

TOWN OF TIMNATH, COLORADO
ORDINANCE NO. 15, SERIES 2023

AN ORDINANCE AMENDING CHAPTER FOUR AND SIX OF THE TOWN OF TIMNATH
MUNICIPAL CODE

WHEREAS, the Town of Timnath, Colorado, (the “Town”), is a home rule municipality, organized and existing under Article XX, Section 6 of the Colorado Constitution; and

WHEREAS, pursuant to Article XX, Section 6 of the Colorado Constitution, the right to enact, administer and enforce sales and use taxes is clearly within the constitutional grant of power to the Town and is necessary to raise revenue with which to conduct the affairs and render the services performed by the Town; and

WHEREAS, pursuant to such authority, the Town has adopted and enacted a Sales and Use Tax Code (the “Code”), under which Town sales and use tax is levied; and

WHEREAS, the Town wishes to amend the Sales and Use Tax Code to conform to state statutes, by adding a Remote Business Licensee with no license application fee and removing the Use Tax License; and

WHEREAS, the Town does not wish to impose local sales tax on retail delivery fees and carryout bag fees enacted by the State of Colorado that would otherwise be taxable under the Code; and

WHEREAS, the Town adopts this ordinance with the intent to exempt such fees from local sales and use tax.

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

Section 1: Section 4-3-20 of the Code is hereby amended to include the addition of the following definition:

License means a Town General Business License or Remote Business License.

Section 2: Section 4-3-80 of the Code is hereby amended to include the addition of the following reporting requirement:

- (d) *Carryout bag fee reporting.* A taxpayer, subject to the carryout bag fee imposed by C.R.S. § 25-17-505 shall report the fees collected on the end of quarter sales tax return and shall remit sixty percent of the fees collected to the Town Finance Department on a quarterly basis. The vendor may choose to voluntarily remit the carryout bag fee on the monthly sales tax return. A store need not remit carryout bag fees collected in any quarter in which the collected fees total less than twenty dollars. The store shall retain those collected fees until the store has

more than twenty dollars' worth of collected fees to remit and shall remit those fees as part of the next quarterly remittance.

Section 3: Section 4-20. Fee Schedule of the Code is hereby amendment to Chapter 6 fee schedule.

CHAPTER		6
Code Section	Description	Amount of Fee
6-1-50	General Business license	\$ 25.00 \$50.00
6-1-240	Sales tax license Remote Business License	\$ 25.00 \$ \$0.00

Section 4: Amendment to Chapter 6 to remove sales tax license and add a remote seller license.

CHAPTER 6 Business Licenses and Regulations

ARTICLE 1 Licenses Generally

Division 1 General Business Licenses for Business with Physical Presence within Timnath

Sec. 6-1-10. Purpose.

(a) The purpose of this Article is the regulation and registration of businesses operating within the Town.
(~~Prior code, § 6.1.1; Ord. No. 11, § 1, 2015, 11-10-2015~~)

~~Sec. 6-1-20. License required.~~

~~Every person must obtain a license from the Town before operating, conducting or carrying on any retail trade, profession or business within the Town; provided, however, that nonprofit and charitable corporations and federal, state or municipal corporations are hereby exempt from the license requirements set forth in this Article.~~

~~(Prior code, § 6.1.2; Ord. No. 11, § 1, 2015, 11-10-2015)~~

b) ~~It is unlawful for any person to engage in any business requiring the collection of sales and/or use tax in the Town without first obtaining a business license pursuant to this Article – either a General Business License or a Remote Business License, as applicable.~~

c) ~~A temporary business license may be issued for temporary locations for periods of seven consecutive days or less, not to exceed a total of 21 days per calendar year. The reporting period for temporary licenses shall end on the day the temporary location closes. Alternatively, the business may be required to apply for a peddler's permit pursuant to Secs. 6-4-10, et seq. of this Code or a Special Use Permit pursuant to Secs. 6-6-10, et seq., of this Code.~~

~~(Prior code, § 6.1.1; Ord. No. 11, § 1, 2015, 11-10-2015; Prior code, § 6-1-210; Ord. No. _____, 9-12-2023)~~

Sec. 6-1-20. Definitions

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

Incidental physical presence means, with respect to the Town, activities as described in subsection (b), (c) or (e) of the definition of physical presence below, or any combination of said subsections, within Town that occurs infrequently and is not regularly scheduled within the ordinary course of a person's business activities.

Physical presence means performing or providing services or selling, leasing, renting, delivering, or installing tangible personal property for storage, use, or consumption within the Town, except that incidental physical presence by employees, agents, or commissioned salespersons within the Town when not otherwise engaged in the activities set forth in subsection (a)-(f) below does not constitute physical presence. Physical presence includes any of the following activities:

(a) Directly, or indirectly by a subsidiary, maintaining a building, store, office, salesroom, warehouse, or other place of business within the Town;

(b) Sending one or more employees, agents, or commissioned salespersons into the Town to solicit business, to install, assemble, repair, service, or assist in the use of its products, or for demonstration or other reasons;

(c) Maintaining one or more employees, agents, or commissioned salespersons on duty at a location within the Town;

(d) Owning, leasing, renting, or otherwise exerting control over real or personal property sales within the Town;

(e) Engaging in activities within the Town that are subject to other business, fire, zoning, or other regulations of the Town; or

(f) Being subject to taxable privileges other than the requirement to collect sales tax imposed by the Town.

(Added Ord. No. ___, 9-12-2023)

Sec. 6-1-30. License required – Businesses with a Physical Presence within the Town

(a) Any person with the intent of operating, conducting or carrying on any retail trade, profession or business within the Town that has a physical presence within Town limits must obtain a General Business License prior to commencing such operation or conduct.

(b) It is unlawful for any person who has physical presence within the Town Limits to engage in any business requiring the collection of sales and/or use tax in the Town without first obtaining a General Business License pursuant to this Article.

(Prior code, § 6.1.2; Ord. No. 11, § 1, 2015, 11-10-2015; Prior code, § 6-1-20; Ord. No. ___, 9-12-2023)

Sec. 6-1-30-40 . Separate license required for each trade or business.

Any person operating, conducting or carrying on any retail trade, profession or business within the Town must obtain a separate license for each location physical building, store, office, salesroom, warehouse or other place of business of such trade, profession or business.

(Prior code, § 6.1.3; Ord. No. 11, § 1, 2015, 11-10-2015)

Sec. 6-1-~~40~~50. License application.

An application for a General Business license shall be made to the Finance Department on the Town of Timnath Sales Tax Portal. ~~Town Clerk on forms provided by the Town.~~ Every applicant shall state under oath or affirmation such facts as may be required for the granting of such license. It is unlawful for any person to make any false statement or misrepresentation in connection with any application for a license.

(Prior code, § 6.1.4; Ord. No. 11, § 1, 2015, 11-10-2015)

Sec. 6-1-~~50~~60. License fees.

Every person required to be licensed by the provisions of this Division shall pay the General Business license fee as provided in Appendix 4-A to this Code, before the Town will grant a General Business License.

(Prior code, § 6.1.5; Ord. No. 11, § 1, 2015, 11-10-2015)

Sec. 6-1-~~60~~. Payment of fee.

~~Before granting the license, the fee required for the license must be paid to the Town at the office of the Town Clerk.~~

~~(Prior code, § 6.1.6; Ord. No. 11, § 1, 2015, 11-10-2015)~~

Sec. 6-1-70. Issuance.

Upon receipt of the required fee and license application, and determination that the business is in compliance with this Code, the Finance Department will issue a General Business License. ~~the Town Clerk will issue a license~~ indicating that the license fee has been paid for the specified year, provided that the business is otherwise in compliance with this Code.

(Prior code, § 6.1.7; Ord. No. 11, § 1, 2015, 11-10-2015)

Sec. 6-1-80. Carrying or posting license required.

The General Business license for a particular business location shall be posted at all times in a conspicuous place in the place of business. If the business is not operated, conducted or carried on at a fixed location, the licensee must carry the license upon his or her person when operating, conducting or carrying on any retail trade, profession or business. Every licensee shall produce said license for examination when requested to do so by any police officer or by any person representing the Town.

(Prior code, § 6.1.8; Ord. No. 11, § 1, 2015, 11-10-2015)

Sec. 6-1-90. License nontransferable and non-assignable.

No license shall be assignable or transferable. In the event that the owner of the business or the physical location of the business changes, an application shall be submitted for a new license.

(Prior code, § 6.1.9; Ord. No. 11, § 1, 2015, 11-10-2015)

Sec. 6-1-100. Period of license.

All licenses shall expire on December 31st of each calendar year.

(Prior code, § 6.1.10; Ord. No. 11, § 1, 2015, 11-10-2015; Ord. No. 24, Art. 1(Exh. A), 2017, 12-12-2017)

Sec. 6-1-110. Renewal.

- (a) An application for renewal of a general business license shall be considered in the same manner as an original application.
- (b) Unless otherwise provided in this Chapter, all renewal applications and fees shall be due at least 30 days prior to expiration of the existing license. Any applicant who fails to submit the renewal application and fee within the required time shall be subject to the following additional fees: an additional 25 percent of the license fee for the first 15 days, and thereafter, and an additional 50 percent of such fee.

(Ord. No. 2015- __, § 1, 11-10-2015)

Sec. 6-1-120. Suspension.

A license may be suspended:

- (1) When any money due the Town has not been paid. This includes failure to pay civil penalties, fines, taxes, impact fees or any other money owed to the Town.
- (2) When any activity conducted by the licensee or the licensee's employee or agent violates any federal, state or local rule, regulation or law.
- (3) Upon licensee failing to comply with the terms and conditions of the license; or
- (4) Upon any grounds of suspension provided by this Code.

(Prior code, § 6.1.11; Ord. No. 11, § 1, 2015, 11-10-2015)

Sec. 6-1-130. Revocation of license.

A license may be revoked by the Town:

- (1) When it appears that the license was obtained by fraud, misrepresentation or false statements within the application.
- (2) When it appears that the activity conducted pursuant to such license is a public nuisance as defined by this Code or statute or violates any federal, state or local rule, regulation or law.
- (3) Upon licensee failing to comply with the terms and conditions of the license or paying the required license fee.
- (4) Upon finding nonconformance of the business, premises, building or land use with this Code; or
- (5) Upon any ground of revocation provided by this Code.

(Prior code, § 6.1.12; Ord. No. 11, § 1, 2015, 11-10-2015)

Sec. 6-1-140. Notice and hearing prior to suspension or revocation.

All hearings to revoke, suspend or cancel a license shall be before the Town Manager. The suspension or revocation of any license shall not release or discharge any licensee from his or her civil liability for the payment of the taxes, penalty and interest or from the prosecution of the offense.

(Prior code, § 6.1.13; Ord. No. 11, § 1, 2015, 11-10-2015)

Sec. 6-1-150. Cease and desist.

If any business is operating without a license, the Town may issue an order to the business to cease and desist all further operation until a license is issued for the business. The order shall give the licensee the option to either:

- (1) Pay all amounts due to the Town within three days; or
- (2) Post a bond in the amount owing the Town and request in writing with the Town a hearing before the Town Manager.

If the business does nothing, it shall cease operations on the third day. The hearing shall be before the Town ~~Council~~ Manager. The proceedings shall not relieve or discharge any licensee from the civil liability for the payment of the taxes, penalty and interest or from the prosecution of the offense.

(Prior code, § 6.1.14; Ord. No. 11, § 1, 2015, 11-10-2015)

Sec. 6-1-160. Refund of fees.

Upon refusal by the Town ~~to issue~~ to issue any license or permit, the fee therefor paid in advance shall be returned to the applicant. In the event that any license or permit is revoked by the Town, all monies paid therefor shall be and remain the monies of the Town and no refund shall be made to any licensee or holder of a permit.

(Ord. No. 2015-__, § 1, 11-10-2015)

Sec. 6-1-170. Penalty.

Failure to comply with the terms of this Division shall constitute a civil infraction. Any person who is found guilty of or pleads guilty or nolo contendere to the violation of any section of this Division shall be punished in accordance with the provisions of Section 1-4-20 of this Code. For each day or portion thereof during which any violation continues, a person may be cited for a separate civil infraction. The penalties specified in this Section shall be cumulative, and nothing shall be construed as either prohibiting or limiting the Town from pursuing such other remedies or penalties, including an action at law or equity.

(Prior code, § 6.1.15; Ord. No. 11, § 1, 2015, 11-10-2015)

~~Division 2 Sales Tax Licenses~~

~~Sec. 6-1-210. License required.~~

- ~~(a) It is unlawful for any person to engage in any business requiring the collection of sales and/or use tax in the Town without first obtaining a sales tax license pursuant to this Article.~~
- ~~(b) A temporary license may be issued for temporary locations and/or special events for periods of seven consecutive days or less, not to exceed a total of 21 days per calendar year. The reporting period for temporary licenses shall end on the day the temporary location closes or special event concludes.~~
- ~~(c) A licensee obtaining a sales tax license pursuant to this Division shall also obtain a license to engage in business pursuant to Division 1 above.~~

~~(Prior code, § 6.2.1; Ord. No. 11, § 1, 2015, 11-10-2015)~~

~~Sec. 6-1-220. Exemptions.~~

~~No license shall be required for any governmental agency or exempt organization which is exempt from the taxes imposed by Chapter 4 of this Code.~~

~~(Prior code, § 6.2.2; Ord. No. 11, § 1, 2015, 11-10-2015)~~

Sec. 6-1-230. License application and administration.

- (a) ~~An applicant for a license shall submit an application to the Town Clerk on forms provided by the Town, stating the business name and address, mailing address, type of business and such other information as may be required by the Town.~~
- (b) ~~An application for renewal shall be filed with the Finance Department. Licenses shall be in effect for one year and shall expire on December 31 of each year, and shall be renewed annually. Renewal of a license may be denied as provided in Section 6-1-240 below.~~
- (c) ~~Each license shall show the name, location, mailing address and character of business of the licensee and shall be posted in a conspicuous place at the business location for which it is issued.~~
- (d) ~~No license shall be transferable. After any sale or transfer of a business, the new owner shall apply for a new license.~~

~~(Prior code, § 6.2.3; Ord. No. 11, § 1, 2015, 11-10-2015; Ord. No. 24, Art. 2(Exh. B), 2017, 12-12-2017)~~

Sec. 6-1-240. License denial, cancellation, suspension or revocation.

- (a) ~~A license may be denied for any violation of the provisions of this Division, or as listed below. The reason for the denial of the application shall be provided to the applicant in writing.
 - (1) ~~The required fees have not been paid.~~
 - (2) ~~The application is incomplete or contains false, misleading or fraudulent statements.~~
 - (3) ~~Nonconformance of the business, premises, building or land use with this Code.~~~~
- (b) ~~The Finance Director may cancel any license:
 - (1) ~~Upon receipt of a written notice that the taxpayer is no longer engaged in business in the Town; or~~
 - (2) ~~Upon the taxpayer's failure to respond to three consecutive notices of delinquency.~~The Finance Director shall give notice to the taxpayer that the license has been cancelled.~~
- (c) ~~A license may be denied, cancelled, denied renewal, suspended or revoked for any violation of the provisions of this Article, or on the grounds that the health, safety or welfare of the community may be endangered by the continued operation of the licensee.~~
- (d) ~~A license may be denied renewal, suspended or revoked after the licensee has been given notice and hearing. The notice shall set forth the reasons for the proposed action, in writing, and shall be given by personal delivery to the applicant or mailed to the address contained in the license, postage prepaid. Said notice shall be given no less than ten days prior to a hearing to be scheduled before the Finance Director.~~
- (e) ~~An application for a new license may be denied by the Finance Director, pursuant to this Section. The applicant may appeal a denial to the Town Manager unless the reason for the denial is an incomplete application, nonconformance with provisions of this Code, such as zoning or the building code, or failure to pay required fees. The reason for the denial of the application shall be provided to the applicant in writing.~~
- (f) ~~A license may be summarily suspended for no more than 30 days by the Finance Director when required for the immediate protection of the public health, safety and welfare. A hearing shall be scheduled as soon as may be reasonably possible.~~
- (g) ~~The Town Manager shall conduct an appeal of the denial of a new license or a hearing. The Town Manager shall deliver a decision in writing to the applicant within 30 days.~~
- (h) ~~No licensee shall continue engaging in business in the Town after his or her license has been cancelled or revoked.~~

~~(Prior code, § 6.2.4; Ord. No. 11, § 1, 2015, 11-10-2015)~~

Sec. 6-1-250. Penalty.

Any person convicted of violation of this Division shall be punished in accordance with the provisions of Section 1-4-20 of this Code; provided, however, that no person under the age of 18 years shall be subjected to imprisonment for violation of this Article. Nothing in this Section shall be construed as either prohibiting or limiting the Town from pursuing such other remedies or penalties, including an action at law or equity.

(Prior code, § 6.2.5; Ord. No. 11, § 1, 2015, 11-10-2015)

Division 2 Remote Business Licenses

Sec. 6-1-210. Remote Business License required.

(a) Any person with the intent of operating, conducting or carrying on any retail trade, profession or business within the Town without having a physical presence within Town limits may seek a Remote Business License.

(b) It is unlawful for any person to who does not have a physical presence within the Town Limits to engage in any business requiring the collection of sales and/or use tax in the Town without first obtaining a Remote Business License pursuant to this Article.

Sec. 6-1-220. Remote Business License application.

An application for a Remote Business License shall be made to the Finance Department on the Town of Timnath sales tax portal. Every applicant shall state under oath or affirmation such facts as may be required for the granting of such license. It is unlawful for any person to make any false statement or misrepresentation in connection with any application for a license.

Sec. 6-1-230. License fees.

No fee will be assessed for obtaining a Remote Business License.

Sec. 6-1-240. Period of license.

All Remote Business Licenses shall expire on December 31st of each odd year.

Sec. 6-1-250. Renewal.

An application for renewal of a Remote Business License shall be considered in the same manner as an original application.

Sec. 6-1-260. Suspension.

A Remote Business License may be suspended:

- (1) When any money due the Town has not been paid. This includes failure to pay civil penalties, fines, taxes, impact fees or any other money owed to the Town;
- (2) When any activity conducted by the licensee or the licensee's employee or agent violates any federal, state or local rule, regulation or law;
- (3) Upon failing to comply with the terms and conditions of the license; or
- (4) Upon any grounds of suspension provided by this Code.

Sec. 6-1-270. Revocation of license.

A license may be revoked by the Town:

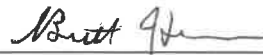
- (1) When it appears that the license was obtained by fraud, misrepresentation or false statements within the application;
- (2) When it appears that the activity conducted pursuant to such license is a public nuisance as defined by this Code or statute or violates any federal, state or local rule, regulation or law;
- (3) Upon failing to comply with the terms and conditions of the license;
- (4) Upon finding nonconformance of the business with this Code;
- (5) Upon the Town finding that the applicant is required to apply for a General Business License; or
- (6) Upon any ground of revocation provided by this Code. Sec. 6-1-280. Notice and hearing prior to suspension or revocation.

All hearings to revoke, suspend or cancel a license shall be before the Town Manager. The suspension or revocation of any license shall not release or discharge any licensee from his or her civil liability for the payment of the taxes, penalty and interest or from the prosecution of the offense.

INTRODUCED, MOVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH ON FIRST READING, ON AUGUST 22, 2023, AND SET FOR PUBLIC HEARING AND SECOND READING AT 6:00 P.M. ON SEPTEMBER 12, 2023 AT THE TIMNATH TOWN CENTER BUILDING, 4750 SIGNAL TREE DRIVE, TIMNATH COLORADO AND ORDERED PUBLISHED BY TITLE THIS 12TH DAY OF SEPTEMBER 2023.

MOVED, SECONDED AND FINALLY ADOPTED ON SECOND READING FOLLOWING PUBLIC HEARING BY THE TIMNATH TOWN COUNCIL ON SEPTEMBER 12TH 2023.

TOWN OF TIMNATH, COLORADO



Brett Hansen, Mayor Pro Tem

ATTEST:



Milissa Peters-Garcia, CMC
Town Clerk

