

**A BILL FOR AN ORDINANCE**

**ORDINANCE NO: 06**

**SERIES OF 2017**

**INTRODUCED BY: COUNCILMEMBER MORAN**

**AN ORDINANCE AMENDING SECTIONS 4-3-30, 4-3-40 AND 4-3-50 OF THE GREENWOOD VILLAGE MUNICIPAL CODE PERTAINING TO SALES AND USE TAX DEFINITIONS, INCLUSIONS AND EXEMPTIONS**

**WHEREAS**, in Senate Joint Resolution No. 14-038, the Colorado General Assembly asked the Colorado Municipal League to revive the tax simplification project from the 1990s to address current systemic problems identified by the retail business community regarding local sales and use tax definitions and exemptions; and

**WHEREAS**, City 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**, City 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**, City 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**, City Council acknowledges that the retail business community desires better uniformity and simplicity when operating in multiple cities; and

**WHEREAS**, City Council has determined that the City can simplify the tax code definitions without sacrificing revenue; and

**WHEREAS**, City Council has determined that it can modify the City's sales and use tax inclusions and exemptions in compliance with the Taxpayer Bill of Rights by remaining revenue neutral.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF GREENWOOD VILLAGE, COLORADO:**

Section 1. Section 4-3-30, Definitions, of the Greenwood Village Municipal Code is hereby amended to read as follows:

For purposes of this Article, the following terms shall have the following meanings:

~~Access services means the services sold by local telephone exchange companies to providers of telecommunications services for use in providing such telecommunications services.~~

***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, poultrymen, 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.

***Airline Company*** means any operator who engages in the carriage by aircraft of persons or property as a common carrier for compensation or hire, or the carriage of mail, or any aircraft operator who operates regularly between two (2) or more points and publishes a flight schedule. Airline Company shall not include operators whose aircraft are all certified for a gross takeoff weight of twelve thousand five hundred (12,500) pounds or less and who do not engage in scheduled service or mail carriage service.

***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.

***Candy*** means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruit, nuts, or other ingredients or

flavorings in the form of bars, drops, or pieces. Candy does not include any preparation containing flour, products that require refrigeration or marijuana infused products.

***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: (a) has been certified as a not-for-profit organization under Section 501(c)(3) of the Internal Revenue Code; and (b) 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, freely and voluntarily ministers to the physical, mental or spiritual needs of persons, and which thereby lessens the burdens of government.

***Coins*** means monetized bullion or other forms of money manufactured from gold, silver, platinum, palladium or other such metals now, in the future or heretofore designated as a medium of exchange under the laws of this State, the United States or any foreign nation.

***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.

***Community Organization*** means a nonprofit entity organized and operated exclusively for the promotion of social welfare, primarily engaged in promoting the common good and general welfare of the community, so long as: (1) no part of the net earnings of which insures to the benefit of any private shareholder or individual; (2) no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; and (3) which does not participate in, or intervene in (including the

publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

***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 completed structure or project, including public and private improvements. ***Construction materials*** include, but are not limited to, such things as: asphalt, bricks, builder's hardware, caulking materials, 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 or inseparable part of a completed structure or project, are not construction materials.

***Consumer*** means any person engaged in business in the City who purchases, uses, stores, distributes or otherwise consumes in the City tangible personal property, other taxable products, 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”.**

***Distribution* means the act of distributing any article of tangible personal property for use or consumption, which may include, but not be limited to, the distribution of advertising gifts, shoppers guides, catalogs, directories, or other property given as prizes, premiums, or for goodwill or in conjunction with the sales of other commodities or services.**

~~***Drugs dispensed in accordance with a prescription* means drugs dispensed in accordance with any order in writing, 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 address of the person for whom the medicine, drug or poison is offered and directions, if any, to be placed on the label.**~~

***Dual Residency* means those situations including, but not limited to, where a person maintains a residence, place of business or business presence, both within and outside the City. A person shall be deemed to have established a legitimate residence, place of business or business presence outside of the City for purposes of dual residency if the person has a physical structure owned, leased or rented by such person which is designated by street number or road location outside of the City, has within it a telephone or telephones in the name of such person and conducts business operations on a regular basis at such location in a manner that includes the type of business activities for which the business (person), as defined in this Code, is organized.**

***Dwelling Unit* means a building or any portion of a building designed for occupancy as complete, independent living quarters for one (1) or more persons, having direct access from the outside of the building or through a common hall and having living, sleeping, kitchen and sanitary facilities for the exclusive use of the occupants.**

***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 (1) of the following activities by a person:**

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

- b. Sends one (1) 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;
- c. Maintains one (1) or more employees, agents or commissioned sales persons on duty at a location within the taxing jurisdiction;
- d. Owns, leases, rents or otherwise exercises control over real or personal property within the taxing jurisdiction; or
- e. Makes more than one (1) delivery into the taxing jurisdiction within a twelve-month period.

~~*Exempt commercial packaging materials* means 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 said person along with and as a part of the finished product to the purchaser; and~~
- ~~c. Is not returnable to said person for reuse.~~

***Factory Built Housing* means a manufactured home or modular home.**

***Farm Closeout Sale* means full and final disposition of all tangible personal property previously used by a farmer or rancher in farming or ranching operations which are being abandoned.**

***Farm Equipment* means any farm tractor, as defined in Section 42-1-102(33), C.R.S., any implement of husbandry, as defined in Section 42-1-102(44), C.R.S., and irrigation equipment having a per unit purchase price of at least one thousand dollars (\$1,000.00). Farm Equipment also includes, regardless of purchase price, attachments and bailing wire, binders twine and surface wrap used primarily and directly in any farm operation. Farm Equipment also includes, regardless of purchase price, parts that are used in the repair or maintenance of the Farm Equipment described in this Paragraph, all shipping pallets, crates, or aids paid for by a farm operation, and aircraft designed or adapted to undertake agricultural applications. Farm Equipment also includes, regardless of purchase price, dairy equipment. Except for shipping pallets, crates or aids used in the transfer or shipping of agricultural products, Farm Equipment does not include: (1) vehicles subject to the registration requirements of Section 42-3-103, C.R.S., regardless of the purpose for which such vehicles are used; (2) machinery, equipment, materials, and supplies used in a manner that is incidental to a farm operation; (3) maintenance and janitorial equipment and supplies; and (4) tangible personal property used in any activity other than farming, such as office equipment and supplies and equipment and supplies used in the sale or distribution of farm products, research, or transportation.**

***Farm Operation*** means the production of any of the following products for profit, including, but not limited to, a business that hires out to produce or harvest such products:

- a. Agricultural, viticultural, fruit, and vegetable products;
- b. Livestock;
- c. Milk;
- d. Honey; and
- e. Poultry and eggs.

***Finance Director*** means the Finance Director of the City or such other person designated by the City. ***Finance Director*** shall also include such person's designee.

~~***Food for domestic home consumption*** means food and beverages purchased by a recipient under the Federal Supplemental Nutrition Assistance Program under 7 U.S.C. Chapter 51, as amended, except that *food for domestic home consumption* does not include carbonated water marketed in containers; ice; chewing gum; seeds and plants to grow food; prepared salads and salad bar items; hot or cold sandwiches; deli trays; soft drinks; candy; alcoholic beverages; food prepared for immediate consumption, including all hot foods or those that can be heated in the store; and food or drink vended by or through machines or non-coin-operated coin-collecting food and snack devices on behalf of a vendor.~~

***Food For Home Consumption*** means food for domestic home consumption as defined in 7 U.S.C. sec. 2012 (k) (2014), as amended, for purposes of the supplemental nutrition assistance program, or any successor program, as defined in 7 U.S.C. sec. 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 Access Services*** means services that provide or enable computer access by multiple users to the Internet, but shall not include that portion of packaged or bundled services providing phone or television cable services when the package or bundle includes the sale of Internet Access 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 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 accommodations by a person, partnership, association, corporation, estate, representative capacity or any other combination of individuals by whatever name known to a person who, for 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, trailer court and park, or similar establishment, for a period of less than thirty (30) days under any concession, permit, right of access, license to use or other agreement.

***Machinery*** means any apparatus consisting of interrelated parts used to produce an article of tangible personal property. The term includes both the basic unit and any adjunct or attachment necessary for the basic unit to accomplish its intended function.

***Manufactured Home*** means any preconstructed building unit or combination of preconstructed building units, without motive power, where such unit or units are manufactured in a factory or at a location other than the residential site of the completed home, which is designed and commonly used for occupancy by persons for residential purposes, in either temporary or permanent locations, and which unit or units are not licensed as a vehicle.

***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.

***Modular Home*** means any structure that consists of multiple sections fabricated, formed or assembled in manufacturing facilities for installation and assembly at the building site, and is constructed to the building codes adopted by the State Division of Housing, created in Section 24-32-706, C.R.S., and is designed to be installed on a permanent foundation.

***Motor Fuel*** means gasoline, casing head or natural gasoline, benzol, benzene and naphtha, gasohol and any other liquid prepared, advertised, offered for sale, sold for use or used or commercially usable in internal combustion engines for the generation of power for the propulsion of motor vehicles upon the public highways. The term does not include fuel used for the propulsion or drawing of aircraft or railroad cars or railroad locomotives.

***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.

***Parent*** means a parent of a student.

***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.

***Photovoltaic System*** means a power system designed to supply usable solar power by means of photovoltaics, a method of converting solar energy into direct current electricity using semiconducting materials that create voltage or electric current in a material upon exposure to light. It consists of an arrangement of several components, including solar panels to absorb and convert sunlight into electricity, a solar inverter to change the electric current from DC to AC, as well as mounting, cabling, metering systems and other electrical accessories to set up a working system.

***Precious Metal Bullion*** means any precious metal, including but not limited to, gold, silver, platinum, palladium, that has been put through a

process of refining and is in such a state or condition that its value depends upon its precious metal content and not its form.

***Prepress Preparation Material*** means all materials used by those in the printing industry including, but not limited to, airbrush color photos, color keys, dies, engravings, light-sensitive film, light-sensitive paper, masking materials, Mylar, plates, proofing materials, tape, transparencies, and veloxes, which are used by printers in the preparation of customer specific layouts or in plates used to fill customers' printing orders, which are eventually sold to a customer, either in their original purchase form or in an altered form, and for which a sales or use tax is demonstrably collected from the printer's customer, if applicable, either separately from the printed materials or as part of the inclusive price therefor. Materials sold to a printer which are used by the printer for the printer's own purposes, and are not sold, either directly or in an altered form, to a customer, are not included within this definition.

***Preprinted Newspaper Supplements*** shall mean inserts, attachments or supplements circulated in newspapers 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 price to the consumer, 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:~~

- ~~a. Such exchanged property is to be sold thereafter in the usual course of the retailer's business; or~~
- ~~b. 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 the 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:~~

- ~~a. The amount of money received or due in cash and credits;~~
- ~~b. Property at fair market value taken in exchange but not for resale in the usual course of the retailer's business;~~
- ~~c. 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;~~
- ~~d. The total price charged on credit sales, including finance charges which are not separately stated. 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 is not part of the purchase price;~~
- ~~e. Installation, delivery and wheeling-in charges included in the purchase price and not separately stated;~~
- ~~f. Transportation and other charges to effect delivery of tangible personal property to the purchaser;~~
- ~~g. Indirect federal manufacturers' excise taxes, such as taxes on automobiles, tires and floor stock; and~~
- ~~h. 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:~~

- ~~a. Any sales or use tax imposed by the State or by any political subdivision thereof;~~
- ~~b. The fair market value of property exchanged if such property is to be sold thereafter in the retailer's usual course of business. This is not limited to exchanges in the State. Out-of-state trade-ins are an allowable adjustment to the purchase price; or~~
- ~~c. Discounts from the original price if such discount and the corresponding decrease in sales tax due is actually passed on to the purchaser. 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.~~

**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:***

- a. The amount of money received or due in cash and credits.**
- b. Property at fair market value taken in exchange but not for resale in the usual course of the retailer's business.**
- c. 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.**
- d. 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.**
- e. Installation, applying, remodeling or repairing the property, delivery and wheeling-in charges included in the purchase price and not separately stated.**
- f. Transportation and other charges to effect delivery of tangible personal property to the purchaser.**
- g. Indirect federal manufacturers' excise taxes, such as taxes on automobiles, tires and floor stock.**
- h. 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:***

- a. Any sales or use tax imposed by the State of Colorado or by any political subdivision thereof.**
- b. 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.

- c. 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* means 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 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, oxygen concentrators and oxygen with related accessories.~~

***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, ~~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:

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

- c. Performance of taxable services; or
- d. Barter or exchange for other **tangible personal property, other taxable products**, or services, ~~including coupons.~~

*Purchase and sale do not include:*

- a. A division of partnership assets among the partners according to their interests in the partnership;
- ~~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;~~
- eb. 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;**
- ec. 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;**
- ed. A transfer of a partnership or limited liability company interest;**
- ~~f. The transfer in a reorganization qualifying under Section 368(a)(1) of the Internal Revenue Code of 1986, as amended;~~
- f. 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;**
- ~~g. The formation of a partnership by the transfer of assets to the partnership or transfers to a partnership in exchange for proportionate interests in the partnership;~~
- hg. The repossession of personal property by a chattel mortgage holder or foreclosure by a lienholder;**
- ih. The transfer of assets from a parent company corporation to a subsidiary company or companies corporation or corporations which are owned at least eighty percent (80%) by the parent company corporation, which transfer is solely in exchange for stock or securities of the subsidiary company corporation;**
- ji. The transfer of assets from a subsidiary company or companies corporation or corporations which are owned at least eighty percent (80%) by the parent company corporation to a parent company corporation or to another subsidiary which is owned at least eighty percent (80%) by the parent corporation, which transfer is solely in exchange for stock or securities of the parent corporation or the subsidiary which received the assets; or**
- kj. The transfer of assets between parent and closely held subsidiary companies corporations, between subsidiary companies corporations**

closely held by the same parent ~~company corporation~~, or between ~~companies corporations~~ 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 corporation~~ 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 corporation~~. To such an extent, any transfer referred to in this ~~paragraph (j)-Subparagraph~~ shall constitute a sale. For the purposes of this ~~paragraph j)-Subparagraph~~, a closely held subsidiary corporation is one in which the parent ~~company corporation~~ owns stock possessing at least eighty percent (80%) of the total combined voting power of all classes of stock entitled to vote and owns at least eighty percent (80%) of the total number of shares of all other classes of stock.

***Rail Carrier*** means as defined in Section 10102 of Title 49 of the United States Code as of October 10, 2013, and as it may be amended hereafter.

***Rail Carrier Part*** means any tangible personal property that is originally designed and intended to be permanently affixed or attached as a component part of a locomotive or rail car used by a rail carrier.

***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.

***Renewable Energy*** means any energy resource that is naturally regenerated over a short time scale and derived directly from the sun (such as thermal, photochemical, and photoelectric), indirectly from the sun (such as wind, hydropower, and photosynthetic energy stored in biomass), or from other natural movements and mechanisms of the environment (such as geothermal and tidal energy). Renewable Energy does not include energy resources derived from fossil fuels, waste products from fossil sources, or waste products from inorganic sources.

***Resident*** means a person who resides or 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.

***Retail sale*** means all sales except wholesale sales.

***Retailer*** means any person selling, leasing or renting tangible personal property or services at retail. *Retailer* shall include any:

- a. Auctioneer;
- 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; and
- c. 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; and-

- d. **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/town administration for computing and reporting a total tax liability ~~the sales and use tax reporting form used to report sales and use tax.~~

***Sale that Benefits a Colorado School*** means a sale of a commodity or service from which all proceeds of the sale, less only the actual cost of the commodity or service to a person or entity as described in this Code, are donated to a school or a school-approved student organization.

***Sales tax*** means the tax to be collected and remitted by a retailer on sales taxed under this Article.

***School*** means a public or nonpublic school for students in kindergarten through 12th grade or any portion thereof.

***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.

***Soft Drink*** means a nonalcoholic beverage that contains natural or artificial sweeteners. "Soft drink" does not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume.

***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.

**Solar Thermal Systems** means a system whose primary purpose is to use energy from the sun to produce heat or cold for: (1) Heating or cooling a residential or commercial building; (2) Heating or cooling water; or (3) Any industrial, commercial, or manufacturing process.

**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.

**Special Fuel** means kerosene oil, kerosene distillate, diesel fuel, all liquefied petroleum gases, and all combustible gases and liquids for use in the generation of power for propulsion of motor vehicles upon the public highways. The term does not include fuel used for the propulsion or drawing of aircraft, railroad cars or railroad locomotives.

**Special Sales Event** means any sales event which includes more than three (3) Vendors taking place at a single location for a limited period of time not to exceed seven (7) consecutive days.

**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.

**Student** means any person enrolled in a school.

**Tangible personal property** means property other than land or buildings 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. ~~seen, weighed, measured, felt or stored on cards, tapes, discs, coding sheets or other machine-readable or human-readable form, or that can otherwise be consumed, used or distributed, which is leased or purchased at retail over which the buyer has any right, power, dominion or control, regardless of the means or mode of conveyance.~~

**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* means any amount of tax that is not reported or not paid on or before the due date.

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

*Taxable services* means services subject to tax pursuant to this Article.

*Taxpayer* means any person obligated to collect and/or pay tax pursuant to the terms of this Article.

*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.** ~~transmission of any two-way interactive 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 or any combinations of such media.~~

~~*Telecommunications service* includes but is not limited to basic local exchange telephone service, toll telephone service and teletypewriter service, including but not limited to residential and business service, directory assistance, cellular mobile telephone or telecommunication service, specialized mobile radio and two-way pagers and paging service, including any form of mobile two-way communication. *Telecommunications service* does not include separately stated nontransmission services which constitute computer processing applications used to act on the information to be transmitted.~~

*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.

*Toll Free Telecommunications Service* means a Telecommunications Service that allows a caller to dial a number without incurring an additional charge for the call.

*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 ~~or otherwise exercising, for any length of time, any right, power, dominion or control over~~ tangible personal property or taxable services when leased or purchased at retail from any person inside or outside ~~inside~~ the City.

*Wholesale sales* means a sales **by wholesalers** to licensed-retailers, jobbers, dealers or **other** 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.** ~~Sales by wholesalers to consumers are not wholesale sales. Sales by wholesalers to nonlicensed retailers are not wholesale sales.~~

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

Section 2. Section 4-3-40 of the Greenwood Village Municipal Code, Imposition of Sales Tax, is hereby amended to read as follows:

Sec. 4-3-40. - Imposition of sales tax.

(a) Levy. There is levied and there shall be collected and paid a sales tax on the full purchase price paid or charged for tangible personal property, **software programs, software license fees, software maintenance agreements**, and taxable services sold at retail or leased by every person exercising a taxable privilege in the City by the sale or lease of such property and services. The sales tax is levied on all sales and leases of tangible personal property or taxable services except those specifically exempted, and is collected by the retailer or lessor and remitted to the City.

(b) Taxable transactions and items. The sales tax shall apply as follows:

(1) On the purchase price paid or charged for all sales and purchases of tangible personal property, **software programs, software license fees, and software maintenance agreements** at retail.

(2) On the total amount due under a lease or contract when the right to possession or use of tangible personal property, **software programs, software license fees, and software maintenance agreements** is granted therein and such transfer of possession would be taxable under this Article if an outright sale were made.

(3) In the case of retail sales involving the exchange of property, on the purchase price paid or charged, including the fair market value of the property exchanged at the time and place of the exchange; excluding however, from the consideration or purchase price, the fair market value of the exchanged property, provided that such exchanged property is to be sold in the usual course of the retailer's business.

(4) Upon telecommunication service, **carrier** access services and upon telephone and telegraph services, whether furnished by public or private corporations or enterprises, for all intrastate telephone and telegraph services.

(5) Upon the entire amount charged to any person or persons for lodging services.

(6) Upon the amount paid for all meals, and beverages and cover charges, if any, furnished in any restaurant, hotel, club, hospital, nursing home or other place at which meals, food or beverages are regularly sold.

(7) Upon the purchase price of tangible personal property, **software programs, software license fees, and software maintenance agreements** acquired with the purchase of a business for use in the operation of such business as such purchase price is documented in the bill or contract of sale, but in no event shall the tax be based upon a valuation of property less than its fair market value. If the purchase price of the property is not itemized in the bill or contract of sale, the tax shall be based upon the book value that the purchaser uses for income tax depreciation or upon the fair market value of the property if no book value has been established. Regardless of the method used to value the property, no deduction shall be made on account of any outstanding liabilities acquired by the purchaser of the business and property.

(c) Exemptions. The following shall be exempt from the sales tax:

(1) All sales of automotive vehicles properly titled and registered to an address outside the City.

(2) All sales of tangible personal property if all of the following conditions exist:

a. The sales are to those who reside or do business outside the City;

b. The articles purchased are to be delivered to the purchaser outside the City by common carrier or by the conveyance of the retailer or by mail; and

c. The articles purchased and delivered are used outside the City.

(3) All sales of gasoline or motor fuel which are taxed under Title 39, Article 27, C.R.S.

(4) All sales of goods manufactured in the City and sold by the manufacturer thereof directly to the ultimate consumer when delivery of such goods is made by common, contract or commercial carrier or by conveyance of the retailer or purchaser to a point outside the City for use outside the City.

(5) All sales to the United States or any state, or departments, institutions or political subdivisions thereof, and all sales to the City and any department thereof when made in the exercise of their governmental functions, provided that such purchases are supported by official government purchase orders or charged to the governmental entity's credit card account and are paid for by draft or warrant drawn on the governmental entity's bank account or such purchases are made pursuant to a written agreement with the governmental entity in which the purchaser is to make such purchases on behalf of the governmental entity.

(6) All sales to charitable organizations of tangible personal property or services to be used in the conduct of the organization's regular activities to foster its expressed charitable purpose and that possesses an exemption certificate from the City.

(7) All sales which the City is prohibited from taxing under the Constitution or laws of the United States or the State.

(8) All sales of drugs dispensed in accordance with a prescription and all sales of prosthetic devices.

(9) All sales of cigarettes.

(10) All charges for the furnishing of rooms or accommodations to any person who is a resident of any hotel, motel, apartment house, mobile home, trailer court or park or similar place, pursuant to a written lease for a period of at least thirty (30) consecutive days.

(11) All sales of tangible personal property to a public utility doing business both within and without the City, for use in such business operations outside the City, even though delivery is made in the City.

(12) All sales of construction and building 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 evidencing that a local sales or use tax has been paid or is required to be paid.

(13) All sales of tangible personal property or taxable services, which transaction was previously subjected to a sales or use tax lawfully imposed on the purchaser or user by another statutory or home rule municipality in the State at a rate equal to or greater than the rate stated in Section 4-3-60 and such tax was collected. If the rate of the sales or use tax paid to such municipality is less than the rate stated in Section 4-3-60, the difference between the tax due under this Article and the tax paid previously shall be remitted to the Finance Director.

(14) Automotive vehicles.

(15) The sale of food for domestic home consumption, as defined in this Article.

**(16) The cost of technical support, when specifically identified, as part of software programs, licenses or maintenance.**

Section 3. Section 4-3-50 of the Greenwood Village Municipal Code, Imposition of Use Tax, is hereby amended to read as follows:

Sec. 4-3-50. - Imposition of use tax.

(a) Levy. There is levied and there shall be a use tax at the rate stated in Section 4-3-60 on the full purchase price paid for or acquisition cost of tangible personal property, **software programs, software license fees, software maintenance agreements,** and taxable services brought into the City for the purpose of using, storing, distributing or consuming such property and services. The use tax is levied upon the privilege of storing, distributing, consuming or using in the City, personally or as part of rendering a service, tangible personal property, taxable personal property or taxable services and is paid by either the retailer or the consumer.

(b) Exemptions. The use, storage, distribution or consumption in the City of the following is exempted from the use tax:

(1) Tangible personal property, **software programs, software license fees, and software maintenance agreements,** the sale or use of which was previously subjected to a sales or use tax lawfully imposed on the purchaser or user by another municipality or county at a rate equal to or greater than the rate stated in Section 4-3-60 and such tax was collected. If the rate of the sales or use tax paid to such municipality is less than the rate stated in Section 4-3-60, the difference between the tax due under this Article and the tax paid previously shall be remitted to the Finance Director.

(2) Tangible personal property, **software programs, software license fees, and software maintenance agreements** purchased in order to be sold at retail in the City either in its original form or as an ingredient of a manufactured or compounded product, in the regular course of business.

(3) Gasoline or motor fuel upon which has accrued or has been paid the tax prescribed by Title 39, Article 27, C.R.S.

(4) Tangible personal property, **software programs, software license fees, software maintenance agreements,** brought into the City by a nonresident for that person's own use, storage, distribution or consumption while temporarily in the City, and the tangible personal property of a resident if such property was purchased prior to becoming a resident of the City.

(5) Tangible personal property, **software programs, software license fees, software maintenance agreements,** used, stored, distributed or consumed by the United States or the State or departments, institutions or political subdivisions thereof and the City and any department thereof, in their governmental capacities only.

(6) Tangible personal property, **software programs, software license fees, software maintenance agreements**, purchased from a nonresident retailer by a resident common carrier, resident public utility or resident construction company, which tangible personal property is stored in the City but not used or consumed in the City.

(7) Tangible personal property of a person engaged in the business of manufacturing or compounding for sale, profit or use any product, which tangible, personal property becomes an ingredient or component part of the product which is manufactured or compounded and the container, label or furnished shipping case.

(8) Electricity, gas, coal, wood, nuclear fuel, fuel oil or coke for use in processing, manufacturing, mining, refining, irrigation, telecommunication services, street and railroad transportation services and all industrial uses; and newsprint and printers' ink used to produce newspaper.

(9) Tangible personal property, **software programs, software license fees, software maintenance agreements**, used, stored, distributed or consumed by charitable organizations in the conduct of the organization's regular activities to foster its charitable purpose, provided that the organization obtains from the City a charitable organization license pursuant to Section 6-1-30 and presents the license as required.

(10) Neat Cattle, sheep, lambs, swine and goats; and mares and stallions used for breeding purposes.

(11) Automotive vehicles and parts and accessories therefor when used or engaged in interstate commerce.

(12) Tangible personal property, **software programs, software license fees, and software maintenance agreements**, or services which the City is prohibited from taxing under the Constitution or laws of the United States or the State.

(13) Prosthetic devices and drugs dispensed in accordance with a prescription.

(14) The storage of construction and building materials.

(15) Automotive vehicles.

**(16) The cost of technical support, when specifically identified, as part of software programs, licenses or maintenance.**

Section 4. Effective Date. This ordinance shall take effect six days following final publication.

INTRODUCED AND APPROVED ON FIRST READING ON THE 3<sup>rd</sup> DAY OF APRIL, 2017, AND ORDERED PUBLISHED IN THE VILLAGER.

ATTEST:

Susan M. Ortiz  
Susan M. Ortiz, MMC  
City Clerk



Ronald J. Rakowsky  
Ronald J. Rakowsky, Mayor

INTRODUCED AND APPROVED ON SECOND READING ON THE 1<sup>st</sup> DAY OF MAY, 2017, AND ORDERED PUBLISHED BY REFERENCE TO TITLE ONLY.

Ronald J. Rakowsky  
Ronald J. Rakowsky, Mayor

ATTEST:

Susan M. Ortiz  
Susan M. Ortiz, MMC  
City Clerk



EFFECTIVE: May 10, 2017