

**ORDINANCE NO. 1585
SERIES 2010**

AN EMERGENCY ORDINANCE AMENDING VARIOUS SECTIONS OF CHAPTER 3.20 OF THE LOUISVILLE MUNICIPAL CODE TO MAKE THEM CONSISTENT WITH THE USE TAX APPROVED BY THE VOTERS AT THE NOVEMBER 2, 2010 ELECTION, AND TO UPDATE PROVISIONS REGARDING ADMINISTRATION OF THE SALES AND USE TAX UNDER SUCH CHAPTER

WHEREAS, the City of Louisville (the “City”), is a Colorado home rule municipal corporation duly organized and existing under laws of the State of Colorado and the City Charter (the “City Charter”); and

WHEREAS, Article XX of the Colorado Constitution grants plenary power to home rule cities to levy and collect taxes within the City limits; and

WHEREAS, pursuant to Ordinance No. 1575, Series 2010, the City referred to the voters and the voters approved a TABOR ballot issue imposing a permanent City use tax at a rate of 3.50% upon the use, storage, distribution or consumption of any article of tangible personal property or taxable services purchased, leased or rented from sources outside the City, and upon rental of storage space within the City, such tax to commence January 1, 2011; and

WHEREAS, the City Council by this Ordinance desires to amend various sections of Chapter 3.20 of the Louisville Municipal Code respecting implementation of the use tax approved by the voters at the November 2, 2010 election and administration of the sales and use tax under such Chapter;

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

Section 1. Section 3.20.020 of the Louisville Municipal Code is hereby repealed and reenacted to read in its entirety as follows:

Sec. 3.20.020. Definitions.

A. Words and phrases not otherwise defined herein shall have the meanings set forth in section 39-26-102, C.R.S. as it currently exists or may hereafter be amended, and such definitions are incorporated herein by reference.

B. When not clearly otherwise indicated by the context, the following terms, words and phrases as used in this chapter, shall have the following meanings:

1. *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.

2. *Agricultural commodity* means any agricultural commodity as defined in section 35-28-104(1), C.R.S.; except that, for purposes of this chapter, “agricultural commodity” shall also include sugar beets, timber and timber products, oats, malting barley, barley, hops, rice, milo, and any other feed grain.

3. *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.

4. *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, and every device used or designed for aviation or for 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.

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

6. *Charitable organization* means any entity 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, or any veterans' organization registered under section 501(c)(19) of the Internal Revenue Code of 1986, as amended, for the purpose of sponsoring a special event, meeting, or other function in the state of Colorado so long as such event, meeting, or function is not part of such organization's regular activities in the state.

7. *Computer programs* means standard systems programs or application programs that are not designed, developed or written specifically for one user.

8. *Computer software* means:

a. Computer software, including prewritten upgrades that are not designated or developed to the specification of a specific purchaser;

b. Computer software designed and developed to the specification of a specific purchaser but then sold to another purchaser; or

c. Software that is modified or enhanced even if such modification or enhancement is designed and developed to the specification of a purchaser.

9. *Construction equipment* means equipment actually used by a person in the erection, installation, alteration, repair, or remodeling of a building or structure.

10. *Construction materials or construction and building 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 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, wall board, wall coping, wall paper, weather stripping, wire netting and screen, water mains and meters, and wood preserver. The above materials, when used for forms, or other items that do not remain as an integral or inseparable part of a completed structure of project, are not construction materials.

11. *Consumer* means any individual person, or person engaged in business in the city that uses, stores, distributes or otherwise consumes in the city tangible personal property or taxable services purchased from sources inside or outside the city.

12. *Customized computer programs or software* means computer software or a computer program written specifically for the purchaser or user and the purchaser or user is billed on an hourly labor basis.

13. *Drugs* means medicine or drugs dispensed in accordance with an order in writing, dated, and signed by a licensed physician, or given orally by or on behalf of a licensed physician, and immediately reduced to writing by a pharmacist, assistant pharmacist, or pharmacy intern, specifying the name and address of the person for whom the medicine or drug is offered and directions, if any, to be placed on the label. The term "drugs" excludes medical marijuana.

14. *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 which a person:

a. Directly, indirectly, or by a subsidiary, maintains a building, store, office, salesroom, warehouse, or other place of business within the city;

b. 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;

c. Maintains one or more employees, agents or commissioned sales persons on duty at a location within the city;

d. Owns, leases, rents or otherwise exercises control over real or personal property within the city; or

- e. Makes more than one delivery into the city within any twelve month period.

15. *Farm close-out sale* means a sale by auction or private treaty of all tangible personal property of a farmer or rancher previously used by him or her in carrying on his or her farming or ranching operations. Unless said farmer or rancher is making or attempting to make full and final disposition of all property used in his or her farming or ranching operations and is abandoning the said operations on the premises whereon they were previously conducted, such sale shall not be deemed a “farm close-out sale” within the meaning of this chapter.

16. *Finance director* means the director of finance and administrative services of the City of Louisville or such other person designated by the city; “finance director” shall also include such person’s designee, which may include, but is not limited to, an impartial hearing officer.

17. *Food* means food for domestic home consumption as defined in 7 U.S.C. sec. 2012 (g), as amended, for purposes of the Federal Food Stamp Program as defined in 7 U.S.C. sec. 2012 (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; cold sandwiches; deli trays; and food or drink vended by or through machines or non-coin operated or coin collecting food and snack devices on behalf of a vendor.

18. *Gross taxable sales* means the total amount received in money, credits, property, or other consideration valued in money excluding the fair market value of exchanged property which is to be sold thereafter in the usual course of the retailer’s business, for all sales, leases, rentals and purchases of tangible personal property or services at retail within the city.

19. *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.

20. *License* means a city sales and use tax license.

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

22. *Lodging* means hotel rooms, apartment hotel rooms, motel rooms, lodging house rooms, motor hotel rooms, guesthouse rooms, guest ranch rooms, extended stay lodging rooms or other similar accommodations that are rented to persons for a period of less than one month or 30 consecutive days, but shall not include rentals under a written agreement for occupancy for a period of at least one month or 30 days.

23. *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.

24. *Manufacturing* means the operation of producing a new product, article, substance, or commodity different from and having a distinctive name, character, or use from raw or prepared materials.

25. *Medical marijuana* means marijuana that is grown and sold pursuant to the provisions of Article 43.3 of title 12 of Colorado Revised Statutes and for a purpose authorized by section 14 of Article XVIII of the Colorado Constitution.

26. *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. This 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 and excludes medical marijuana.

27. *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 property 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.

28. *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, discount coupons or booklets, reprints, newspaper clipping and mailing services or listings, publications that include an updating or revision service, or books or pocket editions of books.

29. *Packaging materials or exempt commercial packaging materials* means 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 label or contain the finished product;

b. Is transferred by said person along with and a part of the finished product to the purchaser; and

c. Is not returnable to said person for reuse.

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

31. *Person* means any individual, firm, limited liability company, partnership, joint venture, corporation, estate, trust, association, 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 and includes the plural as well as the singular number.

32. *Preprinted newspaper supplements* means 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.

33. *Prescription drugs for animals* means medicine or drugs dispensed in accordance with an order that is in writing, dated and signed by a licensed practitioner, or that is given orally by a practitioner, specifying the animals for which the medicine or drug is offered and directions, if any, to be placed on the label.

34. *Purchase price or price* means the price to the consumer, and includes:

a. The amount of money received or due in cash and credits.

b. Property at fair market value taken in exchange but not for resale in the usual course of the retailer's business.

c. 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 media of exchange.

d. 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 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 is not part of

the purchase price.

e. Installation, delivery and wheel-in charges included in the purchase price and not separately stated.

f. Transportation and other charges to effect delivery of tangible personal property to the purchaser and not separately stated.

g. Indirect federal manufacturers' excise taxes, such as taxes on automobiles, tires and floor stock.

h. 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.

Purchase Price or price excludes:

a. Any direct tax imposed by the federal government or by this chapter, and any sales or use tax imposed by the State or by any political subdivision thereof.

b. Discounts from the original price if such discount and the corresponding decrease in sales tax due are 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.

c. In the case of all retail sales involving the exchange of property, the fair market value of the property exchanged at the time and place of the exchange, if:

i. Such exchanged property is to be sold thereafter in the usual course of the retailer's business; provided, however, that any money or other consideration paid over and above the value of the exchanged property is subject to tax; or

ii. Such exchanged property is an automotive vehicle and is exchanged for another automotive vehicle and both vehicles are subject to licensing, registration, or certification under the laws of this state, including, but not limited to, automotive vehicles operating upon public highways, off-highway recreation vehicles, watercraft, and aircraft; provided, however, that any money or other consideration paid over and above the value of the exchanged property is subject to tax.

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

36. *Prosthetic device* means 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, therapeutic or orthopedic devices or appliances, oxygen concentrators and oxygen with related accessories.

37. *Purchase or sale* means the acquisition for any consideration by any person of tangible personal property or services that are purchased, leased, rented, sold, used, stored, distributed, or consumed, but excludes a bona fide gift of property or services.

Purchase or sale includes capital leases, installment and credit sales, and property and services acquired by:

a. Transfer, either conditionally or absolutely, of title or possession or both to tangible personal property;

b. Lease, lease-purchase agreement, rental or grant of a license, including royalty agreements, to use tangible personal property or taxable services; including without limitation access services and linen services; the utilization of coin-operated devices, except coin-operated telephones, which do not vend articles of tangible personal property, shall be considered short-term rentals of tangible personal property;

c. Performance of services for which payment of tax is required under this chapter;

d. Barter or exchange for other property or services including coupons;

e. The transaction of furnishing rooms or accommodations by any person to a person who for a consideration uses, possesses, or has the right to use or possess any room in a hotel, apartment hotel, lodging house, motor hotel, guesthouse, guest ranch, trailer coach, mobile home, auto camp, or trailer court and park, under any concession, permit, right of access, license to use, or other agreement, or otherwise.

Purchase or sale excludes:

a. A division of partnership or limited liability company assets among the partners or limited liability company members according to their interests in the partnership or limited liability company;

b. The formation of a corporation by the owners of a business and the transfer of their business assets to the corporation in exchange for the entire corporation's outstanding stock, except qualifying shares, in proportion to the assets contributed;

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

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

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

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

g. A transfer of a limited liability company or partnership interest;

h. The transfer in a reorganization qualifying under section 368(a)(1) of the “Internal Revenue Code of 1986”, as amended;

i. The formation of a limited liability company or partnership by the transfer of assets to the limited liability company or partnership or transfers to a limited liability company or partnership in exchange for proportionate interests in the limited liability company or partnership;

j. The repossession of personal property by a chattel mortgage holder or foreclosure by a lien holder;

k. The transfer of assets between 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 as otherwise provided herein. For the purposes of this paragraph k, a closely held subsidiary corporation is one in which the parent corporation owns stock possessing 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.

38. *Retailer* or *vendor* means any person selling, leasing or renting tangible personal property or services at retail. Retailer shall include without limitation any:

a. Auctioneer;

b. 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;

c. Charitable organization or governmental entity which makes sales of tangible personal property to the public, notwithstanding the fact that the merchandise sold may have been acquired by gift or donation or that the proceeds are to be used for charitable or

governmental purposes.

39. *Retail sale* means all sales except wholesale sales and includes lease, rental, barter or grant of license to use tangible personal property or taxable services as specified in this chapter by the ultimate user or consumer.

40. *Return* means the tax reporting forms used to report sales and use tax.

41. *Security system services* means electronic security system services. Such term does not include nonelectronic security services such as consulting or human or guard dog patrol services.

42. *Storage or storing* means any keeping or retention of, or exercise of dominion or control over, or possession for any length of time, of tangible personal property when leased, rented or purchased at retail from sources either within or without the city from any person or vendor.

43. *Storage space* means any indoor or outdoor area, structure, warehouse or unit, whether mobile or immobile, which is ordinarily used to store tangible personal property. Storage space shall not include kennels, lockers, mobile home pads or safe deposit boxes.

44. *Tangible personal property* means corporeal personal property. The term shall not be construed to include newspapers, as legally defined by section 24-70-102, C.R.S.

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

46. *Taxpayer* means any person obligated to collect tax, pay tax, or account for tax, or any combination thereof, under the terms of this chapter and as the context may require. The term "taxpayer" includes but is not limited to a retailer, a vendor and such other persons as the context may require.

47. *Telecommunications service* means:

a. Transmission of any two-way interactive electromagnetic communications, including but not limited to voice, image, data and any other information, by the use of any means, but not limited to wire, cable, fiber, optical cable, microwave, radio wave or any combination of such media.

b. Transmission of intrastate electronic messages originating within the city by means of microwave, telephone, telegraph, or cable transmission, including cable, microwave, or other television service for which a charge is imposed, except that for mobile telecommunications services, the definition of taxable services shall be as set forth in the Federal Mobile Telecommunications Sourcing Act, 4 U.S.C. Sections 116 to 126, as amended, which provides that taxes on mobile telecommunications services are to be collected and remitted to the jurisdiction where the customer's primary use of said services occurs, regardless of where the

mobile telecommunications services originate, pass through, or terminate.

c. 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.

d. Telecommunications service does not include separately stated nontransmission services which constitute computer processing applications used to act on the information to be transmitted.

48. *Therapeutic device* means devices, appliances, or related accessories that are sold to correct or treat a human physical disability or surgically created abnormality; if such device, appliance or related accessory has a retail value of more than \$100.00, it must be sold in accordance with a written recommendation from a licensed practitioner to qualify as a therapeutic device for the purposes of this chapter.

49. *Use* means the exercise by any person within the City of a right, power or dominion over tangible personal property when rented, leased or purchased at retail from sources either within or without the City, from any person or vendor. "Use" includes the withdrawal of items from inventory for consumption.

50. *Wholesale sale* means any sale to a licensed retailer, jobber, dealer, or other wholesaler for resale. Sales by wholesalers to consumers not for resale, shall be deemed retail sales.

51. *Wholesaler* means a person selling to retailers, merchants, jobbers, dealers, or other wholesalers, for the purpose of resale and not for storage, use, consumption, or distribution.

Section 2. Section 3.20.080 of the Louisville Municipal Code is hereby repealed and reenacted to read in its entirety as follows:

Sec. 3.20.080. Amendments.

Except as to the sales tax and use tax rate provided for in this chapter, the items taxed and exempted from the sales tax, and the use of the sales and use tax revenues provided for in this chapter, the city council may amend, alter, delete or change the provisions of this chapter by the adoption of an amending ordinance in accordance with law, and such amendment, alteration, deletion or change need not be submitted to the electors of the city for their approval unless otherwise required by the Colorado Constitution.

Section 3. Section 3.20.200 of the Louisville Municipal Code is hereby amended by the deletion of the first "the" appearing in said section.

Section 4. Section 3.20.210 of the Louisville Municipal Code is hereby repealed and reenacted to read in its entirety as follows:

Sec. 3.20.210. Property and services taxed.

The sales tax is imposed upon the property and services as set forth in this section; provided, however, that no such tax shall be charged on any sale of \$0.17 or less.

A. *Auctions:* On the tangible personal property sold by an auctioneer who is either the agent for the owner of such property or is in fact the owner thereof.

B. *Automotive vehicles:* On the price paid or charged on the sale, lease-purchase, or rental for use or storage of an automotive vehicle to a resident of the city when required under the provisions of Title 42 of the Colorado Revised Statutes to be registered at an address inside the city. The county clerk of the county in which the registration occurs is authorized to collect such tax for the city prior to or at the time of registration.

C. *Automotive vehicles, low emitting power sources and parts:* The sales tax is imposed upon the sales of low-emitting motor vehicles, power sources, or parts used for converting such power sources.

D. *Charitable organization sales:* The tax is imposed upon all sales and occasional sales of tangible personal property by a charitable organization.

E. *Combined personal property rentals with operator service:* On the price paid or charged for the right of possession or use of tangible personal property granted under lease, hire, or rental contract with an operator, regardless that at all times such rental property remains in the possession of the operator providing the rental service. If the charge for an operator of the property is not separately stated on the rental invoice, the total invoice amount is taxable. If the operator charge is separately stated, only the property rental charge is subject to city tax.

F. *Computer programs or software:* On the price paid or charged for prewritten, modified or enhanced computer programs or computer software regardless of delivery method.

G. *Construction materials:* On the purchase price paid or charged within the city which are used for the improvement of any building, dwelling, other structure, or realty within or without the city which improvement does not require a building permit pursuant to city ordinance or code.

H. *Customized computer programs or software:* Subsequent sales of customized software will be treated as prewritten modified or enhanced software and taxed accordingly regardless of delivery method.

I. *Exchanged property:* In the case of retail sales involving the exchange of property:

1. The sales tax is imposed on the purchase price paid or charged, including the fair market value of the property exchanged at the time and place of the exchange, excluding, however, from the consideration or purchase price, the fair market value of the exchanged property 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.

2. The exchange of three or more vehicles of the same type by any person in any calendar year in transactions subject to the provisions of this chapter shall be prima facie evidence that such person is engaged in the business of selling vehicles of the type involved in such transactions and that such person is thereby subject to any licensing requirements necessary to engage in such activity.

J. *Food and drink:* The sales tax is imposed upon the amount paid for all sales and purchases of food or drink as defined in section 3.20.020.B.17 and served or furnished in or by restaurants, cafes, lunch counters, cafeterias, hotels, drugstores, supermarkets, social clubs, nightclubs, cabarets, resorts, snack bars, caterers, carryout shops, and other like places of business at which prepared food or drink is regularly sold, including sales from pushcarts, motor vehicles, and other mobile facilities or any other place at which meals or food are regularly sold or are required by law to have foods or meals available for sale. Cover charges shall be included as part of the amount paid for such food or drink. Any mandatory service or service-related charge, whether described as such or as a tip, gratuity, or otherwise, shall be included as part of the purchase price paid for such meals unless the full amount of the charge is passed on to the employees of the food service establishment who have provided direct service to each person paying the charge, and if all federal and state income and other applicable taxes due on such charge have been withheld by the food service establishment and paid to the appropriate government.

Any retailer selling malt, vinous or spirituous liquors by the drink may include in the sales price the tax levied under this chapter. However, meals provided to employees of the places mentioned in this subsection J at no charge or at a reduced charge and which are considered as part of their salary, wages, or income shall be exempt from taxation under the provisions of this chapter.

K. *Freight or Delivery:* On the price paid or charged for freight and delivery services or charges included in the price of the property being delivered; but not including any charges billed separately or included as a separate charge on the vendor's invoice.

L. *Gas and electric services:* The sales tax is imposed upon the amount paid or charged for gas, steam, heat and electric service, whether furnished by municipal, public, or private corporations or enterprises, for commercial or residential consumption and not for resale. For the purposes of this subsection L, "gas" includes natural, manufactured, and liquefied petroleum gas. Tax is also imposed on all industrial users for the portion of such gas and electric services provided and used for lighting or space heating or similar.

M. *Linen service*: On the price paid or charged for such services, whether purchased, leased, or rented.

N. *Lodging*: The sales tax is imposed on the entire amount charged to any person for rooms or accommodations as designated in section 3.20.020.B.22.

O. *Machinery and machine tools*: The sales tax is imposed upon the amount paid for purchases of machinery or machine tools, or parts thereof, in excess of \$500.00 to be used in the city directly and predominantly in manufacturing tangible personal property, for sale or profit. For purposes of this subsection, direct use in manufacturing is deemed to begin for items normally manufactured from inventoried raw material at the point at which raw material is moved from plant inventory on a contiguous plant site and to end at a point at which manufacturing has altered the raw material to its completed form, including packaging, if required. Machinery used during the manufacturing process to move material from one direct production step to another in a continuous flow and machinery used in testing during the manufacturing process is deemed to be directly used in manufacturing.

P. *Maintenance services and agreements*: On the purchase price paid or charged for warranty or maintenance services and contracts relating to tangible personal property when such services are included as part of the purchase price. When such services or warranties are optional to the purchaser and when any parts or supplies or taxable services subsequently provided to the purchaser are properly taxed, such contracts or warranties are not taxable at the time of purchase.

Q. *Pay Television services*: On the purchase price or charge for pay television services sold, purchased, leased, rented, furnished or used.

R. *Prefabricated goods and materials*: On the purchase price or on the complete manufactured cost, including all raw materials, labor, overhead, and profit, of all such goods or materials delivered into and used in the city.

S. *Security systems services*: On the price paid or charged for security system services, including monitoring, whether purchased, leased or rented.

T. *Tangible personal property*: The tax is imposed upon the purchase price paid or charged upon all sales, rentals, leases and purchases of tangible personal property as specified in this chapter:

1. Whether or not such property has been included in a previous taxable transaction;
2. When purchased for use without payment of the sales tax and used, stored, or consumed inside the city either personally or in conjunction with the rendering of a service;
3. When purchased at wholesale and subsequently used by the taxpayer, either personally or in the business.

U. *Telecommunication services:* The sales tax is imposed upon all telecommunication services for all intrastate telecommunications service and mobile communications services as provided in this chapter, originating from or received on telecommunication equipment in the city if the charge for the service is billed to an apparatus, telephone or account in this city, to a customer location in the city, or to a person residing in the city without regard to where the bill for such services is actually received. Carrier access services, interstate or international WATS/800 service and interstate private communications services are exempt.

V. *Telecommunications equipment:* The tax is imposed upon the purchase price paid or charged upon all sales, rentals, leases and purchases of telecommunications equipment; provided, however, that in the case of the sale or transfer of wireless telecommunication equipment as an inducement to a consumer to enter into or continue a contract for telecommunication services that are taxable pursuant to this chapter, the “purchase price” means and shall be limited to the monetary amount paid by the consumer and shall not reflect any sales commission or other compensation received by the retailer as a result of the consumer entering into or continuing a contract for such telecommunication services. Nothing in this subsection shall be construed to define “purchase price” as it applies to the amount a retailer collects from a consumer who defaults or terminates a contract for telecommunication services.

W. *Vending machines:* The sales tax is imposed upon the price paid or charged by the owner/lessee of vending machine devices for articles of tangible personal property that are to be subsequently sold in those coin-operating vending machines or devices. The sales tax shall be collected and remitted by the vending machine owner or lessee for the retail sale of tangible personal property. The sales tax may be included in the retail price of the individual item sold at retail through the machine. The operator, owner or person selling tangible personal property by coin-operated vending machines or devices shall be liable additionally for the sales and use tax on the purchase or use of the coin-operated devices and on any subsequent lease, rental or sale thereof on the full lease, rental or sale price.

Section 5. Section 3.20.220 of the Louisville Municipal Code is hereby repealed and reenacted to read in its entirety as follows:

Sec. 3.20.220. Exemptions from Sales Tax.

The transactions set forth in this section are exempt from the imposition of tax levied by section 3.20.200. The burden of proving that any taxpayer is exempt from collecting or paying sales tax shall be on the taxpayer:

A. *Access services:* Carrier access services, interstate or international WATS/800 service and interstate private communications services.

B. *Non-resident automotive vehicles:* Automotive vehicles sold to nonresidents of the city for registration outside the city. It shall be unlawful to register an automotive vehicle outside the city with intent to avoid tax liability imposed by this chapter.

C. *Agricultural commodities.*

D. *Charitable organization:* All direct sales to charitable organizations in the conduct of their regular charitable functions and activities when billed to and paid for by the charitable organization. This includes all sales of construction and building materials to contractors and subcontractors for use in the building, erection, alteration or repair of structures, highways, roads, streets, and other public works owned or used by charitable organizations in the conduct of their regular charitable functions and activities.

E. *Cigarettes.*

F. *Construction materials:* The sale of construction and building materials, if such materials are picked up by the purchaser and if the purchaser of such materials presents to the retailer a building permit or other documentation acceptable to the city evidencing that a local use tax on such materials has been paid or is required to be paid.

G. *Customized computer programs or software:* Labor which is included as part of a modification or enhancement is not taxable if such charges are separately stated. Custom software programs written specifically for the user and billed on an hourly labor basis are not taxable.

H. *Drugs:* The term “drugs” does not include medical marijuana.

I. *Factory built housing:* Forty-eight percent (48%) of the purchase price of factory built housing, as such housing is defined in section 24-32-703(3), C.R.S.

J. *Farm close-out sales.*

K. *Food:* Food that is purchased by the medium of exchange commonly known as “food stamps”; and the sale of food as defined in 7 U.S.C. 2012(g), as such section now exists or is hereafter amended, that is purchased with funds provided by the special supplemental food program for women, infants, and children authorized by 42 U.S.C. 1786 as such section now exists or is hereafter amended.

L. *Garage sales:* All sales of tangible personal property, except automotive vehicles, at garage sales, yard sales or estate sales; provided that such sales are conducted no more than three times a year, that the sale occurs at the residence of the seller, by the seller, and that the property to be sold was originally purchased for use by members of the household where such sale is being conducted.

M. *Industrial use:* Sales and purchases of electricity, coal, gas, fuel oil, steam, or coke for use in processing, manufacturing, mining, refining, irrigation, building construction, telegraph, telephone, and radio communications, street and railroad transportation services and all industrial uses, except that electricity, gas, coal, fuel oil or coke used for lighting or space heating in these operations shall not be exempt.

N. *Internet access services.*

O. *Labor:* The sale of labor when sold with tangible personal property, if such labor is stated separately on the invoice from the tangible personal property sold; except that manufacturing or fabricating or other processing labor is never exempt.

P. *Livestock and livestock feed:* The sale of cattle, sheep, lambs, poultry, fish for stock purposes, swine and goats; and the sale of mares and stallions for breeding purposes. All sales of feed for livestock or poultry and all sales of seeds to farmers, ranchers, truck farmers, florists and horticulturists who sell the crops resulting from the propagation of such seeds or use such crops as feed for livestock or poultry.

Q. *Manufacturing or compounding:* Sales of tangible personal property to a person engaged in the business of manufacturing, compounding for sale, profit or use, any article, substance or commodity:

1. Which tangible personal property is actually and factually transformed by the process of manufacturing or compounding; and

2. Which tangible personal property becomes by the manufacturing or compounding process, a necessary and recognizable ingredient, component and constituent part of the finished product; and

3. Whose physical presence in the finished product is essential to the use thereof in the hands of the ultimate consumer.

With regard to the sale of tangible personal property sold to a person engaged in the business of manufacturing or compounding for sale, profit or use of food products, such tangible personal property is exempt from taxation under this section when:

i. It is intended that such property become an integral or constituent part of a food product which is intended to be sold ultimately at retail for human consumption; or

ii. Such property, whether or not it becomes an integral or constituent part of a food product, is a chemical, solvent, agent, mold skin casing, or other material, is used for the purpose of producing or inducing a chemical or physical change in a food product or is used for the purpose of placing a food product in a more marketable condition and is directly utilized and consumed, dissipated, or destroyed, to the extent it is rendered unfit for further use, in the processing of a food product which is intended to be sold ultimately at retail for human consumption.

R. *Medical supplies.*

S. *Motor fuels:* The sale of motor fuels upon which there has been accrued or paid the tax prescribed by Article 27 of Title 39 of the Colorado Revised Statutes.

T. *Newspapers:* The sale of newspapers, but not included preprinted newspaper supplements.

U. *Packaging materials or exempt commercial packaging materials.*

V. *Prescription drugs for animals.*

W. *Private communications services.*

X. *Prosthetic devices.*

Y. *Sales tax paid to another city:* The sale of tangible personal property at retail or the furnishing of services if the transaction was previously subjected to a sales or use tax lawfully imposed on the purchaser or user by another statutory or home rule city or town, or city and county, equal to or in excess of the sales tax. A credit shall be granted against the sales tax with respect to such transaction equal in amount to the lawfully imposed local sales tax previously paid by the purchaser to such other statutory or home rule city or town, or city and county. The amount of the credit shall not exceed the amount of the sales tax required to be paid pursuant to this chapter.

Z. *Sales to public utility company or railroad:* Tangible personal property sold to a public utility company or railroad doing business both inside and outside the city, for use in its business operations outside the city, even though delivery thereof is made inside the city.

AA. *Rentals or leases of inventory:* Sale of tangible personal property purchased exclusively for rental or leasing inventory, provided that such property is not otherwise used for the purchaser's general business or personal use. A sales tax is due upon the rental or leasing of such property regardless of whether a sales or use tax has been paid upon a previous purchase of the property.

BB. *Sales for outside delivery:* Sales of tangible personal property where both of the following conditions are met:

1. The sales are to individuals who reside or businesses which are located outside the city; and

2. The articles purchased are delivered to the purchaser outside the city by common carrier or by the conveyance of the seller or by mail, and such articles delivered are used outside the city.

CC. *Therapeutic devices.*

DD. *United States Government:* All direct sales to the U.S. government, the State of Colorado, its departments or institutions, and the political subdivisions thereof in their governmental capacities only, when billed to and paid for by the governmental entity.

EE. *Wholesale sales.*

The list of exemptions shall not be increased by implication or similarity.

Section 6. The title and subsections A, D and G of Section 3.20.240 of the Louisville Municipal Code are hereby repealed and reenacted to read in its entirety as follows:

Sec. 3.20.240. Sales/Use tax license.

A. It shall be unlawful for any person to engage or be engaged in the operation, conduct, or carrying on of any trade, profession, business, occupation within the city, regardless of whether or not goods and services are sold without first having obtained a sales and use tax license from the city. In case business is transacted at one or more separate premises by one person, a separate license for each place of business shall be required. Each license shall be numbered and shall show the name, residence, place, and character of business of the licensee, and shall be posted in a conspicuous place in the place of business for which it is issued.

...

D. It shall be the duty of each licensee, on or before January 1 of each year, to obtain a renewal of the licensee's sales and use tax license if the licensee remains in business in the city or liable to account for the tax provided for in this chapter.

...

G. Any person engaged in business in the city without having secured a license therefor, except as specifically provided in this chapter, shall be guilty of a violation of this chapter.

Section 7. Subsection D of Section 3.20.250 of the Louisville Municipal Code is hereby repealed and reenacted to read in its entirety as follows:

Sec. 3.20.250. Taxpayer responsibilities.

...

D. Tax schedules promulgated under this chapter may be used by a retailer in determining amounts of tax. The use of any such schedules shall not relieve such retailer from liability for payment of the full amount of the tax imposed pursuant to this chapter.

Section 8. Subsections A, B and E of Section 3.20.260 of the Louisville Municipal Code is hereby repealed and reenacted to read in its entirety as follows:

Sec. 3.20.260. Filing returns; due dates.

A. Every retailer shall file a sales tax return, whether or not sales tax is due, and

remit any sales tax due to the city on or before the 20th day of the month following their required reporting period. Every taxpayer owing use tax shall file a use tax return and remit the use tax due to the city on or before the 20th day of the month following their required reporting period. A use tax return is not required to be filed for any reporting period for which no use tax is due.

B. A retailer or taxpayer engaged in business in the city at two or more locations, whether inside or outside the city, who collects and remits sales or use tax, may file one return for all such locations, when accompanied by a supplemental schedule showing the gross sales, net taxable sales and sales and use tax due for each location.

...

E. Unless otherwise approved by the finance director, taxpayers shall file returns and pay tax as follows:

1. A taxpayer whose monthly sales or use tax due is \$100.00 or more shall file returns and pay tax monthly.

2. A taxpayer whose monthly sales or use tax due is less than \$100.00 may pay tax quarterly.

3. If a monthly filer drops to less than \$100.00 per month for an entire calendar year, the annual filing status will change to quarterly for the subsequent calendar year. The annual filing status will be determined by the first full month of tax collected. If a quarterly filer exceeds \$300.00 per quarter for an entire calendar year, the status will change to monthly in the subsequent calendar year.

4. Any taxpayer whose liability, for city sales tax only, for the previous year was more than \$75,000.00 shall file all returns and remit all city taxes required to be remitted by automated clearing house (ACH) payment through the city's designated bank.

Section 9. For fiscal year 2011 only, no sales and use tax license fee shall be assessed to or payable by any person engaged in business in the city who becomes obligated to obtain a sales and use tax license commencing in 2011 solely as a result of becoming subject to tax pursuant to the adoption of Ballot Issue 2D at the November 2, 2010 election.

Section 10. The follows sections of the Louisville Municipal Code, as the same may be amended herein, are hereby further renumbered to the number set forth in parentheses adjacent each such number, and the table of contents to chapter 3.20, and all other references in the Louisville Municipal Code to said sections, shall be renumbered accordingly: 3.20.240 (renumber to 3.20.402); 3.20.250 (3.20.404); 3.20.260 (3.20.406); 3.20.270 (3.20.408); 3.20.280 (3.20.410); 3.20.405 (3.20.412); 3.20.410 (3.20.413); 3.20.412 (3.20.414).

Section 11. The City Council herewith finds, determines and declares that this ordinance is necessary for the immediate preservation of the public health, safety and welfare in order to timely effectuate the amendments herein consistent with the provisions of Ballot Issue

2D approved at the November 2, 2010 election because the use tax approved therein commences effective January 1, 2011. The City Council herewith further finds and determines it is necessary that this ordinance be adopted as an emergency ordinance in light of the fact that the date of certification of the election results, November 23, 2010, occurred later than anticipated and that the date of first reading hereof is the first regular City Council meeting occurring after certification of said election results. Therefore, this ordinance shall take effect January 1, 2011, provided the same has been adopted and signed by the Mayor and approved by two-thirds of the entire City Council.

Section 12. If any portion of this ordinance is held to be invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council and the registered voters of the City hereby declare that they would have passed and approved this ordinance and each part hereof irrespective of the fact that any one part be declared invalid.

Section 13. The repeal or modification of any provision of the Municipal Code of the City of Louisville 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.

Section 14. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

INTRODUCED, READ, PASSED ON FIRST READING, AND ORDERED
PASSED this 7th day of December, 2010.



Nancy Varra

Nancy Varra, City Clerk

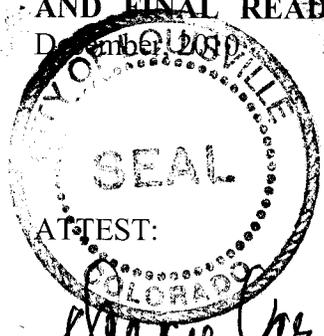
Charles L. Sisk

Charles L. Sisk, Mayor

APPROVED AS TO FORM:
[Signature]

Light, Kelly & Dawes, P.C.
City Attorney

PASSED AND ADOPTED AS AN EMERGENCY ORDINANCE ON SECOND AND FINAL READING AND ORDERED PUBLISHED IN FULL, this 21st day of December, 2019



ATTEST:

Nancy Varra

Nancy Varra, City Clerk

Charles L. Sisk

Charles L. Sisk, Mayor