

DRAFT

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF SAN JOSE TO
PROVIDE FOR A BUSINESS TAX AMNESTY PROGRAM
WHICH FORGIVES TAXPAYERS WHO PAY CERTAIN
PAST DUE BUSINESS TAXES FROM LIABILITY FOR
REMAINING PAST DUE BUSINESS TAXES, INTEREST,
AND CIVIL AND CRIMINAL PENALTIES**

WHEREAS, the Council of the City of San José believes that a Business Tax Amnesty Program will promote increased voluntary compliance by allowing taxpayers who pay certain Business Taxes owed to be free from liability for certain other prior Business Taxes, as well as penalties and interest for prior noncompliance; and

WHEREAS, increased voluntary compliance with the Business Tax Ordinance will increase the City's tax revenues and reduce the City's collection costs; and

WHEREAS, it is the intent of Council to exempt taxpayers who fully pay certain past due Business Taxes from liability for any remaining past due Business Tax and interest, civil and criminal penalties otherwise imposed pursuant to San José Municipal Code Sections 4.76.290 and 4.76.900; 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 that:

SECTION 1. The Director of Finance of the City of San José shall administer a Business Tax Amnesty Program for delinquent Business Tax liabilities owed pursuant to Chapter 4.76 of Title 4 of the San José Municipal Code. 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 Business Tax Amnesty Program shall be administered as follows:

A. Request for Business Tax Amnesty

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

1. If the Request for Business Tax 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 Business Tax due for the portion of the Amnesty Period for which the taxpayer failed to fully pay.
 - c. The required Business Tax Amnesty Payment, or the initial installment as set forth below, shall be included with the Request for Business Tax Amnesty.
 - d. Payment shall be made by check, credit card or money order.
- 2. If a Request for Business Tax 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 of Finance, 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 Business Tax due for the portion of the Amnesty Period for which the taxpayer failed to fully pay.
 - c. The required Business Tax Amnesty Payment, or the initial installment as set forth below, shall be included with the Request for Business Tax Amnesty.
 - d. Payment shall be made by cash, check, credit card, or money order.

3. If a Request for Business Tax Amnesty is submitted to the City by phone:
 - a. A taxpayer may request Amnesty by telephone by calling the number designated by the Revenue Management Division during normal business hours while the Amnesty Program is in effect, but no later than the close of business on March 27, 2020. The taxpayer must speak to an Amnesty Program employee to request the Amnesty and provide payment information.
 - b. At the time the Request is made, the taxpayer shall provide information necessary to enable the calculation of the Business Tax due for the portion of the Amnesty Period for which the taxpayer failed to fully pay.
 - c. A credit card authorization for the full payment of requested Business Tax 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 Business Tax Amnesty and making Business Tax 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 Business Tax 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. Business Tax Amnesty Payment

1. The required Business Tax Amnesty Payment is the total amount of unpaid Business Tax which first became due during the Amnesty Period, not including any penalties or interest owed under Chapter 4.76 of Title 4 of the San José Municipal Code; however, the Business Tax 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 Business Tax accounts to collection agencies during the Amnesty Period.
2. If the required Business Tax Amnesty Payment is greater than one year of unpaid Business Tax, the taxpayer may pay on the installment basis set forth below. Otherwise the sum due under the Amnesty 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 Business Tax Amnesty is requested, of the amount equal to one-third (1/3) of the required Business Tax Amnesty Payment. The remainder of the required Business Tax 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 taxpayer to fully pay any installment when due shall disqualify the taxpayer from receiving forgiveness of any remaining past due Business Tax, interest, civil penalty, or criminal action applicable under this Ordinance and the total unpaid amount of Business Tax, penalties and interest shall become immediately due and payable.
“Failure of the taxpayer to fully pay any installment when due” means a failure of the taxpayer 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 taxpayer’s failure to fully pay any installment when due, penalties and interest shall be calculated under the provisions of Chapter 4.76 of Title 4 of the Municipal Code without regard to the provisions of this Ordinance.

SECTION 3. Any taxpayer who pays in full all sums due in accordance with the Program shall be entitled to the following benefits:

- A. The City shall waive all remaining past due Business Tax which first became due before the beginning of the Amnesty Period, and interest and civil penalties imposed under Section 4.76.290 of the San José Municipal Code, where such amounts are owed due to the nonreporting or underreporting of tax liabilities or the failure to pay Business Tax 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 Business Tax accounts to collection agencies during the Amnesty Period.

- B. The City shall bring no criminal action against the taxpayer, based upon the nonreporting or underreporting of tax liability or the nonpayment of Business Tax previously due.

SECTION 4. Any taxpayer who has previously paid in full the Business Tax due and owing for the Amnesty Period shall be entitled to the following benefits even though the taxpayer has not filed a Request for Business Tax Amnesty with the Director of Finance:

- A. The City shall waive all remaining past due Business Tax which first became due before the beginning of the Amnesty Period, and interest and civil penalties imposed under Section 4.76.290 of the San José Municipal Code, where such amounts are owed due to the nonreporting or underreporting of tax liabilities or the failure to pay Business Tax previously due.
- B. The City shall bring no criminal action against the taxpayer, based upon the nonreporting or underreporting of tax liability or the nonpayment of Business Tax 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 taxpayer makes a Request for Business Tax Amnesty pursuant to this Ordinance.
- B. Any taxpayer against whom a civil or criminal action for Business Tax 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 taxpayer who contests the Director's calculation of the amount due under the Amnesty Program may request a hearing pursuant to Section 4.76.870 of Chapter 4.76 of Title 4 of the San José Municipal Code. For the purposes of that hearing, the Director's determination of the amount due shall be deemed to be an "assessment" within the meaning of Sections 4.76.860 and 4.76.870. The hearing shall be requested within ten (10) days following service of the assessment under Section 4.76.870. The decision of the Director following such hearing shall be final.
- E. Any taxpayer who participates in this Business Tax Amnesty Program for any portion of the Amnesty Period as set forth herein, may not participate in a subsequent business tax amnesty program that waives any tax, penalty, and/or interest owed under Chapter 4.76 of Title 4 of the San José Municipal Code, unless otherwise approved by the City Council.

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