

RESOLUTION NO. 2016-91

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF PEORIA, MARICOPA COUNTY, ARIZONA PROPOSING AN ORDINANCE TO AMEND CHAPTER 12 OF THE PEORIA CITY CODE (1992), KNOWN AS THE PEORIA TAX CODE, TO PROVIDE FOR AN INCREASE IN THE TAX RATES ESTABLISHED THEREIN AND AMENDING SECTIONS 12-405(a); 12-410 (a); 12-415 (a); 12-416(a); 12-417(a); 12-425(a); 12-430(a); 12-435(a); 12-440(b); 12-444; 12-445(a); 12-447; 12-450(a); 12-455(a); 12-460(a); 12-462(a); 12-470(a); 12-475; 12-480(a); 12-610(b); AND AMENDING CHAPTER 2 OF THE PEORIA CITY CODE (1992) BY ENACTING SECTION 2-118 PERTAINING TO FINANCE; QUALITY OF LIFE TAX FUND; AND PROVIDING FOR AN EFFECTIVE DATE.

IT IS RESOLVED by the Mayor and Council of the City of Peoria:

SECTION 1. The following amendments to Chapter 12 of the Peoria City Code (1992 edition), also known as the Peoria Tax Code, are proposed to become valid when approved by a majority of the qualified electors voting thereon and upon proclamation of the Mayor after completion of the official canvass in accordance with Article X, Section 2 of the Peoria City Charter.

SECTION 2. Chapter 12 of the Peoria City Code (1992), known as the Peoria Tax Code, shall be amended by amendments to the following sections of the Peoria Tax Code, all of which shall read as follows:

A. Subsection (a) of Section 12-405 of the Peoria Tax Code is amended to provide as follows:

Sec. 12-405. Advertising.

- (a) The tax rate shall be at an amount equal to ~~one and eight tenths percent (1 8/10%)~~ two and two tenths percent (2 2/10%) of the gross income from the business activity upon every person engaging or continuing in the business of "local advertising" by billboards, direct mail, radio, television, or by any other means. However, commission and fees retained by an advertising agency shall not be includable in gross income from "local advertising". All delivery or disseminating of information directly to the public or any portion thereof for a consideration shall be considered "Local Advertising", except the following:

- (1) the advertising of a product or service which is sold or provided both within and without the State by more than one “commonly designated business entity” within the State, and in which the advertisement names either no “commonly designated business entity” within the State or more than one “commonly designated business entity”. “Commonly Designated Business Entity” means any person selling or providing any product or service to its customers under a common business name or style, even though there may be more than one legal entity conducting business functions using the same or substantially the same business name or style by virtue of a franchise, license, or similar agreement.
- (2) the advertising of a facility or of a service or activity in which neither the facility nor a business site carrying on such service or activity is located within the State.
- (3) the advertising of a product which may only be purchased from an out-of-State supplier.
- (4) political advertising for United States Presidential and Vice Presidential candidates only.
- (5) advertising by means of product purchase coupons redeemable at any retail establishment carrying such product but not product coupons redeemable only at a single commonly designated business entity.
- (6) advertising transportation services where a substantial portion of the transportation activity of the business entity advertised involves interstate or foreign carriage.

B. Subsection (a) of Section 12-410 of the Peoria Tax Code is amended to provide as follows:

Sec. 12-410. Amusements, exhibitions, and similar activities.

- (a) The tax rate shall be at an amount equal to ~~two and eight tenths percent (2 8/10%)~~ three and two tenths percent (3 2/10 percent) of the gross income from the business activity upon every person engaging or continuing in the business of providing amusement that begins in the City or takes place entirely within the City, which includes the following type or nature of businesses:
 - (1) operating or conducting theaters, movies, operas, shows of any type or nature, exhibitions, concerts, carnivals, circuses, amusement parks, menageries, fairs, races, contests, games, billiard or pool parlors, bowling alleys, skating rinks, tennis courts, golf courses, video games, pinball machines, public dances, dance halls, sports events, jukeboxes, batting and driving ranges, animal rides, or any other business charging admission for exhibition, amusement, or entertainment.

- (2) health spas, fitness centers, dance studios, or other persons who charge for the use of premises for sports, athletic, other health-related activities or instruction, whether on a per-event use, or for long-term usage, such as membership fees.

C. Subsection (a) of Section 12-415 of the Peoria Tax Code is amended to provide as follows:

Sec. 12-415. Construction contracting: prime contractors.

- (a) The tax rate shall be at an amount equal to ~~one and eight tenths percent (1 8/10%)~~ two and two tenths percent (2 2/10%) of the gross income from the business upon every construction contractor engaging or continuing in the business activity of construction contracting within the City.
 - (1) However, gross income from construction contracting shall not include charges related to groundwater measuring devices required by A.R.S. Section 45-604.
 - (2) (Reserved)
 - (3) Gross income from construction contracting shall not include gross income from the sale of manufactured buildings taxable under Section 12-427.
 - (4) For taxable periods beginning from and after July 1, 2008, the portion of gross income attributable to the actual direct costs of providing architectural or engineering services that are incorporated in a contract is not subject to tax under this Section. For the purposes of this paragraph, "Direct Costs" means the portion of the actual costs that are directly expended in providing architectural or engineering services.

D. Subsection (a) of Section 12-416 of the Peoria Tax Code is amended to provide as follows:

Sec. 12-416. Construction contracting: speculative builders.

- (a) The tax shall be equal to ~~one and eight tenths percent (1 8/10%)~~ two and two tenth percent (2 2/10%) of the gross income from the business activity upon every person engaging or continuing in business as a speculative builder within the City.
 - (1) The gross income of a speculative builder considered taxable shall include the total selling price from the sale of improved real property at the time of closing of escrow or transfer of title.

- (2) “Improved Real Property” means any real property:
 - (A) upon which a structure has been constructed; or
 - (B) where improvements have been made to land containing no structure (such as paving or landscaping); or
 - (C) which has been reconstructed as provided by Regulation; or
 - (D) where water, power, and streets have been constructed to the property line.
- (3) “Sale of Improved Real Property” includes any form of transaction, whether characterized as a lease or otherwise, which in substance is a transfer of title of, or equitable ownership in, improved real property and includes any lease of the property for a term of thirty (30) years or more (with all options for renewal being included as a part of the term). In the case of multiple unit projects, “sale” refers to the sale of the entire project or to the sale of any individual parcel or unit.
- (4) “Partially Improved Residential Real Property”, as used in this Section, means any improved real property, as defined in subsection (a)(2) above, being developed for sale to individual homeowners, where the construction of the residence upon such property is not substantially complete at the time of the sale.

E. Subsection (a) of Section 12-417 of the Peoria Tax Code is amended to provide as follows:

Sec. 12-417. Construction contracting: owner-builders who are not speculative builders.

- (a) At the expiration of twenty-four (24) months after improvement to the property is substantially complete, the tax liability for an owner-builder who is not a speculative builder shall be at an amount equal to ~~one and eight tenths percent (1 8/10%)~~ two and two tenths percent (2 2/10 %) of:
 - (1) the gross income from the activity of construction contracting upon the real property in question which was realized by those construction contractors to whom the owner-builder provided written declaration that they were not responsible for the taxes as prescribed in Subsection 12-415(c)(2); and
 - (2) the purchase of tangible personal property for incorporation into any improvement to real property, computed on the sales price.

F. Subsection (a) of Section 12-425 of the Peoria Tax Code is amended to provide as follows:

Sec. 12-425. Job printing.

(a) The tax rate shall be at an amount equal to ~~one and eight tenths percent (1 8/10%)~~ two and two tenths percent (2 2/10%) of the gross income from the business activity upon every person engaging or continuing in the business of job printing, which includes engraving of printing plates, embossing, copying, micrographics, and photo reproduction.

G. Subsection (a) of Section 12-427 of the Peoria Tax Code is amended to provide as follows:

Sec. 12-427. Manufactured buildings.

(a) The tax rate shall be at an amount equal to ~~one and eight tenths percent (1 8/10%)~~ two and two tenths percent (2 2/10%) of the gross income, including site preparation, moving to the site, and/or set-up, upon every person engaging or continuing in the business activity of selling manufactured buildings within the City. Such business activity is deemed to occur at the business location of the seller where the purchaser first entered into the contract to purchase the manufactured building.

H. Subsection (a) of Section 12-430 of the Peoria Tax Code is amended to provide as follows:

Sec. 12-430. Timbering and other extraction.

(a) The tax rate shall be at an amount equal to ~~one and eight tenths percent (1 8/10%)~~ two and two tenths percent (2 2/10%) of the gross income from the business activity upon every person engaging or continuing in the following businesses:

- (1) felling, producing, or preparing timber or any product of the forest for sale, profit, or commercial use.
- (2) extracting, refining, or producing any oil or natural gas for sale, profit, or commercial use.

I. Subsection (a) of Section 12-435 of the Peoria Tax Code is amended to provide as follows:

Sec. 12-435. Publishing and periodicals distribution.

- (a) The tax rate shall be at an amount equal to ~~one and eight tenths percent (1 8/10%)~~ two and two tenths percent (2 2/10%) of the gross income from the business activity upon every person engaging or continuing in the business activity of:
- (1) publication of newspapers, magazines, or other periodicals when published within the City, measured by the gross income derived from notices, subscriptions, and local advertising as defined in Section 12-405. In cases where the location of publication is both within and without this State, gross income subject to the tax shall refer only to gross income derived from residents of this State or generated by permanent business locations within this State.
 - (2) distribution or delivery within the City of newspapers, magazines, or other periodicals not published within the City, measured by the gross income derived from subscriptions.

J. Subsection (b) of Section 12-440 of the Peoria Tax Code is amended to provide as follows:

Section 12-440. Rental Occupancy.

- (b) The tax rate shall be at an amount of ~~one and eight tenths percent (1 8/10%)~~ two and two tenths percent (2 2/10%) of the gross rent paid by a tenant, to the extent of his occupancy of real property in this City under a pre-existing lease, upon such tenant, for the privilege of such occupancy, subject to the provisions of this Section.

K. The introductory paragraph of Section 12-444 of the Peoria Tax Code is amended to provide as follows:

Section 12-444. Hotels.

The tax rate shall be at an amount equal to ~~one and eight tenths percent (1 8/10%)~~ two and two tenths percent (2 2/10%) of the gross income from the business activity upon every person engaging or continuing in the business of operating a hotel charging for lodging and/or lodging space furnished to any:

L. Subsection (a) of Section 12-445 of Code is amended to provide as follows:

Sec. 12-445. Rental, leasing, and licensing for use of real property.

- (a) The tax rate shall be at an amount equal to ~~one and eight tenths percent (1 8/10%)~~ two and two tenths percent (2 2/10%) of the gross income from the business activity upon every person engaging or continuing in the business of leasing or renting real property located within the City for a consideration, to the tenant in actual possession, or the licensing for use of real property to the final licensee located within the City for a consideration including any improvements, rights, or interest in such property; provided further that:
- (1) Payments made by the lessee to, or on behalf of, the lessor for property taxes, repairs, or improvements are considered to be part of the taxable gross income.
 - (2) Charges for such items as telecommunications, utilities, pet fees, or maintenance are considered to be part of the taxable gross income.
 - (3) However, if the lessor engages in telecommunication activity, as evidenced by installing individual metering equipment and by billing each tenant based upon actual usage, such activity is taxable under Section 12-470.

M. Section 12-447 of the Peoria Tax Code is amended to provide as follows:

Sec. 12-447. Rental, leasing, and licensing for use of real property: additional tax upon transient lodging.

In addition to the taxes levied as provided in Section 12-445, there is hereby levied and shall be collected an additional tax in an amount equal to ~~three and eight tenths percent (3.8%)~~ four and two tenths percent (4 2/10%) of the gross income from the business activity of any hotel engaging or continuing within the City in the business of charging for lodging and/or lodging space furnished to any transient.

N. Subsection (a) of Section 12-450 of the Peoria Tax Code is amended to provide as follows:

Sec. 12-450. Rental, leasing, and licensing for use of tangible personal property.

- (a) The tax rate shall be at an amount equal to ~~one and eight tenths percent (1 8/10%)~~ two and two tenths percent (2 2/10%) of the gross income from the business activity upon every person engaging or continuing in the business of leasing, licensing for use, or renting tangible personal property for a consideration, including that which is semi-permanently or permanently installed within the City as provided by Regulation.

O. Subsection (a) of Section 12-455 of the Peoria Tax Code is amended to provide as follows:

Sec. 12-455. Restaurants and Bars.

(a) The tax rate shall be at an amount equal to ~~two and eight tenths percent (2 8/10%)~~ three and two tenths percent (3 2/10%) of the gross income from the business activity upon every person engaging or continuing in the business of preparing or serving food or beverage in a bar, cocktail lounge, restaurant, or similar establishment where articles of food or drink are prepared or served for consumption on or off the premises, including also the activity of catering. Cover charges and minimum charges must be included in the gross income of this business activity.

P. Subsection (a) of Section 12-460 of the Peoria Tax Code is amended to provide as follows:

Sec. 12-460. Retail sales: measure of tax; burden of proof; exclusions.

(a) The tax rate shall be at an amount equal to ~~one and eight tenths percent (1 8/10%)~~ two and two tenths percent (2 2/10%) of the gross income from the business activity upon every person engaging or continuing in the business of selling tangible personal property at retail.

Q. Subsection (a) of Section 12-462 of the Peoria Tax Code is amended to provide as follows:

Sec. 12-462. Retail sales: food for home consumption.

(a) The tax rate shall be at an amount equal to ~~one and six tenths percent (1.6%)~~ two percent (2.0%) of the gross income from the business activity upon every person engaging or continuing in the business of selling food for home consumption at retail.

R. Subsection (a) of Section 12-470 of the Peoria Tax Code is amended to provide as follows:

Sec. 12-470. Telecommunication services.

(a) The tax rate shall be at an amount equal to ~~one and eight tenths percent (1 8/10%)~~ two and two tenths percent (2 2/10%) of the gross income from the business activity upon every person engaging or continuing in the business of providing telecommunication services to consumers within this City.

(1) Telecommunication services shall include:

- (A) two-way voice, sound, and/or video communication over a communications channel.
 - (B) one-way voice, sound, and/or video transmission or relay over a communications channel.
 - (C) facsimile transmissions.
 - (D) providing relay or repeater service.
 - (E) providing computer interface services over a communications channel.
 - (F) time-sharing activities with a computer accomplished through the use of a communications channel.
- (2) Gross income from the business activity of providing telecommunication services to consumers within this City shall include:
- (A) all fees for connection to a telecommunication system.
 - (B) toll charges, charges for transmissions, and charges for other telecommunications services; provided that such charges relate to transmissions originating in the City and terminating in this State.
 - (C) fees charged for access to or subscription to or membership in a telecommunication system or network.
 - (D) charges for monitoring services relating to a security or burglar alarm system located within the City where such system transmits or receives signals or data over a communications channel.
 - (E) Charges for telephone, fax, or internet access services provided at an additional charge by a hotel business subject to taxation under Section 12-444.

S. The introductory paragraph of Section 12-475 of the Peoria Tax Code is amended to provide as follows:

Sec. 12-475. Transporting for hire.

The tax rate shall be at an amount equal to ~~one and eight tenths percent (1 8/10%)~~ two and two tenths percent (2 2/10%) of the gross income from the business activity upon every person engaging or continuing in the business of providing the following forms of transportation for hire from this City to another point within the State:

Subsection (a) of Section 12-480 of the Peoria Tax Code is amended to provide as follows:

Sec. 12-480. Utility services.

- (a) The tax rate shall be at an amount equal to ~~three and three tenths percent (3 3/10%)~~ three and seven tenths (3 7/10%) and of the gross income from the business activity upon every person engaging or continuing in the business of producing, providing, or furnishing utility services, including electricity, electric lights, current, power, gas (natural or artificial), or water to:

- (1) consumers or ratepayers who reside within the City.
- (2) (Reserved)

T. Subsection (b) of Section 12-610 of the Peoria Tax Code is amended to provide as follows:

Sec. 12-610. Use tax: imposition of tax; presumption.

- (b) The tax rate shall be at an amount equal to ~~one and eight tenths percent (1 8/10%)~~ two and two tenth percent (2 2/10%) of the:
- (1) cost of tangible personal property acquired from a retailer, upon every person storing or using such property in this City.
 - (2) gross income from the business activity upon every person meeting the requirements of subsection 12-620(b) or (c) who is engaged or continuing in the business activity of sales, rentals, leases, or licenses of tangible personal property to persons within the City for storage or use within the City, to the extent that tax has been collected upon such transaction.
 - (3) cost of the tangible personal property provided under the conditions of a warranty, maintenance, or service contract.
 - (4) cost of complimentary items provided to patrons without itemized charge by a restaurant, hotel, or other business.
 - (5) cost of food consumed by the owner or by employees or agents of the owner of a restaurant or bar subject to the provisions of Section 12-455 of this Chapter.

SECTION 3. Chapter 2 of the Peoria City Code (1992) is amended by enacting Section 2-188 pertaining to Finance; Quality of Life Tax Fund and which shall read as follows:

Section 2-188 Finance: Quality of Life Tax Fund.

(a) A Quality of Life Tax Fund is established in the City in to which revenues generated from the privilege tax increase authorized by the qualified electors of four tenths percent (4/10%) over and above the City's current transaction privilege tax rates collected in the manner provided by the Peoria Tax Code shall be deposited, together with other monies, if any legally available from any other source and appropriated by the City Council through the budget process for the Quality of Life Tax Fund for deposit wherein. This provision shall not be interpreted or place any legal obligation on the City Council to appropriate any other monies for deposit in the Quality of Life Tax Fund other than the revenues generated from the privilege tax increase authorized by the qualified of four tenths percent (4/10%) over and above the City's current transaction privilege tax rates.

(b) The City shall use the funds collected in the Quality of Life Tax Fund for the following areas:

(1) Public safety: land purchase and construction for fire/medical department facilities, police and fire personnel and other operational costs.

(2) Open Space Conservation and Preservation: For the purpose of preserving open space. To purchase or lease interests in land for the purpose of preserving open space; to pay all legal, financial, engineering, architectural, personnel, operational and all other necessary costs in connection therewith.

(3) Trails: Acquire, construct, improve, equip and maintain trails and ancillary facilities; to purchase or lease interests in land for the purpose of preserving recreational trail corridors; to pay all legal, financial, engineering, architectural, personnel, operational costs and all other necessary costs in connection therewith.

(4) Recreation, Parks and Libraries: Land purchase and construction of recreational and library facilities; improvements to neighborhood parks; personnel and operational costs.

(5) Neighborhood Stabilization: Neighborhood stabilization projects, streetscape, shade focused enhancements, and improvements in targeted economic zones.

(c) The use of revenues from such privilege tax increase are restricted, and the Council may pledge such revenues as it deems appropriate for the purposes of funding projects under this section, including but not limited for payments of debt service, lease payments, other obligations, and reserves.

(d) Monies remaining in the fund at the end of the fiscal year shall be carried over to the subsequent fiscal year, and together with new legally available revenues may be appropriated by the City Council in the manner provided in this section.

SECTION 4. The proposed amendments to the Peoria Tax Code, approved by the Mayor and a majority of the members of the City Council and entered into the minutes, shall be submitted by the Peoria City Clerk to the qualified electors of the City at the November 8, 2016 regular municipal election as provided by Article X, Section 2 of the Peoria City Charter. If approved by the voters, these amendments shall become effective on February 1, 2017.

SECTION 5. This Resolution shall become effective in the manner provided by law.

PASSED, AND ADOPTED by the Mayor and Council of the City of Peoria, Arizona, this 5th day of July, 2016.

The following votes were cast pertaining to this resolution:

<u>Mayor Cathy Carlat</u>	_____
<u>Vice Mayor Bridget Binsbacher</u>	_____
<u>Councilmember Vicki Hunt</u>	_____
<u>Councilmember Bill Patena</u>	_____
<u>Councilmember Michael Finn</u>	_____
<u>Councilmember Carlo Leone</u>	_____
<u>Councilmember Jon Edwards</u>	_____

Dated: _____

Cathy Carlat, Mayor

ATTEST:

Rhonda Geriminsky, City Clerk

APPROVED AS TO FORM:

Stephen J. Burg, Acting City Attorney