

ORDINANCE NO. 19-_____

AN ORDINANCE CREATING A NEW PART 13 (TEMPORARY SALES TAX CREDIT IN DESIGNATED GEOGRAPHIC AREAS WITH PUBLIC IMPROVEMENT FEES) 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, PROVIDING FOR THE TEMPORARAY REDUCTION OF CITY SALES TAX WITHIN CERTAIN DESIGNATED GEOGRAPHIC AREAS FOR THE PURPOSE OF FUNDING PUBLIC IMPROVEMENTS AND SUPPORTING ECONOMIC DEVELOPMENT THROUGH PUBLIC IMPROVEMENT FEES

WHEREAS, the City desires to encourage infill development within the City, and with respect to such development, encourage infill development that grows the City's tax base over the long term and creates jobs; and

WHEREAS, infill development often requires the construction of costly public improvements which provide benefit to the entire City as well as the proposed development; and

WHEREAS, the City has levied a Sales and Use Tax pursuant to Chapter 2, Article 7 of the Code of the City of Colorado Springs 2001, as amended (the City Sales Tax Code"); and

WHEREAS, in connection with infill development of commercial property, the City of Colorado Springs ("City") is willing to enter into Credit Public Improvement Fee Agreements (the "Credit PIF Agreements") between and among the City, infill developers, employers and others, concerning the financing and construction of certain public improvements and the creation of other economic development incentives in association with proposed projects which further the public policy of promoting infill development, creating jobs, and growing the City's tax base; and

WHEREAS, City Council may, but shall not be required to, approve a Credit PIF Agreement whereby the City grants, for a limited period of time, a Sales Tax Credit against City sales taxes otherwise due and payable in an amount not exceeding 1% of the amount of Taxable Sales occurring within the designated geographic area if and to the extent that a public improvement fee is imposed in an amount which, as a percentage of Taxable Sales, is equal to the Sales Tax Credit (the "Credit PIF") and will be collected on Taxable Sales occurring within the designated geographic area, with the full amount of the revenues derived therefrom dedicated solely to the construction of public improvements

benefitting the City and the public and support of economic development incentives for job creation and the expansion of the City's tax base; and

WHEREAS, providing for such Sales Tax Credit in an amount equal to the Credit PIF collected and paid on Taxable Sales occurring within designated geographic areas will substantially aid in the finance and development of necessary public improvements and economic development that will benefit the citizens of the City, will promote the orderly development of lands within the City and will promote and protect public health, safety and general welfare of the residents of the City.

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

Section 1. Part 13 (Temporary Sales Tax Credit in Designated Geographic Areas with Public Improvement Fees) 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 created to read as follows:

PART 13 TEMPORARY SALES TAX CREDIT IN DESIGNATED GEOGRAPHIC AREAS WITH PUBLIC IMPROVEMENT FEES

2.7.1301: TEMPORARY SALES TAX CREDIT IN DESIGNATED GEOGRAPHIC AREAS WITH PUBLIC IMPROVEMENT FEES:

2.7.1302: CRITERIA FOR CITY COUNCIL TO AUTHORIZE SALES TAX CREDIT:

2.7.1301: TEMPORARY SALES TAX CREDIT IN DESIGNATED GEOGRAPHIC AREAS WITH COLLECTING PUBLIC IMPROVEMENT FEES:

A. Council finds that City infill development serves the public interest, ensuring orderly development of the City and promoting health, safety and welfare of its citizens. In order to promote such infill development, if, in the discretion of the City Council, a proposed infill development meets the criteria set forth in this Part 13, the City Council may designate a limited geographic area in which a temporary City Sales Tax Credit may be made available, and in connection therewith, grant a temporary Sales Tax Credit to an appropriate designated party for the purposes set forth herein.

B. A developer or employer, may apply to the City for a temporary Sales Tax Credit under this Part 13 by submitting an application therefor to the City with such documentation as the City may require. If approved by the City Council, the developer, and/or employer, and the City shall enter into a Credit PIF Agreement

("Credit PIF Agreement") which describes the project, economic benefit to the City, and public improvements to be constructed and sets forth the terms and limitations upon which the temporary Sales Tax Credit is granted.

C. The Credit PIF Agreement may provide, for a limited period of time, a Sales Tax Credit against sales taxes otherwise due and payable in an amount not exceeding 1% of the amount of Taxable Sales occurring within the designated geographic area if and to the extent that a public improvement fee in an amount as a percentage of Taxable Sales equal to the Sales Tax Credit (the "Credit PIF") is imposed and will be collected on Taxable Sales occurring within the geographic area, with the full amount of the revenues derived from the Credit PIF to be dedicated to the construction of public improvements benefitting the City and the public and to economic development incentives.

D. The Credit PIF Agreement shall identify the responsible party or parties for collection of the Credit PIF, clearly depict the boundaries of the geographic area within which the Sales Tax Credit is to be granted, describe the project and the proposed land use or uses, the economic development benefits to the City, the term for the Credit PIF and Sales Tax Credit, along with such other terms as may be required by the City.

E. Sales Tax Credit. Notwithstanding any other provisions of this Chapter to the contrary, and in order to implement provisions of Credit PIF Agreement(s) entered into by the City, there will be granted to each person or entity obligated to pay sales tax on the purchase or sale or provision of goods or services which are subject to the City's sales tax described in this Chapter occurring within the geographic area identified within the Credit PIF Agreement, a tax credit against the collection of the sales taxes not exceeding the rate of the Credit PIF as set forth in this Part 13. All capitalized terms used in this Part and not otherwise defined herein shall have the meanings given to them in the Credit PIF Agreement. Such tax credit shall be granted in the form of a reduction on the applicable sales tax rate in an amount equal to 1% of the purchase price, and shall attach to a particular taxable sale only to the extent that the Credit PIF Revenue is collected and received by the PIF Collection Agent for such taxable sale. Notwithstanding the foregoing, in the event that a Credit PIF is imposed at a rate less than 1%, the tax credit shall be accordingly reduced to the amount of the Credit PIF so imposed. The tax credit shall be automatic and shall take effect immediately upon the occurrence of a Taxable Sale, but shall be subject to the applicable retailer's remittance to and receipt by the PIF Collection Agent of the Credit PIF Revenue in accordance with the Credit PIF Covenant and the Credit PIF Agreement (as reflected on the retailer's periodic sales tax report).

F. No Sales Tax Credit shall be granted against any Taxable Sales occurring at any retailer within the development unless the Credit PIF is imposed, collected and dedicated to the purposes authorized herein and in accordance with the Credit PIF Agreement.

G. The Sales Tax Credit is only applicable to and shall not exceed 50% of the general City sales tax and does not apply to any other sales tax imposed by the City including, but not limited to, sales and use tax dedicated to road repairs, LART, TOPS and public safety tax.

H. The Sales Tax Credit authorized under this Part shall remain in effect for the period set forth in the Credit PIF Agreement.

I. Suspension of Sales Tax Credit. The City may at any time, on not less than thirty (30) days prior written notice to any affected PIF Collection Agent, suspend the Sales Tax Credit for any given fiscal year of the City within the time period set forth in the Credit PIF Agreement. During a suspension period, retailers within the designated geographic area covered by a Credit PIF Agreement shall be obligated to collect the full amount of sales tax at the rate set forth in this Chapter and remit the entire sales tax amount to the City. The City shall thereafter, within sixty (60) days of the receipt of the entire sales tax amount, rebate that portion of the sales tax previously subject to the Sales Tax Credit to the PIF Collection Agent. Such rebate shall be disbursed pursuant to the terms of Credit PIF Covenant and the Credit PIF Agreement. During the suspension period the retailers shall not collect the Credit PIF. If, for any reason, the Credit PIF should continue to be collected, the rebate described above shall be proportionately reduced.

2.7.1302: CRITERIA FOR CITY COUNCIL TO AUTHORIZE SALES TAX CREDIT:

Sales Tax Credit may be provided in accordance with this Part 13 only if City Council makes findings that the project to be developed meets the following criteria:

A. The project constitutes an infill development as defined in the City's Comprehensive Plan and is consistent with the Comprehensive Plan; and

B. The project will not be financially viable or capable of achievement without receipt of public financial assistance in the form of a Sales Tax Credit offsetting a Credit PIF; and

C. The public improvements assisted with the Sales Tax Credit and the overall economic benefit of the Project will benefit the general public and not merely the project; and

D. The project will grow the City's tax base notwithstanding the Sales Tax Credit.

Section 2. **Invalidity.** In the event this ordinance, the Sales Tax Credit established herein or the Credit PIF is determined by a final court decision to be unconstitutional, void or ineffective for any reason, the temporary Sales Tax Credits shall terminate and every retailer within the designated geographic area shall immediately be required to collect and remit the full City sales tax as provided in Code of the City of Colorado Springs 2001, as amended, Chapter 2, Article 7, Part 2.

Section 3. **Change in Tax Rate.** Nothing contained in this Ordinance shall prohibit the City, after complying with all requirements of law, from increasing or decreasing the City's sales tax rate.

Section 4. **Effect of Credit, Applicability of TABOR.** The City Council hereby determines that the creation or termination of this Sales Tax Credit does not constitute a tax increase, the imposition of a new tax, or a tax policy change directly causing a net tax revenue gain to the City, and that nothing herein creates a multiple fiscal year financial obligation or other indebtedness of the City, nor does the Sales Tax Credit established by this Ordinance and the termination of such credit meet any of the other criteria requiring approval by the electors pursuant to Section 7-90 of the Charter or Article X, Section 20 of the Colorado Constitution, also known as the Taxpayer's Bill of Rights (TABOR).

Section 5. This ordinance shall be in full force and effect from and after its final adoption and publication as provided by Charter.

Section 6. 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 _____, 2019.

Finally passed: _____

Council President

Mayor's Action:

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

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.

Council President

ATTEST:

Sarah B. Johnson, City Clerk