

ORDINANCE NO. 2499

INTRODUCED BY: ALLEN-THOMAS, CHACON, DOUGLAS, FORD, HURST, HUSEMAN, KIM, MADERA, NOBLE

AN ORDINANCE AMENDING ARTICLE I OF CHAPTER 20 OF THE COMMERCE CITY REVISED MUNICIPAL CODE, THE SALES AND USE TAX CODE OF THE CITY OF COMMERCE CITY TO ESTABLISH AN EXEMPTION FROM THE CITY'S SALES AND USE TAX FOR CERTAIN RETAIL DELIVERY FEES AND CARRYOUT BAG FEES ENACTED BY THE STATE OF COLORADO

WHEREAS, the City of Commerce City, Colorado, (the "City") is a home rule municipality, organized and existing under Article XX, Section 6 of the Colorado Constitution;

WHEREAS, pursuant to Article XX, Section 6 of the Colorado Constitution, the right to enact, administer and enforce sales and use taxes is clearly within the constitutional grant of power to the City and is necessary to raise revenue with which to conduct the affairs and render the services performed by the City;

WHEREAS, pursuant to such authority, the City has adopted and enacted a Sales and Use Tax Code (the "Code"), under which City sales and use tax is levied;

WHEREAS, the City does not wish to impose local sales tax on retail delivery fees and carryout bag fees enacted by the State of Colorado that would otherwise be taxable under the Code; and

WHEREAS, the City adopts this ordinance with the intent to exempt such fees from local sales and use tax.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COMMERCE CITY, COLORADO, AS FOLLOWS:

SECTION 1. Findings. The recitals to this ordinance are incorporated as findings of the City Council. This ordinance is found to be necessary for the preservation of the public health, safety, and welfare and in the public interest.

SECTION 2. Code Additions.

- a. Section 20-5(W) is hereby added to the Code as provided in the attached Exhibit A
- b. Section 20-5(X) is hereby added to the Code as provided in the attached Exhibit A

SECTION 3. Repealer. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof are hereby repealed to the extent of such inconsistency.

SECTION 4. Effective Date. This ordinance shall be effective immediately upon passage on second and final reading.

INTRODUCED, PASSED ON FIRST READING AND PUBLIC NOTICE ORDERED THIS
1ST DAY OF MAY 2023.

PASSED ON SECOND AND FINAL READING AND PUBLIC NOTICE ORDERED THIS
5TH DAY OF JUNE 2023.

CITY OF COMMERCE CITY, COLORADO

Benjamin A. Huseman, Mayor

ATTEST

Dylan A. Gibson, City Clerk

EXHIBIT A
(Clean version; ellipses indicates no change)

BEGIN

Section 20-5 EXEMPT TRANSACTIONS, COMMODITIES AND “PERSONS”

It shall be a violation of this Code for any seller to fail to collect, or any purchaser to fail to pay a tax levied by this Code, and on sales on which exemption is disputed.

Should a dispute arise between the purchaser and seller as to whether or not any such sale is exempt from taxation hereunder, the seller shall collect and the purchaser shall pay such tax; the purchaser thereafter may apply to the Finance Director for a refund of such taxes paid as provided herein.

The purchase and sale of articles of tangible personal property not otherwise exempt are subject to the sales or use tax imposed herein as well as those specific services cited as taxable in Section 20- 4. The list of exempt commodities or articles cannot be increased by implication or similarity. In all cases, the burden of proof is upon the taxpayer to establish that a sale is tax exempt.

...

- W. The retail delivery fee consisting of the community access retail delivery fee imposed in C.R.S. § 24-38.5-303(7), the clean fleet retail delivery fee imposed in C.R.S. § 25-7.5-103(8), the clean transit retail delivery fee imposed in C.R.S. § 43-4-1203(7), the retail delivery fee imposed in C.R.S. § 43-4-218(3), the bridge and tunnel retail delivery fee imposed in C.R.S. § 43-4-805 (5)(g.7), and the air pollution mitigation retail delivery fee imposed in C.R.S. § 43-4-1303(8), as such sections existed on June 17, 2021.

- X. The carryout bag fee imposed in C.R.S. § 25-17-505, as such section existed on July 6, 2021.

EXHIBIT B TO ORDINANCE 2499

(Blue underline text indicates additions; ellipses indicates no change)

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X. The carryout bag fee imposed in C.R.S. § 25-17-505, as such section existed on July 6, 2021.

END