



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Rosalynn Hughey
John Ristow
Margaret McCahan

**SUBJECT: REFUND OF CONSTRUCTION
FEES AND TAXES FOR
WESTFIELD DDC, LLC**

DATE: January 31, 2019

Approved

Date

Feb 1 2019

COUNCIL DISTRICT: 6

RECOMMENDATION

- (a) Approve a refund of construction fees and taxes in the amount of \$679,964.82 to Westfield DDC, LLC for a project located at 2847 Stevens Creek Boulevard.
- (b) Approve a refund for the Strong Motion Instrument Program Assessment (SMIPA) fee in the amount of \$4,201.02.
- (c) Approve a refund for the Building Standards Administration Special Revolving Fund (BSASRF) fee in the amount of \$600.00.
- (d) Adopt the following 2018-2019 Appropriation Ordinance amendments in the Building and Structure Construction Tax Fund:
 - (1) Increase the Developer Refunds appropriation to the Department of Planning, Building and Code Enforcement in the amount of \$82,000 and
 - (2) Decrease the Building and Structure Construction Tax Unrestricted Ending Fund Balance by \$82,000.

OUTCOME

The outcome of these actions will provide a refund of \$679,964.82 to Westfield DDC, LLC to align with the correct assessment of fees and taxes related to the development project of a new retail building at 2847 Stevens Creek Boulevard.

BACKGROUND

On October 18, 2017, Westfield DDC, LLC (Westfield), paid \$1,005,360.62 in Development Fees and Taxes in 2017-2018 for the construction of a new retail building located at 2847 Stevens Creek Boulevard. The amount should have been \$325,395.80.

The amount of taxes paid by Westfield was based on the City-calculated project valuation of \$21,863,640 for the complete build-out of a three-story retail building; however, an error was made in how the valuation was assigned. The complete build-out of the retail building has been divided into three permits, shared by Westfield and the tenant. To date, two of the three permits have been issued, totaling 80% of the construction to be completed.

Westfield should not have been charged taxes on the full project valuation, but on their assigned valuation of \$6,860,000, as the tenant was responsible for – and paid for – their share of the valuation. After the refund is issued to Westfield, the net taxes and fees collected for the two permits total \$876,485.80: \$325,395.80 from Westfield and \$551,090.00 from the tenant. The remaining amount of approximately \$200,000 will be collected when the tenant improvement project is permitted.

San José Municipal Code Section 4.82.320 authorizes for the refund of any erroneously paid taxes. If the refund amount exceeds \$500,000, City Council approval is required.

ANALYSIS

The table below displays the original amount paid and the correlating refundable amount:

| Permit No. 17-034018 2847 Stevens Creek Blvd. Bloomingdales Shell | Original Amount Paid | Correct Amount | Refund Amount |
|----------------------------------------------------------------------------------|-------------------------------------|-----------------------|----------------------|
| Construction and Demolition Diversion Review (CDD) | \$100.00 | \$100.00 | \$0.00 |
| Construction Tax District 6 | \$14,400.00 | \$14,400.00 | \$0.00 |
| Building and Structure Construction Tax (B&S) | \$327,954.60 | \$102,900.00 | \$225,054.60 |
| Building Standards Administration Special Revolving Fund (BSASRF) Fee | \$875.00 | \$275.00 | \$600.00 |
| Commercial Residential Mobile Home Park Building Tax (CRMP) | \$655,909.20 | \$205,800.00 | \$450,109.20 |
| Strong Motion Instrument Program Assessment (SMIPA) Fee | \$6,121.82 | \$1,920.80 | \$4,201.02 |
| Total Development Fees and Taxes | \$1,005,360.62 | \$325,395.80 | \$679,964.82 |

EVALUATION AND FOLLOW-UP

This item does not require an evaluation or follow-up.

PUBLIC OUTREACH

This Council memorandum will be posted on the City's website for February 12, 2019 Council Meeting agenda.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office and the Office of Economic Development.

COMMISSION RECOMMENDATION/INPUT

This item does not have a recommendation or input from a board or commission.

COST SUMMARY/IMPLICATIONS

The refund of CRMP Tax (or Construction Excise Tax) will be paid from the Developer Refunds appropriation in the Construction Excise Tax Fund that was set aside for the purpose of issuing tax refunds. The refund of the Building and Structure Construction Tax will also be paid from the Developer Refunds appropriation in the Building and Structure Construction Tax Fund; however, the refunded amount of \$225,055 exceeds the appropriation budget of \$145,000. The recommended actions included in this memorandum reallocates \$82,000 from the Ending Fund Balance to offset the difference.

The refunds for Strong Motion Instrument Program Assessment Fee of \$4,201.02 and the Building Standards Administration Special Revolving Fund Fee of \$600.00 will be paid from PBCE's Building Development Fee Program – Non-Personal/Equipment appropriation.

January 31, 2019

Subject: Refund for Westfield

Page 4

BUDGET REFERENCE

The table below identifies the recommended refund and the associated fund and appropriations.

| Fund # | Appn # | Appn Name | Total Appn | Recommended Budget Action | Amount for Refund | 2018-2019 Adopted Budget Page | Last Budget Action (Date, Ord. No.) |
|--------|--------|----------------------------------|-------------|---------------------------|-------------------|-------------------------------|-------------------------------------|
| 429 | 7732 | Developer Refunds | \$145,000 | \$82,000 | \$225,055 | Adopted Capital V-824 | 6/19/2018 Ord. No. 30124 |
| 429 | 8999 | Unrestricted Ending Fund Balance | \$1,261,466 | (\$82,000) | N/A | Adopted Capital V-825 | 10/16/2018 Ord. No. 30172 |
| 465 | 7732 | Developer Refunds | \$500,000 | N/A | \$450,109 | Adopted Capital V-824 | 6/19/2018 Ord. No. 30124 |
| 001 | 0583 | PBCE – Non-Personal/ Equipment | \$2,060,471 | N/A | \$4,801 | Adopted Operating VIII-285 | 6/19/2018 Ord. No. 30124 |

CEQA

Not a Project, File No. PP17-009, Staff Reports, Assessments, Annual Reports, and Informational Memos that involve no approvals of any City action.

Not a Project, File No. PP17-004, Adjustment to Fees, Rates & Fares without changes to or expansion of services.

/s/

ROSALYNN HUGHEY, Director
Planning, Building and Code Enforcement



MARGARET MCCAHAN, Budget Director
City Manager's Office

/s/

JOHN RISTOW, Acting Director
Department of Transportation

For questions please contact Chu Chang, Assistant Director, Chief Building Official, at (408) 535-7791.