

CITY OF WHEAT RIDGE, COLORADO
INTRODUCED BY COUNCIL MEMBER STARKER
COUNCIL BILL NO. 07-2014
ORDINANCE NO. 1553
Series 2014

TITLE: AN ORDINANCE CONCERNING ECONOMIC DEVELOPMENT, AND IN CONNECTION THEREWITH, AMENDING THE ENHANCED SALES TAX INCENTIVE PROGRAM (ESTIP) AND BUSINESS DEVELOPMENT ZONE (BDZ) PROGRAM WITHIN THE CITY

WHEREAS, the City of Wheat Ridge is a home rule municipality operating under a charter approved by the electorate pursuant to Article XX of the Colorado Constitution; and

WHEREAS, the Wheat Ridge City Council, in the exercise of its power to adopt ordinances for the general welfare of the City, has previously adopted Divisions 4 and 5 of Article 1 of Title 22 of the Wheat Ridge Code of Laws, specifically, the "Enhanced Sales Tax Incentive Program," and the "Business Development Zone Program," and

WHEREAS, the City Council finds that the two programs have served a valuable public purpose in attracting new and revitalized businesses to the City; and

WHEREAS, in order to improve the operation of the Programs and to eliminate internal inconsistencies between them, the Council finds that the Code of Laws provisions governing the Programs should be amended.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WHEAT RIDGE, COLORADO:

Section 1. Enhanced Sales Tax Incentive Program Amended:

Division 4 of Article I of Title 22 of the Wheat Ridge Code of Laws, entitled "Enhanced Sales Tax Incentive Program," is hereby amended to read:

Sec. 22-73. Program established.

There is hereby established within the city an enhanced sales tax incentive program.

Sec. 22-74. Purpose.

The purpose of the enhanced sales tax incentive program created by this division is to encourage the establishment and/or substantial expansion of retail sales tax generating businesses within the city, thereby stimulating the economy of and within the city, thereby providing employment for residents of the city and others, thereby further expanding the goods available for purchase and

consumption by residents of the city, and further increasing the sales taxes collected by the city, which increased sales tax collections will enable the city to provide expanded and improved municipal services to and for the benefit of the residents of the city, while at the same time providing public or public-related improvements at no cost, or at deferred cost, to the city and its taxpayers and residents.

Sec. 22-75. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Enhanced sales tax shall mean the amount of sales tax collected by the city over and above a base amount negotiated by, and agreed upon by, the applicant and the city, and which amount is approved by the city council, which base amount shall never be lower than the amount of sales taxes collected by the city at the property in question in the previous twelve (12) months plus a reasonable and agreed upon percentage of anticipated increase in sales taxes, or, in the case of a newly established business, an amount which represents the good faith determination by the applicant and the city as to the amount of sales taxes which could be generated from the new business without the participation by applicant in the ESTIP created under this division.

ESTIP means the enhanced sales tax incentive program created under this division.

Owner or proprietor shall mean the record owner or operator of an individual business, or, in the case of a shopping center, the owner of the real property upon which more than one (1) business is operated, provided that the owner (whether an individual, corporation, partnership or other entity) is the owner or lessor of the individual businesses operated thereon.

Sec. 22-76. Participation.

Participation in ESTIP shall be based upon approval by the city council exercising its legislative discretion ~~in good faith~~. Any owner or proprietor of a newly established or proposed retail sales tax generating business or location, or the owner or proprietor of an existing retail sales tax generating business or location which wishes to expand substantially, may apply to the city for inclusion within the ESTIP provided that the new or expanded business is reasonably likely, IN THE COUNCIL'S JUDGMENT, to generate enhanced sales taxes of at least ~~five thousand dollars (\$5,000.00)~~ TEN THOUSAND DOLLARS (\$10,000) in

the first ~~year of operation~~. 12 MONTHS FOLLOWING THE EFFECTIVE DATE OF AN AGREEMENT.

Sec. 22-77. Approval of agreement; use of funds generally.

Approval by the city council of an agreement implementing this ESTIP shall entitle the successful applicant to share in enhanced sales taxes derived from applicant's property or business in an amount which shall not in any event exceed the enhanced sales taxes; provided, however, ~~that~~ THE applicant may use such amounts only for public and/or public-related purposes such as those specified herein and which are expressly approved by the city council at the time of consideration of the application. The time period in which the enhanced sales taxes may be shared shall not commence until all public or public-related improvements are completed, and shall be limited by the city council, in its discretion, to a specified time, or until a specified amount is reached.

Sec. 22-78. ELIGIBLE Uses enumerated.

The uses to which the shared enhanced sales taxes may be put by an applicant shall be strictly limited to those which are public or public-related in nature. For the purposes of this division, public or public-related purposes shall mean public improvements, including but not limited to streets, sidewalks, curbs, gutters, pedestrian malls, street lights, drainage facilities, landscaping, decorative structures, FACADES, statuary, fountains, identification signs, traffic safety devices, bicycle paths, off-street parking facilities, benches, restrooms, information booths, public meeting facilities, and all necessary, incidental, and appurtenant structures and improvements, together with the relocation and improvement of existing utility lines, and any other improvements of a similar nature which are specifically approved by the city council upon the city council's finding that said improvements are public or public-related improvements, and that such improvements shall enhance the competitive position of the applicant within the Denver metropolitan area marketplace.

Sec. 22-79. Increments, sharing of funds.

The base figure for sales taxes shall be divided into twelve (12) monthly increments, which increments are subject to agreement between the parties, and approval by the city council, and which increments shall be reasonably related to the average monthly performance of the business or property in question, or similar businesses in the area (i.e. adjust for seasonal variations). If in any month the agreed upon figure is not met by THE applicant so as to create enhanced sales tax for that month, no funds shall be shared with THE applicant for that month, and no increment shall be shared until that deficit, and any other cumulative deficit, has been met, so that at the end of any twelve-month cycle,

NO funds HAVED BEEN SHARED in excess of THE AGREED enhanced sales taxes. ~~agreed to be shared shall not have been shared with any applicant.~~

Sec. 22-80. Revenues restricted.

It is an overriding consideration and determination of the city council that existing sources of city sales tax revenues shall not be used, impaired, or otherwise affected by this ESTIP ~~enhanced sales tax incentive program.~~ Therefore, it is hereby conclusively determined that only enhanced sales taxes generated by the properties described in an application shall be subject to division under this ESTIP. It shall be the affirmative duty of the ~~treasurer~~ SALES TAX DIVISION to collect and hold all such enhanced sales taxes in a separate account apart from the sales taxes generated by and collected from the other sales tax generating uses and businesses within the city and to provide an accounting system which accomplishes the overriding purpose of this section. ~~It is conclusively stated by t~~The city council FINDS AND DECLARES that this division would not be adopted or implemented but for the provisions of this section.

Sec. 22-81. Capital improvement fund.

~~The one (1) percent of sales and use taxes earmarked for the capital improvement fund may be utilized in this ESTIP for public improvements so long as the same are within the meaning of the phrase capital improvements as defined in the voter approved sales tax referendum previously held within the city, and provided that the same are found and determined by the city council to be capital improvements which could be provided by the city from the capital improvement fund but for the provision of such improvements by the applicant; provided, however, that such use of capital improvement funds as part of this ESTIP shall be limited to the amount agreed pursuant to section 22-83 hereof; provided further, however, that nothing contained herein shall limit the city council in the determination to appropriate additional capital improvement funds for capital improvements affecting the property in question as a part of the city's regular appropriation and budget process.~~

Sec. 22-821. Criteria for approval of application AGREEMENT.

Approval of an application ESTIP AGREEMENT ~~for inclusion in this ESTIP~~ shall be given by the city council, at a public hearing, held as a portion of a regularly scheduled city council meeting. NOTICE OF WHICH HAS BEEN PUBLISHED IN A NEWSPAPER OF GENERAL CIRCULATION AT LEAST SEVEN (7) DAYS PRIOR TO THE HEARING. THE COUNCIL'S DETERMINATION OF THE AMOUNT OF SALES TAX TO BE SHARED SHALL BE BASED UPON THE IDENTIFIED NEED OR VALUE THE BUSINESS

OFFERS TO THE COMMUNITY IN TERMS OF SALES TAX GENERATION, INVESTMENT IN THE COMMUNITY OR INCREASED EMPLOYMENT based upon the following criteria:

- (1) The amount of enhanced sales taxes which are reasonably to be anticipated to be derived by the city through the expanded or new retail sales tax generating business;
- (2) The public benefits which are provided by the applicant through public works, public improvements, additional employment for city residents, etc.;
- (3) The amount of expenditures which may be deferred by the city based upon public improvements to be completed by the applicant;
- (4) The conformance of the applicant's property or project with the comprehensive plan and zoning ordinances of the city;
- (5) The agreement required by section 22-832 having been reached, ~~which agreement shall contain and conform to all requirements of section 22-83.~~
- (6) ~~Approval shall be by motion adopted by a majority of the entire city council.~~

Sec. 22-832. Agreement required.

- A) ~~Each application for approval~~ AGREEMENT submitted to the city council shall be subject to approval by the council solely on its own merits. ~~Approval of an application shall require that an~~ THE APPROVED agreement SHALL be executed by the owner and the city, AND ~~which agreement shall, at a minimum, contain:~~
- (1) A list of those public or public-related improvements which justify applicant's approval, and the amount which shall be spent on such improvements;
 - (2) The maximum amount of enhanced sales taxes to be shared, and the maximum time during which the agreement shall continue, it being expressly understood that any such agreement shall expire and be of no further force and effect upon the occurrence of the earlier to be reached of the maximum time of the agreement (whether or not the maximum amount to be shared has been reached) or the maximum amount to be shared (whether or not the maximum time set forth has expired);
 - (3) A statement that THE AGREEMENT ~~this~~ is a personal agreement which is not transferable and which does not run with the land;
 - (4) That THE ~~this~~ agreement shall never constitute a debt or obligation of the city within any constitutional or statutory provision;
 - (5) The base amount which is agreed upon by month, and the fact that if, in any month as specified, sales taxes received from the property do not at least equal such amount, that there shall be no sharing of funds for such month;
 - (6) The base amount shall be agreed upon which shall consider the historic level of sales at the property in question, or a similar property within the area in the

event of a new business, and a reasonable allowance for increased sales due to the improvements and upgrades completed as a result of inclusion within this program;

- (7) A provision that any enhanced sales taxes subject to sharing shall be escrowed in the event there is a legal challenge to this enhanced sales tax incentive program or the approval of any application therefor;
- (8) An affirmative statement that the obligations, benefits, and/or provisions of this agreement may not be assigned in whole or in any part without the expressed authorization of the city council, and further that no third party shall be entitled to rely upon or enforce any provision hereof;
- (9) Any other provisions agreed upon by the parties and approved by the city council.

B) APPROVAL SHALL BE BY MOTION ADOPTED BY A MAJORITY OF THE ENTIRE CITY COUNCIL.

Sec. 22-843. NO Joint ventureR; liability.

The city council has enacted this ESTIP as a joint benefit to the public at large and to private owners for the purposes of providing the city with increased sales tax revenues generated upon and by properties improved as a result of this program; public improvements being completed by private owners through no debt obligation being incurred on the part of the city, and allowing applicants an opportunity to improve properties which generate sales activities, which improvements make those properties more competitive in the marketplace and further provide to the applicant additional contingent sources of revenues for upgrading such properties. ~~The city council specifically finds and determines that creation of this ESTIP is consistent with the city's powers as a home rule municipal corporation, and that exercise of such powers in the manner set forth herein is in furtherance of the public health, safety and welfare.~~ Notwithstanding any provision hereof, BY ADOPTING THIS PROGRAM AND APPROVING AGREEMENTS UNDER THE SAME, the city shall never be a joint ventureR in any private entity or activity which participates in this ESTIP and the city shall never be liable or responsible for any debt or obligation of any participant in ESTIP.

Section 2. Business Development Zone Program Amended.

Division 5 of Article I of Title 22 of the Wheat Ridge Code of Laws is amended to read:

Sec. 22-85. Program established.

There is hereby established within the city the "Wheat Ridge Business Development Zone" program.

Sec. 22-86. Legislative declarations.

- (a) The city council ~~of the city~~ hereby finds and declares:
- (1) That the health, safety and welfare of the people of this city are in large part dependent upon the continued encouragement, development and expansion of opportunities for employment in the private sector in this city;
 - (2) That there currently exists in this city businesses or vacant land which require new development or revitalization opportunities to overcome conditions of unemployment, underemployment, net out-migration of the population, diminution of tax revenues, chronic economic distress and blighting influences such as, but not limited to, deterioration of business districts, deterioration of public infrastructures, traffic and drainage problems or sudden severe economic dislocations;
 - (3) That by creating new development, redevelopment or expansion opportunities for businesses within the city the city council will increase the likelihood that new and improved businesses will generate more municipal sales and use tax revenues for the city in the future.
- (b) It is therefore declared to be the policy of the city, in order to provide incentives for private enterprises to expand or for new businesses to locate in the city, to develop a program which empowers the city council to designate portions of the city as a "business development zone" and to provide for the abatement of certain categories of fees, taxes and other business development-related charges for new development or redevelopment within such districts.
- (c) The city council has enacted this division 5 of article I of chapter 22 of the Code of Laws as a joint benefit to the public at large and to private owners for the purposes of reducing blight in our business districts and of providing the city with increased sales and use tax revenues generated upon and by properties improved as a result of this program and allowing owners and proprietors opportunities to improve properties which generate sales activities AND CREATE ADDITIONAL EMPLOYMENT OPPORTUNITIES, which improvements make those properties more competitive in the marketplace

and further provide to owners and proprietors additional contingent sources of revenues for ~~an~~UPgrading such properties.

- (d) The city council specifically finds and determines that creation of this "business development zone" division and the exercise of the powers enumerated herein are consistent with and promotes the public health, safety and general welfare of the citizens of Wheat Ridge.

Sec. 22-87. Definitions.

As used in this division, the following phrases shall have the following meanings unless the context clearly indicates another meaning:

- (1) The phrase *eligible city fees, charges and taxes* shall mean and shall be limited to use tax on furniture and fixtures associated with the initial development or redevelopment "project," use tax on building materials, building permit fees and zoning fees.
- (2) The phrase *expected incremental future sales and use tax revenue* shall mean the amount of the additional sales and use tax revenue, as projected by the city, expected to be generated during the council-designated time period from the time of completion of the "project" over and above the sales and use tax fees generated on the premises in the twelve (12) months preceding the application described in section 22-88.
- (3) The phrase *owner or proprietor* shall mean the record owner, tenant or operator of an individual business or, in the case of a shopping center, the owner of the real property upon which more than one business is operated.
- (4) *Project* shall mean the specific development or redevelopment expenditures which relate both to the abatement of "eligible city fees, charges, and taxes" and "expected incremental future sales and use tax revenues."

Sec. 22-88. Participation.

Participation in the business development zone program shall be based upon approval by the city council, exercising its legislative discretion ~~in good~~ faith. Any owner or proprietor of an established, proposed or newly purchased business, or the owner or proprietor of an existing business which wishes to

expand AND INVEST AT LEAST \$250,000 IN PRIVATE IMPROVEMENTS IN THE PROJECT, may apply to the city for inclusion within the program. Abatement or sharing of eligible city fees, charges, and taxes shall, upon approval of the ~~application~~ AGREEMENT by the city council, be granted ~~up to the amount of expected incremental future sales and use tax revenue to be generated by the project during the agreed to time period~~ ACCORDING TO THE FOLLOWING REBATE SCHEDULE:

Amount of Investment in Project	Eligible City Fees, Charges and Taxes Rebate
\$250,000 to \$499,999	25%
\$500,000 to \$999,999	50%
\$1,000,000 or higher	75%

Sec. 22-89. Approval of agreement; use of funds generally.

Approval by the city council of an agreement implementing the provisions of this division shall entitle the applicant to share in the eligible city fees, charges and taxes up to the amount agreed by the city council; provided, however, that applicant may use such amounts only for the purpose of developing or redeveloping the business within the approved business development zone, which purposes shall be specifically enumerated in the agreement provided for in section 22-942 hereof.

Sec. 22-90. Uses enumerated.

The uses to which the eligible city fees, charges and taxes may be put by an applicant shall be strictly limited to those which are approved by the city council and relate directly to the development or redevelopment of businesses within the city, which developed or redeveloped businesses will generate more municipal sales and use tax revenues for the city in the future. Priority shall be given to all businesses ~~which make application for inclusion within this program~~ and who agree to utilize the eligible city fees, charges and taxes for the public or public-related purposes identified section 22-78 of this Code of Laws.

~~Sec. 22-91. Increments, sharing of funds.~~

~~The base figure for eligible city fees, charges and taxes shall be divided into twelve (12) monthly increments, which increments are subject to agreement~~

~~between the parties and approved by the city council, and which increments shall be reasonably related to the amount of sales and use taxes generated on the premises in the twelve (12) months preceding the application received by the city for participation in this program. The accounting and payment provisions of sections 22-79 and 22-80 hereof are hereby declared to be applicable to any application approved hereunder.~~

~~Sec. 22-92. Capital improvement fund.~~

~~The one (1) percent of use taxes earmarked for the capital improvement fund may be utilized in this business development zone program for public improvements so long as the same are within the meaning of the phrase capital improvements as defined in the voter approved sales tax referendum previously held within the city, and provided the public improvements are found and determined by the city council to be capital improvements which could be provided by the city from the capital improvement fund but for the provision of such improvements by the applicant.~~

Sec. 22-931. Criteria for approval of AGREEMENT application.

(a) Approval of A BDZ AGREEMENT ~~an application for inclusion in this business development zone program shall be given by the city council, at a public hearing held as a portion of a regularly scheduled city council meeting, NOTICE OF WHICH HAS BEEN PUBLISHED IN A NEWSPAPER OF GENERAL CIRCULATION AT LEAST SEVEN (7) DAYS PRIOR TO THE HEARING. THE COUNCIL'S APPROVAL OF A BDZ AGREEMENT SHALL BE BASED UPON THE IDENTIFIED NEED OR VALUE THE BUSINESS OFFERS TO THE COMMUNITY IN TERMS OF SALES AND USE TAX GENERATION, INVESTMENT IN THE COMMUNITY OR INCREASED EMPLOYMENT based upon the following criteria:~~

- (1) The amount of expected incremental future sales and use tax revenue which can reasonably be anticipated to be derived by the city through the expanded or new ~~tax generating~~ business;
- (2) The public benefits which are provided by the applicant through public works, public improvements, additional employment for city residents, etc.;
- (3) The amount, if any, of city expenditures which may be deferred based upon public improvements to be completed by the applicant;

- (4) The conformance of the applicant's property or project with the comprehensive plan and zoning ordinances of the city;
 - (5) The agreement required by section 22-942 hereof having been reached, which agreement shall contain and conform to all of the requirements of such section.
- (b) Approval of any application AGREEMENT shall be made by motion adopted by a majority of the entire city council.
- (c) ~~The city council may by three fourths (¾) majority vote approve exceptions to the provisions of this division when such exceptions are found to be in the public's interest and such exceptions provide substantial benefit to the city.~~

Sec. 22-942. Agreement required.

Each ~~application~~ AGREEMENT ~~for approval to the city council~~ shall be subject to approval by the council solely on its own merits. Approval of one ~~application~~ AGREEMENT shall not require, or be deemed precedent for, approval of any other ~~application~~ AGREEMENT. ~~Approval of an application AGREEMENTS shall require that an agreement be executed by the owner and the city, AND which THE agreement shall, at a minimum contain:~~

- (1) A list of those ~~public or public-related~~ improvements which justify applicant's approval, and the amount which shall be spent on such improvements;
- (2) The maximum amount of expected incremental future sales and use tax revenue; ~~and the maximum time during which the agreement shall continue, it being expressly understood that any such agreement shall expire and be of no further force and effect upon the occurrence of the earlier to be reached of the maximum time of the agreement (whether or not the maximum amount to be shared has been reached) or the maximum amount to be shared (whether or not the maximum time set forth has expired);~~
- (3) A statement that this is a personal agreement which is not transferable and which does not run with the land;
- (4) A STATEMENT ~~that~~ this agreement shall never constitute a debt or obligation of the city within any constitutional or statutory provision;
- (5) ~~The base amount which is agreed upon by month, and the fact that if, in any month as specified, expected incremental future sales and use~~

~~tax revenue received from the property does not at least equal such amount, that there shall be no sharing of funds for such month;~~

- ~~(6) The base amount shall be agreed upon,~~ which shall consider the use taxes generated by the property in question, or a similar property within the city in the event of a new business;
- ~~(7) A provision t~~That any expected incremental future sales and use tax revenue shall be escrowed in the event there is a legal challenge to this business development zone program;
- ~~(8) An affirmative~~ statement that the obligations, benefits and/or provisions of this agreement may not be assigned in whole or in any part without the expressed authorization of the city council, and further that no third party shall be entitled to rely upon or enforce any provision hereof;
- (9) Any other provisions agreed upon by the parties and approved by the city council.

Sec. 22-953. NO Joint ventureR liability.

The city council has enacted this business development zone as a joint benefit to the public at large and to private owners for the purposes of providing the city with increased tax revenues generated upon and by properties improved as a result of this program; public improvements being completed by private owners through no debt obligation being incurred on the part of the city, and allowing applicants an opportunity to improve properties which generate sales and other business activities. ~~The city council specifically finds and determines that creation of this business development zone is consistent with the city's powers as a home rule municipal corporation, and that exercise of such powers in the manner set forth herein is in furtherance of the public health, safety and welfare.~~ Notwithstanding any provision hereof, the city shall never be a joint ventureR in any private entity or activity which participates in this business development zone program, and the city shall never be liable or responsible for any debt or obligation of any participant in this business development zone.

Sec. 22-964. ESTIP and TIF.

If the applicant, owner or proprietor ~~participates in the city's Enhanced Sales Tax Incentive Program ("ESTIP") or if the owner's or proprietor's business~~ is located in an urban renewal area in which all or a portion of sales tax revenues have been pledged as part of a tax increment financing program, he or she shall be ineligible for participation in this business development zone program.

Secs. 22-975—22-997. Reserved.

Section 3. Severability, Conflicting Ordinances Repealed. If any section, subsection or clause of this Ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected thereby. All other ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Section 4. Effective Date. This Ordinance shall take effect fifteen (15) days after final publication, as provided by Section 5.11 of the Charter.

INTRODUCED, READ, AND ADOPTED on first reading by a vote of 7 to 0 on this 28th day of July, 2014, ordered published in full in a newspaper of general circulation in the City of Wheat Ridge, and Public Hearing and consideration on final passage set for August 11, 2014 at 7:00 p.m., in the Council Chambers, 7500 West 29th Avenue, Wheat Ridge, Colorado.

READ, ADOPTED AND ORDERED PUBLISHED on second and final reading by a vote of 7 to 0, this 11th day of August, 2014.

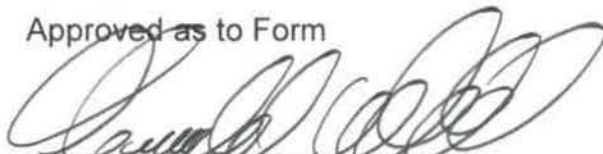
SIGNED by the Mayor on this 11th day of August, 2014.


Joyce Jay, Mayor

ATTEST:



Approved as to Form


Gerald E. Dahl, City Attorney

First Publication: July 31, 2014
Second Publication: August 14, 2014
Wheat Ridge Transcript
Effective Date: August 29, 2014

Published:
Wheat Ridge Transcript and www.ci.wheatridge.co.us