

CITY OF AURORA, ILLINOIS
RESOLUTION NO. R07-263
DATE OF PASSAGE May 22, 2007

**RESOLUTION APROOVING A SALES TAX REVENUE
SHARING AGREEMENT WITH BUFFALO WILD WINGS, INC.**

WHEREAS, the City of Aurora has a population of more than 25,000 persons and is, therefore, a home rule unit under subsection (a) of Section 6 of Article VII of the Illinois Constitution of 1970; and

WHEREAS, subject to said Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs for the protection of the public health, safety, morals and welfare; and

WHEREAS, the City of Aurora is desirous of stimulating investment in commercial property to enhance the City's revenue base and generate sales and property tax revenues to support city services; and

WHEREAS, Buffalo Wild Wings, Inc. has requested City assistance in the form of certain sales tax revenue sharing upon location of its business to Orchard Grove Shopping Center, in the City of Aurora; and

WHEREAS, it is necessary and desirable for the City to provide certain sales tax revenue sharing assistance for the attraction of Buffalo Wild Wings, Inc. to locate its business in the City of Aurora; and

WHEREAS, the Sales Tax Revenue Sharing Agreement with Buffalo Wild Wings, Inc. the subject hereof, is intended to encourage Buffalo Wild Wings, Inc. to locate its business in the City of Aurora.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Aurora, Illinois, that the Sales Tax Revenue Sharing Agreement with Buffalo Wild Wings, Inc., a copy of which is attached hereto, be and is hereby approved, and that the Mayor and City Clerk be and are hereby authorized to execute same.

CITY OF AURORA, ILLINOIS
RESOLUTION NO. R07-263
DATE OF PASSAGE May 22, 2007

**RESOLUTION APROVING A SALES TAX REVENUE
SHARING AGREEMENT WITH BUFFALO WILD WINGS, INC.**

PASSED AND APPROVED by the City Council of the City of Aurora on
May 22, 2007

[Signature]
[Signature]
[Signature]
[Signature]
[Signature]
Aldermen

[Signature]
[Signature]
[Signature]
[Signature]
[Signature]
Aldermen

AYES 12 NAYS 0 ABSENT

ATTEST:

[Signature]
City Clerk

[Signature]
Mayor

City of Aurora
Law Department
44 East Downer Place
Aurora, Illinois 60507
(630) 844-4737 Phone
(630) 844-4737 Fax

SALES TAX REVENUE SHARING AGREEMENT

This Agreement is entered into on this 22nd day of May, 2007 by and between the City of Aurora, Illinois, an Illinois Municipal Corporation (hereinafter referred to as the "City"); and Buffalo Wild Wings, Inc., a Minnesota Corporation (Collectively referred to as "BUFFALO");

RECITALS

A. The City is a home rule municipality and hereby enters into this Agreement pursuant to its home rule powers; and pursuant to Section 6 (a) of Article VII of the Constitution of the State of Illinois of 1970, the City has determined that it has the authority to enter into this Agreement.

B. The City deems it to be of significant importance to encourage development and redevelopment within the City so as to maintain a viable real estate tax and sales tax base and employment opportunities.

C. BUFFALO operates 435 restaurants in thirty-seven (37) states.

D. BUFFALO intends to lease approximately 5700 square feet of property located in Orchard Grove Shopping Center in the City and construct a restaurant thereon and create 100+ jobs. The property to be leased by BUFFALO is set forth and legally described in Exhibit "A" attached hereto. (Hereinafter referred to as the "Property").

E. The Property is currently vacant and has been vacant for a number of years. The Project will consist of leasing the Property on or before Decemer 31, 2007 and, required built out and occupancy by BUFFALO on or before April 30, 2008. The Parties anticipate that this development will enhance the City's real estate and sales tax base and create additional employment opportunities in the City.

Buffalo Wild Wings
JCB/nlw 5/4/07

F. For purposes of this Agreement, the use of the terms "Food and Beverage Tax" and "Food and Beverage Taxes" shall be construed to refer to the net portion of Food and Beverage Taxes imposed by the City of Aurora on food and beverages sold within the City which are generated by BUFFALO. The current city Food and Beverage Tax is (1.75%) of sales. In the event of an increase in the rate of this Tax, the amounts rebated shall remain at (1.75%) of sales.

G. Both BUFFALO and the City acknowledge that BUFFALO will require economic assistance from the City in order to lease the Property and complete the Project. The property adjacent to this proposed leased premises is vacant and could be in that state for a considerable time. BUFFALO is concerned that the vacant property could have an adverse effect on its sale.

H. The anticipated costs of the Project are set forth in Exhibit "B" attached hereto and made a part hereof, but for the economic assistance to be given by the City, the Project as contemplated would not be an economically viable undertaking for BUFFALO.

NOW THEREFORE, in consideration of the foregoing Recitals and the mutual covenants and agreement herein made, the parties hereby agree as follows:

ARTICLE I
RECITALS AS PART OF AGREEMENT

The Parties acknowledge that the statements and representations contained in the foregoing recitals are true and accurate and incorporate such recitals into this Agreement as if fully set forth in this Article I.

ARTICLE II
OBLIGATIONS OF BUFFALO
CONDITION PRECEDENT TO CITY UNDERTAKINGS

2.01 Condition Precedent. Each of the obligations specified in this Article II shall be deemed as a condition precedent to all of the financial undertakings on the part of the City pursuant to this Agreement. The City shall have no financial obligation until the satisfaction by BUFFALO of each and every requirement of this Article II, on or before any date which may be specified herein.

2.02 Lease of Property and Construction of Restaurant. On or before December 31, 2007, BUFFALO shall have acquired a lease to the Property as evidenced by a certified copy of said lease being submitted to the City showing that BUFFALO has a lease on the Property of at least ten (10) years. On or before April 30, 2008, BUFFALO shall have built and opened for business an approximately 5700 square foot restaurant on the Property. In the event BUFFALO does not acquire a lease to the Property and build and open for business on the Property as provided for herein, this Agreement shall be null and void and the City shall have no obligation hereunder.

2.03 Build Out and Occupancy. In order to receive the financial benefits provided for in this Agreement, BUFFALO must acquire a lease for the property on or before December 31, 2007 and complete the Project, and open for business on or before April 30, 2008, subject to the force majeure provisions of Paragraph 4.01. The Project shall be built in accordance with all City approvals and all applicable ordinances, rules and regulations of the City. BUFFALO shall not knowingly cause or permit the existence of any violation of City ordinances, including but not limited to, the Building

Buffalo Wild Wings
JCB/nlw 5/4/07

Code, Zoning Ordinance, Fire Code and all rules and regulations thereunder on any of the Property which it owns and controls.

2.04 Sales Tax Information. BUFFALO shall supply the City with copies of Sales tax information to and at the request of the City's Director of Finance. BUFFALO represents and warrants that all such information produced to the City pursuant to this provision and the further provisions of this Agreement are and will be at all times in the future true and accurate and agrees that the City may and for the purposes of this Agreement does rely on the truth and accuracy of said information as a basis for its entering into this Agreement.

2.05 Tax Reporting and Confidentiality. BUFFALO hereby agrees to provide the City a written report of the total City food and beverage taxes generated by BUFFALO for each calendar year of the Revenue Sharing Term, as hereinafter defined. Such report shall be certified as true by an officer of BUFFALO and shall have attached thereto certified copies of all City food and beverage tax returns filed by BUFFALO for the previous calendar year. BUFFALO will deliver said report on or before the February 15 following the calendar year for which BUFFALO is reporting. The City shall issue payment to BUFFALO within 45 days of receipt of the required documentation. The City hereby represents and warrants that any and all information regarding BUFFALO's sales taxes shall be confidential and used only for the purpose of calculating any amounts due and owing to BUFFALO pursuant to this Agreement. The City acknowledges that BUFFALO's sales and sales tax information is proprietary and competitive, and therefore not subject to disclosure pursuant to the Freedom of Information Act. Upon request the

Buffalo Wild Wings
JCB/nlw 5/4/07

City shall have the right to audit BUFFALO's business records, including sales information, from time-to-time.

2.06 BUFFALO's Guaranteed Term for Occupancy of the Property.

BUFFALO agrees that it will retain its business at the leased premises in the City for a minimum of ten (10) years from commencement.

2.07 Real Estate Taxes and Other Charges. BUFFALO hereby covenants and agrees to promptly pay or cause to be paid before becoming delinquent, subject to any appeal rights, any and all real estate taxes and governmental charges of general applicability that may at any time be lawfully finally assessed with respect to the Project and any portion of the Property which is owned and controlled.

ARTICLE III
CITY OBLIGATIONS AND UNDERTAKINGS

3.01 Economic Assistance. Upon satisfaction by BUFFALO of all of the conditions stated in Article II hereof, the City, relying on the representations and warranties of BUFFALO, in order to make this Project economically viable, shall help to defray BUFFALO'S leasing and construction costs by rebating certain payments to BUFFALO, solely from the City's Food and Beverage Tax paid to the City by BUFFALO. Said payments shall be made by the City to BUFFALO for a period of three and one-half (3 1/2) years (the "Revenue Sharing Term") beginning with the Commencement Date, as hereinafter defined. The annual payments to BUFFALO by the City shall be subject to all of the terms and conditions contained herein.

3.02 Commencement Date; Revenue Sharing Term. BUFFALO shall give the City a sixty (60) day notice stating that it has satisfied all of the conditions of Article II of this Agreement, and that it is electing to commence the Revenue Sharing Term. The

Buffalo Wild Wings
JCB/nlw 5/4/07

notice shall specify the commencement date (the "Commencement Date") as the next following January 1.

ARTICLE IV
GENERAL PROVISIONS

4.01 Delay and Force Majeure. For the purposes of any of the provisions of this Agreement, neither the City nor BUFFALO, as the case may be, nor any successor in interest, shall be considered in breach of, or default in, its obligations under this Agreement in the event of any delay caused by damage or destruction by fire or other casualty, shortage of material, unusually adverse weather conditions such as, by way of illustration and not limitation, severe rain or storms or below freezing temperatures of abnormal degree or quantity for an abnormal duration, tornadoes and other events or conditions beyond the reasonable control of the Party affected which in fact interfere with the ability of such Party to discharge its respective obligations hereunder.

4.02 Assignment of Agreement. The right to receive payments from the City is personal to BUFFALO in consideration of its' lease and build out and maintaining its business on the leased premises in the City for a period of at least ten (10) years from the commencement date. Any payments due to BUFFALO from the City are not assignable.

4.03 BUFFALO Authority. BUFFALO hereby represents and warrants that it is a Corporation authorized to do business in, and in good standing with the State of Minnesota. BUFFALO further represents and warrants that all corporate action necessary to make BUFFALO'S obligations hereunder enforceable against BUFFALO have been taken, no further approvals or actions are required.

4.04 Defaults; Remedies.

- (A) In the event of any default under or violation of this Agreement, the party not in default or violation shall serve written notice upon the party in default or violation, which notice shall be in writing and shall specify the particular violation or default. Each Party shall have the right to cure any violation of this Agreement or default within 30 days from written notice of such default. In the event of default by the City of its obligations to BUFFALO provided for in Article III, BUFFALO's sole and exclusive remedy shall be to seek specific performance from a court of competent jurisdiction.
- (B) In the event that BUFFALO fails to keep its business in the city of Aurora for a minimum of ten (10) years, the City shall have the following additional remedies:

If BUFFALO fails to maintain its business within the city, then in the first five (5) years from the commencement date, the City shall be repaid one hundred (100%) percent of any sums paid to BUFFALO pursuant to this Agreement and shall be entitled to stop any further payments by the City to BUFFALO. In the sixth (6th) year from the commencement date, the City shall be repaid eighty (80%) percent of any sums paid to BUFFALO. In the seventh (7th) year from the commencement date, the City shall be repaid sixty (60%) percent of any sums paid to BUFFALO. In the eighth year from the commencement date, the City shall be repaid forty (40%) percent of any sums paid to BUFFALO. In the ninth (9th) year from the commencement date, the City shall be repaid twenty (20%) percent of any sums paid to BUFFALO.

4.05 Notices. All notices and requests required pursuant to this Agreement shall be sent certified mail as follows:

to BUFFALO: 1600 Utica Avenue South
 Suite 700
 Minneapolis, Minnesota 55416

Buffalo Wild Wings
JCB/nlw 5/4/07

to the City: City Clerk
 City of Aurora
 44 East Downer Place
 Aurora, Illinois 60507

with copies to: Corporation Counsel
 City of Aurora
 44 East Downer Place
 Aurora, Illinois 60507

or at such other addresses as the parties may indicate in writing to the other either by personal or overnight delivery or by certified or registered mail, return receipt requested, with proof of delivery thereof.

4.06 Law Governing. This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois. Venue for any legal action brought by either party as a result of entering into the Agreement shall be in State Court in Illinois.

4.07 Time. Time is of the essence under this Agreement and all time limits set forth mandatory and cannot be waived except by a lawfully authorized and executed written waiver by the party excusing such timely performance.

4.08 Limitation of Liability. Notwithstanding anything herein contained to the contrary by implication or otherwise, any obligations of the City created by or arising out of this Agreement shall not be a general debt of the City on or a charge against its general credit or taxing powers, but shall be a limited obligation payable solely out of the BUFFALO'S food and beverage taxes as set forth in Article III, and shall further be limited to the actual sum of money paid to BUFFALO by the City on those taxes.

4.09 No Waiver or Relinquishment of Right to Enforce Agreement.

Failure of any party to this Agreement to insist upon the strict and prompt performance of the terms covenants, agreements, and conditions herein contained, or any of them, upon any other party imposed, shall not constitute or be construed as a waiver or relinquishment of any party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.

4.10 Paragraph Headings and Subheadings. All paragraph headings or other headings in this Agreement are for the general aid of the reader and shall not limit the plain meaning or application of any of the provisions thereunder whether covered or relevant to such heading or not.

4.11 Authorization to Execute. The Agents of BUFFALO who have executed this Agreement warrant that they respectively have been lawfully authorized by BUFFALO to execute this Agreement. The Mayor and City Clerk of the City hereby warrant that they have been lawfully authorized by the City Council to execute this Agreement.

4.12 Amendment. This Agreement sets forth all the promises, inducements, agreements, conditions and understandings between BUFFALO and the City relative to the subject matter thereof. There are no promises, agreements, conditions or understandings, either oral or written, express or implied, between them, other than as herein set forth. No subsequent alternation, amendment, change or addition to this Agreement shall be binding upon the parties hereto



City of Aurora

Mayor's Office • 44 E. Downer Place • Aurora, Illinois 60507-2067 • (630) 844-3612
FAX (630) 892-8967

Thomas J. Weisner
Mayor

May 4, 2007

TO: Finance Committee:

Alderman Robert O'Connor, Chairman

Alderman Abby Schuler, Member

Alderman Leroy Keith, Member

FROM: Robert Vaughan, Chief of Staff *RV*

SUBJECT: Resolution Approving Sales Tax Revenue Sharing Agreement with Buffalo Wild Wings, Inc.

I am forwarding to you correspondence and a Recommendation on the above referenced matter.

Please have the members of your committee review this matter and make a recommendation to the City Council.

RV/rp
Enclosures

c: Alderman Scheketa Hart-Burns , Alternate Member
Carie Ann Ergo, Public Information Officer
Nancy Warren, Law Department



City of Aurora

Law Department • 44 East Downer Place • Aurora, Illinois 60507-2067 • (630) 844-4777 • Fax (630) 844-4737


Corporation Counsel:
Alayne M. Weingartz

**City of Aurora Law Department
Committee Meeting and Referral Schedule**

Assistant Corp. Counsel:
John C. Banbury

Committee Referral Summary

To: Mayor Thomas J. Weisner

From: Mike Turner, City of Aurora Retail Consultant
Via Review by John Banbury, Assistant Corporation Counsel
And Brian Caputo, Assistant Director Finance 

Date: May 2, 2007

Subject: Resolution Approving a Food and Beverage Tax Agreement with Buffalo Wilds Wings.

Purpose: During the time in which I was working with Buffalo Wilds Wings, Jaffe Development Group and the building owner/builder Jeff Silverman, to obtain a commitment for a store on Orchard Road a couple of obstacles were raised. One obstacle was the lack of overflow parking at the proposed Meijer Store. The other obstacle was the lack of additional prospective customers without the Meijer Store. Buffalo Wild Wings agreed that some type of sales tax incentive would help convince the BWW Committee to make a commitment to the site. I agreed to ask the city council for a short-term food and beverage tax rebate.

Discussion: We have agreed on a food and beverage tax rebate (1.75%) for 3.5 years. This is only a portion of the total tax which will be generated by the store for the City of Aurora. Many BWW gross around \$2.5M per year in total sales. The top Chicago location does around \$3M per year. Therefore the City of Aurora could still receive around \$57,000 a year in sales tax revenue. And of course real estate taxes will be generated from the \$1.5M building. The store will have more than 80 employees. It will be open by April of 2008.

Recommendations:

Place on the Finance Committee Calendar (5/9/07 Agenda) for approval to City Council.

F07.148

RECOMMENDATION

TO: THE COMMITTEE OF THE WHOLE


FROM: THE FINANCE COMMITTEE

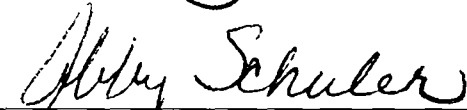
The Finance Committee At Their Meeting On Wednesday, May 9, 2007 Recommended

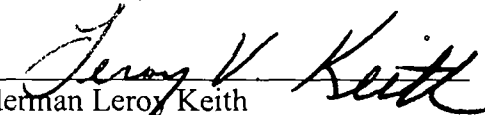
APPROVAL of a Resolution Approving a Sales Tax Revenue Sharing Agreement with Buffalo Wild Wings, Inc

The Vote 3-0

Submitted By


Alderman Robert O'Connor, Chairman


Alderman Abby Schuler,


Alderman Leroy Keith

Alderman Scheketa Hart-Burns, Alternate,

Dated This 10th Day Of May, 2007.



Buffalo Wild Wings, Inc. • 1600 Utica Avenue South, Suite 700 • Minneapolis, MN 55416 • 952-593-9943 • Fax 952-593-9787

June 6, 2007

Cheryl M. Vonhoff
City of Aurora
City Clerk's Office
44 E. Downer Place
Aurora, IL 60507-2067

RE: Sales Tax Rebate Sharing Agreement between the City of Aurora, Illinois and
Buffalo Wild Wings, Inc.

Dear Ms. Vonhoff:

Please find enclosed the signed Sales Tax Rebate Sharing Agreement. Should you
have any questions, please do not hesitate to contact me.

Sincerely,

Matt Brokl
VP, associate General Counsel

Enclosure: Signed Sales Tax Rebate Sharing Agreement