

CITY OF BRUNSWICK

ORDINANCE NO. \_\_\_\_-2015

**AN EMERGENCY ORDINANCE AMENDING AND RESTATING CHAPTER 880 OF THE CODIFIED ORDINANCES OF THE CITY OF BRUNSWICK, OHIO, EFFECTIVE FOR TAX YEARS BEGINNING ON OR AFTER JANUARY 1, 2016, IN ORDER TO REFLECT CHANGES TO THE PROVISIONS OF THE OHIO REVISED CODE THAT GOVERN MUNICIPAL INCOME TAXATION AND TO CLARIFY, SIMPLIFY, AND HARMONIZE EXISTING MUNICIPAL INCOME TAXATION PROVISIONS OF THE CODIFIED ORDINANCES OF THE CITY OF BRUNSWICK, OHIO.**

WHEREAS, Section 715.013 of the Revised Code, as amended by Substitute House Bill 5 enacted by the 130<sup>th</sup> General Assembly of the State of Ohio and approved by the Governor (Substitute House Bill 5), takes effect on January 1, 2016; and

WHEREAS, Substitute House Bill 5 and Section 715.013 of the Revised Code, as so amended, prohibit an Ohio municipal corporation from levying an income tax or withholding tax unless such taxes are levied in accordance with Chapter 718 of the Revised Code, as amended by Substitute House Bill 5; and

WHEREAS, Section 718.04 of the Revised Code, as effective beginning on January 1, 2016, provides that, for a municipal income or withholding tax to be levied in accordance with the provisions and limitations of Chapter 718 of the Revised Code on or after January 1, 2016, the ordinance or resolution of the municipal corporation levying such taxes must, among other things, (i) state that the municipal corporation is levying such taxes in accordance with the limitations specified in Chapter 718 of the Revised Code and (ii) incorporate the provisions of Chapter 718 of the Revised Code; and

WHEREAS, the City of Brunswick, Ohio, desires to continue to impose an income tax and withholding tax on and after January 1, 2016 in accordance with the limitations specified in Chapter 718 of the Revised Code, as amended by Substitute House Bill 5.

NOW, THEREFORE, Be It Ordained by the Council of the City of Brunswick, County of Medina, State of Ohio, that:

SECTION 1. Chapter 880 of the Codified Ordinances of the City of Brunswick, Ohio is hereby amended and restated to read as follows, effective January 1, 2016:

**“880.005 PURPOSES.**

To provide funds for the purposes of general municipal operations, maintenance, acquisition of new equipment, extension and enlargement of municipal services and facilities and capital improvements of the City, there is hereby levied a tax on municipal taxable income at a rate of one percent (1.00%).

To provide funds for the purpose of operating and expanding the Safety Forces of the City, there is hereby levied an additional tax effective January 1, 1996 on municipal taxable income at a rate of thirty-five one-hundredths percent (0.35%).

During the period from January 1, 2010 through December 31, 2017, to provide funds for the purpose of maintaining staffing levels for the Safety Forces of the City, there is also hereby levied a tax on municipal taxable income at a rate of fifty one- hundredths percent (0.50%).

Those taxes shall be imposed for the foregoing purposes, levied on an annual basis on the income of every person residing in or earning or receiving income in the City of Brunswick and measured by the person's municipal taxable income.

The taxes levied under this Chapter 880 shall be levied in accordance with the provisions and limitations set forth in Chapter 718 of the Ohio Revised Code to the fullest extent required for the City to continue to levy those taxes. The required provisions and limitations of Chapter 718 of the Ohio Revised Code are hereby incorporated into this Chapter 880, and those required provisions or limitations of Chapter 718 of Ohio Revised Code shall control to the extent there is a conflict between a provision or limitation of this Chapter 880 and an express provision or limitation of Chapter 718 of the Ohio Revised Code.

#### **880.01 ALLOCATION OF REVENUES.**

The funds collected under the provisions of this Chapter 880 shall be credited to the General Fund and applied for the following purposes and in the following order:

(a) Administration. Such part thereof as shall be necessary to defray all costs of collecting all income taxes levied and the cost of administering and enforcing the provisions of this Chapter shall be appropriated by Council for that purpose.

(b) Allocation of Thirty-Five One-Hundredths Percent (0.35%) Tax Increase. The funds resulting from the additional 0.35% income tax rate, as provided in Ordinance No. 89-95, passed by City Council on July 24, 1995, and approved by the electors of the City at an election on November 7, 1995, shall be allocated and transferred to the Police Fund and/or the Fire Fund and appropriated for the purpose of operating and expanding the Safety Forces of the City.

(c) Allocation of One-Half Percent (0.5%) Tax Increase. During the period from January 1, 2010 through December 31, 2017, the funds resulting from the additional 0.50% income tax rate, as provided in Ordinance No. 4-09, passed by the Council on January 26, 2009, and approved by the electors of the City at an election on May 5, 2009, and the continuation of that increase as provided in Ordinance No. 60-12, approved by the voters of the City at an election on November 6, 2012 and passed thereafter by the Council, shall be allocated and transferred to the Police Fund and/or the Fire Fund and appropriated for the purpose of maintaining staffing levels for the Safety Forces of the City.

(d) The funds resulting from the 1.00% income tax rate, as described in Section 880.005, shall be available for appropriation and allocation, as deemed necessary by the Council of the

City of Brunswick, for the following purposes: general municipal operations, maintenance, acquisition of new equipment, extension and enlargement of Municipal services and facilities and capital improvements of the City.

(e) The Council shall, from time to time, pass Ordinances providing for the allocations required and permitted in this Section, which shall be on file with the Clerk of Council.

## **880.02 DEFINITIONS.**

(1) As used herein, all references in this Chapter 880 to provisions or limitations of Chapter 718 of the Ohio Revised Code and to any Section of that Chapter 718 shall include those provisions or limitations of that Chapter or Section as in effect on January 1, 2016, of any successor statute and of any subsequent amendment to that Chapter or Section or a successor statute in effect from time to time to the fullest possible extent required for the City to continue to levy the taxes specified under this Chapter 880.

(2) The following terms as used in this Chapter 880 (either directly or by reference to Chapter 718 of the Ohio Revised Code) shall have the meanings ascribed to them in Section 718.01 of the Ohio Revised Code: “municipal taxable income”; “income”; “exempt income”; “net profit”; “adjusted federal taxable income”; “Schedule C”; “Schedule E”; “Schedule F”; “Internal Revenue Code”; “resident”; “nonresident”; “taxpayer”; “person”; “pass-through entity”; “S corporation”; “single member limited liability company”; “limited liability company”; “qualifying wages”; “intangible income”; “taxable year”; “tax administrator”; “employer”; “employee”; “other payer”; “calendar quarter”; “Form 2106”; “municipal corporation”; “disregarded entity”; “generic form”; “tax return preparer”; “Ohio business gateway”; “local board of tax review” and “board of tax review”; “net operating loss”; “postal service”; “certified mail,” “express mail,” and “United States mail”; “postmark date” and “date of postmark”; “related member”; “related entity”; “assessment”; “taxpayer’s rights and responsibilities”; “pre-2017 net operating loss carryforward”; “small employer”; “audit”; and “publicly traded partnership.” Further, any other term used in this Chapter 880 that is not otherwise defined in this Chapter and that is defined in Chapter 718 of the Ohio Revised Code shall have the same meaning as is ascribed to it in Chapter 718 of the Ohio Revised Code.

(3) Any term used in this Chapter 880 that is not otherwise defined in this Chapter or by reference to Section 718.01 of the Ohio Revised Code shall have the same meaning as when used in a comparable context in laws of the United States relating to federal income taxation or in Title LVII of the Ohio Revised Code, unless a different meaning is clearly required. If a term used in this Chapter 880 that is not otherwise defined in this Chapter or by reference to Section 718.01 of the Ohio Revised Code is used in a comparable context in both the laws of the United States relating to federal income tax and in Title LVII of the Ohio Revised Code and the use is not consistent, then the use of the term in the laws of the United States relating to federal income tax shall control over the use of the term in Title LVII of the Ohio Revised Code.

(4) For purposes of this Chapter, references in Chapter 718 of the Ohio Revised Code to “a municipal corporation” shall mean the City, except as and if the context clearly indicates or requires a different meaning.

(5) For all taxable years, any amount attributable to a nonqualified deferred compensation plan or program described in section 3121(v)(2)(C) of the Internal Revenue Code, or successor provision thereto in effect from time to time, is for purposes of this Chapter part of qualifying wages and is not a pension.

### **880.03 RENTALS.**

(a) Rental income received by a taxpayer shall be included in the computation of net profit from business activities under Section 880.04 as reported on the taxpayer's Schedule E and/or as required under Chapter 718 of the Ohio Revised Code.

(b) Every property owner subject to this section shall, personally or through a management agent, submit to the Administrator a list of names, addresses, and Social Security Numbers or Employer Identification Numbers, as applicable, of all persons, firms, corporations or other entities occupying, leasing, renting or otherwise using the premises within the City in such a manner as to produce economic benefit to the property owner, whether or not such benefit is called "rent" and whether or not such benefit results in a profit or loss. The required list shall be prepared by June 30, of each year and submitted on or before July 31, of each year and prepared by December 31, of each year and submitted on or before January 31, of the following year and at such other times as may be prescribed by the Administrator.

#### **880.04 IMPOSITION OF TAX.**

Consistently with the provisions of Section 880.005 and subject to the provisions of Section 880.15, there shall be imposed upon the municipal taxable income of all residents, nonresidents, and taxpayers that are not individuals an annual income tax as follows: (1) for the period commencing January 1, 2016 and ending December 31, 2017, an annual tax for the purposes specified in Section 880.005 at the rate of 1.85% per year; and (2) thereafter, unless a separate Ordinance providing for a different rate or rates is approved by the voters of the City and this Council or otherwise passed in accordance with law, an annual tax for the purposes specified in the first two paragraphs of Section 880.005 at the rate of 1.35% per year. The City income tax imposed by this Section does not apply to the income of any individual who is under the age of eighteen. The determination of whether an individual is a resident or a nonresident shall be made in accordance with Section 718.012 of the Ohio Revised Code. To the extent the municipal taxable income of a nonresident or a taxpayer that is not an individual is comprised of net profit, such municipal taxable income shall be apportioned or situated to the City in accordance with Section 718.02 of the Ohio Revised Code. For any taxable year beginning on or after January 1, 2016, a taxpayer that is a member of an affiliated group of corporations may elect, in accordance with Ohio Revised Code section 718.06, to file with the City a consolidated municipal income tax return and determine its City income tax in accordance with such filing. For purposes of determining municipal taxable income for any taxable year beginning on or after January 1, 2016, an individual shall be exempt from City income tax to the extent that such individual satisfies each of the following: (1) is a dependent for federal income tax purposes of a resident; (2) is enrolled at a post-secondary institution of higher learning located outside the City and lives outside the City while enrolled at such an institution; and (3) earns or receives qualifying wages while living outside the City from an employer not located in the City. Any such individual that satisfies the requirements of the immediately preceding sentence is, however, subject to the annual City income tax return filing requirements set forth in Section 880.06.

### **880.05 EFFECTIVE PERIOD.**

The income tax provided for by this Chapter 880 shall be levied, collected and paid with respect to municipal taxable income, including but not limited to qualifying wages, commissions and other compensation and the net profit of businesses, professions or other activities, earned from January 1, 2016, to and including the effective date of any repeal of this Chapter.

### **880.06 RETURN AND PAYMENT OF TAX.**

(a) This Section 880.06 and Sections 718.05, 718.051, and 718.052 of the Ohio Revised Code, shall control the date by which the annual City income tax return for such taxable year must be filed, the form and content of that return, the date by which City income tax for that taxable year must be paid, and any extension of the date by which the annual City income tax must be filed. This Section 880.06 and Sections 718.12 and 718.41 of the Ohio Revised Code shall control for purposes of determining the circumstances under which a taxpayer must file an amended City income tax return. To the extent that the provisions of this Section 880.06 and the express provisions of the foregoing Sections of the Ohio Revised Code are in conflict, the foregoing Sections of the Ohio Revised Code shall control.

(b) Dates; Exemption. Each taxpayer eighteen years and older, except as herein provided, shall, whether or not a tax is due thereon, make and file a return on or before April 15, of the year following the effective date of this chapter and on or before April 15, of each year thereafter, unless April 15 falls on a weekend day or holiday, then the return is due on the federal individual due date. When the return is made for a fiscal year or other period different from the calendar year, the return shall be filed within three and one-half months from the end of such fiscal year or period.

(c) Returns and Content Thereof. The return shall be filed with the Administrator on a form or forms furnished by or obtainable upon request setting forth:

(1) The aggregate amount of qualifying wages, commissions and other compensation earned;

(2) The adjusted federal taxable income from a business, profession or other activity less allowable expenses incurred in the acquisition of such adjusted federal taxable income; (such income shall include only income earned during the year, or portion thereof, covered by the return and subject to the tax imposed by this chapter.)

(3) The amount of tax imposed by this chapter on income reported;

(4) Any credits to which the taxpayer may be entitled under the provisions of Section 880.07, 880.08 and 880.15;

(5) Such other pertinent statements, information returns or other information as the Administrator may require; and

(6) If the taxpayer has no earned income, the taxpayer shall indicate such on the income tax return; sign it, date it and file by the normal due date.

(d) Extensions. The Administrator will extend the time for the filing of the annual return for a period pursuant to provisions set forth in Chapter 718 of the Ohio Revised Code. This extension will be granted by submitting a copy of Federal Extension Form (4868 or 7004) by the date provisions set forth in Section 880.06(b), so long as payment of at least as much as was due the previous year has been paid by the normal due date for the annual return. Failure

to comply with the foregoing payment requirement will result in penalty and interest as provided for in Section 880.11.

(e) Payment With Returns. The taxpayer making a return shall, at the time of the filing thereof, pay to the Administrator the balance of the tax due, if any, pursuant to Section 880.12, after deducting:

(1) The amount of City income tax deducted or withheld at the source pursuant to Section 880.07;

(2) The portion of the tax paid on declaration or extension by the taxpayer pursuant to Section 880.08 or Section 880.06(d), respectively; and

(3) Any credit allowance under the provisions of Section 880.15.

(f) Overpayments; Refunds. Should the return or the records of the Administrator indicate an overpayment of the tax to which the City is entitled under the provisions of this chapter, such overpayment shall first be applied against any existing liability. The balance, if any, at the election of the taxpayer communicated to the Administrator, shall be refunded or transferred against any subsequent liability.

(g) Amended Returns.

(1) When necessary, an amended return shall be filed in accordance with Sections 718.12 and 718.41 of the Ohio Revised code to report additional income and pay any additional tax due or to claim a refund of tax overpaid, subject to the requirements and/or limitations contained in Sections 880.12 and 880.15. Such amended returns shall be on a form obtainable on request from the Administrator. A taxpayer may not change the method of accounting or apportionment of net profits after the due date for filing the original return.

(2) Within 60 days from the final determination of any Federal tax liability affecting the taxpayer's City tax liability, such taxpayer shall make and file an amended City return showing income subject to the City tax based upon such final determination of Federal tax liability and shall pay any additional tax shown due thereon or make claim for refund of any overpayment, without incurring any penalty. If the taxpayer fails to make such an amended return within this three month period, the same penalties and interest provisions will apply as if the return was not timely filed as per Section 880.11.

(3) A taxpayer may not file an amended City income tax return for any taxable year that seeks to: (1) change the method of accounting the taxpayer used to determine its municipal taxable income as reported on the original City income tax return for the given taxable year; (2) change the method used by the taxpayer on its original City income tax return for the given taxable year to apportion or situs its net profit to the City for that taxable year; or (3) elect the filing with the City of a consolidated municipal income tax return for a taxable year for which the original City income tax return was not filed on a consolidated basis.

(h) Liability of Fundamental Change of Business. If any employer which is liable for tax obligations imposed by this chapter undergoes a fundamental change, then the employer and its manager shall be liable for taxes due up to the date of the fundamental change. Taxes and final tax returns shall be due immediately after the fundamental change. Any successor employer shall withhold from any purchase price that the successor owes to the predecessor an amount sufficient to pay all unpaid taxes, interest and penalty which the predecessor employer owes pursuant to this chapter. The successor employer shall make such withholding until such time that the predecessor employer has paid such taxes, interest and penalties. If the successor fails to

withhold such amount, then the successor and, in a personal manner, the successor's manager shall be jointly and severally liable for the payment of the taxes, interest and penalty.

### **880.07 COLLECTION AT SOURCE.**

(a) For all periods beginning on or after January 1, 2016, each employer, agent of an employer, or other payer located or doing business in the City shall, unless excused by Section 718.011 of the Ohio Revised Code withhold from each employee an amount equal to the product of (i) the qualifying wages of the employee that are earned by the employee in the City and (ii) the City income tax rate set forth in section 880.04(a). Each such employer, agent of an employer, or other payer shall deduct and withhold the City income tax from such qualifying wages on the date that the employer, agent, or other payer directly, indirectly, or constructively (i) pays the qualifying wages to such employee or (ii) credits the qualifying wages under Internal Revenue Code section 3121, or any amendment or successor provision thereto in effect from time to time, to the benefit of such employee. For all periods beginning on or after January 1, 2016, this Section 880.07(a) and Section 718.03 of the Ohio Revised Code govern the obligation of an employer, agent of an employer, or other payer to withhold and remit to the City the City income tax owed on the qualifying wages of an employee that are earned by the employee in the City and to prepare and file with the City such returns and reports as required by this section 880.07 or Section 718.03 of the Ohio Revised Code by the dates specified in this section 880.04 or Section 718.03 of the Ohio Revised Code, as applicable. To the extent that the provisions of this Section 880.07 and the express provisions of Section 718.03 of the Ohio Revised Code are in conflict, Section 718.03 of the Ohio Revised Code shall control.

(b) Each such employer, agent of an employer, or other payor shall, on or before the fifteenth (15<sup>th</sup>) day following the end of each calendar quarter, make a return and remit to the City the tax hereby required to be withheld. Such return shall be on a form or forms prescribed by or acceptable to the Administrator and shall be subject to the rules and regulations prescribed therefore by the Administrator. Such employer shall be liable for the payment of the tax required to be deducted and withheld, whether or not such taxes have in fact been withheld. Any employer, agent of an employer, or other payor who withheld more than \$2,399 of City income tax during the immediately preceding calendar year or who withheld more than \$200 of City income tax during any month in the preceding calendar quarter shall, on or before the fifteenth (15<sup>th</sup>) day of each month, make a return and remit to the City the tax hereby required to be withheld for the immediately preceding month.

(c) On or before the last day of February following any calendar year each employer, agent of an employer, or other payor required to withhold and remit City income tax shall file with the Administrator an information return for each employee for whom City income tax has been, or should have been, withheld, showing the name, address and social security number of the employee, the total amount of compensation paid during the year and the amount of City income tax withheld from such employee. Any employer, agent of an employer, or other payor who must file its Internal Revenue Service Forms W-2 and W-3 electronically shall file the annual City income tax withholding reconciliation report required by this Section 880.07(c) electronically with the City in such manner as provided by the Administrator.

(d) The employer, agent of an employer, or other payor collecting such tax shall be deemed to hold the same, until payment is made by such employer to the City, as a trustee for the benefit of the City, and any such tax collected by such employer, agent, or other payor from

qualifying wages paid to employees shall, until the same is paid to the City, be deemed a trust fund in the hands of such employer, agent, or other payor.

(1) Every officer or employee of an employer, agent of an employer, or other payor who has control or direct supervision of or who is charged with the responsibility for withholding City income tax or filing the return and making payment of such taxes as required by this Section 880.07 is deemed to be a trustee of the City in collecting and holding the tax required under this chapter to be withheld, and the funds so collected by such withholding are deemed to be trust funds. Every such officer or employee is liable directly to the City for payment of such trust, regardless of whether actually collected by such employer, agent, or other payor. Any tax deducted and withheld by employers, agents of employers, or other payors in the City is to be considered paid to the City, whether or not the employer, agent, or other payor actually remits the tax to the City, for the purposes of determining employee credits. Refunds cannot be made until withholding is actually remitted to the City.

(2) All officers and employees described in Section 880.07(d)(1) shall be personally liable to the extent of the tax, interest and penalty, jointly and severally, for failure to file the return of the employer, agent of an employer, or other payor or to remit to the City the tax, interest and penalty as required under this chapter to be paid by the employer, agent, or other payor.

(3) No change in structure by an employer, agent of an employer, or other payor, including a fundamental change, discharges its officers and employees described in Section 880.07(d)(1) from liability for the failure by such an officer or employee to remit funds held in trust, to file a tax return or to pay taxes.

### **880.08 DECLARATIONS.**

(a) Requirement for Filing. Every person who engages in any business, profession, enterprise or activity subject to the tax imposed by Section 880.04, shall file a declaration setting forth such estimated income or the estimated profit or loss from such business activity, together with the estimated tax due thereon, if any. Also, excepting those hereinabove set forth and those subject to Section 880.07, every person who anticipates any taxable income may, by election, file a declaration setting forth such estimated income or estimated profit or loss together with the estimated tax thereon, if any. This Section 880.08 and Section 718.08 of the Ohio Revised Code govern the obligation of taxpayer to declare its estimated City income tax liability for a given taxable year and to pay those estimated taxes. Section 718.08 of the Ohio Revised shall control to the extent there is any conflict between this Section 880.08 and the express provisions of Section 718.08 of the Ohio Revised Code.

(b) Filing Dates. Calendar dates for filing such declaration shall be subject to the provisions set forth in Section 718.08 of the Ohio Revised Code.

(c) Forms. Such declaration shall be filed upon a form furnished by or obtainable from the Administrator. Credit shall be taken for City income tax to be withheld, if any, from any portion of such income. In addition, credit may be taken for tax payable to other taxing municipalities in accordance with the provisions of Section 880.15.

(d) Amended Declarations. The original declaration, or any subsequent amendment thereof, may be increased or decreased on or before any subsequent quarterly payment date as provided for herein.

(e) Payment with Declarations. The taxpayer making the declaration shall, at the time of the filing thereof, pay to the Administrator at least 22.5% of the estimated annual tax due after deducting:

(1) Any portion of such tax to be deducted or withheld at the source pursuant to Section 880.07;

(2) Any credits allowable under the provisions of Section 880.15; and

(3) Any overpayment of the previous year's tax liability which the taxpayer has not elected to have refunded. At least a similar amount shall be paid on or before the last day of the sixth, ninth and twelfth month after the beginning of the taxpayer's taxable year, provided that in case an amended declaration has been duly filed or the taxpayer is taxable for a portion of the year only, the unpaid balance shall be paid in equal installments on or before the remaining payment dates.

(f) Lump Sum Payment. At the discretion of the taxpayer, the total sum due may be paid in one lump sum by the due date, or made in quarterly installments, as described in Section 880.08(b). Any or all quarterly installments of the taxpayer's estimated tax may be paid in advance of the due date.

(g) Annual Return Required. On the dates required in Section 880.08(b)(1) of the year following that for which such declaration or amended declaration was filed, an annual return shall be filed and any balance which may be due the City shall be paid therewith in accordance with the provisions of Section 880.06.

#### **880.09 DUTIES OF THE ADMINISTRATOR.**

(a) Collection Responsibility. It shall be the duty of the Administrator to receive the tax imposed by this chapter in the manner prescribed herein from the taxpayers, to keep an accurate record thereof and to report all moneys so received.

(b) Responsibility for Maintenance of Records. It shall be the duty of the Administrator to enforce payment of all taxes owing the City, to keep accurate records for a minimum of five years showing the amount due from each taxpayer required to file a declaration and/or make any return, including taxes withheld, and to show the dates and amounts of payments thereof.

(c) Enforcement Authority. The Administrator is hereby charged with the enforcement of the provisions of this chapter and is hereby authorized, subject to the approval of the Board of Review, to adopt, promulgate and enforce rules and regulations relating to any matter or thing pertaining to the collection of taxes and the administration and enforcement of the provisions of this chapter, including provisions for the re-examination and correction of returns. In the case of a taxpayer that carries on transactions with its stockholders, members, other owners or with other corporations or affiliated entities related by ownership, interlocking directorates or some other method, or in the case of any person who operates a division, branch, factory, office, laboratory or activity within the City constituting a portion only of its total business, the Administrator is imbued with the allocation authority described in Section 482 of the Internal Revenue Code and its associated Treasury Regulations, and the Administrator shall require such additional information as he may deem necessary to ascertain whether net profits are properly allocated to the City. If the Administrator finds that net profits are not properly allocated to the City by reason of transactions with stockholders, members, or other owners or with other corporations or affiliated entities related by ownership, interlocking directories or transactions with such division, branch, factory, office, laboratory or activity, or by some other method, he shall make

such allocation as he deems appropriate to produce a fair and proper allocation of the net profits to the City.

(d) Determination of Taxes. In any case where a taxpayer has failed to file a return or has filed a return which does not show the proper amount of tax due, the Administrator may determine the amount of tax appearing to be due the City from the taxpayer and shall send to such taxpayer a written statement showing the amount of tax assessment so determined, together with interest and penalties thereon, if any. Any assessment determined by the Administrator shall be served in accordance with Section 718.18 of the Ohio Revised Code.

(e) Compromise Authority. Subject to the consent of the Board of Review or pursuant to regulations approved by such Board, the Administrator shall have the power to compromise any interest or penalty, or both, imposed by Section 880.11.

(f) In discharging the duties authorized by Section 880.09 and 880.10, the Administrator shall adhere to Sections 718.13, 718.18, 718.19, 718.23, 718.24, 718.25, 718.26, 718.27, 718.28, 718.30, 718.31, 718.36, 718.38, 718.39, and 718.99 of the Ohio Revised Code.

### **880.10 INVESTIGATIVE POWERS OF THE ADMINISTRATOR; CONFIDENTIAL INFORMATION.**

(a) Examination of Taxpayers Records. The Administrator, or any authorized employee, is hereby authorized to examine the books, papers, records and Federal Income Tax Returns of any employer or of any taxpayer or person subject to, or whom the Administrator believes is subject to, the provisions of this Chapter 880, to verify the accuracy of any return made or, if no return was made, to ascertain the tax due under this Chapter 880. Every such employer, supposed employer, taxpayer or supposed taxpayer is hereby directed and required to furnish, upon written request by the Administrator or his duly authorized agent or employee, the means, facilities and opportunity for making such examinations and investigations as are hereby authorized.

(b) Appearance Orders to Taxpayers. The Administrator is hereby authorized to order any person presumed to have knowledge of the facts to appear before him and may examine such person, under oath, concerning any income which was or should have been returned for taxation or any transaction tending to affect such income. For this purpose the Administrator may compel the production of books, papers, records and Federal Income Tax Returns and the attendance of all persons before him, whether as parties or witnesses, whenever he believes such persons have knowledge of such income or information pertinent to such inquiry.

(c) Result of Refusal to Submit Information. The refusal to produce books, papers, records and Federal Income Tax Returns or to submit to such examination by any employer or person subject or presumed to be subject to the tax or by any officer, agent or employee of a person subject to the tax or required to withhold tax or the failure of any person to comply with the provisions of this section or with an order or subpoena of the Administrator authorized hereby shall be deemed a violation of this chapter and shall be punishable as provided in Section 880.99.

(d) Confidential Nature of Information. Any information gained as the result of any returns, investigations, hearings or verifications required or authorized by this Chapter 880 shall be confidential, except for official purposes or except in accordance with proper judicial order, which includes the exchange of information between City departments for the purpose of collecting the City income tax. No person shall divulge such information.

(e) Retention of Records. Every taxpayer shall retain all records necessary to compute the taxpayer's tax liability for a period of five years from the date the taxpayer's return is filed or the withholding taxes are paid.

(f) Employer Submission of Quarterly List of Independent Contractors upon Request. Any business operating within City limits shall be required, upon request of the Tax Administrator, to submit a quarterly list of independent contractors to the Administrator.

### **880.11 INTEREST AND PENALTIES.**

(a) The penalties and interest, and limitations thereon, specified in Section 718.27 of Ohio Revised Code apply (i) to all City income tax returns required to be filed for taxable years beginning on or after January 1, 2016 and (ii) to all income tax, estimated income tax, and withholding tax payments required to be made or remitted to the City on or after January 1, 2016.

(b) Installment Plans. For presented rare or hardship cases approved by the Administrator or the Administrator's designee, payment plans for the payment of City income tax and any assessed interest and penalties may be entered into by and between the City and the subject taxpayer. All approved payment plans will require a minimum monthly payment of no less than fifty dollars (\$50.00), and no approved payment plan can have a term that exceeds twelve months. Payment plans do not preclude the assessment of penalty and interest against the subject taxpayer on the balance of City income tax due at the time the payment plan is established. Any such installment payment plan agreement may include an undertaking by the taxpayer to pay the City an amount not to exceed fifty dollars (\$50.00) to reimburse the City for the administrative costs incurred to establish the installment payment plan and to collect on it. If at any time during the term of the approved payment plan two monthly payments are not received by the required due dates, the payment plan will immediately terminate and become null and void. Any remaining balance of City income tax, interest, and penalties will then be due in full and must be remitted to the City within two weeks of written notification of the termination of the payment plan.

(c) Exceptions. A penalty shall not be assessed on an additional tax assessment made by the Administrator when a return has been filed in good faith and the tax paid thereon within the time prescribed by the Administrator. In the absence of fraud, neither penalty nor interest shall be assessed on any additional tax assessment resulting from a Federal audit, provided an amended return is filed and the additional tax is paid within three months after final determination of the Federal tax liability.

(d) Abatement by Board of Review. Upon recommendation of the Administrator, the Board of Review may abate penalty or interest, or both. Upon an appeal from the refusal of the Administrator to recommend abatement of penalty and interest, the Board may nevertheless abate penalty or interest or both.

### **880.12 COLLECTION OF UNPAID TAXES AND REFUNDS OF OVERPAYMENTS.**

(a) Sections 718.12, 718.18, and 718.19 of the Ohio Revised Code, as applicable, shall govern the periods of limitation and procedures for any (i) claim for refund of City income tax, (ii) assessment of City income tax, and (iii) commencement of a civil action to recovery City income tax and penalties and interest thereon.

(b) All taxes imposed by this Chapter 880 shall be collectible, together with any interest and penalties thereon, by suit, as other debts of like amount are recoverable. Additionally, the Administrator shall be responsible for establishing procedures for collection of delinquent taxpayer accounts and may outsource collections for said accounts. All of the City's post-judgment collection costs and fees, including attorney's fees, shall be imposed on, and reimbursed by, the delinquent taxpayer.

### **880.13 VIOLATIONS; LIMITATION ON PROSECUTION.**

- (a) No person shall:
- (1) Fail, neglect or refuse to make any return or declaration required by this chapter;
  - (2) Make any incomplete, false or fraudulent return;
  - (3) Fail, neglect or refuse to pay the tax, penalties or interest imposed by this chapter;
  - (4) Fail, neglect or refuse to withhold the tax from payments of qualifying wages to employees or remit such withholding to the Administrator;
  - (5) Refuse to permit the Administrator or any duly authorized agent or employee to examine books, records, papers and Federal Income Tax Returns relating to the income or net profits of a taxpayer;
  - (6) Fail to appear before the Administrator and to produce books, records, papers of Federal Income Tax Returns relating to the income or net profits of a taxpayer upon order or subpoena of the Administrator;
  - (7) Refuse to disclose to the Administrator any information with respect to the income or net profits of a taxpayer;
  - (8) Fail to comply with the provisions of this chapter or any order or subpoena of the Administrator authorized hereby;
  - (9) Give to an employer false information as to the person's true name, correct social security number and residence address or fail to promptly notify an employer of any change in residence address and the date thereof;
  - (10) Fail to use ordinary diligence in maintaining proper records of employees' residence addresses, total wages paid and City tax withheld or knowingly give the Administrator false information;
  - (11) Attempt to do anything whatever to avoid the payment of the whole or any part of the tax, penalties or interest imposed by this chapter; or
  - (12) Fail to make statements of rental listing as set forth in Section 880.03 or make incomplete or false statements thereof.
- (b) All prosecutions under this section shall be commenced within the periods stipulated in Chapter 718 of the Ohio Revised Code.
- (c) The failure of any employer or person to receive or procure a return, declaration or other required form shall not excuse such employer or person from making any information return, return or declaration, from filing such form or from paying the tax.

### **880.14 BOARD OF REVIEW.**

(a) Composition and Procedures. A Board of Review is hereby created. The appointment of members of the Board and the term of such members shall accord with Section 718.11 of the Ohio Revised Code. A majority of the members of the Board shall constitute a quorum. The

Board shall adopt its own procedural rules and shall keep a record of its transactions. Board members shall be compensated for attendance at qualified meetings. Any hearing by the Board may be conducted privately. The provisions of Section 880.10, with reference to the confidential character of information, shall apply to such matters as may be heard before the Board on appeal.

(b) Appeals; Alternative Method of Allocation. All rules and regulations and amendments or changes thereto which are adopted by the Administrator under the authority conferred by this chapter shall be approved by the Board of Review before the same become effective. The Administrator shall follow Sections 718.11 and 718.18 of the Ohio Revised Code in issuing any assessment or denial of a refund claim to a taxpayer, and the Board shall hear and pass on appeals from any ruling, decision, or assessment of the Administrator pursuant to the time frames set forth in Section 718.11 of the Ohio Revised Code. At the request of the taxpayer or Administrator, the Board is authorized to substitute alternate methods of allocation and apportionment. The taxpayer or the Administrator may appeal the Board of Review's decision as provided in Section 5717.011 of the Ohio Revised Code.

### **880.15 TAX CREDIT.**

(a) When the income of a resident is subject to an income tax in another municipality or state (other than Ohio) on the same income taxable under this Chapter, such resident shall be allowed a credit against City income tax equal to one percent (1%) of such income; provided, however, in cases where the income tax rate of the other municipality or state (other than Ohio) is less than one percent (1%), the credit against City income tax shall equal the product of (i) the income tax rate imposed by such other municipality or state (other than Ohio) and (ii) the income that is subject to tax by the City and such other municipality or state (other than Ohio). For the purposes of this Section 880.15, the income of a resident includes the resident's distributive share of net profit from a pass-through entity.

(b) If the 0.5% City income tax set forth in Section 880.005 expires and is not renewed or extended, then references to "one percent (1%)" in Section 880.15 shall be replaced by "three quarters of one percent (0.75%)".

(c) To the extent not set forth in Section 880.15(a), a taxpayer may claim any credit against City income tax that the City is required to grant under Chapter 718 of the Ohio Revised Code.

(d) A claim for credit or refund under this section shall be allowed only to the extent that the resident demonstrates that an income tax was paid to another municipality or state (other than Ohio) on the same income that is also subject to City income tax.

### **880.16 SEPARABILITY.**

If any sentence, clause, section or part of this chapter, or any tax against any individual of any of the several groups specified herein, is found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall affect only such clause, sentence, section or part of this chapter and shall not affect or impair any of the remaining provisions, sentences, clauses, sections or other parts of this chapter. It is hereby declared to be the intention of Council that this chapter would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

### **880.17 COLLECTION OF TAX AFTER TERMINATION OF CHAPTER.**

(a) This chapter shall continue effective insofar as the levy of taxes is concerned until repealed.

(b) Annual returns due for all or any part of the last effective year of this chapter shall be due on the dates provided in Section 880.06 and 880.07 as though the same were continuing.

### **880.99 PENALTY.**

(a) Except as set forth below, whoever violates any of the provisions of Section 880.13 is guilty of a misdemeanor of the third degree and shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than sixty days, or both, for each offense. Pursuant to Section 718.99 of the Ohio Revised Code, whoever violates Section 880.13(a)(4), and whoever knowingly violates Section 880.13(a)(2), shall be guilty of a misdemeanor of the first degree and shall be subject to a fine of not more than one thousand dollars (\$1,000) or imprisonment for a term of up to six months, or both, for each offense.

(b) Except as set forth below, whoever violates any provision of Section 880.10 is guilty of a misdemeanor of the third degree and shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than sixty days, or both. Any person who discloses information received from the Internal Revenue Service in violation Section 718.13(A) of the Ohio Revised Code, and Section 880.10 shall be guilty of a felony of the fifth degree and shall be subject to a fine of not more than five thousand dollars (\$5,000) plus the costs of prosecution, or imprisonment for term not exceeding five years, or both. Each instance of access to or disclosure of taxpayer information, regardless of the source of that information, in violation of Section 718.13(A) of the Ohio Revised Code, and Section 880.10 shall constitute a separate offense.

(c) In addition to the above penalty, any employee of the City who violates the provisions of Section 880.10 relative to the disclosure of confidential information shall be subject to immediate dismissal.”

SECTION 2. Effective January 1, 2016, Chapter 880 of the Codified Ordinances of the City of Brunswick, Ohio, as it has heretofore existed, is hereby repealed. Provided, however, that no provision of this ordinance, including the repeal of Chapter 880 of the Codified Ordinances of the City of Brunswick, Ohio, as it has heretofore existed, shall in any way affect any rights or obligations of the City, any taxpayer, or any other person, official or entity, with respect to the municipal income tax authorized by Chapter 880 of the Codified Ordinances of the City of Brunswick, Ohio, as it has heretofore existed and shall remain in effect until January 1, 2016, or with respect to the withholding, payment or collection of that tax on income earned prior to January 1, 2016.

SECTION 3. The Council finds and determines that all formal actions of this Council concerning and relating to the passage of this ordinance were taken, and all deliberations of this Council and of any of its committees that resulted in such formal action were held, in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 4. This ordinance is declared to be an emergency measure necessary for the immediate preservation of the public health, safety and welfare of the City, and for the further reason that this ordinance is required to be immediately effective in order to enable the City to timely commence collection of the City's income tax in conformance with the changes to the provisions of the Ohio Revised Code that govern municipal income taxation; wherefore, this ordinance shall be in full force and effect immediately upon its passage by the required number of votes and approval by the Mayor.

Passed: \_\_\_\_\_, 2015

\_\_\_\_\_  
President of Council

Attest: \_\_\_\_\_

Approved: \_\_\_\_\_, 2015

\_\_\_\_\_  
Mayor