

**EXPLANATORY COVER SHEET**

COUNCILMAN'S BILL NO. CB-1579

SPONSOR: COUNCIL MEMBER GARNER

TITLE: A BILL FOR AN ORDINANCE REPEALING AND REENACTING ARTICLE 12 OF CHAPTER 5 OF THE NORTHGLENN MUNICIPAL CODE RELATING TO THE CITY'S ENHANCED SALES TAX INCENTIVE PROGRAM

PURPOSE: TO AMEND AND UPDATE THE CITY'S ESTIP ORDINANCE

ADDITIONAL EXPLANATORY REMARKS:

SPONSORED BY: COUNCIL MEMBER GARNER

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A BILL FOR AN ORDINANCE REPEALING AND REENACTING ARTICLE 12 OF CHAPTER 5 OF THE NORTHGLENN MUNICIPAL CODE RELATING TO THE CITY'S ENHANCED SALES TAX INCENTIVE PROGRAM.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Article 12 of Chapter 5 of the Northglenn Municipal Code is hereby repealed in its entirety and reenacted to read as follows:

ARTICLE 12. ENHANCED SALES TAX INCENTIVE PROGRAM.

Section 5-12-1. Title. This Article 12 shall establish and be known as the City of Northglenn's Enhanced Sales Tax Incentive Program ("ESTIP").

Section 5-12-2. Purpose. The purpose of the Enhanced Sales Tax Incentive Program or ESTIP is to recruit and retain retail sales tax generating businesses within the City of Northglenn, thereby stimulating the economy of and within the City, thereby providing employment for residents of the City and others, thereby further expanding the goods and services available for purchase and consumption by businesses and residents of the City, and further increasing the sales taxes collected by the City. Such increased sales tax collections 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-related improvements to the City and its taxpayers and residents.

Section 5-12-3. Definitions. As used in this Article 12, the following phrases shall have the following meanings unless the context clearly indicates another meaning:

(a) The phrase "**enhanced sales tax**" shall mean the amount of sales tax collected by the City over and above a base amount negotiated by the City Manager or the designee, and agreed upon, by the applicant and the City, and which amount is approved by the City Council. The 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. 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.

(b) The phrase "**owner or applicant**" shall mean the record owner or potential owner of the project.

Section 5-12-4. Eligibility. Participation in ESTIP shall be based upon approval by the City Council of the City of Northglenn, exercising its legislative discretion in good faith. Any owner or applicant of a newly established or proposed retail business, or the owner or applicant of an existing retail business 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 to generate enhanced or increased sales taxes.

Section 5-12-5. Limitations. 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 exceed seventy-five percent (75%) of the enhanced sales taxes; provided, however, that applicant shall use said amounts only for improvements such as those specified in Section 5-12-6(b) 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 may be shared shall not commence until all improvements are completed and meet City standards, and shall be limited by the City Council, in its discretion, to a specified time, or until an amount of enhanced sales taxes specified in the Agreement required by Section 5-12-10 hereof has been collected.

Section 5-12-6. Obligations on Participants.

(a) The uses to which any shared enhanced sales taxes may be put by an applicant shall be strictly limited to those improvements installed or constructed by the applicant.

(b) For the purposes of this Article 12, "improvements" shall mean public improvements, including, but not limited to streets, sidewalks, curbs, gutters, pedestrian malls, street lights, drainage facilities, landscaping, decorative structures, 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 and improvement of existing utility lines, and any other improvements of a similar nature which are specifically approved by the City Council.

(c) Nothing contained herein 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.

Section 5-12-7. Administration. The base figure for sales taxes shall be divided into monthly, quarterly, semi-annually or annual increments as determined by the City, 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 performance of the business or property in question, or similar businesses in the area (i.e., adjusted for seasonal variations) for the incremental period. If in any incremental period the agreed base amount is not met by an owner or proprietor and, thus, no enhanced sales taxes are generated for that incremental period, no funds shall be shared with the owner or proprietor for said incremental period, and no increment shall be shared until that deficit, and any other cumulative deficit, has been met, so that at the end of the term of the Agreement, funds in excess of those "**enhanced sales taxes**" agreed to be shared shall not have been shared with any owner or proprietor.

Section 5-12-8. Accounting.

(a) 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 Enhanced Sales Tax Incentive Program. Therefore, the City Council conclusively determines that only enhanced sales taxes generated by the properties described in an application, and a subsequent agreement, shall be subject to division under this Article 12.

(b) It shall be the affirmative duty of the Treasurer of the City of Northglenn to collect and escrow such "**enhanced sales taxes**" payable to the owner or applicant in a separate account apart from the sales taxes generated by, and collect from, any other sales tax generating sources within the City and to provide an accounting system which accomplishes the overriding purpose of this Section 5-12-8. Interest earnings on such account shall accrue to the City. Such funds shall not be considered City funds for purposes of any ordinance or resolution allocating sales tax monies from particular sources to particular purposes but shall be applied exclusively to this Program.

(c) The City Council of the City of Northglenn conclusively states that this Article 12 would not be adopted or implemented but for the provisions of this Section 5-12-8.

Section 5-12-9. Review of Application. Approval of an application for inclusion in this ESTIP shall be given by motion adopted by a majority of the City Council, at a public hearing held as a portion of a regularly scheduled City Council meeting, based upon the following criteria:

(a) 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;

(b) The public benefits which are provided by the applicant through public works,

improvements, additional employment for City residents, etc.

(c) The amount of expenditures which may be deferred by the City based upon improvements to be completed by the applicant at the applicant's expense;

(d) The conformance of the applicant's property or project with the comprehensive plan, zoning ordinances and building codes of the City; and

(e) The agreement required by Section 5-12-10 having been reached, which agreement shall contain and conform to all requirements of Section 5-12-10.

Section 5-12-10. Agreement. 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 owner or applicant and the City, which agreement shall, at a minimum, contain:

(a) A list of those improvements shall be provided which justify the owner or applicant's inclusion within the ESTIP, and the amount which shall be spent by the owner or applicant on said improvements;

(b) The maximum amount of enhanced sales taxes to be shared, and the maximum time during which said 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 shall never constitute a debt or obligation of the City within any Constitutional or Statutory provision;

(d) A provision identifying the incremental period during which the amount of enhanced sales tax funds to be shared, if any, will be calculated, which incremental period may be monthly, quarterly, semi-annually or annually;

(e) The base amount which is agreed upon by incremental period, and the fact that if, in any incremental period as specified, sales taxes received from the property do not at least equal said amount, that there shall be no sharing of enhanced sales tax funds for said incremental 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 sales tax actually paid is recovered by the City;

(f) The base tax amount agreed upon in the agreement 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 ESTIP;

(g) A provision that any enhanced sales taxes subject to sharing shall be escrowed in the event there is a legal challenge to the Enhanced Sales Tax Incentive Program or the approval of any application therefore;

(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 express, written authorization of the Northglenn City Council, and further that no third party shall be entitled to rely upon or enforce any provision of the agreement or this Article 12; and

(i) Any other provisions agreed upon by the parties and approved by the City Council.

#### Section 5-12-11. Legislative Intent.

(a) The City Council has enacted this Article 12 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; Encouraging the construction of public improvements by private owners without debt obligations being incurred by the City; and Allowing owners and proprietors opportunities to improve properties which generate sales activities, which improvements make those properties more competitive in the marketplace and further provide to owners and proprietors additional contingent sources of revenues for upgrading said properties.

(b) 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 those powers in this Article 12 promotes the public health, safety and general welfare. Notwithstanding any provision hereof, 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 5-12-12. Severability. If any clause, sentence, paragraph, or part of this Article 12 or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect its application to other persons or circumstances.

Section 5-12-13. Safety Clause. The City Council hereby finds, determines, and declares that this ordinance is promulgated under the Home Rule powers and general police power of the City of Northglenn, that it is promulgated for the health, safety, and welfare of the public and this

ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the ordinance bears a rational relation to the properly legislative object sought to be attained.

INTRODUCED, READ AND ORDERED POSTED this \_\_\_\_ day of \_\_\_\_\_,  
2006.

\_\_\_\_\_  
KATHLEEN M. NOVAK  
Mayor

ATTEST:

\_\_\_\_\_  
DIANA L. LENTZ, CMC  
City Clerk

PASSED ON SECOND AND FINAL READING this \_\_\_\_ day of \_\_\_\_\_,  
2006.

\_\_\_\_\_  
KATHLEEN M. NOVAK  
Mayor

ATTEST:

\_\_\_\_\_  
DIANA L. LENTZ, CMC  
City Clerk

APPROVED AS TO FORM:

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COREY Y. HOFFMANN  
City Attorney