



COUNCIL COMMUNICATION

TO: Mayor and Council
FROM: Heather Driscoll
DEPARTMENT: Finance & Administrative Services
DATE: April 20, 2020
SUBJECT: CB #13 - Tax for On-Line Sales for 3rd Party Vendors

DESCRIPTION:

CB #13 - Tax for On-Line Sales for 3rd Party Vendors

RECOMMENDATION:

Staff is asking City Council to review and approve, by Ordinance, Council Bill 13, providing for specific rules associated with marketplace retailers' collection and remittance of sales tax, all within the City of Englewood.

PREVIOUS COUNCIL ACTION:

On March 4, 2019, the City Council approved Ordinance 11-19 updating Section 4-4-2 of the Englewood Municipal Code, providing for definitions in association with the assessment and collection of the City's sales tax.

On or before the 1985 adoption of the Englewood Municipal Code, the City of Englewood provided for the assessment and collection of sales tax upon all retail sales and purchases of tangible personal property within the boundaries of the City, including delivery within the City. (EMC 4-4-4-1)

SUMMARY:

The State of Colorado and the City of Englewood separately impose sales tax on retail sales of tangible personal property, commodities, and certain services. A retailer making sales in Colorado and within Englewood is typically required to collect applicable state and local sales taxes.

On June 21, 2018, the United States Supreme Court resolved the legal question regarding whether businesses without a physical presence in a State can be required to collect and remit sales taxes on transactions within the jurisdiction. It determined that out of jurisdiction on-line sellers can be held to the same standards as retailers located within a State.

The Colorado General Assembly enacted legislation effective October 1, 2019, explicitly directing sales tax collection responsibilities to marketplace facilitators for sales within their marketplaces. A *marketplace facilitator* is an individual or legal entity that allows a marketplace seller to offer for sale tangible goods commodities, or services through a marketplace. A *marketplace seller* is an individual or legal entity who has an agreement with a marketplace facilitator and offers for sale tangible personal property, commodities, or services in or through the marketplace facilitator's marketplace, and a *multi-channel seller* offers tangible personal

property, commodities, or services for sale through both marketplaces and other means—such as their own store, or on their own website.

These collection responsibilities apply to any sales made in or through a marketplace facilitator's marketplace as defined by the legislation. There is an exception for small marketplace facilitators who do less than \$100,000 of business annually.

All businesses and retailers, both brick and mortar and on-line, that are in compliance with the City's sales and use tax provisions, seek fair and balanced participation by all businesses that sell products within the City of Englewood without advantage to marketplace or multi-channel sellers/retailers.

ANALYSIS:

Through this proposed action the City of Englewood seeks to maintain procedural conformity with the State of Colorado's established sales tax definitions and requirements regarding on-line marketplace and multi-channel sellers/retailers, as set forth within C.R.S. 39-26-102, while clarifying the expectations set forth with Englewood Municipal Code § 4-4-4 which imposes a sales tax upon all retail sales and purchases of tangible personal property within the boundaries of the City, "including delivery within the boundaries of the City".

FINANCIAL IMPLICATIONS:

Through research conducted by the Finance Department and City Attorney's Office, Staff anticipates a minimum increase in monthly sales tax revenue of \$10,000. Staff is working towards implementing this requirement with multiple vendors and expects to have processes in place to collect tax beginning in July 2020. There will be a ramp up period and tax collected may not reach the minimum amount until later in 2020.

ALTERNATIVES:

Staff highly recommends City Council approve the Ordinance.

CONCLUSION:

Staff is asking City Council to review and approve, by Ordinance, Council Bill 13, providing for specific rules associated with marketplace retailers' collection and remittance of sales tax, all within the City of Englewood. Approving the Ordinance will enable the City to maintain procedural conformity with the State of Colorado's established sales tax definitions and requirements.

ATTACHMENTS:

Council Bill #13

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2020

COUNCIL BILL NO. 13
INTRODUCED BY COUNCIL
MEMBER ANDERSON

AN ORDINANCE AMENDING TITLE 4, CHAPTER 4, SECTIONS 2 REGARDING DEFINITIONS APPLICABLE TO SALES AND USE TAX AND ADDING TITLE 4, CHAPTER 4, SECTION 4-9 REGARDING PAYMENT OF SALES TAX OWED BY MARKETPLACE FACILITATORS, ALL WITHIN THE CITY OF ENGLEWOOD, COLORADO.

WHEREAS, Englewood Municipal Code § 4-4-4 imposes a sales tax upon all retail sales and purchases of tangible personal property within the boundaries of the City, “including delivery within the boundaries of the City”;

WHEREAS, Englewood Municipal Code § 4-4-5 imposes a use tax upon the initial privilege of storing, using or consuming within the boundaries of the City any articles of tangible personal property purchased at retail from sources outside the corporate limits of the City;

WHEREAS, On June 21, 2018, the United States Supreme Court ruled that businesses without a physical presence in a State can be required to collect and remit sales taxes on transactions within the jurisdiction;

WHEREAS, While most on-line retailers currently collect and remit Englewood sales tax for goods sold and delivered within City of Englewood boundaries for sales of their own products but may not collect sales tax for sale of products carried by retailers who sell their products through another on-line seller (marketplace or multichannel sellers/retailers);

WHEREAS, A *marketplace seller* is an individual or legal entity who has an agreement with a marketplace facilitator and offers for sale tangible personal property, commodities, or services in or through the marketplace facilitator’s marketplace, and a *multichannel seller* offers tangible personal property, commodities, or services for sale through other means—such as their own store, or on their own website;

WHEREAS, All businesses and retailers, both brick and mortar and on-line, that are in compliance with the City’s sales and use tax provisions, seek fair and balanced participation by all businesses that sell products within the City of Englewood without advantage to marketplace or multichannel sellers/retailers; and

WHEREAS, The City of Englewood seeks to maintain procedural conformity with the State of Colorado’s established sales tax definitions and requirements regarding on-line marketplace and multichannel sellers/retailers, as set forth within C.R.S. 39-26-102.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ENGLEWOOD, COLORADO, AS FOLLOWS:

In accordance with the provisions of the Englewood Municipal Code the following amendments to Title 4, Municipal Finances and Taxation, are hereby approved:

Section 1. Amendment of Title 4, Chapter 4, Section 2. Title 4, Chapter 4, Section 2 of the Englewood Municipal Code shall be amended by adding the following:

4-4-2: Definitions.

When used in this Chapter, the following words and phrases shall have the following meanings, unless from the context it clearly appears that a different meaning is indicated:

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

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

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

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

Candy means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruit, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. Candy does not include any preparation containing flour, products that require refrigeration or marijuana infused products.

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

Charitable Organization means any entity which: (1) has been certified as a nonprofit organization under Section 501(c)(3) of the Internal Revenue Code, and (2) is an organization which exclusively, and in a manner consistent with existing laws and for the benefit of an indefinite number of persons or animals, freely and voluntarily ministers to the physical, mental, or spiritual needs of persons or animals, and thereby lessens the burden of government.

City means the municipality of Englewood.

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

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

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

Commercial Packaging Materials means containers, labels, and/or cases, that become part of the finished product to the purchaser, used by or sold to a person engaged in manufacturing, compounding, wholesaling, jobbing, retailing, packaging, distributing or bottling for sale, profit or use, and is not returnable to said person for reuse. Commercial Packaging Materials does not include Commercial Shipping Materials.

Commercial Shipping Materials means materials that do not become part of the finished product to the purchaser which are used exclusively in the shipping process. Commercial Shipping Materials include but

are not limited to containers, labels, pallets, banding material and fasteners, shipping cases, shrink wrap, bubble wrap or other forms of binding, padding or protection.

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

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

Construction Materials means tangible personal property which, when combined with other tangible personal property, loses its identity to become an integral and inseparable part of a 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 and inseparable part of completed structure or project are not construction materials.

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

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

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

Cover Charge means a charge paid to a club or similar entertainment establishment which may, or may not, entitle the patron paying such charge to receive tangible personal property, such as food and/or beverages.

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

Digital Product means an electronic product including, but not limited to: (1) "digital images" which means works that include, but are not limited to, the following that are generally recognized in the ordinary and usual sense as "photographs," "logos," "cartoons," or "drawings," (2) "digital audio-visual works" which means a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any, (3) "digital audio works" which means works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones. For purposes of the definition of "digital audio works", "ringtones" means digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication, and (4) "digital books" which means works that are generally recognized in the ordinary and usual sense as "books".

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

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

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

Engaged in Business in the City means performing or providing services or selling, leasing, renting, delivering or installing tangible personal property for storage, use or consumption, within the City. Engaged in Business in the City includes, but is not limited to, any one 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) is required to collect and remit sales tax as a marketplace facilitator or ~~(56)~~ makes more than one delivery into the taxing jurisdiction within a twelve month period.

Factory Built Housing means a manufactured home or modular home.

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

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

Farm Operation means the production of any of the following products for profit, including, but not limited to, a business that hires out to produce or harvest such products: (1) agricultural, viticultural, fruit, and vegetable products; (2) livestock; (3) milk; (4) honey; and (5) poultry and eggs.

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

Food For Home Consumption means food for domestic home consumption as defined in 7 U.S.C. Section 2012(k) (2014), as amended, for purposes of the supplemental nutrition assistance program, or any successor program, as defined in 7 U.S.C. Section 2012(t), as amended; except that "food" does not include carbonated water marketed in containers; chewing gum; seeds and plants to grow foods; prepared salads and salad bars; packaged and unpackaged cold sandwiches; deli trays; and hot or cold beverages served in unsealed containers or cups that are vended by or through machines or non-coin-operated coin collecting food and snack devices on behalf of a vendor.

Garage Sales means sales of tangible personal property, except automotive vehicles, occurring at the residence of the seller, where the property to be sold was originally purchased for use by members of the household where such sale is being conducted. The term includes, but is not limited to, yard sales, estate sales, and block sales.

Gross Sales means the total amount received in money, credit, property or other consideration valued in money for all sales, leases, or rentals of tangible personal property or services.

Internet Access Services means services that provide or enable computer access by multiple users to the Internet, but shall not include that portion of packaged or bundled services providing phone or television cable services when the package or bundle includes the sale of Internet Access Services.

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

License means a City of Englewood sales and/or use tax license.

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

Lodging Services means the furnishing of rooms or accommodations by 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, lodging house, motor hotel, guesthouse, guest ranch, trailer coach, mobile home, auto camp, or trailer court and park, short term rental, or similar establishment, for a period of less than thirty (30) days under any concession, permit, right of access, license to use, or other agreement, 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.

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

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

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, commodities, or services are offered for sale.

Marketplace Facilitator means a person who:

- (1) Contracts with a marketplace seller to facilitate for consideration, regardless of whether the consideration is deducted as fees from the transaction, the sale of the marketplace seller's tangible personal property, commodities, 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; and
- (3) Either directly or indirectly, through agreements or arrangements with third parties, collects the payment from the purchaser and transmits the payment to the marketplace seller.

A 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 means a person, regardless of whether the person is doing business in this state, who has an agreement with a marketplace facilitator and offers for sale tangible personal property, commodities, 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 facilitator or through other means, such as their own store or their own website.

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

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

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

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

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

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

Park means any area used as a park, reservation, playground, beach, ballfield, shelter house, or any other area owned and used by the City and devoted or designated to active or passive recreation, either on a temporary or permanent basis.

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

Photovoltaic System means a power system designed to supply usable solar power by means of photovoltaics, a method of converting solar energy into direct current electricity using semiconducting materials that create voltage or electric current in a material upon exposure to light. It consists of an arrangement of several components, including solar panels to absorb and convert sunlight into electricity,

a solar inverter to change the electric current from DC to AC, as well as mounting, cabling, metering systems and other electrical accessories to set up a working system.

Precious Metal Bullion means any precious metal, including but not limited to, gold, silver, platinum, palladium, that has been put through a process of refining and is in such a state or condition that its value depends upon its precious metal content and not its form.

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

Preprinted Newspaper Supplements shall mean inserts, attachments or supplements circulated in newspapers that: (1) are primarily devoted to advertising; and (2) the distribution, insertion, or attachment of which is commonly paid for by the advertiser.

Prescription Drugs for Animals means a drug which, prior to being dispensed or delivered, is required by the federal Food, Drug, and Cosmetic Act, 21 U.S.C. Section 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. Section 301, et seq., as amended, to state at a minimum the symbol "Rx Only", and is dispensed in accordance with any written or electronic order dated and signed by a licensed practitioner of the healing arts, or given orally by a practitioner and immediately reduced to writing by the pharmacist, assistant pharmacist, or pharmacy intern, specifying the name and any required information of the patient for whom the medicine, drug or poison is offered and directions, if any, to be placed on the label.

Price or Purchase Price means the aggregate value measured in currency paid or delivered or promised to be paid or delivered in consummation of a sale, without any discount from the price on account of the cost of materials used, labor or service cost, and exclusive of any direct tax imposed by the federal government or by this article, and, in the case of all retail sales involving the exchange of property, also exclusive of the fair market value of the property exchanged at the same time and place of the exchange, if: (1) such exchanged property is to be sold thereafter in the usual course of the retailer's business, or (2) such exchanged property is a vehicle and is exchanged for another vehicle and both vehicles are subject to licensing, registration, or certification under the laws of this state, including, but not limited to, vehicles operating upon public highways, off-highway recreation vehicles, watercraft, and aircraft. Any money or other consideration paid over and above the value of the exchanged property is subject to tax.

"Price" or "Purchase Price" includes:

- (1) The amount of money received or due in cash and credits.
- (2) Property at fair market value taken in exchange but not for resale in the usual course of the retailer's business.
- (3) Any consideration valued in money, whereby the manufacturer or someone else reimburses the retailer for part of the purchase price and other media of exchange.
- (4) The total price charged on credit sales including finance charges which are not separately stated at the time of sale. An amount charged as interest on the unpaid balance of the purchase price is not part of the purchase price unless the amount added to the purchase price is included in the principal amount of a promissory note; except the interest or carrying charge set out separately from the unpaid balance of the purchase price on the face of the note is not part of the purchase

price. An amount charged for insurance on the property sold and separately stated at the time of sale is not part of the purchase price.

- (5) Installation, applying, remodeling or repairing the property, delivery and wheeling-in charges included in the purchase price and not separately stated.
- (6) Transportation and other charges to effect delivery of tangible personal property to the purchaser.
- (7) Indirect federal manufacturers' excise taxes, such as taxes on automobiles, tires and floor stock.
- (8) The gross purchase price of articles sold after manufacturing or after having been made to order, including the gross value of all the materials used, labor and service performed and the profit thereon.

"Price" or "Purchase Price" shall not include:

- (1) Any sales or use tax imposed by the State of Colorado or by any political subdivision thereof.
- (2) The fair market value of property exchanged if such property is to be sold thereafter in the retailers' usual course of business. This is not limited to exchanges in Colorado. Out of state trade-ins are an allowable adjustment to the purchase price.
- (3) Discounts from the original price if such discount and the corresponding decrease in sales tax due is actually passed on to the purchaser, and the seller is not reimbursed for the discount by the manufacturer or someone else. An anticipated discount to be allowed for payment on or before a given date is not an allowable adjustment to the price in reporting gross sales.

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

Prosthetic Devices for Animals means any artificial limb, part, device or appliance for animal use which replaces a body part or aids or replaces a bodily function; is designed, manufactured, altered or adjusted to fit a particular patient; and is prescribed by a licensed veterinarian. Prosthetic devices include, but are not limited to, prescribed auditory, ophthalmic or ocular, cardiac, dental, or orthopedic devices or appliances, and oxygen concentrators with related accessories.

Prosthetic Devices for Humans means any artificial limb, part, device or appliance for human use which replaces a body part or aids or replaces a bodily function; is designed, manufactured, altered or adjusted to fit a particular patient; and is prescribed by a licensed practitioner of the healing arts. Prosthetic devices include, but are not limited to, prescribed auditory, ophthalmic or ocular, cardiac, dental, or orthopedic devices or appliances, and oxygen concentrators with related accessories.

Purchase or Sale means the acquisition for any consideration by any person of tangible personal property, other taxable products or taxable services that are purchased, leased, rented, 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;
- (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.

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

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

Realty- means land and anything fixed, immovable, or permanently attached to it such as buildings, walls, fixtures, improvements, roads, trees, shrubs, fences, sewers, structures, and utility systems.

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

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

Resident means a person who resides or maintains one or more places of business within the City, regardless of whether that person also resides or maintains a place of business outside of the City.

Retail 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) ~~a~~Auctioneer;
- (2) ~~s~~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) ~~c~~Charitable organization or governmental entity which makes sales of tangible personal property to the public, notwithstanding the fact that the merchandise sold may have been acquired by gift or donation or that the proceeds are to be used for charitable or governmental purposes;
- (4) ~~r~~Retailer-contractor, when acting in the capacity of a seller of building supplies, construction materials, and other tangible personal property; and
- (5) Marketplace facilitator, a marketplace seller, and a multichannel seller engaged in business in the City.

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 of Englewood administration for computing and reporting a total tax liability.

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

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

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

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

Soft Drink means a nonalcoholic beverage that contains natural or artificial sweeteners. "Soft drink" does not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than fifty percent (50%) of vegetable or fruit juice by volume.

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

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

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

Software Maintenance Agreement means an agreement, typically with a software provider, that may include (1) provisions to maintain the right to use the software; (2) provisions for software upgrades including code updates, version updates, code fix modifications, enhancements, and added or new functional capabilities loaded into existing software, or (3) technical support.

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

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

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

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

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

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 date that any return or payment of the tax is required under the terms of this Code.

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

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

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

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

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

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

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

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

Transient/Temporary Sale means a sale by any person who engages in a temporary business of selling and delivering goods within the city for a period of no more than seven (7) consecutive days.

Transient/Temporary Vendor means any person who engages in the business of Transient/Temporary Sales.

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

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

Wholesale Sales means a sale by wholesalers to retailers, jobbers, dealers, or 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.

Section 2: Title 4, Chapter 4, Section 4, Article 9. Title 4, Chapter 4, Section 4 shall be amended by adding Article 9 as follows:

4-4-4-9: Marketplace Facilitators.

A. Duties of Marketplace Facilitators. With respect to sales of tangible personal property, commodities, or services made by marketplace sellers in or through a marketplace facilitator's marketplace, a marketplace facilitator has all of the liabilities, obligations, and rights of a retailer or vendor under Title 4 whether or not the marketplace seller, because the marketplace seller is a multichannel seller:

1. Has or is required to have a license under this Title 4; or
2. Would have been required to collect and remit tax under this Title 4 had the sale not been made in or through the marketplace.
3. Small marketplace facilitators and multichannel sellers who are exempt from collecting sales tax on behalf of the State of Colorado are also exempt from collecting sales tax on behalf of City.

B. The liabilities, obligations, and rights set forth in this article are in addition to any requirements the marketplace facilitator has under this Title 4 if it also offers for sale tangible personal property, commodities, or services through other means.

C. A marketplace seller, with respect to sales of tangible personal property, commodities, or services made in or through a marketplace facilitator's marketplace, does not have the liabilities, obligations, or rights of a retailer or vendor under Title 4 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 Title 4; 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 Title 4 made in or through the marketplace facilitator's marketplace.

D. If a marketplace facilitator demonstrates to the satisfaction of the Finance Director that the marketplace facilitator made a reasonable effort to obtain accurate information regarding the obligation to collect tax from the marketplace seller and that the failure to collect tax on any tangible personal property, commodities, or services sold was due to incorrect information provided to the marketplace facilitator by the marketplace seller, then the marketplace facilitator, but not the marketplace seller, is relieved of liability under Title 4 for the amount of the tax the marketplace facilitator failed to collect, plus applicable penalties and interest.

1. If a marketplace facilitator is relieved of liability under this section, the marketplace seller remains liable under this Title 4 for tax the marketplace facilitator failed to collect, plus applicable penalties and interest.
2. Subsection (D)(1) does not apply to any sale by a marketplace facilitator that is not facilitated on behalf of a marketplace seller or that is facilitated on behalf of a marketplace seller who is an affiliate of the marketplace facilitator.

Section 3. Notice of general provisions and findings applicable to interpretation and application of this Ordinance:

Applicability of Title 1, Chapter 2, Saving Clause. The provisions of E.M.C. Title 1, Chapter 2, Saving Clause apply to interpretation and application of this Ordinance, unless otherwise set forth above, including, but not limited to, the provisions regarding severability, inconsistent ordinances or code provisions, effect of repeal or modification, and legislation not affected by repeal.

Enforcement. E.M.C. Title 4, Chapter 4, Section 20 provides that in addition to or in lieu of any other penalty or punishment prescribed in that Chapter, the following penalty may also be imposed for violation of any of the provisions of Title 4, Chapter 4: a five hundred dollar (\$500.00) fine or one hundred eighty (180) days imprisonment, or both such fine and imprisonment. A separate offense shall be deemed committed upon each day or portion thereof during or on which any violation of any of the provisions of Title 4, Chapter 4 occurs or continues.

Safety Clauses. The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Englewood, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

Introduced, read in full, and passed on first reading on the 6th day of April, 2020.

Published by Title as a Bill for an Ordinance in the City's official newspaper on the 9th day of April, 2020.

Published as a Bill for an Ordinance on the City's official website beginning on the 8th day of April, 2020 for thirty (30) days.

Read by Title and passed on final reading on the 20th day of April, 2020.

Published by Title in the City's official newspaper as Ordinance No. ____, Series of 2020, on the 23rd day of April, 2020

Published by title on the City's official website beginning on the 22nd day of April, 2020 for thirty (30) days.

This Ordinance shall take effect thirty (30) days after publication following final passage.

Linda Olson, Mayor

ATTEST:

Stephanie Carlile, City Clerk

I, Stephanie Carlile, City Clerk of the City of Englewood, Colorado, hereby certify that the above and foregoing is a true copy of the Ordinance passed on final reading and published by Title as Ordinance No. ____, Series of 2020.

Stephanie Carlile