

Narrative

December 20, 2022



ORDINANCE - ENHANCED EMPLOYMENT AREA OCCUPATION TAX

As discussed when the Redevelopment Plan was presented to Council for the Alliance Heartland Flats Mall and Apartments Project, 385 Apartments, LLC desires additional economic development revenue from an “enhanced employment area” under the Nebraska community development laws. The enhanced employment area will be limited to the new apartment and retail development for the Project, and to the current Holiday Inn Express and Runza locations. The enhanced employment area will impose an additional 2% sales tax on all taxable sales in that area, the revenue from which will be provided to the City by each business and then distributed to 385 Apartments, LLC (or other bond holder) under an enhanced employment area bond, similar to tax increment financing revenue and bonds.

Before Council is the ordinance to adopt and approve the enhanced employment area and the additional 2% occupation tax. The ordinance provides for the purpose of the tax, the taxable area and businesses, and the implementation, collection, and distribution of the tax. Both the Holiday Inn Express and Runza have expressly consented to the imposition of the 2% sales tax.

RECOMMENDATION: APPROVE THE ORDINANCE ON FINAL READING ADOPTING THE ENHANCED EMPLOYMENT AREA AND ADDITIONAL 2% OCCUPATION TAX.

CITY OF ALLIANCE, NEBRASKA

ORDINANCE NO. 2950

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; AND PROVIDING FOR AN EFFECTIVE DATE

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

Section 1. Findings and Determinations. The Mayor and Council of the City of Alliance, Nebraska (the “City”) hereby find and determine as follows:

(a) Pursuant to Section 18-2142.02, Reissue Revised Statutes of Nebraska, and the Community Development Law, as amended (the “Act”), the City of Alliance intends to enter into a Redevelopment Contract (the “**Redevelopment Contract**”) with 385 Apartments, LLC, a Nebraska limited liability company and the Community Redevelopment Authority of the City of Alliance, Nebraska (the “**Authority**”) which, in part, (1) provides for the improvement of a commercial shopping center (the “**Redevelopment Project**”) in the Enhanced Employment Area as shown on **Exhibit “A”** (attached hereto and incorporated herein by reference) and (2) designates such area as an “enhanced employment area” as defined in Section 18-2103(11) of the Act (the “**Enhanced Employment Area**”).

(b) Pursuant to Section 18-2142.02 of the Act, the City is authorized 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 qualified and approved costs and expenses of the Redevelopment 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 sub rent, 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 hereby 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 hereby authorized and directed to execute such documents and take such actions on behalf of the City as are necessary to carry out this Ordinance, including, but not limited to, entering into a Redevelopment Contract with 385 Apartments, LLC, a Nebraska limited liability company and the Authority which shall be produced to final form for approval and execution by the City and the Authority.

Section 4. Tax Imposed; Collection of Tax.

(a) On or after February 1, 2023, and in each calendar month thereafter there is hereby imposed a retail business occupation 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 two percent (2.00%) 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 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 18-2142.04 of the Act, the City hereby 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 sub rent, 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 occupations 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 February 1, 2023, and for each and every month thereafter, shall prepare and file, on or before the 25th day of the following month, 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 occupation tax imposed by this Ordinance shall be cumulative except where otherwise specifically provided.

Section 8. Use of Revenue. The two percent (2.00%) occupation tax imposed by this Ordinance, less any administrative expenses, shall be transferred to the Authority for payment of principal and interest on any Enhanced Employment Area Occupation Tax Revenue Bond for the Enhanced Employment Area and to fund any expenditures that the City is lawfully authorized to make in connection with the Redevelopment 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, if a return has not be filed, 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 or the actual amount if the return is filed but unpaid, compute and assess in addition thereto a penalty equal to ten percent (10.00%) of the amount of taxes determined due,

(b) The City Manager shall give the delinquent Taxpayer written notice of such estimated taxes and penalty, which notice may be served personally, by certified mail, or by regular U.S. mail to the last-provided address of the Taxpayer (the date of service for which shall be three (3) business days after the date posted for mailing).

(c) Such amounts owed, with penalty, shall thereupon become an assessment and such assessment shall be final, due, and payable from the Taxpayer to the City ten (10) days from the date of service of the notice; however, within ten (10) days of providing a notice of such assessment, the 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.

(f) Nothing herein, including any bond executed pursuant this Ordinance, shall obligate the City or Authority to exercise any remedy available to it for collection of any delinquent taxes or assessment owed under this Ordinance.

Section 10. Administration; Miscellaneous Provision.

(a) The administration of the provisions of this Ordinance are hereby vested in the City Manager, or his or her 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 U.S. regular or certified mail, postage prepaid, return receipt requested, to the Taxpayer at his or her last known address, or may be served personally.

(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 transactions 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.

(e) The City shall retain monthly 1.0%, of the gross amount received from the occupation tax imposed hereby, or a monthly minimum of \$25.00 per General Retail Occupation Tax return required to be made pursuant to this ordinance, whichever is higher, as an administrative fee. The City may retain this amount before distribution of other tax receipts to the Authority.

Section 11. Recover of Unpaid Tax by Action at Law

(a) The City Manager may, but is not obligated to, also treat any such taxes and penalties due and unpaid as a debt due the City.

(b) In case of failure to pay the taxes, or any portion thereof, or any penalty thereon when due, the City may, but is not obligated to, recover at law the amount of such taxes and penalties in any court of Box Butte County, Nebraska or of the county wherein the Taxpayer resides or has its principal place of business having jurisdiction of the amounts sought to be collected.

(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, but is not obligated to, 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, determines that any Person has failed to pay

any tax imposed by this Ordinance, such official may, but is not obligated to, suspend or revoke any City license, permit or other approval held by such Person. Such Person shall have an opportunity to a hearing with the City Manager before the suspension or revocation, which may not be held less than seven (7) days after notice is given of the time and place of such hearing, addressed to the last known place of business of such Person. Pending the notice, hearing and final determination, any licensee, permit or other approval issued by the City to the Person may be temporarily suspended. No suspension or revocation hereunder 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 Authority pursuant to the provisions of the Act, for which such occupation tax receipts have been pledged being either the Enhanced Employment Area Occupation Tax Revenue Bond (Heartland Flats Mall and Apartments Project) as described in the Redevelopment Contract; or, 2) twenty (20) years after the issuance of said Bond, as provided 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 hereof shall not be affected thereby.

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

Section 17. Effective Date. This Ordinance shall take effect upon its passage and publication as provided by law.

PASSED AND APPROVED this 20th day of December, 2022.

Mike Dafney, Mayor

(SEAL)

Attest: _____
Tarrah S. Johnson, City Clerk

Approved as to Form and Legality:

Simmons Olsen Law Office, Legal Counsel

EXHIBIT "A"

ENHANCED EMPLOYMENT AREA

Lots 1A, 2A, 3A and 4A, Holsten Replat of Lots One, Two and Three Holsten Addition to the City of Alliance, Box Butte County, Nebraska.