

8/28/2012

**ORDINANCE #1-2012**

**AN EMERGENCY ORDINANCE TO ENACT WITHIN THE TOWN OF FLEMING A RETAIL SALES TAX OF TWO (2) PERCENT AND PROVIDING FOR THE SUBMISSION OF THE ORDINANCE TO A VOTE OF THE REGISTERED ELECTORS AT A SPECIAL ELECTION TO BE HELD NOVEMBER 6, 2012**

**WHEREAS**, the Town Council declares that its intent in the enactment of this Ordinance is to levy within the Town a retail sales tax authorized by state statutes; and

**WHEREAS**, the Town of Fleming (the "Town") is a statutory town existing under and by virtue of laws of the State of Colorado; and

**WHEREAS**, the Town Council finds and determines that the Town is in need of additional funds for municipal purposes, including but not limited to funding electrical improvements, making street repairs, and placing funds in the Town's money market account, which funds are to be used during emergencies; 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, or tax policy change directly causing a net revenue gain; and

**WHEREAS**, the Town Council desires to refer to the registered electors of the Town the TABOR ballot issue set forth herein authorizing the imposition of a sales tax of 2 percent; and

**WHEREAS**, pursuant to resolution adopted by the Town Council, the Town will hold a special election on November 6, 2012, as a coordinated election pursuant to the Uniform Election Code of 1992, as amended; and

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

**WHEREAS**, November 6, 2012 is one of the election dates at which TABOR ballot issues may be submitted to the registered electors of the Town; and

**WHEREAS**, the Town Council finds it is in the best interest of the Town and its citizens to submit to the registered electors of the Town the TABOR ballot issue herein set forth.

**NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FLEMING, COLORADO:**

**Section 1. Definitions.** For purposes of this Ordinance, the definitions of words contained in this Ordinance shall be as defined in Section 39-26-12, C.R.S., and such definitions are incorporated into this Ordinance.

**Section 2. Sales tax revenues-allocation.**

The revenues generated by the imposition of the two percent (2%) Town sales tax may be used for lawful municipal purposes as determined by the Town Council.

**Section 3. Sales tax imposed; tax rate.**

A. There is hereby levied and there shall be collected and paid a Town sales tax equal to two percent (2%) of the gross receipts from all sales of tangible personal property at retail and the furnishing of services, as provided in Section 29-2-105 (1) (d), C.R.S.

B. The tangible personal property and services taxable by this Ordinance shall be the same as the tangible personal property and services taxable pursuant to Section 39-26-104, C.R.S., and subject to the same exemptions as those specified in part 7, Article 26 of Title 39, C.R.S.; provided, that the exemption for sales of food pursuant to Section 39-26-707 (1)(e), C.R.S., shall not apply to the sales tax, and the sale of such items is expressly made taxable pursuant to this Ordinance. The following exemptions from the Town's sale tax expressly apply:

1. The exemption for sales of machinery or machine tools specified in Section 39-26-709(1), C.R.S.;
2. The exemption for sales of electricity, coal, wood, gas, fuel oil, or coke specified in Section 39-26-715 (1)(a)(II), C.R.S.;
3. The exemption for vending machine sales of food specified in Section 39-26-714(2) C.R.S.;
4. The exemption for sales by a charitable organization specified in Section 39-26-718(1)(b), C.R.S.;
5. The exemption for sales of farm equipment and farm equipment under lease or contract specified in Sections 39-26-716(2)(b) and (2)(c), C.R.S.;
6. The exemption for sales of low-emitting motor vehicles, power sources, or parts used for converting such power sources as specified in Section 39-26-719(1), C.R.S.;
7. The exemption for sales of pesticides specified in Section 39-26-716(2)(e), C.R.S.;
8. The exemption for sales of wood from salvaged trees killed or infested in Colorado by mountain pine beetles specified in Section 39-26-723, C.R.S.;

9. The exemption for sales of components used in the production of energy, including but not limited to alternating current electricity, from a renewable energy source specified in Section 39-26-724, C.R.S.;

10. The exemption for sales that benefit a Colorado school specified in Section 39-26-725, C.R.S.; and

11. The exemption for sales by an association or organization of parents and teachers of public school students that is a charitable organization as specified in Section 39-26-718(1)(c), C.R.S.

C. No sales tax shall apply to the sale of tangible personal property at retail or the furnishing of 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 the sales tax. A credit shall be granted against the 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 amount of the sales tax.

D. All sales of personal property on which a specific ownership tax has been paid or is payable shall be exempt from the sales tax when such sales meet both of the following conditions:

1. The purchaser is a nonresident of or has his principal place of business outside the limits of the Town; and

2. Such personal property is registered or required to be registered outside the limits of the Town under the laws of the state.

E. The imposition of the sales tax on individual sales shall be in accordance with schedules set forth in the rules and regulations promulgated by the Department of Revenue, or by separate ordinance of the Town. If any vendor, during any reporting period, shall collect as the sales tax an amount in excess of the amount of the sales tax imposed hereby, it shall remit to the Executive Director of the Department of Revenue (the "Executive Director") the full amount of the sales tax herein imposed and also such excess.

F. For purposes of the sales tax, all retail sales shall be considered consummated at the place of business of the retailer, unless the tangible personal property sold is delivered by the retailer or its agent to a destination outside the limits of the town or to a common carrier for delivery to a destination outside of the Town. The gross receipts from such sales shall include delivery charges when such charges are subject to the state sales tax imposed by Article 26 of Title 36, C.R.S. regardless of the place to which delivery is made.

G. The amount subject to the sales tax shall not include the amount of any sales or use tax imposed by Article 26 of Title 39, C.R.S.

**Section 4. Collection of tax.** The collection, administration and enforcement of this sales tax shall be performed by the Executive Director in the same manner as the collection, administration and enforcement of the state sales tax. The provisions of Article 2 of Title 29, C.R.S., and all rules and regulations promulgated by the Executive Director shall govern the collection, administration and enforcement of the sales tax imposed by this Ordinance.

**Section 5. Vendor fees.** All vendors shall be entitled as collection agents for the Town to withhold an amount allowed by state statute to cover the vendor's expense in the collection and remittance of the sales tax. If any vendor is delinquent in remitting the sales tax, other than in unusual circumstances shown to the satisfaction of the Executive Director, the vendor shall not be allowed to retain any amounts to cover the vendor's expense in collecting and remitting said sales tax, and an amount equivalent to the full amount of the sales tax imposed by this Ordinance shall be remitted to the Executive Director by any such delinquent vendor.

**Section 6. Amendments to provisions.** Except as to the sales tax rate provided for in this Ordinance, and the items taxed and exempted from the sales tax hereunder, the Town Council may amend, alter, delete or change the provisions of this Ordinance by the adoption of an amending ordinance in accordance with law, and such amendment, alteration, deletion or change need not be submitted to the electors of the town for their approval.

**Section 7. Penalties.** Any person convicted of violating any of the provisions of this Ordinance shall be punished by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment for not more than one year or by both such fine and imprisonment.

**Section 8.** Total Town Tax revenues are estimated to increase by up to \$\_\_\_\_\_ in the first full year in which the sales 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 sales 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 Town of Fleming, under Article X, Section 20 of the Colorado Constitution or any other law.

**Section 9.** The provisions of this ordinance shall not take effect unless and until a majority of the registered voters voting at the special municipal election on November 6, 2012 vote "yes" in response to the following ballot title:

SHALL TOWN OF FLEMING TAXES BE INCREASED BY \_\_\_\_\_ (FIRST FULL FISCAL YEAR INCREASE) AND ANNUALLY THEREAFTER IN SUCH AMOUNTS AS ARE RECEIVED EACH YEAR THROUGH THE IMPOSITION OF A SALES TAX ON THE SALE OF TANGIBLE PERSONAL PROPERTY AT RETAIL OR THE FURNISHING OF SERVICES, AS PROVIDED IN SECTION 29-2-105(1)(D), C.R.S., AT THE RATE OF TWO PERCENT(2%) OF GROSS RECEIPTS, BEGINNING JANUARY 1, 2013 WITH

ALL REVENUES DERIVED FROM SUCH TAX TO BE COLLECTED, RETAINED AND SPENT FOR ANY  
LAWFUL MUNICIPAL PURPOSE; AND SHALL THE TOWN BE PERMITTED TO COLLECT, RETAIN  
AND EXPEND ALL REVENUES DERIVED FROM THE 2% SALES 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 10.** The provisions of this Ordinance shall take effect, following passage and approval thereof as provided in Section 9, on January 1, 2013.


**Section 11.** 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 Town Council hereby declares that it would have passed this Ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

**Section 12.** 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.

**Section 13.** The Town Council herewith finds, determines, and declares that this Ordinance is necessary to the immediate preservation of public property, health, welfare, peace, or safety because there is an urgent need for the revenues from the tax proposed by this ordinance, the Town Council desires to submit the foregoing TABOR ballot issues to the registered electors of the Town at a special municipal election on November 6, 2012, and there are several immediate deadlines related to the conduct of said election that must be met. Therefore pursuant to C.R.S. § 31-16-105, the Town Council herewith further finds, determines and declares that it necessary for this Ordinance to take effect immediately upon adoption.

INTRODUCED READ, ADOPTED, APPROVED BY AT LEAST SIX AFFIRMATIVE VOTES, AND  
ORDERED PUBLISHED IN FULL this 28th day August, 2012.

TOWN OF FLEMING, COLORADO

  
Robert Stone, Mayor

ATTEST:

Kim Harms

Kim Harms, Town Clerk