

PASSED 2/20/18

ORDINANCE NO. 4 - 2018

AN ORDINANCE TO AMEND THE VILLAGE OF OAK HARBOR INCOME TAX CODE TO ADOPT SECTIONS 718.80 THROUGH 718.95 OF THE OHIO REVISED CODE AND DECLARING AN EMERGENCY.

WHEREAS, in House Bill (H.B.) 49 of the 132nd General Assembly, the State's general appropriations bill for the biennium, includes Section 803.100 purporting to require that municipalities, on or before January 31, 2018, adopt certain municipal income tax provisions that are also adopted within H.B. 49 to authorize State officials to collect and administer municipal net profits taxes; and

WHEREAS, Section 803.100 of H.B. 49 references and relies upon Section 718.04(A) of the Ohio Revised Code, which purports to make municipal income taxing authority conditional upon a municipality's adoption of code sections as dictated by the State; and

WHEREAS, although the municipal income tax provisions of H.B. 49, and Section 718.04(A) of the Ohio Revised Code, violate the Home Rule Amendment, the Village nevertheless is compelled to adopt H.B. 49's municipal income tax provisions, on or before January 31, 2018, to avoid any doubt or taxpayer challenge as to its ability to impose a municipal income tax under the terms of Section 803.100 of H.B. 49 and Section 718.04(A) of the Ohio Revised Code; and

WHEREAS, the Village is a party to ongoing litigation seeking a declaration that the H.B. 49 municipal income tax provisions, Section 718.04(A) of the Ohio Revised Code, and other provisions of Ohio law that usurp the powers of local self-government are unconstitutional, and to enjoin all actions by state officials to implement the H.B. 49 municipal income tax provisions. Pursuant to that litigation, the Village has until the end of February, 2018 to adopt said provision; and

WHEREAS, the Village, by enacting this Ordinance, does not concede the legality of H.B. 49's municipal income tax provisions, Section 718.04(A) of the Ohio Revised Code, or any other law that is subject to the suit in which the Village is participating, and reserves its right to continue prosecution of that lawsuit;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF OAK HARBOR, OTTAWA COUNTY, OHIO AS FOLLOWS:

Section 1.

That Exhibit A attached hereto and incorporated by reference herein shall hereby be enacted.

Section 2.

That the Village Council hereby expressly finds and determines that it does not concede the legality of H.B. 49's municipal income tax provisions; Section 803.100 of H.B. 49; Section 718.04(A) of the Ohio Revised Code; or any other law that is the subject of the action pending in Case Number 2017 CV 10258 in the Franklin County Court of Common Pleas, and that the Village reserves its rights to continue its participation in and prosecution of said litigation, and any other litigation challenging the State's authority to dictate municipal tax collection and administration, and that adoption of this Ordinance shall not prejudice the claims of the Village therein.

Section 3.

That this Ordinance is declared to be emergency legislation, necessary for the immediate preservation of the public peace, health, and safety, which shall be effective upon passage, such emergency arising from the coercive provisions of law found in H.B. 49 and Section 718.04(A) of the Ohio Revised Code and the need for the Village to preserve its taxing authority in the event that the H.B. 49 municipal income tax provisions and Section 718.04(A) of the Ohio Revised Code are not declared to be unconstitutional.

Section 4.

In the action pending in Case Number 2017 CV 10258 in the Franklin County Court of Common Pleas, the Court is currently considering issuing an injunction preventing the State from enforcing H.B.49. If the Court issues an injunction, whether the injunction is permanent or temporary, quelling or suspending the enforceability of H.B. 49, this Ordinance will not take effect and will automatically be repealed, no matter when that injunction is issued by the Court.

Section 5.

That the Council hereby finds that this Ordinance was deliberated upon and passed in open meetings in compliance with Section 121.22 of the Ohio Revised Code.

Section 6.

That if any provision of the H.B 49 municipal income tax provisions is found unconstitutional, or is stayed or enjoined, that the provisions adopted in Section 1 of this Ordinance shall likewise be stayed.

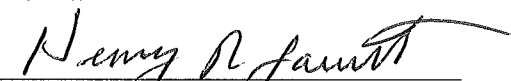
WHEREFORE, this Ordinance shall be in full force and effect immediately upon its passage.

Approved: February 20, 2018



Joseph W. Helle, Mayor

Attest:



Henry R. Jarrett, Fiscal Officer

Dated: 2-26, 2018