

City of Scottsbluff, Nebraska

Tuesday, January 19, 2016

Regular Meeting

Item Reports10


**Presentation and discussion on LB357 and Community
Redevelopment Authority to include Ballot Language and Inter-
local Agreement.**

Staff Contact: Rick Ediger, Deputy City Attorney



308-632-4136
2525 Circle Drive
Scottsbluff, NE 69361

TO: Rick Kuckkahn
City Manager

FROM: Rick L. Ediger 
Deputy City Attorney

DATE: January 14, 2016

RE: LB357 Sales Tax & CRA

In order to keep this project on track, I have prepared a draft Interlocal Agreement for Council and Staff review and comment. This Agreement assumes that the partner agency will be the newly created Community Redevelopment Authority. If the Council decides this is the way that it wants to go, the current plan would be to approve the CRA Ordinance on third reading on February 1. The Interlocal Agreement and the Resolution to approve the ballot language would then be on the February 15 Council Agenda.

Since the January 5 Council meeting, I have reviewed the legislative history of LB357, have had further discussions with the City's Bond Counsel. In addition, Annie Folck or our office has reached out to most of the cities in Nebraska that have approved the additional half-cent sales tax for infrastructure projects. Currently, there are twelve cities of the first class or smaller that have adopted the extra half-cent sales tax. Lincoln has adopted an extra 1/4 cent sales tax, but that lesser amount is allowed for cities of the Primary Class.

There are some items to clarify based on our further research. The Interlocal Agency does not approve the projects. It can make recommendations, if requested, but the final say as to the actual infrastructure projects funded is with the City Council. Any bonds are also issued by the City and authorized by the Council.

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The Interlocal Agency primarily acts in an advisory capacity to evaluate the impact of the projects on the activities of the two agencies involved, although it can act with respect to its own projects where funding is provided, either from the general City budget or from a portion of the additional sales tax. There is a great deal of flexibility in the governing structure of the Interlocal Agency. My draft contains an example of what could work, but it certainly is not the only way that it can be set up. There is a great deal of flexibility, and from what we have seen from other communities, a lot of different ideas. Also, members of the Agency Board do not have to be members of the Council or the CRA. Terms or service could also be provided for, but my proposal is that the representatives simply serve at the pleasure of the appointing agency.

Since there are many moving parts to this project, and based on the questions from the last Council meeting, I plan to have a PowerPoint presentation ready to go at the January 19 Council meeting which will hopefully clarify questions as to the additional sales tax and how it is implemented, the Interlocal Agency and the CRA.

SCOTTSBLUFF IMPROVEMENT AGENCY INTERLOCAL COOPERATION AGREEMENT

This Interlocal Cooperation Agreement (this “Agreement”) is made between the City of Scottsbluff, Nebraska (the “City”) and the Community Redevelopment Authority of the City of Scottsbluff (the “CRA”). The City and the CRA are collectively referred to as the “Members”. This Agreement establishes a separate legal entity which shall be known as the Scottsbluff Improvement Agency (the “Agency”).

Recitals:

a. The City is proposing to increase its municipal sales and use tax at a rate greater than one and one-half percent pursuant to §77-27,142(2) of the Nebraska Statutes (the “Additional Sales Tax”).

b. As per §77-27,142(3)(a), no such tax increase may be imposed unless the City is a party to an interlocal agreement pursuant to the Interlocal Cooperation Act, Neb. Rev. Stat. §13-801 et seq. (the “Act”) with a political subdivision within the municipality or the county in which the municipality is located, which interlocal agreement shall create a separate legal entity related to public infrastructure projects.

c. The CRA is a political subdivision within the City and is willing to enter into this Agreement with the City in order to create the Agency. The Members desire to enter into this Agreement for the purposes as provided for in this Agreement.

Agreement:

1. Purpose: The Agency is organized under and governed by the provisions of the Act. The purpose of this Agreement is as follows:

a. to provide for a means for the City and the CRA to gather information related to the impact of infrastructure improvements to public highways and bridges; municipal roads, streets, bridges, and sidewalks; solid waste management facilities; wastewater, storm water, and water treatment works and systems, water distribution facilities, and water resources projects (collectively, the “Infrastructure Projects”) on needed updates to the City’s infrastructure and the removal and eradication of blight and substandard conditions in the City, and making recommendations to the City and the CRA related to such matters.

b. to make efficient use of the powers of the Members by enabling them to cooperate with each other on a basis of mutual advantage with respect to Infrastructure Projects.

c. to provide for the management and appropriate expenditure of funds allocated to the Agency by the City, utilizing a fiscal year budget commencing October 1 and terminating on September 30 of each succeeding year.

2. Effective Date and Duration: This Agreement shall be effective as of March 1, 2016, and shall continue in effect until terminated by the City; provided, however, the City shall not terminate this Agreement: (i) as long as the Additional Sales Tax is in effect, or (ii) until the payment in full of any bonds issued where the Additional Sales Tax is pledged for payment of such bonds and any refunding bonds.

3. Management: The Agency shall be governed by a Board (the “Board”) which shall be made up of 5 members, as follows:

a. 3 of the Board members shall be appointed by the Mayor of the City with the approval of the City Council. The CRA shall appoint 2 members. Each party may also appoint at least one alternate member to serve on a temporary basis as needed. Board members do not have to be members of the governing body of the respective Agencies, but up to 2 of the Board members may be City Council Members. The members of the Board shall serve at the pleasure of the appointing party and shall serve until the member resigns or is replaced by the appointing entity.

b. The Board shall elect a Chairperson and a Vice-Chairperson from its members. The Chairperson shall preside at all meetings of the Board. The Vice-Chairperson shall act in the absence of the Chairperson. The Board shall also elect a Secretary, who is not required to be a member of the Board. In the event that the Agency is responsible for any funds, the City Finance Director shall act as Ex Officio Treasurer of the Board.

c. The Board shall meet at such time and place as specified by call of the Chairperson or any two members. The Board may, by resolution or bylaw provide for regular meeting times. The Board shall meet at least once per year. Notice of all meetings shall be given as provided for by Nebraska law for political subdivisions.

d. A majority of the Board, to include at least one member representing each party, shall constitute a quorum to conduct business at any meeting. The affirmative vote of a majority of those present at a meeting at which a quorum is present, and including the affirmative vote of at least one Board member representing the City, shall be required for the Board to act.

4. Board Duties: The Board shall be responsible for governing the actions of the Agency and expenditures of any funds allocated to the Agency. For the purposes of §77-27,142(3) of the Nebraska Statutes, the Board shall be a separate administrative entity relating to the Infrastructure Projects, to include those made in blighted and substandard areas. The Board shall be responsible for evaluating and making recommendations for long term development of unified governance of the Infrastructure Projects, and at least every 5 years review the performance of the Infrastructure Projects, including without limitation, the impact of such projects on the removal and eradication of blight and substandard conditions within the City, in addition to any other benchmarks periodically established by the Board or Nebraska Legislature. The Agency and the Board shall have all powers as are provided for in the Act with respect to its purpose.

5. Funding of the Agency: The Agency shall be funded from a portion of the Additional Sales Tax as provided for in the Resolution of the City Council which was adopted for the purpose of placing the Additional Sales Tax on the ballot. [or: The City shall be responsible for providing funding for the establishment, organization and operating expenses of the Agency.]

6. Property: All Infrastructure Projects shall be the property of the City. Otherwise, all real and personal property (“Property”) contributed to or acquired by the Agency shall be the property of the Agency unless conveyed by the Agency to one of the Members; provided, however, no property shall be conveyed to the CRA without the consent of the City. Upon termination of the Agency, all Property shall be distributed to the City, or as otherwise designated by the City.

7. Notices: All notices required or permitted under this Agreement shall be in writing and shall be deemed given at the addresses shown below, when (i) personally delivered, (ii) sent by electronic mail to the authorized representative of a Member, (iii) sent by nationally-recognized courier service with proof of delivery, or (iv) sent by registered or certified United States mail, return receipt requested, postage prepaid. A Member may change its email address or mailing address by delivering notice to the other Party. A notice shall be consider effective upon receipt.

City of Scottsbluff
2525 Circle Drive
Scottsbluff, NE 69631
Att: City Manager

Community Redevelopment Authority
of the City of Scottsbluff
2525 Circle Drive
Scottsbluff, NE 69631
Att: Chairperson

8. Miscellaneous:

a. This Agreement is binding upon and inures to the benefit of the Members and their respective successors and permitted assigns; provided, however, no assignment of all or any portion of this Agreement shall relieve any Member of its obligations under this Agreement. This Agreement shall not be assignable by either Member without the consent of the other party.

b. The provisions of this Agreement shall be severable. If any of the provisions of this Agreement, or the application of any provision to any person, entity or circumstances, are held to be invalid, such invalidity shall not affect other provisions of or applications of this Agreement which can be given affect without the invalid provision or applications.

c. No waiver of any breach of any provision of this Agreement will be deemed a waiver of any other breach of this Agreement. No extension of time for performance of any act will be deemed an extension of the time for performance of any other act.

d. This Agreement may be executed in one or more counterparts, each of which may be considered as an original.

e. This Agreement shall be construed according to the laws of Nebraska.

f. This Agreement contains the entire agreement of the Members. This Agreement may be amended only in writing signed by both of the Members.

City of Scottsbluff, Nebraska

By _____
Mayor

Attest:

City Clerk

Community Redevelopment Authority of the
City of Scottsbluff, Nebraska,

By: _____
Chairperson