

AGENDA ITEM NO. 1 G

COUNCIL MEETING 5/5/2011

APPROVED BY



DEPARTMENT DIRECTOR

CITY MANAGER

May 5, 2011

FROM: CRAIG SCHARTON, Assistant Director
Development & Resource Management Department

BY: BRUCE HARTMAN, Community Revitalization Manager
Development & Resource Management Department

SUBJECT: *REQUEST BY JHF FAMILY LIMITED PARTNERSHIP AND FOR REFUND OF SPECIAL ASSESSMENTS PAID WITH THE FIRST INSTALLMENT OF THEIR 2010-2011 PROPERTY TAX BILL, PURSUANT TO FRESNO MUNICIPAL CODE SECTION 1-512(g).*

RECOMMENDATIONS: For Council to determine whether \$10,545.03 of special assessments paid by JHF Family Limited Partnership was erroneously paid, and a refund of said amount be approved pursuant to Fresno Municipal Code ("FMC") §1-512(g).

EXECUTIVE SUMMARY: JHF Family Limited Partnership ("owner"), through their legal counsel, Thomas V. Miles have requested, pursuant to FMC §1-512(g), a refund totaling \$10,545.03 per City, \$1074.42 per property owners paid by the owner for special assessments for code enforcement costs and penalties on ten separate properties included in their first installment of the 2010-2011 property tax bills.

BACKGROUND: The process for collecting abatement and enforcement costs and penalties for the Code Enforcement Division is codified under Article 5 of Chapter 1 of the FMC. Basically, costs incurred by the City for abatements and/or fines for code violations are totaled and invoiced for each property (FMC §1-505). Then a public hearing is conducted to confirm those costs (FMC §1-506). At that hearing, the property owner can object to or appeal those costs. Under FMC §1-511, those costs are converted into a special assessment, which acts as a lien on the particular property. Under FMC §1-512, the special assessment is recorded, and added to the property tax bill for each tax period, and is paid with that particular tax bill. However, there is an exception to the requirement to pay a special assessment. Section 1-512(a) states in pertinent part:

Immediately upon recording the Notice of Special Assessment, the Special Assessment shall become a lien upon the subject property, except that if any real property to which the lien would attach has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrancer for value has been created and attaches thereon, prior to the date on which the first installment of taxes that included the special assessment imposed under this section would become delinquent, then the lien that would otherwise be imposed by this section shall not attach to real property and the costs of abatement and enforcement relating to the property shall be transferred to the unsecured roll for collection.

In other words, should the property be transferred to another owner as a bona fide purchaser, then the special assessment, by operation of law, is taken off the current tax bill and transferred to the County's unsecured tax rolls, as long as that sale or transfer occurred prior to the date of delinquency for the first installment of the tax in which the special assessment is included. For example, if the special assessment is

recorded and is included in the first installment of the 2010-2011 property tax bill, then the special assessment would be paid with that first installment which is due no later than December 10, 2010. However, under section 1-512(a) a property owner who buys or takes title to that property for value before that first property tax installment is delinquent, in this example, December 10, 2010, the new owner would not be required to pay that part of the tax bill that includes the special assessment, and that assessment should be taken off the tax bill and transferred to the unsecured tax roll.

With current staffing, it would be virtually impossible for staff to monitor each property that has a special assessment attached to determine when a sale or transfer has occurred that triggers the section 1-512(a) exception, and transfer the assessment to the unsecured roll. Therefore, there will be instances in which special assessments that meet the section 1-512(a) requirements will be paid in error. This is especially true since it is the policy with Fresno County to require a property owner to pay the entire listed tax bill amount even if the special assessment should have been removed.

The FMC provides a procedure for requesting a refund for special assessments paid in error. FMC §1-512(g) states:

Refund. The Council may order a refund of all or part of a tax paid pursuant to this section if it finds that all or part of the tax has been erroneously levied. A tax or part thereof shall not be refunded unless a claim is filed with the City Clerk on or before November 1 after the tax became due and payable. The claim shall be verified by the person who paid the tax, or his/her guardian, executor or administrator.

The owner, through their legal counsel Thomas V. Miles, have made a timely request and have provided the City with copies of the deeds for each of the ten properties they have purchased with special assessments attached to the first installment of their 2010-2011 property tax bills, and have provided proof that they have paid those assessments which, pursuant to §1-512(a) should have been transferred to the unsecured tax rolls. A spreadsheet listing the properties, their APN's, the amount of refund requested for each, and the date the deed was recorded, copies of the deeds, the tax bill for each and proof of payment of the taxes is attached to this staff report for your review.

FISCAL IMPACT: If approved, the refund will be taken from the Code Enforcement cost recovery fund.

Attachments:

Spreadsheet, first installment 2010-2011 property tax bill, and proof of payment, copies of deeds for each property.

MDF:ns [55625ns/mdf]- 4/1/11

CITY OF FRESNO
DEVELOPMENT AND RESOURCE MANAGEMENT DEPARTMENT
CODE ENFORCEMENT
REFUND REQUESTED BY PROPERTY OWNER

Address	APN	Refund Req by Property Owner	Corrected Amount Per City	Difference
4723 E. Thomas	454-251-21	92.65	92.65	-
4103 E. Liberty	470-216-12	246.11	246.11	-
2034 E. Terrace	445-254-10	475.29	446.74	(28.55)
2014-2016 N. Cedar	447-230-24	318.94	318.94	-
5180 E. Lamona	455-125-10	371.54	371.55	0.01
1123 W. University	444-242-03	5,212.81	5,212.81	-
1209 E. George	479-291-10	3,359.17	3,358.17	(1.00)
4677 E. Tulare	460-324-37	151.25	151.40	0.15
4714 E. Clinton	447-221-03	119.00	119.00	-
4541 E. Grant	460-073-14	227.66	227.66	-
Total		10,574.42	10,545.03	(29.39)

**JHS Family Lt. Partnership
Refund Request**

Address	APN		Amount Refund Requested	Date Deed Recorded *
4723 E. Thomas	454-251-21	X	\$92.65 ✓	8/13/2009
4103 E. Liberty	470-216-12	X	\$246.11 ✓	9/1/2009
2034 E. Terrace	445-254-10	X	\$475.29 ^{446.74} - 27.55	10/15/2009
2014-2016 N. Cedar	447-230-24	X	\$318.94 ✓	8/12/2009
5180 E. Lamona	455-125-10	X	\$371.54 ^{371.55} 1.01	6/5/2009
1123 W. University	444-242-03	X	\$5,212.81 ✓	10/1/2009
1209 E. George	479-291-10	X	\$3,359.17 ^{3,352.17} - 1.00	12/1/2009
4677 E. Tulare	460-324-37	X	\$151.25 ^{151.40} +.15	8/3/2009
4714 E. Clinton	447-221-03	X	\$119.00 ✓	8/3/2009
4541 E. Grant	460-073-14	X	\$227.66 ✓	6/15/2009
Total			\$10,574.42	

***4/11/11- date tax bill (with special assessment) becomes delinquent.**

10,545.03

(2979)

THOMAS V. MILES

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March 25, 2011

Mr. Michael Flores
Deputy City Attorney
Fresno City Hall
2600 Fresno Street
Fresno, CA 93721

Hand Delivered

RECEIVED
CITY ATTORNEY
2011 MAR 25 PM 2:11

Re: JHS Family Ltd. Partnership's request for refund of overpayment on 2010-2011
Property Tax Bills for:

1209 E. George, Fresno, CA	APN: 479-291-10
1123 W. University, Fresno, CA	APN: 444-242-03
4677 E. Tulare, Fresno, CA	APN: 460-324-37
4714 E. Clinton, Fresno, CA	APN: 447-221-03
4541 E. Grant, Fresno, CA	APN: 460-073-14
5180 E. Lamona, Fresno, CA	APN: 455-125-10
2014-2016 N. Cedar, Fresno, CA	APN: 447-230-24
2034 E. Terrace, Fresno, CA	APN: 445-254-10
4102 ³ E. Liberty, Fresno, CA	APN: 470-216-12
4723 E. Thomas, Fresno, CA	APN: 454-251-21

Dear Mr. Flores:

Thank you for your response to my letters dated February 18, 2011 regarding the above referenced properties. As you know, we were able to obtain revision of the tax bill for a number of other properties similarly situated to the properties above, but the first installment on the 2010-2011 property tax bill was inadvertently paid for each of the above properties.

Pursuant to your letter dated March 2, 2011, which acknowledged receipt of my February 18, 2011 letters requesting refund of my clients' overpayment of special

Mr. Michael Flores
March 25, 2011
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assessment liens which should have been removed from the tax bill on each of the above properties, and your indication that in order to obtain a refund I would need to provide some documentation to establish that the family partnerships actually paid the assessments they have requested to be refunded, enclosed herewith you will find a copy of a check payable to the Fresno County Tax Collector in the amount of \$47,495.37. This check represents payment on the attached list of APN's upon which the family partnerships paid their property tax through their management company, JJD Management Associates. On the attached list you will find the ten properties identified by address and APN, which correlate to the addresses and APNs above, and the amounts paid. The amounts paid contain the overstated first installment on the property tax bill for which my clients are not responsible and which should be removed pursuant to Municipal Code section 1-512(a) as set forth in my letters of February 18, 2011.

The overpaid amount to be refunded for each of the properties should be one-half the total special assessment lien which was paid in the first installment and calculated as follows:

<u>Property</u>	<u>Tax Paid</u>	<u>Assessment Lien</u>	<u>Amount Overpaid</u>
APN: 479-291-10	\$ 3,682.98	\$ 6,718.34	\$ 3,359.17
APN: 444-242-03	\$ 5,681.96	\$ 10,425.62	\$ 5,212.81
APN: 460-324-37	\$ 458.22	\$ 302.50	\$ 151.25
APN: 447-221-03	\$ 560.24	\$ 238.00	\$ 119.00
APN: 460-073-14	\$ 703.33	\$ 455.32	\$ 227.66
APN: 455-125-10	\$ 724.38	\$ 743.07	\$ 371.54
APN: 447-230-24	\$ 637.88	\$ 637.88	\$ 318.94
APN: 445-254-10	\$ 950.57	\$ 895.58	\$ 475.29
APN: 470-216-12	\$ 515.98	\$ 492.22	\$ 246.11
APN: 454-251-21	\$ 410.19	\$ 185.30	\$ 92.65
		<u>Total Refund</u>	\$ 10,574.42

With respect to 635 N. Roosevelt, Fresno, CA (APN:454-263-02) and 4302 E. Ball, Fresno, CA (APN: 460-227-27 owned by David and Linda Hovannisian), the first installments on the 2010-2011 property tax were paid by the previous owners of each property and therefore my clients are not seeking reimbursement of the amounts overpaid. Nevertheless, I requested by the letters dated February 18, 2011, and the follow up email correspondence, that the second installment for all twelve properties

Mr. Michael Flores

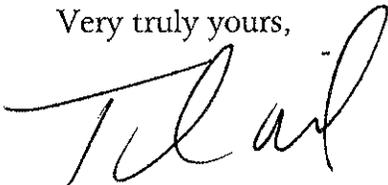
March 25, 2011

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be adjusted and revised, and that the Fresno County Tax Collector be advised of the modifications forthwith so that a revised tax bill is sent and we don't have to go through this process to get a refund. Time is of the essence regarding these matters as the second installment is due on April 11, 2011.

Thank you for agreeing to pass this information to the City Clerk to expedite the process and avoid repetition of paperwork. If the enclosed documentation is insufficient, please advise. My clients are prepared to provide affidavits but I don't believe these burdensome procedures will be necessary given the documentation provided. Thank you for your attention to these matters and please keep me informed as to the status of the revision of the second installments and the progress of the refunds.

Very truly yours,

A handwritten signature in black ink, appearing to read 'T. Miles', written in a cursive style.

Thomas V. Miles