



Memorandum

TO: HONORABLE MAYOR, CITY COUNCIL AND REDEVELOPMENT AGENCY BOARD
FROM: Debra Figone
Harry S. Mavrogenes
SUBJECT: SEE BELOW
DATE: February 24, 2009

COUNCIL DISTRICT: Citywide

SUBJECT: ACTIONS RELATED TO THE FORMATION OF A CONVENTION CENTER FACILITIES DISTRICT

RECOMMENDATION

- a. It is recommended that the City Council hold a public hearing, accept the Convention Center Facilities District Report and take the following actions relating to the formation of Convention Center Facilities District No. 2008-1 and the necessity to incur bond indebtedness:
 1. Adopt a Resolution of Formation of Convention Center Facilities District No. 2008-1, authorizing the levy of a special tax therein, establishing an initial annual appropriations limit therefore and submitting the authorization to levy a special tax and the establishment of the appropriations limit to the qualified electors thereof.
 2. Adopt a Resolution to Incur Bonded Indebtedness of the proposed convention center facilities district pursuant to the City of San José Convention Center Facilities District financing procedure in an amount not to exceed \$750,000,000 over the life of the District.
 3. Adopt a resolution calling a special mailed-ballot election among property owners in the District.
- b. It is recommended that the City Council and Agency Board adopt resolutions authorizing the City Manager and the Executive Director to negotiate and execute a Cooperation Agreement between the City and Agency related to the financing and construction of the proposed Convention Center Phase I Project.

OUTCOME

Approval of these recommendations will allow the City to proceed with the formation of Convention Center Facilities District No. 2008-1 ("CCFD") and to conduct a special election to authorize the levy of special taxes on property located within the CCFD in accordance with the Rate and Method of Apportionment of Special Tax ("RMA"), to authorize the issuance of bonds, and to establish the appropriations limit for the CCFD.

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BACKGROUND

City and Agency staffs have been working with the Convention and Visitors Bureau and the hotel groups to develop a funding program for the proposed renovation and expansion of the Convention Center. Funding for the proposed Convention Center expansion is expected to come from Redevelopment Agency funds (assuming that the Agency can amend the redevelopment plans to increase its financial cap) and through the formation of the CCFD. Hotel properties within the CCFD will vote on a special tax to be levied on hotels within the CCFD at a percentage of hotel room rents pursuant to the RMA. The special tax would be generally administered in the same manner as the City's current Transient Occupancy Tax ("TOT").

On August 19, 2008, the City Council approved an ordinance amending Title 14 of the San José 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. On September 30, 2008, the City Council adopted a resolution of intention to form a Convention Center Facilities District, a resolution to incur bonded indebtedness, approved the boundary map, and set a date for a public hearing on November 18, 2008. The public hearing subsequently was deferred to January 13, 2009.

On January 13, 2009, the City Council was presented with an update on the status of construction for the expansion and renovation of the Convention Center, a summary of the currently proposed plan of finance, changes to the CCFD special tax, an assessment of the impact on Fund 536 during the construction period and a cost benefit analysis for the proposed project. Further, the City Council rescinded the September 30, 2008, resolution of intention to form the CCFD (except insofar as it approved the boundary map of the CCFD) and the original resolution declaring the need to incur bonded indebtedness.

On February 3, 2009, the City Council adopted a new resolution stating its intention to establish a Convention Center Facilities District to be known as Convention Center Facilities District No. 2008-1 pursuant to the San José City Charter and Chapter 14.32 of the San José Municipal Code which incorporates and modifies the Mello-Roos Community Facilities Act of 1982, as amended (collectively, the "Law").

ANALYSIS

Pursuant to the Law, in order to proceed with the establishment of a CCFD, the City Council must: adopt a resolution of formation for the CCFD (the "Resolution of Formation"), a resolution deeming it necessary to incur bonded indebtedness (the "Bonding Declaration"), and a resolution calling a special mailed-ballot election (the "Special Election Resolution") based on the information provided in the Convention Center Facilities District Report ("Hearing Report"). Each of these resolutions is discussed in more detail below. In addition, there is a description of the Hearing Report.

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Convention Center Facilities District Report

The Convention Center Facilities District Report is attached and includes a description of the proposed facilities, proposed boundaries of the CCFD, cost estimates of both the facilities and the proposed financing and the RMA. The RMA provides that each hotel property within the CCFD shall be subject to a maximum special tax levied on total hotel room rents and collected monthly. The special tax rate will initially vary between two distinct tax zones. Zone 1 will be subject to a special tax equal to 4% of the rent charged. Zone 2 would be subject to a special tax that would be phased in over a three-year period, increasing from 1% in the first half of Fiscal Year 2009-10 to 4% by Fiscal Year 2011-12. Both zones would be subject to an additional special tax rate of 1% of rent that would be levied for the upcoming fiscal year if the balance in a Revenue Stabilization Reserve were to fall below a minimum threshold to be specified in the bond documents.

Upon formation of the CCFD, all Assessors' Parcels of Hotel Property within the CCFD shall be subject to the special tax as specified by the RMA. Development approvals for any new hotel properties would be conditioned on such property's annexation into the CCFD. Any hotel that closes or otherwise ceases to collect the special tax may reduce the total special tax collections. The Revenue Stabilization Reserve and the Additional Special Tax of 1% mitigate against inherent fluctuations in hotel tax revenues and provide additional resources to make debt service payments on outstanding bonds. No sources of City revenues, other than the special taxes, will be pledged to repay the bonds.

Resolution of Formation

City Council's adoption of a resolution approving formation of the CCFD authorizes the levy of special taxes on property located in the CCFD in accordance with the RMA and the establishment of an annual appropriations limit for the CCFD initially set at \$50 million, subject to the approval of the voters in the CCFD. The appropriation base limit is adjusted annually by the percent change in per capita personal income for the State of California. It authorizes the facilities to be financed as described in Exhibit B to the Resolution of Intention and the mechanism by which the special tax will be collected.

Resolution Declaring it Necessary to Incur Bonded Indebtedness

This resolution states City Council's need to incur bonded indebtedness for the CCFD. The maximum amount of indebtedness set forth in that resolution is \$750 million over the life of the CCFD, and the maximum term of the bonds is limited to forty years. Because the maximum amount of indebtedness applies to any bonds to be issued at any time in the future, it should be set sufficiently high to accommodate not only the amount of bonds to be issued for the currently proposed renovation and expansion, but also bonds that the City might want to issue for future capital improvements to the Convention Center. As a practical matter, the maximum amount of bonds that could be issued secured solely by the special tax would be limited by the actual level of special tax revenues.

Special Election Resolution

It is recommended that the City Council adopt a resolution calling for a special election, which will be initiated immediately following the adoption of the resolution. The election is to be conducted by mailed ballots in accordance with the California Elections Code. The ballot measure combines, as specifically authorized by the Municipal Code and the California Government Code, three questions: (1) the authorization to levy the special tax for the specified facilities; (2) the authorization to issue bonds; and (3) the establishment of the appropriations limit for the CCFD.

The mailed ballots will include the supplies and instructions necessary for the use and return of the ballot. The ballots will include a return envelope with postage prepaid and will contain the following information: (1) name and address of landowner, (2) declaration under penalty of perjury stating the voter is owner of record or authorized representative of the landowner entitled to vote and is the person whose name appears on the envelope, (3) the printed name, signature and address of the voter, (4) the date of signing and place of execution of the declaration and (5) a notice that the envelope contains an official ballot and is to be opened only by the City Clerk.

The ballots will be mailed, as described above, to the landowners within the CCFD (where the landowner is a public agency, the voter is the lessee of the public agency pursuant to the City Ordinance) and must be returned to the City Clerk by June 9, 2009. Per State law requirements, the ballot measure contains a statement indicating the specific purpose of the special tax, and that the proceeds of the special tax will be applied only to the purposes specified in the ballot measure.

Special taxes must be approved by a two-thirds majority of the votes cast by the qualified electors. In the case of the CCFD, since the special tax is not ever levied on residential property, but is a tax on property owners for the use of the property as a hotel, the electors are the owners of property on which a hotel is situated (or the lessee in the cases of hotels owned by a public agency.) Moreover, under Section 14.32.430 of the San José Municipal Code, the votes are weighted based on the number of hotel rooms on each hotel property.

Cooperation Agreement for the Financing and Construction of the Proposed Project

The Resolution of Formation provides among other things that special tax revenues may be used for the repayment of funds advanced by the City for the project, as well as the repayment of funds advanced by third parties. The Redevelopment Agency has committed \$14.4 million to date, including costs for architectural, project management, and district formation services.

As described in the memorandum for the February 3, 2009, Council Meeting, the CCFD will finance up to \$150 million of proposed renovation and expansion improvements to the Convention Center. The Agency, contingent on its ability to issue new bonds, will also contribute up to \$150 million. Thus, the improvements to be financed by the CCFD represent approximately half of the renovation and expansion improvements to be constructed by the Redevelopment Agency, which are estimated to total approximately \$300 million. However, the CCFD contribution would be from bond proceeds, and the estimate is based on projected future

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hotel tax revenues, which are economically sensitive. If the Phase I Project cannot be completed in its entirety, the City will seek a recommendation from an advisory committee to the City Manager (the "Capital Facilities Advisory Committee") to assist in redefining the Phase I Project to phase in the improvements. The Capital Facilities Advisory Committee consists of eight members: four from the hotel industry to be selected by Team San José and four from the City and/or Redevelopment Agency to be selected by the City, at least one of which will be an Agency representative.

The purpose of the proposed Cooperation Agreement is to memorialize the terms of the respective City and Agency financial commitments to the proposed project, and to provide a mechanism for repayment of advances to the Agency.

EVALUATION AND FOLLOW-UP

Subsequent to the public hearing, property owners will vote via mailed ballot on CCFD authorizations. After the ballots are received by the City Clerk and tallied, the City Council will adopt a resolution declaring the results of the special election. If the property owners vote in favor of the special tax, and other authorizations, this resolution also directs the recording of the notice of the special tax lien. At that time, the City Council will also adopt an ordinance levying the special taxes within the CCFD. If the ballot measure is passed, the City will bring a validation action to have a court confirm the City's legal authority to impose a special tax and issue bonds under the Act.

PUBLIC OUTREACH/INTEREST

Notice of the public hearing appeared in the *San Jose Mercury News* on February 18, 2009.

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater.
- 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.
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach.

COORDINATION

This staff report has been prepared by the City Manager's Office in coordination with the City Attorney's Office, the Redevelopment Agency, and the Finance Department.

COST SUMMARY/IMPLICATIONS

A portion of the compensation for the financial advisor and bond counsel is contingent on the successful sale and close of the bonds and will be paid from bond proceeds. Non-contingent financial advisor, bond counsel, and special tax consultant costs and related City staff costs will be covered by funds provided by the Redevelopment Agency. The proposed Cooperation Agreement will allow the Agency to be reimbursed for these costs from the District.

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CEQA

Resolution No. 72767 and addendum thereto, File No. PP08-002, available at
<http://www.sanjoseca.gov/planning/eir/eir.asp>.



DEBRA FIGONE
City Manager



HARRY S. MAVROGENES
Executive Director

For questions, please contact Paul Krutko, Chief Development Officer, at (408) 535-8181.

Attachment: Hearing Report