

ORDINANCE NO. 23-_____

AN ORDINANCE AMENDING PART 9 (ADMINISTRATION) OF ARTICLE 7 (SALES AND USE TAX) OF CHAPTER 2 (BUSINESS LICENSING, LIQUOR REGULATION AND TAXATION) OF THE CODE OF THE CITY OF COLORADO SPRINGS 2001, AS AMENDED, PERTAINING TO SALES AND USE TAX ADMINISTRATION

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

Section 1. Part 9 (Administration) of Article 7 (Sales and Use Tax) of Chapter 2 (Business Licensing, Liquor Regulation and Taxation) of the Code of the City of Colorado Springs 2001, as amended, is amended to read as follows:

PART 9 ADMINISTRATION

SECTION:

2.7.901: Duties And Powers Of Director

2.7.902: Preservation Of Tax Reports And Returns

2.7.903: ~~First~~ **Local** Administrative Hearing

~~2.7.904: Second Administrative Hearing~~

2.7.90**54**: Time Limitation For Hearing Requests

~~2.7.9065: Judicial Review Of Hearings Under Section 2.7.904 Of This Part~~

Review of the Director's Final Decision

2.7.907**6**: Sales Or Use Tax – Posting Of Bonds Upon Final Decision Under Section 2.7.904**3** Of This Part

~~2.7.908: Sales And Use Tax – Alternative Dispute Resolution Procedure – Deficiency Notice Or Claim For Refund~~

2.7.909**7**: Notices; Manner Of Delivery

2.7.910**8**: Coordinated Audit

2.7.911**09**: Intercity Claims For Recovery

2.7.912**10**: Notice Of Sales And Use Tax Ordinance Amendment

2.7.913**11**: Participation In Simplification Meetings

2.7.901: DUTIES AND POWERS OF DIRECTOR:

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C. Director May Require Reports, Records, **Request Attendance**: The Director may require any person, by regulation or notice served on the person, to make the return, render the statement or keep and furnish the records, or make the information reports as the Director may deem sufficient to show whether or not the person is liable under this

act for payment or collection of the tax imposed herein. **The Director may request the attendance of taxpayer or taxpayer's representative at a meeting with the Director.**

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2.7.903: ~~FIRST~~ **LOCAL ADMINISTRATIVE HEARING:**

A. **Protest and** Requests For Hearing:

1. Notices Of Assessment: ~~An appeal~~ **protest and request for hearing** of a notice of determination, assessment and demand for payment issued to a retailer or taxpayer for failure to file a return, underpayment of tax owed, as a result of an audit or for any other reason, shall be submitted in writing to the Director within ~~twenty (20)~~ **thirty (30)** calendar days from the date of the notice of determination, assessment and demand for payment. ~~Any appeal shall identify the amount of tax disputed in the basis for the appeal.~~

2. Denial Of Refunds: ~~An appeal~~ **protest and request for hearing** of the denial of a refund shall be submitted in writing to the Director within ~~twenty (20)~~ **thirty (30)** calendar days from the date of the denial of refund. ~~and shall identify the amount of the refund requested and the basis for the appeal.~~

B. Contents Of ~~Petition~~ **Protest and Request for Hearing:** The ~~petition~~ **protest and request** for hearing shall be under oath of the taxpayer and shall set forth:

1. The reason **for the protest and** why the hearing should be granted;

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4. A complete description of documents and tax periods pertaining to the **protest and** hearing; and

5. The name, address, telephone number, **email address (if any)** and sales or use tax license number of the taxpayer.

C. **Hearing**

1. Time And Place Of Hearing: The Director shall notify the taxpayer in writing of the time and place for the hearing ten (10) days prior thereto. In all cases, the hearing shall be held in Colorado Springs, Colorado.

2. **Sales And Use Tax Hearing: A hearing on a protest related to sales or use tax shall be held and a decision issued within one hundred eighty (180) days from the date a protest and request for hearing is received by the Director, unless the taxpayer and the Director agree in writing: (1) that the hearing shall be held and a decision issued within such further agreed time; (2) that no hearing shall be held before the Director, in which case, the agreement shall state the taxpayer has exhausted local remedies, the date of such exhaustion and shall advise the taxpayer of the right to pursue further review in accord with C.R.S. Section 29-2-106.1; or (3) One hundred eighty days or more after the date of the taxpayer's**

request for a hearing, the local government notifies the taxpayer in writing that the local government does not intend to conduct a hearing. In such instance, the written notification shall also state that the taxpayer exhausted local remedies in accordance with this section, that such exhaustion occurred on the date of the written notification, and that the taxpayer may pursue further review pursuant to C.R.S. Section 29-2-106.1(3) or (8) within thirty days of such exhaustion.

The hearing shall be informal and no transcript, rules of evidence, or filing of briefs shall be required; but the taxpayer may elect to submit a brief, in which case the City may submit a brief.

3. Excise Tax Hearing: A hearing on a protest related to the taxes imposed in Articles 8, 9, 10 and 11 of this Chapter 2 shall be held and a decision issued within one hundred eighty (180) days from the date a protest and request for hearing is received by the Director, unless the taxpayer and the Director agree in writing that the hearing shall be held and a decision issued within such further agreed time. The hearing will be informal and the rules of evidence do not apply, nor will the filing of briefs be required; but the taxpayer may elect to submit a brief, in which case the City may submit a brief. The hearing shall be audio recorded. The Director's decision shall constitute a final agency action for all purposes under Colorado law. The taxpayer's sole remedy for review shall be to file an action pursuant to Rule 106 of the Rules of Civil Procedure in the El Paso County District Court.

4. Director or Referee to Conduct Hearing: The hearing shall be before the Director or an impartial referee appointed by the Director. The referee is authorized to administer oaths, take testimony, to hear arguments and to issue all necessary and appropriate orders and decisions.

5. Director May Adjust Tax Under Question: Based on the evidence presented at any hearing or filed in support of the taxpayer's contentions at any hearing or based on the referee's orders and decisions arising out of the hearing, the Director may modify or abate in full the tax, penalty and interest questioned at the hearing or may approve a refund.

~~D. Referee To Conduct Hearing: The Director shall appoint an impartial referee to conduct a hearing. The referee shall not be the Supervisor, nor any other person who has previously ruled on the tax problem being petitioned to the Director. The hearing shall be informal and no transcript, rules of evidence, or filing of briefs shall be required; but the taxpayer may elect to submit a brief, in which case the City may submit a brief. The City shall hold the hearing and issue the final decision within ninety (90) days after the City's receipt of the taxpayer's written request therefor, except the City may extend the period if a delay in holding a hearing or issuing a decision thereon was occasioned by the taxpayer, but, in any event, the City shall hold the hearing and issue the decision thereon within one hundred eighty (180) days of the taxpayer's request in writing therefor.~~

~~E. Referee May Adjust Tax Under Question: Based on the evidence presented at any hearing or filed in support of the taxpayer's contentions at any hearing, the referee may modify or abate in full the tax, penalty and interest questioned at the hearing or may approve a refund.~~

~~F. — Hearing Determination Notices: Upon approval or rejection, in whole or in part, of the claim for refund or upon the finding by the referee that an assessment in whole or in part has been made properly or improperly against the taxpayer, the referee shall mail a hearing determination notice to the taxpayer setting forth the amount of claim for refund allowed or denied or the amount of deficiency assessment of taxes found due, stating therein the grounds for allowance or rejection of the petition, in whole or in part. Every decision of the referee shall be in writing and notice thereof shall be mailed to the taxpayer within twenty (20) days following the hearing, but in any event within the time limits prescribed in subsection D of this section.~~

~~2.7.904: SECOND ADMINISTRATIVE HEARING:~~

~~A. — An appeal of a decision of the Director in a hearing held pursuant to section 2.7.903 of this part shall be submitted by the taxpayer within thirty (30) days of the decision.~~

~~B. — The Director shall notify the taxpayer in writing of the time and place for the hearing ten (10) days prior thereto. In all cases the hearing shall be held in Colorado Springs, Colorado.~~

~~C. — The hearing shall be formally conducted by the Director, or by an impartial referee appointed by the Director, with a verbatim record retained thereof.~~

~~D. — The Director or impartial referee may modify or abate in full the tax, penalty and interest questioned at the hearing, or may approve, in whole or in part, the requested refund, as the evidence presented at the hearing justifies.~~

~~E. — Within twenty (20) days of the hearing, the Director or impartial referee shall issue a written final hearing determination notice.~~

~~2.7.9054: TIME LIMITATION FOR HEARING REQUESTS:~~

~~After the expiration of ~~twenty (20)~~**thirty (30)** days from the mailing or personal ~~service~~**delivery** of the notice of determination, assessment, and demand for payment, or of the denial of refund, if the tax has not been paid, and if no **protest and** request for hearing has been made as provided in section 2.7.903 of this part, then the notice of determination, assessment and demand for payment previously ~~mailed~~ or ~~serve~~**delivered**, shall constitute a final assessment of the amount of the tax specified, together with interest, additions to tax and penalties, or the uncontested denial of refund shall constitute a final denial of refund, as the case may be, except only for the amounts as to which the taxpayer has timely filed a protest with the Director.~~

~~2.7.905: REVIEW OF THE DIRECTOR'S FINAL DECISION:~~

Any party, including the City, may appeal the final order or decision of the Director on the protest using all judicial, appellate, and extraordinary proceedings available.

~~2.7.906: JUDICIAL REVIEW OF HEARINGS UNDER SECTION 2.7.904 OF THIS PART:~~

~~The District Court within and for the County of El Paso shall review all determinations of the Director made under the provisions of section 2.7.904 of this part under rule 106(a)(4) of the Colorado Rules of Civil Procedure as the same now provides or may be hereinafter amended.~~

~~2.7.9076: SALES OR USE TAX – POSTING OF BONDS UPON FINAL DECISION UNDER SECTION 2.7.9043 OF THIS PART:~~

~~A.——Within fifteen (15) days after filing for judicial review as provided in section 2.7.906 of this part of **the Director's decision**, the taxpayer shall file with the District Court a surety bond in twice the amount of the taxes, interest, and other charges ~~stated~~**contested in the appeal of** the final decision by the Director which are contested on appeal, **provided that the taxpayer may, at the taxpayer's option, deposit with the finance director in lieu of posting a surety bond. If such amount is deposited with the Director, no further interest shall accrue on the contested deficiency during the pendency of the action.** The taxpayer may satisfy the surety bond requirement by a savings account or deposit in or a certificate of deposit issued by a State or national bank or by a State or Federal savings and loan association, in accord with the provisions of Colorado Revised Statutes section 11-35-101(1), equal to twice the amount of the taxes, interest and other charges stated in the final decision by the Director.~~

~~B.——The taxpayer may deposit the disputed amount with the Director in lieu of posting a surety bond. If the amount is so deposited, no further interest shall accrue on the deficiency contested during the pendency of the action. At the conclusion of the action, after appeal to the Supreme Court or the court of appeals or after the time for the appeal has expired, the funds deposited shall be, at the direction of the court, either retained by the Director and applied against the deficiency or returned in whole or in part to the taxpayer with interest at the rate imposed pursuant to section 2.7.1004 of this article. No claim for refund of amounts deposited with the Director need be made by the taxpayer in order for the amounts to be repaid in accord with the direction of the court.~~

~~2.7.908: SALES AND USE TAX — ALTERNATIVE DISPUTE RESOLUTION PROCEDURE — DEFICIENCY NOTICE OR CLAIM FOR REFUND:~~

~~For transactions consummated on or after January 1, 1986, in lieu of the procedure provided in section 2.7.904 of this part, the taxpayer may elect a State hearing on the decision of the referee appointed pursuant to the provisions of section 2.7.903 of this part on deficiency notice or claim for refund pursuant to the procedures set forth in this section:~~

~~A.——As used in this section, "State Hearing" means a hearing before the Executive Director of the Department of Revenue of the State of Colorado or delegate thereof as provided in Colorado Revised Statutes section 29-2-106.1(3).~~

~~B.——When the City asserts that sales or use taxes are due in an amount greater than the amount paid by a taxpayer, the City shall mail a deficiency notice to the taxpayer by certified mail. The deficiency notice shall state the additional sales and uses taxes due. The deficiency notice shall contain notification, in clear and conspicuous type, that the taxpayer has the right to elect a State hearing on the deficiency pursuant to Colorado Revised Statutes section 29-2-106.1(3). Any taxpayer shall also have the right to elect a~~

~~State hearing on the City's denial of the taxpayer's claim for a refund of sales or use tax paid.~~

~~C. — The taxpayer shall request the State hearing within thirty (30) days after the taxpayer's exhaustion of local remedies. The taxpayer shall have no right to the hearing if the taxpayer has not exhausted local remedies or if the taxpayer fails to request the hearing within the time period provided in this subsection. For purposes of this section, "Exhaustion Of Local Remedies" means:~~

~~1. — The taxpayer has timely requested in writing an administrative hearing as provided in section 2.7.903 of this part and the hearing has been held in conformity with the provisions of section 2.7.903 of this part, or~~

~~2. — The taxpayer has timely requested in writing a hearing before the City and the City has failed to hold the hearing or has failed to issue a final decision within the time periods prescribed in subsection 2.7.903F of this part.~~

~~D. — If the taxpayer has exhausted the local remedies as provided in subsection C of this section, the taxpayer may request a State hearing on the deficiency notice or claim for refund, and the request shall be made and the hearing shall be conducted in the same manner as set forth in Colorado Revised Statutes section 29-2-106.1(3) through (7).~~

~~E. — If the deficiency notice or claim for refund involves only the City, in lieu of requesting a State hearing, the taxpayer may appeal the deficiency notice or denial of a claim for refund to the District Court of the County of El Paso as provided in Colorado Revised Statutes section 29-2-106.1(8), provided the taxpayer complies with the procedures set forth in subsection C of this section.~~

~~2.7.909~~**7**: NOTICES; MANNER OF DELIVERY:

All notices required to be given to any person under the provisions of sections 2.7.903 and 2.7.904 of this part shall be in writing and **delivered either in person, or by electronic mail at the provided email address of the taxpayer with a "delivery receipt"** or, if mailed, shall be postpaid by certified or registered mail, "Return Receipt Requested", directed to the person at the last known address. This **form of delivery** mailing shall be sufficient **notice** for the purpose of this City Tax Code.

~~2.7.910~~**8**: COORDINATED AUDIT:

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~~2.7.911~~**9**: INTERCITY CLAIMS FOR RECOVERY:

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~~2.7.912~~**10**: NOTICE OF SALES AND USE TAX ORDINANCE AMENDMENT:

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~~2.7.913~~**11**: PARTICIPATION IN SIMPLIFICATION MEETINGS:

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Section 2. This ordinance shall be in full force and effect from and after its final adoption and publication as provided by Charter.

Section 3. Council deems it appropriate that this ordinance be published by title and summary prepared by the City Clerk and that this ordinance be available for inspection and acquisition in the office of the City Clerk.

Introduced, read, passed on first reading and ordered published this ____ day of _____, 2023.

Finally passed: _____

Randy Helms, Council President

Mayor's Action:

- Approved on _____.
- Disapproved on _____, based on the following objections:

Yemi Mobolade, Mayor

Council Action After Disapproval:

- Council did not act to override the Mayor's veto.
- Finally adopted on a vote of _____, on _____.
- Council action on _____ failed to override the Mayor's veto.

Randy Helms, Council President

ATTEST:

Sarah B. Johnson, City Clerk