater. (Required: Website Posting)

☐ **Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. (Required: E-mail and Website Posting)

☐ **Criteria 3:** Consideration of proposed changes to service delivery, programs, or staffing that may have impacts to community services and have been identified by staff, the Board or Council, or a community group that requires special outreach. (Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)

COORDINATION

This Council report has been coordinated with the City Attorney's Office, General Counsel's Office, Redevelopment Agency, and City Manager Budget Office.

COST IMPLICATIONS

Appropriation action recommendations to provide funds for the above referenced refunds are included in the 2006-2007 Year End Clean-up memorandum agendized for City Council consideration on June 19th (Item 3.5). These actions include the establishment of Refund to Developer appropriations in the Construction Excise Tax Fund (CRMP - $662,000), the Building and Structure Construction Tax Fund ($380,000), Construction Tax and Property Conveyance Tax Fund: Parks Purposes Council District 3 ($25,000), and the Residential Construction Tax Contribution Fund ($15,000). Corresponding reductions to the Ending Fund Balances in each of these funds were recommended to offset these costs. There were no resulting impacts to capital projects in the 2007-2008 capital budget. Impacts on the out-year of the Capital Improvement Program will need to be reevaluated in the coming year. There are no resulting impacts from refunding the $52,986.64 overpayment of service fees.

CEQA

Not a project.

JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

For questions, please contact John Ruch, Acting Division Manager – Building Department at (408) 535-6876

Attachment A – Tax Refund Table

ATTACHMENT A

CONSTRUCTION TAX AND FEE OVERPAYMENT REFUNDS FOR CERTAIN PROJECTS IN THE PARK CENTER PLAZA, PUEBLO UNO, AND SAN ANTONIO PLAZA REDEVELOPMENT PROJECT AREAS

Applicant	Address	Building & Structures Tax	CRMP Commercial	CRMP Residential	Construction Tax District 3	Residential Cosntruction Tax	Fee Overpayments	Total
Bijan Bakery	170 Market Street	5,746.69	11,493.37		50.24			$17,290.30
Block 3 Partners	88 San Fernando	345,433.02	235,384.86	357,878.07	24,345.92	14,184.00	52,986.64	$1,030,212.51
Mesa Development	170 Market Street	11,314.40	22,628.79					$33,943.19
Wilcox Block	99 S. First Street	17,016.86	34,033.71					$51,050.57
					TOTAL			**$1,132,496.57**