

MEMORANDUM OF LAW

DATE: March 4, 1992

TO: Ernie Anderson, Assistant Financial Management Director
FROM: City Attorney
SUBJECT: Housing Trust Fund; Applicability of Fund Allocation On
Transient Occupancy Taxes ("TOT") Collected From Hotels
Located on Navy Field

BACKGROUND

By a memorandum dated January 29, 1992, you asked for our views on the above-captioned matter. Your memorandum indicates that the Convention Center Corporation is of the view that there is no "nexus" between Housing Trust Fund allocations and TOT collected from Navy Field hotels. Of particular note is the question of increases in TOT as a result of the opening of the new Hyatt Hotel.

You have included with your memorandum a copy of a letter dated September 9, 1991 from Acting General Manager R. Joseph Davis of the Convention Center Corporation to Assistant City Manager Maureen Stapleton which states:

Our General Counsel has contacted Curtis Fitzpatrick, the author of the Housing Trust Fund Ordinance, who said that in his opinion, no nexus was intended between the Fund and Navy Field TOT. In other words, SDCC is entitled to the entire allotment of TOT from Navy Field Hotels consistent with Council Policy.

Quite frankly, I am somewhat astounded by this assertion. It is my recollection of my discussion with Mr. Byron Georgiou, General Counsel for the Corporation, that I told him that:

(1) I would have to review carefully the provisions of the Transient Occupancy Tax Ordinance (Municipal Code section 35.0128) and the Housing Trust Fund Ordinance (Municipal Code section 98.0503) to determine what, if any, "nexus" or relationship existed;

and that,

(2) I could not advise him of my views unless and until I was requested for my opinion by my client, i.e., the City Council, the City Manager, the City Auditor or someone under their authority.

ANALYSIS

Section 98.0503(a) of the San Diego Municipal Code (Housing Trust

Fund Ordinance) provides:

Section 98.0503 ESTABLISHMENT OF THE SAN
DIEGO HOUSING TRUST FUND AND TRUST FUND
ACCOUNT

(a) There is hereby established a Fund to be known and denominated as the San Diego Housing Trust Fund. The Trust Fund shall consist of funds derived from the commercial development linkage fees to be paid to the City pursuant to Division 6, Article 8, Chapter IX (Sections 98.0601 et seq.) of the San Diego Municipal Code; funds derived from the growth in revenues from the Transient Occupancy Tax as provided in Section 35.0128 of the San Diego Municipal Code and any other appropriations as determined from time to time by legislative action of the City Council. This Fund shall be administered by the Commission pursuant to the provisions of this ordinance, the program plan, the appropriation ordinances and Council policies applicable thereto.

(Emphasis supplied.)

Section 35.0128(e) of the San Diego Municipal Code (Transient Occupancy Tax Ordinance) provides as follows:

(e) Notwithstanding the provisions of subparagraphs (a), (b), (c) and (d) of this section regarding utilization of revenues, an amount equal to all revenues collected by the City under Section 35.0103 of this Article from hotels within the Navy Field Complex remaining after payment of a proportionate share of the costs in the administration of this Article, shall first be allocated for the purpose of planning, promoting, operating and maintaining the San Diego Convention Center, including a contingency reserve (for these same purposes) by a transfer to the existing Transient Occupancy Tax New Convention Facility Fund. Money remaining under this section, after providing for the planning, promotion, operation and maintenance of the San Diego Convention Center, including a contingency reserve, may be expended for such legal purpose or purposes as the Council may

direct. (Emphasis supplied.)

Obviously, one could contend that these two sections of the Municipal Code, each fundamentally addressing a different concept, could be construed to be in conflict with each other. Section 98.0503(a) seems to imply that all increases in TOT revenue from the effective date of the Housing Trust Fund Ordinance (May 15, 1990) irrespective of source should be placed in the Housing Trust Fund. On the other hand, Section 35.0128(e) states very simply that an amount equal to all revenues derived from Navy Field Complex hotels be first allocated for Convention Center purposes.

Clearly, there is an ambiguity and perhaps more careful drafting on the part of the draftsman (the undersigned) would have clarified it. However, we believe the general rules of statutory construction will assist in clarifying the issue.

First of all, the language contained in Section 98.0503 recognizes the significance of the allocation of funds provided in Section 35.0128 in general. To the extent then that the legislative body had intended to exclude "growth" revenues from certain hotels (i.e., those within the Navy Field Complex) from the growth revenues to be dedicated to Housing Trust Fund purposes, it clearly could have done so. The legislative record will reflect that no such consideration was undertaken.

Secondly, there is another rule of statutory construction which California jurisprudence applies to matters of this nature. If a potential conflict or ambiguity arises between two statutes or laws of equal dignity, the most recent expression of the legislative body (i.e., the most recent enactment) will prevail. *First City Bank v. Franchise Tax Board*, 70 Cal.3d 444 (1977).

This rule also favors the allocation of the increase in revenues to the Housing Trust Fund, because the most recent amendment to Section 35.0128 was April 1990 while the ordinance creating the Housing Trust Fund became effective on May 15, 1990.

CONCLUSION

On these bases then, we conclude that increases in revenues derived from the TOT from hotels located within the Navy Field Complex should be allocated to the Housing Trust Fund absent a specific amendment to the Housing Trust Fund Ordinance to the contrary.

JOHN W. WITT, City Attorney

By

C. M. Fitzpatrick
Assistant City Attorney

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