



TOWN BOARD SPECIAL MEETING

March 26, 2020 - 4:00 PM

Zoom Meeting, Click on the link <https://windsorgov.zoom.us/j/592131050> OR join by telephone at 877-853-5247 or 888-788-0099 - Webinar ID: 592 131 050

AGENDA

A. CALL TO ORDER

1. Roll Call

B. BOARD ACTION

1. Ordinance No 2020-1606 - An Ordinance Authorizing the Town Manager to Approve Certain Classes of Dining and Drinking Establishments to Temporarily Receive Refunds and Temporarily Defer the Payment of Town Sales Tax in Response to the COVID-19 Virus Public Health Emergency

C. ADJOURN

The Town of Windsor will make reasonable accommodations for access to Town services, programs, and activities and will make special communication arrangements for persons with disabilities. Please call (970) 674-2400 by noon on the Thursday prior to the meeting to make arrangements.



MEMORANDUM

Date: March 26, 2020
To: Mayor and Town Board
Via: Shane Hale, Town Manager
From: Ian McCargar, Town Attorney and Shane Hale, Town Manager
Re: Ordinance 2020-1606
Item #: B.1.

ATTACHMENTS:

- Ordinance 2020-1606

TOWN OF WINDSOR

ORDINANCE NO. 2020-1606

AN ORDINANCE AUTHORIZING THE TOWN MANAGER TO APPROVE CERTAIN CLASSES OF DINING AND DRINKING ESTABLISHMENTS TO TEMPORARILY RECEIVE REFUNDS AND TEMPORARILY DEFER THE PAYMENT OF TOWN SALES TAX IN RESPONSE TO THE COVID-19 VIRUS PUBLIC HEALTH EMERGENCY

WHEREAS, the Town of Windsor is a home rule municipality with all powers conferred under Colorado law; and

WHEREAS, in response to the COVID-19 virus public health emergency, Governor Jared Polis has ordered that Colorado restaurants and bars close their doors to sit-down customer service (“Governor’s Order”); and

WHEREAS, the Governor’s Order makes an exception for take-out and drive-through food and beverage service for those establishments capable of serving customers in this way; and

WHEREAS, the Governor’s Order has had an immediate effect on sit-down restaurants, breweries, coffee houses and bars in Windsor, reducing sales and causing harmful ripple effects with employees, suppliers and fixed-cost imbalances; and

WHEREAS, various taxing entities, in recognition of the business impacts of the Governor’s Order, have sought to provide temporary assistance to affected restaurant and bar owners through tax deferral policies intended to improve short-term cash flow; and

WHEREAS, the Town Board has considered the recommendations of staff and the financial implications thereof, and has concluded that a temporary deferral and temporary refund of Town sales tax payments for certain classes of restaurants and bars is a reasonable measure in response to the immediate effects of the Governor’s Order; and

WHEREAS, the Windsor Home Rule Charter vests the Town Manager and Town Finance Director with the authority to prudently manage the Town’s income, expenses, assets and liabilities in accordance with generally-accepted fiscal standards; and

WHEREAS, the Town Board desires to provide guidelines and policy expectations through the adoption of this Ordinance to assure the public interest is served in the implementation of the sales tax deferrals and refunds authorized herein; and

WHEREAS, the Town Board finds that the within Ordinance promotes the public health, safety and welfare; and

WHEREAS, the Town Board further determines that the adoption of this Ordinance as an emergency ordinance pursuant to Section 4.11 of the Windsor Home Rule Charter is necessary for the immediate preservation of public property, health, welfare, peace, or safety.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN BOARD OF THE TOWN OF WINDSOR, COLORADO, AS FOLLOWS:

Section 1. Eligibility. The following-described classes of dining and drinking establishments shall be eligible to apply for temporary deferral and temporary refund of Town sales tax payments pursuant to the terms of this Ordinance:

Full service restaurants, licensed drinking establishments and coffee houses, each without drive-through service.

Section 2. Notice and Determination of Eligibility by Town Manager.

- (a) The Town Manager shall provide written notice to all dining and drinking establishments who appear to meet the eligibility criteria set forth in Section 1 above, which notice shall invite such establishments to apply by April 19, 2020, for a determination of eligibility upon such forms and in such manner as the Director of Finance shall direct.
- (b) Upon receipt of each application submitted in response to the notice provided pursuant to sub-section (a) of this Section 2, the Town Manager shall apply the criteria set forth in Section 1 above, and shall make a final determination of eligibility. In making this determination, the Town Manager may consider the particular circumstances of the applicant in relation to the criteria, the need for uniformity and consistency, and the purposes to be achieved by this Ordinance.
- (c) The Town Manager may reject any application that is incomplete, untimely or which fails to adequately demonstrate adherence to the criteria set forth in Section 1 above.
- (d) The Town Manager or his designee shall notify each applicant of the Town Manager's determination of eligibility within seven (7) days of receipt of each completed application.

Section 3. Temporary Deferral of Town Sales Tax. Upon eligibility approval by the Town Manager as provided above, each eligible dining and drinking establishment shall be granted a temporary deferral of Town sales tax payments, subject to the following conditions:

- (a) Each eligible dining and drinking establishment shall continue to timely and completely file sales tax returns as otherwise required by Chapter 4 of the *Windsor Municipal Code*.

- (b) Subject to the terms set forth in Section 5 below, the full remittance of sales tax to the Town shall not be required in association with the sales tax returns filed by each eligible dining and drinking establishment, commencing with taxes due for the month of February, 2020 (payable by March 20, 2020), and concluding with taxes due for the month of June, 2020 (payable by July 20, 2020).
- (c) Effective for sales tax payments due beginning July 1, 2020 (payable by August 20, 2020), the deferral of sales tax payments provided in this Ordinance shall terminate, and all establishments shall resume the full and timely payment of sales tax as required under Chapter 4 of the *Windsor Municipal Code*.
- (d) The Town shall not initiate enforcement of unpaid sales tax during the period of deferral set forth in sub-section (b) of this Section 3, so long as the eligible dining and drinking establishment otherwise complies with the requirements of Chapter 4 of the *Windsor Municipal Code*.
- (e) Except as otherwise provided herein, the Town shall not impose any penalty or interest charge for unpaid sales tax during the period of deferral set forth in sub-section (b) of this Section 3, so long as the eligible dining and drinking establishment otherwise complies with the requirements of Chapter 4 of the *Windsor Municipal Code*.

Section 4. Temporary Refunds of February Sales Tax Paid March, 2020.

- (a) At the sole election of any dining and drinking establishment deemed eligible for sales tax deferral under this Ordinance, the Town Manager is authorized to refund all or any portion of February sales tax which was paid in full on or before March 20, 2020, by each such eligible dining and drinking establishment.
- (b) The Director of Finance shall coordinate the processing of any requests for refunds under this Section 4, and shall coordinate the payment of refunds as approved by the Town Manager.
- (c) Any sales tax refund pursuant to this Section 4 shall be deemed temporary, shall be repaid in full to the Town as set forth in Section 5 (a) below, and shall be subject to all enforcement remedies as set forth in Section 5 (b) through (e) below.

Section 5. Payment of Deferred Sales Tax; Enforcement.

- (a) All sales tax payments deferred for or refunded to each eligible dining and drinking establishment pursuant to this Ordinance shall be paid in full on or before 12:00 p.m. on December 31, 2020. The Director of Finance shall coordinate the manner and form of reporting, payment and record-keeping necessary to carry out this sub-section.

- (b) Any deferred and refunded sales tax payments not paid in full as required by sub-section (a) of this Section 5 shall be subject to enforcement (including penalties and interest thereon) as provided in Chapter 4 of the *Windsor Municipal Code*, and shall be further subject to the lien set forth in this Section 5 below.
- (c) Any deferred and refunded sales tax payments, together with penalties and interest, not paid in full as required by sub-section (a) of this Section 5 shall create a lien upon all tangible personal property of the dining and drinking establishment in default hereunder. Such lien shall be deemed perfected on and shall relate back to the date any deferred or refunded sales tax payments would have been due under Chapter 4 of the *Windsor Municipal Code*. Attachment of such lien is not dependent on the recording of written notice, and the lien shall be prior and superior to all other liens, claims, titles and encumbrances, whether or not prior in time, except liens for general taxes. The lien remains attached to the tangible personal property of the eligible dining and drinking establishment from the date of perfection until all unpaid deferred sales taxes are paid in full.
- (d) In the event the Town brings suit or initiates distraint to collect unpaid sales tax deferred pursuant to this Ordinance, the Town shall be entitled to recover its reasonable attorney fees and costs of enforcement in addition to any other remedies to which the Town shall be entitled.

Section 6. Chapter 4 Not Affected. Except as specifically set forth herein, the provisions and requirements of Chapter 4 of the *Windsor Municipal Code* with respect to sales tax shall remain in effect as if this Ordinance had not been adopted.

Introduced, passed by a vote of ___ in favor ___ opposed, adopted and ordered published this 26th day of March, 2020.

TOWN OF WINDSOR, COLORADO

 Kristie Melendez, Mayor

ATTEST:

 Krystal Eucker, Town Clerk

[Seal]