

**ORDINANCE NO. 22-11**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
CASTLE PINES, COLORADO AMENDING ARTICLE 3, SALES AND  
USE TAX, OF CHAPTER 4 OF THE MUNICIPAL CODE**

**WHEREAS**, the City of Castle Pines, Colorado, (the “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 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; and

**WHEREAS**, pursuant to such authority, the City Council has adopted a comprehensive sales and use tax code (“Sales Tax Code”) codified in Article 3 of Chapter 4 of the Municipal Code (“Municipal Code”) under which City sales tax is levied on all sales and purchases of tangible personal property or taxable services at retail unless prohibited, as applicable to the provision of this Ordinance, under the Constitution or laws of the United States; and

**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 Sales Tax Code; and

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

**WHEREAS**, in Colorado Senate Joint Resolution 14-038, the 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**, the City Council of the City (“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 and use tax codes; and

**WHEREAS**, City Council has determined that maintaining the local collection of sales and use taxes for the City is of paramount importance to the continued financial strength of the City; and

**WHEREAS**, City Council has determined that the retail business community desires better uniformity and simplicity when operating in the City; and

**WHEREAS**, City Council has determined that revenue neutral tax simplification is generally construed as good for business and good for the community as a whole; and

**WHEREAS**, the United States Supreme Court in *South Dakota v. Wayfair*, 138 S.Ct. 2080 (2018), overturned prior precedent and held that a State is not prohibited by the Commerce Clause from requiring a retailer to collect sales tax based solely on the fact that such retailer does not have a physical presence in the State (“Remote Sales”); and

**WHEREAS**, based upon the *Wayfair* decision, a retailer’s obligation to collect Remote Sales is no longer based on the retailer’s physical presence in the jurisdiction by the Constitution or law of the United States, and the City’s Code needs to be amended to clearly reflect such obligation consistent with said decision; and

**WHEREAS**, the delivery of tangible personal property, products, or services into the City relies on and burdens local transportation systems, emergency and police services, waste disposal, utilities and other infrastructure and services; and

**WHEREAS**, the failure to tax Remote Sales creates incentives for businesses to avoid a physical presence in the State and its respective communities, resulting in fewer jobs and increasing the share of taxes to those consumers who buy from competitors with a physical presence in the State and its municipalities; and

**WHEREAS**, with the proliferation of internet sales, the Supreme Court in *Wayfair* found that because the Physical Presence Rule creates an artificial and unfair taxing scheme and market distortions by prejudicing in-state businesses and creating a tax benefit for out-of-state businesses, the Physical Presence Rule is no longer required for a business to have a substantial nexus with the taxing state, or other taxing jurisdiction, and to be subject to that jurisdiction’s sales taxes; and

**WHEREAS**, the failure to tax remote sales creates incentives for businesses to avoid a physical presence in the State and its respective communities, resulting in fewer jobs and increasing the share of taxes to those consumers who buy from competitors with a physical presence in the State and its municipalities;

**WHEREAS**, pursuant to Ordinance No. 19-13, the City Council amended the Sales Tax Code to codify the ruling of *Wayfair* by establishing economic nexus for retailers or vendors without physical presence in the state and requiring the retailer or vendor to collect and remit sales tax for all sales made within the marketplace; and

**WHEREAS**, since the adoption of Ordinance No. 19-13, the Colorado Department of Revenue has adopted and implemented a statewide sales and use tax system (“SUTS”) portal to allow Colorado businesses to file taxes for all participating Colorado jurisdictions from one online location; and

**WHEREAS**, the SUTS program includes a geographic information system that enables

businesses to easily identify the correct taxing jurisdiction related to the sale of a taxable good or service; and

**WHEREAS**, in the interest of tax simplification and encouraging voluntary compliance by retailers, the City intends to participate in SUTS; and

**WHEREAS**, the City Council and staff have identified certain amendments to the Sales Tax Code to create sales tax uniformity among Colorado jurisdictions; and

**WHEREAS**, the City Council finds that this Ordinance advances the public health, safety, convenience and general welfare of the residents of the City; and

**WHEREAS**, nothing contained in this Ordinance is intended to nor shall be interpreted or construed to effect a tax policy change resulting in a net revenue increase to the City as restricted by the Taxpayer's Bill of Rights, Section 20 of article X of the Colorado Constitution; and

**WHEREAS**, City Council conducted a public hearing, with proper notice provided, to consider adoption of this Ordinance as required by law.

**THE CITY COUNCIL OF THE CITY OF CASTLE PINES, COLORADO, ORDAINS:**

**Section 1.** Section 4-3-30, titled Definitions, is hereby amended as follows with deletions shown in ~~strike through~~ and additions shown in underline text:

Commodity means a product as opposed to a service.

Digital Product means an electronic product including, but not limited to: (1) "digital images" which means works that include, but are not limited to, the following that are generally recognized in the ordinary and usual sense as "photographs," "logos," "cartoons," or "drawings;" (2) "digital audio-visual works" which means a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any, (3) "digital audio works" which means works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones. For purposes of the definition of "digital audio works", "ringtones" means digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication, and (4) "digital books" which means works that are generally recognized in the ordinary and usual sense as "books".

Economic Nexus means the connection between the City and a person not having a physical nexus in the State of Colorado, which connection is established when the person or marketplace facilitator makes retail sales into the City, and:

(A) In the previous calendar year, the person, which includes a marketplace facilitator, has made retail sales into the state exceeding the amount specified in C.R.S. § 39-26-102(3)(c), as amended; or

(B) In the current calendar year, 90 days has passed following the month in which the person, which includes a marketplace facilitator, has made retail sales into the state exceeding the amount specified in C.R.S. § 39-26-102(3)(c), as amended.

~~Doing business in this City means the selling, leasing, or delivering in this City, or any activity in this City in connection with the selling, leasing, or delivering in this City, of tangible personal property or taxable services by a retail sale as defined in this section, for use, storage, distribution, or consumption within this City. This definition affects the imposition, application, or collection of sales and use taxes only. Doing business in this City includes, but shall not be limited to, the following acts or methods of transacting business:~~

- ~~(a) The maintaining within this City, directly or indirectly or by a subsidiary, of an office, distribution facility, salesroom, warehouse, storage place, or other similar place of business, including the employment of a resident of this City who works from a home office in this City; or~~
- ~~(b) The soliciting, either by direct representatives, indirect representatives, manufacturers' agents, or by distribution of catalogues or other advertising, or by use of any communication media, or by use of the newspaper, radio, or television advertising media, or by any other means whatsoever, of business from persons residing in this City and by reason thereof receiving orders from, or selling or leasing tangible personal property to, such persons residing in this City for use, consumption, distribution, and storage for use or consumption in this City.~~
- ~~(c) Economic nexus:
  - ~~(1) Except as provided in subsection (c)(2) of this section, a person is doing business in this City in a calendar year:
    - ~~(A) If in the previous calendar year the person has made retail sales of tangible personal property, commodities, or services in the state as specified in Section 4-3-210, exceeding one hundred thousand dollars (\$100,000.00); or~~
    - ~~(B) On and after the first day of the month after the ninetieth day after the person has made retail sales of tangible personal property, commodities, or services in the City as specified in Section 4-3-210, in the current calendar year that exceed one hundred thousand dollars (\$100,000.00).~~~~
  - ~~(2) For purposes of determining whether the thresholds set forth in subsection (c)(1) of this section are met:
    - ~~(A) A marketplace facilitator shall include all sales made by marketplace sellers in and through its marketplace; and~~~~~~

~~(B) A marketplace seller shall not include any sales made in or through a marketplace facilitator's marketplace.~~

~~(3) This subsection (c) does not apply to any person who is doing business in this City under subsection (a) of this section but otherwise applies to any other person.~~

Engaged in Business in the City means performing or providing services or selling, leasing, renting, delivering, or installing tangible personal property, products, or services for storage, use or consumption, within the City. Engaged in Business in the City includes, but is not limited to, any one of the following activities by a person: (1) Directly, indirectly, or by a subsidiary maintains a building, store, office, salesroom, warehouse, or other place of business within the City; (2) Sends one or more employees, agents or commissioned sales persons into the taxing jurisdiction to solicit business or to install, assemble, repair, service, or assist in the use of its products, or for demonstration or other reasons; (3) Maintains one or more employees, agents or commissioned sales persons on duty at a location within the City; (4) Owns, leases, rents or otherwise exercises control over real or personal property within the City; (5) Retailer or vendor in the state of Colorado that makes more than one delivery into the City within a twelve month period; or (6) Makes retail sales sufficient to meet the definitional requirements of economic nexus as set forth in this section 4-3-30.

*Marketplace seller* means a person, regardless of whether the person is engaged in doing business in the City this state, who has an agreement with a marketplace facilitator and offers for sale tangible personal property, commodities, or services through a marketplace owned, operated, or controlled by a marketplace facilitator.

*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.

*Prescription Drugs for Humans* 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 written or electronic order dated and signed by a licensed practitioner of the healing arts, or given orally by a practitioner and immediately reduced to writing by the pharmacist, assistant pharmacist, or pharmacy intern, specifying the name and any required information of the patient for whom the medicine, drug or poison is offered and directions, if any, to be placed on the label.

*Retailer or Vendor* means any person selling, leasing, renting, or granting a license to use tangible personal property or services at retail. Retailer shall include, but is not limited to, any:

- (1) Auctioneer;

- (2) Salesperson, representative, peddler or canvasser, who makes sales as a direct or indirect agent of or obtains such property or services sold from a dealer, distributor, supervisor or employer;
- (3) Charitable organization or governmental entity which makes sales of tangible personal property to the public, notwithstanding the fact that the merchandise sold may have been acquired by gift or donation or that the proceeds are to be used for charitable or governmental purposes;
- (4) Retailer-contractor, when acting in the capacity of a seller of building supplies, construction materials, and other tangible personal property; and
- (5) Marketplace facilitator, marketplace seller, and multichannel seller ~~doing business in this City.~~

*Tangible personal property:*

- (a) Means corporeal personal property. The term shall not be construed to include newspapers, as legally defined by section 24-70-102, C.R.S., preprinted newspaper supplements that become attached to or inserted in and distributed with such newspapers, or direct mail advertising materials that are distributed in the City by any person engaged solely and exclusively in the business of providing cooperative direct mail advertising.
- (b) (1) Tangible personal property shall include computer software if the computer software meets all of the following criteria:
  - (A) The computer software is prepackaged for repeated sale or license;
  - (B) The use of the computer software is governed by a tear-open nonnegotiable license agreement; and
  - (C) The computer software is delivered to the customer in a tangible medium.  
Computer software is not delivered to the customer in a tangible medium if it is provided through an application service provider, delivered by electronic computer software delivery, or transferred by load and leave computer software delivery.
- (2) As used in this subparagraph b., unless the context otherwise requires:
  - (A) Application service provider or ASP means an entity that retains custody over or hosts computer software for use by third parties. Users of the computer software hosted by an ASP typically will access the computer software via the internet. The ASP may or may not own or license the computer software, but generally will own and maintain hardware and networking equipment required for the user to access the computer software. Where the ASP owns the computer software, the ASP may charge the user a license fee for the computer software or a fee for maintaining the computer software or hardware used by its customer.

- (B) Computer software means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.
  - (C) Electronic computer software delivery means computer software transferred by remote telecommunications to the purchaser's computer, where the purchaser does not obtain possession of any tangible medium in the transaction.
  - (D) Load and leave computer software delivery means delivery of computer software to the purchaser by use of a tangible medium where the title to or possession of the tangible medium is not transferred to the purchaser, and where the computer software is manually loaded by the vendor, or the vendor's representative, at the purchaser's location.
  - (E) Prepackaged for repeated sale or license means computer software that is prepackaged for repeated sale or license in the same form to multiple users without modification and is typically sold in a shrink-wrapped box.
  - (F) Tangible medium means a tape, disk, compact disc, card, or comparable physical medium.
  - (G) Tear-open nonnegotiable license agreement means a license agreement contained on or in the package, which by its terms becomes effective upon opening of the package and accepting the licensing agreement. Tear-open nonnegotiable license agreement does not include a written license agreement or contract signed by the licensor and the licensee.
- (3) The internalized instruction code that controls the basic operations, such as arithmetic and logic, of the computer causing it to execute instructions contained in system programs is an integral part of the computer and is not normally accessible or modifiable by the user. Such internalized instruction code is considered part of the hardware and considered tangible personal property that is taxable pursuant to subsection 4-3-210(a). The fact that the vendor does or does not charge separately for such code is immaterial.
- (4) If a retailer sells computer software to a City purchaser that is considered tangible personal property taxable pursuant to subsection 4-3-210(a) and the City purchaser pays the retailer for a quantity of computer software licenses with the intent to distribute the computer software to any of the purchaser's locations outside of the City, the measure of City sales tax due is the total of the license fees associated only with the licenses that are actually used in the City. The City purchaser shall provide a written statement to the retailer, attesting to the amount of the license fees associated with Colorado and with points outside of Colorado. The written statement shall relieve the retailer of any liability associated with the proration.

(c) Tangible Personal Property shall include Digital Products.

**Section 2.** Subsection (b) of Section 4-3-60, titled *Liability for payment; taxes held in trust*, is hereby amended to read as follows with additions shown in underline text and deletions shown in ~~strikethrough~~:

(b) Every retailer engaged in business ~~doing business~~ in this City and selling at retail shall be liable and responsible for the payment of an amount equivalent to the amount of the tax imposed by this Article computed on the total of all sales made by such retailer of tangible personal property or services as specified herein.

**Section 3.** Section 4-3-210, titled *Imposition of sales tax*, is hereby amended to add a new subsection (g) to read as follows with additions shown in underline text:

(g) Upon marketplace sales as set forth in Section 4-3-270 of this Article.

**Section 4.** Section 4-3-220, titled *Location of sale*, is hereby amended as follows with additions shown in underline text and deletions shown in ~~strike through~~:

**Sec. 4-3-220. Location of sale.**

- (a) Except as provided in subsections (b) and (c) of this section, for purposes of determining where a sale of tangible personal property, commodities, or services is made, the following rules apply:
- (1) If tangible personal property, commodities, or services are received by the purchaser at a business location of the seller, the sale is sourced to that business location;
  - (2) If tangible personal property, commodities, or services are not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser occurs, including the location indicated by instructions for delivery to the purchaser, if that location is known to the seller;
  - (3) If subsections (a)(1) and (a)(2) of this section do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business, when use of this address does not constitute bad faith;
  - (4) If subsections (a)(1), (a)(2), and (a)(3) of this section do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including, if no other address is available, the address of a purchaser's payment instrument, when use of this address does not constitute bad faith; or
  - (5) If subsections (a)(1), (a)(2), (a)(3), and (a)(4) of this section do not apply, or if the seller is without sufficient information to apply the rules set forth in subsections (a)(1), (a)(2), (a)(3), and (a)(4) of this section, the sale is sourced to the location indicated by the address from which the tangible personal property, commodity, or service was shipped.



(b) (1) The lease or rental of tangible personal property or commodities, but not property identified in subsection (b)(2) or (b)(3) of this section, not leases or rentals based on a lump sum or accelerated basis, and not on the acquisition of property for lease, are sourced as follows:

A. For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with subsection (a) of this section. Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location is as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location is not altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

B. For a lease or rental that does not require periodic payments, the payment is sourced the same as a retail sale in accordance with subsection (a) of this section.

(2) The lease or rental of motor vehicles, trailers, semi-trailers, or aircraft that do not qualify as transportation equipment is sourced as follows:

A. For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The primary property location is as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The location does not change by intermittent use at different locations.

B. For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with subsection (a) of this section.

(3) The lease or rental of transportation equipment is sourced in the same manner as a retail sale in accordance with subsection (a) of this section.

~~(c) (1) A retailer shall source its sales to the business location of the retailer regardless of where the purchaser receives the tangible personal property or service in a calendar year:~~

~~A. If in the previous calendar year, the retailer has made retail sales of tangible personal property, commodities, or services in the state totaling one hundred thousand dollars (\$100,000.00) or less; or~~

~~B. Until the first day of the month after the ninetieth day after the person has made retail sales of tangible personal property, commodities, or services in the State in the current calendar year that total more than one hundred thousand dollars (\$100,000.00), after which the sourcing rules set forth in subsections (a) and (b) of this section apply to all sales made by such retailers on and after such date.~~

~~(2) Sales of tangible personal property, commodities, or services that are sourced to the business location of the retailer under this subsection (c) and that would otherwise be sourced to an out-of-state location under subsection (a) of this section are exempt from taxation under the provisions of this Article.~~

~~(c)~~ As used in this section, unless the context otherwise requires:

- (1) Purchaser may include a donee who is designated as such by the purchaser.
- (2) Receipt or receive means taking possession of tangible personal property or commodities or making first use of services but does not include possession by a shipping company on behalf of the purchaser.
- (3) Transportation equipment means:
  - A. Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce;
  - B. Trucks and truck-tractors with a gross vehicle weight rating of ten thousand one (10,001) pounds or greater, trailers, semi-trailers, or passenger buses that are registered under the international registration plan and operated under authority of a carrier authorized and certificated by the United States department of transportation or another federal or foreign authority to engage in the carriage of persons or property in interstate or foreign commerce;
  - C. Aircraft that are operated by air carriers authorized and certificated by the United States department of transportation or another federal or foreign authority to engage in the carriage of persons or property in interstate or foreign commerce; and
  - D. Containers designed for use on and component parts attached or secured on the items set forth in subsections ~~(d)~~(3)(A) to ~~(d)~~(3)(C) of this section.

**Section 5.** Section 4-3-260, titled *Sales Tax; exempt property and services*, is hereby amended to add new subsections (q), (r), and (s) to read as follows with additions shown in underline text:

(q) All sales of Prescription Drugs for Humans or Prescription Drugs for Animals

(r) 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.

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

**Section 6.** A new Section 4-3-270 is added to Article 3 of Chapter 4 to read as follows with additions shown in underline text:

Sec. 4-3-270. - Marketplace Sales.

(a) (1) A marketplace facilitator engaged in business in the City is required to collect and remit sales tax on all taxable sales made by the marketplace facilitator, or facilitated by it for marketplace sellers to customers in the City, whether or not the marketplace seller for whom sales are facilitated would have been required to collect sales tax had the sale not been facilitated by the marketplace facilitator.

(2) A marketplace facilitator shall assume all the duties, responsibilities, and liabilities of a retailer under this Article. Marketplace facilitators shall be liable for the taxes collected from marketplace sellers. The City may recover any unpaid taxes, penalties, and interest from the marketplace facilitator that is responsible for collecting on behalf of marketplace sellers.

(3) The liabilities, obligations, and rights of a marketplace facilitator set forth under this Section are in addition to any duties and responsibilities that a marketplace facilitator has under this Article if it also offers for sale tangible personal property or taxable services through other means.

(4) A marketplace seller, with respect to sales of tangible personal property or taxable services made in or through a marketplace facilitator's marketplace, does not have the liabilities, obligations, or rights of a retailer under this Article if the marketplace seller can show that such sale was facilitated by a marketplace facilitator:

- a. With whom the marketplace seller has a contract that explicitly provides that the marketplace facilitator will collect and remit sales tax on all sales subject to tax under this Article; or

- b. From whom the marketplace seller requested and received in good faith a certification that the marketplace facilitator is registered to collect sales tax and will collect sales tax on all sales subject to tax under this Article made in or through the marketplace facilitator's marketplace.

(5) If a marketplace seller makes a sale that is not facilitated by a marketplace facilitator in a marketplace, the marketplace seller is subject to all of the same licensing, collection, remittance, filing and recordkeeping requirements as any other retailer.

(6) Responsibilities, duties and liabilities of a marketplace facilitator or marketplace seller begin upon the earlier of when they become licensed to collect the City's sales tax or when they become engaged in business in the City. No obligation to collect the sales tax required by this Article may be applied retroactively.

(b) Auditing. The City shall solely audit the marketplace facilitator for sales made by marketplace sellers but facilitated by the marketplace facilitator. The City will not audit or otherwise assess tax against marketplace sellers for sales facilitated by a marketplace facilitator.

**Section 7.** Subsection (b) of Section 4-3-300, titled *Use tax imposition and exemptions*, is hereby amended to add new sub-subsection (9) to read as follows with additions shown in underline text:

- (9) 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.

**Section 8.** Section 4-3-400, titled *Business licenses*, subsection (a) is hereby amended to read as follows with deletions shown in ~~striketrough~~:

(a) It shall be unlawful for any person to engage in business in the City without first having received a business license, ~~except that a person required to register as a contractor within the meaning of Chapter 6 of the Castle Pines Municipal Code shall not be required to obtain a business license.~~

**Section 9.** Section 4-3-500, titled *Taxpayer (retailer and consumer) liability* is hereby amended as follows with deletions shown in ~~striketrough~~ and additions shown in underline text:

**Sec. 4-3-500. Taxpayer (retailer and consumer) liability.**

(a) (1) Except as provided in subsection (b) of this section, every retailer engaged in business in the City is required to collect and remit and shall be liable and responsible for the payment of an amount equivalent to the rate of sales tax on all sales made by the retailer of commodities or services as specified in 4-3-200.

(2) Every retailer shall, before the twentieth day of each month, make a return to the Finance Director for the preceding calendar month. The Finance Director shall determine what information the returns must contain, how the returns must be made, and the type of forms that must be used.

(3) Every retailer shall remit, along with the return required in subsection (a)(2) of this section, an amount equivalent to the percentage on sales as specified in subsection (a)(1) of this section to the Finance Director.

~~(1) With respect to sales of tangible personal property, commodities, or services made by marketplace sellers in or through a marketplace facilitator's marketplace, a marketplace facilitator has all of the liabilities, obligations, and rights of a retailer or vendor under subsection (a) of this section and this Article whether or not the marketplace seller (because the marketplace seller is a multichannel seller):~~

~~(A) Has or is required to have a license under section 4-3-400(a); or~~

~~(B) Would have been required to collect and remit tax under this Article had the sale not been made in or through the marketplace.~~

~~(2) The liabilities, obligations, and rights set forth in subsection (b)(1) of this section are in addition to any requirements the marketplace facilitator has under subsection (a) of this section if it also offers for sale tangible personal property, commodities, or services through other means.~~

~~(3) Except as provided in subsection (d)(2) of this section, a marketplace seller, with respect to sales of tangible personal property, commodities, or services made in or through a marketplace facilitator's marketplace, does not have the liabilities, obligations, or rights of a retailer or vendor under subsection (a) of this section and this Article if the marketplace seller can show that such sale was facilitated by a marketplace facilitator:~~

~~(A) With whom the marketplace seller has a contract that explicitly provides that the marketplace facilitator will collect and remit sales tax on all sales subject to tax under this Article; or~~

~~(B) From whom the marketplace seller requested and received in good faith a certification that the marketplace facilitator is registered to collect sales tax and will collect sales tax on all sales subject to tax under this Article made in or through the marketplace facilitator's marketplace.~~

- (b) The Finance Director may extend the time for making a return and paying the taxes due under such reasonable rules as the Finance Director may prescribe, but no such extension shall be for a greater period than three (3) months.
- (c) ~~(1) Except as provided in subsection (d)(2) of this section, t~~ The burden of proving that any retailer is exempt from collecting the tax on any goods sold and paying the same to the Finance Director, or from making such returns, shall be on the retailer under such reasonable requirements of proof as the Finance Director may prescribe.
- ~~(A) If a marketplace facilitator demonstrates to the satisfaction of the Finance Director that the marketplace facilitator made a reasonable effort to obtain accurate information regarding the obligation to collect tax from the marketplace seller and that the failure to collect tax on any tangible personal property, commodities, or services sold was due to incorrect information provided to the marketplace facilitator by the marketplace seller, then the marketplace facilitator, but not the marketplace seller, is relieved of liability under this section for the amount of the tax the marketplace facilitator failed to collect, plus applicable penalties and interest.~~
- ~~(B) If a marketplace facilitator is relieved of liability under subsection (d)(2)(A) of this section, the marketplace seller is liable under this section for the amount of tax the marketplace facilitator failed to collect, plus applicable penalties and interest.~~
- ~~(C) This subsection (d)(2) does not apply to any sale by a marketplace facilitator that is not facilitated on behalf of a marketplace seller or that is facilitated on behalf of a marketplace seller who is an affiliate of the marketplace facilitator.~~
- (d) Every retailer conducting a business in which the transaction between the retailer and the consumer consists of the supplying of tangible personal property and services in connection with the maintenance or servicing of the same shall be required to pay the taxes levied under this Article upon the full contract price, unless application is made to the Finance Director for permission to use a percentage basis of reporting the tangible personal property sold and the services supplied under such contract. The Finance Director is authorized to determine the percentage based upon the ratio of the tangible personal property included in the consideration as it bears to the total of the consideration paid under said combination contract or sale that is subject to the sales tax levied under the provisions of this Article. This section shall not be construed to include items upon which the sales tax is imposed on the full purchase price.
- (e) Finance Director may require reports and records. The Finance Director may require any person, by regulation or notice served on such person, to make such records, as specified in Section 4-3-600(b) of this Article, available for inspection so that the

Finance Director may determine whether a person is liable for payment or collection of the taxes imposed by this Article.

- (f) Timely payment evidence; computation of dates.
  - (1) Timely payment may be evidenced by the postmark date if mailed; otherwise, timely payment may be evidenced by the Finance Department validation date.
  - (2) Any due date, payment date or deadline for paying tax due, paying the license renewal fee, providing information or taking other action, which falls on a Saturday, Sunday or legal holiday, recognized by either the federal government or the State, shall be extended to the first business day following such weekend or holiday.
- (g) Duty of retailer to collect. It shall be the duty of every retailer to collect the taxes imposed by this Article, unless the retailer is furnished with satisfactory proof that the sale is exempt under this Article. Whenever there is a disagreement between a retailer and a buyer as to whether a given sale is tax exempt under this Article, it shall be the duty of the retailer to collect and the duty of the buyer to pay the tax. The retailer shall thereupon give to the buyer a receipt that is a copy of the sales invoice showing the amount of sales tax collected by the retailer, and the buyer may then make application to the City for a refund, pursuant to Section 4-3-800 of this Article.
- (h) Taxes paid on the amount of gross sales that are represented by accounts that are found to be worthless and are actually and properly charged off as bad debts for the purpose of the income tax imposed by the laws of the State of Colorado may be credited upon a subsequent payment of the tax as herein provided. Should, however, any such amounts be thereafter collected by the retailer, the tax shall be paid to the City upon the amount so collected.

**Section 10. No Existing Violation Affected.** Nothing in this Ordinance shall be construed to affect any suit or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any ordinance hereby repealed or amended by this Ordinance, or any just or legal right or remedy of any character be lost, impaired, or affected by this Ordinance.

**Section 11. Repeal of Previous Ordinances.** Any and all ordinances or codes or parts thereof in conflict or inconsistent herewith are, to the extent of such conflict or inconsistency, hereby repealed; provided, however, that the repeal of any such ordinance or code or part thereof shall not revive any other section or part of any ordinance or code heretofore repealed or superseded and this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the effective date of this Ordinance.

**Section 12. Codification Amendments.** The codifier of the City’s Municipal Code is hereby authorized to make such numerical and formatting changes as may be necessary to incorporate the provisions of this Ordinance within the Castle Pines Municipal Code.

**Section 13. Safety Clause.** The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Castle Pines, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

**Section 14. Publication and Effective Date.** The City Clerk is hereby directed to cause publication of this Ordinance in accordance with Section 6.5 of the Charter. This Ordinance shall be effective thirty (30) days after final publication on the City’s official website and posted at the City Clerk’s office pursuant to Section 1-3-40 of the Municipal Code.

**INTRODUCED, READ, AND PASSED ON FIRST READING, AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES, COLORADO, the 26<sup>th</sup> DAY OF JULY, 2022.**

**READ, PASSED, AND ADOPTED ON SECOND READING, FOLLOWING A PUBLIC HEARING, AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES, COLORADO the 9<sup>th</sup> day of August, 2022.**



ATTEST:

DocuSigned by:  
*Tobi Duffey*  
AD03A3B02032496...  
Tobi Duffey, MMC, City Clerk

DocuSigned by:  
*Tracy Engerman*  
19352126504646A...  
Tracy Engerman, Mayor

Approved as to form:

DocuSigned by:  
*Linda C. Michow*  
6241DE9988FF444...  
Linda C. Michow, City Attorney


**CERTIFICATION OF PUBLICATION**

I hereby attest and certify that the within and foregoing Ordinance was introduced and read on first reading on July 26, 2022; published by title only in the *Douglas County News-Press*, together with the statement that “[t]he complete text of the ordinance is available through the City Clerk’s office and on the City’s official website with second reading and public hearing to be held on August 9, 2022”; and finally passed and adopted by the City Council on August 9, 2022,



following a duly noticed public hearing and published on the City's official website and posted at the City Clerk's office on July 27, 2022 and August 10, 2022.

ATTEST:

DocuSigned by:  
  
AD03A2B03033400  
Tobi Duffey, MMC, City Clerk