

ORDINANCE NO.: 3644
INTRODUCED BY: Matkowsky

AN ORDINANCE AMENDING CHAPTER 26 OF THE MUNICIPAL CODE OF THE CITY OF THORNTON PERTAINING TO FINANCE AND TAXATION.

WHEREAS, by Senate Joint Resolution 14-038 the General Assembly asked the Colorado Municipal League to develop standardized definitions for use by municipalities in local tax collection; and

WHEREAS, Council has determined that maintaining the local collection of sales and use taxes for the City is of paramount importance to the continued financial strength of the City but that adoption and use of standard sales and tax code definitions will be beneficial to the retail business community by increased uniformity and simplicity; and

WHEREAS, Council has supported the idea that the City should simplify the tax code, without sacrificing revenue and that revenue neutral tax simplification is good for businesses and the community as a whole; and

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

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

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

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

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

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

WHEREAS, the City adopts this ordinance with the intent to address tax administration, and, in connection with, establish economic nexus for retailers or vendors without physical presence in the State.

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

1. Section 26-388 subsection (c) of the Thornton City Code is hereby deleted in its entirety and replaced with the following:

(c) *Definitions.* The following words, terms, and phrases, when used in this article, article VI Telephone Tax, and article VII Lodgings Tax, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

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

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

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

Charitable organization means any entity which: (a) has been certified as a nonprofit organization under Section 501(c)(3) of the Internal Revenue Code, and (b) 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.

City means the city of Thornton, a Colorado home rule municipality.

City Treasurer shall have the meaning set forth therefor in the City Charter.

Coin-operated with regard to a 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 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 a completed structure or project are not construction materials.

Consumer or Purchaser 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.

Consumption means the act or process of consuming; it includes waste, destruction or use.

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.

Digital product means an electronic product, including but not limited to: (a) *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.” (b) *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, (c) *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 (d) *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.

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

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

This definition does not apply to any person who is doing business in this state but otherwise applies to any other person *Engaged in business in the City* means performing or providing services or selling, leasing, renting, delivering or installing tangible personal property, products, or services for storage, use or consumption, within the City.

Engaged in business in the City includes, but is not limited to, any one of the following activities by a person:

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

- (2) sends one or more employees, agents or commissioned sales persons into the taxing jurisdiction to solicit business or to install, assemble, repair, service, or assist in the use of its products, or for demonstration or other reasons;
- (3) maintains one or more employees, agents or commissioned sales persons on duty at a location within the taxing jurisdiction;
- (4) owns, leases, rents or otherwise exercises control over real or personal property within the taxing jurisdiction;
- (5) retailer or vendor in the state of Colorado that makes more than one delivery into the taxing jurisdiction within a twelve month period; or
- (6) makes retail sales sufficient to meet the definitional requirements of economic nexus as set forth in Section 26-388(c) of the Thornton Municipal Code.

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.

Finance Director means the Director of the Finance Department of the City of Thornton 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. § 2012(k) (2014), as amended, for purposes of the supplemental nutrition assistance program, or any successor program, as defined in 7 U.S.C. § 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.

License means a City sales and use tax license.

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

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.

Marijuana means any plant, substance or product for which a local or state retail or medical marijuana license is required for its sale, and shall include, without limitation, the following and any product containing any of the following: (a) any or all parts of the marijuana plant; (b) any resin or cannabinoids extracted or derived from the marijuana plant; or (c) every compound, manufacture, salt, derivative, byproduct, mixture, concentrate, or preparation of the marijuana plant.

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

Marketplace facilitator means a person who:

- (1) Contracts with a marketplace seller or multichannel seller to facilitate for consideration, regardless of whether or not the consideration is deducted as fees from the transaction, the sale of the marketplace seller's tangible personal property, products, or services through the person's marketplace;
- (2) Engages directly or indirectly, through one or more affiliated persons, in transmitting or otherwise communicating the offer or acceptance between a purchaser and the marketplace seller or multichannel seller; and
- (3) Either directly or indirectly, through agreements or arrangements with third parties, collects payment from the purchaser on behalf of the seller.

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 or not the person is engaged in business in the City, which has an agreement with a marketplace facilitator and offers for sale tangible personal property, products, or services through a marketplace owned, operated, or controlled by a marketplace facilitator.

Medical supplies means drugs, prosthetic medical and dental appliances, and special beds for patients with neuromuscular or similar debilitating ailments, when sold for the direct, personal use of a specific individual in accordance with a prescription or other written directive issued by a licensed practitioner of medicine, dentistry, or podiatry; corrective eyeglass lenses including eyeglass frames, and corrective contact lenses, when sold for the direct, personal use of a specific individual in accordance with a prescription or other written directive issued by a licensed practitioner of medicine or optometry; wheelchairs and crutches, when sold for the direct, personal use of a specific individual; oxygen and hemodialysis products for use by a medical patient; hearing aids; hearing aid batteries; insulin, insulin measuring and injecting devices, glucose to be used for treatment of insulin reactions; and human whole blood, plasma, blood products and derivatives.

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.

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

Newspaper means a publication, printed on newsprint, intended for general circulation, and published regularly at short intervals, containing information

and editorials on current events and news of general interest. The term *newspaper* does not include: Magazines, trade publications or journals, credit bulletins, advertising inserts, circulars, directories, maps, racing programs, reprints, newspaper clipping and mailing services or listings, publications that include an updating or revision service, or books or pocket editions of books.

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.

Prefabricated goods and materials means any tangible personal property which has been fabricated, constructed, or made into a form by a contractor, subcontractor, manufacturer, or jobber which is ready for installation or use for its intended purpose, and which is brought to its installation site or delivered to the purchaser. The term includes tangible personal property purchased for use in other manufacturing or construction processes by the purchaser, such as construction materials purchased by a contractor in completing a contract.

Preprinted newspaper supplements shall mean inserts, attachments, or supplements circulated in newspapers that: (a) are primarily devoted to advertising; and (b) 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. § 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. § 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: (a) such exchanged property is to be sold thereafter in the usual course of the retailer's business, or (b) such exchanged property is a vehicle and is exchanged for another vehicle and both vehicles are subject to licensing, registration, or certification under the laws of this state, including, but not limited to, vehicles operating upon public highways, off-highway recreation vehicles, watercraft, and aircraft. Any money or other consideration paid over and above the value of the exchanged property is subject to tax.

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 inter-communications system for the subscriber's stations.

Prosthetic devices for humans means any artificial limb, part, device or appliance for human use which replaces a body part or aids or replaces a bodily function; is designed, manufactured, altered or adjusted to fit a particular patient; and is prescribed by a licensed practitioner of the healing arts. *Prosthetic devices 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, sold, used, stored, distributed, or consumed. 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:

- (5) A division of partnership assets among the partners according to their interests in the partnership;
- (6) 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;
- (7) 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;
- (8) A transfer of a partnership or limited liability company interest;
- (9) 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;
- (10) The repossession of personal property by a chattel mortgage holder or foreclosure by a lienholder; or
- (11) The transfer in a reorganization qualifying under Section 368(a)(1) of the Internal Revenue Code of 1954, as amended.

Purchaser See Consumer.

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.

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 or Vendor 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; or
- (5) Marketplace facilitator, marketplace seller, or multichannel seller.

Retailer-Contractor means a contractor who is also a retailer of building supplies, construction materials, or other tangible personal property, and purchases, manufactures, or fabricates such property for sale (which may include installation), repair work, time and materials jobs, and/or lump sum contracts.

Return means any form prescribed by the City administration for computing and reporting a total tax liability.

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

Software program means a sequence of instructions that can be measured, interpreted and executed by an electronic device (e.g., computers, tablets, smart phones) regardless of the means by which it is accessed or the medium of conveyance. *Software program* includes: (a) custom software program, which is a software program prepared to the special order or specifications of a single customer; (b) 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”, “commercial off-the-shelf” (“COTS”), “mass produced”, or “standardized”; (c) 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 (d) 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.

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 accounting basis or estimated percentage basis means the permission to pay or make deposit of City sales or use tax liability on a percentage of gross sales or gross purchases, and which is granted to facilitate tax reporting for qualified consumers or vendors who may petition the City Treasurer on the basis prescribed in Section 26-391 and elsewhere in this Article.

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.

Telecommunication 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 optic cable, microwave, radio wave, Voice over Internet Protocol (VoIP), or any combinations of such media, including any form of mobile two-way communication. *Telecommunication service* 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.

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 telecommunication 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.

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.

Vendor. See Retailer.

Vendor's fee means the percent of total City sales and use tax collected which is authorized to be retained by the licensed vendor to recompense the vendor for the vendor's expense of collecting and remitting the City sales tax on vendor's sales to the various purchasers or consumers. Consumers filing a City Use Tax report are not entitled to the vendor's fee.

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.

2. Section 26-389 subsection (a)(4) of the Thornton City Code is hereby amended by the addition of the words double-underlined and the deletion of the words stricken to read as follows:

(4) ~~Computer s~~Software. On the price paid or charged for ~~computer software programs, software license fees and software as a service, whether for purchase, rent, or lease of, subscription to, or right to use, access or maintain~~ computer software. Prewritten (canned) software programs are taxable. If there are significant modifications to prewritten software programs to customize it to a specific user, charges for labor which are included in the modification are not taxable, but only if such charges are separately billed on the invoice. Custom software programs written specifically for the user and billed on an hourly labor basis are not taxable. Subsequent sales of customized software will be treated as prewritten (canned) software and taxed accordingly.

3. Section 26-389 subsection (a)(15) of the Thornton City Code is hereby amended by the addition of the words double-underlined and the deletion of the words stricken to read as follows:

(15) ~~Pay-t~~Television and entertainment services. On the purchase price paid or charged for ~~pay-television~~ and entertainment services sold, purchased, leased, rented, furnished or used.

4. Section 26-389 subsection (a)(17) of the Thornton City Code is hereby amended by the addition of the words double-underlined to read as follows:

(17) *Private communication*s services. On the price paid or charged for such services, whether purchased, leased or rented.

5. Section 26-389 subsection (a)(24) of the Thornton City Code is hereby amended by the addition of the words double-underlined and the deletion of the words stricken to read as follows:

(24) ~~WATS~~/800 Toll free telecommunications services. On the price paid or charged for such services, whether purchased, leased or rented.

6. Section 26-389 of the Thornton City Code is hereby amended by the addition of the words double-underlined to read as follows:

(25) Digital products. On the price paid or charged for the purchase of digital products.

7. Section 26-389 subsection (a) of the Thornton City Code is hereby amended by placing all taxable transactions, commodities and services listed therein in alphabetical order and renumbering them accordingly.

8. Section 26-390 subsection (4) of the Thornton City Code is hereby amended by the addition of the words double-underlined and the deletion of the words stricken to read as follows:

(4) Medical supplies, Drugs dispensed in accordance with a prescription, drugs for humans, medical supplies, prosthetic devices for humans, and therapeutic devices. The sale or purchase of prescription drugs for humans ~~consumption only, dispensed in accordance with a prescription, being a written order by a licensed practitioner of the healing arts ordering any registered pharmacist to dispense drugs to a specified individual or the administration of a drug as a part of a patient's treatment,~~ and all sales of medical supplies, prosthetic devices for humans, and therapeutic devices which are prescribed by a licensed practitioner of the healing arts. The medical supplies exemption excludes items purchased for use by medical and dental practitioners or medical facilities in providing their services, even though certain of those items may be packaged for single use by individual patients after which the item would be discarded.

9. Section 26-390 subsection (5) of the Thornton City Code is hereby amended by the addition of the words double-underlined and the deletion of the words stricken to read as follows:

(5) *Factory-built* ~~residential structure~~housing. Forty-eight percent of the purchase price of ~~a~~ factory-built ~~residential structure~~housing, shall be

exempt from taxation under this Code. For any subsequent sales of the factory-built residential structure, the entire purchase price is exempt from taxation under this Code.

10. Section 26-390 subsection (6) of the Thornton City Code is hereby amended by the addition of the words double-underlined to read as follows:

(6) *Food for home consumption*. Food for home consumption purchased with food stamps shall be exempt. Food for home consumption purchased with funds provided by the special supplemental food program for women, infants, and children as provided for in 42 USC 1786 shall also be exempt.

11. Section 26-390 subsection (9) of the Thornton City Code is hereby amended by the addition of the words double-underlined to read as follows:

(9) *Infrequent sales at residences*. Infrequent sales of tangible personal property, including garage sales, shall be exempt from the city sales tax, but only if the sale occurs at the residence of the owner, the property to be sold was originally purchased for use by members of the household where the sale is conducted, and no person other than such household members conducts all or any portion of the sale.

12. Section 26-390 subsection (14) c. of the Thornton City Code is hereby amended by the addition of the words double-underlined and the deletion of the words stricken to read as follows:

c. *Cattle, sheep, etc.* The sale or purchase of neat, cattle, sheep, lambs, swine and goats and purchases of mares and stallions for breeding purposes; and all farm ~~auction~~-closeout sales.

13. Section 26-390 subsection (22) b. of the Thornton City Code is hereby amended by the addition of the words double-underlined and the deletion of the words stricken to read as follows:

b. ~~Exempt~~ Commercial packaging materials. The sales of ~~exempt~~ commercial packaging material as defined in Section 26-388 is exempt under this subsection.

14. Section 26-390 of the Thornton City Code is hereby amended by the addition of the words double-underlined to read as follows:

(27) Retail delivery and carryout bag fees. The retail delivery fee consisting of the community access retail delivery fee imposed in C.R.S. § 24-38.5-303(7), the clean fleet retail delivery fee imposed in C.R.S. § 25-7.5-103(8), the clean transit retail delivery fee imposed in C.R.S. § 43-4-1203(7), the

retail delivery fee imposed in C.R.S. § 43-4-218(3), the bridge and tunnel retail delivery fee imposed in C.R.S. § 43-4-805 (5)(g.7), the air pollution mitigation retail delivery fee imposed in C.R.S. § 43-4-1303(8), as such sections existed on June 17, 2021 and the carryout bag fee imposed in C.R.S. § 25-17-505 as such section existed July 6, 2021.

15. Section 26-390 of the Thornton City Code is hereby amended by placing all exempt transactions, commodities and persons identified therein in alphabetical order and renumbering them accordingly.
16. Section 26-392 subsection (b)(2) of the Thornton City Code is hereby amended by the addition of the words double-underlined to read as follows:

(2) *City treasurer's appointment of employees and examination of returns.* The city treasurer shall appoint such persons to make such expenditures, require such reports, make such investigations and take such other action as the city treasurer deems necessary or suitable to that end. The city treasurer shall determine such organization and methods of procedure in accordance with the provisions of this Code. Subject to the provisions of this Code, the city treasurer is authorized to appoint and prescribe the duties and powers of such officers, accountants, contract auditors, experts and other persons as may be necessary in the performance of this duty. The city treasurer may delegate to any such person so appointed such power and authority as the city treasurer deems reasonable and proper for the effective administration of this Code and, in the discretion of the city treasurer, shall bond, in a sufficient amount, any person handling money under this Code.

17. Section 26-393 subsection (f) of the Thornton City Code is hereby amended by the addition of the words double-underlined and the deletion of the words stricken to read as follows:

(f) *Collection ~~feecosts~~.* The finance director may impose and add to the outstanding tax due by any taxpayer, collection costs including penalties, interest, and collection any fees equal to the amount charged by any collection agency hired by the finance director to collect delinquent taxes owed by the taxpayer.

18. Section 26-466 subsection (4) of the Thornton City Code is hereby amended by the addition of the words double-underlined and the deletion of the words stricken to read as follows:

- (4) The Any person or marketplace facilitator offering or facilitating the sale, lease or rental of making such rooms or other public accommodations


available shall, for all purposes of this article, be deemed to be a retailer or vendor as defined in Section 26-388.

- 19. If any portion of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the constitutionality or validity of the remaining portions of this ordinance. City Council hereby declares that it would have passed this ordinance and each part hereof irrespective of the fact that any one part be declared unconstitutional or invalid.
- 20. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portions hereof are hereby repealed to the extent of such inconsistency or conflict.
- 21. The repeal or amendment of any provision of the Code by this ordinance shall not release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture, or liability, either civil or criminal, which shall have been incurred under such provision, and each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings, and prosecutions for the enforcement of the penalty, forfeiture, or liability, as well as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions.
- 22. This ordinance shall be effective upon final passage.



INTRODUCED, READ, PASSED on first reading, ordered posted in full, and title ordered published by the City Council of the City of Thornton, Colorado, on February 14, 2023.

PASSED AND ADOPTED on second and final reading on February 28, 2023.

CITY OF THORNTON, COLORADO

DocuSigned by:

 D99FCDF39C4145E...
 Jan Kulmann, Mayor

ATTEST:

DocuSigned by:


 D57962BD4E6E4A2...
 Kristen N. Rosenbaum, City Clerk

THIS ORDINANCE IS ON FILE IN THE CITY CLERK'S OFFICE FOR PUBLIC INSPECTION.

APPROVED AS TO LEGAL FORM:

DocuSigned by:

68AB050BB4C24C8...
Tami Yellico, City Attorney

PUBLICATION:

Posted at City Hall, Margaret W. Carpenter Recreation Center, Thornton Active Adult Center, and Trail Winds Recreation Center after first and second readings.

Published on the City's official website after first reading on February 15, 2023, and after second and final reading on March 1, 2023.

COUNCIL COMMUNICATION

Meeting Date: February 28, 2023	Agenda Item: 10B	Agenda Location: CONSENT CALENDAR	<input type="checkbox"/> 1 st Reading <input checked="" type="checkbox"/> 2 nd Reading
Subject: An ordinance amending Chapter 26 of the City Code pertaining to finance and taxation.			
Department Head Review: Kimberly Newhart, Finance Director		Approved by: Kevin S. Woods, City Manager	Ordinance previously introduced by: <u>Matkowsky</u>
Presenter(s): Doug Buchanan, Deputy Finance Director			

SYNOPSIS:

This amendment would update and modify the City Code (Code). Changes to the Code include implementing economic nexus provisions within the Code, adopting definitions developed through the Colorado Municipal League (CML) led Standardized Definitions Project, and exempting the State imposed Retail Delivery and Single Use Plastic Bag fees. Making these changes will increase the number of businesses collecting and remitting Thornton taxes, as well as further simplify tax collection and reporting for businesses operating in the City.

RECOMMENDATION:

Staff recommends Alternative No. 1, to approve the ordinance amending Chapter 26 of the City Code pertaining to finance and taxation.

BUDGET/STAFF IMPLICATIONS:

None.

ALTERNATIVES:

1. Approve the ordinance as recommended.
2. Do not approve the ordinance.

BACKGROUND (ANALYSIS/NEXT STEPS/HISTORY): (includes previous City Council action)

Staff facilitated a discussion regarding simplification of the City Code (Code), pertaining to Sales and Use Tax, to include Economic Nexus, Standard Definitions, as well as exemptions for recently imposed State fees at the December 13, 2022 Council Update. Council provided direction to bring this ordinance forward at a future City Council meeting.

Economic Nexus is a term that describes a business that meets certain sales requirements but does not have a physical presence in a jurisdiction. Despite not having a physical presence in the City, businesses that have Economic Nexus within the City still impact local transportation systems, waste disposal, and emergency services. Prior to the recent South Dakota v. Wayfair, Inc. Supreme Court decision, jurisdictions could not require a business to collect its tax unless they had a physical presence

COMMUNICATION

PAGE 2

in the jurisdiction. Based on this court decision, those businesses that meet certain sales requirements could be required to collect and remit Thornton taxes. It is unknown what revenue impact this would have, as there are already many businesses collecting and remitting Thornton tax that only have economic nexus at this time.

Standard definitions were developed through a CML led project as a result of Colorado Senate Joint Resolution 14-038. This resolution asked CML and municipalities to simplify taxation for businesses by having home rule municipalities use standardized terminology in their tax codes. Adopting the standard definitions would not change the tax treatment of any taxable good or service, and would result in no additional tax revenue for the City. Adopting the standard definitions developed in the CML led project would also bring Thornton in line with the majority of home rule municipalities, who have already adopted these definitions.

The Colorado General Assembly passed several bills that impose fees on customers when purchasing taxable goods and services. Senate Bill 21-260 created a retail delivery fee, which consists of several fees totaling \$0.27, that is charged on the delivery of tangible personal property. This fee is currently taxable under the City Code as part of the purchase price of the goods being delivered. House Bill 21-1162 imposes a \$0.10 fee on single-use plastic bags and recycled paper bags provided by a retailer to the customer. Businesses will collect the bag fee and remit 60% of the fee to the City, and retain the other 40%. Although the bag fee is not currently subject to tax, adding an exemption would clarify this for local businesses.

ATTACHMENTS:

COUNCIL COMMUNICATION

Meeting Date: February 14, 2023	Agenda Item: 12B	Agenda Location: ACTION ITEMS	<input checked="" type="checkbox"/> 1 st Reading <input type="checkbox"/> 2 nd Reading
Subject: An ordinance amending Chapter 26 of the City Code pertaining to finance and taxation.			
Department Head Review: Kimberly Newhart, Finance Director		Approved by: Kevin S. Woods, City Manager	Ordinance previously introduced by: _____
Presenter(s): Doug Buchanan, Deputy Finance Director			

SYNOPSIS:

This amendment would update and modify the City Code (Code). Changes to the Code include implementing economic nexus provisions within the Code, adopting definitions developed through the Colorado Municipal League (CML) led Standardized Definitions Project, and exempting the State imposed Retail Delivery and Single Use Plastic Bag fees. Making these changes will increase the number of businesses collecting and remitting Thornton taxes, as well as further simplify tax collection and reporting for businesses operating in the City.

RECOMMENDATION:

Staff recommends Alternative No. 1, to approve the ordinance amending Chapter 26 of the City Code pertaining to finance and taxation.

BUDGET/STAFF IMPLICATIONS:

None.

ALTERNATIVES:

1. Approve the ordinance as recommended.
2. Do not approve the ordinance.

BACKGROUND (ANALYSIS/NEXT STEPS/HISTORY): (includes previous City Council action)

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COMMUNICATION

PAGE 2

disposal, and emergency services. Prior to the recent South Dakota v. Wayfair, Inc. Supreme Court decision, jurisdictions could not require a business to collect its tax unless they had a physical presence in the jurisdiction. Based on this court decision, those businesses that meet certain sales requirements could be required to collect and remit Thornton taxes. It is unknown what revenue impact this would have, as there are already many businesses collecting and remitting Thornton tax that only have economic nexus at this time.

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ATTACHMENTS:

Certificate Of Completion

Envelope Id: 7C9494304E98470F91BD417CF4400375	Status: Completed
Subject: Complete with DocuSign: Documents for the February 28th Thornton Council Meeting	
Source Envelope:	
Document Pages: 263	Signatures: 30
Certificate Pages: 5	Initials: 0
AutoNav: Enabled	Envelope Originator:
Enveloped Stamping: Enabled	Lucia Higginbotham
Time Zone: (UTC-07:00) Mountain Time (US & Canada)	9500 Civic Center Drive
	Thornton, CO 80229
	Lucia.Higginbotham@thorntonco.gov
	IP Address: 199.117.212.4


Record Tracking

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3/1/2023 8:41:21 AM	Lucia.Higginbotham@thorntonco.gov	

Signer Events

Jan Kulmann
 jan.kulmann@thorntonco.gov
 Mayor
 Security Level: Email, Account Authentication (None)

Signature

DocuSigned by:

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Timestamp

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 Accepted: 3/2/2023 2:18:17 PM
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Tami Yellico
 tami.yellico@thorntonco.gov
 City Attorney
 SHI OBO City of Thornton
 Security Level: Email, Account Authentication (None)

DocuSigned by:

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 Signature Adoption: Pre-selected Style
 Using IP Address: 199.117.212.4

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Electronic Record and Signature Disclosure:
 Not Offered via DocuSign

Kevin S. Woods
 kevin.woods@ThorntonCO.gov
 City Mgr.
 Security Level: Email, Account Authentication (None)

DocuSigned by:

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 Signature Adoption: Pre-selected Style
 Using IP Address: 65.113.229.105
 Signed using mobile

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Electronic Record and Signature Disclosure:
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 ID: 01555634-94cd-4140-8587-0e33efa48b1a

Kristen N. Rosenbaum
 Kristen.Rosenbaum@ThorntonCO.gov
 City Clerk
 Security Level: Email, Account Authentication (None)

DocuSigned by:

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 Signature Adoption: Uploaded Signature Image
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Electronic Record and Signature Disclosure:
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In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
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Certified Delivered	Security Checked	3/2/2023 6:21:45 PM
Signing Complete	Security Checked	3/2/2023 6:22:12 PM
Completed	Security Checked	3/2/2023 6:22:12 PM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

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Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

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Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

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You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: clerk@ThorntonCO.gov

To advise SHI OBO City of Thornton of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at clerk@ThorntonCO.gov and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

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To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to clerk@ThorntonCO.gov and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

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- i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an email to clerk@ThorntonCO.gov and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

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To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to ‘I agree to use electronic records and signatures’ before clicking ‘CONTINUE’ within the DocuSign system.

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- You can access and read this Electronic Record and Signature Disclosure; and
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- Until or unless you notify SHI OBO City of Thornton as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by SHI OBO City of Thornton during the course of your relationship with SHI OBO City of Thornton.