

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 Jose 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 Jose Municipal Code Sections 4.76.290 and 4.76.900;

**NOW THEREFORE, BE IT ORDAINED** by the Council of the City of San José 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 August 1, 2006, through September 29, 2006, inclusive. For the purposes of this Program, "Amnesty Period" means the period from August 1, 2003 through July 31, 2006, 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 with the Director of Finance in person, by mail or by telephone on any business day from August 1, 2006 through September 29, 2006, 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 September 29, 2006, 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 Small Business Center, located on the First Floor of City Hall, 200 East Santa Clara Street, San Jose, or as otherwise directed by the Director, no later than the close of business on September 29, 2006, to be accepted.

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- 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 Treasury Division during normal business hours while the Amnesty Program is in effect, but no later than the close of business on September 29, 2006. 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 required Business Tax Amnesty Payment shall be given together with the Request.
  - d. Payment by phone shall be by credit card only.

**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.
2. If the required Business Tax Amnesty Payment is greater than one year of outstanding business tax liabilities for the business, and the taxpayer pays by means other than credit card, 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 (1) the amount equal to one-third (1/3) of the required Business Tax Amnesty Payment and (2) a fee to the City in the amount of Fifty (\$50) Dollars to reimburse the City for its costs of administering the Installment Payment Plan. The remainder of the required Business Tax Amnesty Payment shall be paid in two (2) equal installments. The first installment payment shall be due thirty (30) days from the date the Request for Business tax Amnesty is made and the second and final installment payment shall be due sixty (60) days from that date.

**C. Failure to Pay Installments**

1. Failure of the taxpayer to fully pay any installment when due shall disqualify the taxpayer from receiving the 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 Jose 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 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 Jose 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 before July 31, 2006, 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 Jose 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. If no service is made within the meaning of Sections 4.76.860 and 4.76.870, the request for hearing shall be made no later than October 27, 2006.

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PASSED FOR PUBLICATION of title this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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RON GONZALES  
Mayor

ATTEST:

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LEE PRICE, MMC  
City Clerk

**DRAFT**

ORDINANCE NO. \_\_\_\_\_

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

**WHEREAS**, the Council of the City of San Jose ("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 Jose: the Willow Glen BID, established pursuant to Ordinance No. 21519 dated December 20, 1983; 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 Willow Glen BID dated July 7, 1989, with the Willow Glen Business and Professional Association; the Agreement for the Operation and Administration of the Downtown BID dated March 3, 1989, with the San Jose 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 Willow Glen Business and Professional Association, the San Jose 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 20, 2006; 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 business who fully pay past due assessments from liability for penalties and interest imposed pursuant to the Amended and Restated Operating Agreements;

**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 Jose shall administer a BID Assessments Amnesty Program ("Program") for delinquent BID assessments owed pursuant to Ordinance Numbers 21519, 22960 and 23453. The Program shall be conducted during the period of August 1, 2006, through September 29, 2006, inclusive. For the purposes of this Program "Amnesty Period" means the period from August 1, 2003 through July 31, 2006, 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 with the Director of Finance in person, by mail or telephone on any business day from August 1, 2006 through September 29, 2006, 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 September 29, 2006, 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 Small Business Center, located on the First Floor of City Hall, 200 East Santa Clara Street, San Jose, or as otherwise directed by the Director, no later than the close of business on September 29, 2006, 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 Treasury Division during normal business hours while the Program is in effect, but no later than the close of business on September 29, 2006. 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.

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.
2. If the required BID Assessment Amnesty Payment is greater than one year of outstanding BID Assessment liabilities for the business and the business pays by means other than credit card, 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 and (2) a fee to the City in the amount of Fifty Dollars (\$50) to reimburse the City for its costs of administering the Installment Payment Plan. The remainder of

the required BID Assessment Amnesty Payment shall be paid in two (2) equal installments. The first installment payment shall be due thirty (30) days from the date the Request for BID Assessment Amnesty is made and the second and final installment payment shall be due sixty (60) days from that date.

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 21519, 22960, and 23453.

SECTION 3. Any business who 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 21519, 22960 and 23453, where such amounts are owed due to the failure to pay any BID Assessment previously due.

SECTION 4. Any business who 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 21519, 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 before July 31, 2006, 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 pursuant to Section 4.76.870 of Chapter 4.76 of Title 4 of the San Jose 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. If no service is made within the meaning of Sections 4.76.860 and 4.76.870, the request for hearing shall be made no later than October 27, 2006.

PASSED FOR PUBLICATION of title this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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RON GONZALES  
Mayor

ATTEST:

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LEE PRICE, MMC  
City Clerk

DRAFT

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING SECTION 4.76.345 OF CHAPTER 4.76 OF TITLE 4 OF THE SAN JOSE MUNICIPAL CODE TO SIMPLIFY THE BUSINESS TAX HARDSHIP EXEMPTION PROCESS BY ELIMINATING THE REQUIREMENT THAT SOLE PROPRIETORS WHO HAVE CLAIMED THE EXEMPTION FILE WITH THE CITY A STATEMENT OF FINANCIAL HARDSHIP WITH SUPPORTING EVIDENCE BY NOVEMBER 30 OF THE FOLLOWING YEAR**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

Section 4.76.345 of Chapter 4.76 of Title 4 of the San José Municipal Code is amended to read as follows:

**4.76.345 Financial Hardship Exemption**

- A. A sole proprietorship shall be exempt from the payment of any business tax imposed under the provisions of this Chapter where the gross receipts of the sole proprietorship do not exceed the poverty level for the calendar year in which the business tax is due, and the sole proprietorship satisfies each of the requirements set forth in Subsection C below.
- B. For the purposes of this Section:
  - 1. The term "sole proprietorship" means a business owned and operated by one person or owned and operated jointly by a husband and wife or domestic partners, without other principals or employees. For purposes of this Section, "domestic partners" means two individuals who have a current declaration of domestic partnership on file with the California

Secretary of State pursuant to the Domestic Partner Registration Act, California Family Code Section 297, et. seq., as may be amended, identifying themselves as each other's domestic partner. A "sole proprietorship" does not include a corporation, partnership, or association unless the single business operator or husband and wife or domestic partners are the only employees of the corporation, partnership, or association.

2. The term "employee" has the meaning defined in Section 4.76.060 of Chapter 4.76 of this Title.
  3. The term "poverty level" means the income amount established by the U.S. Department of Health and Human Services as the poverty guideline for a single person multiplied by two (2) for the calendar year in which the business tax is due.
- C. A sole proprietorship is eligible for an exemption in accordance with the provisions of Subsection A, provided that:
1. The exemption request is filed with the Director of Finance on or before the date the business tax is due; and
  2. The exemption request is made upon a form provided therefor by the Director of Finance, stating under penalty of perjury that it is anticipated that the gross receipts of the sole proprietorship will be at or below the poverty level for the income tax reporting year in which the business tax is due.
- D. The Director of Finance shall have the right to examine and audit all the books and records of the sole proprietorship, including either state or federal income tax returns or other documentation of gross receipts deemed adequate by the Director of Finance, in order to determine the eligibility of the sole proprietorship for the exemption. If the Director of Finance determines that the sole

proprietorship was not entitled to an exemption, then the business tax for the previous calendar year shall be due within thirty (30) days of notification by the City. If the business tax is not paid on or before the thirtieth day, penalties and interest shall accrue pursuant to Section 4.76.290.

- E. No exemption shall be allowed if the sole proprietorship refuses to allow examination of its books and records, including either state or federal income tax returns or other documentation of gross receipts deemed adequate by the Director of Finance, after requested by the Director of Finance to do so.
- F. Any decision of the Director of Finance made under this Section shall be final.

PASSED FOR PUBLICATION of title this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

\_\_\_\_\_  
RON GONZALES  
Mayor

ATTEST:

\_\_\_\_\_  
LEE PRICE, MMC  
City Clerk