

ORDINANCE NO. 2021-__

**AN ORDINANCE OF THE TOWN OF CASTLE ROCK, COLORADO,
AMENDING SECTION 3.04.150 OF THE CASTLE ROCK MUNICIPAL
CODE BY REDUCING THE SALES TAX CREDIT AGAINST CERTAIN
PUBLIC IMPROVEMENT FEES PAID AT THE PROMENADE AT
CASTLE ROCK**

WHEREAS, the Town of Castle Rock, Colorado (the “Town”), Alberta Development, Inc., and the Promenade at Castle Rock Metropolitan District No. 1 entered into a Public Finance Agreement, dated January 7, 2014 (the “Initial PFA”) concerning the finance and construction of certain public improvements in association with the development of a commercial and residential project known as the Promenade at Castle Rock (the “Property”), which agreement was subsequently assigned to Promenade Castle Rock, LLC (the “Developer”); and

WHEREAS, the Initial PFA was subsequently amended by the Amended and Restated Public Finance Agreement (the “First A&R PFA”) by and among the Town, the Developer and Promenade at Castle Rock District Nos. 1, 2 and 3 (the “Districts”), dated February 17, 2015; and

WHEREAS, pursuant to Section 5.2 of the Initial PFA, the Town Council adopted Ordinance No. 2013-36 granting a sales tax credit in the amount of 1.10% of Taxable Transactions (as such term is defined in the Initial PFA), but only to the extent that public improvement fees in an amount equal to 1.10% have been collected on such sales, which sales tax credit is presently codified in Section 3.04.150 of the Castle Rock Municipal Code (“CRMC”); and

WHEREAS, the Town, the Developer and the Districts have now entered into a Second Amended and Restated Public Finance Agreement (the “Second A&R PFA”); and

WHEREAS, pursuant to Section 5.2 of the Second A&R PFA, the Town Council has agreed to consider the adoption of an ordinance amending CRMC Section 3.04.150 by reducing the sales tax credit granted thereby to the amount of 0.55% of Taxable Transactions; and

WHEREAS, providing for a reduced sales tax credit against public improvement fees collected and paid will continue to aid in the finance and development of necessary public improvements that will benefit the residents of the Town and patrons of the Property, while increasing the amount of sales tax revenues available for use by the Town in protecting and promoting the public health, safety and general welfare.

NOW, THEREFORE, IT IS ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CASTLE ROCK, COLORADO:

Section 1. Amendment. Section 3.04.150 of the Castle Rock Municipal Code, is amended to read as follows:

3.04.150. Tax Credit Against Payment of Public Improvement Fees in the Promenade at Castle Rock.

- A. Notwithstanding any other provisions of this Chapter to the contrary, and in order to implement the provisions of the SECOND AMENDED AND RESTATED Public Finance Agreement entered into by the Town of Castle Rock, ~~Alberta Development Partners, LLC~~, PROMENADE CASTLE ROCK, LLC, and PROMENADE AT Castle Rock Metropolitan District NoS. 1, 2, AND 3, DATED MARCH 2, 2021, there is hereby granted to each person or entity obligated to pay, collect or remit the sales tax on the sale or provision of goods or services which are subject to the Town's sales taxes described in this Chapter occurring within the property known as the Promenade at Castle Rock, and more particularly described in ExhibitS A-1, A-2, AND A-3 of the Public Finance Agreement (~~the "Property"~~), a tax credit against the collection of ~~the sales taxes~~ as hereinafter set forth. ~~All capitalized terms used in this Section and not otherwise defined herein shall have the meanings given to them in the Public Finance Agreement, as amended from time to time.~~ Such SALES tax credit shall be granted in the form of a reduction in the applicable sales tax rate in an amount equal to ~~1.10%~~ 0.55%, and shall attach to a particular sales transaction only to the extent that the Credit PIF revenues are collected and received by the PIF Collection Agent for such transaction. The tax credit shall be automatic and shall take effect immediately upon the occurrence of a Taxable Transaction, but shall be subject to the applicable retailer's remittance to and receipt by the PIF collection agent of the Credit PIF revenues in accordance with the PIF Covenant and the Public Finance Agreement (as reflected on the retailer's periodic sales tax report).
- B. ~~Notwithstanding the foregoing, in the event that a Designated Retailer opens a store in the Property prior to January 1, 2025, no sales tax credit shall be granted against any Taxable Sales occurring at any such Designated Retailer.~~ ALL CAPITALIZED TERMS USED IN THIS SECTION AND NOT OTHERWISE DEFINED HEREIN SHALL HAVE THE MEANINGS GIVEN TO THEM IN THE PUBLIC FINANCE AGREEMENT, AS AMENDED FROM TIME TO TIME.
- C. The sales tax credit granted pursuant to this Section shall remain in effect for the period set forth in the Public Finance Agreement and shall thereafter automatically terminate.

Section 2. Invalidity. In the event the sales tax credit established in CRMC Section 3.04.150 or the Credit PIF is determined by a final court decision to be unconstitutional, void or ineffective for any cause, retailers within the Property shall immediately be required to collect and remit the full Town sales tax in the amount of 4.0% as provided in CRMC Chapter 3.04.

Section 3. Change in Tax Rate. Nothing contained in this Ordinance shall prohibit the Town, after complying with all requirements of law, from increasing or decreasing the sales tax rate so long as the sales tax credit is not affected thereby.

Section 4. Effect of Credit; Applicability of TABOR. The Town Council hereby determines that the creation or termination of this sales tax credit does not constitute a new tax,

tax rate increase, or tax policy change directly causing a net tax revenue gain to the Town, nor creates a multiple-fiscal year direct or indirect debt or other financial obligation of the Town that would otherwise require approval by the electors pursuant to Article X, Section 20 of the Colorado Constitution, also known as the Taxpayer's Bill of Rights (TABOR).

Section 5. Repealer. Any bylaws, orders, resolutions, ordinances, or parts thereof, inconsistent with this ordinance are hereby repealed to the extent only of such inconsistency. This repealer shall not be constructed to revise any bylaw, order, resolution or ordinance or part thereof, heretofore not repealed.

Section 6. Effective Date. This Ordinance shall be in full force and effect following adoption and approval by the Town Council and thirty (30) days following its publication of the within Ordinance; provided, however, this Ordinance will not become effective until such time as all outstanding bonds issued under the Initial PFA or the First A&R PFA have been refunded.

APPROVED ON FIRST READING this 16nd day of February, 2021, by a vote of ___ for and ___ against, after publication in compliance with Section 2.02.100.C of the Castle Rock Municipal Code; and

PASSED, APPROVED AND ADOPTED ON SECOND AND FINAL READING this 2nd day of March, 2021, by the Town Council of the Town of Castle Rock by a vote of ___ for and ___ against.

ATTEST:

TOWN OF CASTLE ROCK

Lisa Anderson, Town Clerk

Jason Gray, Mayor

Approved as to form:

Approved as to content:

Michael J. Hyman, Town Attorney

David L. Corliss, Town Manager