

DRAFT

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SAN JOSE TO PROVIDE FOR A BUSINESS IMPROVEMENT DISTRICT ASSESSMENT AMNESTY PROGRAM WHICH FORGIVES BUSINESSES THAT PAY CERTAIN PAST DUE ASSESSMENTS FROM LIABILITY FOR INTEREST AND PENALTIES

WHEREAS, the Council of the City of San José (“Council”), pursuant to California Parking and Business Improvement Area Law, California Streets and Highway Code Section 36500 *et seq.* (“Improvement Law”), established the following Business Improvement Districts (“BIDs”) in the City of San José: the Downtown BID, established pursuant to Ordinance No. 22960 dated October 20, 1988 and the Japantown BID, established pursuant to Ordinance No. 23453 dated May 1, 1990; and

WHEREAS, the Council entered into agreements for the operation and administration of each BID (“Operating Agreements”): the Agreement for the Operation and Administration of the Downtown BID dated March 3, 1989, with the San José Downtown Association and the Agreement for the Operation and Administration of the Jackson-Taylor BID dated July 11, 1990, with the Jackson-Taylor Business and Professional Association (the name of the Jackson-Taylor BID and the Jackson-Taylor Business and Professional Association were subsequently changed, respectively, to the Japantown BID and the Japantown Business Association). The San José Downtown Association and the Japantown Business Association shall be hereinafter sometimes referred to as the “BID Administrators”; and

WHEREAS, on June 24, 1997, the Operating Agreements with the BID Administrators were amended and restated (“Amended and Restated Operating Agreements”); and

WHEREAS, the BIDs, pursuant to the Improvement Law, are subject to annual reauthorization by the Council and were reauthorized by the Council on June 4, 2019; and

WHEREAS, pursuant to the Improvement Law, assessments are levied on businesses within each BID, in the amounts and on the basis as approved by the Council in each annual reauthorization; and

WHEREAS, pursuant to the Amended and Restated Operating Agreements, the City Department of Finance bills for and collects all BID assessments; and

WHEREAS, to the extent a BID assessment is not timely paid, a penalty of ten percent (10%) of the unpaid amount plus interest at the rate of one percent (1%) per month on the unpaid balance are imposed; and

WHEREAS, the Amended and Restated Operating Agreements authorize, subject to certain conditions, the initiation of collection efforts by the City Department of Finance after a BID assessment is more than ninety (90) days overdue; and

WHEREAS, the Council believes that a Business Improvement District Assessment Amnesty Program will promote increased voluntary compliance by allowing businesses who pay the assessment to be free from liability for penalties and interest for prior noncompliance; and

WHEREAS, increased voluntary compliance with the BID assessments will increase future BID assessment revenues; and

WHEREAS, it is the intent of Council to exempt businesses who fully pay past due assessments from liability for penalties and interest imposed pursuant to the Amended and Restated Operating Agreements; and

WHEREAS, pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines and Title 21 of the San José Municipal Code (collectively, "CEQA"), the Director of Planning, Building and Code Enforcement has determined that the provisions of this Ordinance do not constitute a project, under 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; and

WHEREAS, the City Council of the City of San José is the decision-making body for this Ordinance; and

WHEREAS, this Council has reviewed and considered the "not a project" determination under CEQA prior to taking any approval actions on this Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. The Director of Finance of the City of San José shall administer a BID Assessments Amnesty Program ("Program") for delinquent BID assessments owed pursuant to Ordinance Numbers 22960 and 23453. The Program shall be conducted during the period of October 1, 2019, through March 27, 2020, inclusive. For the purposes of this Program "Amnesty Period" means the period from October 1, 2016 through March 27, 2020, inclusive.

SECTION 2. The Program shall be administered as follows:

A. Request for BID Assessment Amnesty

In order to participate in the Program, the business shall make a Request for BID Assessment Amnesty to the Director of Finance in person, by mail, telephone, or on-line, if practicable, on any business day from October 1, 2019 through March 27, 2020, inclusive.

1. If the Request for BID Assessment Amnesty is submitted to the City by mail:
 - a. The Request must be postmarked by the United States Postal Service no later than March 27, 2020, to be accepted.
 - b. The Request shall include information necessary to enable the calculation of the BID Assessment due for the portion of the Amnesty Period for which the business failed to fully pay.
 - c. The required BID Assessment Amnesty Payment, or the initial installment as set forth below, shall be included with the Request for BID Assessment Amnesty.
 - d. Payment shall be made by check, credit card or money order.
2. If a Request for BID Assessment Amnesty is submitted to the City in person:
 - a. The Request must be made at the Customer Service Center, located on the First Floor of City Hall, 200 East Santa Clara Street,

San José, or as otherwise directed by the Director, no later than the close of business on March 27, 2020, to be accepted.

- b. The Request shall include information necessary to enable the calculation of the BID Assessment due for the portion of the Amnesty Period for which the business failed to fully pay.
 - c. The required BID Assessment Amnesty Payment, or the initial installment as set forth below, shall be included with the Request for BID Assessment Amnesty.
 - d. Payment shall be made by cash, check, credit card or money order.
3. If a Request for BID Assessment Amnesty is submitted to the City by phone:
- a. A business may request Amnesty by telephone by calling the number designated by the Revenue Management Division during normal business hours while the Program is in effect, but no later than the close of business on March 27, 2020. The business must speak to a Program employee to request the Amnesty and provide payment information.
 - b. At the time the Request is made, the business shall provide information necessary to enable the calculation of the BID Assessment due for the portion of the Amnesty Period for which the business failed to fully pay.

- c. A credit card authorization for the full payment of required BID Assessment Amnesty Payment shall be given together with the Request.
 - d. Payment by phone shall be by credit card only.
 4. If practicable, the City may provide the taxpayer with additional options for requesting BID Assessment Amnesty and making BID Assessment Amnesty Payment including, but not limited to, registering and making payments on-line (collectively referred to herein as "alternative payment options"). The Request for an alternative payment option may be made while the Amnesty Program is in effect. The taxpayer shall provide whatever information the Director of Finance deems necessary to enable the calculation of the BID Assessment due for the portion of the Amnesty Period for which the taxpayer failed to fully pay and whatever additional information may be necessary for the City to process payment. The Director of Finance is authorized to issue instructions regarding means and method of payment.

B. BID Assessment Amnesty Payment

1. The required BID Assessment Amnesty Payment is the total amount of unpaid BID Assessment which first became due during the Amnesty Period, not including any penalties or interest owed; however, the BID Assessment Amnesty Payment shall include payment by the taxpayer for any amounts due to third parties including, but not limited to, collection agencies, in connection with the City's assignment of delinquent BID Assessment accounts to collection agencies during the Amnesty Period.

2. If the required BID Assessment Amnesty Payment is greater than one year of unpaid BID Assessment, the business may pay on the installment basis set forth below. Otherwise the sum due under the Program shall be paid in full at the time the request for Amnesty is made.
3. The Installment Payment Plan requires the initial payment, at the time BID Assessment Amnesty is requested, of (1) the amount equal to one-third (1/3) of the required BID Assessment Amnesty Payment. The remainder of the required BID Assessment Amnesty Payment shall be paid in one or more installments as determined by the Department of Finance. .

C. Failure to Pay Installments

1. Failure of the business to fully pay any installment when due shall disqualify the business from receiving the forgiveness of any remaining past due BID Assessment, interest, and penalties applicable under this Ordinance and the total unpaid amount of BID Assessment, penalties and interest shall become immediately due and payable. "Failure of the business to fully pay any Installment when due" means a failure of the business to tender payment for the entire amount owing by the applicable due date, or, if tender has been made, a failure of the City to receive full value for the tender by the due date because of a dishonored check, rejected credit card submittal or other reason.
2. In the event of a business's failure to fully pay any installment when due, penalties and interest shall be calculated under the provisions of Ordinance Numbers 22960, and 23453.

SECTION 3. Any business that pays in full all sums due in accordance with the Program shall be entitled to the following benefit:

The City shall waive all remaining past due BID Assessments which first became due before the beginning of the Amnesty Period, and interest and penalties imposed under Ordinance Numbers 22960 and 23453, where such amounts are owed due to the failure to pay any BID Assessment previously due; however, the City shall not waive any amounts due to third parties including, but not limited to, collection agencies in connection with the City's assignment of delinquent BID Assessment accounts to collection agencies during the Amnesty Period.

SECTION 4. Any business that has previously paid in full the BID Assessment due and owing for the Amnesty Period shall be entitled to the following benefit even though the business has not filed a Request for BID Assessment Amnesty with the Director of Finance:

The City shall waive all remaining past due assessment which first became due before the beginning of the Amnesty Period, and interest and penalties imposed under Ordinance Numbers 22960 and 23453, where such amounts are owed due to the failure to pay any BID Assessment previously due.

SECTION 5.

- A. No refund or credit shall be granted for any amount of interest or penalty paid prior to the time the business makes a Request for BID Assessment Amnesty pursuant to this Ordinance.

- B. Any business against whom a civil action for BID Assessment liability was commenced on or before September 30, 2019, shall not be eligible for the Program.
- C. The Director of Finance shall publicize the Program, be authorized to issue forms and instructions, and take other actions necessary to implement this Ordinance.
- D. Any business who contests the Director's calculation of the amount due under the Program may request a hearing in the manner and within the time period prescribed in Section 4.76.870 of Chapter 4.76 of Title 4 of the San José Municipal Code. The decision of the Director following such hearing shall be final.
- E. Any taxpayer who participates in the BID Assessment Amnesty Program for any portion of the Amnesty Period as set forth herein, may not participate in a subsequent BID assessment amnesty program that waives any assessment, penalty, and/or interest owed, unless otherwise approved by the City Council.

RD:KMM:CER
7/3/2019

PASSED FOR PUBLICATION of title this _____ day of _____, 2019, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk