

ORDINANCE NO. 27787

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING TITLE 4 OF THE SAN JOSE MUNICIPAL CODE TO ADD A NEW CHAPTER 4.82 ESTABLISHING UNIFORM REQUIREMENTS AND PROCEDURES APPLICABLE TO THE PRESENTATION AND PROCESSING OF CERTAIN TAX REFUND CLAIMS WITH THE CITY OF SAN JOSE INCLUDING A ONE YEAR CLAIMS PERIOD; AND AMENDING SECTIONS 4.46.080, 4.47.060, 4.54.080, 4.58.220, 4.64.080, 4.68.210, 4.72.130, 4.74.130, 4.76.340 AND 4.78.290 AND REPEALING SECTION 4.76.820 OF TITLE 4 OF THE SAN JOSE MUNICIPAL CODE RELATING TO THE TIME PERIOD AND OTHER REQUIREMENTS FOR FILING AND PROCESSING VARIOUS TAX REFUND CLAIMS; AND TO ESTABLISH A TRANSITION PERIOD FOR THE PRESENTATION OF TAX REFUND CLAIMS THAT WOULD BE UNTIMELY UNDER THE NEW PROCEDURES AND REQUIREMENTS

WHEREAS, pursuant to Section 935 of the California Government Code, this Council wishes to enact uniform procedures applicable to the presentation and processing of certain tax refund claims which provide the City with the opportunity to investigate the facts of such claims while the evidence is fresh, to allow for the settlement of meritorious claims without the need of costly litigation and to permit the City to make appropriate fiscal planning decisions, including decisions regarding the expenditure of the City's tax revenues; and

WHEREAS, except as expressly specified to the contrary in Section 14 of this Ordinance, it is this Council's intent that this Ordinance apply retroactively in order to preserve the City's ability to engage in sound fiscal planning;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Title 4 of the San José Municipal Code is hereby amended by adding a new Chapter to be numbered and entitled and to read as follows:

CHAPTER 4.82
TAX REFUND CLAIMS PROCEDURES
Part 1
Authority and Application

4.82.010 Authority

This Chapter is enacted pursuant to Section 935 of the California Government Code.

4.82.020 Application

Except for tax refund claims governed by Chapter 4.79 or other provisions of this Code and tax refund claims governed by State law, the provisions of this Chapter shall apply to claims for the refund of taxes imposed by the City.

Part 2
Definitions

4.82.200 Definitions

The definitions set forth in this Part shall govern the application and interpretation of this Chapter.

4.82.210 Director

“Director” means the City official charged with the responsibility under this Code for the administration of the tax for which a refund is claimed.

Part 3
Presentation and Processing of Tax Refund Claims

4.82.300 Claims Required

- A. All tax refund claims, including claims for interest or penalties paid in connection with the payment of a tax, shall be presented to the Director within one year of the date of payment, and, except as modified by this Chapter, in the manner prescribed by Part 3 of Division 3.6 of Title 1 of the California Government Code (commencing with Section 900 thereof) for the claims to which that Part applies by its own terms, as those provisions now exist or shall hereafter be amended, and as further provided by this Chapter.

- B. References in this Chapter to specific sections of the California Government Code shall refer to those provisions as they now exist or shall hereafter be amended.

4.82.310 Form of Claim

- A. All tax refund claims shall be made in writing and verified by the claimant or by his or her guardian, conservator, executor or administrator. Any claim filed on behalf of more than one person shall be verified by each person on behalf of whom the claim is filed or by his or her guardian, conservator, executor or administrator.

- B. All tax refund claims shall be filed on the refund claim form prescribed by the Director. In the event that the Director has not prescribed a form of claim, the tax refund claim shall contain:
 - 1. the information required by California Government Code Section 910; and

2. the specific amount claimed to have been overpaid, paid more than once, or erroneously or illegally collected or received by the City; and
3. the grounds upon which the claim is founded, with specificity sufficient to enable the Director and other responsible City officials to understand and evaluate the claim; and
4. documentation supporting the amount of the refund sought.

4.82.320 City Action on Claims

- A. Tax refund claims shall be acted upon by the Director within the time and, except as modified by this Chapter, in the manner prescribed by Part 3 of Division 3.6 of Title 1 of the California Government Code (commencing with Section 900 thereof) for the claims to which that Part applies by its own terms, as those provisions now exist or shall hereafter be amended, and as further provided by this Chapter.
- B. The Director is authorized to allow, compromise or settle a tax refund claim if the claimant has demonstrated that all or a portion of the amount claimed has been overpaid, paid more than once, or has been erroneously or illegally collected or received by the City and the amount to be paid pursuant to the allowance, compromise or settlement is in an amount not to exceed Twenty-Five Thousand Dollars (\$25,000); and with the written approval of the City Attorney, if the amount to be paid exceeds Twenty-Five Thousand Dollars (\$25,000), but is no more than Fifty Thousand Dollars (\$50,000). In the event that the amount to be paid pursuant to an allowance, compromise or settlement of a tax refund claim exceeds Fifty Thousand Dollars (\$50,000), the approval of the City Council is required.

4.82.330 Claim Prerequisite to Suit

In accordance with California Government Code Sections 935(b) and 945.6, no action against the City may be maintained by a person who has not complied with applicable claims presentation requirements.

4.82.340 Suit

Any action brought against the City upon any claim or demand shall conform to the requirements of Section 940 through and including Section 949 of the California Government Code. Any action brought against any employee of the City shall conform to the requirements of Section 950 through and including Section 951 of the California Government Code.

SECTION 2. Section 4.46.080 of Chapter 4.46 of Title 4 of the San José Municipal Code is hereby amended to read as follows:

4.46.080 Refunds and Procedures

Whenever the amount of any tax, penalty or interest has been overpaid, paid more than once, or has been erroneously, or illegally collected or received by the City under this Chapter, it may be refunded to the person who paid the tax provided that a written claim for refund is filed with the Building Official, and the provisions of Chapter 4.82 are satisfied.

SECTION 3. Section 4.47.060 of Chapter 4.47 of Title 4 of the San José Municipal Code is hereby amended to read as follows:

4.47.060 Refunds and Procedures

Whenever the amount of any tax, penalty or interest has been overpaid, paid more than once, or has been erroneously, or illegally collected or received by the City under this Chapter, it may be refunded to the person who paid the tax provided that a written claim for refund is filed with the Building Official, and the provisions of Chapter 4.82 are satisfied.

SECTION 4. Section 4.54.080 of Chapter 4.54 of Title 4 of the San José Municipal Code is hereby amended to read as follows:

4.54.080 Refunds and Procedures

Whenever the amount of any tax, penalty or interest has been overpaid, paid more than once, or has been erroneously, or illegally collected or received by the City under this Chapter, it may be refunded to the person who paid the tax provided that a written claim for refund is filed with the Building Official, and the provisions of Chapter 4.82 are satisfied.

SECTION 5. Section 4.58.220 of Chapter 4.58 of Title 4 of the San José Municipal Code is hereby amended to read as follows:

4.58.220 Refunds and Procedures

Whenever the amount of any tax, penalty or interest has been overpaid, paid more than once, or has been erroneously, or illegally collected or received by the City under this Chapter, it may be refunded to the person who paid the tax provided that a written claim for refund is filed with the Director, and the provisions of Chapter 4.82 are satisfied.

SECTION 6. Section 4.64.080 of Chapter 4.64 of Title 4 of the San José Municipal Code is hereby amended to read as follows:

4.64.080 Refunds and Procedures

Whenever the amount of any tax, penalty or interest has been overpaid, paid more than once, or has been erroneously, or illegally collected or received by the City under this Chapter, it may be refunded to the person who paid the tax provided that a written claim for refund is filed with the Building Official, and the provisions of Chapter 4.82 are satisfied.

SECTION 7. Section 4.68.210 of Chapter 4.68 of Title 4 of the San José Municipal Code is hereby amended to read as follows:

4.68.210 Refunds and Procedures

A. Filing claim.

1. Any tax imposed by this Chapter, including any interest or penalty added thereto, may be refunded by the Director as provided in subsections B and C of this Section whenever such tax has been:
 - a. Overpaid;
 - b. Paid more than once; or
 - c. Erroneously or illegally collected or received by the City, including any instance where a service supplier, pursuant to an order by the California Public Utilities Commission or a court of competent jurisdiction, refunds to its service users taxes paid on refunded charges.

2. No refund shall be paid by the Director unless a written claim for refund is filed with the Director, and the provisions of Chapter 4.82 are satisfied.
- B. Refund or Credit to Service Supplier. A service supplier may obtain a refund of or take as credit against taxes remitted any amount overpaid, paid more than once, or erroneously, or illegally collected or received by the City by filing a claim in the manner provided in subsection A. The Director shall not grant a refund or a credit to a service supplier unless the service supplier has refunded the tax to the service user or credited the tax to charges subsequently payable by the service user to the service supplier.
- C. Refund to Service User. A service user may obtain a refund of any tax, interest or penalty by filing a claim in the manner provided in subsection A when:
1. The service user was required to remit directly to the Director a tax imposed by Section 4.68.050 or Section 4.68.070 and the service user establishes to the satisfaction of the Director that the amount was overpaid, paid more than once, or erroneously, or illegally collected; or
 2. The service user establishes that the amount was overpaid, paid more than once, or erroneously, or illegally collected and has paid the tax to the service supplier but is unable to obtain a refund or credit from the service supplier who collected the tax.

SECTION 8. Section 4.72.130 of Chapter 4.72 of Title 4 of the San José Municipal Code is hereby amended to read as follows:

4.72.130 Refunds and Procedures

- A. Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the

City under this Chapter, it may be refunded as provided in subsections B and C of this Section provided a written claim for refund is filed with the Director of Finance, and the provisions of Chapter 4.82 are satisfied.

- B. An operator may obtain a refund or take as credit against taxes collected and remitted the amount overpaid, paid more than once, or erroneously or illegally collected or received by the City by filing a claim in the manner provided in subsection A of this Section, but only when the operator establishes to the satisfaction of the Director of Finance that the person from whom the tax has been collected was not a transient; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the transient or credited to rent subsequently payable by the transient to the operator.

- C. A transient may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected or received by the City by filing a claim in the manner provided in subsection A of this Section, but only when the tax was paid by the transient directly to the Director of Finance, or when the transient having paid the tax to the operator, establishes to the satisfaction of the Director of Finance that the transient has been unable to obtain a refund from the operator who collected the tax.

SECTION 9. Section 4.74.130 of Chapter 4.74 of Title 4 of the San José Municipal Code is hereby amended to read as follows:

4.74.130 Refunds and Procedures

- A. Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the City under this Chapter, it may be refunded as provided in subsections B and C

of this Section provided a written claim for refund is filed with the Director of Finance, and the provisions of Chapter 4.82 are satisfied.

- B. An operator may obtain a refund or take as credit against taxes collected and remitted the amount overpaid, paid more than once, or erroneously or illegally collected or received by the City by filing a claim in the manner provided in subsection A of this Section, but only when the operator establishes to the satisfaction of the Director of Finance that the person from whom the tax has been collected was not a transient; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the transient or credited to rent subsequently payable by the transient to the operator.

- C. A transient may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected or received by the City by filing a claim in the manner provided in subsection A of this Section, but only when the tax was paid by the transient directly to the Director of Finance, or when the transient having paid the tax to the operator, establishes to the satisfaction of the Director of Finance that the transient has been unable to obtain a refund from the operator who collected the tax.

SECTION 10. Section 4.76.340 of Chapter 4.76 of Title 4 of the San José Municipal Code is hereby amended to read as follows:

4.76.340 Refunds and Procedures

- A. Whenever the amount of any business tax, penalty or interest has been overpaid, paid more than once, or has been erroneously or illegally collected or received by the City under this Chapter, it may be refunded to the claimant who paid the tax provided that a written claim for refund is filed with the Director of Finance, and the provisions of Chapter 4.82 are satisfied.
- B. The Director of Finance or the Director's authorized agent shall have the right to examine and audit all the books and business records of the claimant in order to determine the eligibility of the claimant to the claimed refund. No claim for refund shall be allowed if the claimant therefor refuses to allow such examination of claimant's books and business records after request by said Director to do so.
- C. In the event that the business tax was erroneously paid and the error is attributable to the City, the entire amount of the tax erroneously paid shall be refunded to the claimant. If the error is attributable to the claimant, the City shall retain fifteen dollars (\$15) from the amount to be refunded to cover expenses.
- D. The Director of Finance shall initiate a refund of any business tax which has been overpaid or erroneously collected whenever the overpayment or erroneous collection is uncovered by a City audit of business tax receipts. In the event that the business tax was erroneously paid and the error is attributable to the City, the entire amount of the tax erroneously paid shall be refunded to the claimant. If the error is attributable to the claimant, the City shall retain fifteen dollars (\$15) from the amount to be refunded to cover expenses.
- E. Under any of the following circumstances, no refund shall be made pursuant to this Section unless and until the claimant surrenders to the Director of Finance the certificate evidencing payment of the tax for which refund is sought:

1. Where the tax was paid for a new business but the new business did not become operational within sixty (60) days of the payment of the tax.
2. Where the tax was paid to renew a certificate for a business not in existence at the time the tax was paid.
3. Where a certificate was issued for a business for which another certificate had been issued for the same time period.

SECTION 11. Section 4.78.290 of Chapter 4.78 of Title 4 of the San José Municipal Code is hereby amended to read as follows:

4.78.290 Refunds and Procedures

- A. The Director of Finance may refund any disposal facility tax, penalty or interest which has been overpaid or erroneously or illegally collected, provided that a written claim for refund is filed with the Director of Finance, and the provisions of Chapter 4.82 are satisfied.
- B. The Director of Finance, the City Auditor, the Director of Environmental Services, or the authorized representative of any of them shall have the right to examine and audit all the books and business records of the claimant in order to determine the eligibility of the claimant to the claimed refund. No claim for refund shall be allowed if the claimant therefor refuses to allow such examination of claimant's books and business records after request by the Director to do so.
- C. In the event that the disposal facility tax was erroneously paid and the error is attributable to the City, the entire amount of the tax erroneously paid shall be refunded to the claimant. If the error is attributable to the claimant, the City shall retain fifteen dollars (\$15) from the amount to be refunded to cover expenses.

- D. The Director of Finance shall initiate a refund of any disposal facility tax which has been overpaid or erroneously collected whenever the overpayment or erroneous collection is uncovered by a City audit of disposal facility tax receipts. In the event that the disposal facility tax was erroneously paid and the error is attributable to the City, the entire amount of the tax erroneously paid shall be refunded to the claimant. If the error is attributable to the claimant, the City shall retain fifteen dollars (\$15) from the amount to be refunded to cover expenses.

SECTION 12. Section 4.76.820 of Chapter 4.76 of Title 4 of the San José Municipal Code is hereby repealed.

SECTION 13. Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

SECTION 14. This Ordinance shall take effect at the expiration of thirty days after adoption as provided by San José City Charter Section 605, and except as expressly set forth in the following sentence, shall apply retroactively. Any claim that would have been timely if presented in accordance with the refund period in effect (the "Prior Refund Period") prior to the effective date of this Ordinance may, notwithstanding this Ordinance, be presented by the sooner of the date on which the Prior Refund Period would have expired or on September 12, 2006. Nothing in this Ordinance shall be construed so as to extend the time period for presenting claims which would have been untimely if such claims had been presented on the day before this Ordinance becomes effective.

PASSED FOR PUBLICATION of title this 20th day of June, 2006, by the following vote:

AYES: CAMPOS, CHAVEZ, CORTESE, LeZOTTE, NGUYEN,
PYLE, REED, WILLIAMS, YEAGER; GONZALES

NOES: NONE

ABSENT: CHIRCO

DISQUALIFIED: NONE

RON GONZALES
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk