

1 **CITY OF LITTLETON, COLORADO**

2
3 **ORDINANCE NO. 31**

4
5 **Series, 2018**

6
7 **INTRODUCED BY COUNCILMEMBERS: SCHLACHTER & ELROD**

8
9 **AN ORDINANCE OF THE CITY OF LITTLETON,**
10 **COLORADO, AMENDING TITLE 3 CHAPTER 9 OF THE**
11 **MUNICIPAL CODE REGARDING RETAIL SALES AND**
12 **USE TAX**

13
14 **WHEREAS**, the City of Littleton imposes transaction privilege and use taxes
15 upon various categories of taxable activities; and

16
17 **WHEREAS**, the City desires to update and improve the provisions in the city
18 code pertaining to the administration of the transaction privilege and use taxes; and

19
20 **WHEREAS**, the effect of the proposed changes are not a tax policy change
21 pursuant to the Colorado Taxpayer Bill of Rights.

22
23 **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF**
24 **THE CITY OF LITTLETON, COLORADO, THAT:**

25
26 **Section 1:** Title 3, Chapter 9 regarding Retail Sales & Use Tax is amended as
27 follows:

28
29 **3-9-1-3: ADMINISTRATION OF CHAPTER:**

30
31 ~~The administration of the licensing provisions of this Chapter is hereby vested in the City~~
32 ~~Treasurer; and the administration of all other provisions of this Chapter is hereby vested in and~~
33 ~~shall be exercised by the City Treasurer, who shall prescribe forms and reasonable rules and~~
34 ~~regulations in conformity with this Chapter for the making of returns, for the ascertainment,~~
35 ~~assessment and collection of the taxes imposed pursuant to this Chapter and for the proper~~
36 ~~administration and enforcement hereof.~~

37 **THE ADMINISTRATION OF THIS CHAPTER IS VESTED IN THE FINANCE DIRECTOR,**
38 **WHO SHALL PRESCRIBE FORMS AND REASONABLE RULES AND REGULATIONS IN**
39 **CONFORMITY WITH THIS CHAPTER FOR THE MAKING OF RETURNS; FOR THE**
40 **ASCERTAINMENT, ASSESSMENT, AND COLLECTION OF THE TAXES IMPOSED**
41 **UNDER THIS CHAPTER; AND FOR THE PROPER ADMINISTRATION AND**
42 **ENFORCEMENT OF THIS CHAPTER.**

43 **DUTIES OF THE FINANCE DIRECTOR PROVIDED FOR IN THIS CHAPTER MAY BE**
44 **PERFORMED BY ANY QUALIFIED DEPUTY OR ASSISTANT.**

45 **3-9-1-5: PERFORMANCE BY DEPUTY TREASURER:**

~~Duties of the City Treasurer provided for in this Chapter may be performed by any qualified deputy.~~

Repeal in its entirety and reserve this Section.

3-9-1-8: DUTY TO KEEP BOOKS AND RECORDS; PRESERVATION OF REPORTS AND RETURNS:

~~It shall be the duty of every person engaged or continuing in business in the City, for the transaction of which a license is required by this Chapter, to keep and preserve suitable records of all sales made by him and such other books or accounts as may be necessary to determine the amount of tax for the collection and payment for which he is liable under this Chapter. It shall be the duty of every person to keep and preserve for a period of three (3) years all invoices of goods and all such books, invoices and other records shall be open for examination at any time by the City Treasurer or his duly authorized agents. If such person cannot produce records suitable, in the judgment of the sales tax auditor, to support his actual sales/use tax liability, the sales tax auditor may establish said liability by use of generally accepted accounting principles and by the use of reasonable estimates of said liability based upon such records as may exist or upon the history of similar businesses. Furthermore, when suitable records are available but, in the judgment of the sales tax auditor, are so voluminous that excessive and undue time would be required to conduct an actual audit thereof, the sales tax auditor may use a test period audit or other appropriate sampling technique to compute the sales/use tax liability. When the taxpayer requests that an audit be conducted at a location outside of the Denver metropolitan area or when the City's auditor becomes involved in travel outside of the Denver metropolitan area for the purpose of conducting an audit, the taxpayer shall pay all of the City auditor's expenses. Said expenses may include, but not be limited to, reasonable expenses for lodging, air fare, meals, car rental, etc., if it is not possible for the taxpayer to provide the necessary records within the Denver metropolitan area.~~

Repeal in its entirety and reserve this section

3-9-1-9: PRESERVATION OF REPORTS AND RETURNS:

~~Reports and returns filed pursuant to this Chapter shall be preserved for three (3) years and thereafter until the City Treasurer, with the approval of the City Manager, orders them destroyed.~~

IT SHALL BE THE DUTY OF EVERY PERSON SUBJECT TO THIS CHAPTER TO KEEP AND PRESERVE SUITABLE RECORDS OF ALL SALES MADE BY HIM OR HER, AND SUCH OTHER BOOKS OR ACCOUNTS AS MAY BE NECESSARY TO DETERMINE THE AMOUNT OF SALES TAX AND USE TAX, THE COLLECTION OR PAYMENT FOR WHICH HE OR SHE IS LIABLE UNDER THIS ARTICLE. IF SUCH PERSON CANNOT PRODUCE RECORDS SUITABLE, IN THE JUDGMENT OF THE FINANCE DIRECTOR, TO SUPPORT HIS OR HER ACTUAL SALES/USE TAX LIABILITY, THE FINANCE DIRECTOR MAY ESTABLISH THE LIABILITY BY USE OF GENERALLY ACCEPTABLE ACCOUNTING PRINCIPLES, INCLUDING MAKING ESTIMATES. FURTHERMORE, WHEN SUITABLE RECORDS ARE AVAILABLE BUT, IN THE JUDGMENT OF THE FINANCE DIRECTOR ARE SO VOLUMINOUS THAT EXCESSIVE AND UNDUE TIME WOULD BE REQUIRED TO CONDUCT AN ACTUAL AUDIT THEREOF, THE FINANCE

1 DIRECTOR MAY USE A TEST-PERIOD AUDIT OR OTHER APPROPRIATE SAMPLING
2 TECHNIQUES TO COMPUTE THE SALES/USE TAX LIABILITY.

3 THE TAXPAYER MAY ELECT TO PAY THE EXPENSES INVOLVED IN CONDUCTING
4 THE AUDIT AT A LOCATION OUTSIDE THE CITY IF IT IS NOT POSSIBLE FOR HIM
5 OR HER TO PROVIDE THE NECESSARY RECORDS WITHIN THE CITY. THE FINANCE
6 DIRECTOR, IN HIS OR HER DISCRETION, MAY ELECT TO CONDUCT THE AUDIT AT
7 THE TAXPAYER'S PRINCIPAL PLACE OF BUSINESS. IF THIS OCCURS, THE
8 TAXPAYER SHALL PAY THE EXPENSES INVOLVED IN CONDUCTING THE AUDIT IF
9 SUCH PLACE OF BUSINESS IS LOCATED OUTSIDE THE CITY. FOR PURPOSES OF
10 THIS SUBSECTION OUTSIDE THE CITY SHALL BE DEFINED AS MORE THAN 25
11 MILES FROM THE CORPORATE LIMITS OF THE CITY.

12 IT SHALL BE THE DUTY OF EVERY SUCH PERSON TO KEEP AND PRESERVE FOR A
13 PERIOD OF THREE YEARS ALL INVOICES OF GOODS AND MERCHANDISE
14 PURCHASED FOR RESALE OR USE IN THE BUSINESS, AND ALL SUCH BOOKS,
15 INVOICES AND OTHER RECORDS SHALL BE OPEN FOR EXAMINATION AT ANY
16 TIME AND BY THE FINANCE DIRECTOR OR HIS OR HER DULY AUTHORIZED
17 AGENTS AT A LOCATION WITHIN THE CITY.

18 THE FINANCE DIRECTOR AND CITY CLERK MAY PROMULGATE A RECORDS
19 RETENTION SCHEDULE FOR THE PRESERVATION OF REPORTS AND RETURNS
20 FILED PURSUANT TO THIS CHAPTER.

21 3-9-1-13: VIOLATIONS OF CHAPTER:

22 ~~It shall be a violation of this Chapter for any retailer or vendor to refuse to make any return~~
23 ~~provided to be made or to make any false or fraudulent return, or any false statements in any~~
24 ~~return, or to fail or refuse to make payment to the City Treasurer of any taxes collected or due in~~
25 ~~the City or in any manner to evade the collection and payment of the tax or any part thereof~~
26 ~~imposed by this Chapter, or for any person or purchaser to fail or refuse to pay such tax or evade~~
27 ~~the payment thereof or to aid or abet another in any attempt to evade the payment of the tax~~
28 ~~imposed by this Chapter. Any corporation making a false return or a return containing a false~~
29 ~~statement shall be guilty of a violation of this Chapter.~~

30 Repeal in its entirety and reserve this section.

31 3-9-2-1: VIOLATIONS; EVASION OF COLLECTION OR PAYMENT OF TAX; LICENSE
32 REQUIRED:

33 A. IT SHALL BE UNLAWFUL FOR ANY PERSON OR ANY RETAILER OR VENDOR TO:

34 1. FAIL OR REFUSE TO MAKE ANY RETURN REQUIRED TO BE MADE BY THIS
35 CHAPTER;

36 2. MAKE ANY FALSE OR FRAUDULENT RETURN, OR ANY FALSE
37 STATEMENT IN ANY RETURN;

38 3. FAIL OR REFUSE TO MAKE PAYMENT TO THE FINANCE DIRECTOR OF
39 ANY TAXES WHICH HAVE BEEN COLLECTED BY SUCH PERSON OR RETAILER OR
40 VENDOR OR WHICH ARE DUE AND OWING TO THE CITY; OR

1 4. EVADE, IN ANY MANNER, THE COLLECTION AND PAYMENT OF ANY TAX,
2 OR PART THEREOF, IMPOSED BY THIS CHAPTER.

3 B. IT SHALL BE UNLAWFUL FOR ANY PERSON, OR PURCHASER TO:

4 1. FAIL OR REFUSE TO PAY ANY TAX IMPOSED BY THIS ARTICLE OR EVADE
5 THE PAYMENT THEREOF; OR

6 2. AID OR ABET ANOTHER IN ANY ATTEMPT TO EVADE THE PAYMENT OF
7 ANY TAX IMPOSED BY THIS CHAPTER.

8 C. IT SHALL BE UNLAWFUL FOR ANY PERSON TO:

9 1. ENGAGE IN THE BUSINESS OF SELLING AT RETAIL WITHOUT HAVING
10 FIRST OBTAINED A LICENSE THEREFORE; OR

11 2. FAIL TO OBTAIN ZONING APPROVAL PRIOR TO APPLYING FOR A SALES
12 TAX LICENSE:

13 A. THE FINANCE DIRECTOR MAY REFUSE TO ISSUE A SALES TAX
14 LICENSE OR MAY REVOKE A LICENSE ISSUED TO ANY PERSON WHO HAS
15 NOT OBTAINED A BUILDING PERMIT IF SUCH PERMIT IS REQUIRED.

16 3. MAKE APPLICATION FOR A LICENSE FOR A BUSINESS TO BE OPERATED
17 THAT WOULD VIOLATE LAWS OF THE UNITED STATES, THE STATE OF
18 COLORADO OR ANY OF THE PROVISIONS OF THIS CODE. NOTWITHSTANDING
19 THE FOREGOING:

20 A. A LICENSE MAY BE ISSUED FOR THE RETAIL SALE OF
21 MARIJUANA IN ACCORDANCE WITH THE PROVISIONS OF THIS CODE; OR

22 B. A LICENSE MAY BE ISSUED FOR AN ADULT BUSINESS AS
23 DEFINED IN CHAPTER 14, PROVIDED ALL OTHER REQUIREMENTS OF THIS
24 CODE ARE COMPLIED WITH. THE FINANCE DIRECTOR SHALL ACT ON THE
25 LICENSE APPLICATION WITHIN (7) CALENDAR DAYS OF THE FILING OF THE
26 APPLICATION.

27
28 3-9-2-1: LICENSE REQUIRED:

29 ~~It shall be unlawful for any person to engage in the business of selling at retail, as the same is~~
30 ~~defined in this chapter, without first having obtained a license therefor, which license shall be~~
31 ~~applied for on a form prepared by the city treasurer. No fees shall be charged for issuance of the~~
32 ~~license, and it shall be issued by the treasurer unless he or she determines that the business to be~~
33 ~~operated would violate any of the statutes of the state of Colorado, of the United States or any of~~
34 ~~the provisions of this code. Zoning approval shall be required for all sales and use tax licenses~~
35 ~~provided, however, that if the person or entity seeks a sales and use tax license for an adult~~
36 ~~entertainment establishment, the license shall be issued by the treasurer within five (5) days of~~
37 ~~application therefor, unless the adult entertainment establishment is in or proposed to be located~~
38 ~~in a location where such establishments are not permitted under this code. Said license shall be~~
39 ~~and remain in full force and effect until and unless revoked~~

1 3-9-5-1: COLLECTION AND REFUND OF DISPUTED TAX:

2 ~~Should a dispute arise between a purchaser and seller as to whether or not any sale, commodity~~
3 ~~or service is exempt from taxation pursuant to this Chapter, nevertheless the seller shall collect~~
4 ~~and the purchaser shall pay such tax, and the seller shall thereupon issue to the purchaser a~~
5 ~~receipt or certificate, on forms prescribed by the City Treasurer, showing the names of the seller~~
6 ~~and purchaser, the items purchased, the date, price, amount of tax paid, and a brief statement of~~
7 ~~the claim of exemption. The purchaser may thereafter apply to the City Treasurer for a refund of~~
8 ~~such taxes, and it shall be the duty of the City Treasurer, or a hearing officer if appointed~~
9 ~~pursuant to subsection 3-9-1-10(D) of this Chapter, to determine the question of exemption,~~
10 ~~subject to judicial review by the courts, as provided by Colorado Rules of Civil Procedure 106.~~

11
12 A. COLLECTION. SHOULD A DISPUTE ARISE BETWEEN THE PURCHASER AND
13 THE RETAILER OR VENDOR AS TO WHETHER OR NOT ANY SALE,
14 COMMODITY, OR SERVICE IS EXEMPT FROM TAXATION UNDER THIS
15 CHAPTER, NEVERTHELESS, THE RETAILER OR VENDOR SHALL COLLECT
16 AND THE PURCHASER SHALL PAY SUCH TAX. THEREUPON, THE RETAILER
17 OR VENDOR SHALL ISSUE TO THE PURCHASER A RECEIPT OR
18 CERTIFICATE, ON FORMS PRESCRIBED BY THE FINANCE DIRECTOR,
19 SHOWING THE NAMES OF THE RETAILER OR VENDOR AND THE
20 PURCHASER, THE ITEMS PURCHASED, THE DATE, PRICE, AND AMOUNT
21 OF TAX PAID, AND A BRIEF STATEMENT OF THE CLAIM FOR EXEMPTION. IT
22 SHALL BE UNLAWFUL FOR ANY RETAILER OR VENDOR TO FAIL TO
23 COLLECT, OR ANY PURCHASER TO FAIL TO PAY, THE TAX LEVIED BY THIS
24 ARTICLE ON SALES ON WHICH EXEMPTION IS DISPUTED.

25
26 B. REFUNDS. A REFUND SHALL BE MADE, OR A CREDIT ALLOWED, IN AN
27 AMOUNT EQUIVALENT TO THE TAXES PAID UNDER DISPUTE BY ANY
28 PURCHASER WHO HAS AN EXEMPTION, AS PROVIDED IN THIS CHAPTER,
29 PLUS INTEREST COMPUTED AT AN ANNUAL RATE EQUAL TO THE
30 AVERAGE EARNINGS RATE ON THE INVESTMENT PORTFOLIO OF THE CITY
31 FOR THE PRECEDING MONTH. SUCH REFUND SHALL BE MADE BY THE
32 FINANCE DIRECTOR IN ACCORDANCE WITH THE FOLLOWING PROCEDURE:

33
34 1. APPLICATION. AN APPLICATION FOR A REFUND OF TAXES PAID UNDER
35 DISPUTE MUST BE MADE WITHIN 60 CALENDAR DAYS AFTER THE DATE OF
36 PURCHASE OF THE TANGIBLE PERSONAL PROPERTY OR SERVICES FOR WHICH
37 THE EXEMPTION IS CLAIMED. SUCH APPLICATION SHALL BE SUPPORTED BY AN
38 AFFIDAVIT OF THE PURCHASER, THE ORIGINAL PAID INVOICE
39 OR SALES RECEIPT, AND THE CERTIFICATE ISSUED BY THE RETAILER OR
40 VENDOR. SUCH APPLICATION SHALL BE MADE UPON SUCH FORMS AS SHALL BE
41 PRESCRIBED AND FURNISHED BY THE FINANCE DIRECTOR, WHICH FORMS
42 SHALL CONTAIN SUCH INFORMATION AS THE FINANCE DIRECTOR SHALL
43 REASONABLY PRESCRIBE.

1 2. BURDEN OF PROOF. THE BURDEN OF PROOF THAT ANY TANGIBLE
2 PERSONAL PROPERTY OR SERVICES IS EXEMPT FROM TAXATION UNDER THIS
3 CHAPTER SHALL BE ON THE ONE CLAIMING SUCH EXEMPTION UNDER SUCH
4 REASONABLE REQUIREMENTS OF PROOF AS THE FINANCE DIRECTOR MAY
5 PRESCRIBE.

6 3. DECISIONS. UPON RECEIPT OF AN APPLICATION FOR REFUND, THE
7 FINANCE DIRECTOR SHALL EXAMINE THE SAME, RENDER A DECISION THEREON
8 WITHIN THIRTY (30) CALENDAR DAYS AND GIVE NOTICE OF SUCH DECISION TO
9 THE APPLICANT IN WRITING.

10 4. PETITION FOR HEARING. AN AGGRIEVED APPLICANT MAY PETITION IN
11 WRITING TO THE FINANCE DIRECTOR FOR A HEARING REGARDING SAID
12 APPLICANT'S CLAIM WITHIN 30 CALENDAR DAYS FROM THE DATE OF THE
13 DECISION OF THE FINANCE DIRECTOR DENYING THE REFUND. SUCH PETITION
14 SHALL IDENTIFY THE AMOUNT OF THE REFUND REQUESTED AND THE BASIS FOR
15 THE HEARING. THE TIME PERIOD SET FORTH IN THIS SECTION IS MANDATORY.

16 5. APPEAL. FOLLOWING THE HEARING, AN AGGRIEVED APPLICANT MAY
17 SEEK REVIEW OF THE DECISION OF THE FINANCE DIRECTOR IN DISTRICT COURT.

18 6. REFUNDS NOT ASSIGNABLE. THE RIGHT OF ANY PERSON TO A REFUND
19 UNDER THIS CHAPTER SHALL NOT BE ASSIGNABLE, AND APPLICATION FOR
20 REFUND MUST BE MADE BY THE SAME PERSON WHO PURCHASED THE TANGIBLE
21 PERSONAL PROPERTY OR SERVICES FOR WHICH AN EXEMPTION IS CLAIMED.

22 C. DETERMINATION LETTER. IF THE FINANCE DIRECTOR BELIEVES THAT AN
23 ITEM IS NOT TAXABLE UNDER THIS CHAPTER, HE OR SHE MAY SEND A
24 DETERMINATION LETTER ESTABLISHING THIS FACT UPON RECEIPT OF A
25 WRITTEN REQUEST BY A TAXPAYER. THE DETERMINATION LETTER SHALL
26 APPLY ONLY TO THE TAXPAYER IDENTIFIED AS THE ADDRESSEE. SUCH
27 LETTER SHALL BE IN EFFECT UNTIL REVOKED IN WRITING BY THE
28 FINANCE DIRECTOR OR UNTIL THE CITY COUNCIL PASSES AN ORDINANCE
29 WHICH HAS THE EFFECT OF MAKING THE ITEM SUBJECT TO TAXATION
30 UNDER THIS CHAPTER.

31
32 **Section 2:** Severability. If any part, section, subsection, sentence, clause or
33 phrase of this ordinance is for any reason held to be invalid, such invalidity shall not affect the
34 validity of the remaining sections of this ordinance. The City Council hereby declares that it
35 would have passed this ordinance, including each part, section, subsection, sentence, clause or
36 phrase hereof, irrespective of the fact that one or more parts, sections, subsections, sentences,
37 clauses or phrases may be declared invalid.

38
39 **Section 3:** Repealer. All ordinances or resolutions, or parts thereof, in
40 conflict with this ordinance are hereby repealed, provided that this repealer shall not repeal the
41 repealer clauses of such ordinance nor revive any ordinance thereby.

42
43
44

1 INTRODUCED AS A BILL at a regularly scheduled meeting of the City Council
2 of the City of Littleton on the 7th day of August, 2018, passed on first reading by a vote of 6 FOR
3 and 0 AGAINST; and ordered published by posting at Littleton Center, Bemis Library, the
4 Municipal Courthouse and on the City of Littleton Website.

5 PUBLIC HEARING on the Ordinance to take place on the 21st day of August,
6 2018, in the Council Chambers, Littleton Center, 2255 West Berry Avenue, Littleton, Colorado,
7 at the hour of 6:30 p.m., or as soon thereafter as it may be heard.

8 PASSED on second and final reading, following public hearing, by a vote of _____FOR
9 and ____ AGAINST on the 21st day of August, 2018 and ordered published by posting at Littleton
10 Center, Bemis Library, the Municipal Courthouse and on the City of Littleton Website.

11 ATTEST:

12 _____
13 Wendy Heffner
14 CITY CLERK

Debbie Brinkman
MAYOR

15 _____
16
17 Lena McClelland
18 ASSISTANT CITY ATTORNEY
19
20