

ORDINANCE NO. 28640

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING
TITLE 4 OF THE SAN JOSE MUNICIPAL CODE TO ADD A
NEW CHAPTER 4.86 TO CREATE A USE TAX INCENTIVE
PROGRAM**

WHEREAS, pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (California Revenue and Taxation Code Section 7200 et.seq.), the City of San José receives 1% of all sales taxes collected from transactions occurring in the City. However, unless a taxpayer obtains certain permits from the State Board of Equalization specifying the location of the first use of a taxed purchase, the use tax collected on a transaction will be allocated to a County-wide pool; and

WHEREAS, the City Council of the City of San José has established a Business Cooperation Program designed to provide incentives for anyone conducting business in San José to obtain a Use Tax Direct Payment Permit from the State of California Board of Equalization pursuant to the State Sales and Use Tax Regulation 1699.6; and

WHEREAS, the Business Cooperation Program is also designed to provide incentives for anyone constructing or building in San José to obtain a Sub Seller's Permit for their job site in San José from the State of California Board of Equalization pursuant to the State Sales and Use Tax Regulation 1806 and State Board of Equalization Operations Memo No. 1023; and

WHEREAS, the benefit derived by the City of San José from having businesses obtain Use Tax Direct Pay or Sub Seller's Permits is that the business reports the local use tax component to the jurisdiction in which the property is located at the time the state use tax is reported, thus ensuring that the City receives the entire local component of the use tax and it is not allocated to the Countywide Pool;

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

Title 4 of the San José Municipal Code is amended to add a new chapter, to be numbered, entitled and to read as follows:

**CHAPTER 4.86
USE TAX INCENTIVE PROGRAM**

4.86.010 Eligibility for Use Tax Rebate

Any person or entity doing business in the City of San José is eligible for the Use Tax rebated described herein if all of the following conditions have been satisfied:

- A. The person or business is enrolled in the City's Business Cooperation Program.
- B. The person or entity has obtained a State of California Use Tax Direct Payment Permit pursuant to California Revenue and Taxation Code Section 7051.3, or a Sub Sellers Permit pursuant to State Board of Equalization Operations Memo No. 1023 ("Permit").
- C. The City of San José is properly identified in the Permit as the jurisdiction in which the property acquired under the permit is first functionally used, stored or consumed.

4.86.020 Rebate Claim Procedure

- A. Within forty-five (45) days after the close of the State's tax reporting quarter, a person or entity doing business in San José may file a rebate claim with the City's Director of Finance, on a form provided by the Director of Finance.

- B. The claim must contain evidence of the amount of the Use Tax paid to the State. The Director may request from the claimant any other information necessary to substantiate the rebate claim.

4.86.030 Calculation and Issuance of Use Tax Rebate

- A. The Director of Finance shall issue the rebate within ninety (90) days of verification that the City received the correct amount of funds from the State. The use tax rebate shall be based upon the following schedule:

Net New Use Tax Received by the City of San José (4 consecutive quarters)	Rebate Percentage
0-\$200,000	20%
\$200,001-\$500,000	25%
\$500,001 and greater	30%

- B. The rebate shall be paid by check directly to the claimant but shall be increased or decreased in accordance with any adjustment made by the State to a prior use tax payment by the claimant.

- C. Upon enrollment in the Business Cooperation Program, the City will determine the baseline use tax received by the City from the taxpayer as follows:

- (1) For Direct Payment Permittees, by averaging the amount of tax received by the City from that taxpayer over the twelve (12) quarters prior to enrollment;
 - (2) For Sub Sellers Permittees, by averaging the amount of tax received from that construction site over the twelve (12) quarters prior to enrollment.
- D. "Net New Use Tax", for the purposes of this Chapter, shall mean the difference between the amount of taxes actually received by the City resulting from the taxpayer's Permit and the baseline amount as calculated for the taxpayer upon enrollment in the Business Cooperation Program.
- E. The rebate will be paid quarterly based on twenty percent (20%) of the Net New Use Tax received in each quarter. After four (4) consecutive quarters, the City will adjust the percentage if warranted, based on the total Net New Use Tax received over the prior four (4) quarters. The rebate amount for the fourth consecutive quarter will reflect the amount attributed to the adjusted percentage, if applicable.
- F. For the purposes of this calculation, the quarters are based on the taxpayer's tax reporting calendar, but the calculation is based on the four (4) consecutive quarters immediately following enrollment in the Commercial Business Program.
- G. Once the rebate has been provided for the fourth consecutive quarter, the calculation of the rebate for the next four (4) quarters will begin again.

4.86.040 Amendment or Discontinuance

The City reserves the right to amend or discontinue any provision of this Use Tax Incentive program without voter approval. Any amendment shall be made by ordinance

and shall be applicable to any transaction made subsequent to the effective date of any ordinance.

4.86.050 Term of Use Tax Incentive Program

The Use Tax Incentive Program as set forth in this Chapter shall be in effect until October 15, 2014, or until such time as the City Council takes action to modify this termination date.

PASSED FOR PUBLICATION of title this 25th day of August, 2009, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, HERRERA, KALRA,
LICCARDO, NGUYEN, OLIVERIO, PYLE, REED.

NOES: NONE.

ABSENT: CONSTANT.

DISQUALIFIED: NONE.

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk