

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Richard Doyle
City Attorney

SUBJECT: Approval of an Ordinance
Allowing for the Formation of
the Convention Center Facilities
Districts

DATE: August 8, 2008

RECOMMENDATION

Approval of an ordinance amending Title 14 of the San Jose Municipal Code to add a new Chapter 14.32 to set forth a procedure for the financing of certain public capital facilities through the establishment of Convention Center Facilities Districts, the levy of special taxes and the issuance of bonds secured by such special taxes.

OUTCOME

This ordinance provides a mechanism for the City to use to finance the construction, rehabilitation and maintenance of Convention Center facilities by taxing hotel properties through a special tax district.

BACKGROUND

City and Agency staff have been working with the Convention and Visitors Bureau ("CVB") and the hotel groups to develop a funding program for the renovation and expansion of the Convention Center.

As previously reported to the Council, the goal of the parties is that the funding of the proposed Convention Center expansion would be from Redevelopment Agency funds (assuming that the Agency can amend the redevelopment plans to increase its financial cap) and through the formation of a hotel financing district. Hotel properties within the district would be given the opportunity to approve a tax that the City would impose on hotel properties based on occupied hotel rooms. The tax rate would be a percentage of the hotel room rate, and would be administered in the same manner as the City's current Transient Occupancy Tax ("TOT").

ANALYSIS

Given the parameters set forth above, it was determined that the City should use the State Mello-Roos Community Facilities Act of 1982 as a basis for forming a special tax

district. The Mello-Roos law provides great flexibility and is a well-tested structure for local special taxation for the purpose of financing public facilities. However in its general application, the law does not specifically address the special taxation of hotel properties for this purpose. Therefore, using the City's charter authority, the proposed ordinance adopts the State law by reference and incorporates some changes specific to the needs of this particular type of district.

In particular, the ordinance provides that the tax would be apportioned as a percentage of rent charged by a hotel for the occupancy of the hotel room, consistent with how the City's TOT is applied. It also provides that in all election procedures, the votes will be weighted based on number of hotel rooms. Since the special tax would be a tax on property owners for the use of the property as a hotel, the electors would be the owners of the property on which the hotel is situated. Just like in a standard Mello-Roos District, a tax lien would be placed on the property. However, unlike the standard Mello-Roos District, the special taxes would not be collected on the County tax roll. Instead, the hotel operator would remit the special taxes to the City on a monthly basis in the same manner as the TOT. If the property owner is different than the hotel operator, the property owner would be responsible for requiring the hotel operator to remit the taxes. If the property owner is a public entity, the lessee of the government entity is considered the property owner for the purposes of the ordinance. As such the Agency would not be eligible to vote in the District formation election as ground lessor of the Hilton and Fairmont hotels.

Adoption of this ordinance does not necessarily lead to the formation of a Convention Center Facilities District. It is merely an enabling ordinance. Staff intends to separately bring forward the formation of a District. The anticipated schedule for the formation of a District is as follows:

Date	Activity	Notes
08/19/2008	First Reading of CCFD Ordinance	
08/26/2008	Second Reading of CCFD Ordinance	First Council meeting after first reading.
09/17/2008	Two Councilmembers Submit Letter Requesting CCFD Formation	Required to initiate formation in lieu of property-owner petition.
09/25/2008	CCFD Ordinance Effective	30 days after second reading.
09/30/2008	Council Adopts Resolution of Intent to Form CCFD	First Council meeting after ordinance is effective.
11/04/2008	Council Holds Public Hearing on CCFD	First Council meeting after 30 days after Resolution of Intent.

Date	Activity	Notes
02/02/2009	Property-owners Vote on District Formation	90 days after Public Hearing.

If a District is formed under this procedure, we intend to bring a validation action to have a court confirm the City's legal authority to impose a special tax and issue bonds under this proposed ordinance.

PUBLIC OUTREACH/INTEREST

This memorandum and ordinance is posted on the City's website for the August 19, 2008 Agenda. The ordinance was also reviewed by the CVB.

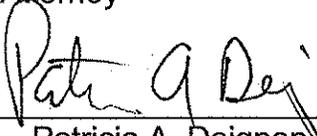
COORDINATION

This item was coordinated with the City Manager's Office, the Redevelopment Agency, and the Finance Department.

CEQA

Not a Project.

RICHARD DOYLE
City Attorney

By 
Patricia A. Deignan
Chief Deputy City Attorney

For questions please contact Patricia A. Deignan, Chief Deputy City Attorney at (408) 535-1201

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING TITLE 14 OF THE SAN JOSE MUNICIPAL CODE TO ADD A NEW CHAPTER 14.32 TO ESTABLISH A PROCEDURE FOR THE FINANCING OF CERTAIN PUBLIC CAPITAL FACILITIES THROUGH THE ESTABLISHMENT OF CONVENTION CENTER FACILITIES DISTRICTS, THE LEVY OF SPECIAL TAXES AND THE ISSUANCE OF BONDS SECURED BY SUCH SPECIAL TAXES

WHEREAS, the Mello-Roos Community Facilities Act of 1982 (the "Act") provides great flexibility and a well-tested structure for local special taxation for the purpose of financing public facilities; and

WHEREAS, the City of San José ("City") wishes to arrange for financing the improvement of its Convention Center facilities through local special taxation of hotel properties; and

WHEREAS, the Act, in its general application, does not specifically address the special taxation of hotel properties for this purpose; and

WHEREAS, it is the intent of the City to follow the substance and procedures of the Act, except as it can be improved in this particular context, for fairness and ease of administration; and

WHEREAS, the City wishes to implement improvements to the Act as set forth in this Ordinance for purposes of its local affairs through the exercise of its charter powers;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of San José:

Title 14 of the San José Municipal Code is hereby amended by adding a new Chapter to be numbered, entitled and to read as follows:

CHAPTER 14.32
CONVENTION CENTER FACILITIES DISTRICT FINANCING PROCEDURE

Part 1
Purpose and Construction

14.32.010 Purpose and Intent

The purpose and intent of this Chapter is to establish a procedure for financing certain public capital facilities through the establishment of Convention Center Facilities Districts, the levy of special taxes within such Districts and the issuance of bonds secured by such special taxes or to be paid from the proceeds of such special taxes.

14.32.020 Special Tax Proceedings

Proceedings for the formation of a Convention Center Facilities District or Districts for the purposes set forth in Section 14.32.300 may be conducted pursuant to this Chapter whether or not provided in any state law.

14.32.030 Nonexclusivity

- A. This Chapter is not, in any way, exclusive.
- B. The procedures provided in this Chapter are alternative to any other procedure provided in this Code or under state law.
- C. The resolution of intention in any proceedings under any state law or other provision of the Municipal Code may provide that such provisions are supplemented by this Chapter.

14.32.040 Construction

This Chapter is to be liberally construed.

14.32.050 Incorporation of the Mello-Roos Community Facilities Act of 1982

- A. The Mello-Roos Community Facilities Act of 1982 (Chapter 2.5, commencing with Section 53311, of Part 1 of Division 2 of Title 5 of the Government Code, as in effect on the effective date of this ordinance) (the "Act"), is incorporated in and made a part of this Chapter.
- B. Except as otherwise provided by this Chapter, the mode and manner for making improvements, for levying and collecting special taxes and for issuing bonds shall be as prescribed in the Act.

**Part 2
Definitions**

14.32.200 Definitions

The definitions set forth in this Part shall govern the application and interpretation of this Chapter.

14.32.210 Hotel

"Hotel" has the meaning set forth in Section 4.72.020.C of Chapter 4.72 of this Code. Hotel shall not be deemed to include any residential use.

14.32. 220 Convention Center Facility

“Convention Center Facility” means any building, improvement to real property, equipment or personal property (in each case having an expected useful life of five years or longer) that comprises any portion of the existing Convention Center and any expansion, construction, reconstruction, rehabilitation, replacement or upgrade thereto.

14.32. 230 Landowner, Owner of Land or Property Owner

“Landowner,” “Owner of Land” and “Property Owner” all mean the owner of the real property upon which a Hotel is located, except that if the fee owner of the real property is a government entity, these terms mean the lessee of the government entity.

14.32. 240 Operator

“Operator” has the meaning set forth in Section 4.72.020.E of Chapter 4.72 of this Code.

14.32. 250 Rent

“Rent” has the meaning set forth in Section 4.72.020.G of Chapter 4.72 of this Code.

Part 3

Authorized Expenditures

14.32.300 Authorized Expenditures

- A. A special tax imposed pursuant to this Chapter may finance the acquisition, construction, reconstruction, replacement, rehabilitation, upgrade and maintenance of any Convention Center Facility.

- B. Revenues from any special tax imposed under this Chapter may be spent on the following: debt service; lease payments; cost of issuance of securities issued for the purpose of financing or refinancing Convention Center Facilities; administrative costs of the District; prepayment of such securities; direct costs of acquisition, design and construction of Convention Center Facilities; ongoing capital repairs and maintenance of Convention Center Facilities.

**Part 4
Formation**

14.32.400 Hearing, Continuances

All hearings called for under the Act shall apply to this Chapter, except that they may be continued from time to time without further notice, but shall be completed within one (1) year of the original hearing date.

14.32.410 Apportionment of Special Tax

Any special tax imposed pursuant to this Chapter shall be imposed on the Property Owner for the use of property as a Hotel, and shall be apportioned as a percentage of Rent charged by the Hotel for the Occupancy (as defined in Section 4.72.020.D of Chapter 4.72 of this Code) of the Hotel rooms.

14.32.420 Written Protests

All protest procedures set forth in the Act shall apply to this Chapter, except that the protests shall be weighted based on number of Hotel rooms instead of area of land.

14.32.430 Special Tax Levy; Election; Voter Qualifications; Ballots

All election procedures set forth in the Act shall apply to this Chapter, except that the votes shall be weighted based on number of Hotel rooms each Property Owner controls at the time the election is called instead of acreage of real property.

Part 5

Collection of the Special Tax

14.32. 500 Special Tax Due with Transient Occupancy Tax

All special taxes imposed pursuant to this Chapter shall be due and remitted with the Operator's payment of the Transient Occupancy Tax as set forth in Section 4.72.080 of Chapter 4.72 of this Code. In the event that the Property Owner is not the Operator, the Property Owner shall cause the Operator to remit the special taxes imposed pursuant to this Chapter with the Operator's payment of the Transient Occupancy Tax.

Part 6

Bonds

14.32.600 Refunding Bonds, Use Of Savings

Any savings achieved through the issuance of refunding bonds may be used in any manner that is consistent with the purposes for which the special tax was imposed.

Part 7
Miscellaneous Provisions

14.32.700 Goals and Policies

The provisions of Section 53312.7 of the Government Code, concerning the adoption of local goals and policies, shall be permissive and not mandatory in connection with any proceedings taken, special tax levied or bonds issued pursuant to this Chapter.

14.32.710 Reports to CDIAC

Section 53359.5(b) (c) of the Government Code requiring the submission of reports to the California Debt and Investment Advisory Commission is not applicable to this Chapter.

14.32.720 Compliance with Chapter

Any proceedings taken, special tax levied or bonds issued pursuant to this Chapter shall not be held invalid for failure to comply with the provisions of this Chapter provided such failure is not a constitutional defect.

14.32.730 Conflict of Law

In the event of any conflict between the provisions of this Chapter or other provisions of the Municipal Code and the provisions of the Act, this Chapter shall govern.

DRAFT

PASSED FOR PUBLICATION of title this _____ day of _____, 2008, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk