



OFFICE OF COMMUNITY DEVELOPMENT

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CITY COUNCIL INFORMATIONAL MEMORANDUM

April 25, 2024

To: Cupertino City Council  
From: Benjamin Fu, Director of Community Development  
Kristina Alfaro, Director of Administrative Services  
Cc: Pamela Wu, City Manager,  
Chris Jensen, City Attorney and  
Matt Morely, Assistant City Manager

Re: Sales Tax Generated from Construction Building Material

Background

At the April 3 Council meeting, the following questions were raised by Councilmember Chao regarding additional revenues that the City can benefit from through the two Development Agreement (DA) extensions for the De Anza and Cupertino Village hotels. Specifically, staff was directed to provide responses to questions regarding the City's ability to get extra sales tax from development by localizing the purchasing of building materials.

In the past, the provision to localize sales tax related to the construction of the project has been included as part of an approved development agreement. In these instances, the developer would incorporate language with its subcontractors working in connection to the development to localize sales and use tax arising from the purchase of materials, to the extent allowable by law. Monitoring of compliance is also set in the DA. However, the practice is not universal to all approved development agreements.

The following includes staff's responses to questions raised during the April 3 meeting. Staff's response are presented in *italics*.

1. I have been told that the city can get extra sales tax from development due to the purchase of building materials. But I just learned today that even the requirement to "source from Cupertino" is "best efforts". Then, I wonder how much sales tax we actually get from a construction project? For example, the West Port project which is being built.

**(Councilmember Chao)**

*Staff Response: As mentioned, provisions to localize sales and use tax arising from the purchase of materials and fixtures from the purchase of materials to the City have been implemented in some DA agreements. However, no DA was entered into as part of the Westport project.*

2. Is there any way to improve the DA or City Code to include policies to ensure more sales tax for construction projects in Cupertino does go to Cupertino as the City is the delivery location, not the corporate office of a building company. **(Councilmember Chao)**

*Staff Response: The City has existing standard development agreement language to encourage sales tax point of sale designation from Cupertino, to the extent allowed by law. City staff will continue to encourage future developments to best collect additional sales taxes from development agreements as projects arise.*

3. RE "City has been implementing some provisions to your suggestions below". What provisions are there that have been implemented. **(Councilmember Chao)**

*Staff Response: As noted above, the City's existing standard development agreement language has a provision that encourages sales tax point of sale designation to the extent allowed by law.*

4. RE: "CDD staff has engaged the conversation with developers to capture these revenues." What can the city staff encourage the developers to do in such conversations? Have the encouragements been successful or not? **(Councilmember Chao)**

*Staff Response: As noted above, the City's existing standard development agreement language has a provision that encourages sales tax point of sale designation to the extent allowed by law. City staff monitors construction status and explores ways to encourage construction. The modifications of the two recently approved hotel DAs are two examples of staff's efforts to engage with the developers.*

5. Any policy limitations that are tying the city staff's hands in implementing the provisions mentioned in Q1 above? **(Councilmember Chao)**

*Staff Response: Development agreement procedures are largely governed by state law. Economic Development and Community Development staff will continue to look for opportunities to bring community benefits to the City through the development agreement process. The approval of a development agreement is ultimately a discretionary decision made by the City Council.*

6. Any policy limitations that are trying the city staff's hands in their encouragements during the conversations in Q2 above? **(Councilmember Chao)**

*Staff Response: See the response to Question #6, above.*

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**Prepared by:** Benjamin Fu, Director of Community Development

Kristina Alfaro, Director of Administrative Services

**Reviewed by:** Matt Morley, Assistant City Manager

Christopher Jensen, City Attorney

**Approved for Submission by:** Pamela Wu, City Manager