

**CITY OF CENTENNIAL,  
COLORADO  
ORDINANCE NO. 2021-O-15**

**AN ORDINANCE OF THE CITY COUNCIL  
OF THE CITY OF CENTENNIAL, COLORADO,  
AMENDING SECTION 4-1-220 OF THE  
CENTENNIAL MUNICIPAL CODE  
GOVERNING THE EXISTING SALES TAX  
ON SALES OF SOFTWARE PROGRAMS**

WHEREAS, the City of Centennial, Colorado, (the "City"), is a home rule municipality, organized and existing under Article XX, Section 6 of the Colorado Constitution; and

WHEREAS, pursuant to Article XX, Section 6 of the Colorado Constitution, the right to enact, administer and enforce sales taxes is clearly within the constitutional grant of power to the City and is necessary to raise revenue with which to conduct the affairs and render the services performed by the City; and

WHEREAS, pursuant to such authority and in accordance with the authority of the voters in the City in 2001 and 2003, the City has adopted and enacted Article 1 of Chapter 4 of the Centennial Municipal Code, cited as the Centennial Sales and Use Tax Code (the "Code"), under which City sales tax is levied on all sales and purchases of tangible personal property or taxable services at retail unless exempted or prohibited; and

WHEREAS, pursuant to Section 4-1-210(7) of the Centennial Municipal Code, the City already imposes a sales tax on sales of software programs that meet certain criteria; and

WHEREAS, "Software Program" is defined in Section 4-1-30 as a "sequence of instructions that can be measured, interpreted and executed by an electronic device (e.g., a computer, tablets, smart phones). 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; and

WHEREAS, the City has and currently continues to impose a sales tax on software programs that meet certain delivery criteria; and

WHEREAS, the City's intent, policy and regulations have always required taxation of sales of software programs with certain qualifying delivery methods; and

WHEREAS, delivery of software has evolved since the implementation of the City's sales and use tax code such that once-common delivery by tangible medium has become very rare and download through the internet has become much more common; and

WHEREAS, by this Ordinance, the City is eliminating the qualifying criteria for taxation of software programs such that all sales of software programs will be subject to the City's tax regardless of method of delivery or download of such software program; and

WHEREAS, at the November 6, 2012 coordinated general election, the voters of the City approved a ballot issue allowing the City to retain and spend all excess revenue derived from any and all sources then in existence or in the future; and

WHEREAS, elimination of this exemption does not create a new tax or increase a tax rate and is therefore compliant with the requirements of Section 11.2 of the City's Home Rule Charter and Article X, Section 20 of the Colorado Constitution ("TABOR").

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CENTENNIAL, COLORADO, ORDAINS:**

**Section 1.**     **Incorporation of Recitals.** The foregoing recitals are hereby affirmed and incorporated herein by this reference as findings of the City Council.

**Section 2.**     **Amending Section 4-1-30 Definitions.**

- A. The definition of *Application Service Provider (ASP)* in Section 4-1-30 of the Centennial Municipal Code is hereby repealed.
- B. The definition of *Electronic Service Delivery* in Section 4-1-30 of the Centennial Municipal Code is hereby repealed.
- C. The definition of *'Load and Leave' Software Delivery* in Section 4-1-30 of the Centennial Municipal Code is hereby repealed.
- D. The definition of *Pre-Packaged for Repeated Sale or License* in Section 4-1-30 of the Centennial Municipal Code is hereby repealed.

**Section 3.**     **Amendment of Subsection (7) of Section 4-1-210.** Section 4-1-210(7) is hereby amended to read as follows with additions in ALL CAPS and deletions shown as strikethroughs:

(7)Software Programs.:-~~On Software Programs that meet all of the following criteria:~~

- a.~~\_\_\_\_\_The Software Program is Pre-Packaged for Repeated Sale or License;~~
- b.~~\_\_\_\_\_The use of the Software Program is governed by a Tear Open Non-Negotiable License Agreement;~~

- e. ~~The Software Program is delivered to the customer in a Tangible Medium. A Software Program is not delivered to the customer in a Tangible Medium if it is provided through an Application Service Provider, delivered by Electronic Software Delivery or transferred by 'Load and Leave' Software Delivery.~~

**Section 4. No retroactive obligations.** No obligation to collect the sales and use tax required by this ordinance shall be applied retroactively.

**Section 5. Severability.** Should any one or more sections or provisions of this Ordinance be judicially determined invalid or unenforceable, such judgment shall not affect, impair, or invalidate the remaining provisions of this Ordinance, the intention being that the various sections and provisions are severable.

**Section 6. Repeal.** Any and all ordinances or codes or parts thereof in conflict or inconsistent herewith are, to the extent of such conflict or inconsistency, hereby repealed; provided, however, that the repeal of any such ordinance or code or part thereof shall not revive any other section or part of any ordinance or code heretofore repealed or superseded and this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the effective date of this Ordinance.

**Section 7. Effective Date.** Except as otherwise expressly provided herein, the provisions of this Ordinance shall become effective thirty (30) days after publication following final passage.

INTRODUCED, READ, AND ORDERED PUBLISHED BY THE CITY COUNCIL OF THE CITY OF CENTENNIAL, COLORADO, UPON A MOTION DULY MADE, SECONDED AND PASSED AT ITS REGULAR MEETING HELD ON THE 7<sup>th</sup> DAY OF SEPTEMBER, 2021.

CITY OF CENTENNIAL

By:   
Stephanie Piko, Mayor

Approved as to Form:

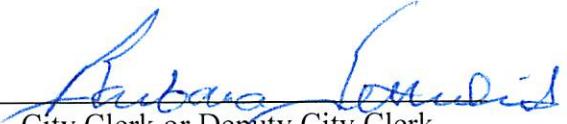
  
For City Attorney's Office

I hereby certify that the above Ordinance was introduced to the City Council of the City of Centennial at its meeting of September \_\_, 2021, and ordered published one time by title only in

The *Centennial Citizen* newspaper on Sept. 9, 2021, and in full on the City web site in accordance with Section 2-1-110 of the Municipal Code.

ATTEST:

SEAL

By:   
City Clerk or Deputy City Clerk

FINALLY ADOPTED, PASSED, APPROVED WITH AMENDMENTS, IF ANY, AND ORDERED PUBLISHED BY TITLE ONLY, IN *THE VILLAGER* NEWSPAPER AND IN FULL ON THE CITY WEB SITE IN ACCORDANCE WITH SECTION 2-1-110 OF THE MUNICIPAL CODE BY THE CITY COUNCIL OF THE CITY OF CENTENNIAL, COLORADO, UPON A MOTION DULY MADE, SECONDED AND PASSED AT ITS MEETING HELD ON THE 20<sup>th</sup> DAY OF September, 2021, BY A VOTE OF 9 IN FAVOR AND 0 AGAINST.


CITY OF CENTENNIAL

By:   
Stephanie Piko, Mayor

I hereby certify that the above Ordinance was finally adopted by the City Council of the City of Centennial at its meeting of Sept. 20, 2021, and ordered published by title only, one time by *The Centennial Citizen* newspaper on Sept. 23, 2021, and in full on the City web site in accordance with Section 2-1-110 of the Municipal Code.

ATTEST:

SEAL

By:   
City Clerk or Deputy City Clerk