

ORDINANCE NO. 19-_____

AN ORDINANCE AMENDING SECTION 104 (WORDS AND PHRASES DEFINED) OF PART 1 (GENERAL PROVISIONS) OF ARTICLE 7 (SALES AND USE TAX) OF CHAPTER 2 (BUSINESS LICENSING, LIQUOR REGULATION AND TAXATION) OF THE CODE OF THE CITY OF COLORADO SPRINGS 2001, AS AMENDED, PERTAINING TO SALES AND USE TAX DEFINITIONS

WHEREAS, the City of Colorado Springs ("City") has enacted the *City of Colorado Springs Sales and Use Tax Code* ("*City Tax Code*") codified as Article 7 of Chapter 2 of the Code of the City of Colorado Springs pursuant to its home rule authority under Article XX of the Colorado Constitution; and

WHEREAS, the City Tax Code has existed since its initial passage with limited amendment; and

WHEREAS, in SJR14-038 the General Assembly asked the Colorado Municipal League to revive the tax simplification project from the 1990's to address current systemic problems associated with local tax collection; and

WHEREAS, Council has determined that the standard tax definitions project is a major collaborative sales tax simplification initiative by Colorado's home rule municipalities that locally collect their sales tax and the retail business community; and

WHEREAS, Council has determined that the City will cooperate in furtherance of a statewide goal to have all locally collecting municipalities agree to use standard definitions in their sales and use tax codes; and

WHEREAS, Council has determined that maintaining the local collection of sales and use taxes for the City is of paramount importance to the continued financial strength of the City; and

WHEREAS, Council has determined that the retail business community desires better uniformity and simplicity when operating in the City; and

WHEREAS, Council has determined that sales tax revenue is directly tied to how well the City's retail business community is faring, Council and staff have generally supported the idea that the City should simplify the tax code, without increasing or decreasing revenue; and

WHEREAS, Council has determined that revenue neutral tax simplification is generally construed as good for business and good for the community as a whole; and

WHEREAS, Council has determined that modification of the City's sales and use tax exemptions is required in an effort to comply with the Taxpayer Bill of Rights by staying revenue neutral; and

WHEREAS, the amendments within the City Tax Code are not a tax policy change; and

WHEREAS, Council has determined that while aligning with a uniform and simplified statewide standard tax definitions, the City Tax Code needs additional modifications to clarify ambiguities and maintain organizational structure for more efficient use and better understanding.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. Section 104 (Words and Phrases Defined) of Part 1 (General Provisions) of Article 7 (Sales and Use Tax) of Chapter 2 (Business Licensing, Liquor Regulation and Taxation) of the Code of the City of Colorado Springs 2001, as amended, is amended to read as follows:

2.7.104: WORDS AND PHRASES DEFINED:

When not clearly otherwise indicated by the context, the following terms, words and phrases as used in this City Tax Code, shall have the following meanings:

~~ADJUSTED GROSS SALES AND SERVICES: Gross sales and services with the addition of bad debts, collected during the current taxable period that had been deducted from adjusted gross sales and services during a previous taxable period.~~

AIRCRAFT PART: any tangible personal property that is intended to be permanently affixed or attached as a component part of an aircraft.

~~ALTERNATIVE RATE OF TAX: That rate of tax as specified in section 2.7.444 of this article.~~

AUCTION: Any sale where tangible personal property is sold by an auctioneer who is either **the agent for the owner of such property** or ~~the agent for the~~ **is in fact the** owner of the ~~property thereof~~.

* * *

~~CALENDAR YEAR: A year commencing on January 1 and ending December 31 of the same year.~~

CHARITABLE ORGANIZATION: Any entity which: ~~a1)~~ has been certified as a ~~not~~ **nonprofit** organization under section 501(c)(3) of the Internal Revenue Code, and ~~b2)~~ is a religious or charitable organization. As used in this definition, a "charitable organization" is an organization which exclusively, and in a manner consistent with existing laws and for the benefit of an indefinite number of persons **or animals**, freely and voluntarily ministers to the physical, mental or spiritual needs of persons **or animals**, and which thereby lessens the burdens of government.

~~CHECK: A written, unconditional order to pay a sum certain in money, drawn on a bank, payable on demand, and signed by the drawer. "Check", for the purposes of this City Tax Code only, also includes a negotiable order of withdrawal or a share draft.~~

* * *

COMMERCIAL PACKAGING MATERIALS: containers, labels, and/or cases, that become part of the finished product to the consumer, used by or sold to a person engaged in manufacturing, compounding, wholesaling, jobbing, retailing, packaging, distributing or bottling for sale, profit or use, and is not returnable to said person for reuse. Commercial Packaging Materials does not include Commercial Shipping Materials.

COMMERCIAL SHIPPING MATERIALS: materials that do not become part of the finished product to the consumer which are used exclusively in the shipping process. Commercial Shipping Materials include but are not limited to containers, labels, pallets, banding material and fasteners, shipping cases, shrink wrap, bubble wrap or other forms of binding, padding or protection.

* * *

~~CONSUMER: Any: a) individual person, or b) person engaged in business in the City, who, **within the City, purchases,** uses, stores, distributes or otherwise consumes in the City tangible personal property or taxable services, purchased from sources inside or outside the City.~~

* * *

COVER CHARGE: a charge paid to a club or similar entertainment establishment which may, or may not, entitle the patron paying such charge to receive tangible personal property, such as food and/or beverages.

* * *

DIGITAL PRODUCT: means an electronic product including, but not limited to: (1) “digital images” which means works that include, but are not limited to, the following that are generally recognized in the ordinary and usual sense as “photographs”, “logos”, “cartoons”, or “drawings”, (2) “digital audio-visual works” which means a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any, (3) “digital audio works” which means works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones. For purposes of the definition of “digital audio works”, “ringtones” means digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication, and (4) “digital books” which means works that are generally recognized in the ordinary and usual sense as “books”.

* * *

~~DISCOUNT:~~ A reduction in the price of personal property by the retailer which is passed on to the consumer.

~~DISHONOR OR DISHONORED:~~ A check is dishonored when the drawee of that instrument refuses payment on the basis that the drawer has insufficient funds on deposit with the drawee, or for any other reason whatsoever other than an error by the drawee.

* * *

~~DRAWEE:~~ The bank upon which a check is drawn or a bank, savings and loan association, industrial bank or credit union on which a negotiable order of withdrawal or a share draft is drawn.

~~DRAWER:~~ A person, either real or fictitious, whose name appears on a check as the primary obligor, whether the actual signature be that of the person or of a person authorized to draw the check on the person.

~~DRUGS DISPENSED IN ACCORD WITH A PRESCRIPTION:~~ Drugs dispensed in accord with any order, in writing, dated and signed by a licensed physician of the healing arts, or given orally by a physician, and immediately reduced to writing by the pharmacist, assistant pharmacist, or pharmacy intern, specifying the

~~name and address of the person for whom the medicine, drug or poison is offered and directions, if any, to be placed on the label.~~

* * *

~~EQUIPMENT: One or more machines of a manufacturer which is used directly and exclusively in the manufacturing of tangible personal property.~~

~~EXCESS TAX: That amount of tax collected during a reporting period that is in excess of the amount of tax under section 2.7.201 of this article and which excessive collection must be remitted to the City using the method prescribed herein.~~

~~EXEMPT COMMERCIAL PACKAGING MATERIALS: Containers, labels and shipping cases sold to a person engaged in manufacturing, compounding, wholesaling, jobbing, retailing, packaging, distributing or bottling for sale, profit or use that meets all of the following conditions: a) is used by the manufacturer, compounder, wholesaler, jobber, retailer, packager, distributor or bottler to contain or label the finished product; b) is transferred by the person along with and as a part of the finished product to the consumer; and c) is not returnable to the person for reuse.~~

~~EXEMPTIONS: These deductions from adjusted gross sales and services in order to arrive at a taxable base, which exemptions may include exempt transactions (in whole or in part), sale or purchase of exempt commodities, articles or services, or sale to exempt persons who may either be exempt on their direct purchase or exempt on the type of commodity, articles or services purchased all as set forth in section 2.7.401 of this article.~~

FOOD: Food for domestic home consumption as defined in 7 USC section 2012(g)(k)(2014) as amended, for purposes of the **supplemental nutrition assistance program, or any successor program**, Federal Food Stamp Program as defined in 7 USC section 2012(h), as amended, except that "food" does not include carbonated water marketed in containers; chewing gum; seeds and plants to grow foods; prepared salads and salad bars; **packaged and unpackaged** cold sandwiches; deli trays; and **hot or cold beverages served in sealed containers or cups that are** ~~feed or drink-vended~~ by or through machines or non-coin-operated coin-collecting food and snack devices on behalf of a retailer.

GARAGE SALES: The sales ~~or offering for sale of articles~~ of tangible personal property, **except automotive vehicles, occurring at the residence of the seller, where property to be sold was originally purchased for use by members of the household where such sale is being conducted. The term includes, but is not limited to, yard sales, estate sales, and block sales** ~~by the owner, lessee or other~~

~~occupant of a dwelling. The term garage sale shall include a patio sale, yard sale or any similar sale.~~

~~GROSS SALES AND SERVICE OR GROSS TAXABLE SALES: The total amount received in money, credit, property or other consideration valued in money for all sales, leases, or rentals of tangible personal property or services.~~

~~INSUFFICIENT FUNDS: A drawer has insufficient funds with the drawee to pay a check when the drawer has no checking account, negotiable order of withdrawal account, or share draft account with the drawee or has funds in an account with the drawee in an amount less than the amount of the check plus the amount of all other checks outstanding at the time of issuance; and a check dishonored for "no account" shall also be deemed to be dishonored by "insufficient funds".~~

~~ISSUE: A person issues a check when he makes, draws, delivers, or passes it or causes it to be made, drawn, delivered, or passed. The foregoing shall not include a subsequent endorser of the check, unless the endorser has actual knowledge of the fact that the drawer has insufficient funds to allow payment of that check by the drawee.~~

~~* * *~~

~~MEDICAL SUPPLIES: Drugs dispensed in accord with a prescription; insulin in all its forms dispensed pursuant to the direction of a licensed physician; glucose usable for treatment of insulin reactions; urine and blood testing kits and materials; insulin measuring and injecting devices, including hypodermic syringes and needles; prosthetic devices; wheelchairs and hospital beds; drugs or materials when furnished by a physician as a part of professional services provided to a patient; and corrective eyeglasses, contact lenses, or hearing aids.~~

~~NEGOTIABLE ORDER OF WITHDRAWAL ACCOUNT: An account in a bank, savings and loan association, or industrial bank.~~

~~NEGOTIABLE ORDER OF WITHDRAWAL OR SHARE DRAFT: Negotiable or transferable instruments drawn on a negotiable order of withdrawal account or share draft account, as the case may be, for the purpose of making payments to third persons or otherwise.~~

~~NET TAXABLE SALES AND SERVICES: The adjusted gross sales and services less authorized "exemptions" therefrom.~~

~~* * *~~

ORTHOPEDIC DEVICE OR APPLIANCE: Any appliance or device designed specifically for use in the correction or prevention of deformities, **functional impairments**, defects or chronic diseases of the **musculoskeletal system** skeleton, joints or spine.

* * *

PRESCRIPTION DRUGS FOR ANIMALS: **A drug which, prior to being dispensed or delivered, is required by the federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sect. 301, et. seq., as amended, to state at a minimum the symbol "Rx Only", and is** ~~Drugs~~ dispensed in accordance with any order in writing, dated and signed by a licensed veterinarian, ~~or given orally by a licensed veterinarian,~~ specifying the animal for which the medicine or drug is offered and directions, if any, to be placed on the label.

PRESCRIPTION DRUGS FOR HUMANS: A drug which, prior to being dispensed or delivered, is required by the federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sect.301, et. seq., as amended, to state at a minimum the symbol "Rx Only", and is dispensed in accordance with any written or electronic order dated and signed by a licensed practitioner and immediately reduced to writing by the pharmacist, assistant pharmacist, or pharmacy intern, specifying the name and any required information of the patient for whom the medicine, drug or poison is offered and directions, if any, to be placed on the label.

PRICE OR PURCHASE PRICE: the aggregate value measured in currency paid or delivered or promised to be paid or delivered in consummation of a sale, without any discount from the price on account of the cost of materials used, labor or service cost, and exclusive of any direct tax imposed by the federal government or by this article, and, ~~The price paid by the purchaser, exclusive of any direct tax imposed by the Federal government or by this City Tax Code, and,~~ in the case of all retail sales involving the exchange of property, also exclusive of the fair market value of the property exchanged at the same time and place of the exchange, if: a) ~~the~~ **such** exchanged property is to be sold thereafter in the usual course of the retailer's business, or b) ~~the~~ **such** exchanged property is a vehicle and is exchanged for another vehicle and both vehicles are subject to licensing, registration, or certification under the laws of this State, including, but not limited to, vehicles operating upon public highways, off highway recreation vehicles, watercraft, and aircraft. Any money or other consideration paid over and above the value of the exchanged property is subject to tax.

A. "Price" or "purchase price" includes:

A1. ~~The total amount of money or other consideration received or due in cash and/or credits.~~

~~B2.~~ * * *

~~€3.~~ Any consideration valued in money, ~~such as trading stamps or coupons~~ whereby the manufacturer or someone else reimburses the retailer for part of the purchase price and other media of exchange.

~~D4.~~ The total price charged on credit sales including finance charges which are not separately stated **at the time of sale**. An amount charged as interest on the unpaid balance of the purchase price is not part of the purchase price unless the amount added to the purchase price is included in the principal amount of a promissory note; except the interest or carrying charge set out separately from the unpaid balance of the purchase price on the face of the note is not part of the purchase price. An amount charged for insurance on the property sold and separately stated **at the time of sale** is not part of the purchase price.

~~€5.~~ Installation, **applying, remodeling or repairing the property, delivery and** ~~standby or~~ wheeling-in charges included in the purchase price and not separately stated.

~~F6.~~ Transportation, ~~delivery,~~ and other charges to effect delivery of tangible personal property ~~from the seller to the consumer or purchaser.~~

~~€6.~~ Indirect Federal manufacturers' excise taxes, such as taxes on automobiles, ~~fuel,~~ tires and floor stock.

~~H7.~~ * * *

~~I8.~~ * * *

B. "Price" or "purchase price" shall not include:

~~A1.~~ * * *

~~B2.~~ * * *

~~€3.~~ Discounts from the original price if the discount and the corresponding decrease in sales tax due is actually passed on to the **purchaser, and the seller is not reimbursed for the discount by the manufacturer or someone else** ~~consumer~~. An anticipated discount to be allowed for payment on or before a given date is not an allowable adjustment to the price in reporting gross sales.

~~PROSTHETIC DEVICES: Any artificial limb, part, device or appliance for human use which aids or replaces a bodily function; is designed, manufactured, altered~~

~~or adjusted to fit a particular individual; and is prescribed by a licensed physician. Prosthetic devices include, but are not limited to, prescribed auditory, ophthalmic or ocular, cardiac, dental, or orthopedic devices or appliances, oxygen concentrators and oxygen with related accessories.~~

PROSTHETIC DEVICES FOR ANIMALS: any artificial limb, part, device or appliance for animal use which replaces a body part or aids or replaces a bodily function; is designed, manufactured, altered or adjusted to fit a particular patient; and is prescribed by a licensed veterinarian. Prosthetic devices include, but are not limited to, prescribed auditory, ophthalmic or ocular, cardiac, dental, or orthopedic devices or appliances, and oxygen concentrators with related accessories.

PROSTHETIC DEVICES FOR HUMANS: any artificial limb, part, device or appliance for human use which replaces a body part or aids or replaces a bodily function; is designed, manufactured, altered or adjusted to fit a particular patient; and is prescribed by a licensed practitioner of the healing arts. Prosthetic devices include, but are not limited to, prescribed auditory, ophthalmic or ocular, cardiac, dental, or orthopedic devices or appliances, and oxygen concentrators with related accessories.

PURCHASE OR SALE:

A. The acquisition for any consideration by any person of tangible personal property, **other taxable products** or taxable services that are purchased, leased, rented, sold, used, stored, distributed, or consumed, ~~but excludes a bona fide gift of property or services.~~ These terms include capital leases, installment and credit sales, and property and services acquired by:

A1. Transfer, either conditionally or absolutely, of title or possession or both to tangible personal property, **other taxable products, or taxable services;**

B2. A lease, lease-purchase agreement, rental or grant of a license, including royalty agreements, to use tangible personal property, **other taxable products,** or taxable services;

C3. Performance of taxable services; or

D4. Barter or exchange for other **tangible personal** property, **other taxable products** or services ~~including coupons.~~

B. The terms "purchase" and "sale" do not include:

A1. * * *

~~B. The formation of a corporation by the owners of a business and the transfer of their business assets to the corporation in exchange for all the corporation's outstanding stock, except qualifying shares, in proportion to the assets contributed;~~

€2. The transfer of assets of shareholders in the formation or dissolution of professional corporations, **if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets;**

Đ3. The dissolution and the pro rata distribution of the corporation's assets to its stockholders, **if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets;**

€4. * * *

~~F. The transfer in a reorganization qualifying under section 368(a)(1) of the "Internal Revenue Code of 1954", as amended;~~

€5. * * *

H6. * * *

* * *

~~RESIDENT: For the purposes of the taxation provisions herein, a~~**A** person who resides or maintains a domicile within the City or who maintains one or more places of business within the City, **regardless of whether that person also resides or maintains a place of business outside of the City.** ~~at the time of a taxable transaction as defined herein. A person may have dual residency, or other places of residency or domicile, or place of business outside the City prior to, during or after the occurrence of the taxable transaction and be a resident.~~

* * *

RETAILER: Any person selling, leasing, renting **or granting a license to use** tangible personal property or services at retail. Retailer shall include, **but is not limited to,** any:

A. * * *

B. Salesperson, representative, peddler or canvasser, who makes sales as a direct or indirect agent of or obtains **such** property or services sold from a dealer, distributor, supervisor or employer;

C. * * *

~~RETAILER'S FEE OR RETAINAGE: The percent of total City sales and use tax collected which is authorized to be retained by the licensed retailer to recompense the retailer for the expense of collecting and remitting the City sales tax on sales to the various consumers. Consumers filing a City use tax report are not entitled to the retailer's fee.~~

~~RETURN: The sales and use tax reporting form used to report sales and use tax.~~

* * *

~~SHARE DRAFT ACCOUNT: An account in a credit union, on which payment of interest or dividends may be made on a deposit with respect to which the bank, savings and loan association, or industrial bank or the credit union, as the case may be, may require the depositor to give notice of an intended withdrawal not less than thirty (30) days before the withdrawal is made, even though in practice notice is not required and the depositor is allowed to make withdrawal by negotiable order of withdrawal or share draft.~~

~~SPECIAL ACCOUNTING BASIS OR ESTIMATED PERCENTAGE BASIS: The permission to pay or satisfy in full City sales or use tax liability on a percentage of gross sales or gross purchases, and which is granted to facilitate tax reporting to qualified consumers or retailers upon petition to the Director, on the basis prescribed in section 2.7.805 of this article and elsewhere in this City Tax Code.~~

* * *

~~TANGIBLE PERSONAL PROPERTY: Corporeal personal property.~~ **Personal property that can be one or more of the following: seen, weighed, measured, felt, touched, stored, transported, exchanged, or that is in any other manner perceptible to the senses.**

* * *

~~THERAPEUTIC DEVICE: Devices, appliances, or related accessories that are sold to correct or treat a human physical disability or surgically created abnormality; if the device, appliance or related accessory has a retail value of more than one hundred dollars (\$100.00), it must be sold in accord with a written recommendation from a licensed physician to qualify as a therapeutic device for purpose of this City Tax Code.~~

* * *

USE: The exercise, for any length of time, by any person within the City, of any right, power or dominion over tangible personal property **or services** when rented, leased or purchased at retail from sources either within or without the City, from any person or vendor **or used in the performance of a contract in the**

City whether such tangible personal property is owned or not owned by the taxpayer. Use includes possession, storage, consumption, distribution, and the withdrawal of items from inventory for use by the person making the withdrawal.

* * *

WHOLESALE: Any person **doing an organized wholesale or jobbing business and** selling to retailers, jobbers, dealers, or other wholesalers, for **the purpose of** resale, and not for storage, use, consumption, or distribution.

Section 2. This ordinance shall be in full force and effect from and after its final adoption and publication as provided by Charter.

Section 3. Council deems it appropriate that this ordinance be published by title and summary prepared by the City Clerk and that this ordinance be available for inspection and acquisition in the office of the City Clerk.

Introduced, read, passed on first reading and ordered published this ____ day of _____, 2019.

Finally passed: _____

Council President

Mayor's Action:

- Approved on _____.
- Disapproved on _____, based on the following objections:

Mayor

Council Action After Disapproval:

- Council did not act to override the Mayor's veto.
- Finally adopted on a vote of _____, on _____.
- Council action on _____ failed to override the Mayor's veto.

Council President

ATTEST:

Sarah B. Johnson, City Clerk