



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Scott P. Johnson

SUBJECT: SEE BELOW

DATE: 9-1-06

Approved

Kay Winer

Date

9/5/06

CITY DISTRICT: City-wide

SUBJECT: APPROVAL OF AN ORDINANCE TO AUTHORIZE THE DIRECTOR OF FINANCE TO WAIVE PENALTIES IMPOSED ON DELINQUENT PAYMENTS OF UTILITY USERS TAXES, TRANSIENT OCCUPANCY TAXES, SOLID WASTE ENFORCEMENT FEES AND DISPOSAL FACILITY TAXES.

RECOMMENDATION

Approval of an ordinance amending Section 4.68.140 of Chapter 4.68, Section 4.72.100 of Chapter 4.72, Section 4.74.100 of Chapter 4.74, and Section 4.78.260 of Chapter 4.78 of Title 4, and amending Section 9.10.960 of Chapter 9.10 of Title 9, all of the San Jose Municipal Code, to authorize the Director of Finance to waive the first penalty of ten percent (10%), on delinquent payments of Utility Users Taxes, Transient Occupancy Taxes, Disposal Facility Taxes, and Solid Waste Enforcement Fees, for penalties imposed on or after January 1, 2006.

OUTCOME

Approval of staff's recommendations will enhance the City's effort to standardize the procedures for the Director of Finance to waive penalties on delinquent payments of Utility Users Tax (UUT), Transient Occupancy Tax (TOT), Disposal Facility Tax (DFT), and Solid Waste Enforcement Fee (SWEF).

BACKGROUND

Currently, the San Jose Municipal Code authorizes the Director of Finance to waive late penalties for the City's UUT and the City's Business Tax under certain circumstances. However, the Director of Finance does not currently have the authority to waive late penalties imposed on delinquent payments of the TOT, SWEF, or DFT. Under the existing provisions of the

Municipal Code, any service supplier or operator who fails to remit any required taxes in a timely manner is subject to penalties. The imposition of the penalties is mandatory and therefore does not authorize the Director of Finance the authority to waive them, except under certain circumstances only for the UUT. This inconsistency has posed problems in working with the business community who provide vital services to the San Jose community. From time to time a business operator or service provider has paid the taxes or fees late due to unforeseen circumstances or human oversight. The Director of Finance is requesting that the Council approve amendments to the City's Municipal Code that provides some flexibility with clear and consistent provisions. Therefore, consistent with the City Council's policies relating to "Getting Families Back to Work", and to provide greater consistency and flexibility for the Finance Director to administer compliance and collections of the City's TOT, UUT, DFT and SWEF, staff is recommending changes to the San Jose Municipal Code as outlined in the analysis section below. The Director of Finance has received three requests for waivers and anticipates a total of five requests that would be subject to the recommended changes. These changes will help promote the City of San Jose as a business friendly environment and will work well toward fostering a positive relationship with the City's business community.

ANALYSIS

Currently, San Jose Municipal Code Section 4.68.140 authorizes the Director of Finance to waive the late penalty for UUT when the service supplier can demonstrate that the delinquent remittance was postmarked or received by the City no more than one day after its due date. To be eligible for a waiver, the service supplier must have made timely payments for the five years immediately prior to the date payment was due. However, the Director of Finance currently does not have the authority to waive late penalties imposed on delinquent payments of the TOT, DFT or SWEF.

In order to standardize the late penalty waiver for UUT, TOT, DFT and SWEF staff recommends the proposed amendments to Municipal Codes Sections 4.68.140, 4.72.100, 4.74.100, 4.78.100 and 9.10.960 authorizing the Director of Finance to waive the first penalty of 10% if the following conditions are met:

- The service supplier or operator requests a waiver within 30 days of the payment due date, has made timely payments for the five years immediately prior to the payment due date, has paid the delinquent obligation and interest for which the late penalty was imposed, and has not been granted any other waiver during the five-year period preceding the month in which the late penalty was first imposed; and
- The service supplier or operator provides evidence satisfactory to the Director of one of the following:

1. Payment of the delinquent remittance was postmarked or received by the City no more than three (3) days after its due date; or
2. The service supplier or operator mistakenly made payment to a party other than the City on or prior to the date that payment was due to the City, and paid the delinquent remittance and accrued interest owed the City prior to applying to the Director for a waiver; or
3. Failure to pay timely was due to circumstances beyond the control of the service supplier or operator and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, and the service supplier or operator paid the delinquent remittance and accrued interest owed the City prior to applying to the Director for a waiver.

Further, staff recommends that the revisions be made retroactive to January 1, 2006. Service suppliers or operators that meet the criteria for waiver will be able to apply for waivers following the effective date of the ordinance for penalties imposed on or after January 1, 2006. The eligibility for a retroactive waiver will expire on January 31, 2007.

It is expected that these changes to the Municipal Code will provide the Director of Finance the necessary flexibility to waive penalties for a service supplier or operator who has a history of timely payments and the service supplier or operator is able to show one of the grounds for waiver as outlined above. By implementing these changes, the Director of Finance will be in a position to review all requests for the waiver of penalties in a consistent manner with balance and fairness. This amendment will promote the City of San Jose as a business friendly environment and will work well toward fostering a positive relationship with the City's business community.

POLICY ALTERNATIVES

Alternative: Make no changes to the Municipal Code.

Pro: Staff would continue to impose penalties on delinquent or late payments without any change to existing procedures.

Con: The City's image as a business friendly agency may be compromised.

Reason for not recommending: Based on prior experience, staff recognizes that in most cases, delinquencies occur as a result of human oversight rather than willful negligence. Maintaining the status quo will not be helpful in promoting San Jose as a business friendly environment.

PUBLIC OUTREACH/INTEREST

Not applicable.

COORDINATION

This memorandum has been coordinated with the Departments of Environmental Services and Planning, Building and Code Enforcement, and the Office of the City Attorney

FISCAL/POLICY ALIGNMENT

The fiscal implications of forgiven penalties are negligible in the broader context of the annual UUT, TOT, DFT and SWEF collections for the City since such late payments under recommended waiver guidelines are infrequent. This amendment is consistent with the Council's goals of cultivating a business friendly image for the City.

COST SUMMARY/IMPLICATIONS

It is worth noting that this action will not result in the City losing any UUT, TOT, DFT or SWEF and that the opportunity cost of penalties foregone will be relatively insignificant in comparison to the taxes collected and goodwill generated by the action on the part of the City. The Finance Department has received three requests for waivers and anticipates a total of five applications will be made for penalty waivers once the ordinance becomes effective for a total amount subject to retroactivity of \$96,161.66.

BUDGET REFERENCE

Not applicable.

CEQA

Not a project.


SCOTT P. JOHNSON
Director, Finance Department

For questions, please contact Scott P. Johnson, Director at (408) 535-7000.

