

**A RESOLUTION EXTENDING THE WAIVER OF DEVELOPMENT-RELATED AND
OTHER CITY FEES FOR CERTAIN NON-PROFIT ORGANIZATIONS AND
AUTHORIZING THE REBATE OF USE TAX COLLECTED FOR CERTAIN NEW
DEVELOPMENT BY OR FOR CERTAIN NON-PROFIT ORGANIZATIONS IN THE
CITY OF COMMERCE CITY**

NO. 2022-67

WHEREAS, the City Council of the City of Commerce City (“City”) desires the City to improve the quality of life of the City’s residents, to improve the availability of services to the City’s residents, to create new employment opportunities, and to attract a variety of other development by attracting development and renewal of properties by non-profit entities; and

WHEREAS, the City imposes certain fees to offset the direct or indirect cost of regulating development and performing its regulatory function, as detailed in the City’s Directory of Fees & Charges (November 19, 2018); and

WHEREAS, the City imposes a uniform sales and use tax within the City that applies, among other things, to materials provided and equipment used in construction within the City; and

WHEREAS, in 2019 the City Council desired to waive certain fees established in Sections 2, 4, 5, 17, 19, and 24 of the Directory of Fees & Charges, as more fully set forth in Exhibit A, for certain types of development by certain types of non-profit entities, in addition to those incentives that may be available through the Commerce City Economic Development Incentives Program, approved pursuant to Resolution No.2014-56, and to authorize the rebate of sales and use tax paid in connection with development of facilities by certain types of non-profit entities; and

WHEREAS, the 2019 resolution allowing the City Manager to rebate or waive certain development fees for non-profit organizations expired on May 31, 2022 and the City Council now desires to extend that waiver until May 31, 2025.

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

1. **Finding of Public Purpose.** The City Council finds and determines that waiving certain fees and rebating taxes consistent with this resolution will serve a public purpose and public need and be in the public interest by attracting development to the City and the establishment of facilities by non-profits and improving the vitality of non-profits, thereby improving the quality of life of the City’s residents, increasing the availability of services, creating new employment opportunities, and attracting other beneficial development.
2. **Definitions.** As used in this resolution:
 - a. *Non-profit development* means the development of property for use by a qualifying non-profit entity.
 - b. *Qualifying non-profit entity* means: (i) organization exempt from federal income tax under section 501(c)(3) of Title 26 of the United States Code; (ii) that is in good standing with the Colorado Secretary of State; and (iii) that has its headquarters or principal place of business within the City or provides services directly to City residents.

3. **Development Fee Waiver.** The City-imposed development fees identified in Exhibit A shall be waived by the City with respect to the development of any non-profit development whether incurred directly by a qualifying non-profit entity, an affiliated entity developing property for the qualifying non-profit entity's use, or a contractor or consultant acting on behalf of the qualifying non-profit entity or its affiliated entity. This waiver applies only to the end-user of the non-profit development and to that portion of a development directly attributable to the non-profit development. The City shall have sole discretion to determine whether fees are attributable to non-profit development. Fees payable after the expiration or revocation of this resolution shall not be subject to this waiver. Fee waiver and other incentives requests for other types of development will be considered on a case-by-case basis through the Commerce City Economic Development Incentives Program.
4. **Community Room Fee Waiver.** The City-imposed fees identified in Exhibit A shall be waived by the City with respect to the use of community meeting rooms at Bison Ridge and Eagle Pointe Recreation Centers by any qualifying non-profit entity, provided such entity shall be responsible for set-up, tear-down, and staffing costs as determined by the City at the time of the application. This waiver applies only to that portion of the use directly attributable to the qualifying non-profit entity's use. The City shall have sole discretion to determine whether fees are attributable to a qualifying non-profit entity's use. Fees payable after the expiration or revocation of this resolution shall not be subject to this waiver. All required applications must be submitted for the use of City facilities. This resolution does not waive any requirements of insurance, indemnity, security deposits, licensing fees, costs of compliance with security requirements or other conditions of approval, or obligations to repair damaged property. This resolution does not limit the City's ability to deny or condition any application for use of City facilities.
5. **Use Tax Rebate.** The City Manager is authorized to rebate non-dedicated City sales/use tax (at the 3.5% rate) payable to the City by or on behalf of a qualifying non-profit entity (whether incurred directly by the non-profit entity or by a contractor or consultant acting on behalf of the non-profit entity). Such rebate shall relate solely to construction materials and charges by contractors for use of construction equipment in conjunction with any development for ownership and use by the qualifying non-profit entity, provided:
 - a. Such rebate shall be funded solely from such taxes actually remitted to the City by or on behalf of the qualifying non-profit entity in connection with the development and subject to the verification of the payment of such taxes;
 - b. Such rebate shall be payable solely to the entity that paid the tax;
 - c. If such rebate is payable to a contractor or consultant acting on behalf of the non-profit entity, the payment of any rebate shall be conditioned on an equivalent reduction in the price paid by the non-profit entity for the work for which the tax was imposed and the receipt of the non-profit entity's consent to the payment of such rebate;
 - d. The City will not be obligated to provide any rebate at any time either non-profit entity or its contractor or consultant owes obligations and debts to the City, whether monetary or otherwise, including, but not limited to, any and all fees, fines, taxes, assessments, penalties, judgments, liens and dedications, whether or not related to the development, and may provide incentives when such obligations and debts are satisfied.
 - e. The City's obligation to pay any rebate is subject to all commitments to pay any City bonds and any restrictions in such bonds. Nothing in this resolution or any Incentive Agreement shall be construed to create a multiple fiscal year debt or financial

obligations to pay the incentive or reimburse taxes to any person or entity without prior City-wide voter approval. Any incentive payable in accordance with this resolution shall be subject to annual appropriations that are a legislative decision of the City Council.

6. **City Manager Authority to Waive Additional Fees.** Consistent with Section 1(A) of the Directory of Fees & Charges, the City Manager is authorized to waive any other City-imposed fee for a qualifying non-profit entity development project if the City Manager deems such a waiver to be in the best interests of the City, to the extent allowed by law.
7. **Expiration.** This resolution shall expire on May 31, 2025.
8. **Authority to Suspend.** The City Manager is authorized to suspend the fee waivers authorized by this resolution, in their entirety or with respect to a particular fee or particular development, if the City Manager determines that the cost to the City is excessive or the program is being abused or misused, in the City Manager's opinion.
9. **Limitation.** This resolution does not waive any fee not listed in Exhibit A; any tax, fine, or penalty; any legislatively-imposed impact fees; any fees charged by or for other entities; or any conditions of regulatory approval. This resolution shall not vest rights upon any person and nothing contained in it shall give or allow any claim or right of action by any person against the City.
10. **Directory of Fees & Charges.** No other City fees shall be increased to offset the cost of this waiver except as provided herein. The Directory of Fees & Charges shall be deemed modified as set forth in this resolution until this resolution expires or is terminated.

RESOLVED AND PASSED THIS 18TH DAY OF JULY 2022.

CITY OF COMMERCE CITY, COLORADO

Benjamin A. Huseman, Mayor

ATTEST

Dylan A. Gibson, City Clerk

EXHIBIT A

(Attach fee schedule with strikethroughs here)