

**TOWN OF FRISCO
COUNTY OF SUMMIT
STATE OF COLORADO
ORDINANCE 21-04**

AN ORDINANCE AMENDING CHAPTERS 110 AND 160 OF THE CODE OF ORDINANCES OF THE TOWN OF FRISCO, COLORADO, CONCERNING BUSINESS LICENSING AND TAXATION, RESPECTIVELY, BY AMENDING SECTIONS 110-3, CONCERNING THE REQUIREMENT FOR A BUSINESS LICENSE; 160-1.1, CONCERNING DEFINITIONS RELATED TO THE TOWN'S SALES TAX; 160-2.1, CONCERNING THE COLLECTION AND PAYMENT OF SALES TAXES; 160-8.2, CONCERNING SALES TAX LICENSES; 160-8.7, CONCERNING THE COLLECTION OF SALES TAX; 160-28, CONCERNING DEFINITIONS RELATED TO THE TOWN'S LODGING TAX; 160-29, CONCERNING BUSINESS LICENSES IN CONNECTION WITH THE LODGING TAX; AND 160-35, CONCERNING PAYMENT OF THE LODGING TAX; ALL IN ORDER FACILITATE THE USE OF THE STATEWIDE ELECTRONIC SALES AND USE TAX FILING AND PAYMENT SYSTEM ESTABLISHED PURSUANT TO COLORADO STATUTES TO SIMPLIFY, STANDARDIZE, AND MAKE MORE EFFICIENT THE REPORTING AND PAYMENT OF SALES AND LODGING TAXES COLLECTED BY PERSONS AND ENTITIES DEFINED HEREIN AS MARKETPLACE FACILITATORS, AMONG OTHERS.

WHEREAS, the Town of Frisco, Colorado ("Town") is a home rule municipality, duly organized and existing under Article XX of the Colorado Constitution; and

WHEREAS, this ordinance is adopted pursuant to the Town's home rule authority and the Town's authority under Colorado Revised Statutes Section 31-23-301; and

WHEREAS, the use of standardized sales and use tax definitions by home rule municipalities that locally collect their sales tax, and use of a statewide system by marketplace facilitators, marketplace sellers, and multichannel sellers that do not have a physical presence in the Town, simplifies the municipal sales tax system and benefits businesses, particularly those engaged in business in multiple locally collecting home rule municipalities, and those without a physical presence in one or more municipalities in which they are engaged in business; and

WHEREAS, in recognition of such benefits, in SB 19-006, codified as C.R.S §39-26-802.7, the Colorado General Assembly mandated the creation of such a statewide system for use by Colorado municipalities, including locally collecting home rule municipalities at the discretion of such municipality; and

WHEREAS, the Town has determined that it is in the best interests of the Town and its business community that the Town participate in this effort to simplify Colorado's municipal tax system by adopting such definitions and otherwise amending the Town's Code to facilitate the use of the statewide system for certain tax reporting and payment purposes.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FRISCO THAT:

Section 1. Section 110-3 of the Code of Ordinances of the Town of Frisco (the "Code"), is hereby amended to read as follows:

§ 110-3. License Required, Exception.

A. It shall be unlawful for any person to operate and maintain or conduct any business within the town, including the delivery of goods by wholesalers within the town which are purchased or contracted for outside the corporate limits of the town, without first obtaining a general business license to conduct such business pursuant to this article, unless otherwise provided by this code. A separate general business license must be obtained for each place of business operating within the town limits. Specialty licenses shall be required in addition to general business licenses when applicable.

B. Licensing of exterminators within the Town of Frisco will also include regulation of the method of extermination. No person, firm or corporation shall engage in the business of extermination by chemical means upon any property within the town unless the chemicals are approved by the town prior to application for a license. Applicants must present evidence of qualifications and expertise to exterminate within the limits of the Town of Frisco and shall proceed in the manner set forth by regulations on file with the Town Clerk of the Town of Frisco.

C. The Town of Frisco prohibits commercial businesses that make their sales traveling from residence to residence or business to business without the previous consent of the occupant or owner.

D. Every license granted under the provisions of this article shall be posted in a conspicuous place at the place of business for the full term of the license. If a person operates and maintains a business within the town but no place of business exists in the town, the license shall be carried on the person of the individual engaging in the business activity. It shall be the duty of each licensee to exhibit the license upon the request of any law enforcement officer, inspector, or other officer of the town.

E. Any provision of this section notwithstanding, a marketplace facilitator, marketplace seller or multi-channel seller, as defined in Section 160-1.1 of this Code, is not required to obtain a business license pursuant to this Article I if the marketplace facilitator, marketplace seller or multi-channel seller: (1) does not have a physical place of business within the Town of Frisco; and (2) holds a valid license for the use of the statewide sales and use tax system established pursuant to C.R.S. § 39-26-802.7, and makes use of that system for payment of taxes due to the Town of Frisco, or (3) in the case of a marketplace seller or multichannel seller, if any tax that would otherwise be due from the marketplace seller or multichannel seller has been collected by a

marketplace facilitator and remitted to the Town of Frisco through the statewide sales and use tax system.

Section 2. Section 160-1.1, "Words and Phrases Defined," of the Code as relates to sales taxation is hereby amended by the amendment or addition of the following definitions, placed in their appropriate alphabetic locations, to read as follows:

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

- A. Auctioneer;
- B. 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;
- C. 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;
- D. Retailer-contractor, when acting in the capacity of a seller of building supplies, construction materials, and other tangible personal property; and
- E. Marketplace facilitator, marketplace seller, or multi-channel seller.

Marketplace means a physical or electronic forum, including but not limited to a store, a booth, an internet website, a catalog, or a dedicated sales software application, where tangible personal property or services are offered for sale.

Marketplace facilitator

(A) means a person who:

- (1) Contracts with a marketplace seller or multichannel seller to facilitate for consideration, regardless of whether or not the consideration is deducted as fees from the transaction, the sale of the marketplace seller's or multichannel seller's tangible person property or services through the person's marketplace;
- (2) Engages directly or indirectly, through one or more affiliated persons, in transmitting or otherwise communicating the offer or acceptance between a purchaser and the marketplace seller or multichannel seller; and

- (3) Either directly or indirectly, through agreements or arrangements with third parties, collect payment from the purchaser on behalf of the seller.
- (B) “Marketplace facilitator” does not include a person that exclusively provides internet advertising services or lists tangible personal property or services for sale, and does not otherwise meet this definition.

Marketplace seller means a person that has an agreement with a marketplace facilitator and offers tangible personal property or services, through a marketplace owned, operated or controlled by a marketplace facilitator.

Multichannel seller means a retailer that offers for sale tangible personal property or services through a marketplace owned, operated or controlled by a marketplace facilitator, and through other means.

Section 3. Section § 160-2.1, concerning responsibility for collection and payment of taxes, is hereby amended to read as follows:

§ 160-2.1. Retailer Responsible for Collection and Payment of Taxes.

Every retailer engaged in business in the Town shall be liable and responsible for payment of an amount equivalent to the taxable sales multiplied by the specified rate.

A. Tax added to price. Retailers shall add the tax imposed, or the average equivalent thereof, to the price, showing such tax as a separate and distinct item. Except as provided in this Subsection, no retailer shall advertise or hold out or state to the public or to any consumer, directly or indirectly, that the tax or any part thereof shall be assumed or absorbed by the retailer, or that it will not be added to the price, or if added, that it or any part thereof shall be refunded.

1. Sales tax may be included in the price of any malt, vinous or spirituous liquor sold by the drink. TAXATION 12-12-18 16

2. Sales tax may be included in the price of items sold from coin operated devices or the price of utilizing such devices.

3. Sales tax may be included in the price of an admissions charge.

B. Tax constitutes debt. Any tax added to the price by a retailer shall constitute a debt from the purchaser to the retailer until paid and shall be recoverable at law in the same manner as other debts.

C. Excess tax. No retailer shall retain any tax collected in excess of the tax

computed, but shall report such excess collections on the return for the period in which it was collected and include it in the calculation of tax due.

- D. Disputed tax. When a dispute arises between a retailer and a purchaser who claims that the sale is exempt from a tax, the retailer shall collect and the purchaser shall pay such tax. The purchaser may then submit a claim for refund to the Town within sixty (60) days of the date of purchase. Any such tax refunded by the Town will be paid directly to the purchaser.
- E. Any provision of this section notwithstanding, a marketplace seller or multi-channel seller, as defined in Section 160-1.1 of this Code, is not liable or responsible for the payment of taxes under this section, nor entitled to the benefits of this section or article, if the marketplace seller or multi-channel seller can show that the subject sale (1) was made in or through a marketplace facilitator's marketplace; and (2) that the marketplace seller or multichannel seller has a contract with the marketplace facilitator that explicitly provides that the marketplace facilitator will collect and remit sales tax on all sales subject to tax under this article, or (3) the marketplace facilitator has provided the marketplace seller or multichannel seller with a certification that the marketplace facilitator is registered to collect and will collect sales tax on all sales subject to tax under this article made in or through the marketplace facilitator's marketplace.

Section 4. Section § 160-8.2, concerning sales tax licenses, is hereby amended to read as follows:

160-8.2. Sales Tax Licenses; Application and Content.

- A. It shall be unlawful for any person to engage in the business of selling retail within the Town without having first obtained a Town sales tax license.
- B. Persons for whom a license is required shall first submit an application stating the name and address of the person requesting such license; the name of the business being licensed and the character thereof; the location, including the street number of such business; and such other information as may be required by the General Government Director.
- C. Licenses shall be in effect through the end of the period for which they were issued; they shall be conditionally renewed upon renewal of the Town business license and the attendant payment of any and all appropriate Town business occupation taxes and Town sales taxes.

D. Each sales tax license shall be numbered and shall show the name, location, mailing address and character of business of the licensee and shall be posted in a conspicuous place at the business location for which it is issued.

E. No sales tax license shall be transferable. The new owner shall apply for a new license within thirty (30) days after any sales of a business.

F. Any provision of this section notwithstanding, a marketplace facilitator, marketplace seller or multi-channel seller is not required to obtain a sales tax license pursuant to this section if the marketplace facilitator, marketplace seller or multi-channel seller: (1) does not have a physical place of business within the Town of Frisco; and (2) holds a valid license for the use of the statewide sales and use tax system established pursuant to C.R.S. § 39-26-802.7, and makes use of that system for payment of taxes due to the Town of Frisco, or (3) in the case of a marketplace seller or multichannel seller, if any tax that would otherwise be due from the marketplace seller or multichannel seller has been collected by a marketplace facilitator and remitted to the Town of Frisco through the statewide sales and use tax system.

Section 5. Section § 160-8.7, concerning sales tax rate, imposition and collection, is hereby amended to read as follows:

§ 160-8.7. Rate; Imposition and Collection; Distribution.

A. Sales tax. There is hereby levied a tax or excise upon all sales of tangible personal property and services specified in Section 160-8.9 at a rate of two percent (2%).

B. Imposition and collection. The tax specified in this Section is imposed upon the purchaser. Any seller engaged in business in the Town shall collect the tax and remit it to the Town pursuant to the schedule set forth in this Article; provided however, that any marketplace facilitator, marketplace seller or multi-channel seller that has obtained a license for the use of the statewide sales and use tax system established pursuant to C.R.S Section 39-26-802.7 may, in lieu of any remittance schedule, reporting period or due date set forth in this Article, use the remittance schedule, reporting period and due date(s) established by such system .

C. Distribution. At any time during which the Town shall have bonds outstanding to which all or a portion of the revenues derived from this Article are pledged, the town shall deposit in the Sales and Use Tax Capital Improvement Fund all or such portion of the revenues derived from the tax imposed by this Article as may be required to be placed in such fund by the ordinance of the town authorizing the issuance of such bonds. All revenues derived from this Article that are not required by this subsection to be placed in the Sales and Use Tax Capital Improvement Fund may be deposited in the town's General Fund or Capital Fund or any other fund established by the town to accomplish any lawful purpose.

Moneys in the Sales and Use Tax Capital Improvement Fund may be used to pay bonds issued by the town to finance capital improvements in the town.

Section 6. Section 160-28, "Definitions," of the Code as relates to the lodging tax is hereby amended by the amendment or addition of the following definitions, placed in their appropriate alphabetic locations, to read as follows:

VENDOR means any person selling lodging, including but not limited to a marketplace facilitator, marketplace seller, or multichannel seller, each as defined in Section 160-1.1.

Section 7. Section 160-29 of the Code, concerning the license required in connection with the lodging tax, is hereby amended to read as follows:

§ 160-29. Rate; Imposition and Collection; Distribution.

Except persons as may be exempted under the provisions of Section 110-3.F. Every person with a duty to collect the tax imposed in this Article shall obtain a business license pursuant to Article I of Chapter 110 of the Frisco Code.

Section 8. Section 160-35 of the Code, concerning the vendor's responsibility for payment of the lodging tax, is hereby amended to read as follows:

§ 160-35. Vendor Responsible for Payment of Tax.

A. Every vendor shall be liable and responsible to the town for the monthly payment of an amount equivalent to 2.35% of all such vendor's gross lodging sales, plus any tax collected by such vendor in excess of this amount.

B. Prior to the twentieth day of each month, every vendor shall make a return to the treasurer of the preceding calendar month and shall remit to the treasurer simultaneously therewith the total amount of tax due and owing to the town as provided by this section. Each monthly return shall be made in such manner and upon such forms as the treasurer may prescribe; provided however, that any marketplace facilitator, marketplace seller or multi-channel seller that has obtained a license for the use of the statewide sales and use tax system established pursuant to C.R.S Section 39-26-802.7 may, in lieu of any remittance schedule, reporting period or due date set forth in this Article, use the remittance schedule, reporting period and due date(s) established by such system.

C. If the accounting methods regularly employed by the vendor are such that monthly returns will impose an unnecessary hardship upon such vendor, the treasurer, upon written request of the vendor, may accept returns at intervals that, in the treasurer's opinion, are more convenient for the vendor and that do not jeopardize collection of the tax; provided, however, that the treasurer may, by rule, permit a vendor who collects less than \$150.00 tax per month to make

returns and pay tax at intervals not greater than three months.

D. Any provision of this section notwithstanding, a marketplace seller or multi-channel seller, as defined in Section 160-1.1 of this Code, is not liable or responsible for the payment of taxes under this section, nor entitled to the benefits of this section or article, if the marketplace seller or multi-channel seller can show that the subject sale (1) was made in or through a marketplace facilitator's marketplace; and (2) that the marketplace seller or multichannel seller has a contract with the marketplace facilitator that explicitly provides that the marketplace facilitator will collect and remit sales tax on all sales subject to tax under this article, or (3) the marketplace facilitator has provided the marketplace seller or multichannel seller with a certification that the marketplace facilitator is registered to collect and will collect sales tax on all sales subject to tax under this article made in or through the marketplace facilitator's marketplace.

Section 9. Savings Clause. If any part, section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional or invalid, the remainder of this ordinance shall continue in full force and effect, it being the legislative intent that this ordinance would have been adopted even if such unconstitutional or invalid matter had not been included herein.

Section 10 . Effective Date. This ordinance shall become effective in accordance with the home-rule Charter of the Town of Frisco, Colorado.

INTRODUCED, PASSED ON FIRST READING AND PUBLICATION AND POSTING ORDERED THIS _____ DAY OF _____, 2021.

TOWN OF FRISCO, COLORADO:

Hunter Mortensen, Mayor

ATTEST:

Deborah Wohlmuth, CMC, Town Clerk

INTRODUCED, PASSED ON SECOND READING AND PUBLICATION AND
POSTING ORDERED THIS _____ DAY OF _____, 2021.

TOWN OF FRISCO, COLORADO:

Hunter Mortensen, Mayor

ATTEST:

Deborah Wohlmuth, CMC, Town Clerk