

ORDINANCE NO. 2

Series 2023

May 2, 2023: Introduced as Council Bill 3, Series 2023 by Mayor Pro Tem Randy Weil, seconded by Councilor Earl Hoellen and considered in full text on first reading. Passed by a vote of 5 yes and 0 no.

May 16, 2023: Considered in full text on second reading. Passed by a vote of 6 yes and 0 no.

A BILL FOR AN ORDINANCE OF THE CITY OF CHERRY HILLS VILLAGE, AMENDING CHAPTER 4, ARTICLE IV CONCERNING RETAIL SALES TAX DEFINITIONS AND EXEMPTIONS

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

WHEREAS, pursuant to Article XX, Section 6 of the Colorado Constitution, the right to enact, administer and enforce sales 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; and

WHEREAS, pursuant to such authority, the City has adopted and enacted a Sales Tax Code (the "Code"), under which the City imposes a sales tax for the privilege of selling tangible personal property at retail upon every vendor engaged in business in the City, unless prohibited, under the Constitution or laws of the United States or as set forth in Chapter 4, Article IV of the Cherry Hills Village Municipal Code ("Municipal Code"); and

WHEREAS, in SJR14-038 the Colorado General Assembly asked the Colorado Municipal League to revive the tax simplification project from the 1990s to address current systemic problems associated with local tax collection; and

WHEREAS, City Council has determined that the standard tax definitions project is a major collaborative sales tax simplification initiative by Colorado's home rule municipalities that locally collect their sales tax and the retail business community; and

WHEREAS, City Council has determined that the City will cooperate in furtherance of a statewide goal to have all locally collecting municipalities agree to use standard definitions in their sales tax codes; and

WHEREAS, City Council has determined that maintaining the local collection of sales taxes for the City is of paramount importance to the continued financial strength of the City and that the retail business community desires better uniformity and simplicity when operating in the City; and

WHEREAS, City Council has generally supported the idea that the City should simplify the tax code, without sacrificing revenue, and has determined that revenue-neutral tax simplification is generally construed as good for business and good for the community as a whole; and

WHEREAS, Council has determined that modifying the City's sales tax exemptions is required in an effort to comply with the Taxpayer Bill of Rights by staying revenue neutral; and

WHEREAS, the City Council 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 Municipal Code, and further desires to exempt from local sales tax the following items: food for home consumption, newspapers and related products, medical supplies, prescription drugs and other medical items for animals, garage sales up to a certain threshold, food and beverage products produced locally on a small scale, and dissolution of LLCs; and

WHEREAS, the City Council has determined that adopting the relevant standard tax definitions established by the Colorado Municipal League is in the City's best interest.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CHERRY HILLS VILLAGE, COLORADO, ORDAINS:

Section 1. Recitals Incorporated. The recitals contained above are incorporated herein by reference and are adopted as findings and determinations of the City Council.

Section 2. Section 4-4-10 Amended. Section 4-4-10 of the Cherry Hills Village Municipal Code, entitled "Definitions," is hereby amended to revise the definitions of "Medical Supplies" and "Purchase or Sale," and to include "Food for Home Consumption," "Garage Sales," "Newspaper," "Preprinted Newspaper Supplements," "Prescription Drugs for Animals," and "Prosthetic Devices for Animals," as defined terms to read as follows, with additions shown in underline and deletions shown in ~~strikethrough~~, and with the remainder of Section 4-4-10 to remain intact:

Food For Home Consumption means food for domestic home consumption as defined in 7 U.S.C. sec. 2012 (k) (2014), as amended, for purposes of the supplemental nutrition assistance program, or any successor program, as defined in 7 U.S.C. sec. 2012 (t), as amended; except that "food" does not include carbonated water marketed in containers; chewing gum; seeds and plants to grow foods; prepared salads and salad bars; packaged and unpackaged cold sandwiches; deli trays; and hot or cold beverages served in unsealed containers or cups that are vended by or through machines or non-coin-operated coin-collecting food and snack devices on behalf of a vendor.

Garage Sales means sales of tangible personal property, except automotive vehicles, occurring at the residence of the seller, where the property to be sold was originally purchased for use by members of the household where such sale is being conducted. The term includes, but is not limited to, yard sales, estate sales, and block sales.

Medical Supplies means drugs dispensed in accordance with a prescription; insulin in all its forms dispensed pursuant to the direction of a licensed physician; glucose usable for treatment of insulin reactions; urine- and blood-testing kits and materials, insulin measuring and injecting devices, including hypodermic syringes and needles; ~~prosthetic devices~~; wheelchairs and hospital beds; ~~drugs or materials~~ when furnished by a doctor as part of professional services provided to a patient; and corrective eyeglasses, contact lenses or hearing aids.

Newspaper means a publication, printed on newsprint, intended for general circulation, and published regularly at short intervals, containing information and editorials on current events and news of general interest. The term Newspaper does not include: magazines, trade publications or journals, credit bulletins, advertising inserts, circulars, directories, maps, racing programs, reprints, newspaper clipping and mailing services or listings, publications that include an updating or revision service, or books or pocket editions of books.

Preprinted Newspaper Supplements means inserts, attachments or supplements circulated in newspapers that: (1) are primarily devoted to advertising; and (2) the distribution, insertion, or attachment of which is commonly paid for by the advertiser.

Prescription Drugs for Animals means a drug which, prior to being dispensed or delivered, is required by the federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sect. 301, et seq., as amended, to state at a minimum the symbol "Rx Only" and is dispensed in accordance with any order in writing, dated and signed by a licensed veterinarian specifying the animal for which the medicine or drug is offered and directions, if any, to be placed on the label.

Prosthetic Devices for Animals means any artificial limb, part, device or appliance for animal use which replaces a body part or aids or replaces a bodily function; is designed, manufactured, altered or adjusted to fit a particular patient; and is prescribed by a licensed veterinarian. Prosthetic devices include, but are not limited to, prescribed auditory, ophthalmic or ocular, cardiac, dental, or orthopedic devices or appliances, and oxygen concentrators with related accessories.

Purchase or Sale means the acquisition for any consideration by any person of tangible personal property or other taxable products that are purchased, leased, rented, sold, used, stored, distributed, or consumed. These terms include capital leases, installment and credit sales, and property acquired by:

- a. Transfer, either conditionally or absolutely, of title or possession or both to tangible personal property, or other taxable products;
- b. A lease, lease-purchase agreement rental or grant of a license, including royalty agreements, to use tangible personal property, or other taxable products;
- c. Barter or exchange for other tangible personal property, or other taxable products.

The terms *Purchase and Sale* do not include:

- a. A division of partnership assets among the partners according to their interests in the partnership;
- b. The transfer of assets of shareholders in the formation or dissolution of professional corporations, if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets;
- c. The dissolution and the pro rata distribution of the corporation's assets to its stockholders, if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets;
- d. A transfer or dissolution of a partnership or limited liability company interest;
- e. The transfer of assets to a commencing or existing partnership or limited liability company, if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets;
- f. The repossession of personal property by a chattel mortgage holder or foreclosure by a lienholder;
- g. The transfer of assets from a parent company to a subsidiary company or companies which are owned at least eighty percent (80%) by the parent company, which transfer is solely in exchange for stock or securities of the subsidiary company;
- h. The transfer of assets from a subsidiary company or companies which are owned at least eighty percent (80%) by the parent company to a parent company or to another subsidiary which is owned at least eighty percent (80%) by the parent company, which transfer is solely in exchange for stock or securities of the parent corporation or the subsidiary which received the assets;
- i. The transfer of assets between parent and closely held subsidiary companies, or between subsidiary companies closely held by the same parent company, or between companies which are owned by the same shareholders in identical percentage of stock ownership amounts, computed on a share-by-share basis, when a tax imposed by this Article was paid by the transferor company at the time it acquired such assets, except to the extent that there is an increase in the fair market value of such assets resulting from the manufacturing, fabricating, or physical changing of the assets by the transferor company. To such an extent any transfer referred to in this paragraph shall constitute a sale. For the purposes of this paragraph, a closely held subsidiary corporation is one (1) in which the parent company owns stock possessing or membership interest at least eighty percent (80%) of the total combined voting power of all classes of stock entitled to vote and owns at least eighty percent (80%) of the total number of shares of all other classes of stock.

Section 3. Section 4-4-210 Amended. Section 4-4-210 of the Cherry Hills Village Municipal Code, entitled "Exemptions," is hereby amended to read as follows, with additions shown in underline and deletions shown in ~~strike~~, with the remainder of Section 4-4-210 to remain intact:

Sec. 4-4-210. Exemptions.

- (a) There shall be exempt from taxation under the provisions of this Article the following:
 - (1) All sales to the United States government, to the State, its departments and institutions, and the political subdivisions thereof in their governmental capacities only.
 - (2) All sales made to religious, charitable and eleemosynary corporations, in the conduct of the regular religious, charitable or eleemosynary functions and activities.
 - (3) All sales which the City is prohibited from taxing under the Constitution or laws of the United States or the State.
 - (4) All sales of cigarettes.
 - (5) ~~All sales of drugs disbursed in accordance with a prescription and all sales of prosthetic and therapeutic devices. All sales of Medical Supplies, Prescription Drugs for Animals, Prescription Drugs for Humans, Prosthetic Devices for Animals, Prosthetic Devices for Humans, Therapeutic Devices, as defined in this Article, and devices, appliances, or related accessories that correct or treat an animal physical disability or surgically created abnormality prescribed by a licensed veterinarian.~~
 - (6) All commodities which are taxed under the provisions of Sections 39-27-101 to 39-27-121, C.R.S., relating to motor fuels.

- (b) All sales and purchases of neat cattle, sheep, lamb, swine and goats; all sales and purchases of mares and stallions for breeding purposes; and all farm close-out sales shall be exempt from taxation.
- (c) All sales and purchases of feed for livestock or poultry, all sales and purchases of seeds, and all sales and purchases of orchard trees shall be exempt from taxation.
- (d) All sales and purchases of straw and other bedding for use in the care of livestock shall be exempt from taxation.
- (e) For transactions consummated on or after January 1, 1986, the City's sales tax shall not apply to the sale of construction and building materials, as the term is used in Section 29-2-109, C.R.S., if such materials are picked up by the purchaser and the purchaser presents to the vendor a building permit or other documentation acceptable to the City evidencing that a local use tax has been paid or is required to be paid.
- (f) All sales of services shall be exempt from taxation.

(g) Certain State-imposed fees shall be exempt from taxation, as set forth below:

(1) 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.

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

(h) The sale of Food for Home Consumption, as defined in this Article, shall be exempt from taxation.

(i) The sale of Newspapers and Preprinted Newspaper Supplements, as defined in this Article, newsprint, and printer's ink, shall be exempt from taxation.

(j) Garage Sales, as defined in this Article, shall be exempt from taxation.

(k) Occasional sales by a City resident of beverages and food products that the resident has cultivated, harvested, prepared, or produced at his or her City residence shall be exempt from taxation. For purposes of this subsection, "occasional sales" means sales that do not occur more than eighty-four (84) days in a calendar year.

Section 4. Severability. If any provision of this ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remaining portions or applications of this ordinance that can be given effect without the invalid portion, provided that such remaining portions or applications of this ordinance are not determined by the court to be inoperable. The City Council declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, despite the fact that any one or more section, subsection, sentence, clause, phrase, or portion be declared invalid.

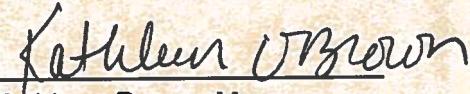
Section 5. Safety. This ordinance is deemed necessary for the protection of the health, welfare, and safety of the community.

Section 6. Codification Amendments. The codifier of the City's Municipal Code, Municode, is hereby authorized to make such numerical and formatting changes as may be necessary to incorporate the provisions of this ordinance within the Cherry Hills Village Municipal Code.

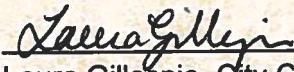
Section 7. Effective Date. This ordinance shall become effective ten (10) days after publication after second reading in accordance with Section 4.5 of the Charter for the City of Cherry Hills Village.

Adopted as Ordinance No. 2, Series 2023, by the City Council of the City of Cherry Hills Village, Colorado this 16th day of May, 2023.

(SEAL)

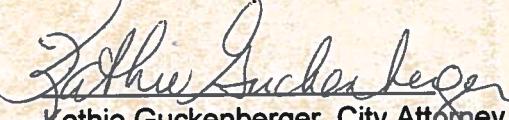

Kathleen Brown, Mayor

ATTEST:


Laura Gillespie, City Clerk

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APPROVED AS TO FORM:


Kathie Guckenberger, City Attorney

