

BY AUTHORITY

ORDINANCE NO. 43  
SERIES OF 2017

COUNCIL BILL NO. 48  
INTRODUCED BY COUNCIL  
MEMBER YATES

**AN ORDINANCE AMENDING TITLE 4, CHAPTER 4, OF THE ENGLEWOOD  
MUNICIPAL CODE 2000, PERTAINING TO IMPOSITION OF USE TAX, ALL  
WITHIN THE CITY OF ENGLEWOOD, ARAPAHOE COUNTY, COLORADO.**

WHEREAS, Title 4, Chapter 4 of the Englewood Municipal Code, as adopted by Ordinance, sets forth the parameters for imposing the sales and use tax within the City of Englewood, and defines "*Use Tax*" as "[T]he tax to be paid or required to be paid by a consumer for using, storing, distributing or otherwise consuming tangible personal property or taxable services inside the City."

WHEREAS, E.M.C. 4-4-5-2(A)(5) exempts from Use tax the United States government, the State of Colorado, Colorado institutions, or political subdivisions of Colorado, all in their governmental capacities only, and religious, charitable, and eleemosynary institutions in the conduct of their regular religious or charitable functions;

WHEREAS, E.M.C. 4-4-5-2(D) provides that "Nothing herein contained shall be deemed to exempt from the tax levied by Subsection E.M.C. 4-4-5-3B on the storage, use or consumption of any tangible personal property to be used by a contractor for the construction of an improvement for any of the institutions or agencies enumerated in subsection A5";

WHEREAS, the City of Englewood desires to modify E.M.C. 4-4-5-2(D) to exempt capital construction projects of public school districts financed with public funds following public vote, as such capital construction projects incorporate and provide for the costs of municipal infrastructure arising out of such construction projects.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ENGLEWOOD, COLORADO, AS FOLLOWS:

Section 1. Amendment of Title 4, Chapter 4. Title 4, Chapter 4 of the Englewood Municipal Code shall be amended as follows:

**4-4-4-3: - Exemptions to Sales Tax.**

A. *Exempt Items:* The sale of the following classes of tangible personal property are exempt from the tax imposed by Section 4-4-4-2:

1. Motor vehicles, trailers and semi-trailers, registered outside of the City.
2. Sales of tangible personal property where both the following conditions exist:
  - a. The sales are to parties who are residents of, or doing business in, the State of Colorado, but outside the City; and
  - b. The articles purchased are to be delivered to the purchaser outside the City by common carrier or by the conveyance of the seller or by mail.

3. Sale of fuel used for the operation of internal combustion engines.
  4. Sale of medicine, medical supplies, orthopedic braces and appliances, dental appliances, hearing aids, crutches, wheel chairs, eye glasses or other mechanical contrivances when purchased with a licensed practitioner's written prescription.
  5. Sales of food products which are to be consumed off the premises of the vendor. As used herein "food" means food which is advertised or marketed for home consumption and sold in the same form, condition, quantities and packaging as is commonly sold by grocers. The term includes cereals and cereal products; milk and milk products; meat and meat products; fish and fish products; eggs and egg products; vegetables and vegetable products; fruit and fruit products; sugar, sugar products and sugar substitutes; coffees and coffee substitutes; teas, cocoa and cocoa products; spices, condiments, salt and oleomargarine. The term "food" does not include chewing gum; spirituous malt or vinous liquors; cocktail mixes; proprietary medicines; nostrums; lozenges; tonics; vitamins and other dietary supplements; water, mineral water and carbonated water marketed in containers; ice; pet foods; food or drink purchased and used by a business or commercial entity by serving to customers or employees (not resold); food or drink furnished, prepared or served for consumption at tables, chairs or counters or from trays; glasses, dishes or other tableware provided by the retailer; prepared food or drink sold by retailers who regularly sell for consumption on or near the premises of the retailer even though such food or drink is sold on a "take out" or "to go" order and is bagged, packaged or wrapped and taken from the premises of the retailer; and food or drink vended by or through machines on behalf of a vendor.
  6. Sales of goods manufactured within the City and sold directly by the manufacturer to a common carrier operating in interstate commerce as the ultimate consumer thereof.
  7. For transactions consummated on or after January 1, 1986, the City's sales tax shall not apply to the sale of construction and building materials, as the term is used in Section 29-2-109, C.R.S., if such materials are picked up by the purchaser and if the purchaser of such materials presents to the retailer a building permit or other documentation acceptable to the City evidencing that a local use tax has been paid or is required to be paid, or that such purchaser presents a building permit or other documentation acceptable to the City evidencing that such purchaser is exempt from payment of Use Tax pursuant to 4-4-5-2.
  8. Sales of newspapers and magazines.
  9. Sales of tangible personal property at a garage sale as defined herein and not in violation of 15-16-2 EMC.
- B. *Exempt Taxpayers:* Sales to the following classes of taxpayers shall be exempt from the tax imposed by this Chapter:
1. Sales to the United States government; to the State of Colorado, its departments or institutions and to the political subdivisions thereof, in their governmental capacity only; in all sales to the City; providing, however, that no commercial, industrial or other banking institution, organized or chartered by the United States government, any agency or department thereof, or by the State of Colorado, shall be considered a governmental institution for the purpose of this exemption.

2. Sales to religious, charitable and eleemosynary institutions, in the conduct of their regular religious, charitable and eleemosynary functions and activities.
  3. Nothing herein contained shall be deemed to exempt from the tax levied by this Chapter, sales of building materials or supplies to be used by a contractor for the construction of an improvement for any of the institutions or agencies enumerated in subsection B1 or B2 hereof.
  4. Persons purchasing tangible personal property at a garage sale as defined herein and not in violation of 15-16-2 EMC.
- C. *Burden of Providing Exemptions; Disputes:* The burden of proof that any retailer is exempt from collecting a tax upon any goods sold and paying the same to the City, or from making return for the same, shall be on the retailer under such reasonable requirements of proof as the City may prescribe. Should a dispute arise between any purchaser and seller as to whether or not any retail sale is exempt from taxation hereunder, the seller shall, nevertheless, collect and the purchaser shall pay such tax; and the seller shall thereupon issue to the purchaser a receipt, or certificate, on forms prescribed by the City showing the names of the seller and purchaser, the items purchased, the date, price, amount of tax paid, and a brief statement of the claim of exemption. Thereafter the purchaser may apply to the City for a refund of such taxes and it shall then be the duty of the City to determine the question of exemption. In any case where the City refunds any taxes, it may collect from the retailer the amount of taxes retained by him/her as a fee which is attributable to the transaction.

#### **4-4-5-2: - Exemptions to Use Tax.**

- A. The tax or excise levied by Section 4-4-5-1 is hereby declared to be supplementary to the tax levied by Section 4-4-4 hereof, and for this reason, the following transactions shall be exempt therefrom:
1. The storage, use or consumption of personal property, the sale of which is subject to the tax levied by Section 4-4-4.
  2. The storage, use or consumption of any tangible personal property purchased for resale to this City, either in its original form or as an ingredient of a manufactured or compounded product, in the regular course of a business.
  3. The storage, use or consumption of motor fuel upon which there has accrued, or has been paid, the motor fuel tax prescribed by the Colorado Motor Fuel Tax Law of 1933, or any amendments thereto.
  4. The storage, use or consumption of tangible personal property which was acquired at a time when the user or consumer thereof was a nonresident of the City; provided its use or consumption is for the benefit of said user or consumer.
  5. The storage, use or consumption of tangible personal property of the United States government, or the State of Colorado, or its institutions, or its political subdivisions, in their governmental capacities only; or by religious, charitable or eleemosynary institutions in the conduct of their regular religious or charitable functions; provided, however, that no commercial, industrial or other banking institutions, organized or chartered by the United States government, any agency or department thereof, or by the State of Colorado, shall be considered a governmental institution for the purpose of this exemption.

6. The storage, use or consumption of tangible personal property by a person engaged in the business of manufacturing, compounding for sale, profit or use, any article, substance or commodity, which tangible personal property meets all of the following conditions.
  - a. Is actually and factually transformed by the process of manufacture;
  - b. Becomes by the manufacturing process a necessary and recognizable ingredient, component or constituent part of the finished product; and
  - c. Its physical presence in the finished product is essential to the use thereof in the hands of the ultimate consumer.
- B. For transactions consummated on or after January 1, 1986, the City's use tax shall not apply to the storage, use, or consumption of any article of tangible personal property, the sale or use of which has already been subjected to a sales or use tax of another statutory or home rule municipality properly and proportionally imposed on the purchaser or user equal to or in excess of three and one-half percent (3.5%). A credit shall be granted against the City's use tax with respect to the person's storage, use or consumption in the City of tangible personal property, the amount of the credit to equal the tax paid by him/her by reason of the imposition of a sales or use tax of the previous statutory or home rule municipality on his/her purchase or use of the property. The amount of the credit shall not exceed three and one-half percent (3.5%).
- C. For transactions consummated on or after January 1, 1986, the City's use tax shall not be imposed with respect to the use or consumption of tangible personal property within the City which occurs more than three (3) years after the most recent sale of the property if, within the three (3) years following such sale, the property has been significantly used within the State for the principal purposes for which it was purchased.
- D. Nothing herein contained shall be deemed to exempt from the tax levied by Subsection 4-4-5-3B on the storage, use or consumption of any tangible personal property to be used by a contractor for the construction of an improvement for any of the institutions or agencies enumerated in subsection A5 above, except any tangible personal property to be used by a contractor for construction projects associated with any capital improvement project of any public school district, for which bond financing has been approved by majority vote of the applicable electors of such public school district, shall be deemed exempt. All costs associated with municipal infrastructure projects connected to such school district construction project(s) will be the responsibility of the public school district, and will be completed in conformance with City regulations, including but not limited to crosswalks, lighting, curb and guttering, utilities, and roadway access.

Section 2. 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 by a court of competent jurisdiction invalid, such judgment shall not affect, impair or invalidate the remainder of this Ordinance or its application to other persons or circumstances.

Section 3. Inconsistent Ordinances. All other Ordinances or portions thereof inconsistent or conflicting with this Ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

Section 4. Effect of repeal or modification. The repeal or modification of any provision of the Code of the City of Englewood by this Ordinance shall not release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture, or liability, either civil or criminal,

which shall have been incurred under such provision, and each provision shall be treated and held as still remaining in force for the purposes of sustaining any and all proper actions, suits, proceedings, and prosecutions for the enforcement of the penalty, forfeiture, or liability, as well as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions. Section 5. Safety Clauses. The City Council of Englewood, Colorado, hereby finds, determines, and declares that this Ordinance 1) is promulgated under the general police power of the City of Englewood, 2) is promulgated for the health, safety, and welfare of the public, and 3) is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that this Ordinance bears a rational relation to the proper legislative object sought to be obtained.

Introduced, read in full, and passed on first reading on the 19<sup>th</sup> day of June, 2017.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 22<sup>nd</sup> day of June, 2017.

Published as a Bill for an Ordinance on the City's official website beginning on the 21<sup>st</sup> day of June, 2017 for thirty (30) days.

Read by Title and passed on final reading on the 3<sup>rd</sup> day of July, 2017.

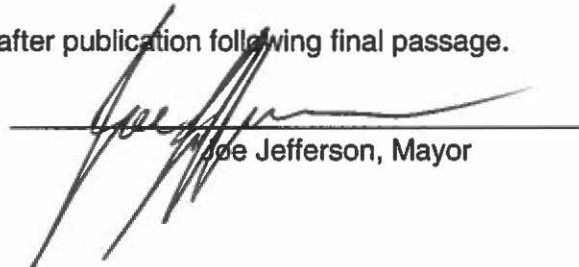
Published by Title in the City's official newspaper as Ordinance No. 43, Series of 2017, on the 6th day of July, 2017.

Published by title on the City's official website beginning on the 5th day of July, 2017 for thirty (30) days.

This Ordinance shall take effect thirty (30) days after publication following final passage.

ATTEST:

  
Stephanie Carlile, Acting City Clerk

  
Joe Jefferson, Mayor

I, Stephanie Carlile, Acting City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of the Ordinance passed on final reading and published by Title as Ordinance No. 43, Series of 2017.

  
Stephanie Carlile