

**CITY OF WHEAT RIDGE, COLORADO
INTRODUCED BY COUNCIL MEMBER DAVIS
Council Bill No. 18
Ordinance No. 1649
Series 2018**

TITLE: AN ORDINANCE PROVIDING FOR AN ADMISSIONS TAX CREDIT, A SALES TAX CREDIT, AND A LODGING TAX CREDIT AGAINST CERTAIN PUBLIC IMPROVEMENT FEES PAID AT CLEAR CREEK CROSSING

WHEREAS, the City of Wheat Ridge ("City"), acting by and through its City Council ("City Council"), is a home rule municipality having all powers conferred by Article XX of the Colorado Constitution; and

WHEREAS, the City has entered into a Public Finance Agreement (the "Public Finance Agreement") with Longs Peak Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado, and Evergreen-Clear Creek Crossing, L.L.C., an Arizona limited liability corporation ("Developer"), concerning the finance and construction of certain public improvements in association with the development of a mixed-use commercial project known as Clear Creek Crossing (the "Project") on approximately 109 acres of real property generally located at the southwest corner of the intersection of Interstate 70 and Colorado Highway 58, as more particularly described on Exhibit 1 ("Property"); and

WHEREAS, all capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Public Finance Agreement; and

WHEREAS, pursuant to Section 4.1 of the Public Finance Agreement, the City Council of the City has agreed to consider adoption of an ordinance granting an Admissions Tax Credit in the amount of two and a half percent (2.50%) against the collection of Admissions Sales to the extent that the Admissions Credit PIF in the amount of two and a half percent (2.50%) is collected on Admissions Sales for admission to an event within the Property (including without limitation all Admissions Sales made online, by email, by phone, through a travel agency, through a third-party such as Stub Hub or Ticketmaster, or otherwise initiated, consummated, conducted, or transacted outside of the Property), subject to the terms and limitations set forth in the Public Finance Agreement; and

WHEREAS, pursuant to Section 4.1 of the Public Finance Agreement, the City Council of the City has agreed to consider adoption of an ordinance granting a Sales Tax Credit in the amount of one and fifty one-hundredths percent (1.50%) against the collection of Retail Sales to the extent that the Retail Credit PIF in the amount of one and fifty one-hundredths percent (1.50%) is collected on Retail Sales initiated, consummated, conducted, or transacted within the Property (including without limitation all Retail Sales for goods or services purchased online, by email, or by phone, but that are picked up by the purchaser from the Retailer's location within the Property or are delivered to the purchaser from the Retailer's location within the Property), subject to the terms and limitations set forth in the Public Finance Agreement; and

WHEREAS, pursuant to Section 4.1 of the Public Finance Agreement, the City Council of the City has agreed to consider adoption of an ordinance granting a Lodging Tax Credit in the amount of five percent (5.0%) against the collection of Lodging Sales to the extent that the Lodging Credit PIF in the amount of five percent (5.0%) has been collected on Lodging Sales for leases, rentals, lodging, or accommodations within the Property (including without limitation all Lodging Sales made online, by email, by phone, through a travel agency, through a third-party such as Expedia or Hotels.com, or otherwise initiated, consummated, conducted, or transacted outside of the Property), subject to the terms and limitations set forth in the Public Finance Agreement; and

WHEREAS, providing for such Admissions Tax Credit against the Admissions Credit PIF, Sales Tax Credit against the Retail Credit PIF, and Lodging Tax Credit against the Lodging Credit PIF will substantially aid in the financing and construction of certain necessary public improvements that will benefit the residents of the City and patrons of the Property, and will protect and promote the public health, safety, and general welfare of the residents of the City.

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

Section 1. Definitions.

“Act” means the Special District Act, Colorado Revised Statutes §§32-1-101, et seq.

“Admissions Credit PIF” means the public improvement fee imposed on the Property in the amount of 2.5% on Admissions Sales for admission to an event within the Property (including without limitation all Admissions Sales made online, by email, by phone, through a travel agency, through a third-party such as Stub Hub or Ticketmaster, or otherwise initiated, consummated, conducted, or transacted outside of the Property), which will be collected in accordance with the terms of the Admissions Credit PIF Covenant and the PIF Collection Agreement, and will be accounted for and spent in accordance with the terms of the Public Finance Agreement.

“Admissions Credit PIF Covenant” means a declaration of covenants by Developer imposing and implementing the Admissions Credit PIF within the Property.

“Admissions Sales” means any exchange of goods or services for money or other media of exchange initiated, consummated, conducted, or transacted that is subject to the City’s Admissions Tax.

“Admissions Tax” means the municipal admissions charge imposed by the City on the right or privilege to gain entrance to any place, event, performance, or scheduled activity held within the City, at such rates and on such terms and conditions as are prescribed in Section 22-101 of the Code.

“Admissions Tax Credit” means the credit against the City’s Admissions Tax in the amount of 2.5% (subject to adjustment as provided in this ordinance) on Admissions Sales for admission to an event within the Property (including without limitation all Admissions Sales made online, by email, by phone, through a travel agency, through a third-party such as Stub Hub or Ticketmaster, or otherwise initiated, consummated, conducted, or transacted outside of the Property), as implemented pursuant to this Ordinance.

“Bonds” means one or more series of bonds, to which the Credit PIF revenues are pledged in accordance with the Public Finance Agreement, issued by the District in accordance with the terms of the Act, which may be in the form of a note, loan, or other financial obligation identified as a Bond, including any bonds, notes, loans, or other financial obligations issued by the Districts to refund Bonds.

“Credit PIFs” means the Admissions Credit PIF, Lodging Credit PIF, and Retail Credit PIF.

“Lodging Credit PIF” means the public improvement fee imposed on the Property in the amount of 5.0% on Lodging Sales for leases, rentals, lodging, or accommodations within the Property (including without limitation all Lodging Sales made online, by email, by phone, through a travel agency, event planner, or other third-party, or otherwise initiated, consummated, conducted, or transacted outside of the Property), which will be collected in accordance with the terms of the Lodging Credit PIF Covenant and the PIF Collection Agreement, and will be accounted for and spent in accordance with the terms of the Public Finance Agreement.

“Lodging Credit PIF Covenant” means a declaration of covenants by Developer imposing and implementing the Lodging Credit PIF within the Property.

“Lodging Sales” means any exchange of goods or services for money or other media of exchange initiated, consummated, conducted, or transacted that is subject to the City’s Lodging Tax.

“Lodging Tax” means the municipal lodgers’ tax imposed by the City at such rate and on such terms and conditions as prescribed in Section 22-100 of the Code, of which an amount equal to 5.0% on Lodging Sales has been permanently earmarked for specific purposes.

“Lodging Tax Credit” means the credit against the City’s Lodging Tax in the amount of 5.0% (subject to adjustment as provided in this ordinance) on Lodging Sales for leases, rentals, lodging, or accommodations within the Property (including without limitation all Lodging Sales made online, by email, by phone, through a travel agency, through a third-party such as Expedia or Hotels.com, or otherwise initiated, consummated, conducted, or transacted outside of the Property), as implemented pursuant to this Ordinance.

“PIF Collection Agent” means an entity retained for the purpose of collecting, accounting for, and disbursing the PIF Revenue in accordance with the PIF Covenants.

“PIF Collection Agreement” means an agreement related to the collection and remittance of the PIF Revenue, entered into in accordance with the Public Finance Agreement.

“PIF Covenants” means the Admissions Credit PIF Covenant, Lodging Credit PIF Covenant, and Retail Credit PIF Covenant.

“PIF Revenue” means all revenue collected by the PIF Collection Agent from the Credit PIFs.

“Retail Credit PIF” means the public improvement fee imposed on the Property in the amount of 1.50% on Retail Sales initiated, consummated, conducted, or transacted within the Property (including without limitation all Retail Sales for goods or services purchased online, by email, or by phone, but that are picked up by the purchaser from the Retailer’s location within the Property or are delivered to the purchaser from the Retailer’s location within the Property), which will be collected in accordance with the terms of the Retail Credit PIF Covenant and the PIF Collection Agreement, and will be accounted for and spent in accordance with the terms of the Public Finance Agreement.

“Retail Credit PIF Covenant” means a declaration of covenants by Developer imposing and implementing the Retail Credit PIF within the Property.

“Retail Sales” means any exchange of goods or services for money or other media of exchange initiated, consummated, conducted, or transacted that is subject to the City’s Sales Tax.

“Sales Tax” means the municipal sales tax imposed by the City on sales of goods and services, at such rates and on such terms and conditions as are prescribed in Chapter 22, Article 1 of the Code.

“Sales Tax Credit” means the credit against the City’s Sales Tax in the amount of 1.50% (subject to adjustment as provided in this ordinance) on Retail Sales that are initiated, consummated, conducted, or transacted within the Property (including without limitation all Retail Sales for goods or services purchased online, by email, or by phone, but that are picked up by the purchaser from the Retailer’s location within the Property or are delivered to the purchaser from the Retailer’s location within the Property), as implemented pursuant to this Ordinance.

“Wheat Ridge Code of Laws” or “Code” means the municipal code and ordinances of the City of Wheat Ridge, Colorado as adopted and as amended from time to time by the Council.

Section 2. Admissions Tax Credit. In order to implement the provisions of the Public Finance Agreement, there is hereby granted to each person or entity obligated to pay, collect, or remit Admissions Tax on Admissions Sales that are initiated, consummated, conducted, or transacted within the Property (including without limitation all Admissions Sales made online, by email, by phone, through a travel agency, through a third-party such as Stub Hub or Ticketmaster, or otherwise initiated, consummated, conducted, or transacted outside of the Property), an Admissions Tax Credit against the collection of the Admissions Taxes as hereinafter set forth. Such Admissions Tax Credit shall be granted in the form of a reduction in the applicable Admissions Tax rate in an amount equal to two and fifty one-hundredths percent (2.50%), and shall attach to a particular transaction only to the extent that the PIF Revenues generated by the Admissions Credit PIF are collected and received by the PIF Collection Agent for such transaction. The Admissions Tax Credit shall be automatic and shall take effect immediately upon the occurrence of an Admissions Sale, but shall be subject to the applicable retailer's remittance to and receipt by the PIF Collection Agent of the PIF Revenues generated by the Admissions Credit PIF in accordance with the Admissions Credit PIF Covenant and the Public Finance Agreement (as reflected on the taxpayer's periodic admissions tax report).

Section 3. Sales Tax Credit. In order to implement the provisions of the Public Finance Agreement, there is hereby granted to each person or entity obligated to pay, collect, or remit Sales Tax on Retail Sales that are initiated, consummated, conducted, or transacted within the Property (including without limitation all Retail Sales for goods or services purchased online, by email, or by phone, but that are picked up by the purchaser from the Retailer's location within the Property or are delivered to the purchaser from the Retailer's location within the Property), a Sales Tax Credit against the collection of the Sales Taxes as hereinafter set forth. Such Sales Tax Credit shall be granted in the form of a reduction in the applicable Sales Tax rate in an amount equal to one and fifty one-hundredths percent (1.50%), and shall attach to a particular transaction only to the extent that the PIF Revenues generated by the Retail Credit PIF are collected and received by the PIF Collection Agent for such transaction. The Sales Tax Credit shall be automatic and shall take effect immediately upon the occurrence of a Retail Sale, but shall be subject to the applicable retailer's remittance to and receipt by the PIF Collection Agent of the PIF Revenues generated by the Retail Credit PIF in accordance with the Retail Credit PIF Covenant and the Public Finance Agreement (as reflected on the retailer's periodic sales tax report).

Section 4. Lodging Tax Credit. In order to implement the provisions of the Public Finance Agreement, there is hereby granted to each person or entity obligated to pay, collect, or remit Lodging Tax on the Lodging Sales for leases, rentals, lodging, or accommodations within the Property (including without limitation all Lodging Sales made online, by email, by phone, through a travel agency, event planner, or other third-party, or otherwise initiated, consummated, conducted, or transacted outside of the Property), a Lodging Tax Credit against the collection of the Lodging Taxes as hereinafter set forth. Such Lodging Tax Credit shall be granted in the form of a reduction in the applicable Lodging Tax

rate in an amount equal to five percent (5.0%), and shall attach to a particular transaction only to the extent that the PIF Revenues generated by the Lodging Credit PIF are collected and received by the PIF Collection Agent for such transaction. The Lodging Tax Credit shall be automatic and shall take effect immediately upon the occurrence of a Lodging Sale, but shall be subject to the applicable payor's remittance to and receipt by the PIF Collection Agent of the PIF Revenues generated by the Lodging Credit PIF in accordance with the Lodging Credit PIF Covenant and the Public Finance Agreement (as reflected on the lodging provider's periodic lodging tax report).

Section 5. Termination of Credits. The Admissions Tax Credit, Sales Tax Credit, and Lodging Tax Credit granted pursuant this Ordinance shall all expire on the earlier to occur of:

- (i) payment of all principal and interest on Bonds issued by the District; or
- (ii) on the last day of the calendar year which is 30 years after the date the first Bonds are issued.

The District shall provide written notice to the City of the date on which Bonds are issued, and the date on which Bonds are paid in full or defeased.

Section 6. Invalidity. In the event the Admissions Tax Credit, Sales Tax Credit, or Lodging Tax Credit established herein or any of the Credit PIFs are determined by a final court decision to be unconstitutional, void, or ineffective for any cause, taxpayers shall immediately be required to collect and remit the full Admissions Tax, Sales Tax, or Lodging Tax, as applicable, as provided in Chapter 22 of the Wheat Ridge Code of Laws.

Section 7. Change in Tax Rate. Nothing contained in this Ordinance shall prohibit the City, after complying with all requirements of law, from increasing or decreasing the City's Admissions Tax, Sales Tax, or Lodging Tax rate. Any reduction in the Admissions Tax or Sales Tax shall not affect the amount of the Admissions Tax Credit or Sales Tax Credit; provided, however, (A) if the Admissions Tax is reduced to an amount lower than the Admissions Tax Credit, Admissions Tax Credit shall automatically be reduced to equal the amount of the Admissions Tax and, if the Admissions Tax is thereafter increased, the Admissions Tax Credit shall automatically increase to equal the Admissions Tax until the Admissions Tax exceeds the original amount of the Admissions Tax Credit, or (B) if the Sales Tax is reduced to an amount lower than the Sales Tax Credit, the Sales Tax Credit shall automatically be reduced to equal the amount of the Sales Tax and, if the Sales Tax is thereafter increased, the Sales Tax Credit shall automatically increase to equal the Sales Tax until the Sales Tax exceeds the original amount of the Sales Tax Credit. If the Lodging Tax is reduced, the Lodging Tax Credit shall be automatically reduced to equal the Lodging Tax rate less 5% (by way of example only, if the Lodging Tax is reduced to 8%, the Lodging Tax Credit would be reduced to 3%), and, if the Lodging Tax is thereafter increased, the Lodging Tax Credit shall automatically increase to an

amount equal to the Lodging Tax less 5% but not to exceed 5% of Lodging Sales.

Section 8. Effect of Credit, Applicability of TABOR. The City Council hereby determines that the creation or termination of the Admissions Tax Credit, Sales Tax Credit, and Lodging Tax Credit does not constitute a tax increase, the imposition of a new tax, or a tax policy change directly causing a net tax revenue gain to the City, and that nothing herein creates a multiple fiscal year financial obligation or other indebtedness of the City, nor does the Admissions Tax Credit, Sales Tax Credit, or Lodging Tax Credit established by this Ordinance nor the termination of Admissions Tax Credit, Sales Tax Credit, or Lodging Tax Credit meet any of the other criteria requiring approval by the electors pursuant to Article X, Section 20 of the Colorado Constitution, also known as the Taxpayer's Bill of Rights (TABOR).

Section 9. Safety Clause. The City Council finds, determines, and declares that this Ordinance is promulgated and adopted under the general police power of the City of Wheat Ridge, that it is promulgated for the public health, safety, and welfare of the public and that 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 legislative object sought to be attained.


Section 10. Severability; Conflicting Ordinances Repealed. If any section, subsection, or clause of this Ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected thereby. All other ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Section 11. Effective Date. This Ordinance shall take effect upon adoption, as permitted by Section 5.11 of the Charter.

INTRODUCED, READ, AND ADOPTED on the first reading by a vote of 7 to 0 on this 24th day of June, 2018, ordered published in full in a newspaper of general circulation in the City of Wheat Ridge and Public Hearing and consideration on final passage set for July 9, 2018, at 7:00 o'clock p.m., in the Council Chambers, 7500 29th Avenue, Wheat Ridge, Colorado.

READ, ADOPTED, AND ORDERED PUBLISHED on second and final reading by a vote of 7 to 0, this 9th day of July, 2018.

SIGNED by the Mayor on this 9th day of July, 2018.



Bud Starker, Mayor

ATTEST:

Janelle Shaver
Janelle Shaver, City Clerk



Approved As To Form

Gerald E. Dahl
Gerald E. Dahl, City Attorney

First Publication: June 28, 2018
Second Publication: July 12, 2018
Wheat Ridge Transcript
Effective Date: July 9, 2018

EXHIBIT 1

Legal Description and Depiction of Property

LOTS 1 AND 2, BLOCK 1; LOTS 1 AND 2, BLOCK 2; LOT 1, BLOCK 3; LOTS 1, 2 AND 3, BLOCK 4; AND TRACTS A AND B; CLEAR CREEK CROSSING SUBDIVISION FILING NO. 2, COUNTY OF JEFFERSON, STATE OF COLORADO

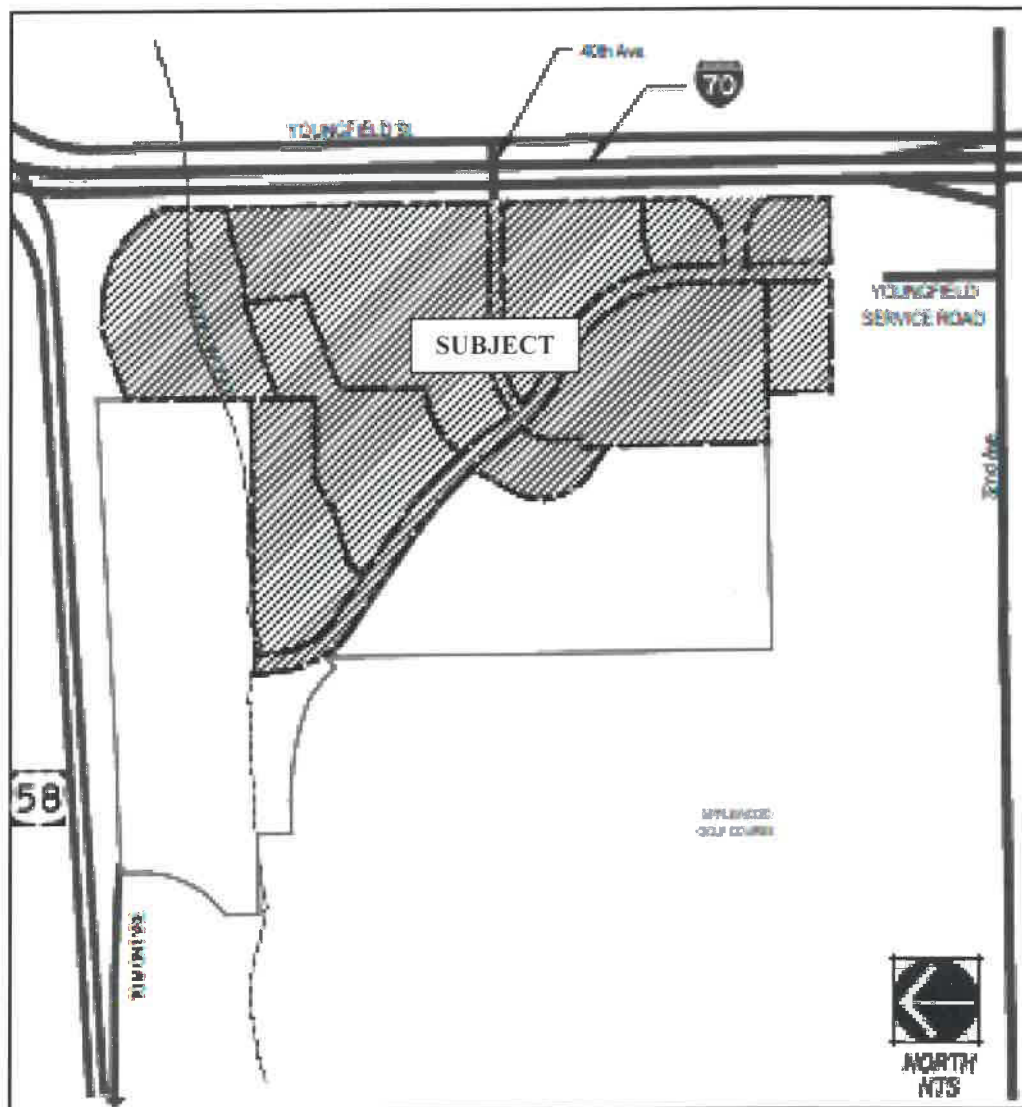


Exhibit 1-9