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CITY OF LITTLETON, COLORADO

ORDINANCE NO. 35

Series, 2017

INTRODUCED BY COUNCILMEMBERS: SCHLACHTER & COLE

**AN ORDINANCE OF THE CITY OF LITTLETON,
COLORADO, AMENDING TITLE 3, CHAPTER 9,
SECTION 1-2, OF THE CITY CODE, ENACTING AND
IMPLEMENTING STANDARDIZED SALES AND USE TAX
DEFINITIONS AND MAKE RELATED CHANGES TO
TITLE 3, CHAPTER 9, SECTIONS 1-10, 3-2, AND 6-12**

WHEREAS, the Colorado General Assembly adopted Senate Joint Resolution (SJF) 14-038, asking the Colorado Municipal League (CML) to work with its members to develop a package of standardized definitions; and

WHEREAS, CML formed a Sales Tax Standardized Definitions Committee (“Committee”) comprised of members from self-collecting home-rule municipalities that worked diligently to prepare a list of standard definitions that would be acceptable to such municipalities; and

WHEREAS, City Council has determined that the city should cooperate in furtherance of a statewide goal to have all self-collecting municipalities agree to use standard definitions in their sales and use tax codes; and

WHEREAS, City Council has determined that maintaining the local collection of sales and use taxes for the city is important to insure the continued financial strength of the city; and

WHEREAS, these changes to the city code are for the purpose of clarification and uniformity only, and will not result in the implementation of any new tax policy, nor will they result in the implementation of any new taxes, nor will it result in the elimination of any current tax exemptions.

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

Section 1: Section 3-9-1-2 of the City Code is hereby amended as follows:

3-9-1-2: STANDARDIZED DEFINITIONS:

When not clearly indicated by the context, the following words and phrases, as used in this Chapter, shall have the following meanings:

AGRICULTURE 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.

~~AUTOMOTIVE VEHICLE: means A~~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, semitrailers, or mobile homes. Automotive vehicle shall not include devices moved by human power or used exclusively upon stationary rails or tracks.

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

~~**BUSINESS: means A**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 A~~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.
~~organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and 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.~~

CITY or TOWN means the municipality of Littleton, CO.

~~CITY TREASURER~~ means The City Finance Director or his or her designee.

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

COIN OPERATED DEVICE means any device operated by coins or currency or any substitute therefor.

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 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 ~~T~~ tangible personal property which, when combined with other tangible personal property, loses its identity to become an integral and inseparable part of a ~~completed~~ structure or project including public and private improvements. Construction materials include, but are not limited to, such things as: asphalt, bricks, 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, wallboard, 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 ~~(A) A~~ any individual person, ~~or~~ (B) Any person engaged in business in the City who purchases, uses, stores, distributes or otherwise consumes, ~~in the City,~~ tangible personal property or taxable services, purchased from sources inside or outside the City.

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.

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".

DRUGS DISPENSED IN ACCORDANCE WITH A PRESCRIPTION: Drugs dispensed in accordance with any order in writing, dated and signed by a licensed practitioner of the healing arts, or

~~given orally by a practitioner, and immediately reduced to writing by the pharmacist, assistant pharmacist, or pharmacy intern, specifying the name and address of the person for whom the medicine, drug or poison is offered and directions, if any, to be placed on the label. "Drugs dispensed in accordance with a prescription" do not include drugs which may be purchased over the counter.~~

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 who:

~~(A)(1)~~ (1) Directly, indirectly, or by a subsidiary maintains a building, store, office, salesroom, warehouse, or other place of business within the ~~City~~ taxing jurisdiction;

~~(B)(2)~~ (2) Sends one or more employees, agents or commissioned sales persons into the City to solicit business or to install, assemble, repair, service, or assist in the use of its products, or for demonstration or other reasons taxing jurisdiction;

~~(C)(3)~~ (3) Maintains one or more employees, agents or commissioned sales persons on duty at a location within the ~~City~~ taxing jurisdiction;

~~(D)(4)~~ (4) Owns, leases, rents or otherwise exercises control over real or personal property within the ~~City~~ taxing jurisdiction; or

~~(E)(5)~~ (5) Makes more than one delivery into the ~~City~~ taxing jurisdiction within a twelve ~~(12)~~ month period by any means other than a common carrier.

~~EXEMPT COMMERCIAL PACKAGING MATERIALS: Containers, labels and shipping cases sold to a person engaged in manufacturing, compounding, wholesaling, jobbing, retailing, packaging, distributing or bottling for sale, profit or use, that meets all of the following conditions:~~

~~(A) Is used by the manufacturer, compounder, wholesaler, jobber, retailer, packager, distributor or bottler to contain or label the finished product;~~

~~(B) Is transferred by said person along with and as a part of the finished product to the purchaser; and~~

~~(C) Is not returnable to said person for reuse.~~

FARM CLOSEOUT SALE means ~~The~~ 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 OPERATIONS 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:
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, Littleton, CO also known as the City Treasurer,~~ or such other person designated by the ~~M~~municipality. "Finance Director" shall also include such person's designees.

FOOD FOR HOME CONSUMPTION ~~means~~ food for domestic home consumption as defined in 7 USC ~~U.S.C. sec. 102(g)(k) (2014),~~ as amended, for purposes of the ~~Federal Food Stamp supplemental nutrition assistance program, or any successor p~~Program, as defined in 7 USC ~~U.S.C. sec. 102(h),~~ as amended, except that "food" does not include carbonated water marketed in containers; chewing gum; seeds and plants to grow food; prepared salads and salad bars; packaged and unpackage~~Ds~~ cold sandwiches; deli trays; and hot and 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. and food, snacks or drinks vended by or through machines.

GROSS SALES means tThe 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 SUBSCRIPTION SERVICE: 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.

~~LICENSE: A City~~ means a Littleton, CO sales and/or use tax license.

LODGING SERVICES **MEANS** ~~t~~The furnishing of rooms or accommodations by any person, to a person who, for consideration, uses, possesses, or has the right to use or possess, any room in a hotel, inn, bed and breakfast, residence, apartment, lodging house, 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 thirty (30) days, under any concession, permit, right of access, license to use, or other agreement, or otherwise.

MEDICAL SUPPLIES **MEANS** drugs dispensed in accordance with a prescription; insulin in all its forms dispensed pursuant to the direction of a licensed physician; glucose useable for treatment of insulin reactions; urine- and blood-testing kits and materials; insulin measuring and injecting devices, including hypodermic syringes and needles; prosthetic devices; wheelchairs and hospital beds; drugs or materials when furnished by a doctor as part of professional services provided to a patient; and corrective eyeglasses, contact lenses, or hearing aids.

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.

~~NEWSPAPER: A~~ 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.

~~PAY TELEVISION: Includes, but is not limited to, cable, microwave or other television service for which a charge is imposed.~~

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

~~PRESCRIPTION DRUGS FOR ANIMALS: D~~ means dugs dispensed in accordance with any order by a licensed veterinarian, not including drugs available over the counter, specifying the animal for

which the medicine or drug is offered and directions, if any, to be placed on the label. ~~in writing, dated and signed by a practitioner, or given orally by a practitioner, specifying the animal for which the medicine or drug is offered and directions, if any, to be placed on the label. "Prescription drugs for animals" shall not include drugs that are available for sale over the counter.~~

PERScription 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, and 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 practitioner of the healing arts, or given orally by a practitioner, not including drugs available over the counter, 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: (A) "Price" or "purchase price" means the price to the consumer, exclusive of any direct tax imposed by the Federal government or by this Chapter, 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. Such vehicles shall include, but not necessarily be limited to: vehicles operating upon public highways, off-highway recreational vehicles, watercraft and aircraft. Any money or other consideration paid over and above the value of the exchanged property is subject to tax.

(B) "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, such as trading stamps or coupons, whereby the manufacturer or someone else reimburses the retailer for part of the purchase price, and other medium of exchange.

4. The total price charged on credit sales including finance charges which are not separately stated. An amount charged as interest on the unpaid balance of the purchase price is not part of the purchase price unless the amount added to the purchase price is included in the principal amount of a promissory note; except the interest-carrying charge set out separately from the unpaid balance of the purchase price on the face of the note is not part of the purchase price. An amount charged for insurance on the property sold and separately stated is not part of the purchase price.

5. Installation, 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.

(C) "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. 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; 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: ~~T~~ means telecommunications services furnished to a subscriber, which entitles the subscriber to the 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: ~~Any artificial limb, part, device or appliance for human use which aids or replaces a bodily function; is designed, manufactured, altered or adjusted to fit a particular individual; and is prescribed by a licensed practitioner of the healing arts. Prosthetic devices include but are not limited to prescribed auditory, ophthalmic or ocular, cardiac, dental, orthopedic devices or appliances, oxygen concentrators and oxygen with related accessories.~~

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

PROSTETIC 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: (A) The term "purchase" or "sale" means the acquisition for any consideration by any person of tangible personal property or taxable services that are purchased, leased, rented, OR sold, used, stored, distributed, or consumed, but excludes a bona fide gift of property or services. These terms include capital leases, installment and credit sales, and property and services acquired by:~~
~~(1) Transfer, either conditionally or absolutely, of title or possession or both, to or of tangible personal property or taxable services;~~

~~(2) A lease, lease-purchase agreement, rental or grant of a license, including royalty agreements, to use tangible personal property to or taxable services;~~

~~(3) Performance of taxable services; or~~

~~(4) Barter or exchange for other tangible personal property or services including coupons.~~

~~(B) 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 formation of a corporation by the owners of a business and the transfer of their business assets to the corporation in exchange for all the corporation's outstanding stock, except qualifying shares, in proportion to the assets contributed;~~

~~3. The transfer of assets of shareholders in the formation or dissolution of professional corporations;~~

~~4. The dissolution and the pro rata distribution of the corporation's assets to its stockholders;~~

~~5. A transfer of a partnership interest;~~

~~6. The transfer in a reorganization qualifying under section 368(a)(1) of the "Internal Revenue Code of 1954", as amended;~~

~~7. The formation of a partnership by the transfer of assets to the partnership or transfers to a partnership in exchange for proportionate interests in the partnership;~~

~~8. The repossession of personal property by a chattel mortgage holder or foreclosure by a lienholder;~~

~~9. The transfer of assets from a parent corporation to a subsidiary corporation or corporations which are owned at least eighty percent (80%) by the parent corporation, which transfer is solely in exchange for the stock or securities of the subsidiary corporation;~~

~~10. The transfer of assets from a subsidiary corporation or corporations which are owned at least eighty percent (80%) by the parent corporation to a parent corporation or to another subsidiary which is owned at least eighty percent (80%) by the parent corporation, which transfer is solely in exchange for the stock or securities of the parent corporation or the subsidiary which received the assets;~~

~~11. The transfer of assets between a parent and closely held subsidiary corporations, or between subsidiary corporations closely held by the same parent corporation, or between corporations which are owned by the same shareholders in identical percentage of stock ownership amounts, computed on a share by share basis, when a tax imposed by this Chapter was paid by the transferor corporation at the time it acquired such assets, except to the extent that there is an increase in the fair market value of such assets resulting from the manufacturing, fabricating, or physical changing of the assets by the transferor corporation. To such an extent any transfer referred to in this subsection shall constitute a sale. For the purposes of this subsection, a closely held subsidiary corporation is one in which the parent corporation owns stock possessing at least eighty percent (80%) of the total combined voting power of all classes of stock entitled to vote and owns at least eighty percent (80%) of the total number of shares of all other classes of stock.~~

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 eighty 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 eighty percent by the parent company to a parent company or to another subsidiary which is owned at least eighty 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;

(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 (9) shall constitute a sale. For the purposes of this paragraph (9), a closely held subsidiary corporation is one in which the parent company owns stock possessing or membership interest at least eighty percent of the total combined voting power of all classes of stock entitled to vote and owns at least eighty percent of the total number of shares of all other classes of stock.

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. ÷ Any person who has his or her business or makes his or her primary residence within the City.

RETAIL SALES: A means all sales except wholesale sales.

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

(A1) Auctioneer;

(B2) 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;

(C3) 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-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 resale (which may include installation), repair work, time and materials jobs, and/or lump sum contracts.

RETURN means the tax that is or should be collected and remitted by a retailer on sales taxed under this Code. ÷ The sales and use tax reporting form used to report sales and use tax.

SALES-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: F means the tax that is or should~~to~~ be collected and remitted by a retailer on sales taxed under this Chapter.

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.

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

STUDENT means any person enrolled in a school.

TANGIBLE PERSONAL PROPERTY means personal property that can be one or more of the following: seen, weighed, measured, felt or touched, stored, transported, or 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 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, including, but not limited to, wire, cable, fiber optic cable, microwave, radio wave, Voice over Internet Protocol (VOIP), internet access, remote access to computers and electronic storage equipment, or any combinations of such media, including any form of mobile two way communication. ~~“Telecommunications service” includes, but is not limited to, basic local exchange telephone service, toll telephone service and teletypewriter service; including, but not limited to, residential and business service, directory assistance, cellular mobile telephone or telecommunication service, specialized mobile radio and two-way pagers and paging service, including any form of mobile two-way communication. “Telecommunications service” does not include separately stated nontransmission services which constitute computer processing applications used to act on the information to be transmitted.~~

TELEVISION & ENTERTAINMENT SERVICES means audio or visual content, that can be

transmitted electronically by any means, for which a charge is imposed.

TOTAL TAX LIABILITY: ~~T~~ 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.

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, or withdrawn from inventory for consumption.

USE TAX: ~~T~~ 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 Sales to licensed licensed sales by wholesalers to retailers, jobbers, dealers or wholesalers for resale and does not include a sale by wholesalers to users and consumers not for resale; the latter types of sales shall be deemed to be Retail Sales and shall be subject to the provisions of this chapter. ~~Sales by wholesalers to consumers are not wholesale sales. Sales by wholesalers to nonlicensed retailers are not wholesale sales.~~

WHOLESALE: ~~A~~ 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. ~~(Ord. 46, Series of 1991)~~

Section 2: Subsections of section 3-9-3-2(A) of Chapter 9 of Title 3 of the City Code are hereby amended as follows:

3-9-3-2: EXEMPTIONS FROM TAXATION:

7. The sale of prescription drugs for humans~~drugs dispensed in accordance with a prescription,~~ prescription drugs for animals, medical supplies, and all sales of corrective prescription eyeglasses and contact lenses. ~~(Ord. 46, Series of 1991)~~
13. All sales and purchases of meat cattle, sheep, lamb, swine and goats; all sales and purchases, to agricultural producers, of mares and stallions for breeding purposes and all farm closeout sales. ~~(Ord. 46, Series of 1991)~~
14. All sales and purchases of feed for livestock or poultry, all sales and purchases of seeds and all sales and purchases, to agricultural producers, of orchard trees. ~~(1971 Code, sec. 19.36; amd. Ord. 25, Series of 1972)~~
23. All sales of custom software programs.
24. "Telecommunications Services" does not include separately stated non-transmission services which constitute computer processing applications used to act on the information to be transmitted' to their exemption language.

Section 3: Section 3-9-1-10 of Chapter 9 of Title 3 of the City Code is hereby amended as follows:

3-9-1-10: HEARINGS AND PROCEDURE FOR REVIEW:

- (A) Petition By Aggrieved Taxpayer; Notice; Action Of Treasurer: If any person having made a return, having failed to file a return, having been deemed by the Finance Director to have underpaid the tax due to the City or having been assessed taxes as a result of an audit, and having paid the tax, interest, and penalties (if any) assessed, feels aggrieved by the assessment made upon

him by the Finance Director, the taxpayer may apply to the Finance Director by petition in writing within ~~twenty-thirty~~ (230) days after the assessment is mailed to the taxpayer for a hearing and a correction of the amount of the tax so assessed and paid, in which petition the taxpayer shall set forth the reasons why such hearing should be granted, and the amount by which such tax, interest, or penalties should be reduced. The Finance Director shall notify the petitioner in writing of the time and place fixed by him for such hearing which shall be held within thirty (30) days after the petition is received by the Finance Director unless continued by mutual consent of the petitioner and the City. After such hearing, the Finance Director shall make such order in the matter as is just and lawful and shall furnish a copy of such order to the petitioner as provided for in subsection (C) of this Section.

(B) Hearings To Be Held In City: Every hearing before the Finance Director held pursuant to this Chapter shall be held in the offices of the City.

(C) Decisions Of Finance Director To Be In Writing; Notice; When Decisions Final: Every decision of the Finance Director shall be in writing and such decision shall be mailed to the petitioner within ten (10) days of the hearing. All such decisions shall become final upon the date that they are postmarked or personally delivered to the petitioner. An appeal of a final decision of the Finance Director from a hearing held pursuant to this Section shall be commenced within thirty (30) days of such decision, and in accordance with Colorado Rule of Civil Procedure 106.

(D) Hearing Officers:

1. If the petitioner so requests in writing received by the Finance Director at least ~~twenty-thirty~~ (320) days prior to the date scheduled for hearing, a hearing officer shall be appointed by the Finance Director and shall have all of the powers and duties of the Finance Director as set forth in this Section. All estimated costs of the hearing officer shall be paid as a deposit by the petitioner to the hearing officer at least ten (10) days prior to the date scheduled for hearing, in an amount as determined by the hearing officer. Failure of the petitioner to deposit such funds shall constitute a waiver of the petitioner's option to have a hearing officer preside in the hearing. All costs actually incurred by virtue of the appointment of a hearing officer shall be borne by the petitioner unless he is ultimately successful on the merits of his appeal. If such occurs, the City shall reimburse the petitioner for all costs of the hearing officer.

Section 4: Section 3-9-6-12(C) of Chapter 9 of Title 3 of the City Code is hereby amended as follows:

3-9-6-12: REFUSAL TO MAKE RETURN:

(C) Assessment; Petition For Revision Or Modification: The estimate made pursuant to subsection (A) of this Section shall upon the giving of notice as provided in subsection (B) of this Section become an assessment, and such assessment shall be final and due and payable from the taxpayer to the Finance Director ~~twenty-thirty~~ (230) days from the date of service of the notice or the date of mailing by registered or certified mail; provided, however, that within such ~~thirtytwenty~~ (230) day period such delinquent taxpayer may petition the Finance Director for a revision or modification of such assessment, and shall within such ~~twenty-thirty~~ (230) day period furnish the Finance Director the facts and correct figures showing the correct amount of such taxes. (~~Ord. 46, Series of 1991~~)

Section 3: Severability. If any part, section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such invalidity shall not affect the validity of the remaining sections of this ordinance. The City Council hereby declares that it would have passed this ordinance, including each part, section, subsection, sentence, clause or phrase hereof, irrespective of the fact that one or more parts, sections, subsections, sentences, clauses, or phrases may be declared invalid.

Section 4: Repealer. All ordinances or resolutions, or parts thereof, in conflict with this ordinance are hereby repealed, provided that this repealer shall not repeal the repealer clauses of such ordinance nor revive any ordinance thereby.

INTRODUCED AS A BILL at a regularly scheduled meeting of the City Council of the City of Littleton on the 5th day of December, 2017, passed on first reading by a vote of 4 FOR and 1 AGAINST; and ordered published by posting at Littleton Center, Bemis Library, the Municipal Courthouse and on the City of Littleton Website.

PUBLIC HEARING on the Ordinance to take place on the 19th day of December 2017, in the Council Chamber, Littleton Center, 2255 West Berry Avenue, Littleton, Colorado, at the hour of 6:30 p.m., or as soon thereafter as it may be heard.

PASSED on second and final reading, following public hearing, by a vote of _____ FOR and _____ AGAINST on the 19th day of December, 2017 and ordered published by posting at Littleton Center, Bemis Library, the Municipal Courthouse and on the City of Littleton Website.

ATTEST:

Wendy Heffner
CITY CLERK

Debbie Brinkman
MAYOR

APPROVED AS TO FORM:

Lena McClelland
ASSISTANT CITY ATTORNEY