

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SAN JOSE 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, ALL OF TITLE 4 OF THE SAN JOSE MUNICIPAL CODE, AND AMENDING SECTION 9.10.960 OF CHAPTER 9.10 OF TITLE 9 OF THE SAN JOSE MUNICIPAL CODE TO AUTHORIZE THE DIRECTOR OF FINANCE TO WAIVE PENALTIES IMPOSED ON DELINQUENT PAYMENTS OF UTILITY USERS TAXES, TRANSIENT OCCUPANCY TAXES, DISPOSAL FACILITY TAXES, AND SOLID WASTE ENFORCEMENT FEES

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

SECTION 1. Section 4.68.140 of Chapter 4.68 of Title 4 of the San José Municipal Code is hereby amended to read as follows:

4.68.140 Delinquent Remittance By Service Supplier Or Master Meter User

- A. For purposes of this Section, “delinquent remittance” means the following.
1. Any taxes that a service supplier fails to remit to the Director on or before the applicable due dates set forth in Section 4.68.113 or Section 4.68.115 are delinquent. The amount of the delinquent remittance is determined based upon whether the service supplier has elected to remit the amount of taxes collected or the amount of taxes billed.
 2. The amount of taxes collected from submetered tenants or customers by a master meter user in excess of the amount of taxes the master meter user paid to the service supplier are delinquent if not remitted on or before the due date set forth in Section 4.68.100.

B. Penalties and interest shall be assessed on a delinquent remittance as follows:

1. The service supplier or master meter user shall pay a first penalty of ten percent (10%) of the amount of the delinquent remittance in addition to the delinquent remittance.
2. The service supplier or master meter user shall pay a second penalty of ten percent (10%) of the amount of the delinquent remittance, in addition to the delinquent remittance and the first penalty, if the delinquent remittance is not paid on or before thirty (30) days following its due date.
3. If the Director determines that the delinquent remittance occurred because of an intentional, material misrepresentation or omission, or fraud by the service supplier or master meter user, the Director shall impose an additional penalty of twenty-five percent (25%) of the amount of the delinquent remittance.
4. Any service supplier or master meter user shall pay interest on the delinquent remittance and all penalties assessed thereon as set forth in Chapter 1.17 of Title 1.

C. The Director shall waive the first penalty of ten percent (10%) imposed upon a service supplier or master meter user if:

1. The service supplier or master meter user applies to the Director for such a waiver no later than thirty (30) days from the date the remittance was due to the City; and
2. The service supplier or master meter user has made timely payments for:
 - (a) the five (5) years immediately prior to the date the remittance was due

to the City; or (b) the two (2) years immediately prior to the date the remittance was due to the City if it has supplied, transported, or delivered the service for fewer than five (5) years; and

3. The service supplier or master meter user provides evidence satisfactory to the Director that:

(i) payment of the delinquent remittance was postmarked or received by the City no more than three (3) days after its due date; or

(ii) the service supplier or master meter user 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

(iii) failure to pay timely was due to circumstances beyond the control of the service supplier or master meter user and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, and the service supplier or master meter user paid the delinquent remittance and accrued interest owed the City prior to applying to the Director for a waiver.

D. The waiver provisions specified in Subsection C shall not apply to interest accrued on the delinquent payments.

SECTION 2. Section 4.72.100 of Chapter 4.72 of Title 4 of the San José Municipal Code is hereby amended to read as follows:

4.72.100 Penalties and Interest

- A. Any operator who fails to remit within the time required by this Chapter any tax collected by the operator shall pay a first penalty of ten percent (10%) of the amount of the delinquent tax in addition to the amount of the delinquent tax.
- B. Any operator who fails to remit any tax collected pursuant to this Chapter on or before thirty (30) days after its due date shall pay a second penalty of ten percent (10%) of the amount of the delinquent tax in addition to the amount of the delinquent tax and the first penalty.
- C. If the Director of Finance determines that the failure to remit any tax on or before the due date set forth in this Chapter is because of an intentional, material misrepresentation or omission, or fraud by the operator, the Director shall impose an additional penalty in the amount of twenty-five percent (25%) of the delinquent tax.
- D. Any operator who fails to remit on or before the due date any tax collected by the operator pursuant to this Chapter shall pay interest on the delinquent tax and on any assessed penalty or penalties as set forth in Chapter 1.17 of Title 1.
- E. The Director shall waive the first penalty of ten percent (10%) imposed upon any operator if:
 - 1. The operator applies to the Director for such a waiver no later than thirty (30) days from the date the remittance was due to the City; and
 - 2. The operator has made timely payments for: (a) the five (5) years immediately prior to the date the remittance was due to the City; or (b) the two (2) years immediately prior to the date the remittance was due to the City if it has operated the hotel for fewer than five (5) years; and

3. The operator provides evidence satisfactory to the Director that:
 - (i) payment of the delinquent remittance was postmarked or received by the City no more than three (3) days after its due date; or
 - (ii) the 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
 - (iii) failure to pay timely was due to circumstances beyond the control of the operator and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, and the operator paid the delinquent remittance and accrued interest owed the City prior to applying to the Director for a waiver.

F. The waiver provisions specified in Subsection E shall not apply to interest accrued on the delinquent payments.

SECTION 3. Section 4.74.100 of Chapter 4.74 of Title 4 of the San José Municipal Code is hereby amended to read as follows:

4.74.100 Delinquent Remittance - Penalties and Interest

- A. Any operator who fails to remit within the time required by this Chapter any tax collected by the operator shall pay a first penalty of ten percent (10%) of the amount of the delinquent tax in addition to the amount of the delinquent tax.
- B. Any operator who fails to remit any tax collected pursuant to this Chapter on or before thirty (30) days after its due date shall pay a second penalty of ten percent

(10%) of the amount of the delinquent tax in addition to the amount of the delinquent tax and the first penalty.

- C. If the Director of Finance determines that the failure to remit any tax on or before the due date set forth in this Chapter is because of an intentional, material misrepresentation or omission, or fraud by the operator, the Director shall impose an additional penalty in the amount of twenty-five (25%) of the delinquent tax.
- D. Any operator who fails to remit on or before the due date any tax collected by the operator pursuant to this Chapter shall pay interest on the delinquent tax and on any assessed penalty or penalties as set forth in Chapter 1.17 of Title 1.
- E. The Director shall waive the first penalty of ten percent (10%) imposed upon any operator if:
 - 1. The operator applies to the Director for such a waiver no later than thirty (30) days from the date the remittance was due to the City; and
 - 2. The operator has made timely payments for: (a) the five (5) years immediately prior to the date the remittance was due to the City; or (b) the two (2) years immediately prior to the date the remittance was due to the City if it has operated the hotel for fewer than five (5) years; and
 - 3. The operator provides evidence satisfactory to the Director that:
 - (i) payment of the delinquent remittance was postmarked or received by the City no more than three (3) days after its due date; or
 - (ii) the 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

- (iii) failure to pay timely was due to circumstances beyond the control of the operator and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, and the operator paid the delinquent remittance and accrued interest owed the City prior to applying to the Director for a waiver.

- F. The waiver provisions specified in Subsection E shall not apply to interest accrued on the delinquent payments.

SECTION 4. Section 4.78.260 of Chapter 4.78 of Title 4 of the San José Municipal Code is hereby amended to read as follows:

4.78.260 Penalties And Interest For Delinquent Taxes

- A. Any solid waste disposal facility operator who fails to pay the disposal facility tax on or before its due date shall pay a first penalty of ten percent (10%) of the amount of the delinquent tax in addition to the delinquent tax.
- B. Any solid waste disposal facility operator who fails to pay the disposal facility tax on or before thirty (30) days after its due date shall pay a second penalty of ten (10%) of the amount of the delinquent tax in addition to the delinquent tax and the first penalty.
- C. If the Director determines that the failure to pay any tax on or before the due date set forth in this Chapter is because of an intentional, material misrepresentation or omission, or fraud, the Director shall impose an additional penalty in the amount of twenty-five (25%) of the delinquent tax.

- D. Any solid waste disposal facility operator who fails to pay on or before its due date any tax imposed pursuant to this Chapter shall pay interest on the delinquent tax and on any assessed penalty or penalties as set forth in Chapter 1.17 of Title 1.
- E. The Director shall waive the first penalty of ten percent (10%) imposed upon any solid waste disposal facility operator if:
1. The solid waste disposal facility operator applies to the Director for such a waiver no later than thirty (30) days from the date the remittance was due to the City; and
 2. The solid waste disposal facility operator has made timely payments for:
(a) the five (5) years immediately prior to the date the remittance was due to the City; or (b) the two (2) years immediately prior to the date the remittance was due to the City if it has operated the solid waste disposal facility for fewer than five (5) years; and
 3. The solid waste disposal facility operator provides evidence satisfactory to the Director that:
 - (i) payment of the delinquent remittance was postmarked or received by the City no more than three (3) days after its due date; or
 - (ii) the solid waste disposal facility 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

- (iii) failure to pay timely was due to circumstances beyond the control of the solid waste disposal facility operator and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, and the solid waste disposal facility operator paid the delinquent remittance and accrued interest owed the City prior to applying to the Director for a waiver.

- F. The waiver provisions specified in Subsection E shall not apply to interest accrued on the delinquent payments.

SECTION 5. Section 9.10.960 of Chapter 9.10 of Title 9 of the San José Municipal Code is hereby amended to read as follows:

9.10.960 Solid Waste Enforcement Fee

- A. Each operator of a solid waste facility or any person who conducts solid waste handling shall pay a solid waste enforcement fee as set forth in the Schedule of Fees established by Council resolution.
- B. The solid waste enforcement fee shall be based upon the weight, volume or type of solid waste that is received or handled by any such operator or upon any other appropriate parameter or any combination of the foregoing, commensurate with the cost of the solid waste enforcement program authorized under Division 30 of the California Public Resources Code.
- C. Each operator of a solid waste facility or any person who conducts solid waste handling shall pay the solid waste enforcement fee on or before the last day of the month immediately following the month in which the solid waste was received or handled. Any fee that is not paid on or before the due date shall be deemed delinquent.

- D. Any solid waste facility operator or person conducting solid waste handling who fails to pay the solid waste enforcement fee on or before its due date shall pay a first penalty of ten percent (10%) of the delinquent fee in addition to the delinquent fee.

- E. Any solid waste facility operator or person conducting solid waste handling who fails to pay the solid waste enforcement fee on or before thirty (30) days of its due date shall pay a second penalty of ten percent (10%) of the amount of the delinquent fee in addition to the delinquent fee and the first penalty.

- F. If the Director of Finance determines that the failure to pay the solid waste enforcement fee on or before its due date is because of an intentional, material misrepresentation or omission, or fraud by the solid waste facility operator or person conducting solid waste handling, the Director shall impose an additional penalty in the amount of twenty-five (25%) of the fee.

- G. Any solid waste facility operator or person conducting solid waste handling who fails to pay the solid waste enforcement fee on or before its due date shall pay interest on the delinquent fee and on any assessed penalty or penalties as set forth in Chapter 1.17 of Title 1.

- H. The Director shall waive the first penalty of ten percent (10%) imposed upon any solid waste facility operator or person conducting solid waste handling, if:
 - 1. The solid waste facility operator or person conducting solid waste handling applies to the Director for such a waiver no later than thirty (30) days from the date the fee was due to the City; and
 - 2. The solid waste facility operator or person conducting solid waste handling

has made timely payments for: (a) the five (5) years immediately prior to the date the fee was due to the City; or (b) the two (2) years immediately prior to the date the fee was due to the City if it has operated the solid waste facility or conducted solid waste handling for fewer than five (5) years; and

3. The solid waste facility operator or person conducting solid waste handling provides evidence satisfactory to the Director that:

(i) payment of the delinquent fee was postmarked or received by the City no more than three (3) days after its due date; or

(ii) the solid waste facility operator or person conducting solid waste handling 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 fee and accrued interest owed the City prior to applying to the Director for a waiver; or

(iii) failure to pay timely was due to circumstances beyond the control of the solid waste facility operator or person conducting solid waste handling and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, and the solid waste facility operator or person conducting solid waste handling paid the delinquent fee and accrued interest owed the City prior to applying to the Director for a waiver.

I. The waiver provisions specified in Subsection H shall not apply to interest accrued on the delinquent payments.

SECTION 6. Retroactive Application – Refunds.

- A. Sections 1 through 5 shall be effective retroactive to January 1, 2006 for remittances that were due to the City during the period between January 1, 2006 and the effective date of this Ordinance. Any utility service supplier, master meter user, hotel operator, solid waste disposal facility operator, solid waste facility operator, or person conducting solid waste handling who would have been eligible for waiver of penalties pursuant to Sections 4.68.140, 4.72.100, 4.74.100, 4.68.260, or 9.10.960 as amended by this Ordinance and paid the penalty, shall be eligible for a refund if the utility service supplier, master meter user, hotel operator, solid waste disposal facility operator, solid waste facility operator, or person conducting solid waste handling applies for a refund on or before January 31, 2007.

- B. The provisions of subsection A of this Section 6 shall apply even though the utility service supplier, master meter user, hotel operator, solid waste disposal facility operator, solid waste facility operator, or person conducting solid waste handling failed to apply to the Director of Finance for a waiver within thirty (30) days from the date the remittance was originally due to the City.

SECTION 7. Retroactive Application – Penalty Waivers.

- A. Sections 1 through 5 shall be effective retroactive to January 1, 2006 for remittances that were due to the City during the period between January 1, 2006 and the effective date of this Ordinance. Any utility service supplier, master meter user, hotel operator, solid waste disposal facility operator, solid waste facility operator, or person conducting solid waste handling who would have been eligible for waiver of penalties pursuant to Sections 4.68.140, 4.72.100, 4.74.100, 4.68.260, or 9.10.960 as amended by this Ordinance and who did not pay the penalty, shall not be liable for the penalty if the utility service supplier, master meter user, hotel operator, solid waste disposal facility operator, solid waste

facility operator, or person conducting solid waste handling demonstrates to the satisfaction of the Director of Finance on or before January 31, 2007 that the utility service supplier, master meter user, hotel operator, solid waste disposal facility operator, solid waste facility operator, or person conducting solid waste handling would otherwise be entitled to the waiver.

- B. The provisions of subsection A of this Section 7 shall apply even though the utility service supplier, master meter user, hotel operator, solid waste disposal facility operator, solid waste facility operator, or person conducting solid waste handling failed to apply to the Director of Finance for a waiver within thirty (30) days from the date the remittance was originally due to the City.

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