

**ORDINANCE NO. 1507 and ORDINANCE 1571
SERIES 2007 and 2010**

AN ORDINANCE ENACTING A NEW CHAPTER 3.24 OF THE LOUISVILLE MUNICIPAL CODE TO ESTABLISH A TAX AND FEE BUSINESS ASSISTANCE PROGRAM OF THE CITY AMENDED IN 2010 TO REVISE THE DEFINITION OF ENHANCED SALES TAX USED FOR PURPOSES OF THE TAX AND FEE BUSINESS ASSISTANCE PROGRAM AND TO CONFIRM EXCLUSION OF HISTORIC PRESERVATION TAX REVENUES FROM SUCH PROGRAM

WHEREAS, the City Council desires to establish a tax and fee business assistance program, the purpose of which is to recruit and retain businesses and employers within the City of Louisville, thereby stimulating the economy of and within the City, providing employment for residents of the City and others, further expanding the goods and services available for purchase and consumption by businesses and residents of the City, and further increasing the sales taxes and fees collected by the City; and

WHEREAS, the City Council finds that increased tax and fee collections realized in connection with such program will enable the City to provide expanded and improved municipal services to and for the benefit of the City, while at the same time providing public or public-related improvements to the City and its taxpayers and residents; and

WHEREAS, the City Council finds that the creation of a tax and fee business assistance program is consistent with the City's powers as a home rule municipal corporation and that exercise of said powers in the manner provided in this Ordinance is in the furtherance of the public health, safety and welfare;

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

Section 1. Title 3 of the Louisville Municipal Code is hereby amended by the addition of a new Chapter 3.24 to read as follows:

Chapter 3.24

TAX AND FEE BUSINESS ASSISTANCE PROGRAM

- Sec. 3.24.010 Established.
- Sec. 3.24.020 Purpose.
- Sec. 3.24.030 Definitions.
- Sec. 3.24.040 Basis for participation.
- Sec. 3.24.030 Approval of agreement; conditions; effect.
- Sec. 3.04.060 Permitted use of funds.
- Sec. 3.04.070 BAP payments.
- Sec. 3.04.080 Existing tax revenue sources unaffected.
- Sec. 3.04.090 Criteria for approval.

Sec. 3.04.100 Agreement with City; required; contents.
Sec. 3.04.110 Findings.

Sec. 3.24.010. Established.

There is established within the city a Tax and Fee Business Assistance Program (“BAP”).

Sec. 3.24.020. Purpose.

The purpose of the BAP created by this chapter is to encourage the recruitment, retention, establishment and/or substantial expansion of sales tax generating businesses and employers within the city, thereby stimulating the economy of and within the city, providing employment for residents of the city and others, further expanding the goods and services available for purchase and consumption by businesses and residents of the city, and further increasing the sales taxes and fees collected by the city, which increased sales tax and fee 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.

3.24.030. Definitions.

As used in this chapter and all sections thereof, the following phrases shall have the following meanings:

Applicant means the owner(s) of real property upon which a business is operated or proposed, or the operator of a business located or proposed to be located within the city.

Enhanced sales tax means 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—or, in the case of a vacancy, the last twelve (12) months of operation.

Fees means the amount of building permit fees and construction use taxes collected by the city during the construction permitting process for initial construction of a project participating in the BAP created under this chapter.

Operator means the owner or potential owner of a business that is eligible for inclusion in the BAP created by this chapter.

Owner means the record owner or potential record owner of real property upon which one (1) or more business is operated.

Sec. 3.24.040. Basis for participation.

Participation in the BAP shall be based upon approval by a majority of the entire city council, exercising its legislative discretion in good faith. Any owner or operator of a proposed business, or the owner or operator of an existing business which proposes to expand substantially, may apply to the city for inclusion within the BAP, provided that the proposed new or expanded business is reasonably likely to generate enhanced or increased sales taxes, permit fees and/or construction use taxes within the city in the first year of operation. Application for inclusion in the BAP must be made prior to the proposed opening, acquisition or expansion.

Sec. 3.24.050. Approval of agreement; conditions; effect.

Approval by the city council of an agreement implementing the BAP shall entitle the successful applicant to share in enhanced sales taxes and fees derived from the applicant's property or business in an amount which shall not exceed that amount specified in the agreement required by section 3.24.100; provided, however, that the applicant may use said amounts only for public or public-related improvements such as those specified in section 3.24.060 and which are expressly approved by the city council at the time of consideration of the application. The time period in which said enhanced sales taxes or fees may be shared shall not commence until all public or public-related improvements are completed and meet city standards, and shall be limited by the city council, in its discretion, to a specified time, which shall not exceed ten (10) years, or until a specified amount is reached.

Sec. 3.24.060. Permitted uses of funds.

A. The uses to which said shared enhanced sales taxes or fees may be put by an applicant shall be strictly limited to obligations and/or improvements which are public or public-related in nature, and which are specifically identified as eligible for BAP funding as part of the agreement required by section 3.24.100 and which, if required by the city, are subject to a subdivision agreement or development agreement executed pursuant to, respectively, section 16.12.100 or section 17.28.260 of this code.

B. By way of example and not limitation, eligible obligations and improvements which are public or public-related in nature include streets, sidewalks, curbs, gutters, pedestrian malls, street lights, drainage facilities, landscaping, decorative structures, redevelopment of existing properties, occupancy of existing vacant space, expansion or creation of jobs in the city, public art, fountains, identification signs, traffic safety devices, bicycle paths, off-street parking facilities, benches, restrooms, information booths, public meeting facilities, and all necessary, incidental, building facades, architectural enhancements, and appurtenant structures and improvements, together with the relocation, extension, undergrounding or improvement of existing utility lines, and any other improvements of a similar nature which are specifically approved by the city council.

C. Nothing in this chapter shall limit the city council from appropriating additional capital improvement funds for capital improvements directly or indirectly affecting the property in question as a part of the city's regular appropriation, capital improvement, or budget process.

Sec. 3.24.070. BAP payments.

A. For BAP agreements utilizing enhanced sales tax incentives, payments shall be made no less than annually and no more than quarterly, as the city and applicant shall agree. For such payments, the base figure (which may be stated as a percentage or fixed dollar amount) shall be divided by the number of agreed-upon payments per year and adjusted for seasonal variations as the parties may agree. If in any period the agreed-upon base figure is not met by applicant and, thus, no enhanced sales taxes are generated for that period, then no funds shall be shared with the applicant for such period 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, funds in excess of those enhanced sales taxes agreed to be shared shall not have been shared with any applicant.

B. For BAP agreements utilizing fees, payments shall be made in either incremental payments or a lump-sum payment as provided in the agreement approved by the city council. Such payments shall commence no earlier than issuance of a certificate of occupancy for the subject location and satisfaction of the requirements of this chapter and of the agreement.

C. No interest shall be paid on any amounts shared pursuant to any BAP agreement.

Sec. 3.24.080. Existing tax revenue sources unaffected.

A. It is an overriding consideration and determination of the city council that existing sources of city sales tax and fee revenues shall not be used, impaired or otherwise affected by the BAP. Therefore, it is conclusively determined that only enhanced sales taxes and fees generated by the properties or businesses described in an approved BAP application shall be subject to division under the BAP. It shall be the affirmative duty of the finance director of the city to collect and hold all such enhanced sales taxes and fees to be shared in a separate account apart from the sales taxes and fees generated by and collected from other sources in the city and to provide an accounting system which accomplishes the overriding purpose of this chapter. It is conclusively stated by the city council that this chapter would not be adopted or implemented but for the provision of this section.

B. Without limiting the foregoing subsection A of this section, it is conclusively stated that there shall be excluded from the BAP and any BAP agreement all revenues from (i) the temporary three-eighths percent sales and use taxes imposed for the ten-year period beginning on January 1, 2004, to be used for open space and related purposes as authorized by the registered electors of the city and set forth in chapter 3.20 of this Code; and (ii) the temporary one-eighth of one percent sales tax for historic preservation purposes imposed for the ten-year period beginning on January 1, 2009 as set forth in section 3.20.605 of this Code. Such revenues shall not be used, impaired or otherwise affected by the BAP.

Sec. 3.24.090. Criteria for approval.

Approval of an application for inclusion in the BAP shall require the affirmative vote of four members of the city council, at a public hearing held as a portion of a regularly scheduled city council meeting, based upon city council consideration of the following criteria:

- A. The amount of enhanced sales taxes which are reasonably to be anticipated to be derived by the city—whether by retention of taxes, creation of new taxes, or a combination thereof—through the expanded or new retail sales tax generating business;
- B. The public benefits which are provided by the applicant through public works, public or public-related improvements, additional and/or retained jobs and employment opportunities for city residents and others, etc.;
- C. The quality of the proposed development;
- D. Whether the proposal utilizes an existing building(s);
- E. Whether the proposal complements existing Louisville businesses (i.e. a buyer or supplier that serves an existing business in the city);
- F. Whether the proposal represents redevelopment to an area or building in the city;
- G. Whether the proposal represents job diversity in industry sectors and is part of a growing industry;
- H. The proposal's contribution to the diversity of retail or to the diversity of jobs or employment opportunities within the city;
- I. Whether the proposal brings a value added result to the city or a development within the city (for example, by moving the company's corporate headquarters to the city);
- J. The amount of the business assistance as a percentage of new revenue anticipated to be created by the proposal (for example, by relocation the company to Louisville);
- K. The amount of expenditures which may be deferred by the city based upon public or public-related improvements to be completed by the applicant;
- L. The conformance of the applicant's property or project with the comprehensive plan and zoning ordinances of the city; and
- M. Whether a proposed agreement required by section 3.24.100 has been reached, which agreement shall contain and conform to all requirements of said section 3.24.100.

Sec. 3.24.100. Agreement with City; required; contents.

Each application for approval submitted to the city council shall be subject to approval by the city council solely on its own merits. Approval of an application shall require that an

agreement be executed by the applicant and the city, which agreement shall, at a minimum, contain:

A. A list of those public or public-related improvements which justify the application's approval, and the amount which shall be spent on such improvements;

B. The maximum amount of enhanced sales taxes or fees to be shared, the timing of payment of any such shared taxes or fees, 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);

C. A statement that the agreement is a personal agreement which does not run with the land;

D. A statement that the agreement shall never constitute a multi-year fiscal obligation, debt or other obligation of the city within the meaning of any constitutional or statutory provision;

E. The base amount which is agreed upon and the timing of periodic payments of enhanced sales taxes to be shared and the fact that if, in any period as specified, sales taxes received from the property do not at least equal said base amount, there shall be no sharing of sales taxes for said period, and that any deficit for any such period shall be carried over to succeeding periods until the difference between the base amount and the amount of sale tax actually paid is recovered by the city;

F. 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 the BAP;

G. A provision that any enhanced sales taxes or fees subject to sharing shall be escrowed in the event there is a legal challenge to the BAP or the approval of any application therefor;

H. An affirmative statement that the obligations, benefits and provisions of the agreement may not be assigned in whole or in any part without the expressed written authorization of the city council, and further that no third party shall be entitled to rely upon or enforce any provision of the agreement;

I. A statement that the agreement shall be subject to the annual appropriation of sufficient funds for payments as provided in this chapter, pursuant to Section 20, Article X of the Colorado Constitution;

K. A statement that the applicant shall have no right, claim, lien or priority in or to the city's sales or use tax revenue superior to or on parity with the rights, claims or liens of the holders as any sales or use tax revenue bonds, notes, certificates or debentures payable from or secured by any sales or use taxes, existing or hereafter issued by the city; and that all rights of the successful applicant are, and at all times shall be, subordinate and inferior to the rights, claims and liens of the holders of any and all such existing or hereafter issued sales and use tax revenue bonds, notes, certificates or debentures, payable from or secured by any sales or use taxes issued by the city; and

L. Any other provisions agreed upon by the parties and approved by the city council.

Sec. 3.24.110. Findings.

The city council has enacted this chapter as a joint benefit to the public at large and to private owners for the purposes of: providing the city with increased sales tax and fee revenues generated upon and by properties improved as a result of the BAP program; providing incentives for businesses to expand or create additional jobs within the city; providing for public and public-related improvements to be 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 taxes, which improvements make those properties more competitive in the marketplace; and further providing to the applicant additional contingent sources of revenues for upgrading such properties. The city council specifically finds and determines that creation of the BAP is consistent with the city's powers as a home rule municipal corporation, and that exercise of said powers in the manner set forth in this chapter is in furtherance of the public health, safety and welfare. Notwithstanding any provision of this chapter, the city shall never be a joint venturer in any private entity or activity which participates in the BAP, and the city shall never be liable or responsible for any debt or obligation of any participant in the BAP.

Section 2. If any portion of this ordinance is held to be invalid for any reason, such decisions shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each part hereof irrespective of the fact that any one part be declared invalid.

Section 3. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

INTRODUCED, READ, PASSED ON FIRST READING, AND ORDERED PUBLISHED this _____ day of _____, 2007.

Charles L. Sisk, Mayor

ATTEST:

Nancy Varra, City Clerk

APPROVED AS TO FORM:

Light, Harrington & Dawes, P.C.,
City Attorney

PASSED AND ADOPTED ON SECOND AND FINAL READING, this _____ day of
_____, 2007.

Charles L. Sisk, Mayor

ATTEST:

Nancy Varra, City Clerk