

ORDINANCE NO. 2021-014

AN ORDINANCE SUBMITTING TO THE ELECTORATE AT THE SPECIAL MUNICIPAL ELECTION ON NOVEMBER 2, 2021, THE QUESTION OF AUTHORIZING AN EXCISE TAX ON NEW HOUSING CONSTRUCTION AS PROVIDED IN A NEW CHAPTER 3.12 OF THE CASTLE ROCK MUNICIPAL CODE

WHEREAS, the Town of Castle Rock (the “Town”) operates nationally-recognized Police and Fire Departments that provide high quality law enforcement, fire protection, and emergency medical services to Town residents; and

WHEREAS, substantial increases in police and fire personnel are needed to keep up with the increased demand for services that has resulted from growth in Town population; and

WHEREAS, it is reasonable for Town residents to expect that new residential growth will help fund the increased demand for services from the Police and Fire Departments; and

WHEREAS, pursuant to Section 13-1 of the Charter of the Town of Castle Rock, Colorado (the “Town Charter”), the Town Council may by ordinance levy and collect taxes for municipal purposes; and

WHEREAS, Town staff has identified that an excise tax on new housing construction would support funding for additional police and fire personnel to those responsible for generating the need; and

WHEREAS, the Town Council has determined that it is necessary and advisable to request approval by the registered electors of the Town for a new housing construction tax in the amount of \$7.00 per square foot, which tax shall be used for the purpose of providing police, fire protection, and emergency medical services to Town residents; and

WHEREAS, it is necessary to prescribe the nature of the proposed new housing construction tax in the Castle Rock Municipal Code and to refer the adoption of such Code provision to the voters at a special municipal election to be conducted in coordination with the statewide coordinated election on November 2, 2021.

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

Section 1. Amendment. The Castle Rock Municipal Code is amended by the addition of a new Chapter 3.12, which Chapter reads as follows:

Chapter 3.12 - New Housing Construction Tax

3.12.010. Purpose and Intent.

A. This chapter is adopted pursuant to the approval of the registered electors of the Town of Castle Rock at the special municipal election held November 2, 2021, at which the question of whether the Town should impose the new housing construction tax was submitted to the registered electors.

B. The Town is experiencing rapid residential growth which, in turn, increases the cost to the Town of providing the additional police, fire protection, and emergency medical services necessitated by such growth. The Town Council has determined, and a majority of the registered electors of the Town have agreed, that a tax upon new housing construction is a proper method of paying for such increased costs. The tax imposed by this chapter bears a reasonable relationship to the need for additional police, fire protection, and emergency medical services created by the new housing construction that will pay the tax.

C. The purpose of this chapter is to impose an excise tax on new housing construction within the Town as set forth herein. The intent of this chapter is to impose an excise tax on new housing construction because of the significant impact on the provision of police, fire protection, and emergency medical services caused by rapid residential growth.

D. The new housing construction tax is not an ad valorem tax on real property.

E. The new housing construction tax shall apply regardless of the value of the property developed.

3.12.020. Definitions.

As used in this Chapter, the following terms shall have the meanings indicated below:

Accessory Dwelling Unit means a dwelling unit that is:

- (i) located within an existing primary dwelling unit, inclusive of an attached garage,
- (ii) an addition to the primary dwelling unit,
- (iii) a detached structure on the same lot or tract as the primary dwelling unit.

For purposes of this definition, “primary dwelling unit” means a separate dwelling unit that is the larger of the dwelling units on a lot or tract that contains an accessory dwelling unit.

Building permit means an official document or certification which is issued by the Chief Building Official and which authorizes the construction, alteration, enlargement, conversion, reconstruction, remodeling, rehabilitation, erection, demolition, moving, or repair of a building or structure that will require the issuance of a certificate of occupancy.

Certificate of occupancy means an official document or certification which is issued by the Chief Building Official and which authorizes the occupancy, temporary or otherwise, of a building or structure.

Dwelling means any building or portion thereof which is used as the private residence or sleeping place of one or more human beings, but not including hotels, motels, tourist courts, clubs, hospitals or similar uses:

- (i) *Multifamily dwelling* means a building, or portion thereof, designed for or occupied by three (3) or more families living independently of each other, which may include condominium or townhouse units.
- (ii) *One-family dwelling* means a building designed exclusively for occupancy by one family, including attached residences.
- (iii) *Two-family dwelling* means a detached building designed exclusively for occupancy by two families living independently of each other.

Maximum tax rate means seven dollars (\$7.00) per square foot of usable space.

New housing construction means the construction of any new one-family, two-family, or multifamily dwelling that requires the issuance of a building permit. New housing construction shall include the construction of a new accessory dwelling unit, but shall not otherwise include the alteration, enlargement, conversion, reconstruction, remodeling, rehabilitation, demolition, moving, or repair of an existing dwelling.

Taxpayer means the party or parties securing all required approvals and permits from the Town and assuming full and complete responsibility for the dwelling, including construction of any public and private improvements required in connection with the dwelling.

Usable space means the total square footage of the floor area enclosed within a building. The floor area shall be determined from the plans and specifications submitted to the Chief Building Official as a part of the application for a building permit, and shall include living spaces, storage, basements, restrooms, hallways, garages (attached or unattached if related to the dwelling), common areas, and similar spaces, as measured from the outside dimensions.

3.12.030. New housing construction tax.

A. There is hereby levied and imposed on all new housing construction within the Town an excise tax in the amount of seven dollars (\$7.00) per square foot of usable space.

B. On January 1, 2023, and the first day of each year thereafter, the maximum tax rate shall be adjusted for inflation in accordance with the Consumer Price Index for all urban consumers in the Denver-Aurora-Lakewood statistical area as published by the United States Bureau of Labor

Statistics, which adjustment shall be published annually in the Development Services Fee Schedule as provided by Section 15.01.020 of this Code. Such adjustment shall not be considered a new tax or tax rate increase that would require further voter approval under Article X, Section 20 of the Colorado Constitution.

C. The Town Council may increase or decrease the rate of the new housing construction tax without further voter approval under Article X, Section 20 of the Colorado Constitution so long as the rate does not exceed the maximum tax rate as adjusted for inflation pursuant to subsection B of this section.

3.12.040. Procedure.

A. Any taxpayer who applies for a building permit for any new housing construction within the Town shall pay the applicable new housing construction tax.

B. The new housing construction tax shall be due and collectable on one occasion only.

C. The Chief Building Official shall not issue a building permit unless and until the applicable new housing construction tax has been paid in full to the Town.

3.12.050. New housing construction tax fund.

A. There is hereby established a new housing construction tax fund into which shall be deposited all revenues collected by the Town from payment of the new housing construction tax set forth in this chapter.

B. Revenues from the new housing construction tax may be expended for the following purposes only:

1. The provision of law enforcement services by the Castle Rock Police Department, including, but not limited to, any and all personnel, equipment and facilities needed to provide such services to the Town and its residents;
2. The provision of fire protection services by the Castle Rock Fire Department, including, but not limited to, any and all personnel, equipment and facilities needed to provide such services to the Town and its residents; and
3. The provision of emergency medical services by the Castle Rock Fire Department, including, but not limited to, any and all personnel, equipment and facilities needed to provide such services to the Town and its residents.

Section 2. Referred Measure. As required under TABOR, this Ordinance shall be referred to the registered electors of the Town at the November 2, 2021, special municipal election and shall take effect only upon their approval on January 1, 2022.

Section 3. Ballot Issue. There shall be submitted to the registered electors of the Town at the special municipal election to be held on Tuesday, November 2, 2021, the following ballot issue:

NEW HOUSING CONSTRUCTION TAX FOR POLICE AND FIRE

SHALL CASTLE ROCK TAXES BE INCREASED BY \$13,900,000 ANNUALLY IN THE FIRST FULL YEAR OF SUCH INCREASE, AND BY WHATEVER ADDITIONAL AMOUNTS ARE RAISED ANNUALLY THEREAFTER, FOR THE SOLE PURPOSE OF PROVIDING POLICE, FIRE PROTECTION, AND EMERGENCY MEDICAL SERVICES FROM A NEW HOUSING CONSTRUCTION TAX IMPOSED AND PAID UPON ISSUANCE OF A BUILDING PERMIT AT A RATE UP TO AND INCLUDING \$7.00 PER SQUARE FOOT OF NEW RESIDENTIAL CONSTRUCTION; PROVIDED THAT:

(I) COMMENCING JANUARY 1, 2023, THE MAXIMUM RATE SHALL BE ADJUSTED FOR INFLATION IN FUTURE YEARS IN ACCORDANCE WITH THE CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS IN THE DENVER-AURORA-LAKEWOOD STATISTICAL AREA;

(II) THE RATE OF SUCH TAX MAY BE INCREASED OR DECREASED WITHOUT FURTHER VOTER APPROVAL SO LONG AS THE RATE DOES NOT EXCEED \$7.00 PER SQUARE FOOT AS ADJUSTED FOR INFLATION; AND

(III) ALL REVENUES FROM SUCH TAX SHALL BE COLLECTED, RETAINED, AND SPENT AS A VOTER-APPROVED REVENUE CHANGE AND AS AN EXCEPTION TO THE LIMITS THAT WOULD OTHERWISE APPLY UNDER ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION OR ANY OTHER APPLICABLE LAW?

YES ____ NO ____

Section 4. Actions by Town Officers and Employees. The Town Clerk is hereby directed to take all actions necessary and proper in order to place the ballot issue on the statewide coordinated election ballot of November 2, 2021.

Section 5. No Repeal. The failure of this ballot issue to obtain voter approval shall not repeal or impair any other voter-approved revenue change of the Town under TABOR.

Section 6. Severability. If any clause, sentence, paragraph, or part of this Ordinance or the application thereof to any person or circumstances shall, for any reason, be adjudged invalid by a court of competent jurisdiction, such judgment shall not affect the remaining provisions of this ordinance.

Section 7. Safety Clause. The Town Council finds and declares that this Ordinance is promulgated and adopted for the public health, safety and welfare and this ordinance bears a rational relation to the legislative object sought to be obtained.

APPROVED ON FIRST READING this 20th day of July, 2021 by a vote of 7 for and 0 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 17th day of August, 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