

*As amended September 14, 2020*

COUNCIL BILL NO. CB20-024  
ORDINANCE NO. 4741

AN ORDINANCE AMENDING ARTICLE III, SALES AND USE TAX, AND ARTICLE V,  
LODGING TAX, OF CHAPTER 98, TAXATION, OF THE ARVADA CITY CODE

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

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

WHEREAS, pursuant to such authority, the City has adopted and enacted a Sales and Use Tax Code (the “Code”), under which City sales tax is levied on all sales and purchases of tangible personal property or taxable services at retail unless prohibited, as applicable to the provision of this Ordinance, under the Constitution or laws of the United States; and

WHEREAS, the United States Supreme Court in *South Dakota v. Wayfair*, 138 S.Ct. 2080 (2018) overturned prior precedent and held that a State is not prohibited by the Commerce Clause from requiring a retailer to collect sales tax based solely on the fact that such retailer does not have a physical presence in the State (“Remote Sales”); and

WHEREAS, based upon such decision, the retailer’s obligation to collect Remote Sales is no longer based on the retailer’s physical presence in the jurisdiction by the Constitution or law of the United States, and the City’s Sales and Use Tax Code needs to be amended to clearly reflect such obligation consistent with said decision; and

WHEREAS, the delivery of tangible personal property, products, or services into the City relies on and burdens local transportation systems, emergency and police services, waste disposal, utilities and other infrastructure and services; and

WHEREAS, the failure to tax remote sales creates incentives for businesses to avoid a physical presence in the State and its respective communities, resulting in fewer jobs and increasing the share of taxes to those consumers who buy from competitors with a physical presence in the State and its municipalities; and

WHEREAS, it is appropriate for Colorado municipalities to adopt uniform definitions within their sales tax codes to encompass marketplace facilitators, marketplace sellers, and multichannel sellers that do not have a physical presence in the City, but that still have a taxable connection with the City; and

WHEREAS, the goal of adopting this ordinance is to join in on the simplification efforts of all the self-collecting home rule municipalities in Colorado; and

WHEREAS, this ordinance provides a safe harbor to those who transact limited sales within the City; and

WHEREAS, absent such amendment, the continued failure of retailers to voluntarily apply and remit sales tax owed on remote sales exposes the municipality to unremitted taxes and permits an inequitable exception that prevents market participants from competing on an even playing field; and

WHEREAS, the City adopts this ordinance with the intent to address tax administration, and, in connection with, establish economic nexus for retailers or vendors without physical presence in the State and require the retailer or vendor to collect and remit sales tax for all sales made within the marketplace.

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

Section 1. Section 98-61, Definitions, of Article III, Sales and Use Tax, of Chapter 98, Taxation, of the Arvada City Code is hereby amended by repealing and reenacting the definition of “Enforcement officer,” repealing the existing definitions of “Engaged in business in the city” and “Retailer,” and by adding new definitions to read as follows:

**“Sec. 98-61. Definitions.**

*Enforcement officer* means the city manager or designee thereof.

*Economic nexus* means 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* means 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;
- (5) Retailer or vendor in the state of Colorado that makes more than one delivery into the taxing jurisdiction within a twelve month period; or
- (6) Makes retail sales sufficient to meet the definitional requirements of economic nexus as set forth in section 98-68.

*Marketplace* means 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* means a person who:

- (1) 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;
- (2) 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
- (3) Either directly or indirectly, through agreements or arrangements with third parties, collects payment from the purchaser on behalf of the seller.

Marketplace facilitator does not include a person who exclusively provides internet advertising services or lists products for sale, and who does not otherwise meet this definition.

*Marketplace seller* means a person, regardless of whether or not the person is engaged in business in the city, who 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* means 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.

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

Except as set forth herein, all other definitions in the Definitions section of this article shall remain the same.

Section 2. Section 98-66, Property and service taxed, of Article III, Sales and Use Tax, of Chapter 98, Taxation, of the Arvada City Code is hereby amended by adding new subsections (3) and (4) to read as follows:

**“Sec. 98-66. Property and service taxed.**

**(3) On all taxable 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 retailer or vendor as defined in section 98-61 of this Code. 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:

1. 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
  2. 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.

(4) With respect to any 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.”

Section 3. Section 98-67.5, No retroactive tax, of Article III, Sales and Use Tax, of Chapter 98, Taxation, of the Arvada City Code is hereby enacted to read as follows:

**“Sec. 98-67.5. No retroactive tax.**

No obligation to collect the sales and use tax required by this article may be applied retroactively. Responsibilities, duties, and liabilities described in section 98-66 of a marketplace facilitator, marketplace seller, or multichannel seller begin when they became licensed to collect the city's sales tax, or when they became legally obligated to collect the city's sales tax under section 98-66, whichever is earlier.”

Section 4. Section 98-242, Legislative intent, of Article V, Lodging Tax, of Chapter 98, Taxation, of the Arvada City Code is hereby amended by repealing and reenacting this section to read as follows:

**“Sec. 98-242. Legislative intent.**

It is the legislative intent of the city council that every person who purchases lodging in the city is exercising a taxable privilege. It is also the intent of the city council that every person who is engaged in business in the city and who furnishes lodging shall collect the tax imposed under this article.”

Section 5. Section 98-243, Definitions, of Article V, Lodging Tax, of Chapter 98, Taxation, of the Arvada City Code is hereby amended by repealing the existing definition of “Vendor,” and by adding new definitions to read as follows:

**“Sec. 98-243. Definitions.**

*Engaged in business in the city* means 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.
- (5) Retailer or vendor in the state of Colorado that makes more than one delivery into the taxing jurisdiction within a twelve month period; or
- (6) Makes retail sales sufficient to meet the definitional requirements of economic nexus as set forth in section 98-68.

*Marketplace* means 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* means a person who:

- (1) 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;
- (2) 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
- (3) Either directly or indirectly, through agreements or arrangements with third parties, collects payment from the purchaser on behalf of the seller.

Marketplace facilitator does not include a person who exclusively provides internet advertising services or lists products for sale, and who does not otherwise meet this definition.

*Marketplace seller* means a person, regardless of whether or not the person is engaged in business in the city, who 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* means 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.

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

Except as set forth herein, all other definitions in the Definitions section of this article shall remain the same.

Section 6. Severability. If any section, paragraph, sentence, clause, or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance and each part or parts thereof irrespective of the fact that any part or parts be declared unconstitutional or invalid.

Section 7. Effective date. This ordinance shall take effect on October 15, 2020.

INTRODUCED, READ, AND ORDERED PUBLISHED this 17th day of August, 2020.

PASSED, ADOPTED, AND APPROVED this 14th day of September, 2020.

*Marc Williams*

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Marc Williams, Mayor

ATTEST:

*Kristen R. Rush, City Clerk*

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City Clerk



APPROVED AS TO FORM:  
Rachel A. Morris, City Attorney

By: *Nora S. Steenson* *RM*

Publication Dates: August 20, 2020  
September 17, 2020

***REDLINE/STRIKETHROUGH VERSION***

**FOR INFORMATION ONLY -- NOT PART OF THE ORDINANCE**

Underlined indicates new material  
~~Strikethrough~~ indicates deleted material

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**Sec. 98-61. - Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*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.

*Business license* means a City of Arvada business license.

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

*Charitable organization* means any entity which:

- (1) Has been certified as a not-for-profit organization under section 501(c)(3) of the Internal Revenue Code; and
- (2) Is an organization which exclusively, and in a manner consistent with existing laws and for the benefit of an indefinite number of persons or animals, freely and voluntarily ministers to the physical, mental or spiritual needs of persons or animals, and which thereby lessens the burdens of government.

*City* means the City of Arvada, Colorado.

*Commercial packaging materials* means containers, labels, and/or cases, that become part of the finished product to the purchaser, used by or sold to a person engaged in manufacturing,



compounding, wholesaling, jobbing, retailing, packaging, distributing or bottling for sale, profit or use, and is not returnable to said person for reuse. Commercial packaging materials does not include commercial shipping materials.

*Commercial shipping materials* means materials that do not become part of the finished product to the purchaser which are used exclusively in the shipping process. Commercial shipping materials include but are not limited to containers, labels, pallets, banding material and fasteners, shipping cases, shrink wrap, bubble wrap or other forms of binding, padding or protection.

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

*Designee* means the person designated by the finance director or city manager to perform duties for the proper administration and enforcement of this article.

*Economic nexus* means 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.

*Enforcement officer* means the city manager or ~~designee thereof~~ ~~other person designated by~~ him.

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

- ~~(1) Directly, indirectly, or by a subsidiary maintains a building, store, office, salesroom, warehouse, or other place of business within the taxing jurisdiction;~~
- ~~(2) Sends one or more employees, agents or commissioned sales persons into the taxing jurisdiction to solicit business or to install, assemble, repair, service, or assist in the use of its products, or for demonstration or other reasons;~~
- ~~(3) Maintains one or more employees, agents or commissioned sales persons on duty at a location within the taxing jurisdiction;~~
- ~~(4) Owns, leases, rents or otherwise exercises control over real or personal property within the taxing jurisdiction; or~~
- ~~(5) Makes more than one delivery into the taxing jurisdiction within a 12-month period by any means other than a common carrier.~~

*Engaged in business in the city* means 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;
- (5) Retailer or vendor in the state of Colorado that makes more than one delivery into the taxing jurisdiction within a twelve month period; or
- (6) Makes retail sales sufficient to meet the definitional requirements of economic nexus as set forth in section 98-68.

*Excess tax* means that amount of city tax collected during a reporting period that is in excess of the amount yield by applying the rate imposed by section 98-68 to city net taxable sales and services and which excessive collection must be remitted to the city using the method prescribed herein.

*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.

*Finance director* means the director of finance of the City of Arvada or such other person designated by the city; "finance director" shall also include such person's designee.

*Food for home consumption* means food for domestic home consumption as defined in 7 U.S.C. 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.

*Freight and delivery* means the price paid or charges for freight and delivery services including:

- (1) Freight-in paid by retailer to obtain tangible personal property before resale which is passed on to the purchaser in the price of the property or through a separate invoice;
- (2) Charges to the purchaser for delivery where the vendor transports the property being sold or leased;
- (3) Freight and delivery charges included in the price of the property being delivered, but not including charges for US Postal Service; and
- (4) Delivery charges include both delivery and pick up of an item.

*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.

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

*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.

*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.

*Marketplace* means 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* means a person who:

- (1) 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;
- (2) 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
- (3) Either directly or indirectly, through agreements or arrangements with third parties, collects payment from the purchaser on behalf of the seller.

Marketplace facilitator does not include a person who exclusively provides internet advertising services or lists products for sale, and who does not otherwise meet this definition.

*Marketplace seller* means a person, regardless of whether or not the person is engaged in business in the city, who 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.

*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.

*Multichannel seller* means 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.

*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.

*Nonresident vendor* means any retailer or vendor whose place of business is located outside the city.

*Pay television* includes, but is not limited to, cable, microwave or other television service for which a charge is imposed.

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

*Preprinted newspaper supplements* means 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 aggregate value measured in currency paid or delivered or promised to be paid or delivered in consummation of a sale, without any discount from the

price on account of the cost of materials used, labor or service cost, and exclusive of any direct tax imposed by the federal government or by this article, and, in the case of all retail sales involving the exchange of property, also exclusive of the fair market value of the property exchanged at the same time and place of the exchange, if:

- (1) Such exchanged property is to be sold thereafter in the usual course of the retailer's business, or
- (2) Such exchanged property is a vehicle and is exchanged for another vehicle and both vehicles are subject to licensing, registration, or certification under the laws of this state, including, but not limited to, vehicles operating upon public highways, off-highway recreation vehicles, watercraft, and aircraft. Any money or other consideration paid over and above the value of the exchanged property is subject to tax.

"Price" or "purchase price" includes:

- (1) The amount of money received or due in cash and credits.
- (2) Property at fair market value taken in exchange but not for resale in the usual course of the retailer's business.
- (3) Any consideration valued in money, whereby the manufacturer or someone else reimburses the retailer for part of the purchase price and other media of exchange.
- (4) The total price charged on credit sales including finance charges which are not separately stated at the time of sale. An amount charged as interest on the unpaid balance of the purchase price is not part of the purchase price unless the amount added to the purchase price is included in the principal amount of a promissory note; except the interest or carrying charge set out separately from the unpaid balance of the purchase price on the face of the note is not part of the purchase price. An amount charged for insurance on the property sold and separately stated at the time of sale is not part of the purchase price.
- (5) Installation, applying, remodeling or repairing the property, delivery and wheeling-in charges included in the purchase price and not separately stated.
- (6) Transportation and other charges to effect delivery of tangible personal property to the purchaser.
- (7) Indirect federal manufacturers' excise taxes, such as taxes on automobiles, tires and floor stock.
- (8) The gross purchase price of articles sold after manufacturing or after having been made to order, including the gross value of all the materials used, labor and service performed and the profit thereon.

"Price" or "purchase price" shall not include:

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



- (3) Discounts from the original price if such discount and the corresponding decrease in sales tax due is actually passed on to the purchaser, and the seller is not reimbursed for the discount by the manufacturer or someone else. An anticipated discount to be allowed for payment on or before a given date is not an allowable adjustment to the price in reporting gross sales.

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

*Prosthetic devices for 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.

*Prototype* means an original model on which something is patterned after.

*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, or sold. These terms include capital leases, installment and credit sales, and property and services acquired by:

- (1) Transfer, either conditionally or absolutely, of title or possession or both to tangible personal property, other taxable products, or taxable services;
- (2) A lease, lease-purchase agreement, rental or grant of a license, including royalty agreements, to use tangible personal property, other taxable products, or taxable services. 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;
- (3) Performance of taxable services; or
- (4) Barter or exchange for other tangible personal property, other taxable products, or services.

The terms "purchase" and "sale" do not include:

- (1) A division of partnership assets among the partners according to their interests in the partnership;
- (2) The transfer of assets of shareholders in the formation or dissolution of professional corporations, if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets;
- (3) The dissolution and the pro rata distribution of the corporation's assets to its stockholders, if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets;

- (4) A transfer of a partnership or limited liability company interest;
- (5) The transfer of assets to a commencing or existing partnership or limited liability company, if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets;
- (6) The repossession of personal property by a chattel mortgage holder or foreclosure by a lienholder;
- (7) The transfer of assets from a parent 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;
- (8) The transfer of assets from a subsidiary company or companies which are owned at least 80 percent by the parent company to a parent company or to another subsidiary which is owned at least 80 percent by the parent company, which transfer is solely in exchange for stock or securities of the parent corporation or the subsidiary which received the assets; or
- (9) The transfer of assets between parent and closely held subsidiary companies, or between subsidiary companies closely held by the same parent company, or between companies which are owned by the same shareholders in identical percentage of stock ownership amounts, computed on a share-by-share basis, when a tax imposed by this article was paid by the transferor company at the time it acquired such assets, except to the extent that there is an increase in the fair market value of such assets resulting from the manufacturing, fabricating, or physical changing of the assets by the transferor company. To such an extent any transfer referred to in this paragraph shall constitute a sale. For the purposes of this paragraph, a closely held subsidiary corporation is one in which the parent company owns stock possessing or membership interest at least 80 percent of the total combined voting power of all classes of stock entitled to vote and owns at least 80 percent of the total number of shares of all other classes of stock.

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

*Research and development* means the research of new or experimental technologies, or the development of new or experimental materials, products, product components or manufacturing processes.

*Research and development equipment* means:

- (1) Equipment used permanently and exclusively in the research of new or experimental technologies; or
- (2) Equipment used exclusively and directly in the development of new or experimental materials, products, product components or manufacturing processes; or
- (3) Research and development equipment does not include research and development product prototypes.

*Retail sales* means all sales except wholesale sales.



~~*Retailer* means any person selling, leasing, renting, or granting a license to use tangible personal property or services at retail. Retailer shall include, but is not limited to, any:~~

- ~~(1) Auctioneer;~~
- ~~(2) Salesperson, representative, peddler or canvasser, who makes sales as a direct or indirect agent of or obtains such property or services sold from a dealer, distributor, supervisor or employer;~~
- ~~(3) Charitable organization or governmental entity which makes sales of tangible personal property to the public, notwithstanding the fact that the merchandise sold may have been acquired by gift or donation or that the proceeds are to be used for charitable or governmental purposes;~~
- ~~(4) Retailer-contractor, when acting in the capacity of a seller of building supplies, construction materials, and other tangible personal property.~~

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

*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.

*Sales tax* means the tax that is collected or required 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 nonelectronic security services such as consulting or human or guard dog patrol services.

*Software program* means a sequence of instructions that can be measured, interpreted and executed by an electronic device (e.g. a computer, tablets, smart phones) regardless of the means by which it is accessed or the medium of conveyance. Software program includes:

- (1) Custom software program, which is a software program prepared to the special order or specifications of a single customer;
- (2) Pre-written software program, which is a software program prepared for sale or license to multiple users, and not to the special order or specifications of a single customer. Pre-written software is commonly referred to as "canned," "off-the-shelf ("COTS")," "mass produced" or "standardized;"
- (3) Modified software, which means pre-written software that is altered or enhanced by someone other than the purchaser to create a program for a particular user; and
- (4) The generic term "software," "software application," as well as "updates," "upgrades," "patches," "user exits," and any items which add or extend functionality to existing software programs.

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

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

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

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

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

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

*Tangible personal property* means personal property that can be one or more of the following: seen, weighed, measured, felt, touched, stored, transported, exchanged, or that is in any other manner perceptible to the senses.

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

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

*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 under 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.

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

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

*Use* means the exercise, for any length of time by any person within the city of any right, power or dominion over tangible personal property or services when rented, leased or purchased at retail from sources either within or without the city from any person or vendor or used in the performance of a contract in the city whether such tangible personal property is owned or not owned by the taxpayer. Use also includes the withdrawal of items from inventory for consumption.

*Use tax* means the tax paid or required to be paid by a consumer for using, storing, distributing or otherwise consuming tangible personal property or taxable services inside the city.

*Watts/800 service* means any outbound or inbound interstate wide area telecommunications service or other similar service which entitles the subscriber, upon payment of the periodic charge, based upon a flat amount and/or usage, to make or receive a large volume of telephonic communications to or from persons having telephone or radio telephone stations in specified areas which are outside the telephone system area in which the subscriber's station is located.

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

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**Sec. 98-66. Property and service taxed.**

(3) On all taxable marketplace sales:

- f. 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.
- g. A marketplace facilitator shall assume all the duties, responsibilities, and liabilities of a retailer or vendor as defined in section 98-61 of this Code. 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.
- h. 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.
- i. 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:
  - 1. 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
  - 2. 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.
- j. 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.

(4) With respect to any 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.

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**Sec. 98-67.5. No retroactive tax.**

No obligation to collect the sales and use tax required by this article may be applied retroactively. Responsibilities, duties, and liabilities described in section 98-66 of a marketplace facilitator, marketplace seller, or multichannel seller begin when they became licensed to collect the city’s sales tax, or when they became legally obligated to collect the city’s sales tax under section 98-66, whichever is earlier.

....

**Sec. 98-242. - Legislative intent.**

It is the legislative intent of the city council that every person who purchases lodging in the city is exercising a taxable privilege and every person who furnishes lodging shall collect the tax imposed by this article. It is the legislative intent of the city council that every person who purchases lodging in the city is exercising a taxable privilege. It is also the intent of the city council that every person who is engaged in business in the city and who furnishes lodging shall collect the tax imposed under this article.

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**Sec. 98-243. - Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Engaged in business in the city means 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.
- (5) Retailer or vendor in the state of Colorado that makes more than one delivery into the taxing jurisdiction within a twelve month period; or
- (6) Makes retail sales sufficient to meet the definitional requirements of economic nexus as set forth in section 98-68.

*Gross taxable sales* means the total amount received in money, credits, property, or other valuable consideration from sales and purchases of lodging that shall be subject to the tax imposed by this article.

*Lodging* means the transaction of furnishing rooms or accommodations by any person, partnership, association, corporation, estate, receiver, trustee, assignee, lessee, or any person acting in a representative capacity or any other combination of individuals by whatever name known to a person, who for a consideration uses, possesses, or has the right to use or possess any room, in a hotel, bed and breakfast residence, apartment hotel, lodginghouse, motor hotel, guest house, guest ranch, mobile home, auto camps, trailer courts and parks, under any concession or franchise, permit, right of access, license to use or other agreement, or otherwise.

*Marketplace* means 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* means a person who:

- (1) 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;
- (2) 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
- (3) Either directly or indirectly, through agreements or arrangements with third parties, collects payment from the purchaser on behalf of the seller.

Marketplace facilitator does not include a person who exclusively provides internet advertising services or lists products for sale, and who does not otherwise meet this definition.

*Marketplace seller* means a person, regardless of whether or not the person is engaged in business in the city, who 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* means 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.

*Person* means an individual, partnership, society, club, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any other group or combination of individuals acting as a unit, including the United States of America, the state and any political subdivision thereof.

*Purchase or sale* means the acquisition for a price by any person of the taxable services of lodging within the city.

*Purchaser* means any person to whom the taxable service of lodging has been rendered.

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

*Tax* means either the tax payable by the purchaser or the aggregate amount of taxes due from a vendor during the period for which the vendor is required to report collections under this article.

*Taxpayer* means any person obligated to account to the finance director for taxes collected or to be collected under the provisions of this article.

~~*Vendor* means a person making sales to a purchaser in the city of the taxable service of lodging.~~