

**ORDINANCE NO. 1575
SERIES 2010**

AN ORDINANCE IMPOSING A THREE AND ONE-HALF PERCENT USE TAX UPON THE USE, STORAGE, DISTRIBUTION OR CONSUMPTION OF ANY ARTICLE OF TANGIBLE PERSONAL PROPERTY OR TAXABLE SERVICES PURCHASED, LEASED OR RENTED FROM SOURCES OUTSIDE THE CITY ON WHICH THE CITY SALES TAX HAS NOT BEEN PAID AND UPON RENTAL OF STORAGE SPACE WITHIN THE CITY AND, IN CONNECTION THEREWITH, MAKING AMENDMENTS TO THE LOUISVILLE MUNICIPAL CODE TO ALLOCATE PORTIONS OF THE USE TAX REVENUES FOR OPEN SPACE AND HISTORICAL PRESERVATION PURPOSES, PRESCRIBE EXEMPTIONS FROM THE USE TAX, AND ADOPT OTHER AMENDMENTS CONCERNING THE ADMINISTRATION AND COLLECTION OF THE USE TAX; AND PROVIDING FOR THE SUBMISSION OF THE ORDINANCE TO A VOTE OF THE REGISTERED ELECTORS AT A SPECIAL ELECTION TO BE HELD NOVEMBER 2, 2010

Section 1. The following ordinance of the City of Louisville, Colorado, is hereby adopted to read:

WHEREAS, the City of Louisville (the "City"), is a Colorado home rule municipal corporation duly organized and existing under laws of the State of Colorado and the City Charter (the "City Charter"); and

WHEREAS, Article XX of the Colorado Constitution grants plenary power to home rule cities to levy and collect taxes within the City limits; and

WHEREAS, pursuant to voter authorization, the City has previously adopted a permanent use tax of three percent (3.00%), which tax is upon the privilege of using or consuming within the City, construction and building materials purchased at retail for use in connection with commercial, industrial or other nonresidential construction or building projects, and upon the privilege of storing, using or consuming within the City, any motor and other vehicles, purchased at retail on which registration is required; and

WHEREAS, pursuant to voter authorization at the November 5, 2002, election, the City has also increased the rate of such use tax by three-eighths of one percent (0.375%), such additional tax to be imposed for a ten-year period commencing January 1, 2004 and the revenues therefrom to be collected, retained and spent exclusively for the acquisition of land in and around the City of Louisville for open space buffer zones, trails, wildlife habitats, wetlands preservation and future parks; and for the development, construction, operation and maintenance of such open space zones, trails, wildlife habitats, wetlands and parks; and

WHEREAS, the City Council finds and determines that the City is in need of additional revenues; and

WHEREAS, the City Council finds that an increase in the City use tax rate to three and one-half percent (3.50%) and extension of the City use tax to other types of property and services will produce additional revenues for needed facilities and services; and

WHEREAS, the City Council finds that, unlike a number of area statutory and home rule jurisdictions, the City's current use tax is collected only upon two categories of property, that being nonresidential construction materials and vehicles; and

WHEREAS, the City Council finds that City adoption of a use tax upon other categories of property and services will equalize tax treatment of property purchased outside the City but used or consumed within the City, which will remove a competitive disadvantage for some categories of City retailers and provide additional tax revenues for needed City services; and

WHEREAS, the City Council finds that allocation of use tax revenues as provided for in this ordinance will also produce additional sustained revenues for open space and historic preservation purposes; and

WHEREAS, Article X, Section 20 of the Colorado Constitution, also referred to as the Taxpayer's Bill of Rights ("TABOR") requires voter approval for any new tax, tax rate increase, tax policy change directly causing a net revenue gain, and the spending of certain funds above limits established by TABOR; and

WHEREAS, pursuant to and as required by the Constitution and laws of the State of Colorado, it is necessary to have voter approval of a TABOR ballot issue concerning the imposition of the use tax provided for herein, and it is also necessary to have voter approval to allow funds collected through such use tax to be reserved for and carried over to subsequent years; and

WHEREAS, TABOR requires that the City submit ballot issues, as defined in TABOR, to the City's registered electors on specified election days before action can be taken on such ballot issues; and

WHEREAS, the City will hold a special municipal election on November 2, 2010 as part of the coordinated general election, and such date is one of the election dates at which TABOR ballot issues may be submitted to the registered electors of the City; and

WHEREAS, City Council finds it is in the best interest of the City and its citizens to submit to the registered electors of the City the question of imposing a permanent City use tax at a rate of 3.50% upon the use, storage, distribution or consumption of any article of tangible personal property or taxable services purchased, leased or rented from sources outside the City, and upon rental of storage space within the City, as further stated in this ordinance.

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

A. Section 3.20.300 of the Louisville Municipal Code is hereby repealed and re-enacted to read in full as follows:

Sec. 3.20.300. Levy of tax; rate.

There is hereby levied, and there shall be collected and paid, a tax upon the privilege of using, storing, distributing, or otherwise consuming in the City any article of tangible personal property or services purchased, leased or rented from sources outside the city, on which a sales tax has not been paid and as specified in section 3.20.305, and upon rental of storage space within the City. The amount of the tax shall be three and one-half percent (3.5%) of the purchase price thereof.

B. Chapter 3.20 of the Louisville Municipal Code is hereby amended by the addition of a new Subsection 3.20.305, to read in full as follows:

Sec. 3.20.305. Property and services taxed.

A. The tax levied by section 3.20.300 is imposed upon and shall apply, without limitation, to the purchase price of the following property and services, if no sales tax thereon has been paid:

1. AUTOMOTIVE VEHICLE: Upon the privilege of storing, using or consuming within the city, any motor and other automotive vehicles, purchased at retail on which registration is required.
2. COMPUTER PROGRAMS AND COMPUTER SOFTWARE.
3. CONSTRUCTION EQUIPMENT: Use tax shall be due on construction equipment used inside the city for contracts entered into on or after January 1, 2011.
 - a. The taxpayer shall identify construction equipment used inside the city as follows:
 - i. Prior to or on the date the equipment is located inside the city, the taxpayer shall file with the city an equipment declaration on a form provided by the city. Such declaration shall state the dates on which the taxpayer anticipates the equipment will be located inside and removed from the boundaries of the city, shall include a description of each such anticipated piece of equipment, shall state the actual or anticipated price of each such anticipated piece of equipment, and shall include such other information as reasonably deemed necessary by the city.

- ii. The taxpayer shall file with the city an amended equipment declaration reflecting any changes in the information contained in any previous equipment declaration no less than once every ninety (90) days after the equipment is brought inside the city or, for equipment which is brought inside the city for a project of less than ninety (90) days duration, such amended declaration must be filed no later than ten (10) days after substantial completion of the project. Amended declarations for all other projects must be filed at least once every ninety (90) days after the equipment is brought inside the city.
 - iii. The taxpayer need not declare any equipment for which the purchase price was less than two thousand five hundred dollars (\$2,500). Such equipment shall be presumed to have been purchased in a municipality having a sales or use tax at a rate at least equal to the rate established pursuant to this chapter and such tax shall be presumed to have been paid to that municipality.
- b. Construction equipment located inside the city for thirty (30) consecutive days or less for which a declaration is properly filed, shall be subject to the tax in an amount calculated as follows: one twelfth (1/12) of the price of the equipment at the time it was purchased shall be multiplied by the rate established in this chapter.
 - c. Construction equipment located inside the city for more than thirty (30) consecutive days, or equipment for which a declaration has not been properly filed, shall be subject to use tax on the full price of such equipment.
4. CONSTRUCTION MATERIALS OR CONSTRUCTION AND BUILDING MATERIALS: Upon the privilege of using or consuming within the city, construction and building materials purchased at retail for use in connection with new residential construction or new residential building projects, commercial, industrial or other nonresidential construction or building projects, whether purchased, leased or rented from sources inside or outside the city.
5. INCEPTION OF BUSINESS; INITIAL USE TAX: Any person who purchases or establishes a business inside the city shall file an initial use tax return and pay the tax levied by section 3.20.300 as follows:
- a. *Existing Businesses:* Use tax shall be due on tangible personal property, except inventory held for lease, rental or resale, which is

acquired with the purchase of a business. The tax shall be based on the price of such property as recorded in the bill of sale or agreement and constituting a part of the total transaction at the time of the sale or transfer, provided the valuation is as great as or greater than the fair market value of such property. Where the transfer of ownership is a lump sum transaction, the use tax shall be due on the book value established by the purchaser for income tax depreciation purposes, or fair market value if no determination has been made. When a business is taken over in return for the assumption of outstanding indebtedness owed by former owners, the tax shall be paid on the fair market value of all taxable tangible personal property acquired by the purchaser. Such tax shall be reported on an initial use tax return.

- b. *New Businesses*: Use tax shall be due on the price of all tangible personal property, except inventory held for lease, rental or resale, which is purchased for use inside the city. Such tax shall be reported on the initial use tax return.
- c. *Cessation of business*: Every person engaged in business in the city who quits doing business in the city shall file a final return. The reporting period for such return shall end on the last day of business in the city.
- d. *Sale or Transfer of Business*: In all cases where any of the assets of any new business are within the city, payment of sales or use tax based on the bill of sale is required on transfer of title or possession, or both, of the tangible personal property taxable in this Chapter, whether involving a retail establishment or any other type of business enterprise.

6. MACHINERY AND MOBILE MACHINERY.

7. MEALS: The tax shall be due upon the cost of food withdrawn from inventory for meals provided at no charge or at a reduced charge to employees as a form of compensation.

8. MEDICAL SUPPLIES: The tax shall be paid on medical supplies purchased for use by medical and dental practitioners or medical facilities in providing their services, even though certain of those items may be packaged for single use by individual patients after which the item would be discarded.

9. PAY TELEVISION.

10. PREPRINTED NEWSPAPER SUPPLEMENTS.

11. STORAGE SPACE: The tax shall be paid on the periodic charge for the rental of indoor or outdoor storage space ordinarily used to store tangible personal property in the city.

12. TANGIBLE PERSONAL PROPERTY: Upon the price of tangible personal property stored, used or consumed, or withdrawn from inventory for business or personal use within the city on which the city sales tax or other lawfully imposed tax has not been charged by the vendor or paid by the consumer.

13. TELECOMMUNICATIONS: In the case of the sale or transfer of telecommunication equipment as an inducement to a consumer to enter into or continue a contract for telecommunications services.

C. Section 3.20.310 of the Louisville Municipal Code is hereby repealed and re-enacted to read in full as follows:

Sec. 3.20.320. Exemptions from Use Tax.

A. The transactions set forth in this section are exempt from the imposition of the tax levied by section 3.20.300. The burden of proving that any taxpayer is exempt from collecting or paying sales tax shall be on the taxpayer:

1. CERTAIN NONRESIDENT AUTOMOTIVE VEHICLES: The storage or use of a motor vehicle if the owner is or was, at the time of purchase, a nonresident of the city, and he purchased the automotive vehicle outside of the city, for use outside the city, and actually so used it for a substantial and primary purpose for which it was acquired and he lawfully registered, titled, and licensed said motor vehicle outside of city.
2. GOVERNMENT, RELIGIOUS & CHARITABLE: The storage, use, or consumption of tangible personal property by the United States government, or the state of Colorado, or its institutions, or its political subdivisions in their governmental capacities only or by religious or charitable corporations in the conduct of their regular religious or charitable functions.
3. LIMITATIONS: The use or consumption of tangible personal property which occurs more than three (3) years after the most recent sale of such property, if within the three years following such sale, the property has been significantly used within the State of Colorado for the principal purpose for which it was purchased.

4. MUNICIPAL PROJECTS: No use tax shall be due on the purchase of construction materials used in construction projects undertaken and managed directly by the city.
 5. OTHER LAWFUL TAX PAID: The city's use tax shall not apply to the storage, use or consumption of any article of tangible personal property the sale or use of which has already been subjected to a sales or use tax of another statutory or home rule municipality legally imposed on the purchaser or user equal to or in excess of the use tax required to be paid pursuant to this title. A credit shall be granted against the city's use tax with respect to the person's storage, use or consumption in the city of tangible personal property, the amount of the credit to equal the tax paid by him by reason of the imposition of a sales or use tax of the previous statutory or home rule municipality on his purchase or use of the property. The amount of the credit shall not exceed the amount of the use tax required to be paid pursuant to this chapter.
 6. SALES TAXED ITEMS: The storage, use, or consumption of any tangible personal property the sale of which is subject to a retail sales tax imposed by the city.
 7. STORAGE: The storage of construction and building materials.
 8. TEMPORARY NONRESIDENT USE: The storage, use, or consumption of tangible personal property brought into the city by a nonresident thereof for his own storage, use, or consumption while temporarily within the city; provided, however, that this exemption does not apply to the storage, use, or consumption of tangible personal property brought into this state by a nonresident to be used in the conduct of a business in the city.
 9. WHOLESALE TRANSACTIONS: The storage, use, or consumption of tangible personal property by a person engaged in the business of manufacturing or compounding for sale, profit, or use any article, substance, or commodity, which tangible personal property enters into the processing of or becomes an ingredient or component part of the product or service which is manufactured, compounded, or furnished and the container, label, or the furnished shipping case thereof.
- B. The list of exemptions shall not be increased by implication or similarity.

D. Section 3.20.610 of the Louisville Municipal Code is hereby repealed and re-enacted to read in full as follows:

Sec. 3.20.610. Use tax—Use of specified revenues.

- A. Revenues from a three-eighth percent rate of use tax shall be used exclusively for the acquisition of land in and around the city for open space buffer zones, trails, wildlife habitats, wetlands preservation and future parks; and for the development, construction, operation and maintenance of such open space zones, trails, wildlife habitats, wetlands and parks.
- B. Revenues from a one-eighth percent rate of use tax shall be deposited into the historic preservation fund and the net proceeds of such one-eighth percent use tax shall be collected, retained and spent exclusively for the historic preservation purposes within historic Old Town Louisville as provided in subsection 3.20.605.B of this chapter.
- C. Except as herein provided, all revenues from the use tax shall be deposited in such fund or funds as the city council shall designate.
- D. Except for those revenues subject to subsections A and B of this section, the city council shall have the authority by resolution to waive or reduce the amount of use tax otherwise due and payable to the city pursuant to section 3.20.300, and to enter into agreements for the sharing or crediting of revenues from the tax imposed by said section 3.20.300, if city council determines that such waiver, reduction, sharing or credit is in furtherance of a public purpose and the best interests of the city.

Section 2. Total City tax revenues are estimated to increase by up to \$1.5 million in the first full year in which the use tax provided for in this ordinance is in effect. However, the revenues from said tax may be collected and spent, regardless of whether said revenues, in any year after the first full year in which said use tax is in effect, exceed the estimated dollar amount stated above, and without any other limitation or condition, and without limiting the collection or spending of any other revenues or funds by the City of Louisville, under Article X, Section 20 of the Colorado Constitution or any other law.

Section 3. This ordinance shall not take effect unless and until a majority of the registered voters voting at the special municipal election on November 2, 2010 vote “yes” in response to the following ballot title:

SHALL CITY OF LOUISVILLE TAXES BE INCREASED \$1.5 MILLION

ANNUALLY (FIRST FULL FISCAL YEAR INCREASE) AND BY WHATEVER ADDITIONAL AMOUNTS ARE RAISED ANNUALLY THEREAFTER BY THE ADOPTION OF A USE TAX UPON THE PRIVILEGE OF USING, STORING, DISTRIBUTING, OR CONSUMING WITHIN THE CITY ANY ARTICLE OF TANGIBLE PERSONAL PROPERTY OR TAXABLE SERVICES PURCHASED, LEASED OR RENTED FROM SOURCES OUTSIDE THE CITY, AND UPON RENTAL OF STORAGE SPACE WITHIN THE CITY, SUCH TAX TO BE AT THE RATE OF 3.500% OF THE PURCHASE PRICE THEREOF AND TO COMMENCE JANUARY 1, 2011 SUBJECT TO THE FOLLOWING:

SUCH USE TAX SHALL SUPERSEDE THE CITY'S CURRENT USE TAX OF 3.375%, PROVIDED THAT IF THIS QUESTION IS NOT APPROVED BY THE VOTERS THE CURRENT USE TAX OF 3.375% SHALL REMAIN IN EFFECT IN ACCORDANCE WITH THE TERMS OF THE VOTERS' APPROVALS OF SUCH 3.375% USE TAX;

THE NEW USE TAX OF 3.500% SHALL BE APPLIED TO SUCH PROPERTY AND SERVICES, AND SUBJECT TO SUCH EXEMPTIONS, AS MAY BE PRESCRIBED FROM TIME TO TIME BY ORDINANCE OF THE CITY COUNCIL;

THE NET PROCEEDS OF SUCH TAX TO BE ALLOCATED SUCH THAT REVENUES FROM A RATE OF 0.375% ARE USED FOR OPEN SPACE PURPOSES CONSISTENT WITH BALLOT ISSUE 2D APPROVED AT THE NOVEMBER 5, 2002 ELECTION, REVENUES FROM A RATE OF 0.125% ARE USED FOR HISTORIC PRESERVATION PURPOSES CONSISTENT WITH BALLOT ISSUE 2A APPROVED AT THE NOVEMBER 4, 2008 ELECTION; AND REVENUES FROM THE REMAINING 3.000% ARE USED FOR PURPOSES DETERMINED BY THE CITY COUNCIL;

AND SHALL THE CITY BE PERMITTED TO COLLECT, RETAIN AND EXPEND ALL REVENUES DERIVED FROM SUCH 3.500% USE TAX AS A VOTER-APPROVED REVENUE CHANGE AND AN EXCEPTION TO LIMITS WHICH WOULD OTHERWISE APPLY UNDER ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION OR ANY OTHER LAW?

YES _____
NO _____

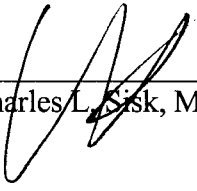
Section 4. The provisions of this ordinance shall take effect, following passage and approval thereof as provided in Section 3, on January 1, 2011.

Section 5. If any portion of this ordinance is held to be invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council and the registered voters of the City hereby declare that they would have passed and approved this ordinance and each part hereof irrespective of the fact that any one part be declared invalid.

Section 6. The repeal or modification of any provision of the Municipal Code of the City of Louisville by this ordinance shall not release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture, or liability, either civil or criminal, which shall have been incurred under such provision, and each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings, and prosecutions for the enforcement of the penalty, forfeiture, or liability, as well as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions.

Section 7. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

INTRODUCED, READ, PASSED ON FIRST READING, AND ORDERED PUBLISHED this 6th day of July, 2010.



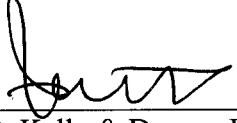
Charles L. Sisk, Mayor

ATTEST:



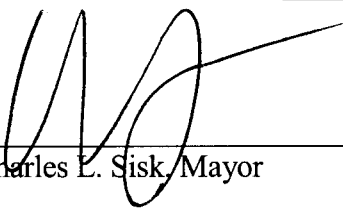
Nancy Varra, City Clerk

APPROVED AS TO FORM:



Light, Kelly & Dawes, P.C.
City Attorney

PASSED AND ADOPTED ON SECOND AND FINAL READING, this 20th day of July, 2010.



Charles L. Sisk, Mayor



Nancy Varra City Clerk