

ORDINANCE NO. 2055

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GOLDEN, COLORADO, AMENDING CHAPTERS 3.02, 3.03, AND 3.08 OF THE GOLDEN MUNICIPAL CODE, ENACTING AND IMPLEMENTING STANDARDIZED SALES AND USE TAX DEFINITIONS

WHEREAS, the Colorado General Assembly adopted Senate Joint Resolution (SJR) 14-038, asking the Colorado Municipal League (CML) to work with its members to develop a package of standardized sales tax definitions; and

WHEREAS, CML formed a Sales Tax Standardized Definitions Committee comprised of members from self-collecting home-rule municipalities that worked diligently to prepare a list of standard definitions that would be acceptable to such municipalities; and

WHEREAS, City of Golden staff fully participated on the Committee and supports the results of the work of the Committee; and

WHEREAS, these changes to the Municipal Code are for the purpose of clarification and uniformity only, and will not result in the implementation of any new policy, nor will they result in the implementation of any new taxes, nor will it result in the elimination of any current tax exemptions.

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

Section 1. Section 3.02.010- Words and phrases defined, of Chapter 3.02 – Definitions, of Title 3 – Retail Sales and Use Tax, of the Golden Municipal Code is repealed and reenacted to read as follows:

3.02.010 - Words and phrases defined.

The following words and phrases as used in this title shall have the following meaning:

Agricultural Producer means a person regularly engaged in the business of using land for the production of commercial crops or commercial livestock. The term includes farmers, market gardeners, commercial fruit growers, livestock breeders, dairymen, poultry men, and other persons similarly engaged, but does not include a person who breeds or markets animals, birds, or fish for domestic pets nor a person who cultivates, grows, or harvests plants or plant products exclusively for that person's own consumption or casual sale.

Aircraft means a device that is used or intended to be used for flight in the air.

Aircraft Part means any tangible personal property that is intended to be permanently affixed or attached as a component part of an aircraft.

Aircraft Simulator means a Flight Simulator Training Device (FSTD) as defined in Part I of Title 14 of the Code of Federal Regulations that is qualified in accordance with Part 60 of Title 14 of the Code of Federal Regulations for use in a Federal Aviation Administration Approved Flight Training Program.

Aircraft Simulator Part means any tangible personal property that is originally designed and intended to be permanently affixed or attached as a component part of an aircraft, and which will also function when it is permanently affixed or attached as a component part of an aircraft simulator.

Auction means any sale where tangible personal property is sold by an auctioneer who is either the agent for the owner of such property or is in fact the owner thereof.

Automotive vehicle means any vehicle or device in, upon, or by which any person or property is or may be transported or drawn upon a public highway, or any device used or designed for aviation or flight in the air. Automotive vehicle includes, but is not limited to, motor vehicles, trailers, semi-trailers, or mobile homes. Automotive vehicle shall not include devices moved by human power or used exclusively upon stationary rails or tracks.

Business means all activities engaged in or caused to be engaged in with the object of gain, benefit, or advantage, direct or indirect.

Carrier Access services means the services furnished by a local exchange company to its customers who provide telecommunications services which allow them to provide such telecommunications services.

Charitable organization means any entity which:

(1) Has been certified as a nonprofit organization under Section 501(c)(3) of the Internal Revenue Code; and

(2) 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 thereby lessens the burdens of government.

City means the municipality of Golden, Colorado.

Coin Operated Device means any device operated by coins or currency or any substitute therefor.

Collection Costs shall include, but is not limited to, all costs of audit, assessment, bank fees, hearings, execution, lien filing, distraint, litigation, locksmith fees, auction fees and costs, prosecution and attorney fees.

Commercial Packaging Materials means containers, labels, and/or cases, that become part of the finished product to the purchaser, 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 means materials that do not become part of the finished product to the purchaser 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.

Construction Equipment means any equipment, including mobile machinery and mobile equipment, which is used to erect, install, alter, demolish, repair, remodel, or otherwise make improvements to any real property, building, structure or infrastructure.

Construction materials means tangible personal property which, when combined with other tangible personal property, loses its identity to become an integral and inseparable part of a structure or project including public and private improvements. Construction materials include, but are not limited to, such things as: asphalt, bricks, builders hardware, caulking material, cement, concrete, conduit, electric wiring and connections, fireplace inserts, electrical heating and cooling equipment, flooring, glass, gravel, insulation, lath, lead, lime, lumber, macadam, millwork, mortar, oil, paint, piping, pipe valves and pipe fittings, plaster, plumbing fixtures, putty, reinforcing mesh, road base, roofing, sand, sanitary sewer pipe, sheet metal, site lighting, steel, stone, stucco, tile, trees, shrubs and other landscaping materials, wall board, wall coping, wall paper, weather stripping, wire netting and screen, water mains and meters, and wood preserver. The above materials, when used for forms or other items which do not remain as an integral and inseparable part of completed structure or project are not construction materials.

Consumer means any person in the City who purchases, uses, stores, distributes or otherwise consumes tangible personal property or taxable services, purchased from sources inside or outside the City.

Contract auditor means a duly authorized agent designated by the taxing authority and qualified to conduct tax audits on behalf of and pursuant to an agreement with the municipality.

Contractor means any person who shall build, construct, reconstruct, alter, expand, modify, or improve any building, dwelling, structure, infrastructure, or other improvement to real property for another party pursuant to an agreement. For purposes of this definition, Contractor also includes subcontractor.

Cover Charge means 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.

Data processing equipment means any equipment or system of equipment used in the storage, manipulation, management, display, reception or transmission of information.

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".

Engaged in business in the city means performing or providing services or selling, leasing, renting, delivering, or installing tangible personal property for storage, use or consumption within the city. Engaged in business in the city includes, but is not limited to, any one of the following activities by a person:

(1) Directly, indirectly, or by a subsidiary maintains a building, store, office, salesroom, warehouse, or other place of business within the taxing jurisdiction;

(2) Sends one or more employees, agents or commissioned sales persons into the taxing jurisdiction to solicit business or to install, assemble, repair, service, or assist in the use of its products, or for demonstration or other reasons;

(3) Maintains one or more employees, agents or commissioned sales persons on duty at a location within the taxing jurisdiction;

(4) Owns, leases, rents or otherwise exercise control over real or personal property within the taxing jurisdiction; or

(5) Makes more than one delivery into the taxing jurisdiction within a 12-month period by any means other than a common carrier.

Factory Built Housing means a manufactured home or modular home.

Finance director means the finance director of the City of Golden or such other person designated by the municipality; finance director shall also include such person's designee.

Food for home consumption means food for domestic home consumption as defined in 7 U.S.C. Section 2012(k)(2014) as amended, for purposes of the supplemental nutrition assistance program, or any successor program, as defined in 7 U.S.C. Section 2012(t), 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 unsealed containers or cups that are vended by or through machines or non-coin operated coin-collecting food and snack devices on behalf of a vendor.

Garage Sales means sales of tangible personal property, except automotive vehicles, occurring at the residence of the seller, where the 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.

Gross sales means 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.

Internet subscription service means software programs, systems, data and applications available online through rental, lease or subscription, that provide information and services including, but not limited to, data linking, data research, data analysis, data filtering or record compiling.

License means a City of Golden sales and use tax license.

Linen services means services involving the provision and cleaning of linens, including but not limited to, rags, uniforms, coveralls and diapers.

Lodging services means the furnishing of rooms or accommodation by any person, partnership, association, corporation, estate, representative capacity or any other combinations of individuals by whatever name known to a person who for a consideration uses, possesses, or has the right to use or possess any room in a hotel, inn, bed and breakfast residence, apartment hotel, lodging house, motor hotel, guesthouse, guest ranch, trailer coach, mobile home, auto camp, or trailer court and park, or similar establishment for a period of less than 30 days under any concession, permit, right of access, license to use, or other agreement, or otherwise.

Manufacturing means the operation or performance of an integrated series of operations which places a product, article, substance, commodity, or other tangible personal property in a form, composition or character different from that in which it was acquired whether for sale or for use by a manufacturer. The change in form, composition or character must result in a different product having a distinctive name, character or use from the raw or prepared materials.

Medical marijuana means marijuana acquired, possessed, cultivated, manufactured, delivered, transported, supplied, sold, or dispensed to a person who qualifies as a patient with a debilitating medical condition(s) under Article XVIII, Section 14, of the Colorado Constitution, and which person holds a valid "registry identification card" issued by the State of Colorado pursuant to Colorado Constitution, Article XVIII, Section 14.

Mobile machinery and self-propelled construction equipment means those vehicles, self-propelled or otherwise, which are not designed primarily for the transportation of persons or cargo over the public highways, and those motor vehicles which may have originally been designed for the transportation of persons or cargo over the public highways, and those motor vehicles which may have originally been designed for the transportation of persons or cargo but which have been redesigned or modified by the mounting thereon of special equipment or machinery, and which may be only incidentally operated or moved over the public highways. This definition includes, but is not limited to, wheeled vehicles commonly used in the construction, maintenance, and repair of roadways, the drilling of wells, and the digging of ditches.

Newspaper means a publication, printed on newsprint, intended for general circulation, and published regularly at short intervals, containing information and editorials on current events and news of general interest. The term newspaper does not include: magazines, trade publications or journals, credit bulletins, advertising inserts, circulars, directories, maps, racing programs, reprints, newspaper clipping and mailing services or listings, publications that include an updating or revision service, or books or pocket editions of books.

Online Garage Sales means sales of tangible personal property, except automotive vehicles, occurring online, where the property to be sold was originally purchased for use by the seller or members of the seller's household.

Person means any individual, firm, partnership, joint venture, corporation, limited liability company, estate or trust, receiver, trustee, assignee, lessee or any person acting in a fiduciary or representative capacity, whether appointed by court or otherwise, or any group or combination acting as a unit.

Preprinted newspaper supplements shall mean inserts, attachments or supplements circulated in newspaper that:

- (1) Are primarily devoted to advertising; and
- (2) The distribution, insertion, or attachment of which is commonly paid for by the advertiser.

Prescription Drugs for Animals means 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 order in writing, dated and signed 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 means 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 of the healing arts, or given orally by a 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 means 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, 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:

- (1) Such exchanged property is to be sold thereafter in the usual course of the retailer's business, or
- (2) 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.

Price or purchase price includes:

- (1) The amount of money received or due in cash and credits.
- (2) Property at fair market value taken in exchange but not for resale in the usual course of the retailer's business.
- (3) Any consideration valued in money, whereby the manufacturer or someone else reimburses the retailer for part of the purchase price and other media of exchange.
- (4) 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 wheeling-in charges included in the purchase price and not separately stated.
- (6) Transportation and other charges to effect delivery of tangible personal property to the purchaser.
- (7) Indirect federal manufacturers' excise taxes, such as taxes on automobiles, tires and floor stock.
- (8) The gross purchase price of articles sold after manufacturing or after having been made to order, including the gross value of all the materials used, labor and service performed and the profit thereon.

Price or Purchase Price shall not include:

- (1) Any sales or use tax imposed by the State of Colorado or by any political subdivision thereof.
- (2) The fair market value of property exchanged if such property is to be sold thereafter in the retailers' usual course of business. This is not limited to exchanges in Colorado. Out of state trade-ins are an allowable adjustment to the purchase price.
- (3) Discounts from the original price if such 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. 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.

Private communications services means telecommunications services furnished to a subscriber, which entitles the subscriber to exclusive or priority use of any communication channel or groups of channels, or to the exclusive or priority use of any interstate inter-communications system for the subscriber's stations.

Prosthetic Devices for Animals means 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 means 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 means 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. These terms include capital leases, installment and credit sales, and property and services acquired by:

- (1) Transfer, either conditionally or absolutely, of title or possession or both to tangible personal property, other taxable products, or taxable services;
- (2) 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;
- (3) Performance of taxable services; or
- (4) Barter or exchange for other tangible personal property, other taxable products, or services.

The terms purchase and sale do not include:

- (1) A division of partnership assets among the partners according to their interests in the partnership;
- (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;
- (3) 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) A transfer of a partnership or limited liability company interest;
- (5) The transfer of assets to a commencing or existing partnership or limited liability company, if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets;
- (6) The repossession of personal property by a chattel mortgage holder or foreclosure by a lienholder;
- (7) The transfer of assets from a parent corporation to a subsidiary company or companies which are owned at least 80 percent by the parent company, which transfer is solely in exchange for stock or securities of the subsidiary company;
- (8) The transfer of assets from a subsidiary company or companies which are owned at least 80 percent by the parent company to a parent company or to another subsidiary which is owned at least 80 percent by

the parent company, which transfer is solely in exchange for stock or securities of the parent corporation or the subsidiary which received the assets;

(9) The transfer of assets between parent and closely held subsidiary companies, or between subsidiary companies closely held by the same parent company, or between companies which are owned by the same shareholders in identical percentage of stock ownership amounts, computed on a share-by-share basis, when a tax imposed by this article was paid by the transferor company at the time it acquired such assets, except to the extent that there is an increase in the fair market value of such assets resulting from the manufacturing, fabricating, or physical changing of the assets by the transferor company. To such an extent any transfer referred to in this paragraph (11) shall constitute a sale. For the purposes of this paragraph (11), a closely held subsidiary corporation is one in which the parent company owns stock possessing or membership interest at least 80 percent of the total combined voting power of all classes of stock entitled to vote and owns at least 80 percent of the total number of shares of all other classes of stock.

Recreation services means all services relating to athletic or entertainment participation events and/or activities including but not limited to pool, golf, billiards, skating, tennis, bowling, health/athletic club memberships, coin operated amusement devices, video games and video club memberships.

Retail sales means all sales except wholesale sales.

Retailer means 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:

- (1) Auctioneer;
- (2) 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;
- (3) Charitable organization or governmental entity which makes sales of tangible personal property to the public, notwithstanding the fact that the merchandise sold may have been acquired by gift or donation or that the proceeds are to be used for charitable or governmental purposes;
- (4) Retailer-contractor, when acting in the capacity of a seller of building supplies, construction materials, and other tangible personal property.

Retailer-contractor means a contractor who is also a retailer of building supplies, construction materials, or other tangible personal property, and purchases, manufactures, or fabricates such property for sale (which may include installation), repair work, time and materials jobs, and/or lump sum contracts.

Return means any form prescribed by the city administration for computing and reporting a total tax liability

Sales tax means the tax that is collected or required to be collected and remitted by a retailer on sales taxed under this Code.

Security system services means electronic alarm and/or monitoring services. Such term does not include non-electronic security services such as consulting or human or guard dog patrol services.

Software Program means a sequence of instructions that can be measured, interpreted and executed by an electronic device (e.g. a computer, tablets, smart phones) regardless of the means by which it is accessed or the medium of conveyance. Software program includes: (1) Custom software program, which is a software program prepared to the special order or specifications of a single customer; (2) Pre-written software program, which is a software program prepared for sale or license to multiple users, and not to the special order or specifications of a single customer. Pre-written software is commonly referred to as "canned," "off-the-shelf ("COTS")," "mass produced" or "standardized;" (3) Modified software, which means pre-written software that is altered or enhanced by someone other than the purchaser to create a program for a particular user; and (4) The generic term "software," "software application," as well as "updates," "upgrades," "patches," "user exits," and any items which add or extend functionality to existing software programs.

Software as a service means software that is rented, leased or subscribed to from a provider and used at the consumer's location, including but not limited to applications, systems or programs.

Software License Fee means a fee charged for the right to use, access, or maintain software programs.

Software maintenance agreement means an agreement, typically with a software provider, that may include:

- (1) Provisions to maintain the right to use the software;
- (2) Provisions for software upgrades including code updates, version updates, code fix modifications, enhancements, and added or new functional capabilities loaded into existing software; or
- (3) Technical support.

Sound system services means the provision of broadcast or pre-recorded audio programming to a building or portion thereof. Such term does not include installation of sound systems where the entire system becomes the property of the building owner or the sound system service is for presentation of live performances.

Storage means any keeping or retention of, or exercise dominion or control over, or possession of, for any length of time, tangible personal property not while in transit but on a stand still basis for future use when leased, rented or purchased at retail from sources either within or without the City from any person or vendor.

Tangible personal property means 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.

Tax means the use tax due from a consumer or the sales tax due from a retailer or the sum of both due from a retailer who also consumes.

Tax deficiency or deficiency means any amount of tax, penalty, interest, or other fee that is not reported and/or not paid on or before the due date that any return or payment of the tax is required under the terms of this Code.

Taxable sales means gross sales less any exemptions and deductions specified in this Code.

Taxable services means services subject to tax pursuant to this Code.

Taxpayer means any person obligated to collect and/or pay tax under the terms of this Code.

Telecommunications service means the service of which the object is the transmission of any two-way interactive electronic or electromagnetic communications including but not limited to voice, image, data and any other information, by the use of any means but not limited to wire, cable, fiber optical cable, microwave, radio wave, Voice over Internet Protocol (VoIP), or any combinations of such media. including any form of mobile two-way communication.

Television & Entertainment Services means audio or visual content, that can be transmitted electronically by any means, for which a charge is imposed.

Therapeutic Device means devices, appliances, or related accessories that correct or treat a human physical disability or surgically created abnormality.

Total tax liability means the total of all tax, penalties, and/or interest owed by a taxpayer and shall include sales tax collected in excess of such tax computed on total sales.

Transient/temporary sale means a sale by any person who engages in a temporary business of selling and delivering goods within the city, for a period of no more than seven consecutive days.

Transient/temporary vendor means any person who engages in the business of transient/temporary sales.

Use means 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 also includes the withdrawal of items from inventory for consumption.

Use tax means the tax 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.

Wholesale sales means a sale by wholesalers to retailers, jobbers, dealers or wholesalers for resale and does not include a sale by Wholesalers to users or consumers not for resale; latter types of sales shall be deemed to be Retail Sales and shall be subject to the provisions of this chapter.

Wholesaler means 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. Section 3.03.010- Rate, imposition and collection, distribution, of Chapter 3.03 – Levy, of Title 3 – Retail Sales and Use Tax, of the Golden Municipal Code is repealed and reenacted to read as follows:

3.03.010 - Rate, imposition and collection, distribution.

(a) *Sales tax.* There is levied a tax upon all sales of tangible personal property and services specified in subsection 3.03.030(a). The rate levied shall be three percent of the purchase price.

(1) All sales except automotive vehicles are consummated at the place of business of the retailer unless the property sold is delivered by the retailer, his agent, a common carrier, or by mail. In the event of such delivery, the sale is consummated at the place of delivery.

(2) Sales of automotive vehicles are consummated at the place of residence of the purchaser, as determined by the automotive vehicle registration laws of the State of Colorado (Title 42 of the Colorado Revised Statutes). The county clerk of the county in which registration occurs is authorized to collect such tax for the city prior to or at the time of registration.

(b) *Use tax.* There is levied a tax upon the privilege of using, storing, distributing, or otherwise consuming in the city any article of tangible personal property or taxable services specified in subsection 3.03.030(b). The rate levied shall be three percent of the purchase price.

(c) *Collection.* Any retailer engaged in business in the city shall collect tax and remit it to the city in accordance with the schedule set forth in this title and procedures and regulations approved and specified by the finance director. The failure of such retailer to collect and remit the taxes shall not relieve the purchaser or consumer from liability to the city for said taxes.

(d) *Sales and use tax capital improvements fund.* The City of Golden "Sales and Use Tax Capital Improvements Fund" is hereby created. Such fund shall not be available to be pledged or expended for any general municipal purposes. One-third of the sales and use taxes collected by virtue of this title shall immediately be distributed to and deposited in the "Sales and Use Tax Capital Improvements Fund". Funds deposited to the "Sales and Use Tax Capital Improvements Fund" shall be used solely to provide for capital needs throughout the City of Golden as determined by the public capital program budgeting process.

(e) *Applicability to banks.* The provisions of this title shall apply to national banking associations and to banks organized and chartered under State of Colorado law.

(f) *Community marketing fund.* The City of Golden "Community Marketing Fund" is hereby created. Such fund shall not be available to be pledged or expended for any purpose except as provided herein. For the period beginning January 1, 2001 (for sales tax remittances due to the City in February 2001) and extending until December 31, 2020 (for sales tax remittances due to the City in January, 2021) the two and one-half percent vendors fee credit suspended by Ordinance 1510, as extended by Ordinances 1749, 1875, and 2013 shall immediately upon collection by the city be distributed to and deposited in the "community marketing fund". Funds deposited in the "community marketing fund" shall be used solely to market the

community utilizing the following activities, as described in, and limited by the management requirements contained in section 18.62.040.

- (1) Development and updating a community marketing plan.
- (2) Development and updating of an implementation strategy for promotion activities.
- (3) Public relations activities, promotional activities, direct advertising, and limited financial support for certain events and activities recommended by the plan.

Section 3. Section 3.03.020- Tax schedule, of Chapter 3.03 – Levy, of Title 3 – Retail Sales and Use Tax, of the Golden Municipal Code is amended to provide as follows:

3.03.020 - Tax schedule.

The sales and use taxes imposed in this title shall be collected and remitted to the city in accordance with the following schedule:

Purchase Price	Tax
\$.01—\$.18 inclusive	No tax
\$.19—\$.51 inclusive	\$.01
\$.52—\$.84 inclusive	\$.02
\$.85—\$1.00 inclusive	\$.03

For a purchase price in excess of \$1.00 the tax shall be three cents on each full dollar of the purchase price plus the tax shown on the schedule contained in this section for the applicable fractional part of a dollar of each such purchase price.

Section 4. Section 3.03.030- Transactions subject to tax, of Chapter 3.03 – Levy, of Title 3 – Retail Sales and Use Tax, of the Golden Municipal Code is amended to provide as follows:

3.03.030 - Transactions subject to tax.

- (a) The sales tax levied by subsection 3.03.010(a) shall apply to the price of the sale or provision of the following:

(1) Tangible personal property that is sold, leased or rented, whether or not such property has been included in a previous taxable transaction.

(2) Telecommunication services. This includes all international, interstate and intrastate telecommunication services originating from or received on telecommunication equipment in the city, if the charge for the service is billed to an apparatus, telephone or account in the city, except that for mobile telecommunication services liability shall be imposed only when the users' place of primary use is within the city. For the purposes of this subsection, "place of primary use" means, as defined in C.R.S. 29-1-1002, as amended.

(3) Installation in the city of equipment required to receive or transmit telecommunications service.

(4) Upon all sales of food for home consumption, prepared food, or food for immediate consumption. Except as provided in section 3.03.040, upon the amount paid for food and drink served or furnished in or by restaurants, cafes, lunch counters, cafeterias, hotels, drug stores, social clubs, nightclubs, cabarets, resorts, snack bars, caterers, bars, carry-out shops and other like places of business at which prepared food, meals or drink is regularly served, including mobile facilities. Cover charges shall be included as a part of the amount paid for such food or drinks.

(5) Gas, electricity, steam coal, wood, fuel oil or coke furnished for domestic or commercial consumption.

(6) Television and entertainment services including charges for service, installation, connection, or any similar charge.

(7) Service of operators when furnished with the lease or rental of tangible personal property if such services are not separately stated.

(8) Linen services.

(9) Tangible personal property dispensed from currency or coin-operated devices.

(10) Lodging services.

(11) Pre-written (canned) Software Programs that are sold, licensed for use, subscribed to, leased or rented. Software programs are deemed to be used within the city if one of the following is true:

a. The end-user of the software program is engaged in business in the city or resides in the city while using or accessing the software; or

b. The server or other computer equipment upon which the software program, electronic files or electronic data reside or are maintained is located within the city.

(12) Modified software that is sold, licensed for use, leased or rented, provided that if the cost of customization is separately calculated and stated from the cost of the pre-written (canned) software program, the cost of the modified component of the purchase price shall not be subject to the sales tax.

(13) Software license fees.

(14) Software maintenance agreements when:

a. The agreement is mandatory to maintain the right to use the associated software; or

b. The agreement includes software upgrades and the cost for upgrading is not separately calculated and stated from other aspects; or

c. The agreement includes technical support and the cost associated with technical support is not separately stated or calculated.

(15) Tangible personal property that is utilized by customers or patrons, while affixed to a building or premises and intended to be utilized in its current state (i.e. automated or self-serve car wash equipment, laundromat washers and dryers, bowling lanes and such properties) shall be subject to sales tax unless the business owner pays sales tax or subsequent use tax upon the purchase of the tangible personal property as further provided by subsection 3.03.030(b)(6).

(16) Sales of tangible personal property by a retailer-contractor, when acting as a retailer, shall be subject to sales tax on the total sales price. Labor and installation charges are not taxable if separately stated. When a building permit is pulled, the retailer-contractor is considered to be acting as a contractor. When a building permit is not pulled, the retailer-contractor is considered to be acting as a retailer.

(17) Software as a service.

(18) Internet subscription services.

(19) Data processing equipment.

(20) Digital products.

(21) Aircraft, aircraft parts, aircraft simulators, and aircraft simulator parts. The term aircraft includes unmanned aerial vehicles (UAVs or "drones") and any other similar unmanned flying craft.

(22) Commercial shipping materials.

(23) Prescription drugs for animals.

(24) Prosthetic devices for animals.

(25) The following recreation services including but not limited to billiards, bowling, coin operated amusement devices, video games, and video club memberships.

(26) Rental of all or part of a facility for exclusive or private use, including room rentals.

(27) Security system services.

(28) Sound system services.

(29) Therapeutic devices.

(b) The use tax levied by subsection 3.03.010(b) shall apply to the purchase price for the privilege of using, storing or consuming inside the city the following:

(1) Tangible personal property, services and rights for all items described in subsection 3.03.030(a) above, acquired by purchase, license, lease or rental without payment of the sales tax.

(2) Tangible personal property purchased at wholesale or component parts purchased for manufacture which are subsequently used by the taxpayer, either personally or in business, including, but not limited to, goods given as samples or prizes for purposes of promoting business, sales or goodwill by persons engaged in business in the city.

(3) Taxable services described in subsection 3.03.030(a) which are purchased without previous payment of the sales tax.

(4) Automotive vehicles required under the provisions of Title 42 of the Colorado Revised Statutes to be registered at an address inside the city. The county clerk of the county in which the registration occurs is authorized to collect such tax for the city prior to or at the time of registration.

(5) Construction materials.

(6) Tangible personal property purchased to be affixed to a building or premises and intended to be utilized in that fashion (i.e. automated or self-serve car wash equipment, laundromat washers and dryers, bowling lanes, and such properties) and all materials, supplies and parts associated with such operation, unless the business owner elects to collect and remit sales tax on each transaction where the equipment is utilized by the customer or patron. Such election must be made by the due date of the initial use tax return and is irrevocable. The failure to pay sales tax or remit use tax on the initial use tax return due to the city shall be deemed as an election to collect and remit sales tax on each transaction where the equipment is utilized by the customer or patron.

Section 5. Section 3.03.040- Exemption from sales tax, of Chapter 3.03 – Levy, of Title 3 – Retail Sales and Use Tax, of the Golden Municipal Code is repealed and reenacted to read as follows:

3.03.040 - Exemption from sales tax.

(a) The sales tax levied by subsection 3.03.010(a) shall not apply to the following:

(1) Sales of automotive vehicles sold to nonresidents of the city for registration outside the city. It shall be unlawful to register an automotive vehicle outside the city with intent to avoid tax liability imposed by this title.

(2) Sale of tangible personal property when both of the following conditions are met:

a. The sales are to individuals who reside or businesses which are located outside the city; and

b. The articles purchased are delivered to the purchaser outside the city by common carrier or by the conveyance of the seller or by mail, and such articles delivered are used outside the city.

(3) Sale of the following medical items: prescription drugs for humans; insulin in all its forms dispensed pursuant to the direction of a licensed medical or dental practitioner; 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 for humans; wheelchairs and hospital beds; drugs or materials when furnished by a licensed medical or dental practitioner as part of professional services provided to a patient; and correctable eyeglasses, contact lenses, or hearing aids. This exemption shall not encompass items purchased for use by medical and dental practitioners or medical facilities in providing their services, even though certain of those items may be packaged for single use by individual patients after which the item would be discarded. This exemption shall not include therapeutic devices.

(4) Sales of cigarettes.

(5) All direct sales to charitable organizations in the conduct of their regular charitable functions and activities, when billed to and paid for by the charitable organization.

(6) All sales of construction and building materials to contractors and subcontractors for use in the building, erection, alteration or repair of structures, highways, roads, streets, and other public works owned or used by charitable organizations in the conduct of their regular charitable functions and activities.

(7) All direct sales to the United States government, the State of Colorado, its departments or institutions, and the political subdivisions thereof in their governmental capacities only, when billed to and paid for by the governmental entity.

(8) All sales which the city is prohibited from taxing under the Constitution or laws of the United States, or the Constitution of the State of Colorado.

(9) Tangible personal property sold to a public utility company or railroad doing business both inside and outside the city, for use in its business operations outside the city, even though delivery thereof is made inside the city.

(10) The sale of motor fuels upon which there has been accrued or paid the tax prescribed by Article 27 of Title 39 of the Colorado Revised Statutes.

(11) The sale of cattle, sheep, lambs, poultry, fish for stock purposes, swine and goats; and the sale of mares and stallions for breeding purposes.

(12) All sales of feed for livestock or poultry and all sales of seeds to agricultural producers who sell the crops resulting from the propagation of such seeds or use such crops as feed for livestock or poultry.

(13) All wholesale sales.

(14) Sales of tangible personal property to a person engaged in the business of manufacturing, compounding for sale, profit or use, any article, substance or commodity:

a. Which tangible personal property is actually and factually transformed by the process of manufacturing or compounding; and

b. Which tangible personal property becomes by the manufacturing or compounding process, a necessary and recognizable ingredient, component and constituent part of the finished product; and

c. Whose physical presence in the finished product is essential to the use thereof in the hands of the ultimate consumer.

d. With regard to the sale of tangible personal property sold to a person engaged in the business of manufacturing or compounding for sale, profit or use of food products, such tangible personal property is exempt from taxation under this section when:

1. It is intended that such property become an integral or constituent part of a food product which is intended to be sold ultimately at retail for human consumption; or

Such property, whether or not it becomes an integral or constituent part of a food product, is a chemical, solvent, agent, mold skin casing, or other material, is used for the purpose of producing or inducing a chemical or physical change in a food product or is used for the purpose of placing a food product in a more marketable condition and is directly utilized and consumed, dissipated, or destroyed, to the extent it is rendered unfit for further use, in the processing of a food product which is intended to be sold ultimately at retail for human consumption.

(15) Sales of tangible personal property for use as "commercial packaging materials".

(16) Sale of tangible personal property purchased exclusively for rental or leasing inventory, provided that such property is not otherwise used for the purchaser's general business or personal use. A sales tax is due upon the rental or leasing of such property regardless of whether a sales or use tax has been paid upon a previous purchase of the property.

(17) Labor sold with tangible personal property, if such labor is stated separately on the invoice from the tangible personal property sold; except that manufacturing or fabricating or other processing labor is never exempt.

(18) Sales, licensing, lease, or rental of custom software programs.

(19) The sale of construction materials, 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, which evidences that a use tax on such materials has been paid or is required to be paid to the city or a municipality.

(20) The sale of food that is purchased by the medium of exchange commonly known as "food stamps".

(21) The sale of food as defined in Section 1786 of Title 42 of the United States Code as of, and as it may be amended after, October 1, 1987, that is purchased with vouchers, checks or similar certificates of exchange for the "Special Supplemental Food Program" for women, infants and children.

(22) Forty-eight percent of the purchase price of factory built housing, as such housing is defined in C.R.S. 24-32-703(3).

(23) Newspapers, newsprint and printer's ink used to produce newspapers.

(24) Preprinted newspaper supplements.

(25) Garage sales and online garage sales, provided that such sales are conducted no more than three times a year.

(26) Sales and purchases of electricity, coal, gas, fuel oil, steam, or coke for use in processing, manufacturing, mining, refining, irrigation, building construction, telegraph, telephone, and radio communications, street and railroad transportation services and all industrial uses.

(27) Sales of freestanding solid fuel heating appliances, pre-fabricated fireplaces, gas log units or such similar heating appliances for residential dwelling places, or units which comply with all applicable laws, rules, regulations and requirements related to "clean air" standards, and which replace existing fireplaces, freestanding solid fuel heating appliances, pre-fabricated fireplaces or other such heating appliances which do not comply with said law.

(28) "Telecommunications service" under the following conditions:

a. Separately stated software that constitutes computer processing applications used to act on the information to be transmitted; or

b. Carrier access service, interstate or international WATS/800 service and interstate or international private communication services shall be exempt from taxation; or

c. Telecommunication services sold for resale to other persons for the purpose of providing telecommunication services to the final end user.

(29) The following recreational services: health /athletic club memberships and golf greens fees.

(b) The city's sales tax shall not apply to the sale of tangible personal property or the furnishing of services if the transaction was previously subjected to a sales or use tax lawfully imposed on the purchaser or user by another statutory or home rule municipality equal to or in excess of the sales tax required to be paid pursuant to this title. A credit shall be granted against the city's sales tax with respect to such transaction equal in amount to the lawfully imposed municipal sales or use tax previously paid by the purchaser or user to the other municipality. The amount of the credit shall not exceed the amount of the sales tax required to be paid pursuant to this title. This exemption shall be denied if the tax paid to another municipality was not legally due under the laws of the municipality. This exemption shall be denied for subsequent transactions within the city, including, but not limited to, rentals and leases of the tangible personal property.

(c) The list of exemptions shall not be increased by implication or similarity.

Section 6. Section 3.03.050- Exemption from use tax, of Chapter 3.03 – Levy, of Title 3 – Retail Sales and Use Tax, of the Golden Municipal Code is repealed and reenacted to read as follows:

3.03.050 - Exemption from use tax.

(a) The use tax levied by subsection 3.03.010(b) shall not extend or apply to the following:

(1) The use, storage or consumption of tangible personal property the sale of which would be exempt from the sales tax.

(2) The storage of construction materials.

(3) The use or consumption of tangible personal property which occurs more than three years after the most recent sale of such property, if within the three years following such sale, the property has been significantly used within the State of Colorado for the principal purpose for which it was purchased.

(4) The storage, use or consumption of automotive vehicles if the owner is or was, at the time of purchase, a nonresident of the city and he/she purchased the vehicle for use outside the city, and if the vehicle was previously registered, titled, and licensed outside the city. The use of an automotive vehicle in conjunction with a business located within the city shall not be exempt by reason of the storage of said automotive vehicle outside the city.

(b) 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 legally imposed on the purchaser or user equal to or in excess of the use tax required to be paid pursuant to this title. 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 the purchaser or user by reason of the imposition of a sales or use tax of the previous municipality on the purchase or use of the property. The amount of the credit shall not exceed the amount of the use tax required to be paid pursuant to this title. This exemption shall be denied if the tax paid to another municipality was not legally due under the laws of the municipality. This exemption shall be denied for subsequent transactions within the city, including, but not limited to, rentals and leases of the tangible personal property.

(c) No use tax shall be due on the purchase of construction materials used in construction projects undertaken and managed directly by the city.

(d) The list of exemptions shall not be increased by implication or similarity.

Section 7. Subsection 3.08.010(b)- Recovery of taxes, penalty and interest, of Chapter 3.08 – Enforcement, of Title 3 – Retail Sales and Use Tax, of the Golden Municipal Code is repealed and reenacted to read as follows

3.08.010 - Recovery of taxes, penalty and interest.

(b) If any fees, taxes, penalty or interest imposed by this title and shown due by returns filed by the taxpayer or as shown by assessments duly made as provided in this section are not paid within five days after the same are due, then the finance director shall issue a deficiency notice, setting forth the name of the taxpayer, the amount of the fees, tax, penalties and interest, the date of the accrual thereof, and that the city claims a lien therefore on the real and tangible personal property of the taxpayer. Said notice shall be hand delivered or mailed to the taxpayer by certified mail or other verifiable delivery methods.

(1) Said notice shall be on forms furnished by the finance department and shall be verified by the city manager or by the finance director and may be filed in the office of the county clerk and recorder in which the taxpayer owns real or tangible personal property, and the filing of such notice shall create a lien on such property in that county and constitute notice thereof. If the city files the lien, there shall be a lien fee of \$50.00 imposed and added to the total assessment amount. The finance director may include additional collection costs. At any time when taxes due are unpaid, whether such notice shall have been filed or not, the finance director may issue a warrant directed to any duly authorized revenue collector, or to any law enforcement officer or to the sheriff of the county, commanding such person to levy upon, seize, and sell sufficient of the real and personal property of the amount due together with interest, penalties, and costs as may be provided by law, subject to valid superior claims or liens.

(2) Jeopardy assessment.

- a. Issuance. If the collection of any tax due from a taxpayer, whether or not previously assessed, will be jeopardized by delay, the city manager may declare the taxable period immediately terminated, order the finance director to determine the tax, and issue a jeopardy assessment and demand for payment. Any tax so assessed shall be due and payable immediately.
- b. Security for payment. Enforcement of a jeopardy assessment and demand for payment may be stayed if the taxpayer gives security for payment which is satisfactory to the city manager.
- c. Dispute of jeopardy assessment. If, in the opinion of the taxpayer, the jeopardy assessment is not for the correct amount of tax due, the taxpayer shall pay the tax due as assessed and submit a claim for refund to the city.

Section 8. If any article, section, paragraph, sentence, clause or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

Section 9 All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof is hereby repealed to the extent of such inconsistency or conflict.

Section 10. The repeal or modification of any provision of the Municipal Code of the City of Golden 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. Each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions for 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 11. This ordinance is deemed necessary for the protection of health, welfare and safety of the community.

Introduced, read, passed and ordered published the 13th day of April, 2017.

Passed and adopted upon second reading and ordered published this _____ day of _____, 2017.

Marjorie N. Sloan
Mayor

ATTEST:

Susan Brooks
City Clerk, MMC

APPROVED AS TO FORM:

David S. Williamson
City Attorney

I, Susan M. Brooks, City Clerk of the City of Golden, Colorado, do hereby certify that the foregoing is a true copy of a certain proposed ordinance introduced and read before the City Council of the City of Golden at a regular meeting thereof held on the 13th day of April, 2017, and ordered by said City Council to be published as the law provides, and that a public hearing is declared for the 27th day of April, 2017 at 6:30 p.m. in the Council Chambers of City Hall, 911 10th Street, Golden, Colorado.

(SEAL)

ATTEST:

Susan M. Brooks
Susan M. Brooks, City Clerk of the City of Golden,
Colorado