



# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Julia H. Cooper

**SUBJECT: TEMPORARY EXTENSION OF  
BUSINESS TAX FINANCIAL  
HARDSHIP EXEMPTIONS**

**DATE:** September 20, 2021

Approved

Date

09/21/21

## RECOMMENDATION

Approve an ordinance amending Chapter 4.76 of Title 4 of the San José Municipal Code to amend Section 4.76.345.6 to temporarily extend, from October 1, 2021 through June 30, 2022, eligibility for the existing financial hardship exemptions for low-revenue generating small businesses and small business owners with limited household incomes to include all persons engaged in business in the City who satisfy certain financial hardship requirements.

## OUTCOME

The proposed ordinance would temporarily extend the eligibility for existing financial hardship exemptions for low-revenue generating small businesses and small business owners with limited household incomes to include all persons engaged in business in the City who satisfy certain financial hardship requirements from October 1, 2021 through June 30, 2022.

## BACKGROUND

Any entity engaged in business in the City, whether providing a service or selling a product, is required to register within ninety (90) days of starting a business and pay a City-imposed business tax; succeeding business tax payments are due annually<sup>1</sup>. The City offers business tax exemptions for certain types of businesses<sup>2</sup>, with many businesses benefiting from available financial hardship exemptions. As of August 10, 2021, there were over 97,700 businesses with an active business certificate registered to engage in business in the City of San José (“City”).

<sup>1</sup> Measure G (Ordinance 2016.2), passed by City of San José electorate, November 8, 2016

<sup>2</sup> City of San José Municipal Code Chapter 6 of Title 4, Part 5 – Exemptions

[https://library.municode.com/ca/san\\_jose/codes/code\\_of\\_ordinances?nodeId=TIT4REFIBUTA\\_CH4.76BUTA\\_PT5EX](https://library.municode.com/ca/san_jose/codes/code_of_ordinances?nodeId=TIT4REFIBUTA_CH4.76BUTA_PT5EX)

The COVID-19 pandemic, which the City Director of Emergency Services proclaimed as a local emergency on March 6, 2020<sup>3</sup> and later was ratified by City Council action on March 10, 2020<sup>4</sup>, and the consequent public health mandates triggered by that and other governmental emergency declarations, caused major disruptions and economic shock to City businesses. City enterprises experienced significant reductions in demand for goods and services, or closed (either temporarily or permanently) due to the March 16, 2020 County of Santa Clara (“County”) shelter-in-place order directing all businesses and governmental agencies to “cease non-essential operations at physical locations within the County...”<sup>5</sup>.

Since the March 2020 shelter-in-place order was issued, staff has recommended, and City Council has approved, several business-tax related actions to assist businesses in meeting the financial challenges caused by COVID-19. On March 24, 2020<sup>6</sup>, City Council extended the Business Tax Amnesty Program and Business Improvement District Assessment Amnesty Program (“Business Tax Amnesty Programs”) approved on August 13, 2019<sup>7</sup>, which forgave taxpayers who paid certain past due business taxes from liability for the remaining past due business taxes, interest and penalties and expanded eligibility requirements for business tax financial hardship exemptions to include trusts under certain circumstances. This City Council action extended the Business Tax Amnesty Programs expiration date from March 27, 2020 to June 30, 2020. Subsequently, the City Council extended the Business Tax Amnesty Programs expiration date again, to September 30, 2020<sup>8</sup>, at its June 30, 2020 meeting.

During the summer of 2020, the County issued successive public shelter-in-place directives allowing a limited number of essential and outdoor business activities to resume after its initial March 16, 2020 mandate. However, many City businesses continued to be challenged by the remaining COVID-19 related constraints. Given the uncertainty of when the COVID-19 emergency and associated restrictions might be over, and the pending September 30, 2020 expiration of the Business Tax Amnesty Programs, City Council approved a temporary expansion of business tax financial hardship exemptions at its September 29, 2020 meeting. This expansion extended eligibility for the City’s existing financial hardship exemptions, for low-revenue generating small businesses and small business owners with limited household incomes, to include all persons engaging in business in the City who satisfied certain financial hardship requirements, effective October 1, 2020 through September 30, 2021.

The COVID-19 public health threat has decreased in the County since October 2020 due to robust vaccination rates and risk-reduction protocols, and businesses and governmental agencies had been allowed to reopen, with the State ending its risk-level tiered system for business operations, capacity limits and physical limitations as of June 15, 2021<sup>9</sup>. However, there have been recent significant increases in COVID-19 cases and hospitalizations in Santa Clara County

<sup>3</sup> <https://www.sanjoseca.gov/Home/ShowDocument?id=54789>

<sup>4</sup> <https://sanjose.legistar.com/View.ashx?M=F&ID=8187911&GUID=84A84537-2584-46CA-AF63-9034D1D72E38>

<sup>5</sup> Public Health Order issued under Authority of California Health and Safety Code Sections 101040, 101085 and 120175

<https://covid19.sccgov.org/sites/g/files/exjcpb766/files/03-16-20-Health-Officer-Order-to-Shelter-in-Place.pdf>

<sup>6</sup> <https://sanjose.legistar.com/View.ashx?M=F&ID=8205849&GUID=263BB4CE-9C8D-41DE-8C13-36041485C35D>

<sup>7</sup> <https://sanjose.legistar.com/View.ashx?M=F&ID=7570829&GUID=29D162EE-8731-4047-8B9A-BE045FED1FE9>

<sup>8</sup> <https://sanjose.legistar.com/View.ashx?M=F&ID=8636136&GUID=5A524A53-1F81-4154-A42A-54BD52717FE8>

<sup>9</sup> <https://covid19.ca.gov/safely-reopening/>

due primarily to the COVID-19 Delta variant, which led to the August 2, 2021 County public health order<sup>10</sup> requiring the use of face coverings indoors to the maximum extent possible. And the economic recovery has been uneven; while certain business sectors (technology, for example) have expanded, other sectors, such as retail, personal services, leisure and hospitality, as well as the performing arts and creative cultural communities, are still affected by the various mandates and a long way off from recovery. After over eighteen months of the COVID-19 pandemic, many businesses have been pushed to the limit.

In the *Evaluation and Follow-Up* section of the September 29, 2020 Council memorandum, the Finance Department committed to returning to City Council for action if additional relief was considered to be needed beyond September 30, 2021. Given the continuing fragility of the local economic recovery, approving the staff recommendation to extend the expanded business tax financial hardship exemptions will provide financial relief to City businesses hardest hit by the COVID-19 pandemic while they recover, become more resilient and build back better.

## **ANALYSIS**

The San José Municipal Code (“SJMC”), as modified by Measure G passed by City of San José voters on November 8, 2016<sup>11</sup>, provided for two (2), income-based business tax financial hardship exemptions for small business owners as follows:

- (1) low-revenue generating small businesses where the gross receipts of the small business do not exceed two (2) times the poverty guideline for a single person established by the US Department of Health and Human Services (“HHS”); or
- (2) small business owners where the adjusted gross income (“AGI”) of the small business owner and their spouse/domestic partner’s income do not exceed four (4) times the HHS poverty guideline for a single person.

Measure G defined “small business” as “a business owned and operated by a single natural person or owned and operated jointly by married spouses or domestic partners, without other principals or employees.”<sup>12</sup>

The September 29, 2020 City Council action amended SJMC Title 4 – Chapter 4.76, expanding those two (2) exemptions to any business that met the income requirements. At that time, it was contemplated an additional 6,000 businesses, including residential landlords, could be eligible under the expanded eligibility criteria, with an estimated \$1.35 million impact over twelve (12) months. The Finance Department also made procedural modifications to its business tax financial hardship exemptions program, allowing all hardship applicants to use *anticipated* income for 2020 vs. using actual, prior year (2019) taxes to determine eligibility, and offering

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<sup>10</sup> <https://covid19.sccgov.org/order-health-officer-08-02-2021-requiring-all-to-use-face-covering-indoors>

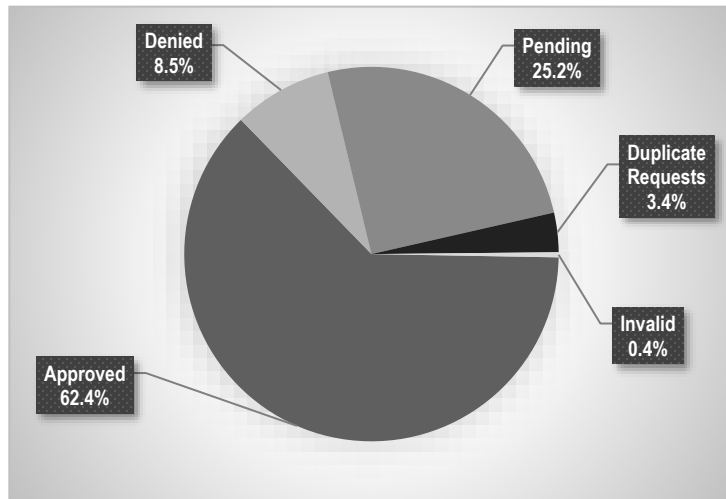
<sup>11</sup> <https://records.sanjoseca.gov/Ordinances/ORD2016.2.PDF>

<sup>12</sup> SJMC § 4.76.115 – Small business.

[https://library.municode.com/ca/san\\_jose/codes/code\\_of\\_ordinances?nodeId=TIT4REFIBUTA\\_CH4.76BUTA\\_PT1PUDE\\_4.76.115SMBU](https://library.municode.com/ca/san_jose/codes/code_of_ordinances?nodeId=TIT4REFIBUTA_CH4.76BUTA_PT1PUDE_4.76.115SMBU)

extended payment plan terms, from three (3) months to twelve (12) months. Verification of 2020 actual income, as reported to the Internal Revenue Service (“IRS”), would be required for the following (2021) business tax renewal period.

As was reported at the August 19, 2021 Public Safety, Finance and Strategic Support (“PSFSS”) Committee in the Finance Department *Fourth Quarter Financial Reports for Fiscal Year 2020-2021*<sup>13</sup> and cross-referenced to the September 14, 2021 City Council meeting<sup>14</sup>, from October 1,



2020 through June 30, 2021, 19,544 business and residential landlords with renewals due have been contacted about the COVID-19 business tax financial hardship exemption assistance. Of those 19,544, 2,290 applied for an exemption, with 1,430 approved, 195 denied, 577 pending, 78 duplicate requests and 10 invalid accounts. For all COVID-19 business tax financial hardship exemptions through June 30, 2021, there is an estimated revenue loss of \$409,127.

Figure 1. COVID-19 Business Tax Hardship Exemptions

The 2020-2021 Adopted Budget forecasted General Business Tax revenues at \$25.7 million; however, actual revenue in 2020-2021 was \$26.5 million. The 2021-2022 Adopted Budget assumed that General Business Tax revenue would remain similar to the 2020-2021 Adopted Budget as a result of a moderate annual inflation rate increase of 1.6%, offset by slightly reduced activity levels. However, since 2020-2021 actuals exceeded year-end estimates by approximately \$800,000, the 2021-2022 Adopted Budget allows for a 3% drop from 2020-2021 actual general business tax receipts.

Extending the business tax hardship exemptions expansion contemplates 5,500 businesses may be eligible for the recommended 2021-2022 expanded business tax hardship exemption program. The 2021 HHS poverty guideline effective as of January 13, 2021<sup>15</sup> is \$12,880 for a single person, which would result in business tax hardship exemptions for those businesses where gross receipts do not exceed \$25,760 or where the combined AGI of the business owner and their spouse/partner does not exceed \$51,520. Given the anticipated participation, an estimated \$900,000 in General Business Tax revenues may be foregone over the nine (9) month period.

<sup>13</sup> <https://sanjose.legistar.com/View.ashx?M=F&ID=9708850&GUID=5634B7A0-59FE-4D35-82A7-A8E792B32F36>

<sup>14</sup> <https://sanjose.legistar.com/View.ashx?M=F&ID=9776658&GUID=AFECDFEA-E256-4041-A77B-B82886748653>

<sup>15</sup> <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines>

Procedural modifications analogous to those implemented as of October 1, 2020 would be followed, allowing all hardship exemption applicants to use *anticipated* income for 2021 vs. using actual, prior year (2020) taxes to determine eligibility, and offering extended payment plan terms, from three (3) months to twelve (12) months. Verification of 2021 actual income, as reported to the IRS, would be required for the following (2022) business tax renewal period.

### **CONCLUSION**

Adoption of the proposed ordinance would temporarily extend, from October 1, 2021 through June 30, 2022, the eligibility for existing financial hardship exemptions to include all persons engaged in business in the City who satisfy certain financial hardship requirements and provide financial relief to City businesses affected by the unprecedented public health and economic disruptions of the COVID-19 Pandemic.

### **EVALUATION AND FOLLOW-UP**

Information on General Business Tax revenues will be reported to the PSFSS Committee as part of the City Manager Budget Office Bi-Monthly Financial Report, as well as the 2021-2022 Mid-Year Review, which will be brought forward for City Council consideration in February 2022. Specific information on the COVID-19 business tax hardship exemptions will be reported to the PSFSS Committee in the Finance Department Quarterly Financial Reports. The Finance Department may return to City Council with an extension of the temporary expansion of business tax financial hardship exemptions, if continued relief is needed beyond June 30, 2022.

### **CLIMATE SMART SAN JOSÉ**

The recommendation in this memo has no effect on Climate Smart San José energy, water, or mobility goals.

### **PUBLIC OUTREACH**

This memorandum will be posted on the City's Council Agenda website for the September 28, 2021 Council meeting. The business community will be informed about the continuing temporary expansion of the business tax financial hardship exemptions through messages on the Finance Department Business Tax website, City phone systems, notes printed on business tax renewal notices and, where that business information is available, emails to registered businesses.

The Finance Department also will provide the Mayor's Office and City Council District Offices with a written summary of this action that may be distributed through their networks. Written

text will be translated into Spanish and Vietnamese. The Finance Department also will use certified bi-lingual staff as primary resources to assist customers over the phone as needed, as well as use Voiance interpretation services as a secondary resource to assist with language accessibility. Materials also will include referrals to other existing City resources for businesses, such as those offered by the Office of Economic Development.

### **COORDINATION**

This memorandum was coordinated with the City Manager's Budget Office, Office of Economic Development and the Office of the City Attorney.

### **COMMISSION RECOMMENDATION/INPUT**

No commission recommendation or input is associated with this action.

### **FISCAL/POLICY ALIGNMENT**

This recommendation aligns with the City Roadmap for FY 2021-2022, adopted by City Council on March 16, 2021 under COVID-19 Pandemic: Community and Economic Recovery.

### **COST SUMMARY/IMPLICATIONS**

Extending the business tax hardship exemptions expansion contemplates 5,500 businesses may be eligible for the recommended 2021-2022 business tax hardship exemption program, which would include any businesses who previously benefited from the expansion as well as new businesses. The 2021 HHS poverty guideline effective as of January 13, 2021<sup>16</sup> is \$12,880 for a single person, which would result in business tax hardship exemptions for those businesses where gross receipts do not exceed \$25,760 or where the combined AGI of the business owner and their spouse/partner does not exceed \$51,520. Given the anticipated participation, an estimated \$900,000 in General Business Tax revenues may be foregone over the nine (9) month period. As the General Business Tax revenue category outperformed expectations in 2020-2021, the budgetary impact of extending the business tax hardship exemptions through June 30, 2022 is expected to be minimal.

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<sup>16</sup> <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines>

## **POLICY ALTERNATIVES**

The Finance Department analyzed several alternatives for various types of relief for small business owners which would dramatically impact revenue to the City. Below is list of alternative proposals that were explored.

### **Alternative #1: Allow Temporary Expansion to Expire on September 30, 2021**

**Pros:** The business tax hardship exemptions would revert to being available only for small business owners.

**Cons:** This alternative would result in a significant increase in delinquencies and potentially further deteriorate the City small business base.

**Reason for not recommending:** This would not align with the City Roadmap for FY 2021-2022, adopted by City Council on March 16, 2021 under COVID-19 Pandemic: Community and Economic Recovery, and is not a proactive approach to assisting businesses struggling with COVID-19 related economic challenges.

### **Alternative #2: Enact temporary exemption for businesses with employee counts/rental units under a certain number**

**Pros:** This alternative would provide a broad exemption for any business with two (2) or fewer employees and any residential landlord with one (1) rental unit, with the potential to assist approximately 28,000 businesses operating in San José.

**Cons:** This alternative would significantly affect City general business tax revenues, with projected foregone revenues of \$4.7 million to \$8.8 million.

**Reason for not recommending:** While this alternative would provide business tax relief to many businesses and landlords, the revenue loss to the City would likely be significant. Additionally, this broad exemption could benefit businesses and residential landlords that otherwise have not seen a business activity reduction due to COVID-19.

### **Alternative #3: Enact temporary exemption for businesses based on gross receipts under a certain number**

**Pros:** This alternative would provide an exemption for any business with gross receipts under \$50,000, with the potential to assist approximately 15,000 businesses and landlords operating in San José.

**Cons:** This alternative would significantly impact the City general business tax revenue base, with a projected reduction in the range of \$2.0 to \$3.2 million. This is a conservative estimate with the assumption that 25% of total business would apply.

**Reason for not recommending:** While this alternative would provide business tax relief to many businesses and landlords, the revenue loss to the City would likely be significant. Additionally, this increased income threshold would render most residential landlords with one (1) or two (2) units exempt and erase the progress made with Measure G (2016) to expand the tax base. This exemption also could benefit businesses and residential landlords that otherwise have not seen a business activity reduction due to COVID-19.

HONORABLE MAYOR AND CITY COUNCIL

September 20, 2021

**Subject: Temporary Expansion of Business Tax Financial Hardship Exemptions**

Page 8

**CEQA**

Not a Project, File No. PP17-004, Government Funding Mechanism, or Fiscal Activity with no commitment to a specific project which may result in a potentially significant physical impact on the environment.

/s/

JULIA H. COOPER

Director of Finance

For questions, please contact Luz Cofresí-Howe, Assistant Director of Finance, at (408) 535-7041.