

# RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

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## CITY OF SAN JOSE CONVENTION CENTER FACILITIES DISTRICT NO. 2008-1

The Special Tax authorized by Convention Center Facilities District No. 2008-1 ("CCFD No. 2008-1") of the City of San Jose (the "City") shall be levied on all Assessor's Parcels within CCFD No. 2008-1 and collected as provided herein commencing in Fiscal Year 2009-2010 in an amount determined by the City Council through the application of the rate and method of apportionment of the Special Tax set forth below. All of the real property within CCFD No. 2008-1, unless exempted by law or by the provisions hereof, shall be taxed for the purposes, to the extent and in the manner herein provided.

### ***A. DEFINITIONS***

The terms hereinafter set forth have the following meanings:

**"Additional Special Tax"** means the Special Tax determined in accordance with Section D herein, which may be levied by the City Council in any Fiscal Year on an Assessor's Parcel of Taxable Property to satisfy the Revenue Stabilization Reserve Requirement, provided that there are Bonds outstanding.

**"Assessor's Parcel"** means a lot or parcel shown in an Assessor's Parcel Map with an assigned assessor's parcel number.

**"Assessor's Parcel Map"** means an official map of the Assessor of the County designating parcels by assessor's parcel number.

**"Base Special Tax"** means the Special Tax determined in accordance with Section C herein, which may be levied by the City Council in any Fiscal Year on an Assessor's Parcel of Taxable Property.

**"Bond Documents"** means any bond indenture, trust agreement or similar document setting forth the terms of any Bonds.

**"Bonds"** means any binding obligation to pay or repay a sum of money, including obligations in the form of bonds, notes, certificates of participation, long-term leases, loans from government agencies, or loans from banks, other financial institutions, private businesses, or individuals, or long-term contracts, or any refunding thereof, to which the Special Tax has been pledged.

**"CCFD Administrator"** means an official of the City, or designee thereof, responsible for determining the Special Tax Requirement and providing for the levy and collection of the Special Taxes for CCFD No. 2008-1.

**"Chapter"** means Chapter 14.32 of the San Jose Municipal Code, as amended.

**“City”** means the City of San Jose.

**“City Council”** means the City Council of the City.

**“County”** means the County of Santa Clara.

**“Director of Finance”** means the finance director of the City.

**“Exempt Property”** means all Assessor’s Parcels within CCFD No. 2008-1 which are exempt from the Special Taxes pursuant to Section F herein.

**“Facilities”** has the meaning given to that term in the resolution of which this Rate and Method of Apportionment of Special Tax is a part.

**“Fiscal Year”** means the period commencing on July 1 of any year and ending the following June 30.

**“Hotel Property”** means an Assessor’s Parcel of Taxable Property which consists of one or more buildings or structures situated in the City that has, on file with the Director of Finance, a transient occupancy registration certificate, including, but not limited to, any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, guesthouse, bed and breakfast inn, apartment house, dormitory, public or private club, mobilehome or house trailer at a fixed location, or other similar structure or portion thereof situated in the city, which is occupied or intended or designed for Occupancy by Transients for dwelling, lodging or sleeping purposes.

**“Hotel Transient Unit”** means a room within Hotel Property as to which the Special Tax may be levied in that it is used for Transient Occupancy.

**“Occupancy”** means the use or possession, or right to the use or possession of any Hotel Transient Unit, or portion thereof.

**“Operator”** means the person who is proprietor of the Hotel Property, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs his functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator, and shall have the same duties and liabilities as his principal.

**“Owner”** means the landowner, owner of land, or property owner of Hotel Property, except that if the fee owner of the Hotel Property is a government entity, ‘Owner’ means the lessee of the government entity.

**“Rent”** means the consideration charged for the Occupancy of Hotel Transient Units valued in money, whether to be received in money, goods, property, labor, service, or otherwise. For purposes of this definition, Rent charged to: 1) a federal or state employee when on official business, or 2) any officer or employee of a foreign government, who is exempt by reason of express provision of federal law or international treaty, shall be excluded from the Base Special Tax and Additional Special Tax calculations defined in Section C and D herein, respectively.

**“Revenue Stabilization Reserve”** means a fund to be established and held by the City. Prior to the issuance of Bonds, all Special Tax revenues will, as collected and received by the City, be deposited in the Revenue Stabilization Reserve. Prior to the first issuance of Bonds, the City may pay its authorized expenses incurred in connection with the Convention Center Facilities District from the Revenue Stabilization Reserve, and thereafter as may be specified in the Bond Documents. Funds in the Revenue Stabilization Reserve shall be available for transfer to the appropriate redemption funds or accounts, established by the Bond Documents for the payment of debt service on Bonds, in the event that Special Tax collections, at any time, are not sufficient to make scheduled payments of principal or interest on the Bonds.

Subject to any limitations that may be imposed by the Bond Documents, the City may, at any time, transfer amounts in the Revenue Stabilization Reserve in excess of the Revenue Stabilization Reserve Requirement to the project fund for the Facilities or provide for changes, including a reduction, of the Revenue Stabilization Reserve.

The Bond Documents may establish terms and conditions under which the Revenue Stabilization Reserve may be closed and the Special Tax revenues therein, and any investment earnings thereon, applied to other authorized purposes of CCFD No. 2008-1. In the absence of provisions in the Bond Documents, once all Bonds have been retired, or provision has been made for their retirement or early redemption (which provision may include the application of moneys in the Revenue Stabilization Reserve), the Revenue Stabilization Reserve will be closed and all remaining funds in the Revenue Stabilization Reserve transferred to the project fund for the Facilities.

**“Revenue Stabilization Reserve Requirement”** means the minimum balance required in the Revenue Stabilization Reserve, as specified in the Bond Documents.

**“Special Tax”** means the special tax authorized by CCFD No. 2008-1 to be levied by the City Council pursuant to the Chapter to fund the Facilities.

**“Taxable Property”** means all Assessor’s Parcels that are not exempt from the Special Tax pursuant to law or the Rate and Method of Apportionment of Special Tax.

**“Transient”** means a person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty consecutive calendar days or less, counting portions of calendar days as full days.

**“Zone”** means one of the two mutually exclusive geographic areas defined below.

- *“Zone 1”* means all territory in the City located within a two and one quarter (2 ¼) mile radius of the San Jose Convention Center located at 408 Almaden Blvd. San Jose CA. 95110.
- *“Zone 2”* means all territory within the City of San Jose that is not within Zone 1.

## ***B. CLASSIFICATIONS OF ASSESSOR'S PARCELS***

Each Fiscal Year using the definitions above, all Assessor's Parcels within CCFD No. 2008-1 shall be classified as either Hotel Property or Exempt Property and all Hotel Property shall be classified as within either Zone 1 or Zone 2. Commencing with Fiscal Year 2009-2010 and for each subsequent Fiscal Year, all Hotel Property shall be subject to Special Taxes pursuant to Sections C, D and E below.

## ***C. BASE SPECIAL TAX RATE***

### ***Zone 1***

Commencing in Fiscal Year 2009-2010, each Assessor's Parcel classified as Hotel Property within Zone 1 of CCFD No. 2008-1 shall be subject to a Base Special Tax. The Base Special Tax for each Assessor's Parcel classified as Hotel Property within Zone 1 shall equal four percent (4%) of all Rent charged.

### ***Zone 2***

Commencing in Fiscal Year 2009-2010, each Assessor's Parcel classified as Hotel Property within Zone 2 of CCFD No. 2008-1 shall be subject to a Base Special Tax. The Base Special Tax for each Assessor's Parcel classified as Hotel Property within Zone 2 shall equal the percentage of all Rent charged as identified in Table 1 below.

**TABLE 1**  
**ZONE 2 BASE SPECIAL TAX RATES**

Term	Base Special Tax
July 1, 2009 – December 31, 2009	1%
January 1, 2010 – June 30, 2010	2%
Fiscal Year 2010-2011	3%
Fiscal Year 2011-2012 and thereafter	4%

## ***D. ADDITIONAL SPECIAL TAX RATE***

Commencing in Fiscal Year 2009-2010, each Assessor's Parcel classified as Hotel Property in CCFD No. 2008-1 shall be subject to an Additional Special Tax. The Additional Special Tax for each Assessor's Parcel classified as Hotel Property within either Zone shall equal one percent (1%) of all Rent charged.

If Bonds are outstanding, and the City Council determines, by no later than June 1 of any calendar year (or such other date as specified in the Bond Documents), that the amount in the Revenue Stabilization Reserve is less than the Revenue Stabilization Reserve Requirement, then the City Council may levy and collect the Additional Special Tax in the following Fiscal Year. The City must mail written notice of the imposition of the Additional Special Tax to all Owners, or Operators on behalf of Owners, at least 30 days before the imposition of the Additional Special Tax may commence. If the Additional Special Tax will not be imposed in any year immediately following a year in which it was imposed, then the City must mail written notice by June 1 to all Owners or Operators on behalf of Owners that levy of the Additional Special Tax will cease as of the following July 1 for the Fiscal Year beginning on that day.

### ***E. METHOD OF APPORTIONMENT OF THE SPECIAL TAX***

Commencing with Fiscal Year 2009-2010, and for each subsequent Fiscal Year, the City Council shall levy Special Taxes as described below:

- Step One: The Base Special Tax shall be levied on each Assessor's Parcel classified as Hotel Property up to the rates specified in Section C.
- Step Two: The Additional Special Tax shall also be levied on each Assessor's Parcel classified as Hotel Property if authorized, and as provided in, Section D.

Special Taxes associated with Rent that is charged for Transient Occupancy shall be considered levied and due in the calendar month the Transient ceases Occupancy of the Hotel Transient Unit(s), except that Special Taxes associated with Rent that is paid by credit card shall be deemed levied and collected on the date that the credit card is presented for payment to the Operator. The Special Taxes are payable as described in Section G below.

### ***F. EXEMPTIONS***

No Special Tax shall be levied on any Assessor's Parcel not classified as Hotel Property.

### ***G. MANNER OF COLLECTION***

The Special Tax shall be collected monthly by the City. Each Operator on behalf of the Owner shall, on or before the last day of each calendar month, submit the Special Taxes levied against their Hotel Property to the Director of Finance of the City and shall include a special tax obligation form provided by the City.

### ***H. FAILURE TO SUBMIT SPECIAL TAX***

If any Owner, or Operator on behalf of Owner, fails or refuses to pay the Special Tax levied, the Director of Finance shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of the Special Tax. As soon as the Director of Finance shall procure such facts and information as he is able to obtain upon which to base the Special Tax for such Assessor's Parcel classified as Hotel Property, the Director of Finance shall proceed to determine the amount of such Special Tax due plus any penalties and interest, as described below. In case such determination is made, the Director of Finance shall give a Determination of Special Tax Due by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the Owner or Operator on behalf of the Owner at its last known place of address. Such Owner, or Operator on behalf of the Owner, may file an appeal as prescribed in Section J herein.

Any Operator who fails to remit the Special Tax levied within the time required shall be subject to a penalty of ten percent (10%) of the amount delinquent in addition to the delinquent Special Tax. Delinquent Special Taxes will incur an additional 1½% penalty (applied to the amount originally levied without compounding) on the first day of each month which is more than six months after the date when the delinquent Special Tax was levied.

### ***I. SPECIAL TAX AUDIT***

It shall be the duty of the Owner, or Operator on behalf of the Owner, for each Assessor's Parcel classified as Hotel Property that is subject to the Special Tax to keep and preserve, for a period of three years, all records as may be deemed necessary by the City (and that will, at a minimum, include a record of all Rents collected) to determine the Special Taxes levied upon such Hotel Property by the City Council. The City shall have the right to inspect such records at all reasonable times.

### ***J. APPEALS***

Any Owner or Operator on behalf of the Owner, claiming that the amount or application of the Special Tax is not correct, may appeal to the City Council by filing a notice of appeal with the City Clerk within fifteen calendar days of the serving or mailing of the Determination of Special Tax Due. The City Council shall fix a time and place for hearing such appeal, and the City Clerk shall give notice in writing to such Owner and Operator at their last known place of address. The findings of the City Council shall be final and conclusive, and shall be served upon the appellant in the manner prescribed above for service of notice of hearing. Any Special Tax found to be due shall be immediately due and payable upon the service of the City Council findings. If the City Council decision requires that the Special Tax for an Assessor's Parcel be modified or changed in favor of the Owner, or Operator on behalf of Owner, a cash refund shall not be made, but a credit shall be given against future Special Taxes on that Assessor's Parcel.

### ***K. TERM OF SPECIAL TAX***

The authority of the City Council to levy the Base Special Tax on all Assessor's Parcels classified as Hotel Property within CCFD No. 2008-1 in accordance with Section E is perpetual. The Additional Special Tax may only be levied during a period when Bonds are outstanding in accordance with Section E herein.