

**TOWN OF NEW CASTLE, COLORADO
ORDINANCE NO. TC 2019-7**

**AN ORDINANCE OF THE TOWN OF NEW CASTLE, COLORADO
AMENDING TITLES 3 AND 5 OF THE NEW CASTLE MUNICIPAL CODE
TO IMPLEMENT A TAX ON TOBACCO AND NICOTINE PRODUCTS
AND REQUIRING LICENSES FOR TOBACCO RETAILERS**

WHEREAS, pursuant to Resolution No. 17, Series of 2019, the Town Council submitted a ballot question to the eligible electors of the Town of New Castle (“Town”) requesting authorization of a tax on tobacco and nicotine products at the regular election held on November 5, 2019; and

WHEREAS, Article XI of the New Castle Home Rule Charter authorizes the Town to levy and collect taxes, including sales taxes, for municipal purposes, subject to the requirements of the Colorado Constitution for voter approval; and

WHEREAS, a majority of eligible electors voting on said ballot question voted in the affirmative and approved the tax; and

WHEREAS, the Town Council desires to add new chapters to the New Castle Municipal Code to implement the tax and to provide definitions, procedures, and penalties relating thereto, including requirements for associated business licenses.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF NEW CASTLE, COLORADO:

1. The preceding recitals are incorporated by reference as findings of the Town Council.
2. A new Chapter 3.20 of the New Castle Municipal Code is hereby enacted as follows:

**Chapter 3.20
Tobacco and Nicotine Products Tax**

3.20.010 Definitions.

Cigarette, Tobacco Product, and Nicotine Product shall have the same meanings set forth in C.R.S. § 18-13-121(5), as now existing or as hereafter amended.

Nicotine Delivery Product means any device that can be used to deliver tobacco or nicotine to the person inhaling from the device, including an electronic cigarette, cigar, cigarillo, or pipe, regardless of whether or not the device may be primarily marketed, advertised or sold for the purpose of delivery of other drugs or substances.

Tobacco Retailer shall mean a person or business engaged in the sale of cigarettes, tobacco products, and/or nicotine products, including nicotine delivery products.

3.20.020 Sales Tax.

- A. There is imposed on all sales of cigarettes a sales tax in the amount of sixteen cents (\$0.16) per cigarette or three dollars and twenty Cents (\$3.20) per pack of twenty cigarettes, effective as of January 1, 2020. Such tax shall increase by one-half cent (\$0.005) per cigarette or ten cents (\$0.10) per pack of twenty cigarettes on January 1 of each year, until the tax is twenty cents (\$0.20) per cigarette or four dollars (\$4.00) per pack of twenty cigarettes.
- B. For all types of tobacco products and nicotine products other than cigarettes, including nicotine delivery products, there is imposed a sales tax equal to forty percent (40%) of the sale price of such products.
- C. The taxes imposed by this Chapter are in addition to all other taxes imposed by law.

3.20.030 Unlawful to advertise absorption of tax.

It is unlawful for any retailer to advertise, to hold out to or state to the public or to any consumer, directly or indirectly, that the tax or any part thereof imposed by this Chapter will be assumed or absorbed by the retailer, or that it will not be added to the selling price of the property sold; or if added, that any part thereof will be refunded.

3.20.040 License for retailer.

It is unlawful for any person to engage in the business of making sales of cigarettes, tobacco products, or nicotine products, including nicotine delivery products, without having first obtained a tobacco retailer license in accordance with Chapter 5.32 of this code.

3.20.050 Duty to keep books and records

It shall be the duty of every person required by the provisions of Chapter 5.32 to obtain a tobacco retailer license, to keep and preserve suitable records of all sales made by him or her, and such other books or accounts as may be necessary to determine the amount of tax for the collection of which he or she is liable hereunder. It shall be the duty of every such person to keep and preserve for a period of three (3) years all invoices of goods and merchandise purchased for resale, and all such books, invoices and other records shall be open for examination at any time by the Town Treasurer/Finance Director of Finance or his or her duly authorized agents.

3.20.060 Tobacco tax return

- A. Every person, partnership or corporation required to obtain a tobacco retailer license pursuant to the provisions of Chapter 5.32 shall file a tobacco sales tax return, upon forms approved by the Town, on or before the twentieth day of each calendar month for the sales activities of the preceding calendar month; provided,

however, that, if the accounting methods regularly employed by the licensed retailer in the transaction of his or her business, or other conditions, are such that reports of sales made on a calendar-monthly basis will impose unnecessary hardship, the Treasurer/Finance Director may, upon request of such retailer, accept reports at such intervals as will, in his or her opinion, better suit the convenience of the taxpayer, and will not jeopardize the collection of the tax; and provided further, that a retailer doing business in two (2) or more places or locations may file one (1) return covering all such business activities in the Town.

- B. The returns so filed shall contain such information as may enable the Treasurer/Finance Director to accurately determine the amount of tax collected by the person, partnership or corporation filing the return, but, in all cases, shall contain, at a minimum, the amount of net taxable sales of cigarettes, tobacco products, nicotine products, and nicotine delivery products made for which the tax return is filed.
- C. The return shall be accompanied by an amount equal to the sales tax required to be collected by the tobacco retailers but which, in no case, shall be less than the amount actually collected.
- D. All other persons, partnerships and corporations shall pay to the Town the amount of any tax due under the provisions of Section 3.20.020 not less than fifteen (15) days after the date that the tax becomes due.

3.20.070 Examinations of returns; Refunds; Deficiencies; Notice of appeal

- A. As soon as practicable after any tax return is filed, the Treasurer/Finance Director shall examine it, and if it then appears that the correct amount of tax to be remitted is greater or less than that shown in the return, the tax shall be recomputed.
- B. If the amount paid exceeds that which is due, the excess shall be refunded or credited against any subsequent remittance from the same taxpayer.
- C. If the amount paid is less than the amount due, or if the Treasurer/Finance Director determines that any amount of tax required by this Chapter is due and unpaid, for any reason, the difference between the amount paid and the amount owed to the Town, together with interest thereon at the rate of one and one-half percent (1½%) per month from the time the return was due (unless provided otherwise herein), shall be paid by the vendor within fifteen (15) days after written notice and demand to him or her from the Town.
- D. An appeal of a notice of assessment, or demand issued to a vendor or taxpayer for failure to file a return, underpayment of tax owed or as a result of an audit shall be submitted in writing to the Town Clerk within twenty (20) calendar days from the

date of the notice of assessment or demand. Any such appeal shall identify the amount of tax disputed and the basis for the appeal.

3.20.080 Penalty; Disregard for rules.

If any part of the deficiency is due to negligence or intentional disregard of authorized rules and regulations with knowledge thereof, but without intent to defraud, there shall be added ten percent (10%) of the total amount of the deficiency; and in such case, interest shall be collected at the rate of one and one-half percent (1½%) per month on the amount of the deficiency from the time the return was due, from the person required to file the return, which interest and addition shall become due and payable within fifteen (15) days after written notice and demand by the Town.

3.20.090 Penalty; Fraud.

If any part of the deficiency is due to fraud with the intent to evade the tax, then there shall be added fifty percent (50%) of the total amount of the deficiency, and in such case the whole amount of the tax unpaid, including the additions, shall become due and payable fifteen (15) days after written notice and demand by the Town, and an additional one and one-half percent (1½%) per month on said amounts shall be added from the date the return was due until paid.

3.20.100 Service Charge; Returned checks.

If a check in payment of any tax required by this Chapter is returned unpaid, a processing charge or returned check charge in the amount set forth in the Town's fee schedule, as amended from time to time, will be added to any amount due and owing.

3.20.110 Investigation of retailer's books.

For the purpose of ascertaining the correctness of a return, or for the purpose of determining the amount of tax due from any taxpayer, the Treasurer/Finance Director may hold investigations and hearings concerning any matters covered by this Chapter, and may examine any relevant books, papers, records, or memoranda of any such person, requiring the attendance of such taxpayer, or any officer or employee of such taxpayer, or of any person having knowledge of such sales, and taking such testimony and proof as may be necessary to properly ascertain any tax liability. Production of documents and attendance of witnesses shall be requested by the Director on his or her own motion or on motion of any party; any request for production or attendance shall inform persons that compliance is voluntary but that, if the request is not complied with, the Town may apply to the Municipal Judge for issuance of a subpoena.

3.20.120 Judge compels attendance.

The Municipal Judge of the Town, upon the application of the Town Attorney, may compel the attendance of witnesses, the production of books, papers, records or memoranda, and the giving of testimony before the Treasurer/Finance Director or any of his or her duly authorized agents, by the issuance and enforcement of subpoenas, in the same manner as production of evidence may be compelled before the court.

3.20.130 Tax information confidential.

- A. Except in accordance with judicial order, or as otherwise herein provided, the Town shall not divulge any information gained from any return filed or as a result of any investigation or hearing held pursuant to the provisions of this Chapter.
- B. Nothing contained in this subsection shall be construed to prohibit:
 - (1) The delivery to a person, or to his or her duly authorized representative, of a copy of any return filed in connection with his or her tax;
 - (2) The publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof;
 - (3) The inspection by the Town Attorney, or any other legal representative of the Town, of the return or other information relating to any taxpayer who may become involved in litigation with the Town in which the said information may become material.
- C. Reports and returns shall be preserved for three (3) years, and thereafter until the Treasure/Finance Director, with the approval of the Town Administrator, shall order them destroyed.

3.20.140 Estimated taxes and assessment thereof.

- A. If any person neglects or refuses to make a return for, or payment of any of the taxes levied by this Chapter when the same become due, the Treasurer/Finance Director shall, at some date subsequent to five (5) days after the date for the making of such return or the payment of such taxes, give written notice to the person responsible for making the return or paying the taxes or the lack of the filing of such return or payment of said taxes, which notice shall notify the taxpayer, or other person responsible for the return of the tax, that the same must be paid within five (5) days from the date of the receipt of said notice.
- B. If the return is not filed, or the taxes are not paid, within five (5) days after receipt of such notice, the Treasurer/Finance Director may make an estimate, based upon such information as may be available to him or her, of the amount of taxes due for the period or periods for which taxpayer is delinquent and shall add thereto a penalty in an amount equal to ten percent (10%) of the estimated tax, together with interest on the estimated tax at the rate of one and one-half percent (1½%) per month from the due date thereof, and may assess said amount against the delinquent taxpayer by giving the taxpayer written notice thereof, which notice shall require the taxpayer either to pay the amount assessed by the Treasurer/Finance Director or to petition him or her for a correction of the estimate within a period of ten (10)

days thereafter. Any such petition for correction shall be in writing, and any facts or figures in support thereof shall be submitted upon the oath of the taxpayer. The Treasurer/Finance Director shall consider the matters submitted by the taxpayer, and shall make a decision as to the proper amount of taxes, penalty and interest due, which decision shall be final and binding.

3.20.150 Unpaid tax a prior lien.

- A. The taxes imposed by Section 3.20.020 shall be a first and prior lien upon the goods and business fixtures owned or used by any tobacco retailer required by the provisions of Section 3.20.060 to submit a return and make payment of the taxes collected, except the stock of goods held for sale in the ordinary course of business, until said taxes are paid in full.
- B. The lien created by subsection (A) above shall be construed to be liens and encumbrances upon the specific items of personal property therein enumerated, and shall take precedence over all other liens, encumbrances or claims of whatsoever nature, and shall immediately attach to such items without the necessity of the filing of any notice of lien thereof.

3.20.160 Enforcement; Foreclosure of liens.

- A. If any tax, penalty or interest imposed by this Chapter and shown due by returns filed by the taxpayer, or as shown by assessment duly made as provided herein, are not paid within fifteen (15) days after the same are due, the Treasurer/Finance Director may issue a warrant directed to any duly authorized revenue collector, or to the sheriff of any county in this State commanding him or her to levy upon, seize and sell sufficient personal property of the tax debtor which is subject to the liens created by Section 3.20.150 found within his or her county for the payment of the amount due, together with interest, penalties and costs.
- B. Simultaneously with the issuance of said warrant, the Town shall issue a notice of tax lien, setting forth the name of the taxpayer, the amount of the tax, penalties, interest and costs, the date of the accrual thereof, and that the Town claims a first and prior lien therefor on the tangible personal property of the taxpayer subject to said liens.
- C. Such notice shall be on forms prepared by the Town, shall be verified by the Treasurer/Finance Director, and shall be filed in the office of the clerk and recorder of any county in this State in which the taxpayer owns tangible personal property subject to said liens.
- D. Upon the filing of said notice of lien, the effective date of the lien shall relate back to the date of the first transaction for which any tax is due.

3.20.170 Refunds; Procedure.

- A. A refund shall be made or credit allowed for any tax paid under protest by any purchaser who has or claims to have an exemption as in this Chapter provided. Such refund shall be made by the Town after compliance with the following conditions precedent:
- (1) **Application.** Applications for refund must be made within ninety (90) days after the purchase or use of products on which the exemption is claimed, and must be supported by the affidavit of the purchaser, accompanied by the original paid invoice or sales receipt and a certificate issued by the seller, together with such further information as may be requested by the Town.
 - (2) **Decisions.** Upon receipt of such application and accompanying information, the Treasurer/Finance Director shall examine the same with all due speed and shall give notice to the applicant by an order in writing of his or her decision thereon.
 - (3) **Hearing.** An aggrieved applicant may, within twenty (20) days after such decision is mailed to him or her, petition the Town for a hearing on the claim. Such petition shall be in writing filed with the Town Clerk and shall identify the amount of the refund requested and the basis for the request. The Treasurer/Finance Director shall, upon due notice to the applicant, hold a hearing upon such petition, taking such information or evidence as may be material, and shall thereafter render his or her final decision upon such application.
- B. Any person claiming to have paid a tax for the purchase of any covered product in excess of the rates established by this Chapter may apply for a refund of the excess in the manner prescribed above.
- C. An appeal of a decision of the Treasurer/Finance Director in a hearing held pursuant to this Section shall be commenced within thirty (30) days of such decision by filing a notice of appeal with the Town Clerk and shall be scheduled and heard by the Town Council within thirty days after filing, or at the next regularly-scheduled Town Council meeting, whichever is later.
- D. The right of any person to a refund under this Chapter shall not be assignable, and application refund must be made by the same person who purchased the goods and who paid the tax thereon, as shown by the invoice or receipt of the sale thereof.

3.20.180 Penalties

Any person violating any provision of this Chapter shall be deemed guilty of a municipal offense punishable in accordance with Chapter 1.20 of this code.

3. A new Chapter 5.32 of the New Castle Municipal Code is hereby enacted as follows:

**Chapter 5.32
Tobacco Retailers**

5.32.010 Definitions. Cigarette, Tobacco Product, and Nicotine Product, Nicotine Delivery Product, and Tobacco Retailer shall have the meanings set forth in 3.20.010 of the New Castle Municipal Code.

5.32.020 License Required – New Tobacco Retailers

Prior to engaging in the sale of cigarettes, tobacco products, nicotine products, and/or nicotine delivery products, a person or entity shall obtain a tobacco retailer's license from the Town in the same manner as general business licenses, and only one license shall be required.

5.32.030 Existing Tobacco Retailers

Any person or entity that was engaged in the sale of cigarettes, tobacco products, nicotine products, and/or nicotine delivery products prior to the adoption of this Chapter 5.32 shall obtain a new tobacco retailer's license within sixty days of the effective date of this Chapter.

5.32.040 Conditions Related to Tobacco Retailer's License

- A. Tobacco retailers shall comply with state statutes prohibiting the sale of cigarettes, tobacco products, and nicotine products to minors including, but not limited to, C.R.S. § 18-13-121 and C.R.S. §§ 44-7-101, *et seq.*, as now existing or as hereafter amended, which are adopted by reference, except for the penalty provisions of C.R.S. Section 18-13-121(2).
- B. Tobacco retailers shall comply with all other state and federal statutes and regulations regarding the sale of cigarettes, tobacco products, and/or nicotine products, including nicotine delivery products, now existing or hereafter amended or enacted.

5.32.050 Penalties

- A. The penalty provisions set forth in Section 5.04.120 shall apply to violations of this Chapter 5.32 and C.R.S. § 44-7-103.
- B. For purposes of municipal court prosecutions, a tobacco retailer's failure to comply with the provisions of C.R.S. §18-13-121 or §§ 44-7-101, *et seq.* shall be deemed a municipal offense punishable in accordance with Chapter 1.20 of this code.


4. Each section of this Ordinance is an independent section and a holding of any section or part thereof to be unconstitutional, void, or ineffective for any cause or reason shall not be deemed to affect the validity or constitutionality of any other section or part thereof, the intent being that the provisions hereof are severable.

INTRODUCED on November 19, 2019, at which time copies were available to the Council and to those persons in attendance at the meeting, read by title, passed on first reading, and ordered


published in full and posted in at least two public places within the Town as required by the Charter.

INTRODUCED a second time at a regular meeting of the Council of the Town of New Castle, Colorado, on December 3, 2019, read by title and number, passed with amendment as set forth herein, approved, and ordered published as required by the Charter.

TOWN COUNCIL OF THE TOWN OF
NEW CASTLE, COLORADO

By: 
Art Riddile, Mayor

ATTEST:


Melody Harrison, Town Clerk

