

**TOWN OF FRISCO
COUNTY OF SUMMIT
STATE OF COLORADO
ORDINANCE 23-02**

AN ORDINANCE AMENDING CHAPTER 160 OF THE CODE OF ORDINANCES OF THE TOWN OF FRISCO, COLORADO, CONCERNING TAXATION, BY AMENDING SECTIONS 160-1.1 CONCERNING DEFINITIONS RELATED TO THE TOWN'S SALES TAX; 160-2.1, CONCERNING COLLECTION AND PAYMENT OF SALES TAX; 160-2.4, CONCERNING REPORTING PERIODS FOR THE PAYMENT OF SALES TAXES; 160-3.1, CONCERNING MARIJUANA AND TOBACCO LICENSES; 160-3.3, CONCERNING CONFIDENTIALITY OF TAX INFORMATION; 160-5.6, CONCERNING NOTICE OF ASSESSMENT; 160-7.1, 160-7.2, AND 160-7.3 CONCERNING LIENS RELATED TO THE TOWN'S SALES TAX; 160-7.4 AND 160-7.6, CONCERNING THE RECOVERY OF TAX DUE; 160-8.9, CONCERNING TRANSACTIONS AND ITEMS SUBJECT TO TAX; 160-8.10, CONCERNING EXEMPTIONS FROM SALES TAX; 160-27, CONCERNING THE LEGISLATIVE INTENT RELATED TO THE TOWN'S LODGING TAX; 160-28, CONCERNING DEFINITIONS RELATED TO THE TOWN'S LODGING TAX; 160-35, CONCERNING THE PAYMENT OF LODGING TAX; 160-36, CONCERNING EXCESS TAX RELATED TO THE TOWN'S LODGING TAX; 160-42, CONCERNING CONFIDENTIALITY OF TAX INFORMATION; 160-45, CONCERNING RECOVERY OF TAXES, PENALTY, AND INTEREST; 160-46, CONCERNING LIENS RELATES TO THE TOWN'S LODGING TAX; 160-62 CONCERNING DEFINITIONS RELATED TO THE TOWN'S SHORT-TERM RENTAL PROPERTY EXCISE TAX; AND 160-63 CONCERNING IMPOSITION OF THE TOWN'S SHORT-TERM RENTAL PROPERTY EXCISE TAX; ALL IN ORDER TO SIMPLIFY, STANDARDIZE, AND MAKE MORE EFFICIENT THE REPORTING AND PAYMENT OF SALES, LODGING, AND SHORT TERM RENTAL 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 tax definitions, by home rule municipalities that locally collect their sales tax, 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, the Town has determined that it is in the best interests of the Town and its business community that the Town simplify Colorado's municipal tax system by adopting such definitions; and

WHEREAS, the United States Supreme Court in *South Dakota v. Wayfair*, 138 S.Ct. 2080 (2018), overturned prior precedent and held that a State is not prohibited by the Commerce

Clause from requiring a vendor to collect tax based solely on the fact that such vendor does not have a physical presence in the State ("Remote Sales"); and

WHEREAS, based upon such decision, the vendor's obligation to collect tax on Remote Sales is no longer based on the vendor's physical presence in the jurisdiction by the Constitution or law of the United States, and the Town's Code needs to be amended to clearly reflect such obligation consistent with said decision; and

WHEREAS, the failure to tax remote sales within the Town creates incentives for businesses to avoid a physical presence in the State and its respective communities, resulting in fewer jobs and increasing the share of taxes to those consumers who buy from competitors with a physical presence in the State and its municipalities; and

WHEREAS, the remote sale or furnishing of lodging within the Town burdens local transportation systems, emergency and police services, waste disposal, utilities and other infrastructure and services; and

WHEREAS, the goal of adopting this ordinance is to join in on the simplification efforts of all the self-collecting home rule municipalities in Colorado; and

WHEREAS, absent such amendment, the failure of vendors to voluntarily apply and remit tax owed on sales within the Town exposes the Town to unremitted taxes and permits an exception inequitable to local businesses that prevents market participants from competing on an even playing field.

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

Section 1. The Town Council finds, determines, and declares as follows:

- A. In 1992 the electors of the state approved Article X, §20 of the Colorado Constitution, commonly known as the "TABOR Amendment."
- B. The Town is a "district" as defined in TABOR.
- C. Section 7(b) of TABOR establishes a formula for the calculation of a local district's (such as the Town's) allowed annual fiscal year spending.
- D. Section 7(d) of TABOR provides that local electors may approve a "voter-approved revenue change" to the local district's allowed annual fiscal year spending.
- E. By Resolution No. 39, Series 2000, the Town Council of the Town of Frisco referred to the electors of the Town the following ballot question:

SHALL THE TOWN OF FRISCO, COLORADO BE AUTHORIZED TO RETAIN ALL REVENUES IT RECEIVES FROM ITS PROPERTY TAXES AND SALES, USE, AND OTHER EXCISE TAXES; RATES, FEES, ASSESSMENTS, FINES, FORFEITURES, LICENSES, PERMITS,

REIMBURSEMENTS, CONTRIBUTIONS, DONATIONS, SEIZURES, RENTS, CHARGES (BOTH OPERATING AND CAPITAL IN NATURE) FOR FACILITIES AND SERVICES; DISTRIBUTIONS FROM OTHER GOVERNMENTS; GRANTS; INTEREST EARNINGS AND OTHER INVESTMENT INCOME; AND ANY OTHER REVENUES IT RECEIVES IN 2001 AND SUBSEQUENT YEARS; AND SHALL THE TOWN BE AUTHORIZED TO SPEND SUCH REVENUES AS VOTER-APPROVED REVENUE CHANGE, A CHANGE IN TAX POLICY FOR 2001, AND AN EXCEPTION TO ANY SPENDING LIMITATIONS WHICH MIGHT OTHERWISE APPLY, WITHOUT LIMITING THE COLLECTION AND SPENDING OF OTHER REVENUES OF THE DISTRICT IN ANY YEAR?

- F. At the general election held on November 7, 2000 the electors of the Town approved the ballot question set forth in Section E, above.
- G. In 2009, the Colorado Supreme Court issued its opinion in the case of Mesa County Bd. of Comm'rs v State, 203 P.3d 519 (Colo. 2009). In its opinion the Supreme Court held that when a municipality subject to TABOR has approved a broadly worded measure such as the Town did in 2000, the municipality may thereafter amend its tax ordinance(s) without a new election because, in the language of the Court's opinion, "such a requirements would create unnecessary redundancy."
- H. Pursuant to the Colorado Supreme Court's holding in the case mentioned in G, the adoption of this ordinance does not result in a "tax policy change" requiring approval of the Town's electors under TABOR.
- I. The adoption of the ordinance does not create a new tax or tax rate.

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:

Collection Costs shall include, but is not limited to, all costs of audit, assessment, bank fees, hearings, execution, lien filing, distraint, litigation, locksmith fees, auction fees and costs, prosecution and attorney fees.

Community Organization means a nonprofit entity organized and operated exclusively for the promotion of social welfare, primarily engaged in promoting the common good and general welfare of the community, so long as: (1) No part of the net earnings of which inures to the benefit of any private shareholder or individual; (2) No substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; and (3) Which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

Contract Auditor means a duly authorized agent designated by the taxing authority and qualified to conduct tax audits on behalf of and pursuant to an agreement with the municipality.

Cover Charge means a charge paid to a club or similar entertainment establishment which may, or may not, entitle the patron paying such charge to receive tangible personal property, such as food and/or beverages.

Data Processing Equipment any equipment or system of equipment used in the storage, manipulation, management, display, reception, or transmission of information including, but not limited to, computers, software program, hardware, or firmware.

Digital Product means an electronic product including, but not limited to: (1) "digital images" which means works that include, but are not limited to, the following that are generally recognized in the ordinary and usual sense as "photographs," "logos," "cartoons," or "drawings." (2) "digital audio-visual works" which means a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any, (3) "digital audio works" which means works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones. For purposes of the definition of "digital audio works", "ringtones" means digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication, and (4) "digital books" which means works that are generally recognized in the ordinary and usual sense as "books".

Diapers means an absorbent garment worn by humans who are incapable of, or have difficulty, controlling their bladder or bowel movements.

Dwelling Unit means a building or any portion of a building designed for occupancy as complete, independent living quarters for one (1) or more persons, having direct access from the outside of the building or through a common hall and having living, sleeping, kitchen and sanitary facilities for the exclusive use of the occupants.

Engaged in business in the Town means performing or providing services or selling, leasing, renting, delivering or installing tangible personal property for storage, use or consumption within the Town. *Engaged in business in the Town* includes, but is not limited to, any one of the following activities by the person:

- A. Directly, indirectly or by a subsidiary maintains a building, store, office salesroom, warehouse or other place of business within the taxing jurisdiction;
- B. Sends one (1) or more employees, agents or commissioned sales persons into the taxing jurisdiction to solicit business or to install, assemble, repair, service or assist in the use of its products, or for demonstration or other reasons;
- C. Maintains one (1) or more employees, agents or commissioned sales persons on duty at a location within the taxing jurisdiction;
- D. Owns, leases, rents or otherwise exercises control over real or personal property within the taxing jurisdiction;
- E. Makes more than one (1) delivery into the taxing jurisdiction within a twelve-month period ~~by any means other than common carrier.~~

Food For Home Consumption means food for domestic home consumption as defined in 7 U.S.C. sec. 2012 (k) (2014), as amended, for purposes of the supplemental nutrition assistance program, or any successor program, as defined in 7 U.S.C. sec. 2012 (t), as amended; except that "food" does not include carbonated water marketed in containers; chewing gum; seeds and plants to grow foods; prepared salads and salad bars; packaged and unpackaged cold sandwiches; deli trays; and hot or cold beverages served in unsealed containers or cups that are vended by or through machines or non-coin-operated coin-collecting food and snack devices on behalf of a vendor.

Garage Sales means sales of tangible personal property, except automotive vehicles, occurring at the residence of the seller, where the property to be sold was originally purchased for use by members of the

household where such sale is being conducted. The term includes, but is not limited to, yard sales, estate sales, and block sales.

Internet Access Services means services that provide or enable computer access by multiple users to the internet, but shall not include that portion of packaged or bundled services providing phone or television cable services when the package or bundle includes the sale of Internet Access Services.

Internet Subscription Service means software programs, systems, data and applications available online through rental, lease or subscription, that provide information and services including, but not limited to, data linking, data research, data analysis, data filtering or record compiling.

Lodging services means the provision or facilitation of provision of any rooms or accommodations by any person, partnership, association, corporation, estate, representative capacity or any other combination of individuals by whatever name known to a person who, for consideration including barter, trade or timesharing uses, possesses or has the right to use or possess any room or other accommodation, including but not limited to a hotel, inn, bed and breakfast, apartment, single-family residence, lodging house, condominium, motor hotel, guesthouse, guest ranch, trailer coach, mobile home, auto camp, trailer court and park, any portion of a dwelling unit or other area which accommodates a guest, or similar establishment, for a period of less than thirty (30) consecutive days under any rental agreement, sharing or trade agreement, concession, permit, right of access, license to use, or other agreement, ~~short term (less than thirty [30] consecutive days) leasing or rental of any hotel room, motel room, apartment hotel, lodging house, motor hotel, guest house, trailer coach, mobile home, auto camp, trailer court, condominium unit, town home, time share unit, private residence or other accommodation.~~

Manufactured Home means any preconstructed building unit or combination of preconstructed building units, without motive power, where such unit or units are manufactured in a factory or at a location other than the residential site of the completed home, which is designed and commonly used for occupancy by persons for residential purposes, in either temporary or permanent locations, and which unit or units are not licensed as a vehicle.

Marketplace seller means a person, regardless of whether or not the person is engaged in business in the town, which ~~that~~ has an agreement with a marketplace facilitator and offers tangible personal property, products, or services, through a marketplace owned, operated or controlled by a marketplace facilitator.

Menstrual care products means tampons, panty liners, menstrual cups, sanitary napkins, and other similar tangible personal property designed for hygiene in connection with the human menstrual cycle.

Online Garage Sales means sales of tangible personal property, except automotive vehicles, occurring online, where the property to be sold was originally purchased for use by the seller or members of the seller's household.

Photovoltaic System means a power system designed to supply usable solar power by means of photovoltaics, a method of converting solar energy into direct current electricity using semiconducting materials that create voltage or electric current in a material upon exposure to light. It consists of an arrangement of several components, including solar panels to absorb and convert sunlight into electricity, a solar inverter to change the electric current from DC to AC, as well as mounting, cabling, metering systems and other electrical accessories to set up a working system.

Renewable Energy means any energy resource that is naturally regenerated over a short time scale and derived directly from the sun (such as thermal, photochemical, and photoelectric), indirectly from the sun (such as wind, hydropower, and photosynthetic energy stored in biomass), or from other natural

movements and mechanisms of the environment (such as geothermal and tidal energy). Renewable Energy does not include energy resources derived from fossil fuels, waste products from fossil sources, or waste products from inorganic sources.

Sale that Benefits a Colorado School means a sale of a commodity or service from which all proceeds of the sale, less only the actual cost of the commodity or service to a person or entity as described in this Code, are donated to a school or a school-approved student organization.

School means a public or nonpublic school for students in kindergarten through 12th grade or any portion thereof.

Software as a Service means software that is rented, leased or subscribed to from a provider and used at the consumer's location, including but not limited to applications, systems or programs.

Software License Fee means a fee charged for the right to use, access, or maintain software programs.

Software Maintenance Agreement means an agreement, typically with a software provider, that may include (1) provisions to maintain the right to use the software; (2) provisions for software upgrades including code updates, version updates, code fix modifications, enhancements, and added or new functional capabilities loaded into existing software, or (3) technical support.

Solar Thermal Systems means a system whose primary purpose is to use energy from the sun to produce heat or cold for: (1) Heating or cooling a residential or commercial building; (2) Heating or cooling water; or (3) Any industrial, commercial, or manufacturing process.

Taxable Services means services subject to tax pursuant to this Article.

Television and Entertainment Services means audio or visual content that can be transmitted electronically by any means, for which a charge is imposed.

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

Every retailer engaged in business in the Town or marketplace facilitator, that has made retail sales into the state exceeding the amount specified in C.R.S. § 39-26-102(3)(c), shall be liable and responsible for payment of an amount equivalent to the taxable sales multiplied by the specified rate.

Section 4. Section § 160-2.4, concerning reporting periods for the payment of sales tax, is hereby amended to read as follows:

A. Unless otherwise required or approved, taxpayers shall file returns and pay taxes with the same filing schedule assigned by the State of Colorado, as follows:

~~1. A taxpayer whose monthly tax due to the Town is less than ten dollars (\$10.00) may file returns and pay sales tax annually at the end of the calendar year.~~

~~2. A taxpayer who in any month has a monthly tax due to the Town of ten dollars (\$10.00) or more shall file returns and pay tax monthly and continue to pay monthly for each month for the remainder of the calendar year.~~

Section 5. Section § 160-3.1, concerning licenses, is hereby amended to read as follows:

The administration of this Article is hereby vested in the General Government Director.

K. Retail and Medical Marijuana Licenses. Prior to the renewal, or issuance of a license to retail and medical marijuana and/or marijuana products, the General Government Director shall certify that all returns have been filed and taxes paid.

L. Tobacco Licenses. Prior to the renewal, or issuance of a license to sell any tobacco or nicotine products, the General Government Director shall certify that all returns have been filed and taxes paid.

Section 6. Section § 160-3.3, concerning confidentiality of tax information, is hereby amended to read as follows:

All specific information gained under the provisions of this Article which is used to determine the total tax liability from a taxpayer, whether furnished by the taxpayer or obtained through audit, shall be treated by the Town and its officers, employees, contract auditor or legal representatives as confidential.

Section 7. Section § 160-5.6, concerning notice of assessment, is hereby amended to read as follows:

The General Government Director or specified authorized agent shall issue a notice of assessment for any tax deficiency, penalties, ~~or~~ interest due and collection costs.

Section 8. Section § 160-7.1, concerning liens related to the Town's sales tax, is hereby amended to read as follows:

A. Issuance. If any tax liability is not paid by the payment date of a notice of assessment, the General Government Director may issue a notice of lien on the real and personal property of the taxpayer. Such lien shall specify the name of the taxpayer, the total tax liability and collection costs, the date of the accrual thereof, the location of the property and shall be certified by the General Government Director.

Section 9. Section § 160-7.2, concerning liens related to the Town's sales tax, is hereby amended to read as follows:

A. Any lien for total tax liability and collection costs shall continue until a release of lien is filed by the General Government Director.

B. Any person who purchases or repossesses real or personal property upon which a lien has been filed by the General Government Director for total tax liability shall be liable for a payment of such tax liability and collection costs up to the value of the property taken or acquired.

Section 10. Section § 160-7.3, concerning liens related to the Town's sales tax, is hereby amended to read as follows:

Upon payment of the total tax liability and collection costs or enforcement of the lien, the General Government Director shall file a release of lien with the county clerk and recorder of the county in which the lien was filed.

Section 11. Section § 160-7.4, concerning the recovery of tax due, is hereby amended to read as follows:

- A. Any unpaid total tax liability shall constitute a debt of the taxpayer to the Town and the General Government Director may request the Town Attorney to file a civil action in either the Municipal Court or the County District Court to collect such total tax liability and collection costs.

Section 12. Section § 160-7.6, concerning the recovery of tax due, is hereby amended to read as follows:

- B. If the taxpayer does not volunteer entry to the premises, the General Government Director may apply to the Municipal Court of the Town for a warrant authorizing any employee or agent of the Town to search for and seize property located inside the Town to enforce the collection of total tax liability and collection costs.

Section 13. Section § 160-8.9, concerning transactions and items subject to tax, is hereby amended to read as follows:

The tax levied by Section 160-8.7 shall apply to the following:

- A. All sales of tangible personal property at retail, whether or not such property has been included in a previous taxable transaction.

- D. All sales of food, including but not limited to:

1. The amount paid for food or drink served or furnished in or by restaurants, cafes, lunch counters, cafeterias, hotels, drugstores, social clubs, nightclubs, cabarets, resorts, snack bars, caterers, carry-out shops, delicatessens, grocery stores, counters, vending machines and other like places of business at which prepared food or drink is regularly sold, including sales from pushcarts, motor vehicles and other mobile facilities.
2. The total amount paid as a cover charge or for admission to an establishment that charges a single price for admission and tangible personal property-food service.

- K. Upon the total purchase price charged to any person or persons for Lodging services.

L. Upon television and entertainment services sold, purchased, leased, rented, furnished or used, including any equipment rentals furnished as a part of the price or separately stated, if the charge is billed to a person in the town.

M. Upon prewritten (canned) software that is sold, licensed for use, subscribed to, leased or rented when delivered electronically or by any other method. Software is deemed to be used within the town if one of the following is true: 1. The end user of the software is engaged in business in the town or resides in the town while using or accessing the software; or 2. The server or other computer equipment upon which the software, electronic files or electronic data reside or are maintained is located within the Town of Frisco

N. Software maintenance agreements when: 1. The agreement is mandatory to maintain the right to use the associated software; or 2. The agreement includes software upgrades and the cost for upgrading is not

separately calculated and stated from other aspects; or 3. The agreement includes technical support and the cost associated with technical support is not separately stated or calculated

O. Upon software as a service, data processing equipment, internet subscription service and digital products.

P. Upon all software license fees.

O. Upon sales of tangible personal property by a retailer-contractor, when acting as a retailer, shall be subject to sales tax on the total sales price.

Section 14. Section § 160-8.10, concerning exemptions from sales tax, is hereby amended to read as follows:

A. The tax levied by Section 160-8.7 shall not apply to the following:

2. Tangible personal property that is to be used, stored or consumed outside the ~~State~~ Town by persons residing or doing business outside the ~~State~~ Town when the property is to be delivered to the purchaser outside the ~~State~~ Town by mail; by common, contract or commercial carrier that is employed to effect delivery by the vendor; or by the vendor's conveyance.
3. Prosthetic devices prescribed by a licensed practitioner and prescription drugs for humans dispensed with a prescription.
7. All direct sales to community charitable organizational functions and activities, when billed to and paid for by the community charitable organization.
8. All occasional sales by a community organization under the following conditions: 1. The sale of tangible personal property or concessions by a community organization takes place no more than ninety (90) days, whether consecutive or not, during any one calendar year; and 2. The funds raised by a community organization through these sales are retained by the organization to be used in the course of the organization's charitable service. All individual sales of twenty-five dollars (\$25.00) or less by charitable organizations in the conduct of events or sales to generate funds for charitable purposes; provided that the sales shall not be conducted for more than three (3) consecutive days or more than nine (9) total days in any calendar year.
26. All sales at garage sales or yard sales in a residential area, online garage sales (no limit on days), except sales of automotive vehicles, not exceeding a consecutive three-day period nor a total of nine (9) days per calendar year, but not including sales conducted by a professional or compensated agent of the owner of the items to be sold.
29. All sales that benefit a Colorado school, if the sale is made by any of the following:
 - a. A school;
 - b. An association or organization of parents and school teachers;
 - c. A booster club or other club, group, or organization whose primary purpose is to support a school activity; or
 - d. A school class or student club, group, or organization; provided, however, that no such entity shall be regularly engaged in the business of selling commodities or services at retail.

30. All sales of menstrual care products.
31. Diapers
32. All sales, storage, use, or leasing of photovoltaic systems or solar thermal systems (and its components) and in the production of alternating current electricity from a renewable energy source. The exemption shall not include any components beyond the point of generator step-up transformers located at the production site, labor, energy storage devices, or remote monitoring systems.
33. Fifty percent (50%) of the purchase price of:
 - a. manufactured homes, and of
 - b. other buildings or structures including conventional buildings shall be exempt from taxes under the provisions of this code; except that the entire purchase price in any subsequent sale of manufactured homes or other buildings severed from real estate after such housing or severed building has once been subject to the payment of sales or use tax under the provisions of this code shall be exempt from taxes under the provisions of this code.
34. All transactions specified in section 29-4-227(1), Colorado Revised Statutes when utilized for the purpose of a project providing affordable housing.
35. The retail delivery fee consisting of the community access retail delivery fee imposed in C.R.S. § 24-38.5-303(7), the clean fleet retail delivery fee imposed in C.R.S. § 25-7.5-103(8), the clean transit retail delivery fee imposed in C.R.S. § 43-4-1203(7), the retail delivery fee imposed in C.R.S. § 43-4-218(3), the bridge and tunnel retail delivery fee imposed in C.R.S. § 43-4-805(5)(g.7), and the air pollution mitigation retail delivery fee imposed in C.R.S. § 43-4-1303(8), as such sections existed on June 17, 2021.
36. Disposable bag fees, including the fee imposed in C.R.S. § 25-17-505, as such section existed on July 6, 2021.
37. Cover charges, if the amount paid is strictly for admission to the vendor's place of business and tangible personal property, such as food and/or beverages, is not received as consideration for the amount paid.
38. All sales of construction materials to contractors and subcontractors for use in the building, erection, alteration, or repair of structures, highways, roads, streets, and other public works owned and used by:
 - c. The United States government, the state, its departments and institutions, the political subdivisions thereof in their governmental capacities only;
 - d. Charitable organizations, as defined in section 160-1.1 of this code, in the conduct of their regular charitable functions and activities; or
 - e. Schools, other than schools held or conducted for private or corporate profit.
39. All sales of internet access services.

Section 15. Section 160-27, concerning the legislative intent related to the Town's lodging tax is hereby amended to read as follows:

The Town of Frisco hereby finds and declares that the creation of town capital improvements and amenities that will enhance the viability of the town as a premier destination resort is of primary importance in maintaining the community identity, environmental desirability and economic health of the town. The Town of Frisco further finds that it is appropriate to fund amenities to be used by tourists, and that will promote tourism within the town, by revenue generated by activities enjoyed by tourists and citizens in the town. It is therefore necessary and appropriate to impose a tax on lodging in the town in order to preserve, promote and enhance the community identity, environmental desirability and economic health of the town. It is therefore declared to be the legislative intent of the Town of Frisco that every person who purchases lodging in the town is exercising a taxable privilege and shall pay the tax imposed by this Article. It is further declared to be the legislative intent of the Town Council that, for the purposes of this Article, every vendor who shall make a sale of lodging to a purchaser in the Town shall collect the tax imposed by this Article on the total purchase price charged for such lodging furnished at any one (1) time by or to every customer or buyer, in the manner set forth in this Article. ~~It is further declared that every person who sells lodging in the town shall collect the tax imposed by this Article.~~

Section 16, Section 160-28, "Definitions," of the Code as related 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:

The following words, terms, and phrases, when used in this Article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

LODGING means the provision or facilitation of provision of any rooms or accommodations by any person, partnership, association, corporation, estate, representative capacity or any other combination of individuals by whatever name known to a person who, for consideration including barter, trade or timesharing uses, possesses or has the right to use or possess any room or other accommodation, including but not limited to a hotel, inn, bed and breakfast, apartment, single-family residence, lodging house, condominium, motor hotel, guesthouse, guest ranch, trailer coach, mobile home, auto camp, trailer court and park, any portion of a dwelling unit or other area which accommodates a guest, or similar establishment, for a period of less than thirty (30) consecutive days under any rental agreement, sharing or trade agreement, concession, permit, right of access, license to use, or other agreement.
~~means the transaction of furnishing a room or other accommodation by any person to another person who, for consideration, whether or not paid in cash, uses, possesses, or has the right to use or possess any room or other accommodation in a hotel, apartment hotel, town home, condominium building, time share building, lodging house, motor hotel, guest house, bed and breakfast residence, guest ranch, mobile home, auto camp, trailer court, or trailer park in the town under any agreement, concession, permit, right of access, license or otherwise. This definition shall not apply to the transaction of furnishing rooms for meetings or exhibitions.~~

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 the remote sale of lodging within the town is offered.

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 remote sale of lodging within the town 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, collects payment from the purchaser on behalf of the seller.

B. "Marketplace Facilitator" does not include a person that exclusively provides internet advertising that does not otherwise meet this definition.

MARKETPLACE SELLER means a person, regardless of whether or not the person is engaged in business in the town, which has an agreement with a marketplace facilitator and offers the remote sale of lodging within the town through a marketplace owned, operated, or controlled by a marketplace facilitator.

MULTICHANNEL SELLER means a vendor that offers for the remote sale of lodging within the town through a marketplace owned, operated, or controlled by a marketplace facilitator, and through other means.

PURCHASE OR SALE means the acquisition for consideration by any person of lodging within the town.

PURCHASER means any person exercising the taxable privilege of purchasing lodging who has purchased lodging or to whom lodging has been sold.

TAX means either the tax payable by the purchaser or the aggregate amount of taxes due from a vendor during the period for which the vendor is required to report collections under this Article means the lodging tax payable by the purchaser or due from a vendor.

VENDOR means any person making sales of or furnishing lodging to a purchaser selling lodging, including, and includes, but is not limited to, a marketplace facilitator, marketplace seller, or multichannel seller, and shall include, without limitation, online travel companies to the maximum extent permitted by law each as defined in Section 1.1.

Section 17. Section 160-35 of the Code, concerning payment of lodging tax, is hereby amended to read as follows:

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 to pay tax at alternative intervals who collects less than \$150 tax per month to make returns and pay tax at interval not greater than 3 months.

Section 18. Section 160-36 of the Code, concerning excess tax related to the Town's lodging tax, is hereby amended to read as follows:

If any vendor, during any reporting period, collects as a tax an amount in excess of 2.35% of its total gross lodging sales, then it shall remit to the treasurer the full net amount of the tax imposed in this Article and also such excess amount. The retention by the vendor of any excess amount of tax collections over the 2.35% of the total gross lodging sales of such vendor or the intentional failure to remit punctually to the treasurer the full amount required to be remitted by the provisions of this Article is declared to be a violation of this Article and shall be recovered, together with interest, penalties and collection costs, as provided in § 160-45.

Section 19. Section 160-42 of the Code, concerning confidentiality of tax information, is hereby amended to read as follows:

- A. Except in accordance with judicial order or as otherwise provided herein the treasurer and his/her agents, clerks ~~and~~, employees and contract auditor shall not divulge any information gained from any return filed or any investigation or hearing held under the provisions of this Article.

Section 20. Section 160-45 of the Code, concerning recovery of taxes, penalty, and interest is hereby amended to read as follows:

- C. Action for recovery.
 - 2. To recover such taxes, penalties, ~~or interest due~~ and collection costs, the treasurer may bring an action in attachment, and a writ of attachment may be issued to the sheriff. In any such proceedings, no bond shall be required of the treasurer, nor shall any sheriff require of the treasurer an indemnifying bond for executing the writ of attachment or writ of execution upon any judgment entered in such proceedings. The treasurer may prosecute appeals in such cases without the necessity of providing bond thereof. It is the duty of the town attorney, when requested by the treasurer, to commence action for the recovery of taxes due under this Article, and this remedy shall be in addition to all other existing remedies or remedies provided in this Article.

H. For any failure to pay taxes, penalties, or interest, or any portion thereof, when due, the Treasurer or may recover at law the amount of such taxes, penalties, and collection costs in any county or district court of the county wherein the taxpayer resides or has his or her principal place of business that has jurisdiction of the amounts sought to be collected. The return of the taxpayer or the assessment made by the Treasurer or as provided in this Article, shall be prima facie proof of the amount due.

Section 21. Section 160-46 of the Code, concerning liens related to the Town's lodging tax, is hereby amended to read as follows:

- A. Notice of tax lien.
 - 1. If any taxes, penalty or interest imposed by this Article and shown due by returns filed by the taxpayer or as shown by assessments duly made as provided in this section are not paid within five days after the same are due, then the treasurer shall issue a notice, setting forth the name of the taxpayer, the amount of the tax, penalties ~~and~~, interest and collection costs, the date of the accrual thereof, and that the town claims a first and prior lien therefore on the real and tangible personal property of the taxpayer except as to pre-existing claims or liens of a bona fide mortgagee, pledgee, judgment creditor or purchaser whose rights have attached prior to the filing of the notice as provided in this section on property of the taxpayer, other than the goods, stock in trade, and business fixtures of such taxpayer.
 - 2. Said notice shall be on forms furnished by the treasurer and shall be verified by the manager, by the treasurer or any duly qualified agent of the manager or the treasurer, whose duties are the collection of such tax, and may be filed in the office of the county clerk and recorder in which the taxpayer owns real or tangible personal property, and the filing of such notice shall create a lien on such property in the county and constitute notice thereof. After said notice has been filed, or concurrently therewith, or at any time when taxes due are unpaid, whether such notice shall have been filed or not, the treasurer may issue a warrant directed to any duly authorized revenue collector, or to the sheriff of the county, commanding him to levy upon,

seize, and sell sufficient of the real and personal property of the amount due together with interest, penalties and collection costs, as may be provided by law, subject to valid pre-existing claims or liens.

- ii. Any lien for taxes as shown on the records of the county clerk and recorder as provided in this section, upon payment of all taxes, penalties ~~and~~ interest and collection costs covered thereby, shall be released by the treasurer in the same manner as mortgages and judgments are released.

Section 22. Article VII of the Code, concerning Short-Term Rental Property Excise Tax, is hereby amended to read as follows:

ARTICLE VII SHORT-TERM RENTAL PROPERTY EXCISE TAX

Section 23. Section 160-62, "Definitions," of the Code as related to the short-term rental property excise tax is hereby amended by the amendment or addition of the following definitions, placed in their appropriate alphabetic locations, to read as follows:

As used in this Article, the following words shall have the following meanings and other words used in this Article shall have the meanings that may be set forth in section 160-1.1 of this Chapter:

PURCHASER means any person exercising the taxable privilege of purchasing lodging services.

VENDOR means a person making sales of or furnishing lodging services to a purchaser, and includes, but is not limited to, a marketplace facilitator, marketplace seller, or multichannel seller, and shall include, without limitation, online travel companies to the maximum extent permitted by law.

Section 24. Section 160-63 of the Code, concerning imposition of the Town's short-term rental property excise tax is hereby amended to read as follows:

Effective June 1, 2022, there is hereby levied a tax in the amount of 5.0% of the purchase price paid or charged for use of a short-term rental property within the Town. Every vendor who shall make a sale of the use of a Short-Term Rental Property to a purchaser in the Town shall collect the tax imposed by this Article on the total purchase price charged for such lodging services at any one (1) time by or to every customer or buyer, in the manner set forth in this Article. ~~In all cases, the purchase price paid or charged shall exclude the sale of any goods, services, or commodities other than the use of the short-term rental property and otherwise taxed under Chapter I of this Chapter.~~ The tax imposed by this section is in addition to, and not in lieu of, the lodging tax owed to the Town pursuant to Article IV of this Chapter 160 in connection with the sale of lodging.

Section 25. 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 26. 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 10th DAY OF January, 2023.

ADOPTED ON SECOND AND FINAL READING AND PUBLICATION BY TITLE ORDERED THIS 24th DAY OF January, 2023.

TOWN OF FRISCO, COLORADO:



[Handwritten Signature]

Hunter Mortensen, Mayor

ATTEST:

[Handwritten Signature]

Stacey Nell, Town Clerk