



City of Grand Island

Tuesday, December 20, 2022

Council Session

Item F-1

#9909 - Consideration of Adding Article XI to Chapter 23 of the Grand Island City Code, Providing for the Levy of a Retail Business Occupation Tax for a Redevelopment Project.

Staff Contact: Chad Nabity

Council Agenda Memo

From: Chad Nabity, AICP

Meeting: December 20, 2022

Subject: Redevelopment Contract for CRA Area #28 Woodsonia Hwy. 281, LLC – Conestoga and Occupation Tax Ordinance

Presenter(s): Chad Nabity, AICP CRA Director

Background

Woodsonia Hwy. 281, LLC is proposing to redevelop the Conestoga Mall property at 3404 W. 13th Street for commercial and residential purposes. The property is currently zoned CD Commercial Development District and RD Residential Development zone. On November 22, 2022 the Grand Island City Council approved a redevelopment plan for this project. That plan designated an Enhanced Employment Area and as such Council is authorized to impose an occupancy tax on the area to aid in redevelopment.

Staff has prepared a redevelopment contract including all of the elements of the approved redevelopment plan including: the use of Tax Increment Financing, declaration of an Enhanced Employment Area with an associated occupation tax, and grants from the City of Grand Island, Grow Grand Island and the Community Redevelopment Authority of the City of Grand Island.

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| • TIF Authorized | \$26,257,000 |
| • EEA Authorized | \$36,763,000 |
| • City Grant for reimbursement of public infrastructure | \$5,500,000 |
| • Grow Grand Island Grant | \$1,000,000 |
| • CRA Grant | \$4,000,000 |

Discussion

A resolution has been prepared to approve the contract. This contract will involve the City of Grand Island, the Community Redevelopment Authority and the Developer. The resolution authorizes the Mayor to sign the contract subject to the following contingencies:

- A. Developer shall have closed on the purchase of the land within Redevelopment Area No. 28 and shall be the owner in fee simple of such land; and

- B. Developer shall provide written documentation of a contract between Developer and the entity that has been targeted as the “new to market approximately 150,000 SF retailer positioned on the southern portion of the redevelopment site” for its participation in the Redevelopment Project;

In addition to the Resolution authorizing the Mayor to sign the contract, Staff has prepared an ordinance to levy a 1.5% occupation tax on all sales on lots 1-12 of Conestoga Mall Ninth Subdivision (all areas of the subdivision excepting lot 13 which is approved for apartments). The occupation tax ordinance would not become effective until after the same contingencies are met and a period of at least 60 days to notify the retailers in the area and give them time to prepare to begin collecting the taxes.

Some key provisions in the contract include:

The City will reimburse the developer up to \$5,500,000 for eligible public improvements in public easements or rights of way. These include costs associated with building 16th Street and Overland Drive to city street standards and cost of relocating and replacing storm water detention cells along with installation of city sewer and water across the site.

The developer will build up to 250 apartments on lot 13 of the subdivision. Final numbers will be based on an approved development plan and zoning amendment.

The developer will complete the apartments, main mall building rehabilitation and anchor store before December 31, 2030 or annual payments from the CRA will cease.

Two action items have been prepared for Council’s consideration. The first is a resolution approving the form of the redevelopment contract and authorizing the Mayor to execute the contract upon satisfaction of the two contingencies previously placed by the Council on the implementation of the Redevelopment Plan. The second is an ordinance imposing an occupation tax on general retail businesses located within the Enhanced Employment Area and effective on the date that is established in the Redevelopment Contract.

Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve the resolution and after approval consider a motion to approve the occupation tax ordinance
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

City administration recommends that the Council approve the Resolution and authorize the Mayor to sign the redevelopment contract upon the developer meeting the contingencies. City administration then recommends that the Council approve the Ordinance imposing an occupation tax within the Enhanced Employment Area.

Sample Motions

1. Move to approve the resolution authorizing the Mayor to sign the redevelopment contract upon the developer satisfying specified contingencies.
2. Move to approve the Ordinance imposing an occupation tax within the Enhanced Employment Area.

ORDINANCE NO. 9909

An ordinance adding a new Article XI to Chapter 23 of the Grand Island City Code; providing for the levy of a retail business occupation tax for a redevelopment project; establishing definitions; providing for the administration, collections, returns; delinquencies and recovery of unpaid occupation taxes; specifying the use of such occupation tax revenue; providing a sunset provision for the collection of such occupation tax; providing for publication and an effective date of this ordinance; and other matters related thereto.

WHEREAS, the City of Grand Island, Nebraska, a municipal corporation and city of the first class, ("City") has determined it to be desirable to undertake and carry out urban redevelopment projects in areas of the City which are determined to be substandard and blighted and in need of redevelopment; and

WHEREAS, the Nebraska Community Development Law, Chapter 18, Article 21, Nebraska Reissue Revised Statutes of 2007, as amended (the "Act"), prescribes the requirements and procedures for the planning and implementation of redevelopment projects; and

WHEREAS, on November 22, 2022, by Resolution No. 2022-341, the City Council of the City ("Council") as authorized by the Act, approved the Site Specific Redevelopment Plan for Redevelopment Area No. 28 (the "Redevelopment Plan"), which, in part, provides for the redevelopment of a commercial shopping center (the "Redevelopment Project") between 13th Street and State Street and between U.S. Highway 281 and Webb Road in the Redevelopment Project Area as shown on Exhibit "A" (attached hereto and incorporated herein by reference); and

WHEREAS, the Redevelopment Plan and Resolution No. 2022-341 provide for the designation of the Redevelopment Project Area shown on Exhibit "A" as an "enhanced

Approved as to Form	▣ _____
December 16, 2022	▣ City Attorney

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employment area” as defined in Section 18-2103(22) of the Act (the “Enhanced Employment Act Area”); and

WHEREAS, pursuant to Section 18-2142.02 of the Act, the City is authorized to agree to and to levy and collect a general business occupation tax upon the businesses and users of space within the Enhanced Employment Act Area for the purpose of paying all or any part of the costs and expenses of the Enhanced Employment Act Project within the Enhanced Employment Act Area and Woodsonia Hwy 281, LLC (the “Developer”) on behalf of itself and its successors and assigns has requested that the City levy and collect such a tax within the Enhanced Employment Act Area; and

WHEREAS, the City Council has determined it is necessary, desirable, advisable, and in the best interests of the City that a general business occupation tax be imposed within the Enhanced Employment Act Area as provided by the Act for the purposes set forth herein.

NOW THEREFORE,

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA:

SECTION 1. There is hereby added a new Article XI to Chapter 23 of the Grand Island City Code as follows:

Article 23-XI Enhanced Employment Act Area Tax – CRA 28

§23-115. Definitions.

As used in this Article, the following words and phrases shall have the meanings ascribed to them in this Article, except where the context clearly indicates or requires a different meaning:

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- A. *Person* means any natural person, individual, partnership, association, organization or corporation of any kind or character engaging in the business of operating a General Retail Business.
- B. *General Retail Business* means any activity engaged in by any Person or caused to be engaged in by such Person in which products or services are sold, leased or rented for any purpose other than for resale, sublease or subrent, except that “General Retail Business” shall not mean any transaction which is subject to tax under Sections 53-160, 66-489, 66-489.02, 66-4,140, 66-4,145, 66-4,146, 77-2602 or 77-4008 of the Nebraska Revised Statutes or which is exempt from tax under Section 77-2704.24 of the Nebraska Revised Statutes.
- C. *Taxpayer* shall mean any Person engaged in the business of operating a General Retail Business as herein defined who is required to pay the tax herein imposed.

§23-116. Tax Imposed; Collection of Tax.

- A. On or after the effective date of this tax and in each calendar month thereafter there is hereby imposed a retail business occupational tax upon each and every Person operating a General Retail Business within the Enhanced Employment Act Area for any period of time during a calendar month. The amount of such tax shall be one and one-half percent (1.50%) of all General Retail Business transactions which the State of Nebraska is authorized to impose a tax as allowed by the Nebraska Local Option Revenue Act for each calendar month derived from the General Retail Business subject to this tax. Such tax shall be imposed on transactions which the State of Nebraska is authorized to impose a tax as allowed by the Nebraska Local Option Revenue Act resulting from the sales of products or services within the limits of the Enhanced Employment Act Area which are subject to the sales and use tax imposed by the State of Nebraska, except that no occupation tax shall be imposed on any

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transaction which is subject to tax under Sections 53-160, 66-489, 66-489.02, 66-4,140, 66-4,145, 66-146, 77-2602 or 77-4008 of the Nebraska Revised Statutes or which is exempt from tax under Section 77-2704.24 of the Nebraska Revised Statutes.

- B. The Person engaged in operating a General Retail Business may itemize the tax levied on a bill, receipt, or other invoice to the purchaser, but each Person engaged in such business shall remain liable for the tax imposed by this Article.

§23-117. Business Classifications.

Pursuant to Section 18-2142.02 of the Act, the City hereby makes the following classifications of businesses, users of space, or kinds of transactions for purposes of imposing the occupation tax:

- A. General Retail Business: means any activity engaged in by an Person or caused to be engaged in by such Person in which products or services are sold, leased or rented for any purpose other than for resale, sublease or subrent, except that “General Retail Business” shall not mean any transaction which is subject to tax under Sections 53-160, 66-489, 66-489.02, 66-4,140, 66-4,145, 66-146, 77-2602 or 77-4008 of the Nebraska Revised Statutes, as amended, or which is exempt from tax under Section 77-2704.24 of the Nebraska Revised Statutes, as amended.
- B. Non-Occupation Tax Retail: means users of space, or kinds of transactions where an occupations tax cannot be imposed pursuant to Section 18-2142.02 of the Act, which includes, but is not limited to 1) manufacturers or wholesalers of alcoholic liquor; 2) producers, suppliers, distributors, wholesalers, or importers of motor fuel and/or gasoline; 3) stamping agents engaged in distributing or selling cigarettes at wholesale; 4) the first owner of tobacco products in the state of Nebraska; and 5) the gross receipts from the sale, lease, or

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rental of and the storage use, or other consumption of food or food ingredients except for prepared food and food sold through vending machines.

C. *Other*: businesses that are not either General Retail or Non-Occupation Tax Retail.

§23-118. Return.

Each and every Person engaged in the operation of a General Retail Business within the Enhanced Employment Act Area upon the effective date of this tax as stated in the ordinance and Redevelopment Contract for the Enhanced Employment Act Area, and for each and every month thereafter, shall prepare and file, on or before the 25th day of the following month thereafter on a form prescribed and furnished by the City Finance Director, a return for such month, and at the same time pay to the City the tax herein imposed. The return shall be verified and sworn to by the officer in charge of the business. The return shall be considered filed on time if mailed in an envelope properly addressed to the City Finance Director, postage prepaid and postmarked before midnight of the 25th day of the appropriate month.

§23-119. Tax Cumulative.

- A. The levy of the tax under this Article is in addition to all other fees, taxes, excises and licenses levied and imposed under any contract or any other ordinances of the City, in addition to any fee, tax, excise or license imposed by the State of Nebraska.
- B. Payment of the tax imposed by this Ordinance shall not relieve the Person paying the same from payment of any other tax now or hereafter imposed by contract or ordinance or by this Ordinance, including those imposed for any business or occupation he or she may carry on, unless so provided therein. The occupational tax imposed by this Ordinance shall be cumulative except where otherwise specifically provided.

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§23-120. Use of Revenue.

The one and one-half percent (1.50%) occupation tax imposed by this Ordinance, less an administrative fee of 0.50% retained by the City, shall be used only to fund the indebtedness issued by the CRA pursuant to the provisions of Section 18-2124 of the Act, for which such occupation tax receipts have been pledged for the benefit of the Enhanced Employment Act Project and pursuant to the City's lawful authority under the Act.

§23-121. Failure to File Return; Delinquency; Assessment by the City Finance Director.

- A. If any person neglects or refuses to make a return or payment of the taxes as required by this article, the Finance Director shall make an estimate, based upon such information as may be reasonably available, of the amount of taxes due for the period or periods for which the taxpayer is delinquent, and upon the basis of such estimated amount, compute and assess in addition thereto a penalty equal to ten percent (10%) thereof, together with interest on such delinquent taxes, at the rate of one percent (1%) per month, or fraction thereof from the date when due.
- B. The City Finance Director shall give the delinquent Taxpayer written notice of such estimated taxes, penalty, and interest, which notice must be served personally or by certified mail.
- C. Such estimate shall thereupon become an assessment and such assessment shall be final and due and payable from the Taxpayer to the City Finance Director ten (10) days from the date of service of the notice or the date of mailing by certified mail; however, within such ten (10) day period the delinquent Taxpayer may petition the City Finance Director for a revision or modification of such assessment and shall, within such ten-day (10) period, furnish the City Finance Director the facts and correct figures showing the correct amounts of such taxes.

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- D. Such petition shall be in writing, and the facts and figures submitted shall be submitted in writing and shall be given under oath of the Taxpayer.
- E. The City Finance Director may then modify such assessment in accordance with the facts which he or she deems correct. Such adjusted assessment shall be made in writing, and notice thereof shall be mailed to the Taxpayer within ten (10) days; and all such decisions shall become final upon the expiration of thirty (30) days from the date of service, unless proceedings are commenced within that time for appeal in the District Court.

§23-122. Administration; Miscellaneous Provision.

- A. The administration of the provisions of this Ordinance are hereby vested in the City Finance Director, or designee, who shall prescribe forms in conformity with this Ordinance for the making of returns, for the ascertainment, assessment and collection of the tax imposed hereunder, and for the proper administration and enforcement hereof.
- B. All notices required to be given to the Taxpayer under the provisions of this Ordinance shall be in writing. Notices shall be mailed by registered or certified mail, postage prepaid, return receipt requested, to the Taxpayer at their last known address.
- C. It shall be the duty of every Taxpayer to keep and preserve suitable records and other books or accounts as may be necessary to determine the amount of tax for which they are liable hereunder.
 - 1. Records of the transactions which the State of Nebraska is authorized to impose a tax allowed by the Nebraska Local Option Revenue Act by which this tax is measured shall be kept separate and apart from the records of other sales or receipts in order to facilitate the examination of books and records as necessary for the collection of this tax.

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2. It shall be the duty of every Taxpayer to keep and preserve for a period of four (4) years all such books, invoices and other records, which shall be open for examination at any time by the City Finance Director or duly designated persons. If such Person keeps or maintains his books, invoices, accounts or other records, or any thereof, outside of the state, upon demand of the City Finance Director they shall make the same available at a suitable place within the City, to be designated by the City Finance Director, for examination, inspection and audit by the City Finance Director or duly authorized persons. The Taxpayer shall reimburse the City for the reasonable costs of examination, inspection and audit if the City Finance Director determines that the Taxpayer paid ninety percent or less of the tax owing for the period of the examination.
 3. The City Finance Director, in their discretion, may make, permit or cause to be made the examination, inspection or audit of books invoices accounts or other records so kept or maintained by such Person outside of the state at the place where same are kept or maintained or at any place outside the state where the same may be made available, provided such Person shall have entered into a binding agreement with the City to reimburse it for all costs and expenses incurred by it in order to have such examination, inspection or audit made in such place.
- D. For the purpose of ascertaining the correctness of a return, or for the purpose of determining the amount of tax due from any Person, the City Finance Director or their duly authorized persons, may conduct investigations concerning any matters covered by this Ordinance; and may examine any relevant books, papers, records or memoranda of any such Person.

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§23-123. Recovery of Unpaid Tax by Action at Law

- A. The City Finance Director may also treat any such taxes, penalties or interest due and unpaid as a debt due the City.
- B. In case of failure to pay the taxes, or any portion thereof, or any penalty or interest thereon when due, the City may recover at law the amount of such taxes, penalties and interest in any court of Hall County, Nebraska or of the county wherein the Taxpayer resides or has its principal place of business having jurisdiction of the amounts sought to be collected.
- C. The return of the Taxpayer or the assessment made by the City Finance Director, as herein provided, shall be prima facie proof of the amount due.
- D. The City Attorney may commence an action for the recovery of taxes due under this Ordinance and this remedy shall be in addition to all other existing remedies, or remedies provided in this Ordinance.

§23-124. Suspension or Revocation of Licenses for Failure to Pay Tax; Hearing.

If the Mayor or the Mayor's designee, after holding a hearing, shall find that any Person has willfully evaded payment or collection and remittance of the tax imposed by this Ordinance, such official may suspend or revoke any City license, permit or other approval held by such tax evader. Such Person shall have an opportunity to be heard at such hearing to be held not less than seven (7) days after notice is given of the time and place of the hearing to be held, addressed to the last known place of business of such Person. Pending the notice, hearing and finding, any licensee, permit or other approval issued by the City to the Person may be temporarily suspended. No suspension or revocation hereunder shall release or discharge the Person from civil liability for the payment or collection and remittance of the tax, nor from prosecution for such offense.

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§23-125. Sunset Provision.

The occupation tax imposed by this Ordinance shall terminate and collection of the tax shall cease upon the earlier of 1) payment in full of all indebtedness issued by the CRA pursuant to the provisions of Section 18-2124 of the Act, for which such occupation tax receipts have been pledged; or, 2) thirty (30) years after the effective date of the occupation tax in the Enhanced Employment Area, as provided for in the Redevelopment Contract between City and Developer.

SECTION 2. EFFECTIVE DATE OF OCCUPATION TAX This occupation tax within the Enhanced Employment Area shall be effective and payable to the City upon the first day of the month that is sixty days after the date that the Developer has (1) acquired fee title to the Redevelopment Project Property; and (2) entered into a purchase agreement with a retail company, whose stock is publicly traded, for the sale of Lot 3 of the Conestoga Mall Ninth Subdivision in Grand Island, Hall County, Nebraska.

SECTION 3. EFFECTIVE DATE OF ORDINANCE This Ordinance shall be in full force and take effect from and after its passage and publication within fifteen days in one issue of the Grand Island Independent as provided by law.

Enacted: December 20, 2022.

Roger G. Steele, Mayor

Attest:

RaNae Edwards, City Clerk