

BY AUTHORITY

ORDINANCE NO. **4162**

COUNCILLOR'S BILL NO. **53**

SERIES OF 2022

INTRODUCED BY COUNCILLORS  
**Seymour, DeMott**

**A BILL  
FOR AN ORDINANCE AMENDING CHAPTER IV OF THE WESTMINSTER MUNICIPAL  
CODE CONCERNING MARKEPLACE SALES, MARKETPLACE FACILITATORS,  
ECONOMIC NEXUS, AND CERTAIN EXEMPTIONS**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 4-2-2, W.M.C., is hereby AMENDED to read as follows:

**4-2-2. Definitions.**

The following words, terms, and phrases, when used in this chapter, shall have the following meaning, unless the context clearly indicates otherwise:

*Auction* shall mean 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* shall mean 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.

*Carrier access services* shall mean the services furnished by a local exchange company to its customers who provide telecommunications services which allow them to provide such telecommunications services.

*Coin-operated device* shall mean any device operated by coins or currency or any substitute therefor.

*Commercial packaging materials* shall mean 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* shall mean 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* shall mean 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* shall mean tangible personal property that, 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, 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 that do not remain as an integral or inseparable part of a completed structure or project, are not construction materials.

*Consumer* shall mean 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.

*Contractor* shall mean 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.

*Digital product* shall mean 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".

"Economic nexus" in the City shall mean the connection between the City and a person not having a physical nexus in the State of Colorado, which connection is established when the person or marketplace facilitator makes retail sales into the City, and:

(1) In the previous calendar year, the person, which includes a marketplace facilitator, has made retail sales into the state exceeding the amount specified in C.R.S. § 39-26-102(3)(c), as amended; or

(2) In the current calendar year, 90 days has passed following the month in which the person, which includes a marketplace facilitator, has made retail sales into the state exceeding the amount specified in C.R.S. § 39-26-102(3)(c), as amended.

This definition does not apply to any person who is doing business in this state but otherwise applies to any other person.

*Engaged in business in the City* shall mean performing or providing services or selling, leasing, renting, delivering or installing tangible personal property, products, or services 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 exercises control over real or personal property within the taxing jurisdiction; or

(5) Retailer or vendor in the state of Colorado that makes more than one delivery into the taxing jurisdiction within a 12-month period, ~~by any means other than common carrier.~~

(6) Makes retail sales sufficient to meet the definitional requirements of economic nexus as set forth in 4-2-2, W.M.C.

*Farm closeout sale* shall mean 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* shall mean 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 \$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* shall mean 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;

(1) Agricultural, viticultural, fruit, and vegetable products;

(2) Livestock;

(3) Milk;

(4) Honey; and

(5) Poultry and eggs.

*Food for home consumption* shall mean 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 food; 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* shall mean 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* shall mean 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.

*Manufacturing* shall mean 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.

“Marketplace” shall mean a physical or electronic forum, including, but not limited to, a store, a booth, an internet website, a catalog, or a dedicated sales software application, where tangible personal property, taxable products, or taxable services are offered for sale.

“Marketplace Facilitator”

(1) Shall mean a person who:

(a) Contracts with a marketplace seller or multichannel seller to facilitate for consideration, regardless of whether or not the consideration is deducted as fees from the transaction, the sale of the marketplace seller’s tangible personal property, products, or services through the person’s marketplace;

(b) Engages directly or indirectly, through one or more affiliated persons, in transmitting or otherwise communicating the offer or acceptance between a purchaser and the marketplace seller or multichannel seller; and

(c) Either directly or indirectly, through agreements or arrangements with third parties, collects payment from the purchaser on behalf of the seller.

(2) Marketplace Facilitator does not include a person that exclusively provides internet advertising services or lists products for sale, and that does not otherwise meet this definition.

“Marketplace Seller” shall mean a person, regardless of whether or not the person is engaged in business in the city, which has an agreement with a marketplace facilitator and offers for sale tangible personal property, products, or services through a marketplace owned, operated, or controlled by a marketplace facilitator.

“Multichannel Seller” shall mean a retailer that offers for sale tangible personal property, commodities, or services through a marketplace owned, operated, or controlled by a marketplace facilitator, and through other means.

*Mini-storage* or *mini-warehouse* shall mean a building or group of buildings containing individual storage units rented or leased to individuals for the storage of merchandise, commodities or private property.

*Mobile machinery* and *self-propelled construction equipment* shall mean 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.

*Motor fuel* shall mean gasoline, casing head or natural gasoline, benzoyl, 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.

*Municipality* shall mean any municipal corporation or similar form of local government, including any city, town, and city and county, whether organized pursuant to charter, constitution or statute, in Colorado or another state, except counties, school districts, or special districts, and the City of Westminster.

*Newspaper* shall mean 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.

*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* shall mean 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* shall mean a drug which, prior to being dispensed or delivered, is required by the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 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* shall mean:

(1) 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:

- (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 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.

(2) "Price" or "purchase price" shall include:

- (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 that 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 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.

(3) "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 retailer's 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* shall mean 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 humans* shall mean 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 concentrator's, and oxygen with related accessories.

*Purchase or sale* shall mean:

- (1) 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:
  - (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. The utilization of coin-operated devices, except coin-operated telephones, which do not vend articles of tangible personal property shall be considered short-term rentals of tangible personal property.
  - (c) Performance of taxable services; or

(d) Barter or exchange for other tangible personal property, other taxable products, or services.

(2) The terms "purchase" and "sale" do not include:

(a) A division of partnership assets among the partners according to their interests in the partnership;

(b) 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;

(c) 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;

(d) A transfer of a partnership or limited liability company interest;

(e) 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;

(f) The repossession of personal property by a chattel mortgage holder or foreclosure by a lienholder;

(g) The transfer of assets from a parent company 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;

(h) 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 company or the subsidiary which received the assets;

(i) 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 title 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 (i) shall constitute a sale. For the purposes of this paragraph (i), a closely held subsidiary company is one in which the parent company owns stock possessing 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.

*Qualified hospital organization* shall mean any of the following:

(1) An organization that is exempt from federal income tax under Section 115 or Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, but only if the organization holds a license to operate a "general hospital" for people issued pursuant to Sections 25-3-101 and 25-3-102, C.R.S. (2012), as amended, including any successor provisions to those sections, and operates a general hospital in the City;

(2) A corporation or trust that is exempt from federal income tax under Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, and that owns or employs personal property or improvements that are used in the operations of one or more organizations described in paragraph (1) of this definition; and either

(a) Directly controls, or is controlled by, one or more organizations described in paragraph (1) of this definition; or

(b) Is controlled by a management organization as defined in paragraph (3) of this definition in common with one or more organizations described in paragraph (1) of this definition; or

(c) Owns a hospital that is licensed to operate as a "general hospital" for people in the city pursuant to Sections 25-3-101 and 25-3-102, C.R.S. (2012), as amended, including any successor provisions to those sections, and that is operated by an organization described in paragraph (1) of this definition.

(3) An organization that is exempt from federal income tax under Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, and a principal function of which is to manage the property or operations, or both, of one or more organizations described in paragraphs (1) or (2) of this definition; and

(4) A partnership, limited partnership, limited liability limited partnership, limited liability partnership, limited liability company, or joint venture if all of the partners, members, joint venturers or other participants in such partnership, limited partnership, limited liability limited partnership, limited liability partnership, limited liability company or joint venture are organizations described in paragraphs (1), (2) or (3) of this definition.

*Resident* shall mean 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 sales* shall mean all sales except wholesale sales.

*Retailer or vendor* shall mean any person selling, leasing or renting, or granting a license to use tangible personal property or services at retail. *Retailer or vendor* 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.
- (5) Marketplace facilitator, marketplace seller, or multichannel seller.

*Retailer-contractor* shall mean 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*, for purposes of this chapter, shall include any definition of "return" included in other chapters of this title.

*Sales tax* shall mean the tax that is collected or required to be collected and remitted by a retailer on sales taxed under this chapter.

*Software program* shall mean 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.

*Special fuel* shall mean 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.

*Storage* shall mean 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.

*Storage facility* shall mean any indoor or outdoor area, structure, warehouse or unit, whether mobile or immobile, that is ordinarily used to store tangible personal property. Storage facility shall not include kennels, lockers, mobile home pads, safe deposit boxes, and reservoirs.

*Tangible personal property* shall mean 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* shall mean 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.

*Telecommunications service* shall mean 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 combination of such media, including any form of mobile two-way communication.

*Television and entertainment services* shall mean audio or visual content that can be transmitted electronically by any means, for which a charge is imposed.

*Use* shall mean 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* shall mean 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* shall mean sales by wholesalers to 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.

*Wholesaler* shall mean 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 4-2-5, W.M.C., is hereby AMENDED to read as follows.

#### 4-2-5. Transactions and Items Subject to Tax.

(A) The tax levied by Subsection 4-2-3(A), W.M.C., shall apply to the price of the following:

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

(2) Telecommunications service, except carrier access services and interstate private communications services, and except as otherwise provided by this section for mobile communication services, for all international, interstate and intrastate telecommunications service 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 this City, to a customer location in this City, or to a person residing in this City without regard to where the bill for such services is actually received. "Telecommunications services" do not include separately stated non-transmission services which constitute computer processing applications used to act on the information to be transmitted.

(a) Mobile telecommunications service shall be subject to the tax imposed by this chapter only if the service is provided by a home service provider to a customer whose place of primary use is within the City and the service originates within the City; further, the tax shall be collected in accordance with the provisions of the Act.

(b) As used in this subsection, unless the context otherwise requires:

(i) "Act" means the federal "Mobile Telecommunications Sourcing Act," 4 U.S.C. Sections 116 to 126, as amended.

(ii) "Customer" means customer as defined in Section 124(2) of the Act.

(iii) "Home service provider" means home service provider as defined in Section 124(5) of the Act.

(iv) "Mobile telecommunications service" means mobile telecommunications service as defined in Section 124(7) of the Act.

(v) "Place of primary use" means the place of primary use as defined in Section 124(8) of the Act.

(c) The Finance Director may require payment of the tax on any other basis permitted by this chapter when a customer fails to provide its place of primary use or the Act is determined to be inapplicable to the tax imposed by this chapter on mobile telecommunications services.

(3) Installation in the City of equipment required to receive or transmit telecommunication service.

(4) Gas, electricity and steam furnished for domestic, commercial or industrial consumption.

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

(6) Services of an operator when furnished with the lease or rental of tangible personal property, if such services are not separately stated.

(7) Rentals of storage space within the City, except for leases or rentals of storage space in conjunction with the lease of an area at which a business is conducted.

(8) Software programs.

(9) Digital products.

(10) Marketplace Sales

(a) A marketplace facilitator engaged in business in the city is required to collect and remit sales tax on all taxable sales made by the marketplace facilitator, or facilitated by it for marketplace sellers or multichannel sellers to customers in the city, whether or not the marketplace seller for whom sales are facilitated would have been required to collect sales tax had the sale not been facilitated by the marketplace facilitator.

(b) A marketplace facilitator shall assume all the duties, responsibilities, and liabilities of a vendor under Title IV of the W.M.C. Marketplace facilitators shall be liable for the taxes collected from marketplace sellers or multichannel sellers. The City may recover any unpaid taxes, penalties, and interest from the marketplace facilitator that is responsible for collecting on behalf of marketplace sellers or multichannel sellers.

(c) The liabilities, obligations, and rights set forth under this article are in addition to any duties and responsibilities of the marketplace facilitator has under this article if it also offers for sale tangible personal property, products, or services through other means.

(d) A marketplace seller, with respect to sales of tangible personal property, products, or services made in or through a marketplace facilitator's marketplace, does not have the liabilities, obligations, or rights of a retailer under this article if the marketplace seller can show that such sale was facilitated by a marketplace facilitator:

(i) With whom the marketplace seller has a contract that explicitly provides that the marketplace facilitator will collect and remit sales tax on all sales subject to tax under this article; or

(ii) From whom the marketplace seller requested and received in good faith a certification that the marketplace facilitator is registered to collect sales tax and will collect sales tax on all sales subject to tax under this article made in or through the marketplace facilitator's marketplace.

(e) If a marketplace seller makes a sale that is not facilitated by a licensed marketplace facilitator in a marketplace, the marketplace seller is subject to all of the same licensing, collection, remittance, filing and recordkeeping requirements as any other retailer.

(f) Auditing. With respect to any market place sale, the city shall solely audit the marketplace facilitator for sales made by marketplace sellers or multichannel sellers but facilitated by the marketplace. The city will not audit or otherwise assess tax against marketplace sellers or multichannel sellers for sales facilitated by a marketplace facilitator.

(g) No obligation to collect the tax required by this article may be applied retroactively. Responsibilities, duties and liabilities described in 4-2-5(A)(11)W.M.C. of a marketplace facilitator, marketplace seller, or multichannel seller shall begin upon the earlier of when they became licensed to collect the city's sales tax or when they became legally obligated to collect the city's sales tax.

(h) If any provision of this ordinance, or the application of such provision to any person or circumstance, is held to be unconstitutional, then the remainder of this ordinance, and the application of the provisions of such to any person or circumstance, shall not be affected thereby.

(i) The ordinance shall be effective on the first day of the month that is at least thirty (30) days after date of its adoption.

(B) The tax levied by Subsection 4-2-3(b), W.M.C., shall apply to the price of the following:

(1) Non-exempt tangible personal property purchased for use without payment of the sales tax and used, stored, or consumed inside the City, either personally or in conjunction with the rendering of a service.

(2) Tangible personal property purchased at wholesale or component parts purchased for manufacture that are subsequently used by the taxpayer, either personally or in the business.

(3) Taxable services purchased without payment of the sales tax.

(4) Automotive vehicles required to be registered at an address inside the City on which municipal sales tax has not been paid. 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.

(a) The determination of vehicle registration requirements for individuals shall be the same as for the determination of residency for voter registration purposes.

(b) The determination of vehicle registration requirements for automotive vehicles that are owned by a business and operated primarily for business purposes shall be based on the address from which such motor vehicles are principally operated and maintained.

Section 3. Section 4-2-6, W.M.C., is hereby AMENDED to read as follows:

**4-2-6. Exemptions From Sales Tax.**

(A) The tax levied by Subsection 4-2-3(a), W.M.C., shall not apply to the following:

(1) Automotive vehicles sold to nonresidents of the City for registration outside the City.

(2) Tangible personal property when both of the following conditions exist:

(a) The sales are to a person who resides or is located outside the City; and,

(b) The articles purchased are delivered to purchaser person 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) Prosthetic devices for humans, prescription drugs for humans, prescription drugs for animals, and items that are dispensed pursuant to a written order of a licensed practitioner of the healing arts.

(4) Reserved.

(5) All direct sales, except for construction materials used in a project for which a city building permit is required, to charitable organizations in the conduct of their regular exempt organizational functions and activities, when billed to and paid for by the charitable organization.

(6) All direct sales, except for construction materials used in a project for which a city building permit is required, 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.

(7) Construction materials used in construction projects undertaken and managed directly by the City.

(8) All sales that the City is prohibited from taxing under the Constitution or laws of the United States, or 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) Motor fuel upon which there has been accrued or paid either the gasoline tax or special fuel tax required by Article 27 of Title 39, C.R.S., and that is not subject to refund.

(11) Farm equipment.

(12) Neat cattle, sheep, lambs, swine and goats; mares and stallions for breeding purposes.

- (13) Feed for livestock or poultry, seeds, and orchard trees.
- (14) Straw and other bedding for use in the care of livestock.
- (15) Farm closeout sales.
- (16) All wholesale sales to licensed wholesalers, except sales of property used or consumed by the wholesaler.
- (17) Tangible personal property sold to a person engaged in manufacturing or processing for sale when the product being manufactured or processed is transformed in fact by the addition of the property, and such property becomes a constituent part of the finished product.
- (18) Commercial packaging materials, but not commercial shipping materials.
- (19) Napkins, straws or eating utensils sold to a retailer when the following conditions are met:
  - (a) The property is used in the consumption of food purchased;
  - (b) The cost of the property is included in the price of an item that is sold separately, rather than included in the price of a service; and
  - (c) The property is not returnable or intended for reuse.
- (20) Newsprint and printer's ink for use by publishers, newspapers and commercial printers.
- (21) Newspapers, but not including preprinted newspaper supplements.
- (22) Tangible personal property sold for rental or leasing inventory, including, but not limited to, coin-operated devices, provided that such property is not otherwise used except for customer demonstration or display.
- (23) 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.
- (24) Construction materials, if the purchaser of such materials presents to the retailer a building permit, or other documentation acceptable to the City, that evidences that a use tax on such materials has been paid or is required to be paid to the City or a municipality.
- (25) Tangible personal property sold through coin-operated devices for a price of \$0.15 or less.
- (26) Food for home consumption purchased with federal food stamps or with funds provided by the Special Supplemental Nutrition Program for Women, Infants, and Children, 42 U.S.C. Section 1786, from retailers who qualify as follows:
  - (a) Retail food stores that primarily sell food for home preparation and consumption and in which one or more staple food items make up more than 50 percent of eligible food sales. These stores shall include: full-line grocery stores; convenience stores; stores that sell meat, poultry, or fish; stands that sell agricultural commodities; farmers' markets; milk routes; bread routes; day-old bread stores; bakeries that sell bread; and nonprofit cooperative food-purchasing ventures that are properly licensed to sell food in the state and locality in which they are operating.
  - (b) Firms whose primary business is not the sale of food for home preparation and consumption, but who have recognized grocery departments in which staple foods make up more than 50 percent of eligible food sales.
- (27) Meals purchased with federal food stamps or with funds provided by the Special Supplemental Nutrition Program for Women, Infants, and Children, 42 U.S.C. Section 1786, in the following instances:

(a) The meals are prepared for and served to residents of federally subsidized housing for the elderly; or are prepared for and served to persons who are 60 years of age or over or who receive supplemental security income benefits, and their spouses, in senior citizens' centers, apartment buildings occupied primarily by such persons, public or private nonprofit establishments (eating or otherwise) that contract with the appropriate agency of the state to offer meals for such persons at concessional prices;

(b) The meals are prepared for and delivered to persons 60 years of age or over and persons who are physically or mentally handicapped or otherwise so disabled that they are unable adequately to prepare all of their meals, when such meals are prepared for and delivered to them (and their spouses) at their home by a public or private nonprofit organization or by a private establishment that contracts with the appropriate state agency to perform such services at concessional prices;

(c) The meals are prepared for and served to narcotics addicts or alcoholics as part of drug addiction or alcoholic treatment and rehabilitation programs;

(d) The meals are prepared for and served to disabled or blind recipients of federal financial benefits under the Social Security Act who are residents in a public or private nonprofit group living arrangement that is certified for no more than 16 residents by the appropriate state agency or agencies under regulations issued under the Social Security Act; or

(e) The meals are prepared for and served to women and children temporarily residing in public or private nonprofit shelters for battered women and children.

(28) Carrier access services.

(29) Private communications services.

(30) Custom software programs, and labor sold to modify pre-written software programs, if such labor is stated separately on the invoice from the pre-written software programs.

(31) Garage sales in a residential area, not exceeding a consecutive three-day period or a total of 21 days per calendar year, but not including sales conducted by a professional or compensated agent of the owner of the items to be sold.

(32) Sales by a recognized youth group affiliated with a charitable organization or a governmental entity.

(33) Transactions subject to the admissions or accommodations tax imposed by this title when the charge for the admission or accommodation is separately stated.

(34) Water sold by the City.

(35) Insulin in all forms, dispensed pursuant to the direction of a licensed practitioner of the healing arts. Glucose to be used for the treatment of insulin reactions, diabetic urine and blood testing kits and materials, and insulin measuring and injecting devices.

(36) All sales, except of construction materials used in a project for which a city building permit is required, to qualified hospital organizations when billed to and paid for by the qualified hospital organization.

(37) The retail delivery fee consisting of the community access retail delivery fee imposed in C.R.S. § 24-38.5-303(7), the clean fleet retail delivery fee imposed in C.R.S. § 25-7.5-103(8), the clean transit retail delivery fee imposed in C.R.S. § 43-4-1203(7), the retail delivery fee imposed in C.R.S. § 43-4-218(3), the bridge and tunnel retail delivery fee imposed in C.R.S. § 43-4-805 (5)(g.7), and the air pollution mitigation retail delivery fee imposed in C.R.S. § 43-4-1303(8), as such sections existed on June 17, 2021.

(38) The carryout bag fee imposed in C.R.S. § 25-17-505, as such section existed on July 6, 2021.

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

Section 4. Section 4-3-2, W.M.C., is hereby AMENDED to read as follows:

#### **4-3-2. Definitions.**

The following words, terms and phrases, when used in this chapter, shall have the following meaning, unless the context clearly indicates otherwise:

*Admissions charge* shall mean:

- (1) Any charge for the right or privilege of admission to:
  - (a) A performance of a motion picture open to the public; or
  - (b) An establishment open to the public that is licensed to sell, dispense or serve fermented malt beverages (three and two-tenths percent beer) or alcoholic beverages (liquor) pursuant to state law; or
  - (c) Any public display of live animals and/or plants, including insects or fish.

(2) Any charge for the right or privilege to the use of bowling alleys and pin setters for bowling balls in a bowling alley open to the public, including charges for bowling by the line.

(3) Admissions charge includes the value of free passes and complimentary admissions tickets provided by the operator.

*Charitable organization*, for purposes of this chapter, shall include any definition of "charitable organization" included in other chapters of this title.

*Gross sales* shall mean the total amount received in money, credit, property or other consideration valued in money for all admissions charges.

*Open to the public* shall mean any place or event or activity, the admission or access to which is open to members of the public upon payment of a charge or fee.

*Operator* shall mean any person, whether owner, operator, lessee, marketplace facilitator, marketplace seller, multichannel seller, as defined in this Title, or any other person, who charges or causes to be charged:

- (1) Admission to a performance of a motion picture theater open to the public.
- (2) Admission to an establishment licensed to sell, dispense, or serve fermented malt beverages (three and two-tenths percent beer) or alcoholic beverages (liquor) pursuant to state law; or
- (3) Admission to a bowling alley or fees for the utilization, lease or rental of bowling alleys and pin setters for bowling balls in a bowling alley open to the public, including charges for bowling by the line.
- (4) Admission to any public display of live animals and/or plants, including insects or fish.

*Price* shall mean the aggregate value in money or any thing or things paid or delivered or promised to be paid or delivered for admissions charges.

*Public* shall mean any individual, firm, copartnership, joint venture, corporation, society, club, league, association, joint stock 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, and the plural, as well as the singular number.

*Purchase or sale* shall mean the acquisition or disposition for a price of:

- (1) The right of privilege of admission to:
  - (a) A performance of a motion picture open to the public; or
  - (b) An establishment open to the public that is licensed to sell, dispense, or serve fermented malt beverages (three and two-tenths percent beer) or alcoholic beverages (liquor) pursuant to state law; or
  - (c) Any public display of live animals and/or plants, including insects or fish.
- (2) The right to the use of bowling alleys and pin setters for bowling balls in a bowling alley open to the public, including bowling by the line.

*Return, for purposes of this chapter, shall include any definition of "return" included in other chapters of this title.*

*Tax shall mean the admissions tax imposed by this chapter.*

*Vendor shall mean any operator as defined in this section.*

Section 5. Section 4-4-1, W.M.C., is hereby AMENDED to read as follows:

#### **4-4-1. Definitions.**

The following words, terms and phrases, when used in this chapter, shall have the following meaning, unless the context clearly indicates otherwise:

*Charitable organization*, for purposes of this chapter, shall include any definition of "charitable organization" included in other chapters of this title.

*Gross sales* shall mean the total amount received in money, credit, property or other consideration valued in money for all rooms or accommodations.

*Price* shall mean the aggregate value in money or any thing or things paid or delivered or promised to be paid or delivered for rooms or accommodations.

*Purchase or sale* shall mean the acquisition or disposition for a price of the right to use rooms or accommodations.

*Return*, for purposes of this chapter, shall include any definition of "return" in other chapters of this title.

*Room or accommodation* shall mean any room, unit, or space for which a charge is made.

*Tax* shall mean the accommodation tax imposed by this chapter.

*Vendor* shall mean a marketplace facilitator, marketplace seller, multichannel seller, motel, hotel, apartment hotel, lodging house, guest house, guest ranch, or any other place that provides sleeping rooms or sleeping facilities and offers rooms and accommodations for a consideration.

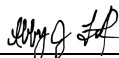
Section 6. This ordinance shall take effect upon its passage after second reading. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.



INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED  
PUBLISHED this 10<sup>th</sup> day of October, 2022.


PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED  
this 24<sup>th</sup> day of October, 2022.

ATTEST:

  
\_\_\_\_\_  
City Clerk

  
\_\_\_\_\_  
Mayor

APPROVED AS TO LEGAL FORM:

  
\_\_\_\_\_  
City Attorney's Office