



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Rosalynn Hughey
Jim Shannon

**SUBJECT: OVERPAYMENT REFUND OWED
HUNTER PROPERTIES**

DATE: June 17, 2020

Approved

Date

6/19/2020

COUNCIL DISTRICT: 3

RECOMMENDATION

- 1) Approve a refund of construction taxes in the amount of \$2,205,000 paid under the incorrect rate by Hunter Properties (CAP OZ 34, LLC) for a project located at 1173 and 1167 Coleman Avenue and direct the Director of Finance to make payment in accordance with the instructions in the refund claim.
- 2) Adopt the following 2019-2020 Appropriation Ordinance amendments in the Building and Structure Construction Tax Fund:
 - a) Establish an appropriation for Developer Refunds to the Transportation Department in the amount of \$315,000;
 - b) Decrease the Construction Tax Refund Reserve by \$315,000.
- 3) Adopt the following 2019-2020 Appropriation Ordinance amendments in the Construction Excise Tax Fund:
 - a) Establish an appropriation for Developer Refunds appropriation to the Transportation Department in the amount of \$1,890,000;
 - b) Decrease the Construction Tax Refund Reserve by \$1,890,000.

OUTCOME

The outcome of these actions will be a reduction to the taxes paid by Hunter Properties for the project at 1173 and 1167 Coleman Avenue in the amount of \$2,205,000, which includes a \$315,000 reduction in the Building and Structures Tax and a reduction of \$1,890,000 in the Commercial-Residential-Mobile Home Park (CRMP) Tax (also known as the Construction Excise Tax).

BACKGROUND

On August 28, 2018 and September 21, 2018, Hunter Properties paid \$945,000 in Building & Structures tax and \$1,890,000 in Commercial- Residential-Mobile Home Park tax for a project located at 1173 and 1167 Coleman Avenue (buildings 3 and 4 of the ‘Coleman Highline’ project).

Date	Address	Permit Number	B&S Tax Paid	CRMP Tax Paid
8/28/2018	1173 Coleman Ave- Foundation	2018-132513	\$99,000	\$198,000
9/21/2018	1173 Coleman Ave- Structure	2018-135530	\$396,000	\$792,000
8/28/2018	1167 Coleman Ave- Foundation	2018-132516	\$90,000	\$180,000
9/21/2018	1167 Coleman Ave- Structure	2018-135540	\$360,000	\$720,000
Total:			\$945,000	\$1,890,000

When the taxes owed for the project were calculated, the project was incorrectly identified as a commercial project rather than an industrial project. At the time, office/R&D uses were considered ‘industrial’ uses which were taxed at a rate of 1% for Buildings & Structures and 0% for CRMP. The amount of tax owed for the project was calculated as a commercial use and was taxed at a rate of 1.5% for Buildings & Structures and 3% for CRMP resulting in an over payment of \$2,205,000.

On August 16, 2019, the Department of Planning, Building, and Code Enforcement (PBCE) received a refund request from Hunter Properties, requesting a \$2,205,000 refund on the basis that the taxes were miscalculated. Pursuant to Municipal Code 4.82.320, a refund claim in excess of \$500,000 requires City Council approval.

ANALYSIS

San Jose’s Building and Structure Tax is applicable to all building permits, including both new construction and tenant improvements and the CRMP tax is applicable to building permits for commercial and residential structures, but not industrial buildings. In order to support industrial uses, such as research and development, the tax rate imposed for industrial buildings is significantly lower than for other commercial buildings. At the time of the Coleman Highline payment for 1173 and 1167 Coleman Avenue, offices that supported or were associated with research and development operations were included in the definition of “industrial” uses and were explicitly called out as eligible for the lower tax rate.

Pursuant to Municipal Code 4.46, research and development uses qualify for a lower Building and Structures tax rate: from 1.5% reduced to 1.0%. Pursuant to 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 Hunter Properties based on the

commercial designation, and the refund being requested for each tax based on the industrial designation.

Address	Permit Number	B&S Tax Paid (1.5%)	B&S Corrected Amount (1.0%)	CRMP Tax Paid (3.0%)	CRMP Corrected Amount (0%)	Refund Amount
1173 Coleman Ave- Foundation	2018-132513	\$99,000	\$66,000	\$198,000	\$0	\$231,000
1173 Coleman Ave- Structure	2018-135530	\$396,000	\$264,000	\$792,000	\$0	\$924,000
1167 Coleman Ave- Foundation	2018-132516	\$90,000	\$60,000	\$180,000	\$0	\$210,000
1167 Coleman Ave- Structure	2018-135540	\$360,000	\$240,000	\$720,000	\$0	\$840,000
	Total:	\$945,000	\$630,000	\$1,890,000	\$0	\$2,205,000

If this refund is approved, Hunter Properties would receive a refund of \$2,205,000, and the City will have received a total of \$630,000 in the Building and Structures tax and \$0 in CRMP.

The San José Municipal Code has since been modified to identify office uses as separate from industrial uses. As of April 2019 when this change went into effect, office uses are taxed at a rate of 1.5% for Building & Structures, and 0.5% for CRMP.

CONCLUSION

At issuance of building permits for the project at Coleman Highline, construction taxes were calculated incorrectly and a \$2,205,000 refund is owed to the developer.

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.

CLIMATE SMART SAN JOSE

Although the Coleman Highline project increases the density of new development and facilitates job creation within City limits, the recommendation in this memorandum has no effect on Climate Smart San José energy, water, or mobility goals.

PUBLIC OUTREACH

This memorandum will be posted on the City’s Council Agenda website for the June 30, 2020 Council Meeting.

COORDINATION

This memorandum has been prepared in coordination with the Finance Department and the City Attorney’s Office.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

COST SUMMARY/IMPLICATIONS

The total refund of \$2,205,000 will be made from the Building and Structure Construction Tax Fund and the CRMP Tax Fund. For the past several years, the Traffic Capital Program has maintained a Construction Tax Refund Reserve that sets aside funding in both the Building and Structure Construction Tax Fund and the Construction Excise Tax Fund to serve as a funding source for the potential refunding of construction taxes. As a result, the issuance of this refund will not jeopardize the capital improvement projects funded by the Building and Structure Construction Tax Fund and the Construction Excise Tax Fund.

BUDGET REFERENCE

The table below identifies the fund and appropriation recommended to be modified with this memorandum.

Fund #	Appn #	Appn. Name	Total Appn.	Rec. Budget Action	2019-2020 Adopted Capital Budget Page*	Last Budget Action (Date, Ord. No.)
429	7732	Developer Refunds	\$0	\$315,000	N/A	N/A
429	8489	Construction Tax Refund Reserve	\$515,000	(\$315,000)	V-915	10/22/2019, 30325
465	7732	Developer Refunds	\$0	\$1,890,000	N/A	N/A
465	8489	Construction Tax Refund Reserve	\$2,270,000	(\$1,890,000)	V-915	10/22/2019, 30325

HONORABLE MAYOR AND CITY COUNCIL

June 17, 2020

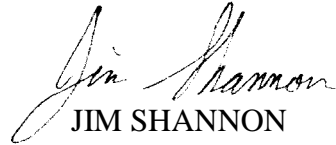
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CEQA

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

/s/
ROSALYNN HUGHEY
Director, Planning, Building, and
Code Enforcement


JIM SHANNON
Budget Director

For questions, please contact Emily Lipoma, Development Facilitation Officer, at (408) 535-7903.