



County of Sonoma

State of California

Date: December 17, 2019

Item Number: _____
Resolution Number: _____

☐ 4/5 Vote Required

Resolution Of The Board Of Supervisors Of The County Of Sonoma, State Of California, Granting An Appeal Filed By Fairmont Sonoma Mission Inn (Operator) Seeking a Waiver of Penalties And Interest For Late Remittance Of Its Transient Occupancies Tax (TOT) And Business Improvement Area (BIA) Tax For The October—December 2018 Reporting Period; Making Findings Of Fact In Support Of Said Determination; Waiving Penalties And Interest; And Authorizing And Directing The Tax Collector To Issue A Refund In The Full Amount Of The Penalties And Interest Paid By Operator.

Whereas, Fairmont Sonoma Mission Inn and Spa (hereafter, “Operator”) operates a hotel establishment generally located at 100 Boyes Boulevard, Sonoma, California, and has operated said establishment in good standing at this location since at least 2003; and

Whereas, Operator is required to collect Transient Occupancy Tax (“TOT”) and Business Improvement Area (“BIA”) Assessments on all stays at its hotel establishment and remit those amounts to the Sonoma County Tax Collector (“Tax Collector”) on a quarterly basis by established due dates; and

Whereas, Operator failed to timely submit its TOT and BIA returns and payments for the October—December 2018 reporting period by the January 31, 2019 due date for said returns and payments; and

Whereas, upon discovering its error, Operator promptly notified the Tax Collector and subsequently remitted the required TOT and BIA returns and payments for the October—December 2018 reporting period on February 26, 2019, 26 days after the January 31, 2019 due date; and

Whereas, pursuant to Sonoma County Code sections 12-16 and 33-8, respectively, penalties and interest automatically attach to the Operator’s TOT and BIA payments on the 1st day of the month following the due date; and

Whereas, Operator’s late payment incurred TOT penalties and interest in the amount of \$73,781.42 and BIA penalties and interest in the amount of \$12,296.90,

respectively; and

Whereas, Operator's February 26, 2019 payments included all applicable penalties and interest for both the TOT and BIA due; and

Whereas, Operator timely filed an appeal to the Tax Collector seeking a refund of the penalties and interest paid citing the following grounds for failing to meet the January 31, 2019 due date: (i) the delinquency was an anomaly due to understaffing and several recent staff transitions, (ii) the January 31 due date falls during an especially busy time for Operator which includes month end for the current month, payroll for 500 employees, W-2s for 500 employees, and year end for the hotel, and (iii) Operator has an established history of timely filing and payment for both TOT and BIA and the delinquency in question was a first time violation; and

Whereas, on April 25, 2019, the Tax Collector held a hearing on Operator's appeal in accordance with the provisions set forth in Sonoma County Code section 12-21.1 of the TOT ordinance and Sonoma County Code section 33-9 of the BIA ordinance; and

Whereas, after considering the evidence presented by Operator, the Tax Collector concluded that he lacked the authority under both the TOT and BIA ordinances to waive penalties and interest under these circumstances; and

Whereas, Operator timely appealed the Tax Collector's decision to the Board of Supervisors ("Board") pursuant to Sonoma County Code section 12-21.2 of the TOT ordinance and Sonoma County Code section 33-10 of the BIA ordinance; and

Whereas, the Board held a duly noticed public hearing and considered the written briefing and oral presentations by the Tax Collector and Operator and oral comments from members of the public; and

Whereas, at the hearing, Operator admitted it was responsible for the failure to timely remit the October—December 2018 TOT and BIA payments to the Tax Collector, but sought a one-time waiver of the penalties and interest based on their previously unblemished record and the circumstances that led to the missed payment; and

Whereas, the Tax Collector verified on the record that Operator had never previously failed to timely remit its TOT and BIA returns and payments; and

Whereas, Operator provided evidence at the Board hearing of the various deadlines and personnel changes that contributed to the missed TOT and BIA payments on the January 31, 2019 deadline; and

Whereas, the Board acknowledged that Operator immediately self-reported and remitted full payment, including the penalties and interest that attached, once it discovered the error; and

Whereas, following the public hearing, the Board—having considered the record of the proceedings before it, the written material submitted for the public hearing, the oral testimony of Operator and the Tax Collector, and the oral testimony provided by members of the public, and having deliberated on the matter—by a vote of 5-0, voted to grant Operator’s appeal and waive the \$86,078.32 in penalties and interest, subject to the adoption of written findings of the Board in support of its determination.

Now, Therefore, Be It Resolved that the Board of Supervisors hereby finds, determines, and declares that the foregoing recitals are true and correct and are hereby incorporated into and form a material part of this Resolution; and

Be It Further Resolved that the Board finds, based on the foregoing facts presented in the record of proceedings before the Board, good cause exists to excuse Operator’s late payment of TOT and BIA under these circumstances and to grant a one-time waiver of the penalties and interest that attached to those late payments.

Be It Further Resolved that the Board hereby waives the TOT penalties and interest in the amount of \$73,781.42 and BIA penalties and interest in the amount of \$12,296.90.

Be It Further Resolved that the Board hereby finds pursuant to Government Code section 26227 that the waiver of the penalties and interest meet the social needs of the community to support the County's welfare and rehabilitation efforts by supporting a good steward of the community that has contributed significant benefit to the disadvantaged in our community by offering discounted room rates during times of disaster and power shutoffs and has provided many jobs for our residents.

Be It Further Resolved that the Tax Collector is hereby authorized and directed to return the penalties and interest paid by Operator and in the total amount of \$86,078.32.

Supervisors:

Gorin:	Zane:	Gore:	Hopkins:	Rabbitt:
Ayes:	Noes:	Absent:	Abstain:	

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So Ordered.