

**C I T Y   O F   E N G L E W O O D**  
**IN**  
**MONTGOMERY COUNTY, OHIO**

**ORDINANCE NO: 18-02**

**PASSED: February 27, 2018**

**AN ORDINANCE: AMENDING CHAPTER 881 OF THE CODIFIED ORDINANCES  
OF THE CITY OF ENGLEWOOD REGARDING MUNICIPAL  
INCOME TAX AND DECLARING AN EMERGENCY**

**WHEREAS**, the General Assembly enacted S. B. 127 in September 2016, such that any income or withholding tax is “levied in accordance with the provisions and limitations specified in Chapter 718”; and

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

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

**WHEREAS**, on December 21, 2017, Judge David Cain of the Franklin County Court of Common Pleas issued an order in Franklin County Common Pleas Case Number 17CV 10258 extending the deadline set by Section 803.100 of H.B. 49 to February 24, 2018; and

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

**WHEREAS**, the City of Englewood is a party to the ongoing litigation seeking a declaration that the H.B. 49 municipal income tax provisions, Section 718.04(A) of the Ohio Revised Code, and other provisions of Ohio law that usurp the powers of local self-government are unconstitutional, and to enjoin all actions by state officials to implement the H.B. 49 municipal income tax provisions; and

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

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF  
ENGLEWOOD, MONTGOMERY COUNTY, OHIO, AS FOLLOWS:**

**SECTION I** That Chapter 881 of the Codified Ordinances of the City of Englewood shall hereby be enacted to read as set forth in Exhibit A of this Ordinance, attached hereto and incorporated by reference herein.

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

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

**SECTION IV** It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and of any committees that resulted in those formal actions were in meetings open to the public, in compliance with all legal requirements.

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

**PASSED** this 27th day of February, 2018.

Patricia Burnside  
Patricia Burnside, Mayor

**ATTEST:**

Kerry Norman  
Kerry Norman, Clerk of Council

## C E R T I F I C A T E

**I, Kerry Norman, Clerk of Council of the City of Englewood, Montgomery County, Ohio, do hereby certify the foregoing is a true and correct copy from the *Record of Proceedings* of said City. WITNESS my signature this 27th day of February, 2018.**

Kerry Norman

Kerry Norman, Clerk of Council

## CERTIFICATE OF POSTING

**I, Kerry Norman, Clerk of Council of the City of Englewood, Montgomery County, Ohio, do hereby certify publication of the foregoing ORDINANCE was made as designated by Sections 224.01 and 24.02 of the Englewood Code.**

Kerry Norman

Kerry Norman, Clerk of Council