

ORDINANCE NO. 2402
INTRODUCED BY: Padilla

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, AMENDING CHAPTER 28 OF ARTICLE 3 OF THE BRIGHTON MUNICIPAL CODE 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; AND SETTING FORTH OTHER MINOR AMENDMENTS

WHEREAS, the City of Brighton, 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 has adopted and enacted a Sales and Use Tax Code, set forth in Chapter 28 of Article 3 of the Brighton Municipal Code (the "Code"), under which City sales and use tax is levied; 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 Code; and

WHEREAS, the City further desires to amend Chapter 28 as set forth herein; and

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

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO:

Section 1. Section 3-28-70 is hereby amended as follows:

The vendor (retailer) shall be entitled as collecting agent of the City to withhold a vendor's fee, in the amount of three and one-third percent (3 $\frac{1}{3}$ %) of the total City sales tax collected by the vendor, up to a cap of twenty-five dollars (\$25.00) from the total amount due by the vendor to the City each month if the taxes due are remitted and paid in full by electronic means on or before the due date.

Section 2. Section 3-28-80(46) is hereby enacted as follows:

(46) 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 3. Section 3-28-80(47) is hereby enacted as follows:

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

Section 4. Section 3-28-85(c)(2) is hereby amended as follows:

(2) Remittance of tax. Every retailer or vendor engaged in business and selling at retail, as such are defined in this Article, shall file a return as prescribed in this Article with the Finance Director on or before the twentieth day of the month, unless the twentieth day falls on a weekend day or holiday; then the return is due on the first business day thereafter, for the preceding month or months under report and remit taxes in the amount yielded by applying the rate imposed by Section 3-28-40 hereof to such sales and also any excess tax amounts as provided in Subsection (j) of this Section. Retailers or vendors who file and make full payment on or before the due date by electronic means may deduct three and one-third percent ($3\frac{1}{3}\%$) up to a maximum of twenty-five dollars (\$25.00) of the amount of taxes to be paid by the vendor or retailer's expense of collection and remittance of tax. Vendors or retailers who do not file and pay in full by electronic means on or before the due date shall not be permitted to deduct any amount to cover the expense of collection and remittance of tax for that return. The retailer shall add the tax as a separate and distinct item, and such tax shall be a debt from the consumer to the retailer and shall be recoverable at law in the same manner as other debts.

Section 5. Section 3-28-95(a) is hereby amended as follows:

(a) Assessment to recover unpaid penalties, interest and estimated taxes. If any person, taxpayer or vendor fails, neglects or refuses to collect the tax or to make a return and pay the tax as required by this Article or should fail to remit the proper amount of tax or underpays the tax because of negligence or fraud, penalties and interests shall be added to such tax and imposed in accordance with the following provisions. If a person required to file a return and pay the taxes imposed by this Article disregards the provisions of this Article and, in doing so, repeatedly or on a regular basis fails to file accurate tax returns or fails to remit the correct amount of taxes, the Finance Director, on such information as is available, shall make an estimate of the tax and additions of penalty and interest thereto and shall give to the delinquent taxpayer, person or vendor written notice of final determination, assessment and demand for payment. Such notice shall be served personally or by first class mail, and the assessed amount shall be due and payable within thirty (30) days after the date of such notice. An estimate of taxes due shall also be made if an examination under Section 3-28-90 hereof shows that there are inadequate records available to make an actual determination of taxes due.

Section 6. Section 3-28-95(c) is hereby amended as follows:

(c) Mathematical error on tax returns. In the event that the amount of tax is understated on the taxpayer's return due to a mathematical error, the City shall notify the taxpayer by written notice of final determination, assessment and demand for payment of the amount of tax in excess of that shown in the return which is due and has been assessed. The taxpayer shall have no right of protest or appeal as in the matter of other assessments, but shall pay the tax due and assessed or file an amended return to show the true amount of tax due within thirty (30) days from such assessment.

Section 7. Section 3-28-95(d) is hereby amended as follows:

(d) Deficiency due to fraud. For transactions consummated on or after January 1, 2003, if any taxpayer or vendor fails to file a return or pay the tax on any return required under this Article on the date prescribed therefor, and any part of the deficiency is due to fraud with the intent to evade the tax, there shall be added one hundred percent (100%) of the total amount of the deficiency, and in such case the whole amount of the tax unpaid, including the additions, shall become due and payable thirty (30) days after written notice of final determination, assessment and demand for payment by the Finance Director, and an additional three percent (3%) per month on such amount shall be added from the date the tax was due until paid.

Section 8. Section 3-28-95(f) is hereby amended as follows:

(f) Waiver of penalty; credit; limitation. The Finance Director is authorized to waive, for good cause shown, any penalty or interest assessed as provided in this Article.

(1) Interest assessment. Interest prescribed under this Section shall be paid upon notice and demand and shall be assessed, collected and paid in the same manner as the tax to which it is applicable.

(2) No interest assessed on credit. If any portion of a tax is satisfied by credit of an overpayment, no interest shall be imposed under this Section on the portion of the tax so satisfied for any period during which, if the credit had not been made, interest would have been allowed with respect to such overpayment.

(3) Interest assessment period. Interest prescribed under this Section on any tax may be assessed and collected at any time during the period within which the tax to which such interest relates may be assessed and collected.

Section 9. Section 3-28-105(g) is hereby amended as follows:

(g) Disallowed. Upon receipt of such application, the Finance Director shall examine the application with all due speed and shall give notice to the applicant, by order, in writing, of the decision thereon. Protest of a denial of refund and request for hearing as provided in Section 3-28-110 hereof shall be submitted in writing to the Finance Director within thirty (30) calendar days from the date of denial of the refund and shall identify the amount of the refund requested and the basis for the protest. The decision made based upon that hearing may be appealed to the Adams County District Court in the manner provided in this Article.

Section 10. Section 3-28-110(a) is hereby amended as follows:

(a) Request for hearing; protest. A taxpayer may request a hearing when the City asserts that taxes and any penalties or interest under Section 3-28-95 hereof are due, as stated in a notice of final determination, assessment and demand for payment sent to the taxpayer by the City or when the City denies a taxpayer's claim for refund. The hearing request shall be in writing and shall be received by the Finance Director within thirty (30) days of the date of mailing of a notice of final determination, assessment and demand for payment or of a notice of a denial of refund. This request for hearing shall set forth the factual and/or legal basis for the taxpayer's belief that the assessment or denial is incorrect. A taxpayer's failure to timely request a hearing shall constitute a failure to exhaust local remedies. Any unprotested tax, penalty and interest shall be paid in full within the thirty-day period specified in this Subsection.

Section 11. Section 3-28-110(c) is hereby amended as follows:

(c) Hearing time and place. The Finance Director shall notify the taxpayer in writing of the time and place for the administrative hearing within thirty (30) days of receipt of the taxpayer's request for a hearing. Such notification shall be mailed no less than thirty (30) days prior to the date of hearing. In all cases, the hearing shall be held in the City at the office of the Finance Director. A final decision thereon shall be issued and the results mailed to the taxpayer within ninety (90) days of the City's receipt of the taxpayer's request for hearing, except that the ninety-day period shall be extended to one hundred eighty (180) days if the taxpayer caused any delay in the holding of the hearing or in the issuance of the decision, and except that the one-hundred-eighty-day period may be waived by the taxpayer.

Section 12. Section 3-28-110(g) is hereby amended as follows:

(g) Request for hearing; time limitation. After the expiration of thirty (30) days from the date of the notice of final determination, assessment and demand for payment or denial of refund, if the tax has not been paid or if no request for hearing has been timely filed, the notice of final determination, assessment and demand for payment previously mailed shall constitute a final assessment of the amount of the tax specified, together with interest and penalties, or shall constitute a final denial of refund, as the case may be.

Section 13. Section 3-28-115(a) is hereby amended as follows:

(a) Lien. The sales tax shall be a first and prior lien on the tangible personal property sold, purchased, stored, used, distributed or consumed, subject only to valid mortgage or other liens of record on and prior to the date the notice as required by Subsection (f) of this Section is mailed, and when such tax is collected by retailers or agents, the sales tax imposed by sections under this Article shall be a first and prior lien upon the goods and business fixtures of or used by any retailer under lease, title-retaining contract or other contract arrangement and shall take precedence on all such property over other liens or claims of whatever kind or nature.

Section 14. Section 3-28-115(e)(1) is hereby amended as follows:

(e)(1) Assessment of taxes. If any person or taxpayer or vendor fails, neglects or refuses to collect the tax or file a return and pay the tax as required by this Article or fails to remit the proper amount of tax or underpays the tax because of negligence, fraud or on a regular basis, the Finance Director may make an estimate based upon such information as may be available and shall add in addition to the tax, penalty and interest as set forth in Section 3-28-95 hereof and promptly thereafter give to the delinquent taxpayer written notice of such estimated taxes, penalty and interest, which notice of assessment shall be served personally or by mail and which notice of final determination, assessment and demand for payment shall be due and payable thirty (30) days from such service.

Section 15. Section 3-28-115(f) is hereby amended as follows:

(f) Notice of tax lien. If any taxes, penalty or interest imposed by this Article and shown due by returns filed by the taxpayer or as shown by assessments duly made as provided in this Article are not paid within thirty (30) days after such are due, the City shall issue a notice to the taxpayer by mail, setting forth the name of the taxpayer, the amount of the tax, penalties and interest, the date of the accrual thereof and that the City claims a first and prior lien therefor on the real and tangible personal property of the taxpayer, except as to preexisting claims or liens of a

bona fide mortgagee, pledgee, judgment creditor or purchaser, whose rights shall have attached prior to the mailing of the notice as provided in this Subsection on property of the taxpayer other than on the goods, stock-in-trade and business fixtures of such taxpayer. The attachment of such lien is not dependent on the recording of the written notice. The lien remains attached to the property from the date the notice as required herein is mailed until the amounts due are paid. In no event shall failure of the taxpayer or responsible person to receive notice as required herein void the lien provided for in this Section.

Section 16. Section 3-28-115(i)(1) is hereby amended as follows:

(1) Issuance of distraint. The Finance Director may issue a warrant under the Finance Director's own hand directed to any employee, agent or representative of the Finance Department, sometimes referred to collectively in this Section as "agent" or "revenue collector" or to any sheriff of any county in the State, commanding such person to distraint, seize cash and cash equivalents, and/or seize and sell the personal property of the taxpayer, except such personal property as is exempt from execution and sale by any statute of this State, for the payment of the tax due together with penalties and interest accrued thereon and cost of execution:

- a. When any deficiency in tax is not paid within thirty (30) days from the mailing of notice of final determination, assessment and demand for payment therefor and no hearing has been requested and no appeal from such deficiency assessment has been docketed with any district court of this State within such period;
- b. When any other amount of tax, penalty or interest is not paid within thirty (30) days from the mailing of assessment and demand for payment thereof; or
- c. Immediately upon making of a jeopardy assessment or of the issuance of a demand for payment as provided in Subsection (h) above.

Section 17. Section 3-28-125(b) is hereby amended as follows:

(b) Within fourteen (14) days of receipt of notice of an intended audit by any municipality that administers its own sales tax collection, the taxpayer may provide to the Finance Director, by mail, return receipt requested, a written request for a coordinated audit indicating the municipality from which the notice of intended audit was received and the name of the official who issued such notice. Such request shall include a list of those municipalities utilizing local collection of their sales tax in which the taxpayer holds a current business license and a declaration that the taxpayer will sign a waiver of any passage-of-time-based limitation upon this City's right to recover tax owed by the vendor for the audit period.

Section 18. Section 3-28-170 is hereby amended as follows:

So long as this Article remains in effect, it shall be the duty of each licensee, to obtain a renewal of such license on or before the license expiration date if the licensee remains engaged in business in the City. A business license shall not be renewed unless the proposed business and location comply with this Code.

Section 19. Section 3-28-200(b) is hereby amended as follows:

- (b) No license shall be required under this article for a contractor who:
- (1) has obtained a contractor license pursuant to Chapter 16 of Article 15 of this Code;
 - (2) does not directly, indirectly, or by a subsidiary maintain a building, store, office, salesroom, warehouse, or other place of business within the taxing jurisdiction; and

(3) does not own, lease, rent, or otherwise exercise control over real or personal property within the taxing jurisdiction.

Section 20. All sections, subsections, and definitions of Chapter 28 not expressly amended or modified herein remain in full force and effect.

Section 21. As provided in City Charter Section 5.9(A), this Ordinance, either as presented or as amended, shall be published in full as it was adopted after the initial reading. This Ordinance shall be in full force and effect five days after its final publication, as provided in City Charter Section 5.8, except as set forth herein.

INTRODUCED, PASSED ON FIRST READING AND ORDERED PUBLISHED THIS
1st DAY OF November, 2022.

INTRODUCED, PASSED ON FINAL READING AND ORDERED PUBLISHED BY
TITLE ONLY THIS 6th DAY OF December, 2022.

CITY OF BRIGHTON, COLORADO

GREGORY MILLS, Mayor

ATTEST:

NATALIE HOEL, City Clerk

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APPROVED AS TO FORM:

YASMINA SHAUSH, Assistant City Attorney