

ORDINANCE NO. 1359, SERIES 2026

AN ORDINANCE AMENDING SECTION 9-26 OF CHAPTER 9, ARTICLE II, DIVISION 3 OF THE CORTEZ CITY CODE BY ENACTING SUBSECTION (C) IN ORDER TO EFFECT A TABOR REFUND OF A PORTION OF THE FAMILY RECREATION CENTER SALES TAX REVENUE THAT WAS COLLECTED BY THE CITY IN 2022 THROUGH 2025

WHEREAS, at the election held on November 6, 2001 (the “2001 Election”), the voters of the City of Cortez, Colorado (the “City”) approved an increase to the City-wide sales tax of .55% commencing on January 1, 2002, in order to finance the construction of the Family Recreation Center (the “Recreation Sales Tax”); and

WHEREAS, the ballot question approved by the City’s voters at the 2001 Election provided that the Recreation Sales Tax would terminate following the repayment of all bonds issued to finance the construction of the Family Recreation Center (the “Recreation Center Bonds”); and

WHEREAS, pursuant to Ordinance No. 954, Series 2001, the City Council of the City (the “City Council”) amended the Cortez City Code to require the Recreation Sales Tax to be imposed commencing on January 1, 2002, and terminating on the earliest permitted date following the payment in full of the Recreation Center Bonds in accordance with the ballot question approved at the 2001 Election; and

WHEREAS, at the election held on April 3, 2018 (the “2018 Election”), the voters of the City approved a ballot question that authorized the City to extend the imposition and collection of the expiring Recreation Sales Tax indefinitely after the Recreation Center Bonds were paid in full, provided that the rate of the Recreation Sales Tax shall be decreased from .55% to .35% (the “Recreation Sales Tax Reduction”); and

WHEREAS, the final maturity of the Recreation Center Bonds was paid in full on December 1, 2021; and

WHEREAS, the Cortez City Code was not amended after the 2018 Election to implement the Recreation Sales Tax Reduction in accordance with the ballot question approved at the 2018 Election until October 14, 2025, when the City Council adopted Ordinance No. 1350, Series 2025 (“Ordinance No. 1350”); and

WHEREAS, because the Cortez City Code was not amended to implement the Recreation Sales Tax Reduction until the adoption of Ordinance No. 1350, the City imposed the Recreation Sales Tax at the rate of .55% instead of .35% from January 1, 2022, through December 31, 2025, resulting in the City collecting \$7,840,134 from the Recreation Sales Tax during that time period instead of \$4,989,176—a difference of \$2,850,958 (the “Over Collected Amount”); and

WHEREAS, Article X, Section 20 of the Colorado Constitution (“TABOR”) requires the City to refund any revenue collect or kept that the City was not authorized to collect or keep; and

WHEREAS, in accordance with *Property Tax Adjustment Specialists, Inc. v. Mesa County Board of County Commissioners*, 956 P2d 1277, 1281 (Colo. App. 1998) “‘revenue collected, kept, or spent illegally’ necessarily must be construed narrowly to refer only to those revenues collected or spent by districts in violation of the procedures set forth in [TABOR];” and

WHEREAS, only the revenues generated by the Recreation Sales Tax in excess of the amount generated by the .35% authorized in the ballot question approved at the 2018 Election were collected in violation of the procedures set forth in TABOR, therefore, TABOR’s refund requirements only apply to those revenues; and

WHEREAS, TABOR provides that “[r]efunds need not be proportional when prior payments are impractical to identify or return;” and

WHEREAS, the City has determined that prior payments are impractical to identify or return because it is not practicable to determine who paid the Recreation Sales Tax from 2022-2025 or to determine how much Recreation Sales Tax each person or entity has paid; and

WHEREAS, TABOR provides “[s]ubject to judicial review, district may use any reasonable method for refunds under [section (1)], including temporary tax credits or rate reductions;” and

WHEREAS, the City Council has determined and hereby determines that it is reasonable to refund the Over Collected Amount through a temporary sales tax rate reduction of the City’s general sales tax of 3.5% (the “General Sales Tax”) and the Recreation Sales Tax of .35% effective from and including October 18, 2026, through and including December 31, 2026 (75 days) (the “Sales Tax Holiday”); and

WHEREAS, the City Council has determined that its average daily collection of sales tax through the General Sales Tax and the Recreation Sales Tax for the fourth quarter of 2026 is estimated to be \$40,798, therefore, the Sales Tax Holiday is of sufficient length to refund the Over Collected Amount; and

WHEREAS, in accordance with the Colorado Supreme Court’s decision in *In Re Interrogatory on House Bill 21-1164 Submitted by Colorado Gen. Assembly*, 487 P.3d 636, 647 (Colo. 2021) and the Colorado Court of Appeals decision in *Bruce v. Pikes Peak Library District*, 155 P.3.d 630 (Colo. App. 2007), the elimination of the temporary General Sales Tax and Recreation Sales Tax rate reductions on December 31, 2026, does not require additional voter approval in advance under TABOR; and

WHEREAS, the City Council has determined that, since a portion of the refund of the Over Collected Amount is being advanced by the temporary reduction to the General Sales Tax, the City may elect to repay the amount advanced by the General Sales Tax with revenues derived from the Recreation Sales Tax in the future; and

WHEREAS, the City Council has determined and hereby determines that it is in the best interests of the City, its taxpayers, residents and constituents to take the actions set forth herein.

NOW THEREFORE, BE IT ORDAINED BY THE CORTEZ CITY COUNCIL AS FOLLOWS:

RECITALS; RATIFICATION AND APPROVAL OF PRIOR ACTIONS: The foregoing recitals are incorporated herein as findings of City Council. All actions heretofore taken, not inconsistent with the provisions of this Ordinance, by the City Council or the officers, agents, or employees of the City relating to the subject matter of this Ordinance, are hereby ratified, approved, and confirmed.

REASONABLE REFUND METHODOLOGY: The City Council hereby finds and determines pursuant to section (1) of TABOR and *Brue v. Pikes Peak Library District*, 155 P.3d 630, 633 (Colo. App. 2007) that it is entitled to use any reasonable method for refunds under section (1) of TABOR, subject to judicial review. After due consideration of the options available to the City Council to effect a refund under section (1) of TABOR, the City Council has determined and hereby determines that the temporary reduction of the General Sales Tax rate of 3.5% and the Recreation Sales Tax rate of .35% to 0.00% each is reasonable and in the best interest of the City and its taxpayers.

CODE AMENDMENT: The Cortez City Code, Chapter 9, Article II, Division 3 is amended by the addition of Section 9-26(c) to read as follows:

- (c) Commencing on October 18, 2026, and terminating on December 31, 2026, the base sales tax imposed pursuant to subsection (a) of this section is temporarily reduced to zero percent and the recreation sales tax imposed pursuant to subsection (b) of this section is temporarily reduced to zero percent. The temporary sales tax rate reductions set forth in this subsection (c) shall terminate at 11:59 p.m. on December 31, 2026, at which point the base sales tax imposed pursuant to subsection (a) of this section shall be restored to three and one-half percent and the recreation sales tax imposed pursuant to subsection (b) of this section shall be restored to thirty-five one-hundredths of one percent. The temporary sales tax rate reductions set forth in this subsection (c) are being granted by the City to effect a refund under section (1) of Article X, Section 20 of the Colorado Constitution ("TABOR") in accordance with the terms of TABOR. This subsection (c) shall automatically be repealed on January 1, 2027.

REPEALER. All orders, bylaws, and resolutions of the City, or parts thereof, inconsistent or in conflict with this Ordinance, are hereby repealed to the extent only of such inconsistency or conflict.

SEVERABILITY. If any section, paragraph, clause, or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Ordinance, the intent being that the same are severable.

RECORDING AND AUTHENTICATION. Upon adoption hereof, this Ordinance shall be recorded in a book kept for that purpose and shall be authenticated by the signatures of the Mayor and the City Clerk.

EFFECTIVE DATE. This Ordinance shall be effective upon publication after final passage on second reading.

FIRST READING. This ordinance shall be considered first reading on the 10th day of February 2026, at the hour of 7:30 p.m., in the City Council Chambers in City Hall, Cortez, Colorado, at which time this ordinance shall be read and the public hearing for the second or final reading of this ordinance shall be set.

PUBLIC HEARING. This ordinance shall be considered for second or final reading on the 24th day of February 2026, at the hour of 7:30 p.m., in the City Council Chambers in City Hall, Cortez, Colorado, at which time and place all persons may appear and be heard concerning the same.

PASSED, ADOPTED AND APPROVED ON FIRST READING THIS 10th DAY OF FEBRUARY 2026.

CITY OF CORTEZ

ATTEST:



DANIELLE WELLS, CITY CLERK



RACHEL MEDINA, MAYOR

APPROVED AS TO FORM:



J. PATRICK COLEMAN, CITY ATTORNEY

PASSED, ADOPTED AND APPROVED ON SECOND AND FINAL READING THIS 24th DAY OF FEBRUARY 2026.

CITY OF CORTEZ

ATTEST:



DANIELLE WELLS, CITY CLERK



RACHEL MEDINA, MAYOR