

**CITY OF EDGEWATER**  
**ORDINANCE NO.2023 - 11**  
**SERIES OF 2023**

**AN ORDINANCE REPEALING AND REENACTING DIVISION 2 OF ARTICLE 4 OF CHAPTER 4 OF THE EDGEWATER MUNICIPAL CODE TO GENERALLY ALIGN THE CITY SALES TAX CODE WITH THE STATE SALES TAX CODE AND THEREBY FACILITATE THE COLORADO DEPARTMENT OF REVENUE’S COLLECTION OF THE CITY’S SALES TAX**

WHEREAS, the City of Edgewater, Colorado (the “City” or “Edgewater”), is a Colorado home rule municipality, duly organized and existing pursuant to Section 6 of Article XX of the Colorado Constitution;

WHEREAS, pursuant to its home rule authority, and in compliance with Section 20 of Article X of the Colorado Constitution (“TABOR”), the City has previously adopted a City sales tax code, codified as Division 2 of Article 2 of Chapter 4 of the Edgewater Municipal Code (“Code”); and

WHEREAS, historically, the City has self-collected City sales taxes; and

WHEREAS, the Edgewater City Council (“Council”) finds and determines that the City’s self-collection and administration of City sales taxes is an unnecessary burden on City staff and resources; and

WHEREAS, the State Department of Revenue collects local sales taxes for many Colorado jurisdictions and would do the same for the City upon the City’s alignment of the City sales tax code with the State’s; and

WHEREAS, the Council therefore desires to amend the Code to achieve general uniformity with the State sales tax code, thereby facilitating the transfer of City sales tax collection and enforcement responsibilities from the City to the State; and

WHEREAS, the Council finds and determines that the purpose of this Ordinance is to simplify tax collection and ease administrative burdens, not to raise additional tax revenues; that the Ordinance will cause an incidental and de minimis tax-revenue change; and, as such, this Ordinance does not require voter-approval under TABOR, as established in *Tabor Foundation v. Regional Transportation District, et al.*, 416 P.3d 101 (Colo. 2018).

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

Section 1. Division 2 of Article 2 of Chapter 4 of the Code, concerning the City’s sales tax, is hereby repealed and reenacted to read in its entirety as follows:

## **Division 2 – Sales Tax**

### **Sec. 4-2-210. - Definitions.**

All terms used in this Division 2 shall have the meanings assigned to them by Section 4-2-20 of this Code unless such definition conflicts with the same defined term under C.R.S. § 39-26-102, as existing or as hereafter amended, in which case the Colorado Revised Statute definition shall control.

### **Sec. 4-2-220. – Imposition, Collection, Administration, and Enforcement of Sales Tax.**

Unless otherwise provided herein or under Article 2, Title 29, C.R.S., the provisions of Article 26, Title 39, C.R.S., shall govern the collection, administration, and enforcement of this sales tax.

- (1) Imposition of Sales Tax. There is hereby imposed and there shall be collected a tax on all sales of tangible personal property and services described in Section 4-2-220(2) and occurring within the City. The tax is imposed as provided for in Section 29-2-105(1)(d), C.R.S. The sales tax shall be set at a rate of three and one-half percent (3.5%) of the amount of each sale. The taxable amount of a sale shall not include the amount of any sales or use tax imposed by Article 26, Title 39, C.R.S.
- (2) Property and Services Taxed. The sales of tangible personal property and services taxable under this Division shall be the same as the sales of tangible personal property and services taxable pursuant to Section 39-26-104, C.R.S., subject to the exemptions set forth under Section 4-2-230.
- (3) For the purpose of this sales tax, all retail sales are sourced as specified in Section 39-26-104(3), C.R.S.
- (4) Without limiting the broad application of Section 4-2-220(2) and recognizing that mobile telecommunications services are subject to particular legal requirements, this sales tax shall apply to mobile telecommunications services to the greatest extent permitted under Section 29-2-105(1.5), C.R.S.

### **Sec. 4-2-230. – Exemptions.**

- (1) General Sales Tax Exemptions. Except as otherwise provided herein or in Section 29-2-105(1)(d), C.R.S., the sales of tangible personal

property and services taxable under this Division shall be subject to the same exemptions as those specified in part 7, article 26, title 39, C.R.S.

- (2) Exemptions Required to be Express. Pursuant to Section 29-2-105(1)(d)(I)(A)-(R), C.R.S., which requires the City to expressly exempt certain sales from the City's tax code if such sales are to be exempted, the City adopts the following additional express exemptions:
  - (a) The exemption for sales by a charitable organization specified in Section 39-26-718(1)(b), C.R.S.;
  - (b) The exemption for sales that benefit a Colorado school specified in Section 39-26-725, C.R.S.; and
  - (c) The exemption for manufactured homes set forth in Section 39-26-721(3), C.R.S.
- (3) Food. Notwithstanding any other provision of this sales tax regarding the taxation of food, this sales tax shall not apply to the following:
  - (a) Sales of food purchased with food stamps. For the purposes of this subsection (a), "food" has the same meaning as provided in 7 U.S.C. § 2012, as currently in effect and subsequently amended.
  - (b) Sales of food purchased with funds provided by the special supplemental food program for women, infants, and children, 42 U.S.C. § 1786. For the purposes of this subsection (b), "food" has the same meaning as provided in 42 U.S.C. § 1786, as currently in effect and subsequently amended.
- (4) Certain Construction and Building Materials. This sales tax shall not apply to the sale of "construction and building materials," as the term is used in Section 29-2-109, C.R.S., if the purchaser of such materials presents to the retailer a building permit or other documentation acceptable to the City evidencing that a local use tax has been paid or is required to be paid on the materials.
- (5) Cigarettes. This sales tax shall not apply to sales of cigarettes.
- (6) Sales to a Telecommunications Provider. This sales tax shall not apply to sales to a telecommunications provider of equipment used directly in the provision of telephone service, cable television service, broadband communications service, or mobile telecommunications

service. It is the policy of this City that this exemption be applied in a uniform and nondiscriminatory manner to the telecommunications providers of telephone service, cable television service, broadband communications service, and mobile telecommunications service.

- (7) Sales Subject to Prior Ownership Tax. Sales of personal property on which a specific ownership tax has been paid or is payable are exempt from this sales tax when the sale meets both of the following conditions: (i) the purchaser is a nonresident of the City or has his principal place of business outside the City and (ii) the personal property sold is registered or required to be registered outside the City's limits under the law of the State of Colorado.
- (8) Sales Subject to Prior Payment of Sales or Use Tax. This sales tax shall not apply to the sale of tangible personal property or services if the transaction was previously subjected to a sales or use tax lawfully imposed on the purchaser or user by another statutory or home rule city and county, city, or town equal to or in excess of that sought to be imposed by this sales tax. A credit shall be granted against this sales tax with respect to such transaction equal in amount to the lawfully imposed local sales or use tax previously paid by the purchaser or user to the previous statutory or home rule city and county, city, or town. The amount of the credit shall not exceed the sales tax imposed herein.

#### **Sec. 4-2-240. – Administration and Enforcement.**

Notwithstanding any provision of Division 4 of this Chapter 4, the collection, administration and enforcement of this Division 2 shall be performed by the executive director of the Colorado Department of Revenue in the same manner as the collection, administration, and enforcement of the Colorado state sales tax, as supplemented by Article 2, Title 29, C.R.S.

Section 2. Delivery to Colorado Department of Revenue. As soon as practical after final adoption, the City clerk shall provide a copy of this Ordinance and notice of its adoption and approval to the executive director of the Colorado Department of Revenue.

Section 3 Colorado Department of Revenue to Enforce. Upon the effective date of this Ordinance, the collection, administration, and enforcement of the City sales tax shall be performed by the executive director of the Colorado Department of Revenue in the same manner as the collection, administration, and enforcement of the Colorado state sales tax, as supplemented by article 2, title 29, C.R.S.

Section 4 Effective Date. Excepting the directive given under Section 2 hereof, this Ordinance shall become effective on January 1, 2024.

Section 5. Severability. If any section, paragraph, sentence, clause, or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

Section 6. References to Colorado Law. References to Colorado law are to the versions of those laws in effect at the time this ordinance was adopted as well as any subsequent amendments thereto.

INTRODUCED, READ, PASSED ON FIRST READING AND ORDERED PUBLISHED this 3<sup>rd</sup> day of October, 2023.

/s/ John Beltrone

John Beltrone, Mayor

ATTEST:

/s/ L Pedroza

Lenore Pedroza, MMC

City Clerk

PASSED AND ADOPTED ON SECOND READING AND ORDERED PUBLISHED this 24<sup>th</sup> day of October, 2023.

/s/ John Beltrone

John Beltrone, Mayor

ATTEST:

/s/ L Pedroza

Lenore Pedroza, MMC

City Clerk

APPROVED AS TO FORM:

/s/ Carmen Beery

Carmen Beery, City Attorney