

**REPORT/RECOMMENDATION TO THE BOARD OF DIRECTORS
OF THE SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT
AND RECORD OF ACTION**

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF THE COUNTY OF SAN BERNARDINO
AND RECORD OF ACTION**

February 11, 2020

FROM

GARY McBRIDE, Chief Executive Officer, County Administrative Office

DAN MUNSEY, Fire Chief/Fire Warden, San Bernardino County Fire Protection District

SUBJECT

Refund of Special Taxes Due to Court Judgment – Fire Protection Service Zone 5 (Upland and San Antonio Heights)

RECOMMENDATION(S)

1. Acting as the governing body of the San Bernardino County Fire Protection District:
 - a. Recommend that the County of San Bernardino refund special taxes levied for Fire Protection Service Zone 5 associated with properties located in Upland and San Antonio Heights during Fiscal Years 2017-18 and 2018-19, based on the trial court's decision in the matter of *San Antonio Heights Association v. Local Agency Formation Commission for San Bernardino County (LAFCO)*, San Bernardino County Superior Court Case No. CIVDS 1712771 using the following two methods:
 - i. Pursuant to Resolution No. 2019-20 adopted by the Board of Supervisors on March 12, 2019 (Item No. 14) and in accordance with California Revenue and Taxation Code section 5105, refund the above-described special taxes without a claim for refund filed where there has been no transfer of the property during or since the fiscal year for which the taxes subject to the refund were levied and the amount of the refund is less than \$5,000.
 - ii. For refunds that fall outside of Recommendation No. 1.a.i., refund the above-described special taxes after receipt of taxpayer's refund claim by the Auditor-Controller/Treasurer/Tax Collector for the County of San Bernardino pursuant to Revenue and Taxation Code section 5097.
 - b. Recommend that the County of San Bernardino pay interest earned on the above-described special taxes to the taxpayers contingent upon submittal of Form W-9 by the taxpayer to the Auditor-Controller/Treasurer/Tax Collector.
 - c. Authorize the Auditor-Controller/Treasurer/Tax Collector to post the appropriation and revenue adjustments, as detailed in the Financial Impact Section, needed to proceed with the refund of FP-5 special taxes and related costs. (Four votes required).
2. Acting as the governing body of the County of San Bernardino:
 - a. Approve the refund of special taxes paid into Fire Protection Service Zone 5 associated with properties located in Upland and San Antonio Heights for Fiscal Years 2017-18 and 2018-19, based on the trial court's decision in the matter of *San Antonio Heights*

**Refund of Special Taxes Due to Court Judgment - Fire Protection
Service Zone 5 (Upland and San Antonio Heights)
February 11, 2020**

Association v. LAFCO, San Bernardino County Superior Court Case No. CIVDS 1712771 using the following two methods:

- i. Pursuant to Resolution No. 2019-20 adopted by the Board of Supervisors on March 12, 2019 (Item No. 14) and in accordance with California Revenue and Taxation Code section 5105, refund the above-described special taxes without a claim for refund filed where there has been no transfer of the property during or since the fiscal year for which the taxes subject to the refund were levied and the amount of the refund is less than \$5,000.
 - ii. For refunds that fall outside of Recommendation No. 2.a.i., refund the above-described special taxes after receipt of the taxpayer’s refund claim by the Auditor-Controller/Treasurer/Tax Collector pursuant to Revenue and Taxation Code section 5097.
- b. Authorize the Auditor-Controller/Treasurer/Tax Collector to pay interest earned on the above-described special taxes to the taxpayers contingent upon submittal of Form W-9 by the taxpayer to the Auditor-Controller/Treasurer/Tax Collector.

(Presenter: Dan Munsey, Fire Chief/Fire Warden, 387-5779)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Operate in a Fiscally-Responsible and Business-Like Manner.

FINANCIAL IMPACT

Based on a trial court’s decision in regards to *San Antonio Heights Association v. LAFCO*, the County of San Bernardino will refund approximately \$6.8 million in special taxes levied in Fiscal Years 2017-18 and 2018-19 and paid into Fire Protection Service Zone 5 (FP-5) associated with properties located in Upland and San Antonio Heights. Other estimated costs associated with the refund are as follows: refund processing fees (up to \$1.1 million), payment of interest on refunded amounts/refund of penalties and interest paid by taxpayer (\$0.4 million), and legal fees (\$0.3 million). The result is a total estimated cost of \$8.6 million.

Approval of this item will not result in the use of additional Discretionary General Funding (Net County Cost) because all costs related to the FP-5 refund will be funded by the San Bernardino County Fire Protection District (SBCFPD) through its General Reserve for Special Incidents, which is set-aside for response to major emergencies both inside and outside the County. As of January 27, 2020, the Special Incidents Reserve had cash available of \$9.3 million. Since approval of this item will reduce this reserve by up to \$8.6 million, SBCFPD may need to request a loan from the County General Fund in the future for the costs of responding to a major emergency. Such a loan would be repaid upon SBCFPD receiving cost reimbursement from the Federal Emergency Management Agency (FEMA), California Governor’s Office of Emergency Services (Cal OES), or any other agency that provides reimbursement for emergencies.

The following 2019-20 budget adjustments are requested for SBCFPD:

Fund/Fund Center	Commitment Item/ GL Account	Description	Action	Amount
<i>General Reserve – Special Incidents Fund:</i>				
1069992412	55305030	Operating Transfers Out	Increase	\$8,620,000
2412	37008880	F/B – Available Reserves	Decrease	\$8,620,000

**Refund of Special Taxes Due to Court Judgment - Fire Protection
Service Zone 5 (Upland and San Antonio Heights)
February 11, 2020**

Fund/Fund Center	Commitment Item/ GL Account	Description	Action	Amount
<i>Service Zone FP-5 (Upland and San Antonio Heights) Fund:</i>				
5807062464	40909975	Operating Transfers In	Increase	\$8,620,000
5807062464	53003355	Prior Year Expense-Other Charges	Increase	\$7,180,000
5807062464	52002555	Refund Processing Costs	Increase	\$1,140,000
5807062464	52002535	Legal Expenses	Increase	\$300,000

BACKGROUND INFORMATION

In *San Antonio Heights Association v. LAFCO*, San Bernardino County Superior Court Case No. CIVDS 1712771, an organization of residents challenged the decision made by LAFCO to annex Upland and San Antonio Heights into FP-5 through LAFCO Action No. 3216. On June 10, 2019, the trial court issued its final statement of decision. The trial court ruled that while the annexation of the City of Upland into SBCFPD was valid, the annexation of the City and the unincorporated area of San Antonio Heights into FP-5 was not. The trial court entered its judgment on November 1, 2019. The judgment only covers the special taxes levied in Fiscal Years 2017-18 and 2018-19 due to the fact that on October 18, 2018 (Item No. 58), the Board of Supervisors expanded FP-5 to include San Antonio Heights and Upland commencing Fiscal Year 2019-20.

Based on this trial court's decision, special taxes for FP-5 that were levied in Fiscal Years 2017-18 and 2018-19 and paid for properties in Upland and San Antonio Heights are entitled to a refund.

On March 12, 2019 (Item No. 14), the Board of Supervisors for the County of San Bernardino adopted Resolution No. 2019-20 that approved the operation of California Revenue and Taxation Code section 5105. Revenue and Taxation Code section 5105 took effect on January 1, 2019. Revenue and Taxation Code section 5105 streamlines the claim requirements in Revenue and Taxation Code section 5097 by providing that if the Board of Supervisors makes this section operative by adoption of an ordinance or resolution, an order for refund of taxes or assessments authorized pursuant to this article may be paid to the assessee of that property, or to the latest recorded owner of that property, as shown on the tax roll, without a claim for refund filed, if there has been no transfer of the property during or since the fiscal year for which the taxes subject to refund were levied and the amount of the refund is less than \$5,000.

This item recommends that the Board of Supervisors for the County of San Bernardino refund the above-described special taxes: (a) Pursuant to Resolution No. 2019-20 adopted by the Board of Supervisors on March 12, 2019 (Item No. 14) and in accordance with California Revenue and Taxation Code section 5105, refund the above-described special taxes without a claim for refund filed where there has been no transfer of the property during or since the fiscal year for which the taxes subject to the refund were levied and the amount of the refund is less than \$5,000; and (b) For refunds that fall outside of (a), refund the above-described special taxes after the taxpayer's refund claim is received by the Auditor-Controller/Treasurer/Tax Collector (ATC) pursuant to Revenue and Taxation Code section 5097. ATC will mail the refund claim form to the taxpayer, along with Form W-9 for receipt of interest earned on the special taxes. Form W-9 is described further in the following paragraph.

**Refund of Special Taxes Due to Court Judgment - Fire Protection
Service Zone 5 (Upland and San Antonio Heights)
February 11, 2020**

In addition to the refund of special taxes, ATC is authorized to pay interest earned on the above-described special taxes to the taxpayers upon submittal of Form W-9 by the taxpayer. Form W-9, as required by the Internal Revenue Service, requests the name, address, and taxpayer identification information of a taxpayer (in the form of a Social Security Number or Employer Identification Number). The ATC will include the Form W-9 with the refund check mailed to the taxpayers.

The ATC will also refund any penalties and interest applied to the aforementioned special taxes that were paid by the taxpayers. However, this refund does not require the taxpayer to submit a Form W-9.

PROCUREMENT

N/A

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Robert Messinger, Principal Assistant County Counsel, 387-5455 and Scott Runyan, Deputy County Counsel, 387-5455) on January 28, 2020; Auditor-Controller/Treasurer/Tax Collector (Linda Santillano, Chief Deputy, 382-3189 and Lisa Lazzar, General Accounting Manager, 382-3196) on January 28, 2020; Finance (Tom Forster, Administrative Analyst, 387-4635) on January 28, 2020; and County Finance and Administration (Matthew Erickson, County Chief Financial Officer, 387-5423) on January 28, 2020.

**Refund of Special Taxes Due to Court Judgment - Fire Protection
Service Zone 5 (Upland and San Antonio Heights)
February 11, 2020**

Record of Action of the Board of Directors
San Bernardino County Fire Protection District

Record of Action of the Board of Supervisors
County of San Bernardino

DEFERRED/APPROVED

Moved: Janice Rutherford Seconded: Josie Gonzales
Ayes: Robert A. Lovingood, Janice Rutherford, Dawn Rowe, Curt Hagman, Josie Gonzales

Lynna Monell, SECRETARY/CLERK OF THE BOARD

BY *Lynna Monell*
DATED: February 11, 2020



cc: File- Administrative Office
la 02/21/2020