

# **City of Scottsbluff, Nebraska**

**Monday, December 5, 2022**

**Regular Meeting**

## **Item Resolut.1**

**Council to consider action on the third reading of the Ordinance to consider allowing retail as a qualifying business to the City of Scottsbluff LB840 Plan.**

**Staff Contact: Starr Lehl, Economic Development Director**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AMENDING THE SCOTTSBLUFF ECONOMIC DEVELOPMENT PLAN TO PROVIDE FOR RETAIL AS A QUALIFYING BUSINESS WITHIN A BUSINESS IMPROVEMENT DISTRICT.**

**BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SCOTTSBLUFF, NEBRASKA:**

1. The City Council has, by Ordinance, adopted an Economic Development Plan (as Amended and Renewed) (the “Plan”), which was effective as of October 1, 2015 and which was amended by ordinance on March 19, 2018.

2. The Citizen Advisory Committee has recommended an amendment to the Plan as provided for in this Ordinance, and the City Council has held a public hearing on the recommended amendment.

3. Paragraph 3(a)(10) of the Plan is amended to add the following Qualifying Business:

(10) Retail trade, but only if the business:

A. generates its principal source of income from retail sales of product(s) manufactured on the premises from which the sales take place; or

B. generates its principal source of income from retail sales, and (i) total assistance to a business does not exceed the maximum of \$10,000 or 50% of the project, (ii) the business has at least a 10% monetary investment in the project; (iii) the business’s principal location for the project is within a business improvement district of the City; (iv) other financing or banking investment is provided or received by the applicant for the project, (v) receipt of assistance by the business is contingent upon submitting proof of payment for project costs, and (vi) the total assistance provided by the Program for businesses under this paragraph 3(a)(10)(B) in any one fiscal year does not exceed more than 20% of the sales tax receipts for the Program during the previous fiscal year.

At no time shall the total amount of incentives devoted to retail trade under this paragraph 3(a)(10) exceed the limits under Nebraska law.

4. This Ordinance was approved by a two-thirds vote of the members of the City Council. It shall become effective upon its passage, approval and publication. Publication shall be in pamphlet form.

Passed and approved on \_\_\_\_\_, 2022.

\_\_\_\_\_

Mayor

Attest:

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney

**City of Scottsbluff, Nebraska  
Economic Development Plan  
(as Amended and Renewed)  
Effective October 1, 2015  
(with amendments through March 19, 2018)**

**1. General Community and Economic Development Strategy:**

a. The voters of the city of Scottsbluff, Nebraska (the “City”) approved an Economic Development Plan (the “Plan”) for the City in 1995, pursuant to the Local Option Municipal Economic Development Act (the “Act”), Neb. Rev. Stat. §§ 18-2701, *et. seq.* The Plan was subsequently amended and renewed by the voters in 1999 and 2004. Under the Plan, and its subsequent amendments and renewals, the City has implemented its Economic Development Program (the “Program”).

b. The City’s intent for the Program is to enhance business and commercial investment in the Scottsbluff area through direct and indirect financial assistance to prospective or current businesses. The Program has enhanced, and will continue to enhance, the City’s ability to compete for new businesses and to promote and expand the City’s existing businesses. Primarily, the Program’s assistance strategy has been the extension of job credits to those businesses that can expand or create jobs in the local area. This strategy required the creation and retention of full-time jobs, along with health insurance and other benefits for those jobs. Thus the projects funded through the Program have generally been connected to businesses where growth is expected.

c. Other Program strategies have been utilized. The most notable strategies, other than job creation, have been job training and public works improvements. The City participated in providing funding to Western Nebraska Community College when it established its Center for Business and Individual Training (the “CBIT”). The CBIT trains employees of Qualifying Businesses (as provided for in this Plan), and has, since its inception, been instrumental to the local area for quality job training and for recruiting new businesses to the local area. In addition, the City has awarded grants for water line extensions to Qualifying Businesses located near Western Nebraska Regional Airport. Other strategies will be considered for activities which are eligible for funding under the Plan.

d. Due to the success of the Program to date, the City now desires to extend funding of the Program and to amend the Plan in total as provided for in this Amendment. Reference to the Plan in the remainder of this document shall include the Plan as amended by the terms of this document.

**2. General Intent and Proposed Goals of the Program:**

The goal of the Program is to provide quality jobs for the citizens of the City and the local area. Funds from the Program will be used to encourage and assist existing and new Qualifying Businesses to create and retain jobs, through direct or indirect financial assistance. This may include direct grants to Qualifying Businesses or indirect assistance through eligible

activities under this Plan. The success of the Program will be measured by a combination of (a) jobs created and retained in the City and the local area for the length of the Program, and/or (b) the total payroll provided or increased by Qualifying Businesses participating in the Program.

### **3. Businesses Eligible for Financial Assistance under the Program:**

a. A business shall be considered eligible for financial assistance under the Program, and shall be referred to as a “Qualifying Business,” if it is any corporation, partnership, limited liability company, or sole proprietorship that derives its principal source of income from any of the following trades:

- (1) Manufacturing articles of commerce.
- (2) Conducting research and development.
- (3) Processing, storing, transporting, or selling goods or commodities sold or traded in interstate commerce.
- (4) Selling services in interstate commerce.
- (5) Headquarters facilities related to Qualifying Businesses as listed in this paragraph.
- (6) Telecommunications activities.
- (7) Tourism-related activities.
- (8) Any other activities deemed sufficient to establish eligibility for a Qualifying Business through future amendments to the Act, and incorporated into this Plan and the Program by ordinance of the City Council after amendment to the Act.
- (9) Construction and rehabilitation of housing pursuant to a Workforce Housing Plan, as provided for below.

(10) Retail trade, but only if the business:

A. generates its principal source of income from retail sales of product(s) manufactured on the premises from which the sales take place; or

B. generates its principal source of income from retail sales, and (i) total assistance to a business does not exceed the maximum of \$10,000 or 50% of the project, (ii) the business has at least a 10% monetary investment in the project; (iii) the business’s principal location for the project is within a business improvement district of the City; (iv) other financing or banking investment is provided or received by the applicant for the project, (v) receipt of assistance by the business is contingent upon submitting proof of payment for project costs, and (vi) the total assistance provided by the

Program for businesses under this paragraph 3(a)(10)(B) in any one fiscal year does not exceed more than 20% of the sales tax receipts for the Program during the previous fiscal year.

At no time shall the total amount of incentives devoted to retail trade under this paragraph 3(a)(10) exceed the limits under Nebraska law

- (11) Production of films, including feature, independent and documentary films, commercials, and television programs.

b. If a Qualifying Business employs people and carries on activities in more than one city in Nebraska, or will do so at any time during the first year after its application for participation in the Program, it shall only be a Qualifying Business if, in each such city, it maintains employment for the first two years after the date on which the business begins operations in the City as a participant in the Program at a level not less than its average employment level in the other city during the twelve months before participation in the Program.

c. A Qualifying Businesses need not be located within the territorial boundaries of the City.

#### **4. Eligible Economic Activities:**

a. Funds allocated to the Program shall be expended primarily for the purpose of providing direct and indirect financial assistance for Qualifying Businesses. Activities eligible for the Program may include, but are not limited to, the following:

- (1) Direct loans or grants to Qualifying Businesses for fixed assets or working capital, or both.
- (2) Loan guaranties for Qualifying Businesses.
- (3) Grants for public works improvements essential to the location or expansion of, or the provision of new services by, a Qualifying Business.
- (4) Grants or loans for job training.
- (5) The purchase or real estate, options for real estate purchases, and the renewal or extension of such options. If and when real estate is to be purchased or optioned by the City under the Program, the real estate will be indentified based upon the need of a particular Qualifying Business or based upon potential needs of Qualifying Businesses not yet identified. All such real estate should be properly zoned with no excessive easements, covenants, or other encumbrances. Any proceeds received by the City from the future sale of such real estate shall be returned to the City's Economic Development Fund for reuse under the Program.
- (6) Issuing bonds as provided for in the Act.

- (7) Paying salaries and support of City staff to implement the Program, or paying expenses of contracting the administration of the Program to an outside entity.
- (8) Providing technical assistance to Qualifying Businesses, such as marketing assistance, management counseling, preparing financial packages, engineering assistance, etc.
- (9) Expenses for locating a Qualifying Business to the local area.
- (10) Equity investment in a Qualifying Business.
- (11) Grants or loans for the construction or rehabilitation for sale or lease of housing as part of a Workforce Housing Plan, as provided for below.

## **5. Workforce Housing Plan:**

“Workforce Housing Plan” means a program to construct or rehabilitate single-family housing or market rate multi-family housing which is designed to address a housing shortage that impairs the ability of the City to attract new businesses or impairs the ability of existing businesses to recruit new employees. In connection with the Workforce Housing Plan:

a. The City has participated in a Multi-County Regional Housing Study (the “Housing Study”) conducted by Hanna:Keelan Associates, P.C. for Western Nebraska Economic Development Interlocal Group. The Housing Study covered Scotts Bluff, Morrill and Kimball Counties, and communities within those Counties, to include the City. The Housing Study found that the current housing stock in the City and Scotts Bluff County, including both single-family and market rate multi-family housing, was deficient in numbers and quality, and that the City has a housing shortage.

b. The Workforce Housing Plan is intended to include all single-family housing and market rate multi-family housing. No special provisions for housing for persons of low or moderate income are provided for.

c. Due to the lack of available housing within the City and Scotts Bluff County, existing businesses have difficulty in recruiting new employees; and

d. Construction costs, and the cost of providing infrastructure for housing (to include streets and utilities) are adversely impacting the ability to find housing for persons seeking new or rehabilitated housing in the City.

## **6. Funding and Preliminary Budget:**

a. The Program will primarily be funded by a portion of the City Sales Tax equal to ¼ of 1%. The sales tax collections to fund the Program will be collected from October 1, 2015 to September 30, 2025. The Program can also accept funding from grants, or from state or federal funds, or from donations.

b. Notwithstanding the actual amount collected by the City for the benefit of the Program, the City shall not appropriate funds derived directly from City sources of revenue in an amount in excess of the maximum permitted by Nebraska law in effect at the time of appropriation. By way of reference, the current limits as provided by Section 18-2717 of the Act prohibit the City from appropriating funds from local sources in excess of:

- (1) four-tenths of one percent of the taxable valuation of the City in the year in which the funds are collected;
- (2) \$4,000,000 per year; and
- (3) the amount approved by voters at elections approving the Program and the extension of the Program.

c. The above restrictions shall not apply to the reappropriation of funds which were appropriated but not expended during the previous fiscal years, nor shall they apply to appropriation of funds received from other sources.

d. The total amount proposed to be directly collected from local sources is estimated to be as follows (amounts shown are in addition to amounts shown in the existing Plan which have not yet been collected):

<u>Fiscal Year Ending:</u>	<u>Estimated Collections</u>
September 30, 2016	\$1,000,000
September 30, 2017	\$1,025,000
September 30, 2018	\$1,050,000
September 30, 2019	\$1,075,000
September 30, 2020	\$1,100,000
September 30, 2021	\$1,125,000
September 30, 2022	\$1,150,000
September 30, 2023	\$1,175,000
September 30, 2024	\$1,200,000
September 30, 2025	<u>\$1,225,000</u>
Total:	\$11,125,000

e. The Basic Preliminary Budget is (October 1, 2015 through September 30, 2025):

Administration (2%):	\$222,500
Grants for eligible activities:	<u>\$10,902,500</u>
Total:	\$11,125,000



f. The City may issue bonds pursuant to the Act to fund and carry out the Program. The total amount of bonds that may be outstanding at any time shall be set by resolution of the City Council and shall not exceed the anticipated collections and resources which will be available to the Program during its existence.

g. The Program is currently in existence and shall continue in existence through September 30, 2040.

## **7. Application Process for Financial Assistance:**

a. For a Qualifying Business to be considered for Program benefits, the Qualifying Business shall first become an “Applicant” by applying to the City for assistance. The application shall contain information as required by this Plan and any additional information as requested by the Administrator and/or Application Review Committee (as explained below).

b. Upon Receipt of an application, the Program Administrator shall make a preliminary determination as to whether: (1) the Applicant is eligible as a Qualifying Business; (2) the proposed activities are eligible; (3) the Applicant has no legal actions underway that may significantly impact its capacity; and (4) the Applicant’s business complies with the provisions of the application guidelines.

c. Once the Administrator makes the preliminary determinations above, the application is referred to the Application Review Committee. The Application Review Committee shall review the application, including any financial information furnished, and shall provide recommendations to the Administrator concerning negotiations with the Applicant. Once the Application Review Committee has completed its review, and following any negotiations conducted by the Administrator, the Application Review Committee shall make a recommendation that: (1) the application be approved; (2) the application be disapproved; (3) the Application Review Committee is not able to make a recommendation on the Applicant due to lack of information or other factors cited by the Application Review Committee; or (4) the application be referred to the City Council for a determination of funding as set forth below.

d. Approval or disapproval will be based on whether the Applicant is able to show: (1) eligibility for funding; and (2) that the type of level of assistance will not unduly enrich the business or be unreasonable in relation to the public benefit to be achieved from the funding. If the recommendation is for disapproval or if the Application Review Committee is unable to make a recommendation, it shall provide reasons for its decision.

e. All approval recommendations from the Application Review Committee shall be submitted to the City Council for consideration of funding. The Application Review Committee may also refer to the City Council certain applications, in its sole discretion, where it is unable to make a recommendation. In making its determination, the City Council shall generally not be presented with any information which has been determined by the Administrator or Application Review Committee as confidential.

f. An Applicant which has been awarded funding under the Program shall thereafter be referred to as a “Funded Business.”

g. There shall be no limit on the number of times a Qualifying Business may apply for assistance. Applications shall be received until all funds anticipated for the Program have been committed. The decision of whether or not Program funds shall be granted, including the timing and amount and the allocation of funds where there are not sufficient funds to fulfill the requests of all qualified Applicants, is at the sole discretion of the City.

## **8. Information Required from Applicants:**

a. Applications for assistance submitted by an Applicant shall include the following information:

- (1) Application in a form prescribed and provided by the Administrator;
- (2) Business Plan which includes financial projections for the next 3 years where appropriate;
- (3) Signed copies of the most recent 2 years’ fiscal tax returns, or copies of all years where the applicant has been in existence for less than 2 years.
- (4) Signed copies of financial statements of the Applicant for the 2 most recent fiscal years, or copies for all fiscal years where the applicant has been in existence for less than 2 years.
- (5) Where the applicant is a closely held entity, signed balance sheets from holders of more than 25% of the ownership interests in the entity; and
- (6) Other information as requested by the Administrator or the Application Review Committee.

b. The Administrator may waive the furnishing of all or any portion of the above items where the Administrator is able to obtain reasonable assurances as to the stability of the Applicant from other reliable sources or information to include audited financial statements and filing with regulatory agencies (i.e., SEC filings).

c. The Administrator may also waive the furnishing of all or any portion of the above items where the Applicant agrees that no funds shall be paid to the Applicant until the Applicant has performed according to agreed-upon criteria.

d. The Administrator may use any reasonable methods to verify the information provided by the Applicant.

## **9. Confidentiality:**

a. In the process of gathering information about an Applicant or Qualifying Business, the City may receive information about the business which is confidential and, if released, could cause harm to the business or give unfair advantage to competitors. Nebraska law authorizes the City to maintain confidentiality of business and project records which come into its possession.

b. In order to protect the Applicants, and to encourage them to make full and frank disclosures of information relevant and necessary for the application, the City may take the following steps to ensure the confidentiality of the information it receives:

- (1) The continuation of any resolution or ordinance which makes such information confidential and punished disclosure;
- (2) A restriction on the number of people with access to confidential information, with the Administrator primarily responsible for their safekeeping and any distribution of confidential information; and
- (3) Requiring personnel reviewing the applications and other Program review to sign statements of confidentiality regarding all confidential information submitted by Applicants and Qualified Businesses.

#### **10. Administration:**

a. The Program Administrator shall be the City Manager unless (1) another city official is appointed by the City Council to serve as Administrator, or (2) the City by action of the City Council enters into a contract with a third party to administer the Program.

b. The Administrator shall be responsible for (1) generally administering the Program, (2) monitoring any and all reports required of Funded Businesses, and (3) assisting the Application Review Committee and the Citizen Advisory Committee (as provided below) by providing necessary information.

c. The Application Review Committee will be composed of 5 members to be appointed by the Mayor, subject to the approval of the City Council. At least 3 members of this Committee shall be residents of the City. At least one member must have experience in banking or lending and at least one member must be a Certified Public Accountant. The Program Administrator shall serve as an ex-officio, but non-voting member of the Application Review Committee. The Mayor, subject to the approval of the City Council, may also appoint up to 2 alternate members to the Application Review Committee, at least one of whom shall be a resident of the City. In the event that a Committee member is not available, or has a conflict of interest, with respect to a matter before the Committee, the Program Administrator may designate one of the alternates to act in the place of that Committee member.

d. In the event that the City has contracted with a third party for the administration of the Program, then the City Council shall designate a City employee as "Program Liaison Officer" to serve as an ex-officio, but non-voting member of the Application Review Committee

and the Citizen Advisory Committee, and to keep the Council generally informed concerning the Program.

#### **11. Review Process:**

a. In order to provide assurance that all applicable laws, regulation, and requirements are met by the City and all Funded Businesses, the City shall require annual reports, in the form to be prescribed by the Administrator, from all Funded Businesses unless the circumstances of the grant are such that annual reports are not appropriate and the City determines that annual reports will not be necessary at the time of the grant. In addition, the Administrator may conduct reviews of Funded Businesses as the Administrator deems appropriate.

b. A Citizen Advisory Committee shall be established which shall:

- (1) Review the functioning and progress of the Program at regular meetings, and advise the City Council with regard to the Program; and
- (2) Report to the City Council on its findings and suggestions at a public hearing called for that purpose, at least once every six months.

c. The Citizen Advisory Committee shall consist of not less than 5 or more than 10 registered voters of the City who shall be appointed by the Mayor subject to the approval of the City Council. At least one member of this Committee shall have expertise or experience in business finance or accounting. Except for ex-officio members, no member shall be an elected or appointed City official, an employee of the City, a participant in a decision-making position regarding expenditures of the Program funds, an official or employee of any Funded Business under the Program, or an official or employee of any financial institution participating directly in the Program.

d. At least once per year, the City shall provide for an outside, independent audit of the Program by a qualified private auditing businesses. The auditing business shall not, at the time of the audit or for any period of the term subject to the audit, have a contractual or business relationship with any Qualifying Business receiving assistance from the Program or any financial institution directly involved with a Qualifying Business receiving assistance from the Program. The results of the audit shall be filed with the City Clerk and made available to the public during normal business hours.

**12. Amendment:**

This Plan shall be amended only to (1) conform to the provisions of any existing or future state or federal law, or (2) when necessary to accomplish the purposes of this amended Plan as presented to the voters of the City. Any amendment shall first require notice and a public hearing and shall be approved by a 2/3 vote of the members of the City Council. No amendment shall fundamentally alter the Plan's basic structure or goals, either with regard to eligible Qualifying Businesses, the use of the funds collected, or the basic terms set out in the amended Plans as presented to the voters of the City, without submitting the proposed changes to a new vote of the registered voters of the City, except as otherwise permitted by law.