



Ordinance No. 2015-02-002

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF NOGALES, ARIZONA, AMENDING CITY CODE CHAPTER 15A "TAX CODE OF THE CITY OF NOGALES" BY RENUMBERING THE CHAPTER TO BE 9A OF THE NOGALES CITY CODE; AMENDING, REPEALING AND REPLACING VARIOUS ARTICLES, SECTIONS AND REGULATIONS OF SAME IN ACCORDANCE WITH RECENT AMENDMENTS ADOPTED BY THE MUNICIPAL TAX CODE COMMISSION. (LEGAL)**

BE IT ORDAINED by the Council of the City of Nogales, Arizona, as follows:

**Section 1:** The Tax Code of the City of Nogales, currently codified as Chapter 15A of the Nogales City Code, is hereby renumbered and codified as Chapter 9A of the Nogales City Code and all section numbers and regulations within this Chapter are hereby changed from "15A-xxx" to "9A-xxx."

**Section 2:** Nogales Tax Code is amended in accordance with the amendments contained in that certain document titled "2015 City of Nogales Tax Code Amendments," declared to be a public document by Resolution R2015-020xxx, which is hereby adopted by reference as if fully set forth herein.

**Section 3:** Penalty Provision: Amended Section 9A-330, as adopted herein, contains the following penalty clause at Subsection (c):

Any person required to be licensed under this Chapter who fails to obtain a license on or before conducting any business activity requiring such license shall be subject to the license fees due for each year in business plus a penalty in the amount of fifty percent (50%) of the applicable fee for each time for which such fee would have been imposed, from and after the date on which such activity commenced until paid. This penalty shall be in addition to any other penalty imposed under this Chapter and must be paid prior to the issuance of any license. License fee penalties may be waived by the Tax Collector subject to the same terms as the waiver of tax penalties provided for in Section 15A-540.

**Section 4:** All other ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed to the extent of any such conflict.

**Section 5:** This ordinance shall take effect thirty days after adoption, with retroactive application of various amendments pursuant to the retroactivity dates of each as determined by the Municipal Tax Code Commission for the various amendments adopted herein.

**Section 6:** In the event any provision in this ordinance is held invalid by any court of competent jurisdiction, the remaining provisions in this ordinance shall be deemed severable and shall remain in full force and effect.

**Section 7:** The City Clerk is directed to publish the text of this Ordinance in a newspaper of general circulation for two (2) consecutive weeks after its effective date, and further to post a copy of this Ordinance in three (3) or more public places within the City.

**PASSED, ADOPTED, AND APPROVED** by the Council of the City of Nogales, Arizona, this 04th day of February, 2015.

John F. Doyle, Mayor

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**ATTEST:**

Leticia Robinson, City Clerk

**APPROVED AS TO FORM:**

Jose L. Machado, City Attorney

STAFF SUMMARY

**SUBJECT:** The Municipal Tax Code Commission approved modifications to the Model City Tax Code (MCTC) in 2012, 2013 and 2014 to implement enacted legislation approved by the Arizona Legislature and signed by the Governor. The MCTC establishes the overall framework for the transaction privilege tax (TPT) the state, counties, cities and towns assess. Once the Commission approves amendments municipalities have no discretion and therefore must adopt the modifications unless they were specifically created as an option. This item's resolution declares the modifications provided by the Municipal Tax Code Commission a public record which then is being adopted by reference in the presented ordinance.

For the most part, the modifications are housekeeping in nature related to the modification of definitions, exemptions and categorization of types of sales. For example, exemptions to the use tax were modified to include renewable energy credits. Another example concerns a modification to the definition of the retail category to establish "food for home consumption" as a separate and distinct category of sales; the same was done several years ago for the tax on transient lodging (commonly called the bed tax).

The most significant changes to the MCTC are associated with the 2013 and 2014 enacted legislation that created a uniform licensing administrative process, an extension of the overall tax simplification effort undertaken by the Arizona State Legislature. These modifications must be adopted by all municipalities.

In addition, the MCTC changes established a penalty fee on late TPT license fee payments. Currently the Nogales City Code does not assess a penalty fee. The MCTC modifications established a mandatory penalty of 50%. The City's TPT license fee is \$25 so the 50% penalty amounts to \$12.50 penalty. No material revenue is expected to be generated from this penalty.

Finally, the MCTC amendments established a privilege tax on wastewater services under the utilities category of the TPT. This was done so wastewater services are treated consistently with the way water services and other utilities are treated and they are subject to the privilege tax. While cities are required to adopt this change to the tax code, they nevertheless have the option of inserting their respective TPT rate (2% for Nogales) or another lesser number. It is recommended that City Council adopt the amendment as submitted, which uses the City's 2% rate. According to the League of Arizona Cities & Towns, upon adoption of this MCTC amendment other cities have applied to wastewater services their normal and customary TPT rate for water and other utilities. Based on the \$2.7M in billed wastewater services for FY 2014, it is estimated that a 2% privilege tax would generate approximately \$54,000 (assuming all billed wastewater service amounts are paid in full). For a residential customer, a common monthly wastewater only services bill of \$20- \$25 would increase \$0.40 - \$0.50.

**BACKGROUND:**

The Model City Tax Code (MCTC) was enacted in 1987 by the Arizona Legislature. It is a uniform sales and use tax act that has been adopted by most Arizona cities including the City of Nogales and all large cities in the state. Authorized options are available within the Code, so variations exist between cities but, in general, municipal sales and use tax provisions are uniform throughout the state.

The twin goals of the MCTC are to provide uniformity and to retain the right of individual cities and towns to determine the items taxed, as well as the exemptions to be granted, thereby leaving the determination of the local tax base up to the individual city or town council.

The MCTC was prepared with the participation of a wide range of stakeholders as explained in the following bullet points.

- Business interests, as represented by the State Chamber of Commerce, and a committee of tax attorneys who are retained by major taxpayers to do their privilege tax work, provided feedback. This is the continued practice as amendments are made to the code. Tax

professionals representing major taxpayers are consulted through the Arizona Tax Research Association and the State Chamber of Commerce.

- The interests of the state's municipalities have been and continue to be represented by the Unified Audit Committee (UAC), the membership of which is comprised of local tax officials and representatives of the Arizona Department of Revenue. The UAC coordinates joint audit activities among the various jurisdictions and publishes uniform guidelines that interpret the model city tax code.

All proposed changes to the code are reviewed by the Unified Audit Committee and the Municipal Tax Code Commission. The commission members are a representative of the Arizona Department of Revenue and nine mayors or council members of cities or towns that have adopted the model city tax code.

**TOTAL COST OF PROJECT(S):** No additional ongoing expenses or one-time expenses are anticipated as a result of these required code changes. Additional city sales tax revenue of approximately \$54,000 per year is projected with the adoption of the privilege tax on wastewater services; by doing so the city would tax wastewater services in the same way that water services currently are taxed. For a residential customer, a typical monthly bill of \$20 - \$25 would increase \$0.40 - \$0.50.

All of the amendments submitted in this ordinance are mandatory.

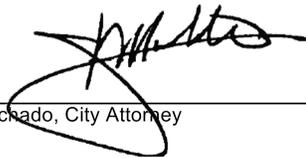
**STATUTORY REQUIREMENTS, IF ANY:** Municipalities must adopt the MCTC modifications unless they were created as an option.

**ALTERNATIVES:** There are no alternatives as municipalities are required to adopt and implement all Model City Tax Commission approved modifications to the MCTC.

**STAFF RECOMMENDATION:** Adopt the MCTC modifications as presented.

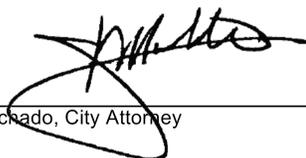
SUGGESTED MOTION:

"I move to approve Order No: O2015-02-002"



Joe Machado, City Attorney

1/26/2015



Joe Machado, City Attorney

1/26/2015

A handwritten signature in black ink, consisting of several overlapping loops and a final vertical stroke on the right side.

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Shane Dille, City Manager