



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Councilmember Pam Foley

SUBJECT: SEE BELOW

DATE: August 13, 2019

Approved

Date

8/13/2019

SUBJECT: AMNESTY PROGRAM FOR BUSINESS TAX AND EXPANDING THE ELIGIBILITY REQUIREMENTS FOR THE FINANCIAL HARDSHIP EXEMPTIONS.

RECOMMENDATION

- 1.) Approve staff's two recommendations pertaining to the Business Tax Amnesty Program.
 - a. Approve an ordinance authorizing the Director of Finance to administer a Business Tax Amnesty Program which forgives taxpayers who pay certain past due business taxes from liability for the remaining past due business taxes, interest and penalties;
 - b. Approve an ordinance authorizing an Amnesty Program for the Downtown and Japantown Business Improvement District Assessments, to run concurrently with the Business Tax Amnesty Program.
- 2.) Direct staff to explore amending the third recommendation, "expand the eligibility requirements", to include Benefit Corporations (B-Corp).
 - a. Approve an ordinance amending Sections 4.76.115 and 4.76.120 of Chapter 4.76 of Title 4 of the San Jose Municipal Code to broaden the definitions of small business and small business owner in order to expand the eligibility requirements for the Business Tax Financial Hardship Exemptions to include trusts under certain circumstances.

BACKGROUND

The City of San José currently offers a financial hardship exemption for small businesses and who do not yield a significant amount of income, or their owners with a limited amount of income. Currently "financial hardship exemptions are available to sole proprietorships, partnerships, and corporations that are owned by a single natural person

or owned jointly by spouses or domestic partners, without other principals or employees, whose gross receipts are at or below the poverty levels set forth in Chapter 4.76.”

In addition to staff’s recommendation to include small businesses owned through a trust, we should also explore the inclusion of Benefit Corporations (B-Corp.) which are “owned by a single natural person or jointly owned by spouses or domestic partners, without other principals or employees, who’s gross receipts are at or below the poverty levels set forth in Chapter 4.76” of the Municipal Code.

A Benefit Corporation is very similar to a C-Corporation, and is taxed as a traditional corporation. A Benefit Corporation can be designed for both for-profit and non-profit objectives; however, they have a public benefit purpose requirement. A Benefit Corporation’s articles of incorporation must state that the corporation is a Benefit Corporation, and that one of its purposes is to create a general public benefit. As such, a company obligates itself to create a general public benefit by becoming a Benefit Corporation. A Benefit Corporation may additionally include any “specific public benefit” adopted by the corporation in its articles.

Unlike traditional corporations, law requires the Benefit Corporation to create products and services that “benefit” the public interests, such as protecting the environment. To further the development of net-positive small businesses, and encourage our residents to look towards the improvement and future of our environment, we should explore the inclusion of the Benefit Corporations to the list of those eligible to receive a Business Tax Financial Hardship Exemption.