



## *Memorandum*

**TO:** HONORABLE MAYOR AND CITY COUNCIL

**FROM:** Nora Frimann  
City Attorney

**SUBJECT: RESOLUTION ORDERING AN ACTION IN SUPERIOR COURT TO FORECLOSE CCFD SPECIAL TAX LIEN**

**DATE:** November 23, 2022

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### **RECOMMENDATION**

Adopt a resolution, pursuant to Government Code Section 53356.1, ordering delinquent Convention Center Facilities District No. 2008-1 ("CCFD") taxes assessed against a hotel property located at 1510 North First Street, San Jose, CA 95112 ("Comfort Suites"), including any penalties, interests, and costs, be collected through an action brought in the Santa Clara County Superior Court to foreclose on the CCFD special tax lien.

### **OUTCOME**

The City will bring an action to foreclose on the special tax lien recorded against real property located at 1510 North First Street where Hitesh Investments, LLC d/b/a Comfort Suites, its owner of record, operates as a hotel within the CCFD. If judgment is in favor of the City, the property will be foreclosed and put up for sale through the judicial foreclosure process. Assuming the property is sold, the outstanding tax debt will be paid from the sale proceeds.

### **BACKGROUND**

In 2009, the City Council established the Convention Center Facilities District No. 2008-1 ("CCFD") for purposes of financing the expansion and renovation of the San José McEnery Convention Center. The CCFD was established under Chapter 14.32 of the San José Municipal Code that incorporates, with some modifications, state law known as the Mello-Roos Community Facilities Act of 1982 ("Mello-Roos Act"; Government Code Sections 53311 et seq.).

Also in 2009, owners of hotel properties within the CCFD voted by the required two-thirds margin to approve the imposition of the CCFD Special Tax and to authorize the

issuance of bonds to finance the expansion and renovation of the Convention Center. Since 2009, the City has levied the CCFD Special Tax on hotel properties within the CCFD and a Special Tax Lien was recorded against each hotel property within the CCFD. The Special Tax is calculated and collected in the same manner as the City's transient occupancy tax at the rate of 4% of the hotel room rent.

In 2011, the City issued bonds to finance the Convention Center expansion and renovation of the Convention Center that are to be repaid with the CCFD Special Tax revenues. In 2022, the City of San Jose Financing Authority ("Authority"), a joint exercise of powers authority, issued lease revenue bonds (the "2022 Bonds") to fully refund the bonds issued in 2011. The 2022 Bonds are payable from lease payments to be made by the City. Among other consideration for the refunding of the 2011 bonds and to further secure the 2022 Bonds, the City has pledged the proceeds of the CCFD Special Tax to the payment of the City's lease payment obligations, and has promised to levy and collect the same and to remit all Special Taxes to the trustee of the 2022 Bonds for payment of debt service.

Comfort Suites is a hotel property located within the CCFD. The owners and operators of Comfort Suites failed to pay any CCFD taxes for the months of August 2021, October 2021, November 2021, December 2021, January 2022, February 2022, March 2022, April 2022, May 2022, and June 2022. Additionally, a City audit found that Comfort Suites failed to report and pay correct CCFD taxes for each of the months between January 2018 and December 2020, inclusive. The City assessed Comfort Suites for delinquent taxes, and the assessment was not appealed. The assessment is now final and the delinquent CCFD Special Taxes remain outstanding in the amount of approximately \$85,441.09, as of November 1, 2022.

## **ANALYSIS**

As noted above, the City established the CCFD under Chapter 14.32 of the San José Municipal Code, incorporating the Mello-Roos Act. The Mello-Roos Act authorizes the collection of delinquent taxes through a foreclosure action on the real property on which a special tax lien is recorded. In connection with the 2022 Bonds, the City covenanted to the Authority to pursue foreclosure proceedings to collect delinquent CCFD taxes and to diligently prosecute and pursue such proceedings to judgment and sale. Under the Mello-Roos Act, the first step in the foreclosure process is the City Council's adoption of the proposed resolution ordering the foreclosure action (Government Code Section 53356.1(a)).

The administrative process has been exhausted. Following the Council's adoption of the resolution authorizing foreclosure of Comfort Suites, the City Attorney will file a complaint to initiate foreclosure proceedings.

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**Subject: COMFORT SUITES**

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**PUBLIC OUTREACH/INTEREST**

This memorandum has been posted on the City's website for the December 6, 2022 agenda.

**COST SUMMARY/IMPLICATIONS**

Not applicable.

**CEQA**

Not a Project; File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.

By /s/ Nora Frimann  
NORA FRIMANN  
City Attorney

For questions please contact James J. Huang, Deputy City Attorney, at (408) 535-1900.