

II. DISCUSSION

Over the past months, staff have researched and evaluated options for the financing of the Convention Center Phase III Expansion Project. The approach that has been determined to offer the strongest legal and financial basis for the project is using the Mello-Roos Act as a basis to establish a community facilities district (“CFD”). This is also the structure that the City of San Jose and the hotel industry successfully used in its convention center expansion project.

The Mello-Roos Act provides significant flexibility for the financing of public facilities, and the City has previously used the Mello-Roos Act to establish community facilities districts (“CFDs”) within its territory to finance public infrastructure. However, the Mello-Roos Act does not specifically address the taxation of hotel properties through a collection method similar to the one used for the City’s transient occupancy tax (“TOT”), or a vote weighting methodology based on hotel room revenue. An amendment to the San Diego Municipal Code has been prepared so that the contemplated Convention Center Facilities District can be formed. The proposed amendment would provide the legal framework to establish a Convention Center Facilities District to provide funding for the proposed Expansion Project under Article XI of the California Constitution and the City’s Charter Authority, and through the incorporation, by reference in the amendment, of provisions of the Mello-Roos Act. Below are key elements of the amendment:

- The special tax levied in a Convention Center Facilities District established under new Section 61.2701, et seq. of the Municipal Code would be a tax on the property owners for the use of the property as a hotel, and therefore the electors would be the owners of the property on which hotels are located.
- In all election procedures, the votes will be allocated to the owner of each taxable parcel of land on the basis of one vote for each dollar of special tax that would have been due if the proposed special tax had been in place for the 12-month period ending three months prior to the month in which the resolution calling the election is adopted by City Council.
- The special taxes for the Convention Center Facilities District would be collected and administered in the same manner as the City’s TOT, unlike the special tax for a more typical CFD that is collected on the County tax roll. Therefore, if a property owner is different from the hotel operator, the property owner would need to arrange for requiring the hotel operator to collect and remit the special taxes.

Similar to a standard CFD, a special tax lien would be placed on the hotel property and the property could be subject to foreclosure if the special taxes are delinquent. If the property owner is a public entity, the Municipal Code amendment specifies that the lessee of the governmental entity is considered the property owner for the purposes of a Convention Center Facilities District formed under Section 61.2701, et seq. As such, the City and other public entity lessors of certain hotels in Mission Bay, San Diego Bay, and other areas would not be eligible to vote in the district formation election, and the leasehold interest would be subject to foreclosure if the special taxes are delinquent.

Convention Center Facilities District and Special Taxes

The Convention Center Facilities District would be structured as a City-wide district. The boundaries of the Convention Center Facilities District would be City-wide and only properties upon which hotels are located would be subject to the special tax. As a City-wide district, any hotels built in the future would become subject to the special tax. The amount of special tax and the formula for apportioning the tax would be set forth in the Rate and Method of Apportionment (the "R&MA") for the district, which would be docketed for City Council consideration with the Resolution of Intention to Form the District, expected in November 2011. In addition, the Resolution of Intention action includes the adoption of the district boundary map, which would be coterminous with the City limits. In accordance with the Mello-Roos Act, formation of the Convention Center Facilities District and imposition of the special tax would require two-thirds voter approval of the qualified electors whose property would be subject to the special tax. The R&MA is under development. The taxing formula is expected to involve a three-tiered structure (hotels in the downtown area within close proximity to the Convention Center would pay a rate of 3% of room revenue; hotels immediately outside of downtown in areas such as Mission Bay and Mission Valley would pay a rate of 2% of room revenue; and hotels located in all other City locations would pay a rate of 1% of room revenue), with the apportionment of special taxes being greater for hotels located closer to the Convention Center.

Next Steps

Adoption of the amendment does not lead to formation of a Convention Center Facilities District. It only provides a framework for forming such a district under Article XI of the California Constitution and the City's Charter Authority. Formation of a Convention Center Facilities District would require several legislative actions and an election process in the next two quarters. If the proposed Municipal Code amendments are approved by City Council, staff will prepare the necessary legal documents to form the Convention Center Facilities District. The targeted legislative time-line for the district formation is provided below.

Targeted Legislative Time-line for District Formation

- September 2011 Introduce Ordinance Amending the Municipal Code
- October 2011 Second Reading of Ordinance Amending the Municipal Code
- November 2011 Adoption of Resolution of Intention to Form District
- January 2012 Public Hearing; Adoption of Resolution of Formation of District
- April 2012 Election Held (mailed ballots)
- April 2012 Certify Election Results; Introduce Ordinance Levying Special Tax
- May 2012 Second Reading of Ordinance Levying Special Tax
- June 2012 Effective Date of Ordinance Levying Special Tax

III. FISCAL CONSIDERATIONS

If the proposed Municipal Code amendment is approved, and a Convention Center Facilities District is subsequently formed pursuant to new Municipal Code Section 61.2701, et seq., it is

contemplated that the costs of formation, estimated at \$200,000, would be reimbursed from special tax revenues of the district. These costs include the costs of Formation Counsel, the Special Tax Consultant, and City staff costs. The City engaged Willdan Financial Services in August 2011 to provide Special Tax Consulting services related to formation of the district. Willdan was selected from the City's As-needed Special Tax Consultant List established through a Request for Proposal process. The City Attorney's Office has identified Orrick Herrington & Sutcliffe LLP to serve as Formation Counsel, and on August 2, 2011 the City Council authorized the Firm to provide Formation Counsel Services Regarding the Formation of a Convention Center Financing District.

In addition, if the Convention Center Facilities District is formed, it is estimated that the district could contribute between \$29 million and \$33 million annually to the debt service for bonds issued to finance construction of the Expansion Project.

A detailed financing plan, incorporating other funding sources for the Expansion Project, is being developed and the City Council will be briefed during subsequent steps in the district formation process.

IV. ALTERNATIVES

Approval of the requested actions would provide a mechanism to establish a Convention Center Facilities District to fund a significant portion of the Expansion Project. Additional steps, including City Council approvals and an election involving affected property owners, would be required before a district could be formed.

V. PREVIOUS COUNCIL and/or COMMITTEE ACTION

On May 17, 2011, the City Council was presented with an informational report concerning the proposed Expansion Project. On August 2, 2011, the City Council adopted a Resolution authorizing the Assignment and Authorization Agreement related to the Proposed Phase III Expansion of the San Diego Convention Center, and adopted a Resolution authorizing the Law Firm of Orrick Herrington & Sutcliffe to Provide Formation Counsel Services regarding the Formation of a Convention Center Financing District.

VI. COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS

Outreach to hotel owners/operators is on-going. Significant community outreach is expected prior to the City Council actions related to formation of the Convention Center Facilities District. In addition, the formation of the Convention Center Facilities District will involve an election process.

VII. KEY STAKEHOLDERS AND PROJECTED IMPACTS

If a Convention Center Facilities District is subsequently formed under the proposed Municipal Code amendment, through various City Council actions and an election process, hotel operators and landowners who own property upon which hotels are located within the City will be subject

to a special tax to be approved by a 2/3 vote required of qualified electors. Business entities involved in the formation of the Convention Center Facilities District include Orrick, Herrington & Sutcliffe LLP (Formation Counsel) and Willdan Financial Services (Special Tax Consultant).



Lakshmi Kommi
Debt Management Director



Mary Lewis
Chief Financial Officer

Attachment: Proposed Municipal Code Amendment

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 6, ARTICLE 1 OF THE SAN DIEGO MUNICIPAL CODE BY ADDING DIVISION 27, SECTIONS 61.2701, 61.2702, 61.2703, 61.2704, 61.2705, 61.2706, 61.2707, 61.2708, 61.2709, 61.2710, 61.2711, 61.2712, 61.2713, 61.2714, 61.2715, 61.2716, 61.2717, 61.2718, 61.2719, ALL RELATING TO PROCEDURES TO BE FOLLOWED IN THE FORMATION OF A CONVENTION CENTER FACILITIES DISTRICT.

WHEREAS, the City is considering a renovation of and an expansion to the existing San Diego Convention Center (Convention Center Expansion); and

WHEREAS, the proposal for the Convention Center Expansion includes the formation of a special district (Convention Center Facilities District) comprising the entire City but only subjecting to special taxation all hotels within the City, which would be subject to a special tax based upon a percentage of room revenues; and

WHEREAS, this ordinance establishes a procedure, incorporating relevant portions of the Mello-Roos Act of 1982, whereby hotel owners may vote for or against the formation of the District, the levy of a special tax and any bonded indebtedness, the proceeds of which would be used to finance, in part, the Convention Center expansion; and

WHEREAS, the creation of special taxing districts and the issuance of bonds secured by special taxes levied on property therein entirely within the City is a municipal affair; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 6, Article 1 of the San Diego Municipal Code is hereby amended by adding new Division 27, sections 61.2701, 61.2702, 61.2703, 61.2704, 61.2705, 61.2706, 61.2707, 61.2708, 61.2709, 61.2710, 61.2711, 61.2712, 61.2713, 61.2714, 61.2715,

61.2716, 61.2717, 61.2718, 61.2719 titled “San Diego Convention Center Facilities District Procedural Ordinance,” to read as follows:

Division 27: San Diego Convention Center Facilities District Procedural Ordinance

§ 61.2701 Purpose and intent

The purpose and intent of this Division is to establish a procedure for financing certain public *convention center facilities* and maintenance through the establishment of convention center facilities districts, the levy and collection of special taxes within such districts and, for *convention center facilities*, the issuance of bonds secured by such special taxes.

§ 61.2702 Special tax proceedings

Proceedings for the formation of a convention center facilities district or districts for the purposes set forth in section 61.2701 may be conducted pursuant to this Division whether or not provided in any state law.

§ 61.2703 Non-exclusivity

- (a) This Division is not, in any way, exclusive.
- (b) The procedures provided in this Division are alternative to any other procedure provided in the San Diego Municipal Code or under state law.
- (c) The resolution of intention in any proceedings under any state law or other provision of the San Diego Municipal Code may provide that such provisions are supplemented by this Division.

§ 61.2704 Construction

This Division is to be liberally construed.

§ 61.2705 Definitions

Each word that is defined in this Division appears in the text of this Division in italicized letters. Terms defined in the *Act* but not defined in this Division have the meaning given them in the *Act*. For the purpose of this Division, the following definitions shall apply:

Act means the Mello-Roos Community Facilities Act of 1982 (Chapter 2,5, commencing with section 53311 of Part I, Division 2, Title 5 of the California Government Code), as amended from time to time.

Convention center facility means any building, improvement to real property, equipment or personal property (in each case having an expected useful life of five years or longer) that is publicly-owned and comprises any portion of the existing San Diego Convention Center and any expansion, construction, reconstruction, rehabilitation, replacement or upgrade thereto.

Hotel has the same meaning in San Diego Municipal Code section 35.0102.

Landowner means the owner of the real property upon which a *Hotel* is located, except that if the fee owner of the real property is a government entity,

Landowner means the lessee of the government entity.

Occupancy has the same meaning in San Diego Municipal Code section 35.0102 after excluding any reference therein to Recreational Vehicle Parks and Campgrounds.

Operator has the same meaning in San Diego Municipal Code section 35.0102.

Rent has the same meaning in San Diego Municipal Code section 35.0102 after excluding any reference therein to Recreational Vehicle Parks and Campgrounds.

Transient has the same meaning as in section 35.0102.

§ 61.2706 Incorporation of the Mello-Roos Community Facilities Act of 1982 and portions of the Streets and Highways Code

- (a) Except as otherwise provided in this Division, the *Act* and those sections of the California Streets and Highways Code referred to in the *Act*, are incorporated in and made a part of this Division.
- (b) Except as otherwise provided by this Division, the mode and manner for making improvements, for levying and collecting special taxes and for issuing bonds shall be as prescribed in the *Act*. In any conflict between the provisions of the *Act* or the referenced portions of the California Streets and Highways Code and this Division, the provisions of this Division shall prevail.
- (c) Notwithstanding subdivision (a), the provisions of sections 53312.7, 53312.8, 53313.6, 53313.7, 53313.9, 53325.6 (and the reference to 53325.6 contained in section 53331), 53329 and 53329.5 of the *Act* are not incorporated into this Division and shall have no application to proceedings conducted pursuant to this Division.
- (d) Notwithstanding the provisions of section 53313.51 of the *Act*, whenever the City is a party to construction contracts, the City may use its public works contracting procedures even if they do not involve or require the identification of “discrete portions or phases” of the facilities to be constructed.

- (e) For purposes of this Division the words "not to exceed three consecutive years" are deleted from section 53314.3 of the *Act*.
- (f) For purposes of this Division the words "not exceeding five years" and "within five years after such disbursement" are deleted from section 53314.5 of the *Act*.
- (g) For purposes of this Division, the word "revolving" is removed from section 53314.6 of the *Act* each time it appears.
- (h) For purposes of this Division, subdivisions (a)(1) and (a)(2) are removed from section 53314.9 of the *Act*.
- (i) For purposes of this Division, property not currently being used as a *Hotel*, or not designated in a City land use plan for *Hotel* use, or not the subject of a pending application filed with the City for *Hotel* use, shall be deemed exempt from the special tax for purposes of sections 53324, 53332, and all other similar provisions of the *Act* and for purposes of section 3114.5 and all other similar provisions of the California Streets and Highways Code.
- (j) For purposes of this Division, the provisions of section 53359.5(b)(13) of the *Act* shall apply only to special taxes levied on the property tax rolls pursuant to San Diego Municipal Code section 61.2714. For all other special taxes, instead of the information required by section 53359.5(b)(13), the City shall include in the report the same information with respect to the special taxes that it normally collects and reports regarding the City's Transient Occupancy Taxes.

- (k) Notwithstanding San Diego Municipal Code section 61.2391, in connection with the issuance of bonds pursuant to this Division, the City Council may determine and may declare in the resolution authorizing the issuance of the bonds that the City shall advance available penalty and interest charges on delinquent special taxes in a *convention center facilities* district to pay district obligations. Notwithstanding San Diego Municipal Code section 61.2392, the City in its sole discretion may determine whether funds in the Special Assessment District Delinquency Fund as defined in section 61.2392 may be expended on behalf of a *convention center facilities* district formed under this Division.

§ 61.2707 Authorized expenditures

- (a) A special tax imposed pursuant to this Division may finance the acquisition, construction, reconstruction, replacement, rehabilitation, upgrade and maintenance of any *convention center facility*.
- (b) Revenues from any special tax imposed under this Division may be spent on the following: debt service; lease payments; cost of issuance of securities issued for the purpose of financing or refinancing *convention center facilities*; replenishment or funding of reserve funds established in connection with the issuance of debt (as defined in the *Act*), administrative costs of the district; prepayment of such securities; direct costs of acquisition, planning, engineering, design, site preparation, and construction of *convention center facilities*; ongoing capital repairs and

maintenance of *convention center facilities*; and all incidental and administrative costs authorized by the *Act*.

§ 61.2708 Hearing, continuances

All hearings called for under the *Act* shall be required by this Division, except that they may be continued from time to time without further notice, but shall be completed within two years of the original hearing date. For purposes of this Division, the mailing notices as provided in sections 53322.4 and 53346 and any other similar provisions of the *Act* shall be made to owners and operators of properties that would not be exempt from the special tax if the proposed special tax were being currently levied as proposed.

§ 61.2709 Written protests

All protest procedures set forth in the *Act* shall apply to this Division, except that registered voters shall have no protest rights under any circumstances, and *Landowner* protests shall be weighted base on number of votes possessed under San Diego Municipal Code section 61.2710(c) instead of area of land.

§ 61.2710 Special tax levy; election; voter qualifications; ballots

All election procedures set forth in the *Act* shall apply to this Division, with the following exceptions:

- (a) The qualified electors shall in all cases be the *Landowners*.
- (b) The City Clerk shall in all cases be the elections official.
- (c) Votes shall not be allocated on the basis of acreage of real property, but instead shall be allocated to each *Landowner* on the basis of one vote for each dollar of special tax that would have been the obligation of that

parcel (as determined by the City Council) if the proposed special tax had been in place for the 12-month period ending at the end of the month which is three months prior to the month in which the resolution calling the special, mailed-ballot election is adopted by the City Council. If a *Hotel* was not operated during that entire 12-month period, or was operated at less than normal capacity due to remodeling or construction or reconstruction or any other cause, the number of votes to be allocated to the *Landowner* of that parcel shall be determined by the City Council based on estimates presented to the City Council utilizing data from other *Hotels* deemed by the City Council to be most similar in size and quality and location to the *Hotel* in question. The City Council's decision regarding the number of votes to be allocated to a *Hotel* properties shall be final.

- (d) The *Landowners* entitled to vote shall be those meeting the definition of *Landowner* as of the close of the public hearing unless the City Clerk is informed, by reliable evidence as determined by the City Clerk, of a change in ownership after that time and prior to the election. In that event, the City Clerk shall, at the request of the new *Landowner* submitted to the City Clerk with such evidence no later than 24 hours before the deadline for returning ballots, prepare a new ballot and deliver it to the new *Landowner*. The City Clerk shall also, in that event, accept and include in the canvass of the election the ballot submitted by the new *Landowner* rather than the ballot prepared for the former *Landowner*.

- (e) Since the *Landowner*-voters are entitled to a secret ballot, and since ballots are required to contain the names of each *Landowner* and the number of votes each *Landowner* is entitled to cast, and since the number of votes assigned to each *Hotel* may be considered to contain proprietary commercial information, the City Clerk shall protect the confidentiality of the ballots. No persons, other than the staff and consultants of the City who require access for the purposes of counting and canvassing the ballots, may have access to the ballots at any time, unless by order of a court of competent jurisdiction.

§ 61.2711 Notice of Special Tax Lien

- (a) For purposes of this Division, and to conform to the language of the form of notice of special tax lien already contained in section 3114.5 of the California Streets and Highways Code, the words “whose properties are not exempt from the special tax” shall be added to section 3114.5 of the California Streets and Highways Code immediately following the words “The county recorder shall index the notice of special tax liens to the names of the property owners within the community facilities district...”
- (b) Whenever a parcel of property within a *convention center facilities* district formed pursuant to this Division begins to be used as a *Hotel* property, either for the first time or after a period of time when it was not so used, that property shall thereupon become subject to the special tax. The City Clerk shall prepare an amended notice of special tax lien, or an

amendment to the notice of special tax lien, that applies to and describes the new *Hotel* property in accordance with the California Streets and Highways Code. The City Clerk shall arrange for the recording of the document with the county recorder as provided in the California Streets and Highways Code.

§ 61.2712 Application of special tax

Any special tax imposed pursuant to this Division shall be levied on the property for use of the property as a *Hotel* (or, as the case may be, levied on the leasehold interest of a publicly-owned *Hotel* parcel). The special tax shall not, in any year, be levied on the residential use of the property for that year. *Hotel* use is not residential use.

§ 61.2713 Special tax collected with transient occupancy tax

All special taxes imposed pursuant to this Division shall be due and remitted with the *Operator's* payment of the transient occupancy tax as set forth in Chapter 3, Article 5, Division 1 of the San Diego Municipal Code. In the event that the *Landowner* is not the *Operator*, the *Landowner* shall cause the *Operator* to remit the special taxes imposed pursuant to this Division with the *Operator's* payment of the transient occupancy tax. Unlike Chapter 3, Article 5, Division 1 of the San Diego Municipal Code, however, the special tax is not imposed on the *Transient*, but is imposed on the real property containing the *Hotel* or, as the case may be, on the leasehold interest containing the *Hotel* if the parcel or parcels containing the *Hotel* are publicly owned. The *Operator* may, but is not required to, add the special tax to, and collect it with, the *Rent*. the provisions of San Diego Municipal

Code sections 35.0111, subdivisions (f), (g) and (h) of sections 35.0112 , 35.0114, 35.0115, 35.0116, 35.0117, 35.0118, 35.0121, 35.0122, 35.0127, the first sentence of 35.0136, 35.0137 and 35.0138 shall apply to any special tax levied pursuant to this Division. The special tax levied pursuant to this division is distinct from the City's transient occupancy tax and may be enforced, in the event of non-payment, as provided in the *Act*.

§ 61.2714 **Optional collection of delinquent special taxes on secured property tax roll**

Any special taxes delinquent as of July 1 of any fiscal year, together with any penalties and interest accrued as of that date, may, at the option of the City Council, be placed on the secured property tax roll for the property incurring the special tax obligation in the that fiscal year, where it shall be collected in the same manner as ordinary ad valorem property taxes are collected and shall be subject to the same penalties and the same procedure, sale, and lien priority in case of delinquency as is provided for ad valorem taxes.

§ 61.2715 **Refunding bonds, use of savings**

Notwithstanding section 53364.2 of the *Act*, any savings achieved through the issuance of refunding bonds may be used in any manner that is consistent with the purposes for which the special tax was imposed.

§ 61.2716 **Goals and policies**

The provisions of section 53312.7 of the *Act*, concerning the adoption of local goals and policies, shall be permissive and not mandatory in connection with any proceedings taken, special tax levied or bonds issued pursuant to this Division.

§ 61.2717 Compliance with Division

Any proceedings taken, special tax levied or bonds issued pursuant to this Division shall not be held invalid for failure to comply with the provisions of this Division provided such failure is not a constitutional defect.

§ 61.2718 Conflict of law

In the event of any conflict between the provisions of this Division or other provisions of the San Diego Municipal Code and the provisions of the *Act*, this Division shall govern.

§ 61.2719 Severability

If any section, subsection, sentence, clause, phrase, portion or provision of this Code is for any reason held to be invalid or unconstitutional, by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Code. The Council of this City hereby declares that it would have adopted each section, subsection, sentence, clause, phrase, portion or provision thereof, irrespective of the fact that any one or more sections, paragraphs, sentences, clauses, phrases, portion or provision be declared invalid or unconstitutional. This section shall apply to all amendments heretofore or hereafter made to the Code.

Section 2. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been available to the City Council and the public a day prior to its passage.

Section 3. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: JAN I. GOLDSMITH, City Attorney

By _____
Brant C. Will
Deputy City Attorney

BCW:jdf
09/08/2011
Or.Dept:Debt Management
Doc. No. 242076.2

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor