NOTICE OF PUBLIC HEARING
ORDINANCE No. 1857, SERIES 2023

NOTICE IS HEREBY GIVEN that at a regular meeting of the City Council of the City of Louisville, Colorado, to be held on September 19, 2023 at the hour of 6:00 p.m., at Louisville City Hall, 749 Main Street, Louisville, Colorado 80027 or in an electronic meeting, the City Council will hold a Public Hearing on the final passage and adoption of a proposed **AN ORDINANCE AMENDING TITLE 3 OF THE LOUISVILLE MUNICIPAL CODE CONCERNING THE CITY'S TAX AND BUSINESS ASSISTANCE PROGRAM SET FORTH IN CHAPTER 3.24, AND TO ADD A NEW CHAPTER 3.25 REGARDING ENHANCED ASSISTANCE FOR AEROSPACE BUSINESSES.**

Published in the *Daily Camera* on September 10, 2023 with full ordinance.

Full copies available in the City Clerk's Office, 749 Main Street, Louisville CO 80027.

ORDINANCE NO. 1857
SERIES 2023

AN ORDINANCE AMENDING TITLE 3 OF THE LOUISVILLE MUNICIPAL CODE CONCERNING THE CITY'S TAX AND BUSINESS ASSISTANCE PROGRAM SET FORTH IN CHAPTER 3.24, AND TO ADD A NEW CHAPTER 3.25 REGARDING ENHANCED ASSISTANCE FOR AEROSPACE BUSINESSES

WHEREAS, the City Council adopted Chapter 3.24 of the Louisville Municipal Code ("City Code") pursuant to Ordinance No. 1507, Series 2007, which established the City's Tax and Fee Business Assistance Program ("BAP"), authorizing the rebate of certain taxes and fees to businesses 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 for the purpose of enabling the City to provide expanded and improved municipal services and public-related improvements for the benefit of the City's residents; and

WHEREAS, while the BAP authorizes the rebate of up to one hundred percent (100%) of taxes and fees eligible for rebate under the BAP, the City's practice has been to rebate up to fifty (50%) of eligible taxes and fees, thus preserving the remainder for City purposes; and

WHEREAS, the City Council finds that certain businesses within the aerospace industry demonstrate greater-than-average potential to further the stated purposes of the BAP, including large investment in the City of Louisville and the creation of high-paying jobs; and

WHEREAS, the City Council thus finds it appropriate to offer enhanced assistance to aerospace businesses that demonstrate, and that meet certain criteria designed to target such, greater-than-average potential, in order to increase the probability such businesses will locate their operations in Louisville; and

WHEREAS, the City Council further finds that enhanced assistance to aerospace businesses should include the option, at the City Council's discretion, to provide assistance from existing sources of City sales tax and fee revenues, which is an option not currently available under Chapter 3.24 of the Louisville Municipal Code ("City Code"), which limits incentives to taxes and fees generated by the properties or businesses over and above a base amount designed to preserve the City's existing tax and fee base; and

WHEREAS, the City Council, therefore, desires to amend Title 3 of the City Code to add a new Chapter 3.25 concerning enhanced assistance to aerospace businesses; and

WHEREAS, pursuant to Ordinance No. 1575, Series 2010, the City adopted a 3.65% tax for using, storing, distributing or otherwise consuming tangible personal property or taxable services inside the City ("consumer use tax'), which became effective following voter approval; and

WHEREAS, following the City's adoption of the City's consumer use tax in 2010, the City began authorizing rebates of the City's consumer use tax under authority implied from the BAP; and

WHEREAS, the City Council desires to amend Chapter 3.24 of the City Code to specifically authorize rebates of consumer use tax revenues under the BAP to any business meeting the base criteria for rebates under the program.

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

Section 1. Section 3.24.030 of the Louisville Municipal Code is hereby amended to read as follows (words to be added are underlined; words to be deleted are ~~stricken through~~):

Sec. 3.24.030. - Definitions.

As used in this chapter and all sections thereof, the following terms and 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.

<u>*Consumer use tax* means the amount of the use tax collected by the city from an applicant participating in the BAP created under this chapter, not including construction use taxes.</u>

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 base amount shall never be lower than the amount of sales taxes collected by the city at the property in question in the previous 12 months.

Fees means the amount of building permit fees, sign 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<u>, and the amount of consumer use taxes collected by the city from the applicant's procurement of items necessary to its operation within the city for the period set forth in an agreement approved by the city council.</u>

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 or more business is operated.

<u>**Section 2.**</u> Section 3.24.100 of the Louisville Municipal Code is hereby amended to read as follows (words to be added are <u>underlined</u>; words to be deleted are ~~stricken through~~):

Sec. 3.24.100. - Agreement with city; required; contents.

Each application for inclusion in the BAP submitted to the city shall be considered 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, in the event the applicant, and/or its successors and assigns, ceases business operations in the city within ten (10) years after the certificate of occupancy has been received for the business location, the applicant, or its permitted successors and assigns, shall pay to the city ten percent (10%) of the enhanced sales taxes or fees rebated by the city under the BAP agreement for each full year that the applicant, and/or its successors and assigns, cease operations at the business location.

H. ~~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;

I. ~~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;

J. ~~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. ~~J.~~ 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. ~~K.~~ Any other provisions agreed upon by the parties and approved by the city council.

Section 3. Title 3 of the Louisville Municipal Code is hereby amended by the addition of a new Chapter 3.25, to read as follows:

CHAPTER 3.25
ENHANCED ASSISTANCE FOR AEROSPACE BUSINESSES

Sec. 3.25.010.- Established.
Sec. 3.25.020.- Findings, intent, and purpose.
Sec. 3.25.030.- Definitions.
Sec. 3.25.040.- Basis for participation.
Sec. 3.25.050.- Approval of agreement; conditions; effect.
Sec. 3.25.060.- EAP payments.
Sec. 3.25.070.- Criteria for approval.
Sec. 3.25.080.- Agreement with city; required; contents.

Sec. 3.25.010.- Established.

There is established within the city an Enhanced Assistance Program for Aerospace Businesses ("EAP").

Sec. 3.25.020.- Findings, intent, and purpose.

A. The purpose of the EAP created by this chapter is to encourage the recruitment, retention, establishment, and/or substantial expansion within the city of aerospace businesses meeting certain criteria set forth in this chapter.

B. The city council specifically finds and determines aerospace businesses have a greater-than-average potential to create a large number of jobs with high earning potential for residents of the city and others, and to otherwise stimulate the city's economy, and following the period of assistance under this chapter, the potential to increase the taxes and fees collected by the city, which increased 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.

C. The city council further specifically finds and determines that creation of the EAP 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 EAP, and the city shall never be liable or responsible for any debt or obligation of any participant in the EAP.

Sec. 3.25.030.- Definitions.

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

Aerospace business means a business engaged in the research, development, and manufacture of aircraft, vehicles, and equipment to be sent into space.

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

Enhanced assistance means a rebate up to one hundred percent (100%) of sales and use taxes collected by the city from an aerospace business meeting the eligibility criteria set forth in this chapter, for a period of up to ten (10) years, pursuant to an agreement approved by the city council; except that, enhanced assistance shall exclude all revenues derived from the City's 0.375% Open Space Tax, the 0.125% Historic Preservation Tax, the 0.15% Recreation Center Tax, and any future special sales or use taxes imposed following the effective date of the EAP agreement between the city and the applicant.

Operator means the owner or potential owner of an aerospace business that is eligible for inclusion in the EAP created by this chapter.

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

Sec. 3.25.040.- Basis for participation.

A. Any owner or operator of a proposed aerospace business, or the owner or operator of an existing aerospace business which proposes to expand substantially, may apply to the city for inclusion within the EAP, provided that the proposed new or expanded aerospace business meets the eligibility criteria set forth in subsection B. Application for inclusion in the EAP must be made prior to the proposed opening, acquisition or expansion.

B. To be eligible for enhanced assistance under this section, an aerospace business must meet each of the following criteria:

1. Invest at least fifty million dollars ($50M) in the business's Louisville operation over the 5-year period following approval of the BAP agreement; and

2. Create a minimum of one hundred (100) jobs over the five (year) period immediately following commencement of the aerospace business's operation in Louisville, with an average annual wage above 100% of the annual wage of Boulder County, not including the value of any employee benefits.

C. Enhanced assistance may be used by an aerospace business only for the following items:

1. Physical, chemical, or mechanical components for integration into a specific product to be used in space flight;

2. Equipment used to manufacture specific products or components of specific products to be used in space flight; and

3. Software used in connection with the business's space flight operations, and associated software maintenance agreements.

D. Enhanced assistance may be provided to aerospace businesses meeting the above-listed criteria in lieu of or in addition to the fee assistance authorized under chapter 3.24.

E. Aerospace businesses not meeting the above-listed criteria are not eligible for enhanced assistance, but may apply for BAP assistance pursuant to chapter 3.24.

Sec. 3.25.050.- Approval of agreement; conditions; effect.

Execution of an agreement by the city and an applicant implementing the EAP shall entitle the applicant to enhanced assistance in an amount not to exceed the amount specified in the agreement required by section 3.25.080; provided, however, that the applicant may use said amounts only for those items specified in section 3.24.040(C). The time period for enhanced assistance shall not commence until all public or public-related improvements are completed and meet city standards and until the aerospace business has commenced its operations within the city, and shall be limited to a specified time set forth in the agreement, which shall not exceed ten years, or until a specified maximum amount is reached.

Sec. 3.25.060. - EAP payments.

A. Enhanced assistance payments shall be made no less than annually and no more than quarterly, as the city and applicant shall agree.

B. Aerospace businesses utilizing fee assistance pursuant to chapter 3.24, which may be authorized in addition to the enhanced assistance established under this chapter, shall receive such fee rebate payments in either incremental payments or a lump-sum payment as provided in the agreement approved by the city council.

C. Payments under this section shall be 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.

D. No interest shall be paid on any amounts shared pursuant to any EAP or BAP agreement.

Sec. 3.25.070. - Criteria for approval.

Approval of an application for inclusion in the EAP for incentives shall require the affirmative vote of four members of the city council, based upon consideration of the following criteria:

A. The applicant's total investment business's Louisville operation;

B. The total number of jobs created over the five (year) period immediately following commencement of the aerospace business's operation in Louisville;

C. The average annual wage of the aerospace business's employees;

D. The quality of the proposed development;

E. Whether the proposal represents redevelopment to an area or building in the city;

F. 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);

G. The amount of the enhanced assistance as a percentage of new revenue anticipated to be created by the proposal (for example, by relocation the company to the city);

H. The conformance of the applicant's property or project with the comprehensive plan and zoning ordinances of the city; and

I. Whether a proposed agreement required by section 3.25.080 has been reached, which agreement shall contain and conform to all requirements of said section 3.25.080.

Sec. 3.25.080. - Agreement with city; required; contents.

Each application for inclusion in the EAP submitted to the city shall be considered 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. The maximum amount of enhanced assistance to be shared, the timing of payment of any enhanced assistance, 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);

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

C. 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;

D. For aerospace businesses utilizing fee assistance pursuant to chapter 3.24, all such statements required under chapter 3.24 for BAP agreements utilizing fee assistance;

E. A provision that, in the event the applicant, and/or its successors and assigns, ceases business operations in the city within ten (10) years after the certificate of occupancy has been received for the business location, the applicant, or its permitted successors and assigns, shall pay to the city ten percent (10%) of the enhanced assistance rebated by the city under the EAP agreement for each full year that the applicant, and/or its successors and assigns, cease operations at the business location.

F. A provision that any enhanced assistance subject to sharing shall be escrowed in the event there is a legal challenge to the EAP or the approval of any application therefor;

G. 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;

H. 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;

I. 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

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

Section 4. If any portion of this ordinance is held to be invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares it would have passed and approved this ordinance and each part hereof irrespective of the fact that any one part be declared invalid.

Section 5. The repeal or modification of any provision of the Municipal Code of the City of Louisville by this ordinance shall not release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture, or liability, either civil or criminal, which shall have been incurred under such provision, and each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings, and prosecutions for the enforcement of the penalty, forfeiture, or liability, as well as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions.

Section 6. 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 _______________, 2023.

Dennis Maloney, Mayor

ATTEST:
Meredyth Muth, City Clerk

APPROVED AS TO FORM:
Kelly PC
City Attorney

PASSED AND ADOPTED ON SECOND AND FINAL READING, this ____ day of _______________, 2023.

Dennis Maloney, Mayor

ATTEST:
Meredyth Muth, City Clerk