

ORDINANCE NO. 31-12

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF BUCKEYE, ARIZONA, RELATING TO TRANSACTION PRIVILEGE TAX; DESIGNATING AND ALLOCATING A PORTION OF THE REVENUE RECEIVED FROM THE STATE OF ARIZONA DEPARTMENT OF REVENUE FROM TRANSACTION PRIVILEGE TAXES FOR ECONOMIC DEVELOPMENT PURPOSES; PROVIDING DEFINITIONS AND PROCEDURES FOR THAT PORTION OF THE TRANSACTION PRIVILEGE TAX ALLOCATED AND DESIGNATED AS ECONOMIC DEVELOPMENT FUNDS; AND ACKNOWLEDGING, AUTHORIZING AND RATIFYING THE PLEDGE OF EXCISE TAXES FOR FINANCE PURPOSES IN ORDER TO ACHIEVE HIGHER DEBT RATINGS RESULTING IN LOWER DEBT SERVICE COSTS TO THE TOWN; REPEALING ORDINANCE NO. 23-10 EFFECTIVE OCTOBER 1, 2012; REPEALING ORDINANCE NO. 26-10 EFFECTIVE OCTOBER 1, 2012; REPEALING ORDINANCE NO. 28-10 EFFECTIVE OCTOBER 1, 2012; REPEALING ORDINANCE NO. 35-10 EFFECTIVE OCTOBER 1, 2012.

WHEREAS, the Mayor and Council of the Town of Buckeye (the “Town Council”) adopted Ordinance No. 23-10 on June 14, 2010 relating to, among other things, a temporary increase in the tax rate for transaction privilege taxes for certain specific business activities and relating to the designation of the additional revenue from the tax increase to be used for public safety services as set forth in Ordinance No. 23-10;

WHEREAS, the Town Council adopted Ordinance No. 26-10 on September 21, 2010 wherein Town Council, among other things, (i) clarified and affirmed the transaction privilege tax rates to be levied on certain specific business activities conducted within the Town of Buckeye, and (ii) set the additional tax rate in Ordinance No. 26-10 to terminate June 30, 2014, and (iii) designated and allocated a portion of the revenue received from the State of Arizona Department of Revenue from the transaction privilege taxes for economic development purposes, all as set forth in Ordinance No. 26-10;

WHEREAS, the Town Council adopted Ordinance No. 28-10 on September 21, 2010 relating to the definitions and uses of the Economic Development Funds in accordance with the requirements of Ordinance No. 26-10;

WHEREAS, with the exception of the transaction privilege tax rate levied on residential occupancy and on rental, leasing, and licensing for use of real property, the Town Council desires to make permanent the transaction privilege tax increase currently set to terminate June 30, 2014;

WHEREAS, the Town Council desires to clarify and affirm the transaction privilege tax rates to be levied on certain specific business activities conducted within the Town of Buckeye;

WHEREAS, to assist in the creation or retention of jobs or to otherwise improve or enhance the economic welfare of the residents of the Town of Buckeye, the Town Council

desires to designate and allocate a portion of the revenue received from the State of Arizona Department of Revenue from the transaction privilege taxes for economic development purposes;

WHEREAS, the Town Council adopted Ordinance No. 35-10 on November 16, 2010 to clearly state its intent to allow the pledging and liening of its transaction privilege taxes and, through Ordinance No. 35-10 acknowledged, authorized and ratified the pledge of excise taxes for finance purposes in order for the Town to achieve higher debt ratings resulting in lower debt service costs to the Town;

WHEREAS, notwithstanding any allocation or designation to a specific purpose, the Town Council desires to clarify and affirm that transaction privilege tax revenues will be available at any time to pledge or lien as security for and serve as a source of payment for any bond, obligation, lease, purchase agreement, trust agreement or other contract or agreement;

WHEREAS, the pledge by the Town of its transaction privilege taxes is a common and widely used form of municipal finance;

WHEREAS, as a result of the pledge of its transaction privilege taxes the Town is able to obtain better ratings of its finance instruments from national rating agencies, which higher ratings result in lower interest costs and lower debt service costs;

WHEREAS, the Town has previously pledged its transaction privilege taxes in connection with past capital financings and intends to do so in the future;

WHEREAS, the Town desires to clearly state its intent to allow the pledging and liening of its transaction privilege taxes through the adoption of this Ordinance, notwithstanding any terms or provisions of any other ordinance, resolution or agreement of the Town; and

WHEREAS, effective October 1, 2012, the Town Council desires to repeal Ordinance No. 23-10, Ordinance No. 26-10, Ordinance No. 28-10, and Ordinance No. 35-10.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BUCKEYE, ARIZONA, as follows:

Section 1. The foregoing recitals are incorporated as if fully set forth herein.

Section 2. The current transaction privilege tax rates, and the transaction privilege tax rates effective as of October 1, 2012 for the Town of Buckeye and the specific business activities on which the transaction privilege tax rates are to be levied are as set forth in **Exhibit A** attached hereto and incorporated herein by this reference.

Section 3. Subject to the following provisions of this Section 3, six and one-quarter percent (6.25%) of the revenue currently received from the State of Arizona Department of Revenue and the revenue received from the State of Arizona Department of Revenue on or after July 1, 2012 from the transaction privilege taxes levied as approved in Section 2 and Exhibit A of this Ordinance may be designated and allocated as Economic Development Funds. For Fiscal Year 2012-2013 and all fiscal years thereafter, such Economic Development Funds may be used

for economic development purposes and for economic development projects as defined by Ordinance of the Town Council as may be amended from time to time. The revenue received from the State of Arizona Department of Revenue from the transaction privilege taxes levied as approved in Section 2 and Exhibit A of this Ordinance that may be designated and allocated as Economic Development Funds shall be limited to six and one-quarter percent (6.25%) of the revenues that are received from the first two percent (2%) transaction privilege tax levied on the business activities set forth on Exhibit A attached hereto, **EXCEPT** telecommunication services. Any designation and allocation of transaction privilege tax revenue received as Economic Development Funds shall be subject to budget requirements and Town Council approval.

Section 4. For the purposes of this Ordinance, “Economic Development Fund(s)” shall mean only those funds received and held by the Town pursuant to Section 3 of this Ordinance, as such Section may be amended from time to time. Economic Development Funds are public monies and shall be segregated from other monies of the Town. Nothing contained herein shall prevent or prohibit the Town from pledging, encumbering or granting a security interest in all or part of the Town’s transaction privilege taxes, including but not limited to, Economic Development Funds, for any public purpose.

Section 5. Economic Development Funds shall be used for public purposes as permitted by law and this Ordinance and may be paid, spent, allocated, loaned, granted, or otherwise used by the Town Council, in its sole and absolute discretion, for Economic Development Purposes for areas located within or benefitting the annexed Buckeye Municipal Planning Area (the “Buckeye MPA”).

Section 6. For purposes of this Ordinance, Economic Development Projects shall mean any construction, acquisition, planned expenditure or other activity related to or accomplishing a specific Economic Development Purpose.

Section 7. For purposes of this Ordinance, Economic Development Purposes shall mean those public purposes as determined by the Town Council from time to time, in its sole and absolute discretion, which enhance the general health, safety and welfare of the Buckeye MPA, including, but not limited to, the following:

- (a) Qualitative Economic Development Projects;
- (b) Enhanced Town services;
- (c) Elimination or removal of nuisances, dilapidated buildings or facilities;
- (d) Enhanced or additional parking, lighting, pedestrian walkways, landscaping, open spaces or streetscapes;
- (e) Theme or public signage and restoration or improving building facades needed to accomplish a public purpose such as to eliminate slum or blight conditions;
- (f) Improving public infrastructure, including, but not limited to, water and sewer systems and streets;

- (g) Relocation of utilities;
- (h) Marketing and other professional services focusing on economic, commercial, employment and recreational activities or opportunities all of which accomplish a public purpose;
- (i) Acquisition of land or other interests in property necessary for Economic Development Projects;
- (j) Retention of professional services or personnel related to Economic Development Projects; and
- (k) Such other lawful expenditures related to enhancing economic development in the Buckeye MPA.

Section 8. The Town Manager, or authorized designee, shall establish application guidelines and procedures and shall prepare application forms to be utilized by the Town or any person or entity applying for Economic Development Funds.

Section 9. The Town Manager may submit to the Town Council, on the Town's behalf, requests for Economic Development Funds for the payment of the reasonable costs of one or more Economic Development Projects which will be directly managed, controlled, supervised or performed by the Town.

Section 10. Requests by a party other than the Town Manager for Economic Development Funds shall be submitted in writing to the Town Manager, or authorized designee, and shall be in substantial compliance with the requirements of the application guidelines and procedures established by the Town. The Town Manager or authorized designee shall review such requests and, upon the Town Manager's determination that the written application is in substantial compliance with the Town requirements, will forward a recommendation for approval or rejection to the Town Council. The Town Council may approve, reject or modify, in its sole and absolute discretion, any request for Economic Development Funds.

Section 11. The Town Manager, or authorized designee, may submit proposed Economic Development Projects that further the purpose of this Ordinance through the annual budget process and/or other times as necessary.

Section 12. Notwithstanding any terms or provisions of any ordinance, resolution or agreement of the Town of Buckeye, or any appropriation, allocation, designation or commitment of the Town's transaction privilege taxes, the Town acting through the Town Manager, the Town Finance Department or their designees, may pledge, encumber or grant an interest in all or part of the Town's transaction privilege taxes and other revenues included in the definition of "excise taxes" in the applicable finance documents, including but not limited to, State shared sales and income taxes and State revenue sharing collected and allocated or apportioned fines, forfeitures, license and permit fees, franchise fees, other transaction privilege, excise and business taxes, bed

and rental taxes, as security for payment of any bond, obligation, lease, purchase agreement, trust agreement or other contract or agreement.

Section 13. Any pledge, encumbrance or grant of security interest of the Town’s excise tax made, including but not limited to the Town’s Excise Tax Revenue Refunding Obligation, Series 2010 and three loans from the Greater Arizona Development Authority, shall constitute a first lien on such excise taxes.

Section 14. The Town Council, on September 20, 2011, adopted Ordinance No. 30-11, which among other things, adopted the Town of Buckeye Tax Code (the “Tax Code”) and, through Ordinance No. 30-11, the Tax Code was inserted into the Town Code of the Town of Buckeye, Arizona (the “Town Code”) as a new Chapter 13, Tax Code. The intent of inserting the new Chapter 13, Tax Code, into the Town Code was to renumber the tax code provisions contained in another chapter of the Town Code; there was no intent to set or change transaction privilege tax rates in adopting Chapter 13 or to create any conflict or inconsistencies with the transaction privilege tax rates adopted in Ordinance No. 26-10 on September 21, 2010. Therefore, the Town Council hereby ratifies and confirms, up to October 1, 2012, those transaction privilege tax rates adopted by Town Council in Ordinance No. 26-10.

Section 15. Ordinance No. 23-10 is repealed in its entirety effective October 1, 2012.

Section 16. Ordinance No. 26-10 is repealed in its entirety effective October 1, 2012.

Section 17. Ordinance No. 28-10 is repealed in its entirety effective October 1, 2012.

Section 18. Ordinance No. 35-10 is repealed in its entirety effective October 1, 2012.

Section 19. If any provision of this Ordinance is for any reason held by any court of competent jurisdiction to be unenforceable, such provision of portion hereof shall be deemed separate, distinct, and independent of all other provisions and such holding shall not affect the validity of the remaining portions of this Ordinance.

Section 20. All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

PASSED AND ADOPTED by the Town Council of the Town of Buckeye, Arizona, this 4th day of June, 2012.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

Jackie A. Meck, Mayor

ATTEST:

Lucinda J. Aja, Town Clerk

APPROVED AS TO FORM:

Scott W. Ruby, Town Attorney

EXHIBIT A
TO
ORDINANCE NO. 31-12

[Table setting forth transaction privilege tax rates for the Town of Buckeye and the specific
business activities on which the tax rates are to be levied]

(See following page.)

TOWN OF BUCKEYE TRANSACTION PRIVILEGE TAX TABLE (Exhibit "A")

Section	Business Activities	Current Tax Rate ¹	Tax Rate Effective 10/01/2012 ¹
13-405	Advertising.	3%	3%
13-410	Amusements, exhibitions, and similar activities.	3%	3%
13-415	Construction contracting: construction contractors.	3%	3%
13-416	Construction contracting: speculative builders.	3%	3%
13-417	Construction contracting: owner-builders who are not speculative builders.	3%	3%
13-420	Feed at wholesale.	3%	3%
13-425	Job printing.	3%	3%
13-427	Manufactured buildings.	3%	3%
13-430	Timbering and other extraction.	3%	3%
13-432	Mining.	3%	3%
13-435	Publishing and periodicals distribution.	3%	3%
13-440	Rental occupancy.	3%	2%
13-444	Hotels.	3%	3%
13-445	Rental, leasing, and licensing for use of real property.	3%	2%
13-450	Rental, leasing and licensing for use of tangible personal property.	3%	3%
13-455	Restaurants and Bars.	3%	3%
13-460	Retail sales: measure of tax; burden of proof; exclusions.	3%	3%
13-470	Telecommunication services.	4%	4%
13-475	Transporting for hire.	3%	3%
13-480	Utility services.	3%	3%

¹ The revenue currently received, and received on or after July 1, 2012, from the State of Arizona Department of Revenue from the transaction privilege taxes levied as approved in Section 2 and Exhibit A of this Ordinance that may be designated and allocated as Economic Development Funds shall be limited to six and one-quarter percent (6.25%) of the revenues that are received from the first two percent (2%) transaction privilege tax levied on the business activities set forth on this Table **EXCEPT** telecommunication services. Any designation and allocation of transaction privilege tax revenue received as Economic Development Funds shall be subject to budget requirements and Town Council approval. **(For exact text, see Ordinance No. 31-12 adopted June 4, 2012.)**