

TOWN OF WINDSOR

ORDINANCE NO. 2018 – 1562

AN ORDINANCE REPEALING, AMENDING AND RE-ADOPTING SECTION 4-3-30 OF THE *WINDSOR MUNICIPAL CODE* TO MAKE CERTAIN DEFINITIONS CONSISTENT WITH STATEWIDE STANDARDS RECOMMENDED BY THE COLORADO MUNICIPAL LEAGUE

WHEREAS, the Town of Windsor (“Town”) is a Colorado home rule municipality, with all powers and authority vested under Colorado law; and

WHEREAS, municipal sales and use taxes are a critical source of revenue to municipalities; and

WHEREAS, as a home rule municipality, state law allows the Town to collect and retain sales and use tax revenue without involvement of the State Department of Revenue; and

WHEREAS, by Ordinance No. 2004-1189, adopted on August 9, 2004, the Town Board repealed the former Sales and Use Tax Code, and adopted the current Sales and Use Tax Code, since codified at Chapter 4, Article III of the *Windsor Municipal Code*; and

WHEREAS, in response to concerns expressed by the commercial community, the Colorado Municipal League has developed its Model Uniform Sales Tax Definitions (“Uniform Definitions”), and has recommended that home rule municipalities voluntarily adopt the has expressed concern at the Uniform Definitions to bring state-wide consistency to the collection of sales and use tax revenue; and

WHEREAS, the Town’s Director of Finance has considered the Uniform Definitions, and has recommended their adoption, to the extent the Town’s current Sales and Use Tax Code uses the words and phrases found in the Uniform Definitions; and

WHEREAS, the Town Board has given due consideration to the reasoning and purpose behind the Uniform Definitions, and finds that the adoption of the within Ordinance promotes consistency, clarity and the public health, safety and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN BOARD OF THE TOWN OF WINDSOR, COLORADO, AS FOLLOWS:

Section 4-3-30 of the *Windsor Municipal Code* is hereby repealed, amended and re-adopted to read as follows:

**Sec. 4-3-30. - Definitions.**

For the purpose of this Article, the definitions of words contained in this Article, whether capitalized or not in usage, shall be defined as follows:

*Aircraft* means a device that is used or intended to be used for flight in the air.

*Aircraft Part* means any tangible personal property that is intended to be permanently affixed or attached as a component part of an aircraft.

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

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

*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.

*Claim for recovery* means a claim for reimbursement of sales and use taxes paid to the wrong taxing jurisdiction.

*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. *Coins* shall have the same meaning as *Bullion and Coins*.

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

*Collection proceedings* shall include the mailing of a notice of audit, an audit and all remedies exercised by the Director pursuant to this code to collect any unpaid taxes, penalties and interest.

*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.

*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.

*Deficiency* shall have the same meaning as “tax deficiency”.

*Director* means the Town’s Finance Director or such person's designee. *Director* shall also have the same meaning as means the *Finance Director of the Town of Windsor*.

*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.

*Engaged in Business in the Town* means performing or providing services or selling, leasing, renting, delivering or installing tangible personal property for storage, use or consumption, within the Town. *Engaged in Business in the Town* includes, but is not limited to, any one of the following activities by a person: (1) Directly, indirectly, or by a subsidiary maintains a building, store, office, salesroom, warehouse, or other place of business within the taxing jurisdiction; (2) Sends one or more employees, agents or commissioned sales persons into the taxing jurisdiction to solicit business or to install, assemble, repair, service, or assist in the use of its products, or for demonstration or other reasons; (3) Maintains one or more employees, agents or commissioned sales persons on duty at a location within the taxing jurisdiction; (4) Owns, leases, rents or otherwise exercises control over real or personal property within the taxing jurisdiction; or (5)

Makes more than one delivery into the taxing jurisdiction within a twelve month period by any means other than a common carrier.

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

*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 baling 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.

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

*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.

*License* means a Town of Windsor sales tax license.

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

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

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

*Occasional sales* means retail sales of tangible personal property, including concessions, for fund-raising purposes, if the funds raised by the charitable organization through these sales are retained by the organization to be used in the course of the organization's charitable service, and:

- (1) The sale of tangible personal property by the charitable organization takes place for no more than twelve (12) days, whether consecutive or not, during any one (1) calendar year; or
- (2) The funds raised by the charitable organization through these sales do not exceed twenty-five thousand dollars (\$25,000.00) of gross profit during any one (1) calendar year.

*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.

*Point of Sale.* For the purpose of this Article, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his or her agent to a destination outside the limits of the Town or to a common carrier for delivery to a destination outside the Town. The gross receipts from such sales shall include delivery charges. If a retailer has no permanent place of business in the Town or has more than one (1) place of business, the place at which the retail sales are consummated for the purpose of this Article shall be determined by the provisions of Title 39, Article 26, C.R.S., and by rules and regulations promulgated by the Department of Revenue. Notwithstanding any other provision of this Article, the value of construction

and building materials on which a use tax has previously been collected by an incorporated town, city or county shall be exempt from this sales tax if the materials are delivered by the retailer or his or her agent to a site within the limits of the Town.

*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.

*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.

*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 for Humans* 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) Utilization of coin operated devices, except coin-operated telephones, which do not vend articles of tangible personal property;
- (4) Performance of taxable services; or
- (5) Barter or exchange for other tangible personal property, other taxable products, or services.

The terms *Purchase and Sale* do not include:

- (1) A division of partnership assets among the partners according to their interests in the partnership;
- (2) The transfer of assets of shareholders in the formation or dissolution of professional corporations, if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets;
- (3) The dissolution and the pro rata distribution of the corporation's assets to its stockholders, if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets;
- (4) A transfer of a partnership or limited liability company interest;
- (5) The transfer of assets to a commencing or existing partnership or limited liability company, if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets;
- (6) The repossession of personal property by a chattel mortgage holder or foreclosure by a lienholder;
- (7) The transfer of assets from a parent company to a subsidiary company or companies which are owned at least 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 (11) shall constitute a sale. For the purposes of this paragraph (11) , 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 Town, regardless of whether that person also resides or maintains a place of business outside of the Town. Any person who does not meet the definition of *Resident* shall be deemed a non-resident.

*Retailer* means any person selling, leasing, renting, or granting a license to use tangible personal property or services at retail. *Retailer* shall include, but is not limited to, any: (1) auctioneer; (2) salesperson, representative, peddler or canvasser, who makes sales as a direct or indirect agent of or obtains such property or services sold from a dealer, distributor, supervisor or employer; (3) Charitable organization or governmental entity which makes sales of tangible personal property to the public, notwithstanding the fact that the merchandise sold may have been acquired by gift or donation or that the proceeds are to be used for charitable or governmental purposes; (4) Retailer-Contractor, when acting in the capacity of a seller of building supplies, construction materials, and other tangible personal property.

*Retailer-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.

*Retail Sales* means all sales except wholesale sales.

*Return* means any form prescribed by the Town of Windsor 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 Article, are donated to a school or a school-approved student organization.

*School* means a public school or Charter school as defined in Section 22-1-101, C.R.S, or a private school, providing education for students in kindergarten through 12th grade or any portion thereof.

*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.

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

*Storage* 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 Town 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, 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* 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 Article.

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

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

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

*Use* means the exercise, for any length of time by any person within the Town 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 Town from any person or vendor or used in the performance of a contract in the Town 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 Town.

*Vendor fee* means a credit, as designated by the Director, to be allowed against the tax due on timely filed sales tax returns. The amount of the credit, and any limitation per return, will be stated on the sales tax return as approved by the Director.

*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.

*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 Article.

Introduced, passed on first reading, and ordered published this 25<sup>th</sup> day of June, 2018.

TOWN OF WINDSOR, COLORADO

By Kristie Melendez  
Kristie Melendez, Mayor

ATTEST:

Amanda Mehlenbacher  
Amanda Mehlenbacher  
Deputy Town Clerk



Introduced, passed on second reading, and ordered published this 9<sup>th</sup> day of July, 2018.

TOWN OF WINDSOR, COLORADO

By \_\_\_\_\_  
Kristie Melendez, Mayor

ATTEST:

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Amanda Mehlenbacher  
Deputy Town Clerk