

City of Scottsbluff, Nebraska

Monday, May 18, 2015

Regular Meeting

Item Resolut.1

Council to consider an Ordinance providing for the levy of a Retail Business Occupation Tax (third reading).

Staff Contact: Rick Kuckkahn, City Manager

ORDINANCE NO. ____

AN ORDINANCE PROVIDING FOR AGREEMENT TO THE LEVY OF A RETAIL BUSINESS OCCUPATION TAX; THE LEVY OF A RETAIL BUSINESS OCCUPATION TAX; ESTABLISHING DEFINITIONS; PROVIDING FOR THE ADMINISTRATION, COLLECTIONS, RETURNS, DELINQUENCIES AND RECOVERY OF UNPAID AMOUNTS RELATED TO SUCH OCCUPATION TAX; SPECIFYING HOW SUCH TAX REVENUE WILL BE USED; PROVIDING A SUNSET PROVISION FOR THE TAX; PROVIDING FOR PUBLICATION IN PAMPHLET FORM, PROVIDING FOR AN EFFECTIVE DATE AND RELATED MATTERS

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

Section 1. Findings and Determinations. The Mayor and Council of the City of Scottsbluff, Nebraska (the “City”) finds and determines as follows:

(a) Pursuant to Chapter 18, Article 21, Reissue Revised Statutes of Nebraska, as amended (the “Act”), the Community Development Agency of the City of Scottsbluff (the “CDA”) has prepared and adopted the **CITY OF SCOTTSBLUFF REDEVELOPMENT PLAN FOR THE MONUMENT MALL REHABILITATION** which, in part, (1) provides for the development of a commercial shopping center (the “**Redevelopment Project**”) in the Redevelopment Project Area as shown on **Exhibit “A”** (attached and incorporated by reference) and (2) designates the area shown in **Exhibit “B”** (attached and incorporated by reference) as an “enhanced employment area” as defined in Section 18-2103(22) of the Act (the “**Enhanced Employment Area**”).

(b) 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 Area for the purpose of paying all or any part of the costs and expenses of the Enhanced Employment Project within the Enhanced Employment Area.

(c) 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 Area as provided by the Act for the purpose set forth in Section 1(b).

Section 2. Definitions. As used in this Ordinance, the following words and phrases shall have the meanings ascribed to them in this Section 2, except where the context clearly indicates or requires a different meaning:

(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.

Section 3. Agreement to Impose Tax. The City agrees to impose an occupation tax upon every Person operating a General Retail Business within the Enhanced Employment Area, and the Mayor and City Clerk are authorized and directed to execute such documents and take such actions as are necessary to carry out this Ordinance, including, but not limited to, entering into a Redevelopment Contract with the CDA and a redeveloper in substantially the form as set forth in **Exhibit “C”**.

Section 4. Tax Imposed; Collection of Tax.

(a) On or after _____20__ and in each calendar month thereafter there is imposed a retail business occupational tax upon each and every Person operating a General Retail Business within the Enhanced Employment Area for any period of time during a calendar month. The amount of such tax shall be one half percent (0.50%) 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 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.

(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 Ordinance.

Section 5. Business Classifications. Pursuant to Section 18-2142.02 of the Act, the City 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 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, 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 occupation 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 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.

Section 6. Return. Each and every Person engaged in the operation of a General Retail Business within the Enhanced Employment Area for the calendar month beginning _____20__, 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 Manager, 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 Manager, postage prepaid and postmarked before midnight of the 25th day of the appropriate month.

Section 7. Tax Cumulative.

(a) The levy of the tax under this Ordinance 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.

Section 8. Use of Revenue. The one half percent (0.50%) occupation tax imposed by this Ordinance, less any administrative expenses, shall be used to fund any expenditures that the City is lawfully authorized to make in connection with the Enhanced Employment Project as permitted by the Act.

Section 9. Failure to File Return; Delinquency; Assessment by the City Manager

(a) If any Person neglects or refuses to file a return or make payment of the taxes as required by this Ordinance, the City Manager 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 one percent (1.00%) thereof, together with interest on such delinquent taxes, at the rate of ten percent (10.00%), per month, or fraction thereof from the date when due. Any such interest due may be compounded quarterly.

(b) The City Manager 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 Manager 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 Manager for a revision or modification of such assessment and shall, within such ten-day period, furnish the City Manager the facts and correct figures showing the correct amounts of such taxes.

(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 Manager 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.

Section 10. Administration; Miscellaneous Provision.

(a) The administration of the provisions of this Ordinance are vested in the City Manager, or his 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 his or her 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 he/she is liable hereunder.

(1) Records of the transitions 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.

(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 Manager or his or her 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 Manager he/she shall make the same available at a suitable place within the City, to be designated by the City Manager, for examination, inspection and audit by the City Manager or his or her duly authorized persons. The Taxpayer shall reimburse the City for the reasonable costs of examination, inspection and audit if the City Manager determines that the Taxpayer paid ninety percent or less of the tax owing for the period of the examination.

(3) The City Manager, in his or her 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 Manager or his or her 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.

Section 11. Recover of Unpaid Tax by Action at Law

(a) The City Manager 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 all or any portion of the tax, or any penalty or interest when due, the City may recover at law the amount of such taxes, penalties and interest in any court of Scotts Bluff County, Nebraska or any other county having jurisdiction over the Taxpayer.

(c) The return of the Taxpayer or the assessment made by the City Manager, 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.

Section 12. Suspension or Revocation of Licenses for Failure to Pay Tax; Hearing. If the City Manager or the City Manager'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 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.

Section 13. 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 City pursuant to the provisions of Section 18-2124 of the Act, for which such occupation tax receipts have been pledged; or, 2) twenty (20) years after the effective date of the Ad Valorem Tax Provision, as provided for in the Redevelopment Contract.

Section 14. Conflicts. All ordinances, resolutions, or orders, or parts thereof in conflict with the provisions of this Ordinance are to the extent of such conflict hereby repealed.

Section 15. Severability. If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid, the validity of the remainder shall not be affected.

Section 16. Headings of Section Not Controlling. The headings of sections of this Ordinance are set forth for convenience of reference only and shall not affect the construction or interpretation of this Ordinance or any section.

Section 17. Effective Date. This Ordinance shall be published in pamphlet form as authorized by section 16-403 of the Nebraska Revised Statutes with distribution to be made by making copies available to any interested person at the City office and shall take effect upon its passage and publication as provided by law.

DATED: May ___, 2015

CITY OF SCOTTSBLUFF, NEBRASKA

By: _____

Mayor

ATTEST:

By: _____

Clerk

EXHIBIT "A"

REDEVELOPMENT PROJECT AREA

Lot 3, Block 3, Third Replat of Lots 3 and 4, Block 3, Northeast Second Add Replat No. 2 and Lot 2, Block 3, Northeast Second Add Replat No. 2

EXHIBIT "B"
ENHANCED EMPLOYMENT ACT AREA

To be supplied

EXHIBIT "C"
REDEVELOPMENT CONTRACT