

BOROUGH OF EDGEWOOD
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MAY 5, 2008

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**BOROUGH OF EDGEWOOD
MINUTES OF THE MEETING OF COUNCIL HELD
MAY 5, 2008**

Council Vice President McDonald called the Meeting of the Council of the Borough of Edgewood to order on Monday, May 5, 2008 at 7:37 PM in the Municipal Building.

ROLL CALL

Borough Manager Kurt Ferguson called the roll and the following responded: Mr. Harding, Mr. Reynolds, Ms. Pryce, Ms. McDonald.

Mr. Szefi, Mr. Hellett and Ms. Schaefer were absent.

Mayor Jean O. Davin was available by phone and Solicitor W. Timothy Barry was present. Junior Councilperson McArdle was absent.

The Pledge of Allegiance was recited.

ITEMS FROM THE FLOOR

Ms. Clevenger, representing the Edgewood Foundation, stopped by as part of their monthly participatory process.

AUTHORIZATION TO PAY BILLS

M-1 Mr. Harding moved to authorize the payment of bills, for goods and services received by the Borough, having been reviewed and approved by the General Government Committee in the amount of \$61,813.00. Second by Mr. Reynolds.

DISCUSSION: None.

Upon roll call vote, the following was recorded: Mr. Harding, Mr. Reynolds, Ms. Pryce, Ms. McDonald voted yes. **Motion carried.**

Ms. McDonald noted that there would be a brief Executive Session, but no action would follow. She also changed the order of the meeting to allow those presenting reports the option of leaving before the eleven page ordinance on the agenda was read.

VOLUNTEER FIRE DEPARTMENT

Mr. Halle reported a quiet month, stating that there had been ten (10) calls, with four (4) incidents on the Parkway. For the year, there have been two hundred fifty nine (259) hours logged and training hours totaling two hundred sixty six (266).

A "member of the month" program will begin for the fire department, according to Mr. Halle, and this will honor training, leadership and attendance, among other things. The first awardee will

be Mr. Reynolds. Line officers will not be eligible to receive these awards, but will choose the awardees.

Mr. Halle said a pet CPR class was sponsored at the First Presbyterian Church of Edgewood and was attended by forty four (44) people. The department purchased a CPR kit. The course was taught by Allegheny County.

DISCUSSION: None.

Ms. McDonald noted that the Recreation report would be included in the Borough Manager Report.

WATER AUTHORITY REPORT

Mr. Fuller stated that the Wilksburg-Penn Joint Water Authority audit was presented at its last meeting. It was decided that the auditor should be switched every few years. No weaknesses were noted in the Authority.

DISCUSSION: Ms. McDonald asked how much water line insurance, alluded to by Mr. Fuller, will cost.

PLANNING COMMISSION REPORT

Mr. Szefi was absent and there was no report available.

DISCUSSION: None.

COG REPORT

Mr. Hellett was absent and there was no report available.

DISCUSSION: None.

SOLICITOR'S REPORT

Mr. Barry had no separate report.

DISCUSSION: None.

BOROUGH MANAGER'S REPORT

For the Recreation Department, Mr. Ferguson reported that baseball is underway. He said that the Movie Night schedule will begin in the second week in June.

Mr. Ferguson gave details regarding paving at the Edgewood Avenue bridge, stating that this was done after detailed and quick discussions with Penn Dot. It was agreed that they would pave 230 feet in the area at \$126.05 per foot. A motion is currently on the agenda regarding the

paving, according to Mr. Ferguson and the Solicitor agreed that the Borough should pass the motion.

The original motion was to pave from Elm to 225 Edgewood Avenue and, with the unexpected paving, there will be a need to pave only an additional 48 feet at an estimated cost of \$5,000. Following this, paving will occur from Maple Avenue to within 30 feet of Oakview Avenue. Mr. Ferguson noted that the Edgewood Avenue paving has been financially complicated and indicated that the portion which has been completed was valued at \$80,000.

A motion has been passed for paving of the other streets and a bid opening will occur on May 28, 2008, with paving beginning in early June.

Mr. Ferguson reported on the water line replacement on Pennwood Avenue from the Wilkinsburg line to Washington Street. He stated that this has been backfilled and by the third week of May will be paved. A portion of Washington Street will also be repaved where the water and sewer lines were broken.

The break which occurred near the tennis court on Greendale will also be repaired. Mr. Ferguson stated that one of the first things visible to anyone entering the Borough is the infrastructure. He further noted that on a recent trip to Philadelphia, people were amazed at some of the programs which the Borough has in place, including recycling and leaf programs.

DISCUSSION: Mr. Reynolds asked if, prior to paving Washington Street, the fire hydrants could be looked at, as they seem to be in disrepair.

Mr. Barry noted that under the Cooperation Agreement with Port Authority Transit, the item remaining to be done is repaving of a portion of Edgewood Avenue. He asked Mr. Ferguson to speak about this.

Mr. Ferguson stated that part of the Agreement is that when the project is complete, Port Authority Transit will be responsible for repaving Edgewood Avenue. He stated that the base was deteriorating at a fast rate and one half mile was cut out and repoured.

It was Mr. Ferguson's thought that getting the work done will access grant money. He stated that the road will be ready to be repaved and stated that he will proceed and have it repaved.

Mr. Reynolds discussed the Cooperation Agreement, the linear park and the curb cuts. Following a discussion with Congressman Doyle, Mr. Reynolds stated that his sense was that paving would have to be included.

Ms. Pryce asked if Port Authority Transit was obligated to do the base and Mr. Ferguson answered in the affirmative. He said that the binder is about one and one half to two inches and the base provides a foundation. When it crumbles, according to Mr. Ferguson, there will be a rough ride.

Ms. Pryce asked if Borough will respond to the residents of LaCrosse Street and their petition and Ms. McDonald stated that this would be handled in the Public Works discussion.

COMMITTEE ACTION

M-2 Ms. Pryce moved to amend the street paving advertisement, originally passed by Borough Council on February 19, 2008, to expand paving on Edgewood Avenue from 225 Edgewood, an additional 48 feet. Second by Mr. Reynolds.

DISCUSSION: None.

Upon roll call vote, the following was recorded: Mr. Harding, Mr. Reynolds, Ms. Pryce, Ms. McDonald voted yes. **Motion carried.**

M-3 Mr. Harding read Ordinance 1023 on Third and Final Reading and asked for its immediate adoption. Second by Mr. Reynolds.

BOROUGH OF EDGEWOOD

ORDINANCE 1023

AN ORDINANCE OF THE BOROUGH OF EDGEWOOD, COUNTY OF ALLEGHENY, AND COMMONWEALTH OF PENNSYLVANIA, AMENDING AND RESTATING ARTICLE II OF CHAPTER 184 OF THE BOROUGH OF EDGEWOOD CODE OF ORDINANCES, TAXATION IN ORDER TO LEVY, ASSESS AND COLLECT A LOCAL SERVICES TAX AND TO REPEAL ITS EMERGENCY AND MUNICIPAL SERVICES TAX ON INDIVIDUALS FOR THE PRIVILEGE OF ENGAGING IN AN OCCUPATION WITHIN THE BOROUGH, AND TO ESTABLISH REGULATIONS RELATED THERETO.

WHEREAS, the Local Tax Enabling Act, 53 P.S. §6901 *et seq.*, authorized the Council of the Borough of Edgewood (the "Borough") to levy, assess and collect a tax on individuals for the privilege of engaging in an occupation within the Borough formerly known as an occupation privilege tax; and

WHEREAS, the Commonwealth of Pennsylvania thereafter enacted Act 222 of 2004, which amended the Local Tax Enabling Act to replace the occupation privilege tax with an emergency and municipal services tax and to establish regulations related to the same; and

WHEREAS, thereafter, the Commonwealth of Pennsylvania adopted Act No. 7 of 2007 which provided for the repeal of the emergency and municipal services tax by providing for a local services tax; and

WHEREAS, Article II of Chapter 184 of the Borough of Edgewood Code of Ordinances, Taxation, established the regulations for the Borough's emergency and municipal services tax; and

WHEREAS, in order to comply with Act No. 7 of 2007, the Council of the Borough desires to amend and restate Article II of Chapter 184 of the Borough of Edgewood Code of Ordinances, Taxation, in order to levy, assess and collect a local services tax on individuals for the privilege of engaging in an occupation within the Borough and to establish regulations related to the same.

NOW THEREFORE the Council of the Borough of Edgewood hereby ordains and enacts as follows:

SECTION 1: Article II of Chapter 184 of the Borough of Edgewood Code of Ordinances, Taxation, is amended and restated in its entirety to read as follows:

ARTICLE II

Local Services Tax

Title.

This Article shall be known and cited as the "Local Services Tax Ordinance."

Authority.

This part is enacted under the authority of the Local Tax Enabling Act, as amended by Act No.7 of 2007.

Purpose.

The purpose of this Part is to provide revenue for police, fire and emergency services; road construction and maintenance; the reduction of property taxes and for such other purposes as may be specified for such tax from time to time by §22.6 of the Local Tax Enabling Act, as amended.

Definitions.

The following words and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context or language clearly indicates or requires a different meaning:

POLITICAL SUBDIVISION - The area within the corporate limits of the Borough of Edgewood.

COLLECTOR - The person, public employee or private agency designated by the political subdivision to collect and administer the tax herein imposed.

DCED - The Department of Community and Economic Development of the Commonwealth of Pennsylvania.

EARNED INCOME - "Compensation" as this term is defined in Section 13 (relating to earned income taxes) of the Local Tax Enabling Act, as amended.

HE, HIS or HIM- Indicates the singular and plural number, as well as male, female and neuter genders.

INDIVIDUAL - Any person, male or female, engaged in any occupation, trade or profession within the corporate limits of the political subdivision.

NET PROFITS - The net income from the operation of a business, profession, or other activity, as this term is defined in Section 13, relating to earned income taxes) of the Local Tax Enabling Act, as amended.

OCCUPATION - Any trade, profession, business or undertaking of any type, kind or character, including services, domestic or other, earned on or performed within the corporate limits of the political subdivision for which compensation is charged or received; whether by means of salary, wages, commission or fees for services rendered.

RESERVE COMPONENT OF THE ARMED FORCES - The United States Army Reserve, United States Navy Reserve, United States Marine Corps Reserve, United States Coast Guard Reserve, United States Air Force Reserve, the Pennsylvania Army National Guard or the Pennsylvania Air National Guard.

TAX - The local services tax levied by this Article.

TAX YEAR - The period from January 1 until December 31 in any year; a calendar year.

Levy of tax

The Borough of Edgewood hereby levies and imposes on every individual engaging in an occupation within the jurisdictional limits of the Borough of Edgewood a tax in the amount of \$52.00 per annum, beginning the first day of January 2008 and continuing on a calendar basis annually thereafter, until modified or repealed by subsequent ordinance.

Exemption and refunds.

A. Exemption. Any person whose total earned income and net profits from all sources within the political subdivision is less than Twelve Thousand (\$12,000.00) Dollars for any calendar year in which the tax is levied is exempt from the payment of the tax for that calendar year. In addition, the following persons are exempt from payment of the tax:

- (1) Any person who has served in any war or armed conflict in which the United States was engaged and is honorably discharged or released under honorable circumstances from active service if, as a result of military service, the person is blind, paraplegic or a double or quadruple amputee or has a service-connected disability declared by the United States Veterans' Administration or its successor to be a total one hundred percent disability.
- (2) Any person who serves as a member of a reserve component of the armed forces and is called to active duty at any time during the taxable year.

B. Procedure to Claim Exemption.

- (1) A person seeking to claim an exemption from the local services tax may annually file an exemption certificate with the political subdivision and with the person's employer affirming that the person reasonably expects to receive earned income and net profits from all sources within the political subdivision of less than twelve thousand dollars (\$12,000) in the calendar year for which the exemption certificate is filed. In the event the political subdivision utilizes a tax collection officer, it shall provide a copy of the exemption certificate to that officer. The exemption certificate shall have attached to it a copy of all the employee's last pay stubs or W-2 forms from employment within the political subdivision for the year prior to the fiscal year for which the employee is requesting to be exempted from the tax. Upon receipt of the exemption certificate and until otherwise instructed by the political subdivision or except as required by clause (2), the employer shall not withhold the tax from the person during the calendar year or the remainder of the calendar year for which the exemption certificate applies, Employers shall ensure that the exemption certificate forms are readily

available to employees at all times and shall furnish each new employee with a form at the time of hiring. The exemption certificate form shall be the uniform form provided by the political subdivision.

- (2) With respect to a person who claimed an exemption for a given calendar year from the tax, upon notification to an employer by the person or by the political subdivision that the person has received earned income and net profits from all sources within the political subdivision equal to or in excess of twelve thousand dollars (\$12,000) in that calendar year or that the person is otherwise ineligible for the tax exemption for that calendar year, or upon an employer's payment to the person of earned income within the municipality in an amount equal to or in excess of twelve thousand dollars (\$12,000) in that calendar year, an employer shall withhold the local services tax from the person under clause (3).
- (3) If a person who claimed an exemption for a given calendar year from the tax becomes subject to the tax for the calendar year under clause (2), the employer shall withhold the tax for the remainder of that calendar year. The employer shall withhold from the person, for the first payroll period after receipt of the notification under clause (2), a lump sum equal to the amount of tax that was not withheld from the person due to the exemption claimed by the person under this subsection, plus the per payroll amount due for that first payroll period. The amount of tax withheld per payroll period for the remaining payroll periods in that calendar year shall be the same amount withheld for other employees. In the event the employment of a person subject to withholding of the tax under this clause is subsequently severed in that calendar year, the person shall be liable for any outstanding balance of tax due, and the political subdivision may pursue collection under this article.
- (4) Except as provided in clause (2), it is the intent of this subsection that employers shall not be responsible for investigating exemption certificates, monitoring tax exemption eligibility or exempting any employee from the local services tax.

- C. Refunds. The Borough of Edgewood, in consultation with the Collector and DCED, shall establish procedures for the processing of refund claims for any tax paid by any person who is eligible for exemption, which procedures shall be in accord with provisions of the general municipal law relating to refunds of overpayments and interest on overpayments. Refunds made within seventy-five days of a refund request or seventy-five days after the last day the employer is required to remit the tax for the last quarter of the calendar year, whichever is later, shall not be subject to interest. No refunds shall be made for amounts overpaid in a calendar year that do not exceed one dollar (\$1): The Borough of Edgewood or the Collector shall determine eligibility for exemption and provide refunds to exempt persons.

Duty of employers to collect.

- A. Each employer within the political subdivision, as well as those employers situated outside the political subdivision but who engage in business within the political subdivision, is hereby charged with the duty of collecting the tax from each of his employees engaged by him or performing for him within the political subdivision and making a return and payment thereof to the Collector. Further, each employer is hereby authorized to deduct this tax for each employee in his or her employ, whether said employee is paid by salary, wage or commission and whether or not all such services are performed within the political subdivision.
- B. A person subject to the tax shall be assessed by the employer a pro rata share of the tax for each payroll period in which the person is engaging in an occupation. The pro rata share of the tax assessed on the person for a payroll period shall be determined by dividing the rate of the tax levied for the calendar year by the number of payroll periods established by the employer for the calendar year. For purposes of determining the pro rata share, an employer shall round down the amount of the tax collected each payroll period to the nearest one-hundredth of a dollar. Collection of the tax shall be made on a payroll period basis for each payroll period in which the person is engaging in an occupation, except as provided in Paragraph D of this Section, For purposes of this paragraph,

combined rate shall mean the aggregate annual rate of the tax levied by the school district and the municipality.

- C. No person shall be subject to the payment of the local services tax by more than one political subdivision during each payroll period.
- D. In the case of concurrent employment, an employer shall refrain from withholding the tax if the employee provides a recent pay statement from a principal employer that includes the name of the employer, the length of the payroll period and the amount of the tax withheld and a statement from the employee that the pay statement is from the employee's principal employer and the employee will notify other employers of a change in principal place of employment within two weeks of its occurrence. The employee's statement shall be provided on the form approved by DCED.
- E. The tax shall be no more than fifty-two dollars (\$52) on each person for each calendar year, irrespective of the number of political subdivisions within which a person may be employed. The political subdivision shall provide a taxpayer a receipt of payment upon request by the taxpayer.
- F. No employer shall be held liable for failure to withhold the tax or for the payment of the withheld tax money to the political subdivision if the failure to withhold taxes arises from incorrect information submitted by the employee as to the employee's place or places of employment, the employee's principal office or where the employee is principally employed. Further, an employer shall not be liable for payment of the local services tax in an amount exceeding the amount withheld by the employer if the employer complies with the provisions of Paragraph B, titled "Procedure to Claim Exemption", under the section of this Article, titled "Exemption and refunds", and remits the amount so withheld in accordance with this article.
- G. Employers shall be required to remit the local services taxes thirty days after the end of each quarter of a calendar year.

Returns.

Each employer shall prepare and file a return showing a computation of the tax on forms to be supplied to the employer by the Collector. If an employer fails to file the return and pay the tax, whether or

not the employer makes collection thereof from the salary, wages or commissions paid by him or her to an employee, except as provided hereafter in this article, the employer shall be responsible for the payment of the tax in full as though the tax had been originally levied against the employer.

Dates for determining tax liability and payment.

Each employer shall use his employment and payroll records from the first day of January to March 31 each year for determining the number of employees from whom said tax shall be deducted and paid over to the collector on or before April 30 of the same calendar year. Supplemental reports shall be made by each employer on July 30, October 30 and January 31 for new employees as reflected on his employment and payroll records from April 1 to June 30, July 1 to September 30 and October 1 to December 31, and payments on these supplemental reports shall be made on July 30, October 30 and January 31, respectively.

Self-employed individuals.

Each self-employed individual who has Earned Income or realizes Net Profit, as those terms are defined herein, within the political subdivision shall be required to comply with this article and pay the tax due to the Collector on or before the thirtieth day following the end of each quarter.

Individuals engaged in more than one occupation or employed in more than one political subdivision.

A. The situs of the tax shall be the place of employment on the first day the person becomes subject to the tax during each payroll period. In the event a person is engaged in more than one occupation, that is, concurrent employment, or an occupation which requires the person working in more than one political subdivision during a payroll period, the priority of claim to collect the local services tax shall be in the following order:

- (1) First, the political subdivision in which a person maintains his or her principal office or is principally employed;
- (2) Second, the political subdivision in which the person resides and works if the tax is levied by that political subdivision;

- (3) Third, the political subdivision in which a person is employed and which imposes the tax nearest in miles to the person's home. In case of dispute, a tax receipt of the taxing authority for that calendar year declaring that the taxpayer has made prior payment constitutes prima facie certification of payment to all other political subdivisions.

Nonresidents subject to tax.

All employers and self-employed individuals residing or having their places of business outside of the political subdivision but who perform services of any type or kind or engage in any occupation or profession within the political subdivision do, by virtue thereof, agree to be bound by and subject themselves to the provisions, penalties and regulations promulgated under this article with the same force and effect as though they were residents of the political subdivision. Further, any individual engaged in an occupation within the political subdivision and an employee of a nonresidential employer may, for the purpose of this article, be considered a self-employed person, and in the event his or her tax is not paid, the political subdivision shall have the option of proceeding against either the employer or employee for the collection of this tax as hereinafter provided.

Administration of tax.

- A. It shall be the duty of the Collector to accept and receive payments of this tax and keep a record thereof showing the amount received by him from each employer or self-employed person, together with the date the tax was received. It shall be the duty of the Collector to accept and keep a record of the information submitted by employers relating to the number of employees subject to the tax, the number of employees exempt from the tax, the employee exemption certificates and refunds of the tax paid to individuals and employers.
- B. The Collector is hereby charged with the administration and enforcement of this article and is hereby charged and empowered, subject to municipal approval, to proscribe, adopt and promulgate rules and regulations relating to any matter pertaining to the administration and enforcement of this article, including provisions for the examination of payroll records of any employer subject to this article, the examination and correction of any return made in compliance with this article and any payment

alleged or found to be incorrect or as to which overpayment is claimed or found to have occurred.

Any person aggrieved by any decision of the Collector shall have the right to appeal to the Court of Common Pleas of Allegheny County as in other cases provided.

- C. The Collector is hereby authorized to examine the books and payroll records of any employer in order to verify the accuracy of any return made by an employer or, if no return was made, to ascertain the tax due. Each employer is hereby directed and required to give the Collector the means, facilities and opportunity for such examination.

Suits for collection.

- A. In the event that any tax under this article remains due or unpaid 30 days after the due dates above set forth, the Collector may sue for the recovery of any such tax due or unpaid under this article, together with interest and penalty.
- B. If for any reason the tax is not paid when due, interest at the rate of 6% on the amount of such tax shall be calculated beginning with the due date of the tax and a penalty of 5% shall be added to the flat rate of such tax for nonpayment thereof. Where suit is brought for the recovery of this tax or other appropriate remedy undertaken, the individual liable therefor shall, in addition, be responsible and liable for the costs of collection.

Violations and penalties.

Whoever makes any false or untrue statement on any return required by this article, or whoever refuses inspection of the books, records or accounts in his or her custody and control setting forth the number of employees subject to this tax who are in his or her employment, or whoever fails or refuses to file any return required by this article shall be guilty of a violation and, upon conviction thereof, shall be sentenced to pay a fine of not more than \$600 and costs of prosecution, and, in default of payment of such fine and costs, to imprisonment for not more than 30 days. The action to enforce the penalty herein

prescribed may be instituted against any person in charge of the business of any employer who shall have failed or who refuses to file a return required by this article.

Interpretation.

- A. Nothing contained in this article shall be construed to empower the political subdivision to levy and collect the tax hereby imposed on any occupation not within the taxing power of the political subdivision under the Constitution of the United States and the laws of the Commonwealth of Pennsylvania.
- B. If the tax hereby imposed under the provisions of this article shall be held by any court of competent jurisdiction to be in violation of the Constitution of the United States or of the laws of the Commonwealth of Pennsylvania as to any individual, the decision of the court shall not affect or impair the right to impose or collect said tax or the validity of the tax so imposed on other persons or individuals as herein provided

SECTION 2: Except as set forth hereafter, all ordinances or parts of ordinances inconsistent herewith are hereby repealed. Nothing herein shall be construed to repeal the imposition and collection of an occupation privilege tax, plus applicable penalties and interest, for calendar year 2005 and all prior calendar years, or of an emergency and municipal services tax, plus applicable penalties and interest, for calendar years 2006 and 2007, as the same exist prior to this amendment.

SECTION 3: This Ordinance shall become effective in accordance with applicable law, with the repeal of previous Occupational Privilege and Emergency and Municipal Services Tax Ordinances, effective January 1, 2008.

SECTION 4: In all other respects, Chapter 184 of the Code of the Borough of Edgewood shall remain as heretofore enacted, ordained and amended, which said Chapter, as amended, is hereby re-enacted in its entirety herein.

ORDAINED AND ENACTED into law this 5th day of May 2008.

ATTEST

Kurt M. Ferguson
Borough Secretary

Heidi McDonald
Acting Council President

EXAMINED AND APPROVED by me this 5th day of May 2008.

Jean O. Davin
Mayor

DISCUSSION: Ms. Pryce asked if this was in effect before and Ms. McDonald noted that the state needed to make changes.

Upon roll call vote, the following was recorded: Mr. Harding, Mr. Reynolds, Ms. Pryce, Ms. McDonald voted yes. **Third Reading Passes.**

M-4 The Chair asks, "Shall Ordinance 1023 Pass?"

Upon roll call vote, the following was recorded: Mr. Harding, Mr. Reynolds, Ms. Pryce, Ms. McDonald voted yes. **Ordinance 1023 Passes.**

NEW BUSINESS

Ms. McDonald set two meetings for May 12, 2008: General Government at 7:00 PM and Public Safety at 8:00 PM.

ADJOURNMENT

M-5 Following a brief Executive Session, which lasted from 8:25 PM to 8:40 PM, Ms. Pryce moved, and it was seconded by Mr. Reynolds, to adjourn the meeting.

DISCUSSION: None.

Upon roll call vote, the following was recorded: Mr. Harding, Mr. Reynolds, Ms. Pryce, Ms. McDonald voted yes. **Motion carried.**

Kurt Ferguson
Borough Manager