



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Scott P. Johnson

SUBJECT: BUSINESS TAX ORDINANCE
REVISION

DATE: June 1, 2009

Approved

Christine J. Sheppes

Date

6/5/09

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

Approve an ordinance amending Section 4.76.200 of Chapter 4.76 of Title 4 of the San José Municipal Code to allow the disclosure of business tax records in certain specified circumstances.

OUTCOME

Approval of the amendment to Section 4.76.200 of the San José Municipal Code will ensure the long-term viability of the Business License Information Program (BLIP), administered by the Finance Department, and allow the disclosure of business tax records to federal or state tax officials, or the tax officials of another city, county, or city and county if a reciprocal arrangement exists for the exchange of tax records, in order to assist the City with the enforcement of its business tax.

BACKGROUND

Section 4.76.200 of the San José Municipal Code provides that each business tax application and all of the statements and information contained therein may be subject to review and audit and verification by the Director of Finance, the Director's deputies, or other authorized employees of the City. All persons engaged in business in the City are required to permit examination of their books, records, and papers for purposes of the City enforcing its business tax. Section 4.76.200 also provides that the information or data obtained from an examination or audit, or from any application required by the City to be completed by the persons engaged in business in the City, is confidential.

Business tax records are released to third parties pursuant to a subpoena or court order. Additionally, the confidentiality provision of Section 4.76.200 has been interpreted not to apply

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to otherwise publicly available information contained in these records, such as business name, address and the like.

In order to take advantage of recent changes made to the California Revenue and Taxation Code, the proposed amendment to Section 4.76.200 adds a provision that allows the disclosure of business tax records to federal or state tax officials, or the tax officials of another city, county, or city and county, if a reciprocal arrangement exists for the exchange of tax records, in order to assist the City with the enforcement of its business tax. The proposed amendment also clarifies that the City may disclose business tax records in response to a subpoena or a court order and that publicly available information contained in the business tax records is subject to disclosure.

ANALYSIS

The Finance Department's Revenue Management Division is responsible for several tax and fee compliance programs in addition to the City's accounts receivable delinquency management program.

Revenue Taxation Code Section 19551.1 permits, under certain circumstances, the disclosure of tax information by the California Franchise Tax Board (FTB) to cities for a fee. The FTB's tax information sharing program has been used successfully by the City of San José to identify unregistered businesses resulting in the collection of unpaid business taxes. In order to participate in the FTB's tax information sharing program, the City of San José is required to enter into an agreement with the FTB and to reimburse the FTB a pro-rated share of the costs of the program based on its population. For the City, the cost is approximately \$20,000 per year, a fraction of the approximately \$1 million per year in revenue the program generates for the City.

Senate Bill 1146, which went into effect on January 1, 2009, amended Section 19551.1 and added a new Section 19551.5 to the Revenue and Taxation Code. AB 1146 requires cities that assess a business tax to annually furnish specified information to the FTB, upon request, but not later than December 31, 2009, for the first year. As an alternative, cities may enter into reciprocal agreements to exchange tax data with the FTB. If a city enters into such an agreement with the FTB, each party absorbs its own costs of providing the tax data in lieu of seeking reimbursement. In other words, the FTB would not seek reimbursement from the City and the City foregoes its claim for reimbursement of state-mandated costs. The bill also extends the sunset provision of Revenue and Taxation Code Section 19551.1, allowing the FTB to continue to share tax information with the cities through December 31, 2013.

In order to take advantage of the recent changes to the Revenue and Taxation Code, the proposed amendment to Section 4.76.200 adds a provision that allows the disclosure of

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business tax records to federal or state tax officials, or the tax officials of another city or county, or city and county if a reciprocal arrangement exists for the exchange of tax records, in order to assist the City with the enforcement of its business tax.

Given the success of the BLIP program, as part of the Finance Department's Revenue Collection Strategic Plan, amending Section 4.76.200 of Chapter 4.76 of the San José Municipal Code to take advantage of the recent changes to the Revenue and Taxation Code will assure the continued success of the BLIP program. Furthermore, the change will reduce the General Fund expenditures for this program by an average of \$20,000 annually.

EVALUATION AND FOLLOW-UP

The Finance Department will continue to ensure that the integrity of the data meets all the requirements of the City's ordinance and will be reviewed periodically for compliance with the department's data security policies and procedures.

PUBLIC OUTREACH/INTEREST

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council, or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

COORDINATION

This memorandum has been coordinated with the City Manager's Office and the City Attorney's Office.

FISCAL/POLICY ALIGNMENT

The revision of the San José Municipal Code Section 4.76.200 will allow the Finance Department to continue maximizing revenue generation programs and further the City's overall economic goals.

PUBLIC SAFETY, FINANCE AND STRATEGIC SUPPORT COMMITTEE

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CEQA

Not a project.



SCOTT P. JOHNSON
Director, Finance

For questions, please contact David McPherson, Deputy Director of Finance at (408) 535-7091.