



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Joseph Horwedel

SUBJECT: REFUND FOR POLYCOM, INC.

DATE: March 26, 2012

Approved

Date

3/27/12

COUNCIL DISTRICT: 4

RECOMMENDATION

Approve a refund of construction taxes in the amount of \$349,427.68 paid under the incorrect rate by Novo Construction, Inc. for a project located at 6001 America Center Drive and direction to the Director of Finance to make payment in accordance with the instructions in the refund claim.

OUTCOME

The outcome of these actions will be a reduction to the Building and Structures Tax in the amount of \$49,918.24, and a reduction to the Commercial-Residential-Mobile Home Park (CRMP) Tax of \$299,509.44.

BACKGROUND

On December 28, 2011, Novo Construction, Inc. paid \$299,509.44 in CRMP tax and \$149,754.72 in Building and Structures tax (total of \$449,264.16) for a project located at 6001 America Center Drive (project number 12-005059, "America Center Phase I"). The amount of tax owed for the project was calculated at the commercial tax rate for each of these taxes. Development Services assigns a commercial status to all nonresidential projects unless the applicant declares industrial use by completing a Special Incentive Industrial Use Tenant Improvement Declaration form. During intake for this project, the declaration form was provided to Novo Construction, who did not indicate an industrial use although their project qualified as industrial since it is intended for research and development.

On February 28, 2012, the Department of Planning, Building and Code Enforcement (PBCE) received a refund request from Novo Construction, requesting \$349,427.68 on the basis that, "Taxes should be at Industrial Rate not Commercial." With the refund request claim form, a Special Incentive Industrial Use Tenant Improvement Declaration form was also submitted,

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indicating that the structure was to be used for "Research and development of products and product testing, engineering development and sales development. Products include industry-leading telepresence, video, voice and Polycom UC Intelligent Core™ infrastructure solutions." Based on the information provided, staff has determined that the project will be used for research and development, which qualifies the building structure for industrial use based on Municipal Code Chapter 4.46, "Building and Structure Construction Tax," and that a refund is due to the customer. Based on Municipal Code 4.8.320, a refund claim in excess of \$50,000 requires City Council approval.

ANALYSIS

San José's Building and Structure Tax and CRMP Tax (also called the Construction Excise Tax) are applicable to all building permits, including both new construction and tenant improvements. The tax rate imposed for commercial purposes is significantly higher than those for industrial purposes.

Residential and commercial uses are broadly defined for both taxes based on the provisions of the Zoning Ordinance. Commercial uses are those allowed in the General Commercial Zoning District per the Zoning Ordinance. "Industrial" uses are defined differently in that 12 specific uses are explicitly called out as eligible for the lower tax rate. (Additional uses were approved effective March 16, 2012, but those were not applicable at the time of Novo Construction's permit application.) Per Municipal Code 4.46, one of the uses qualifying a structure as industrial use is research and development, reducing the Building and Structures tax rate from 1.5% to 1.0%. Per Municipal Code 4.47, building structures designated as industrial are exempt from the CRMP tax, reducing the CRMP tax rate from 3.0% to 0%.

The chart below summarizes the tax rate for both the CRMP and the Building and Structures taxes, as well as the amount initially imposed on Novo Construction based on the commercial designation, and the refund being requested for each tax based on the industrial designation. If this refund is approved, Novo Construction will receive a refund of \$349,427.68, and the City will have received a total of \$99,836.48 in the Building and Structures tax, and \$0 in CRMP.

As designated in Novo Construction's refund claim, the City is instructed to pay the refund to Polycom, Inc.

EVALUATION AND FOLLOW-UP

With approval of the recommended action, the refund of construction taxes will be promptly processed. No follow up actions with Council are expected.

POLICY OUTREACH/INTEREST

- Criterion 1: Requires Council action on the use of public funds equal to \$1 million or greater.** (Required: Website Posting)
- Criterion 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)**
- Criterion 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. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This Council action does not meet any of the criteria above, however it will be posted on the City's website for the April 3, 2012 Council meeting agenda.

COORDINATION

This memorandum has been coordinated with the Finance Department, City Attorney's Office and the City Manager's Budget Office.

COST SUMMARY/IMPLICATIONS

The total refund of \$349,427.68 will be made from the Building and Structure Construction Tax Fund (\$49,918.24) and the Construction Excise Tax Fund (\$299,509.44). The issuance of this refund will not jeopardize the ability of the Building and Structure Construction Tax Fund and the Construction Excise Tax Fund to meet the budgeted revenue estimate.

CEQA

Not a Project, File No. PP10-069, City Organizational and Administrative Activities.

/s/
JOSEPH HORWEDEL, Director
Planning, Building & Code Enforcement

For questions, please contact Joseph Horwedel, at 408-535-7900.