



COUNCIL AGENDA: 6/14/22

FILE: 22-899

ITEM: 2.15

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Julia H. Cooper
Jim Shannon

**SUBJECT: COUNTY OF SANTA CLARA
HOTEL TAX AND FEE REFUND**

DATE: May 23, 2022

Approved

Date

06/02/22

RECOMMENDATION

- a) Approve a refund for Transient Occupancy Tax (TOT), Convention Center Facilities District Tax (CCFD), and Hotel Business Improvement District (HBID) fees, totaling \$1,097,455.63, to the County of Santa Clara, for the period of March 2020 through July 2021.
- b) Direct the Director of Finance to make the refund payment in accordance with the instructions in the refund claim.
- c) Adopt the following 2021-2022 Appropriation Ordinance adjustments in the Convention Center Facility District Revenue Fund:
 - 1) Establish the Special Tax Refund appropriation to the Finance Department in the amount of \$290,161; and
 - 2) Decrease the Unrestricted Ending Fund Balance by \$290,161.

OUTCOME

The outcome of this action will be to issue a refund to the County of Santa Clara (County) for TOT, CCFD, and HBID fees, in the amount of \$1,097,455.63 erroneously collected from the County by hotel operators and remitted to the City of San José (City). These taxes and fees were associated with County long-term rental agreements with hotels that were used to house the homeless during the COVID-19 pandemic (from March 2020 through July 2021) funded by the County Project Roomkey Program. The TOT, CCFD, and HBID refund is for long-term hotel guests (i.e., guests with hotel stays greater than 30 consecutive days) whose hotel stays are not subject to the City's TOT, CCFD, and HBID.

BACKGROUND

Since March 2020, the County has been renting rooms at eight hotels in San José as part of its Project Roomkey Program, which provides non-congregate shelter options for people experiencing homelessness during the COVID-19 pandemic. The County entered into agreements with seven of the eight hotels, entitling hotel guests to occupy rooms for more than 30 consecutive calendar days.

On September 30, 2021, the City received a \$1,282,950.64 refund claim from the County for TOT, CCFD, and HBID collected from the County by eight hotel operators between March 2020 and July 2021. These hotel taxes/fees were collected erroneously from the County by hotel operators and remitted to the City, in connection with the County's long-term rental agreements with these hotels, as part of the Project Roomkey homeless shelter program. Pursuant to San José Municipal Code Section 4.82.320, a refund claim in excess of \$500,000 requires City Council approval.¹

ANALYSIS

Pursuant to Chapters 4.72 and 4.74, the City imposes a combined TOT (6% Special Fund and 4% General Fund) on each transient (guest) for the privilege of occupying or having the right to occupy a hotel room at the rate of 10% of the room rent charged by the hotel operator. The TOT is collected and remitted by the hotel operator to the City. The CCFD is imposed on the hotel owner at the rate of 4% of the rent charged and typically is passed on to the hotel guest and collected at the same time and in the same manner as the TOT.² The HBID fee is imposed on all hotel businesses within the Business Improvement District, with 80 rooms or more, and is a fixed dollar amount per room per night depending upon the location of the hotel in proximity to the San José McEnery Convention Center.³

Refund Claim

On September 30, 2021, the City received a refund claim from the County for the period of March 2020 through July 2021, in the amount of \$1,282,950.64, for hotel taxes and fees paid. This refund claim was based on TOT, CCFD, and HBID remittances collected from the County and submitted to the City by hotel operators, from whom the County was renting hotel rooms for more than 30 consecutive days, pursuant to long-term rental agreements, as part of the Project Roomkey homeless assistance program. These long-term room rental agreements are exempt from TOT, CCFD, and HBID, as they were for hotel stays greater than 30 consecutive days.

¹ All references are to the [San José Municipal Code](#), unless otherwise stated

² Convention Center Facilities District No. 2008-1 was established by the City under [Chapter 14.32](#), and City Council adopted [Resolution No. 74826](#) authorizes the levy of the CCFD Special Hotel Tax which was approved on June 9, 2009 by the then-qualified electors of the CCFD

³ See, [Resolution No. 78561](#).

Staff analyzed the County's refund claim of \$1,282,950.64 by reviewing it against the City's cash receipts, as recorded on its Transient Occupancy Tax Return Forms and in its Financial Management System. Staff found that the City's records supported a revised refund amount of \$1,097,455.63, reflective of TOT, CCFD, and HBID collected and remitted by seven of the eight hotels listed on the September 30, 2021 refund claim, as follows:

TOT, CCFD, HBID				
Paid by the County to the City for exempt guests				
March 2020 - July 2021				
<u>Hotel Name</u>	<u>TOT</u>	<u>CCFD</u>	<u>HBID*</u>	<u>TOTAL</u>
Casa Linda Motel	\$1,644.50	\$657.80	N/A	\$2,302.30
EZ-8 Motel San José I (1550)	154,504.00	61,801.60	21,700.00	238,005.60
EZ-8 Motel San José II (2050)	179,789.40	71,915.56	28,057.50	279,762.46
Hampton Inn Tully	112,100.61	44,840.25	30,286.00	187,226.86
Motel 6 Alameda	10,483.20	4,193.28	N/A	14,676.48
Pacific Motor Inn	235,031.09	94,012.44	N/A	329,043.53
Quality Inn San José	31,848.14	12,739.26	1,851.00	46,438.40
Total	<u>\$725,400.94</u>	<u>\$290,160.19</u>	<u>\$81,894.50</u>	<u>\$1,097,455.63</u>

*HBID only applies to hotels with 80 or more rooms.

On February 24, 2022, the City sent its calculations and proposal for a revised refund to the County. On March 16, 2022, the County agreed upon the City's revised refund amount of \$1,097,455.63. Accordingly, the Administration recommends that the City Council approve a refund in the amount of \$1,097,455.63.

While a tax refund claim typically has a one-year statute of limitations, which would have limited the refund period to October 1, 2020 through September 30, 2021 and reduced the amount of the refund to approximately \$700,000, the Administration recommends the refund cover the entire refund period identified by the County in its September 30 refund claim.

CONCLUSION

Based on information provided by the County, which has been reviewed and verified by Finance staff, the Administration is recommending a refund in the amount of \$1,097,455.63 be approved by the City Council.

EVALUATION AND FOLLOW-UP

With approval of the recommended action, the refund of the TOT, CCFD, and HBID fee will be promptly processed. No follow up actions with the City Council are expected.

CLIMATE SMART SAN JOSE

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 14, 2022 Council meeting.

COORDINATION

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

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

COST SUMMARY/IMPLICATIONS

Of the total \$1,097,456 refund amount, \$807,295 is recommended to be paid from the General Liability Claims City-Wide Expenses appropriation in the General Fund, and \$290,161 from the CCFD Fund. Even though the hotel industry and hotel-related revenues have been hit particularly hard from the recession and are slow to recover, the recent refunding of outstanding debt in the CCFD Fund provides that fund with sufficient capacity to refund the previously collected proceeds. The TOT Fund and HBID, however, have seen their revenues and funding capacity reduced significantly. As a result, the Administration recommends the repayment to the County for these funds be paid from the General Liability Claims appropriation, so services are not affected. If excess fund balance remains after the year-end reconciliation of the General Fund, the Administration will recommend restoring the \$807,295 to General Liability Claims as part of the 2021-2022 Annual Report.

BUDGET REFERENCE

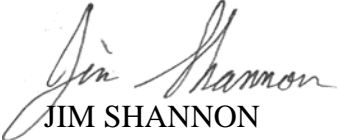
The table below identifies the funds and appropriations recommended to be modified with this memorandum.

Fund #	Appn. #	Appn Name	Total Appn	Recommended Budget Adjustment	Amount for Repayment	2021-2022 Adopted Budget Page	Last Budget Action (Date, Ord. No.)
001	0018	General Liability Claims	\$18,529,800	N/A	\$807,295	890	10/19/2021, 30682

CEQA

Statutorily Exempt, File No. PP17-001, CEQA Guidelines Section 15262, Feasibility and Planning Studies with no commitment to future actions.

/s/
JULIA COOPER
Director of Finance


JIM SHANNON
Budget Director

For questions, please contact John Kachmanian, Deputy Director of Finance – Revenue Management at (408) 535-7034.