

TOWN OF ERIE
ORDINANCE NO. ____-2020

AN ORDINANCE OF THE BOARD OF TRUSTEES OF THE TOWN OF ERIE AMENDING TITLE 4 OF THE ERIE MUNICIPAL CODE BY THE ADDITION OF A NEW CHAPTER 12, TO ESTABLISH AN ENHANCED SALES TAX INCENTIVE PROGRAM

WHEREAS, the Town uses sales taxes in the operation of government for the purpose of providing municipal services to the citizens, residents and business owners of the Town;

WHEREAS, the Board of Trustees deems the development of new retail sales tax generating businesses, and the substantial expansion of existing retail sales tax generating businesses, as well as the encouragement of primary employers and local job creation, to be a vital and important steps in the economic development of the Town;

WHEREAS, the Board of Trustees wishes to establish a fund derived from a portion of the enhanced sales taxes, which fund may be shared with owners as an incentive for establishing or expanding retail sales tax generating businesses within the Town;

WHEREAS, so as to avoid an impact to the general fund of the Town, the source of funding for this program shall be limited to a portion of increased sales taxes generated solely by businesses involved in the program;

WHEREAS, the Board of Trustees wishes to establish a mechanism by which Town permit and application fees may be reduced or waived as an incentive to new, relocating, or expanding businesses; and

WHEREAS, the Board of Trustees wishes to establish an Enhanced Sales Tax Incentive Program as set forth herein to serve the public purposes of providing employment, additional taxes and public and public-related improvements through deferred expenditure of public funds, while promoting economic development within the Town of Erie, thereby continuing to encourage and to provide for the vitality of businesses within the Town, as well as providing opportunities for employment for the residents of the Town, and enabling the Town to carry forward its functions in the preservation of the health, safety, and welfare of the citizens and residents of the Town.

NOW THEREFORE BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF ERIE, COLORADO, AS FOLLOWS:

Section 1. Title 4 of the Erie Municipal Code is amended by the addition of a new Chapter 12, to read as follows:

Chapter 12

Enhanced Sales Tax Incentive Program

4-12-1: PURPOSE:

The purpose of this Chapter is to encourage the establishment and substantial expansion of retail sales tax generating businesses within the Town, thereby stimulating the economy of and within the Town, providing employment for residents of the Town and others, further expanding the goods available for purchase and consumption by residents of the Town, and further increasing the sales tax collected by the Town, which increased sales tax collections will enable the Town to provide expanded and improved municipal services to and for the benefit of the residents of the Town, while at the same time providing public or public-related improvements at no cost, or at deferred cost, to the Town and its taxpayers and residents.

4-12-2: ESTABLISHMENT:

There is hereby established within the Town an Enhanced Sales Tax Incentive Program ("ESTIP").

4-12-3: DEFINITIONS:

For purposes of this Chapter, the following terms shall have the following meanings:

Enhanced sales tax means the amount of sales tax collected by the Town over and above a base amount negotiated by, and agreed upon by, the applicant and the Town, and which amount is approved by the Board of Trustees, which base amount shall never be lower than the amount of sales tax collected by the Town at the property in question in the previous twelve (12) months plus a reasonable and agreed upon percentage of anticipated increase in sales tax, or, in the case of a newly established business, an amount of sales tax that could be generated from the new business without the participation by the applicant in the ESTIP created hereunder.

Owner or proprietor means 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 business is operated, provided that said owner (whether an individual, corporation, partnership or other entity) is the owner or lessor of the individual businesses operated thereon.

Public or public-related purposes means public improvements, including without limitation streets, sidewalks, curbs, gutters, pedestrian malls, street lights, drainage facilities, landscaping, statuary, fountains, identification signs, traffic safety devices, bicycle paths, off-street parking facilities, benches, off-site sewer lines, lift stations, 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 that are specifically approved by the Town upon the Town's findings that said improvement are public or public-related improvements, and that such improvements will benefit the economic health of the Town.

4-12-4: APPLICATION:

Participation in ESTIP shall be based upon approval by the Town, exercising its administrative discretion in good faith. Any owner or proprietor of a newly established or proposed retail sales tax generating business 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 Town for inclusion within the ESTIP, provided that the new or expanded business is reasonably likely to generate enhanced sales tax of at least twenty thousand dollars (\$20,000) in the first year of operation.

4-12-5: SHARING OF SALES TAX:

A. Approval by the Town of an agreement implementing the ESTIP shall entitle the successful applicant to share in enhanced sales tax derived from the applicant's property or business in an amount which shall not in any event exceed fifty percent (50%) of the enhanced sales taxes; provided, however, that the applicant may use said amounts only for public or public-related purposes, such as those specified herein, and which are expressly approved by the Town at the time of consideration of the application. The time period in which said enhanced sales taxes may be shared shall not commence until all public or public-related improvements are completed, and shall be limited by the Town, in its discretion, to a specified time, or until a specified amount is reached.

B. The uses to which said shared enhanced sales tax may be put by an applicant shall be strictly limited to those that are public or public-related in nature.

C. The base figure for sales taxes shall be divided into 12 monthly increments, which increments are subject to agreement between the parties, and approval by the Town, and which increments shall be reasonably related to the average monthly performance of the business or property, 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 for said month, no increment shall be shared until that deficit, and any other cumulative deficit, has been met, so that at the end of any 12-month cycle, funds in excess of those "enhanced sales tax" funds agreed to be shared shall not have been shared with any applicant.

4-12-6: EFFECT ON OTHER TAXES:

It is an overriding consideration and determination of the Town that existing sources of Town sales tax revenues shall not be used, impaired or otherwise affected by this Chapter. Therefore, the Finance Director shall collect and hold all such enhanced sales taxes in a separate account apart from the sales taxes generated

by and collected from the Town, and ensure an accounting system that accomplishes the purpose of this Section. This Chapter would not be adopted or implemented except for the provisions of this section.

4-12-7: CONSIDERATION:

A. An application for inclusion in the ESTIP shall be considered by the Board of Trustees at a public hearing.

B. Approval or denial shall be based upon the following criteria:

1. The amount of enhanced sales tax reasonably anticipated to be derived by the Town through the expanded or new retail sales tax generating business;

2. The public benefits that are or will be provided by the applicant through public works, public improvements, additional employment for Town residents or other factors;

3. The amount of expenditures that may be deferred by the Town based upon public improvements that will be completed by the applicant;

4. The conformance of the applicant's property or project with the Town's comprehensive plan and the Unified Development Code;

5. An agreement in compliance with Section 4-12-8.

4-12-8: AGREEMENT:

The agreement between the owner and the Town shall contain, at a minimum, the following provisions:

1. A list of those public or public-related improvements that justify the applicant's approval, and the amount to be spent on said improvements;

2. The maximum amount of enhanced sales taxes to be shared, and the maximum duration of the agreement, 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 is personal, and not transferable or assignable;

3. A statement that the agreement shall never constitute a debt or obligation of the Town within any constitutional or statutory provision;

4. The base amount 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 said amount, that there shall be no sharing of funds for said month;

5. The base amount shall be agreed upon and 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 ESTIP;

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

7. An affirmative statement that the obligations, benefits and/or provisions of the agreement may not be assigned in whole or in any part without the express authorization of the Town, and further that no third party shall be entitled to rely upon or enforce any provision of it; and

8. Any other provisions agreed upon by the parties and approved by the Town.

4-12-9: FEE REDUCTION AND WAIVER

As part of the ESTIP, the Board of Trustees may include a reduction or waiver of any or all Town-imposed application, permit, or development fees, if, in the Board of Trustees' sole discretion, such a reduction or waiver would further the purposes of this Chapter.

4-12-10: NON-LIABILITY:

The Town specifically finds and determines that creation of this Chapter is consistent with the Town's powers as a municipal corporation, and that exercise of said powers in the manner set forth herein is in furtherance of the public health, safety and welfare. Notwithstanding any provision hereof, the Town shall never be a joint venturer in any private entity or activity that participates in this ESTIP, and the Town shall never be liable or responsible for any debt or obligation of any participant in ESTIP.

Section 2. Severability. If any article, section, paragraph, sentence, clause, or phrase of this Ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The Board of Trustees hereby declares that it would have passed this Ordinance and each part or parts hereof irrespective of the fact that any one, or part, or parts be declared unconstitutional or invalid.

Section 3. Safety. The Board of Trustees finds that the adoption of this Ordinance is necessary for the protection of the public health, safety and welfare.

Section 4. Effective Date. This Ordinance shall take effect 30 days after publication following adoption.

INTRODUCED, READ, PASSED AND ORDERED PUBLISHED this 28th day of January, 2020.

Jennifer Carroll, Mayor

ATTEST:

Joanne Salser, Deputy Town Clerk