

AGENDA
LAKEWOOD CITY COUNCIL
STUDY SESSION
CITY OF LAKEWOOD, COLORADO
VIRTUAL MEETING
NOVEMBER 2, 2020
7:00 P.M.

To watch the Council meeting live, please use either one of the following links:

City of Lakewood Website: <https://www.Lakewood.org/CouncilVideos>

or

Lakewood Speaks: <https://lakewoodspeaks.org/>

Phone Number for Public Input: (1-669-900-9128)

Webinar ID: (938 9088 9694)

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Press *9 to Request to Speak

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ITEM 1 – CALL TO ORDER

ITEM 2 – ROLL CALL

ITEM 3 – PRESENTATION – NEW REVENUE OPPORTUNITIES AND SALES & USE TAX CODE REGULATIONS

PUBLIC INPUT

ITEM 4 – REPORTS

ITEM 5 – ADJOURNMENT

STAFF MEMO

DATE OF STUDY SESSION: NOVEMBER 2, 2020 / AGENDA ITEM NO. 3

To: Mayor and City Council

From: Holly Björklund, Chief Financial Officer, 303-987-7601

Subject: **NEW REVENUE OPPORTUNITIES – SALES & USE TAX CODE AND REGULATIONS**

SUMMARY STATEMENT: Staff will provide City Council an overview of new revenue opportunities for consideration, with a focus on the rewritten Sales & Use Tax Code and Regulations. All documents were distributed to City Council in advance of the Budget & Audit Board meeting (10/19/20). Suggested revisions from the Board will be incorporated and any revised documents will be sent to City Council prior to this study session.

BACKGROUND INFORMATION: City staff has revised Chapter 3.02 of the Lakewood Municipal Code (the “City Tax Code”) to incorporate the standardized definitions promulgated by a committee, which included City representatives, organized by the Colorado Municipal League as a result of Senate Joint Resolution (SJR 14-038). The intent of SJR 14-038 was to encourage self-collecting municipalities to help simplify their tax codes by using standized terminology. City staff took additional measures to transform the City Tax Code to be more user (business) friendly and to more clearly articulate current processes and tax determinations.

BUDGETARY IMPACTS: It is anticipated that the revised City Tax Code will result in better compliance and therefore, increased revenue.

STAFF RECOMMENDATIONS: Staff recommends City Council provide any specific questions in advance of the study session, so thoughtful answers may be researched and responded to suitably.

ALTERNATIVES: City Council may delay or forgo this presentation.

PUBLIC OUTREACH: This item was promoted through the regular communication channels for items that come before the City Council.

NEXT STEPS: Staff will incorporate feedback from the City Council in advance of the 1st Reading on November 23, 2020.

ATTACHMENTS: Tax Code Adoptions Overview
Exhibit A – Home Rule Cities-Standardized Definitions Adoption
Exhibit B – CMLs Standardized Definitions with Comparision to Current Definitions
Exhibit C – Current Code Mapping to Revised Code
Proposed Tax Code
Proposed Regulations

REVIEWED BY: Kathleen E. Hodgson, City Manager
Benjamin B. Goldstein, Deputy City Manager
Gregory D. Graham, Deputy City Attorney

Proposed Adoption of Standardized Definitions and Revised Lakewood Municipal Code (“LMC”) and Regulations Summary

Background

The Colorado Constitution gives local municipalities the ability to determine their tax base, establish rates, and perform their own tax collection. For businesses that operate in more than one jurisdiction, managing the (sales/use) taxation can be complex and burdensome. The General Assembly adopted Senate Joint Resolution (SJR) 14-038 urging Colorado’s home rule municipalities that locally collect their sales tax to work with the Colorado Municipal League (“CML”) to develop a package of uniform tax definitions. The intent of this resolution was to simplify taxation by having the municipalities utilize standardized terminology in their taxation policy. Definitions were drafted in a way that added clarity about current business practices without triggering a TABOR election. Standardized definitions were finalized February 2016. To date, 55 of the 72 self-collecting home rule jurisdictions have adopted the standardized definitions (Exhibit A).

Standardized Definitions

CML’s 2016 standardized definitions package initially consisted of 106 definitions. Five definitions have since been added. Of the 111 definitions, staff proposes that Lakewood adopt 82 relevant definitions (48 current definitions and 34 new definitions). Exhibit B provides Lakewood’s proposed definitions for adoption with a comparison to the language in the current code. Definitions and terminology have been updated throughout the revised code and regulations.

Revised LMC and Regulations – Key Changes

When incorporating the standardized definitions into Lakewood Municipal Code (“LMC”), it became clear that the LMC and associated regulations should be reviewed and revised in totality. Over the years, changes had been made to the LMC in response to state legislative changes, the 1992 standardized definition project, and local legal disputes and challenges. The current code is difficult for businesses to read and interpret. Furthermore, the current code contains typos, spelling and grammar errors, obsolete language, inconsistencies and concepts are scattered throughout.

The revised code has been written to make sales and use tax easy to understand by business owners and accountants, without the interpretation of an attorney. It is organized in a way that is logical, and the language more clearly articulates the taxation policy. Sales and use tax sections have been consolidated, concepts have been combined and headers and lists have been incorporated for easier navigation. References to old tax rates and old taxation of food have been updated. The language around charitable organizations has been updated to more clearly link to the criteria of 501(c)(3) and highlights the differentiating point of lessening the burden of government. The collection and enforcement sections have been simplified and expanded to reflect current processes, and an audit section was added.

The revised code contains important language for technological changes that incorporates the following definitions: Digital Product, Software as a Service, Software License Fee, Software Maintenance Agreement, Software Program, Economic Nexus, Marketplace and Marketplace facilitatory. In addition, it reflects and explains Lakewood’s position of 3rd party collections and addresses Economic Nexus and Marketplace Facilitators. These terms are necessary to bring LMC and regulations up to date with the digital era.

Review and Next Steps

Staff from Lakewood Finance and Legal partnered in the review and rewrite of the code and regulations. Considerable time and thought were put into the revised code and regulations to explain current processes and tax determinations, transforming the code to be more user (business) friendly; while ensuring no TABOR violations. The revised code and regulations have been reviewed by tax experts from other municipalities, as well

as members of small business associations. It is anticipated that the adoption of the revised code will result in incremental revenue from better compliance.

For City Council's review, it is recommended that attention be given to those areas with the most change (highlighted above). Printed color versions are available upon request.

- To streamline the review process, staff has attached:
 - Exhibit B – A redlined version of changes to definitions, including those not recommended for adoption
 - Exhibit C – A mapping of each section of the current code to the revised code, with notes highlighting changes
 - Proposed Tax Code
 - Proposed Regulations
- The current code and regulations can be found online at:
 - Code (Chapter 3.01): https://library.municode.com/co/lakewood/codes/municipal_code
 - Regulations: <https://www.lakewood.org/files/assets/public/finance/pdfs/regulations-and-special-regulations.pdf>

Upcoming review dates:

- October 19 - Budget & Audit Board Review
- November 2 - City Council Study Session
- November 23 – City Council 1st Reading
- December 14 – City Council 2nd Reading

Exhibit A

Home Rule, Self-Collecting Municipalities that Have Adopted Sales Tax Definitions

- Arvada (6/19/2017)
- Aspen (10/19/2017)
- Aurora (4/3/2017)
- Avon (3/28/2017)
- Black Hawk (2/14/2018)
- Boulder (2/6/2018)
- Breckenridge (8/13/2019)
- Broomfield (3/13/2018)
- Canon City (3/5/2018)
- Carbondale (5/22/2018)
- Castle Pines (11/14/2019)
- Centennial (12/4/2017)
- Cherry Hills Village (8/7/2018)
- Colorado Springs (3/26/2019)
- Commerce City (4/6/2020)
- Cortez (10/10/2017)
- Craig (3/27/2018)
- Crested Butte (8/7/2018)
- Dacono (8/14/2017)
- Delta (1/1/2016)
- Denver (6/25/2017)
- Edgewater (5/4/2017)
- Englewood (3/18/2019)
- Evans (9/18/2018)
- Federal Heights (7/17/2018)
- Fort Collins (5/16/2017)
- Frisco (9/12/2017)
- Glenwood Springs (6/7/2018)
- Golden (4/27/2017)
- Grand Junction (12/10/2019)
- Greeley (10/17/2017)
- Greenwood Village (5/1/2017)
- Gunnison (11/28/2017)
- Gypsum (2016)
- La Junta (5/1/2018)
- Lamar (11/27/2017)
- Littleton (12/19/2017)
- Lone Tree (8/10/2019)
- Longmont (4/25/2017)
- Louisville (6/13/2017)
- Montrose (9/19/2017)
- Mountain Village (11/27/2017)
- Mt. Crested Butte (9/18/2018)
- Northglenn (10/9/2017)
- Parker (12/14/2017)
- Rifle (11/7/2018)
- Sheridan (9/20/2018)
- Silverthorne (3/7/2018)
- Snowmass Village (7/18/2018)
- Steamboat Springs (1/22/2019)
- Timnath (5/15/2017)
- Vail (3/19/2019)
- Westminster (6/26/2017)
- Wheat Ridge (4/10/2017)
- Windsor (7/9/2018)

Exhibit B - CML's Standardized Definitions Comparison to LMC Current Definitions

Red font indicates a definition that is NOT recommended for adoption or a deletion of certain language. Those definitions that are NOT recommended for adoption have been found to not apply to Lakewood's business community.

Blue font indicates language added to the standardized definition.

Green font indicates a change to the standardized definition per Lakewood's Finance Department and legal counsel. Most of these changes are grammatical but some are to more clearly articulate what is being defined.

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

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

- (2) **"Aircraft"** means a device that is used or intended to be used for flight in the air. (New)
- (3) **"Aircraft Part"** means any tangible personal property that is intended to be permanently affixed or attached as a component part of an aircraft.
- (4) **"Aircraft Simulator"** means a Flight Simulator Training Device (FSTD) as defined in Part I of Title 14 of the Code of Federal Regulations that is qualified in accordance with Part 60 of Title 14 of the Code of Federal Regulations for use in a Federal Aviation Administration Approved Flight Training Program.
- (5) **"Aircraft Simulator Part"** means any tangible personal property that is originally designed and intended to be permanently affixed or attached as a component part of an aircraft, and which will also function when it is permanently affixed or attached as a component part of an aircraft simulator.
- (6) **"Airline Company"** means any operator who engages in the carriage by aircraft of persons or property as a common carrier for compensation or hire, or the carriage of mail, or any aircraft operator who operates regularly between two (2) or more points and publishes a flight schedule. Airline Company shall not include operators whose aircraft are all certified for a gross takeoff weight of twelve thousand five hundred (12,500) pounds or less and who do not engage in scheduled service or mail carriage service. (New)

- (7) **“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. (No change)
- (8) **“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~~ and mobile homes. Automotive Vehicle shall not include devices moved by human power or used exclusively upon stationary rails or tracks. (No change)

- (9) **“Business”** means all activities engaged in or caused to be engaged in with the object of gain, benefit, or advantage, direct or indirect.

OLD: “Business” ~~includes~~ means all activities engaged in or caused to be engaged in with the object of gain, benefit, or advantage, direct or indirect.

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

OLD “Candy” means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruit, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. ~~“Candy”~~ Candy ~~shall~~ does not include any preparation containing flour ~~and shall~~, products that require ~~no~~ refrigeration or marijuana infused products.

- (11) **“Carrier Access Services”** means the services furnished by a local exchange company to its customers who provide telecommunications services, which allow such customers to provide those telecommunications services.

OLD: “Carrier Access Services” means the services furnished by a local exchange company to its customers who provide telecommunications services, which allow ~~them~~ such customers to provide ~~such~~ those telecommunications services.

- (12) **Charitable Organization** means any entity ~~which~~ that: (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, and thereby lessens the burden of government.

~~OLD: “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 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 any political campaign on behalf of any candidate for public office (including the publishing or distributing of statements)).~~

- (13) **“City”** means the municipality of Lakewood, Colorado. (No change)

- (14) **“Coins”** means monetized bullion or other forms of money manufactured from gold, silver, platinum, palladium or other such metals now, in the future or heretofore designated as a medium of exchange under the laws of this State, the United States or any foreign nation. (New)
- (15) **“Coin Operated Device”** means any device operated by coins or currency or any substitute therefor.
- (16) **“Collection Costs”** shall include, but is not limited to, all costs of audit, assessment, bank fees, hearings, execution, lien filing, distraint, litigation, locksmith fees, auction fees and costs, prosecution and attorney fees. (New)
- (17) **“Commercial Packaging Materials”** means containers, labels, and/or cases, ~~that~~ *which* 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 are* not returnable to said person for reuse. Commercial Packaging Materials does not include Commercial Shipping Materials.
- OLD: *“Commercial packaging materials” means containers, labels and shipping cases used by 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: (i) is used by the manufacturer, compounder, wholesaler, jobber, retailer, packager, distributor or bottler to contain or label the finished product; (ii) is transferred by said person along with and as a part of the finished product to the purchaser; and (iii) is not returnable to said person for reuse. “Commercial packaging materials” as defined are exempt from sales or use tax imposed by this chapter.*
- (18) **“Commercial Shipping Materials”** means materials that do not become part of the finished product to the purchaser ~~which~~ *and* 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. (New)
- (19) **“Community Organization”** means a nonprofit entity organized and operated exclusively for the promotion of social welfare, primarily engaged in promoting the common good and general welfare of the community, so long as: (1) No part of the net earnings of which insures to the benefit of any private shareholder or individual; (2) No substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; and (3) Which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.
- (20) **“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. (New)
- (21) **“Construction Materials”** means tangible personal property which, when combined with other tangible personal property, loses its identity to become an integral and inseparable part of a structure or project including public and private improvements. Construction Materials include, but are not limited to, such things as: asphalt, bricks, builders' hardware, caulking material, cement, concrete, conduit, electric wiring and connections, fireplace inserts, electrical heating and cooling equipment, flooring, glass, gravel, insulation, lath, lead, lime, lumber, macadam, millwork, mortar, oil, paint, piping, pipe valves and pipe

fittings, plaster, plumbing fixtures, putty, reinforcing mesh, road base, roofing, sand, sanitary sewer pipe, sheet metal, site lighting, steel, stone, stucco, tile, trees, shrubs and other landscaping materials, wall board, wall coping, wallpaper, weather stripping, wire netting and screen, water mains and meters, and wood preserver. The above materials, when used for forms, or other items which do not remain as an integral and inseparable part of completed structure or project are not construction materials.

OLD: “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 ~~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, wallpaper, weather stripping, wire netting and screen, water mains and meters, and wood preserver. The above materials, when used for forms, or other items which do not remain as an integral and inseparable part of completed structure or project are not construction materials.

- (22) **“Consumer”** means any person in the City who purchases, uses, stores, distributes or otherwise consumes tangible personal property or taxable services, purchased from sources inside or outside the City.

OLD: “Consumer” means ~~(a) an individual person, or (b) a person engaged in business~~ any person in the city who purchases, uses, stores, distributes or otherwise consumes ~~in the city~~ tangible personal property or taxable services, purchased from sources inside or outside the City.

- (23) **“Contract Auditor”** means a duly authorized agent designated by the taxing authority and qualified to conduct tax audits on behalf of and pursuant to an agreement with the municipality.

- (24) **“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. (New)

- (25) **“Cover Charge”** means a charge paid to a club or similar entertainment establishment which may, or may not, entitle the patron paying such charge to receive tangible personal property, such as food and/or beverages. (New)

- (26) **“Data Processing Equipment”** means any equipment or system of equipment used in the storage, manipulation, management, display, reception or transmission of information.

- (27) **“Digital Product”** means an electronic product including, but not limited to: (A) “Digital images,” which means are 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,”~~ or the like. (B) “Digital audio-visual works,” which means are 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 are 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-are~~ works that are generally recognized in the ordinary and usual sense as “books”. (New)

- (28) **“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. (New)
- (29) **“Dual Residency”** means those situations including, but not limited to, where a person maintains a residence, place of business or business presence, both within and outside the City. A person shall be deemed to have established a legitimate residence, place of business or business presence outside of the City for purposes of dual residency if the person has a physical structure owned, leased or rented by such person which is designated by street number or road location outside of the City, has within it a telephone or telephones in the name of such person and conducts business operations on a regular basis at such location in a manner that includes the type of business activities for which the business (person), as defined in this Code, is organized.
- (30) **“Dwelling Unit”** means a building or any portion of a building designed for occupancy as complete, independent living quarters for one (1) or more persons, having direct access from the outside of the building or through a common hall and having living, sleeping, kitchen and sanitary facilities for the exclusive use of the occupants.
- (31) **“Economic Nexus”**
- A. *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 makes retail sales into the City, and:*
 - 1. *In the previous calendar year, the Person has made retail sales into the State exceeding the amount specified in C.R.S. § 36-102(3)(c), as amended; or*
 - 2. *In the current calendar year, ninety (90) days has passed following the month in which the Person has made retail sales into the State exceeding the amount specified in C.R.S. § 36-102(3)(c), as amended.*
 - B. *This definition does not apply to any Person who is doing business in this state but otherwise applies to any other Person.*
 - C. *For the purpose of clarity, the definition of “Person” includes any Marketplace Facilitator.*
- (32) **“Engaged in Business in the City”** means performing or providing services or selling, leasing, renting, delivering or installing tangible personal property for storage, use or consumption, within the City. Engaged in Business in the City includes, but is not limited to, any one of the following activities by a person: (A) Directly, indirectly, or by a subsidiary maintains a building, store, office, salesroom, warehouse, or other place of business within the ~~taxing jurisdiction city~~; (B) Sends one or more employees, agents or commissioned sales persons into the ~~taxing jurisdiction 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 ~~salespersons~~ on duty at a location within the ~~taxing jurisdiction city~~; (D) Owns, leases, rents or otherwise exercises control over real or personal property within the ~~taxing jurisdiction city~~; or (E) Makes more than one (1) delivery into the ~~taxing jurisdiction city~~ within a twelve (12)- month period ~~by any means other than a common carrier.~~ (F) *Makes retail sales sufficient to meet the definitional requirements of “Economic Nexus” as set*

forth in this section.

OLD: “~~Doing-Engaged~~ in business in the city” means ~~performing or~~ providing ~~of performing~~ services, or selling, leasing, renting, delivering or installing tangible personal property for storage, use or consumption, within the city. ~~Doing-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 ~~city-taxing jurisdiction~~; (2) Sends one or more employees, agents or commissioned sales persons into the taxing jurisdiction to solicit business or to install, assemble, repair, service, or assist in the use of its products, or for demonstration or other reasons; (3) Maintains one or more employees, agents or commissioned sales persons on duty at a location within the taxing jurisdiction; (4) Owns, leases, rents or otherwise exercises control over real or personal property within the taxing jurisdiction; or (5) Makes more than one delivery into the taxing jurisdiction within a twelve month period.

(33) “**Factory-Built Housing**” means a manufactured home or modular home. (New)

(34) “**Farm Closeout Sale**” means ~~the~~ full and final disposition of all tangible personal property previously used by a farmer or rancher in farming or ranching operations which are being abandoned.

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

(35) “**Farm Operation**” means the production of any of the following products for profit, including, but not limited to, a business that hires out to produce or harvest such products:
(1) Agricultural, viticultural, fruit, and vegetable products; (2) Livestock; (3) Milk; (4) Honey; and (5) Poultry and eggs.

~~(36) “Finance Director” means the Finance Director of the City of Lakewood Finance Department, or such other person designated by the municipality; Finance Director shall also include such person's designee, or such other person designated by the city.~~

“Chief Financial Officer” or “CFO” means the Chief Financial Officer/City Treasurer of the City of Lakewood, or designee, or such other Person designated by the City.

(37) “**Food For Home Consumption**” means food for domestic home consumption as defined in 7 U.S.C. ~~see~~ § 2012-(k) (2014), as amended, for purposes of the supplemental nutrition assistance program, or

any successor program, as defined in 7 U.S.C. ~~see. §~~ 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~~ retailer.

OLD: "Food" means food for domestic home consumption as defined in 7 U.S.C. ~~see. §~~ 2012(~~gk~~) (2014), as amended, ~~as such section existed on October 1, 1987, or is thereafter amended~~ for purposes of the ~~federal food stamp~~ supplemental nutrition assistance program, ~~or any successor program~~, as defined in 7 U.S.C. ~~Section~~~~see. §~~ 2012(~~ht~~), 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 ~~food or drink~~ hot or cold beverages served in ~~unsealed containers or cups that are~~ vended by or through machines or non-coin-operated ~~or~~ coin-collecting food and snack devices on behalf of a ~~vendor~~ retailer.

- (38) **"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.
- (39) **"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. (No change)
- (40) **"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.
- (41) **"Internet Subscription Service"** means software programs, systems, data and applications available online through rental, lease or subscription, that provide information and services including, but not limited to, data linking, data research, data analysis, data filtering or record compiling.
- (42) **"License"** means a City of Lakewood sales and/or use tax license. (No change)
- (43) **"Linen Services"** means services involving ~~the~~ provision and cleaning of linens, including but not limited to rags, uniforms, coveralls and diapers. (No change)
- (44) **"Lodging Services"** means the furnishing of any rooms or accommodations by any person, partnership, association, corporation, estate, representative capacity or any other combination of individuals by whatever name known to a person who, for consideration, possesses or has the right to use or possess any room, including but not limited to, a hotel, inn, bed and breakfast, apartment, single family residence, lodging house, condominium, motor hotel, guesthouse, guest ranch, trailer coach, mobile home, auto camp, trailer court and park, any portion of a dwelling unit or other area which accommodates a guest, or similar establishment, under any rental agreement, concession, permit, right of access, license to use or other agreement.

OLD: ~~"Rooms or accommodations"~~ or "lodging services" means the furnishing of any rooms or accommodations by any person, partnership, association, corporation, estate, representative capacity or any other combination of individuals by whatever name known to a person who, for ~~a~~ consideration,

~~uses, possesses, or has the right to use or possess any room, including but not limited to, in~~ a hotel, inn, bed and breakfast ~~residence~~, apartment ~~hotel~~, single family residence, lodging house, condominium, motor hotel, guesthouse, guest ranch, trailer coach, mobile home, auto camp, ~~or~~ trailer court and park, any portion of a dwelling unit or other area which accommodates a guest, or ~~any similar type~~ establishment, under any rental agreement, ~~for a period of less than thirty consecutive days under any~~ concession, permit, right of access, license to use, ~~or other agreement, or otherwise.~~

- (45) **“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. (New)
- (46) **“Manufactured Home”** means any ~~preconstructed~~ *pre-constructed* building unit or combination of ~~preconstructed~~ *pre-constructed* building units, without motive power, where such unit or units are manufactured in a factory or at a location other than the residential site of the completed home, which is designed and commonly used for occupancy by persons for residential purposes, in either temporary or permanent locations, and which unit or units are not licensed as a vehicle. (New)
- (47) **“Manufacturing”** means the operation or performance of an integrated series of operations which places a product, article, substance, commodity, or other tangible personal property in a form, composition or character different from that in which it was acquired whether for sale or for use by a manufacturer. The change in form, composition or character must result in a different product having a distinctive name, character or use from the raw or prepared materials. (New)
- (48) *“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 or Taxable Services are offered for Sale.*
- (49) *“Marketplace Facilitator”*
- A. *Means a Person who:*
 - 1. *Contracts with a Marketplace Seller to facilitate for consideration, whether or not the consideration is deducted as fees from the transaction, the Sale of the Marketplace Seller’s Tangible Personal Property, Taxable Products or Taxable Services through the Person’s Marketplace;*
 - 2. *Engages directly or indirectly, through one or more affiliated Persons, in transmitting or otherwise communicating the offer or acceptance between a purchaser and the Marketplace Seller; and*
 - 3. *Either directly or indirectly, through agreements or arrangements with third parties, collects the payment from the purchaser on behalf of the seller.*
 - B. *“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.*
 - C. *“Marketplace Seller” means a Person, whether or not engaged in business in the City, which has an agreement with a Marketplace Facilitator and offers for Sale Tangible Personal Property, commodities or Services through a Marketplace owned, operated or controlled by a Marketplace Facilitator.*

- (50) *“Marketplace Seller” means a Person, whether or not engaged in business in the City, which has an agreement with a Marketplace Facilitator and offers for Sale Tangible Personal Property, commodities or Services through a Marketplace owned, operated or controlled by a Marketplace Facilitator.*
- (51) *“Medical Marijuana” means marijuana acquired, possessed, cultivated, manufactured, delivered, transported, supplied, sold, or dispensed to a person who qualifies as a patient with a debilitating medical condition(s) under Article XVIII, Section 14, of the Colorado Constitution, and which person holds a valid “registry identification card” issued by the State of Colorado pursuant to Colorado Constitution, Article XVIII, Section 14.*
- (52) **“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. (New)
- (53) **“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~~ *C.R.S. § 24-32-706, C.R.S.*, and is designed to be installed on a permanent foundation. (New)
- (54) *“Motor Fuel” means gasoline, casing head or natural gasoline, benzol, benzene and naphtha, gasohol and any other liquid prepared, advertised, offered for sale, sold for use or used or commercially usable in internal combustion engines for the generation of power for the propulsion of motor vehicles upon the public highways. The term does not include fuel used for the propulsion or drawing of aircraft or railroad cars or railroad locomotives.*
- (55) **“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. (No change)
- (56) *“Online Garage Sales” means sales of tangible personal property, except automotive vehicles, occurring online, where the property to be sold was originally purchased for use by the seller or members of the seller’s household.*
- (57) *“Parent” means a parent of a student.*
- (58) **“Person”** means any individual, firm, partnership, joint venture, corporation, limited liability company, estate or trust, receiver, trustee, assignee, lessee or any of the foregoing acting in a fiduciary or

representative capacity, whether appointed by court or otherwise, or any group or combination acting as a unit, *and includes a Marketplace Facilitator.*

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

- (59) **“Photovoltaic System”** means a power system designed to supply usable solar power by means of photovoltaics, a method of converting solar energy into direct current electricity using semiconducting materials that create voltage or electric current in a material upon exposure to light. It consists of an arrangement of several components, including solar panels to absorb and convert sunlight into electricity, a solar inverter to change the electric current from DC to AC, as well as mounting, cabling, metering systems and other electrical accessories to set up a working system.
- (60) **“Precious Metal Bullion”** means any precious metal, including but not limited to, gold, silver, platinum, palladium, that has been put through a process of refining and is in such a state or condition that its value depends upon its precious metal content and not its form.
- (61) **“Prepress Preparation Material”** means all materials used by those in the printing industry including, but not limited to, airbrush color photos, color keys, dies, engravings, light-sensitive film, light-sensitive paper, masking materials, Mylar, plates, proofing materials, tape, transparencies, and veloxes, which are used by printers in the preparation of customer specific layouts or in plates used to fill customers' printing orders, which are eventually sold to a customer, either in their original purchase form or in an altered form, and for which a sales or use tax is demonstrably collected from the printer's customer, if applicable, either separately from the printed materials or as part of the inclusive price therefor. Materials sold to a printer which are used by the printer for the printer's own purposes, and are not sold, either directly or in an altered form, to a customer, are not included within this definition.
- (62) **“Preprinted Newspaper Supplements”** shall mean inserts, attachments or supplements circulated in newspapers that: (1) are primarily devoted to advertising; and (2) the distribution, insertion, or attachment of which is commonly paid for by the advertiser.
- (63) **“Prescription Drugs for Animals”** means a drug ~~which-that~~, prior to being dispensed or delivered, is required by the federal Food, Drug, and Cosmetic Act, 21 U.S.C. ~~Sect. §§~~ 301, et. Seq., as amended, 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.

OLD: “Prescription Drugs for Animals” means a drug ~~which-that~~, prior to being dispensed or delivered, is required by the federal Food, Drug, and Cosmetic Act, 21 U.S.C. ~~Sect. §§~~ 301, et. seq., as amended, to state at a minimum the symbol “Rx Only”, and is dispensed in accordance with any order in writing, dated and signed by a ~~practitioner of the healing arts, or given orally by a practitioner,~~ licensed *veterinarian* specifying the animal for which the medicine or drug is offered and directions, if any, to be placed on the label.

- (64) **“Prescription Drugs for Humans”** means a drug ~~which-that~~, prior to being dispensed or delivered, is required by the federal Food, Drug, and Cosmetic Act, 21 U.S.C. ~~Sect. §§~~ 301, et. seq., as amended, 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. (New)

(65) "Price" or "Purchase Price"

A. **"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~~ Tax Code, and, in the case of ~~all~~ retail sales involving the exchange of property, also exclusive of the fair market value of the property exchanged at the same time and place of the exchange, if:

- (1) Such exchanged property is to be sold thereafter in the usual course of the retailer's business, or
- (2) Such exchanged property is a vehicle and is exchanged for another vehicle and both vehicles are subject to licensing, registration, or certification under the laws of this state, including, but not limited to, vehicles operating upon public highways, off-highway recreation vehicles, watercraft, and aircraft. Any money or other consideration paid over and above the value of the exchanged property is subject to tax.

B. Price or Purchase Price includes:

- (1) The amount of money received or due in cash and/or credits.
- (2) Property at fair market value taken in exchange but not for resale in the usual course of the retailer's business.
- (3) Any consideration valued in money, *such as trading stamps or coupons* whereby the manufacturer or someone else reimburses the retailer for part of the purchase price and other media of exchange.
- (4) The total price charged on credit sales including finance charges ~~which that~~ 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, *and* 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~~ *automotive vehicles*, tires and floor stock.
- (8) The gross purchase price of articles sold after manufacturing or after having been made to order, including the gross value of all the materials used, labor and service performed and the profit thereon.

C. Price or Purchase Price shall not include:

- (1) Any sales or use tax imposed by the State of Colorado or by any political subdivision thereof.
- (2) The fair market value of property exchanged if such property is to be sold thereafter in the retailers' usual course of business. This is not limited to exchanges in Colorado. Out-of-state trade-ins are ~~an allowable~~ *authorized by this Tax Code as* adjustments 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. *In reporting gross sales, an anticipated discount to be allowed for payment on or before a given date is not ~~an allowable~~ authorized under this Tax Code as an adjustment to the Purchase Price. ~~in reporting gross sales.~~*

OLD: "Price" or "Purchase Price" means the ~~price to the consumer,~~ 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~~ Tax Code, and, in the case of ~~all~~ retail sales involving the exchange of property, also exclusive of the fair market value of the property exchanged at the same time and place of the exchange, if: (1) Such exchanged property is to be sold thereafter in the usual course of the retailer's business, or (2) Such exchanged property is ~~an automotive~~ vehicle and is exchanged for another ~~automotive~~ vehicle and both ~~automotive~~ 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 ~~case~~ cash and/or credits.
- (2) Property at fair market value taken in exchange but not for resale in the usual course of the retailer's business.
- (3) Any consideration valued in money, ~~such as trading stamps or coupons~~ whereby the manufacturer or someone else reimburses the retailer for part of the purchase price and other media of exchange.
- (4) The total price charged on credit sales including finance charges ~~which~~ that 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, and~~ 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 ~~automotive vehicles~~ ~~automobiles~~ automotive vehicles, 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 ~~retailer's~~ retailers' usual course of business. This is not limited to exchanges in Colorado. Out-of-state trade-ins are authorized by this Tax Code as ~~an allowable~~ adjustments 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. In reporting gross sales, an anticipated discount to be allowed for payment on or before a given date is not ~~an allowable~~ authorized under this Tax Code as an adjustment to the price ~~in reporting gross sales.~~

- (66) ***“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.
- (67) ***“Prosthetic Devices for Animals”*** means any artificial limb, part, device or appliance for animal use which replaces a body part or aids or replaces a bodily function; is designed, manufactured, altered or adjusted to fit a particular patient; and is prescribed by a licensed veterinarian. Prosthetic devices include, but are not limited to, prescribed auditory, ophthalmic or ocular, cardiac, dental, ~~or and~~ orthopedic devices or appliances, ~~and oxygen concentrators with related accessories.~~ (New)
- (68) ***“Prosthetic Devices for Humans”*** means any artificial limb, part, device or appliance for human use which replaces a body part or aids or replaces a bodily function; is designed, manufactured, altered or adjusted to fit a particular patient; and is prescribed by a licensed practitioner of the healing arts. Prosthetic devices include, but are not limited to, prescribed auditory, ophthalmic or ocular, cardiac, dental, ~~or and~~ orthopedic devices or appliances, ~~and oxygen concentrators with related accessories.~~

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

(69) ***“Purchase” or “Sale”***

A. ***Inclusions.*** *“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.

B. ***Exclusions.*** *Purchase” and “Sale”* does not mean or ~~The terms Purchase and Sale do not~~ include:

- (1) A division of partnership assets among the partners according to their interests in the partnership;
- (2) The transfer of assets of shareholders in the formation or dissolution of professional corporations, if no consideration, including, but not limited to, the assumption of a liability, is paid for the transfer of assets;

- (3) The dissolution and the pro rata distribution of the corporation's assets to its stockholders, if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets;
- (4) A transfer of a partnership or limited liability company interest;
- (5) The transfer of assets to a commencing or existing partnership or limited liability company, if no consideration, including, but not limited to, the assumption of a liability, is paid for the transfer of assets;
- (6) The repossession of personal property by a chattel mortgage holder or foreclosure by a lienholder;
- (7) The transfer of assets from a parent company to a subsidiary company or companies which are owned at least eighty percent by the parent company, which transfer is solely in exchange for stock or securities of the subsidiary company;
- (8) The transfer of assets from a subsidiary company or companies which are owned at least eighty percent (80%) by the parent company to a parent company or to another subsidiary which is owned at least eighty percent by the parent company, which transfer is solely in exchange for stock or securities of the parent corporation or the subsidiary which received the assets; (80%) by the parent company, which transfer is solely in exchange for stock or securities of the parent company or the subsidiary which received the assets;
- (9) The transfer of assets between parent and closely held subsidiary companies, or between subsidiary companies closely held by the same parent company, or between companies which are owned by the same shareholders in identical percentage of stock ownership amounts, computed on a share-by-share basis, when a tax imposed by this ~~article~~ tax code was paid by the transferor company at the time it acquired such assets, except to the extent that there is an increase in the fair market value of such assets resulting from the manufacturing, fabricating, or physical changing of the assets by the transferor company. To such an extent any transfer referred to in this paragraph (9) shall constitute a sale. For the purposes of this paragraph (9), a closely held subsidiary ~~corporation~~ company is one in which the parent company owns stock possessing or membership interest at least eighty percent (80%) of the total combined voting power of all classes of stock entitled to vote and owns at least eighty percent (80%) of the total number of shares of all other classes of stock.

OLD: ~~"Sale" or "Sale and Purchase"~~ "Purchase" or "Sale" means the ~~conveyance or~~ acquisition for any consideration by any person of tangible personal property ~~or table services, other taxable products or taxable services~~ that are purchased, leased, rented, ~~or sold, used, stored, distributed, or consumed, but excludes a bona fide gift of property or services.~~ These terms include capital leases, installment and credit sales, and property and services acquired by:

- (1) Transfer, either conditionally or absolutely, of title or possession or both to 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 including coupons.~~

~~The sale, purchase, lease, or rental of services specifically enumerated in this chapter as taxable include: (i) telecommunication services; (ii) gas, electric and steam services; (iii) pay television services; (iv) security system and sound system services; (v) linen services; (vi) warranty and maintenance services; (vii) modified or customized computer program services; and (viii) services providing admission or access to~~

~~motion picture performances and to establishments which are licensed to serve malt, vinous or spirituous liquors. "Sale" or "sale and purchase" also includes the leasing or rental of tangible personal property. "Sale" or "sale and purchase" also includes the transaction of furnishing rooms or accommodations or lodging services by any person, partnership, association, corporation, estate, receiver, trustee, assignee, lessee, or person acting in a representative capacity or any other combination of individuals by whatever name known to a person who for a consideration uses, possesses, or has the right to use or possess any room in a hotel, inn, bed and breakfast residence, apartment hotel, lodging house, motor hotel, guesthouse, guest ranch, trailer coach, mobile home, auto camp, or trailer court and park, or similar type establishment for a period of less than thirty consecutive days under any concession, permit, right of access, license to use, or other agreement, or otherwise.~~

~~"Sale" or "sale and purchase" excludes "Purchase" and "Sale" does not mean or include:~~

- (1) A division of partnership assets among the partners according to their interests in the partnership;
- ~~(2) The formation of a corporation by the owners of a business and the transfer of their business assets to the corporation in exchange for all of the corporation's outstanding stock, except qualifying shares, in proportion to the assets contributed;~~
- (3) The transfer of assets of shareholders in the formation or dissolution of professional corporations, if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets;
- (4) 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;
- ~~(5) 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;~~
- ~~(6) 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;~~
- (7) A transfer of a partnership or limited liability company interest;
- ~~(8) The transfer in a reorganization qualifying under Section 368(a)(1) of the Internal Revenue Code of 1954, as amended;~~
- (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 formation of a partnership by the transfer of assets to the partnership or transfers to a partnership in exchange for proportionate interests in the partnership;~~
- (11) The repossession of personal property by a chattel mortgage holder or foreclosure by a lien holder; and
- ~~(12) The transfer of assets between parent and closely held subsidiary corporations, or between corporations which are owned by the same shareholders in identical percentage of stock ownership amounts, computed on a share-by-share basis, when a tax imposed by this chapter was paid by the transferor corporation at the time it acquired such assets, except to the extent provided by Section 3.01.140(A). For the purposes of this paragraph, a closely held subsidiary corporation is one in which the parent corporation owns stock possession 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.~~

- (13) The transfer of assets from a parent company to a subsidiary company or companies which are owned at least eighty percent by the parent company, which transfer is solely in exchange for stock or securities of the subsidiary company;
- (14) The transfer of assets from a subsidiary company or companies which are owned at least eighty percent by the parent company to a parent company or to another subsidiary which is owned at least eighty percent by the parent company, which transfer is solely in exchange for stock or securities of the parent corporation or the subsidiary which received the assets;
- (15) The transfer of assets between parent and closely held subsidiary companies, or between subsidiary companies closely held by the same parent company, or between companies which are owned by the same shareholders in identical percentage of stock ownership amounts, computed on a share-by-share basis, when a tax imposed by this ~~article~~ Tax Code was paid by the transferor company at the time it acquired such assets, except to the extent that there is an increase in the fair market value of such assets resulting from the manufacturing, fabricating, or physical changing of the assets by the transferor company. To such an extent any transfer referred to in this paragraph (13) shall constitute a sale. For the purposes of this paragraph (13), a closely held subsidiary company is one in which the parent company owns stock possessing or membership interest at least eighty percent of the total combined voting power of all classes of stock entitled to vote and owns at least eighty percent of the total number of shares of all other classes of stock.

(70) "Qualified Hospital Organization" means any of the following:

- A. An organization that is exempt from federal income tax under section 115 or section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, but only if the organization holds a license to operate a "general hospital" for people issued pursuant to C.R.S. § 25-3-101 and 25-3-102, ~~Colorado Revised Statutes (2012)~~, as amended, including any successor provisions to those sections, and operates a general hospital within the City of Lakewood; or
- B. A corporation or trust that:
 - 1. Is exempt from federal income tax under section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended; and
 - 2. Owns or employs personal property or improvements that are used in the operations of one or more organizations described in paragraph (A) of this definition; and
 - 3. Either (i) directly controls, or is controlled by, one or more organizations described in paragraph (A) of this definition, (ii) is controlled by a management organization as defined in paragraph (C) of this definition in common with one or more organizations described in paragraph (A) of this definition, or (iii) owns a hospital that is licensed to operate as a "general hospital" for people pursuant to C.R.S. § ~~sections 25-3-101 and 25-3-102, Colorado Revised Statutes (2012)~~, as amended, including any successor provisions to those sections, and that is operated by an organization described in paragraph (A) of this definition; or
- C. An organization that is exempt from federal income tax under section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, and which organization's principal function is to manage the property or operations, or both, of one or more organizations described in paragraphs (A) or (B) of this definition; or
- D. A partnership, limited partnership, limited liability limited partnership, limited liability partnership, limited liability company, or joint venture if all of the partners, members, joint ventures or other participants in such partnership, limited partnership, limited liability limited partnership, limited liability partnership, limited liability company or joint venture are organizations described in paragraphs (A), (B) or (C) of this definition.

- (71) ***“Rail Carrier”*** means as defined in Section 10102 of Title 49 of the United States Code as of October 10, 2013, and as it may be amended hereafter.
- (72) ***“Rail Carrier Part”*** means any tangible personal property that is originally designed and intended to be permanently affixed or attached as a component part of a locomotive or rail car used by a rail carrier.
- (73) ***“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.
- (74) ***“Renewable Energy”*** means any energy resource that is naturally regenerated over a short time scale and derived directly from the sun (such as thermal, photochemical, and photoelectric), indirectly from the sun (such as wind, hydropower, and photosynthetic energy stored in biomass), or from other natural movements and mechanisms of the environment (such as geothermal and tidal energy). Renewable Energy does not include energy resources derived from fossil fuels, waste products from fossil sources, or waste products from inorganic sources.
- (75) ***“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. (New)
- (76) ***“Retail Sales”*** means all sales except wholesale sales.

OLD: *“Retail sale” or ~~“purchased at retail” or “selling at retail”~~ means all sales except wholesale sales made within the city.*

- (77) ***“Retailer”*** means any person selling, leasing, renting, or granting a license to use tangible personal property or services at retail. Retailer shall include, but is not limited to, any:
- A. ~~(1)~~ Auctioneer;
 - B. ~~(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;
 - C. ~~(3)~~ Charitable organization or governmental entity ~~which that~~ 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.~~
 - D. *Marketplace Facilitator or Marketplace Seller.*

OLD: *“Retailer” or “vendor” means any person selling, leasing, ~~or renting,~~ or granting a license to use tangible personal property or services at retail. Retailer ~~or vendor~~ shall include, but is not limited to, any: (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 that~~ 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.~~*

(78) **“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. (New)

(79) **“Return”** means any form prescribed by the city administration for computing and reporting a total tax liability.

OLD: “Return” means ~~the sales and use tax reporting form used to report sales and use tax.~~ any form prescribed by the city/town administration for computing and reporting a total tax liability.

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

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

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

(82) **“School”** means a public or nonpublic school for students in kindergarten through 12th grade or any portion thereof.

OLD: ~~“School” means an educational institution having a curriculum comparable to grade, grammar, junior high, high school, or college, or any combination thereof, requiring daily attendance and charging a tuition fee.~~

(83) **“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.

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

(84) **“Soft Drink”** means a nonalcoholic beverage that contains natural or artificial sweeteners. “Soft drink” does not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than fifty percent (50%) of vegetable or fruit juice by volume. (No change)

(85) **“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. (New)

(86) **“Software License Fee”** means a fee charged for the right to use, access, or maintain software programs. (New)

(87) **“Software Maintenance Agreement”** means an agreement, typically with a software provider, that may include

A. ~~(1)~~ Provisions provisions to maintain the right to use the software;

- B. ~~(2)~~ *Provisions* ~~provisions~~ for software upgrades including code updates, version updates, code fix modifications, enhancements, and added or new functional capabilities loaded into existing software, or
- C. ~~(3)~~ *Technical* ~~technical~~ support. (New)

“Software Maintenance Agreement” does not include an agreement that provides only for technical support.

- (88) **“Software Program”** means a sequence of instructions that can be measured, interpreted and executed by an electronic device (e.g. ~~a~~ computers, tablets, smart phones) regardless of the means by which it is accessed or the medium of conveyance. Software program includes:
- A. ~~(1)~~ Custom software program, which is a software program prepared to the special order or specifications of a single customer;
- B. ~~(2)~~ Pre-written software program, which is a software program prepared for sale or license to multiple users, and not to the special order or specifications of a single customer. Pre-written software is commonly referred to as “canned,” “off-the-shelf (“COTS”),” “mass produced” or “standardized;”
- C. ~~(3)~~ Modified software, which means pre-written software that is altered or enhanced by someone other than the purchaser to create a program for a particular user; and
- D. ~~(4)~~ The generic term “software,” “software application,” as well as “updates,” “upgrades,” “patches,” “user exits,” and any items which add or extend functionality to existing software programs. (New)
- (89) **“Solar Thermal Systems”** means a system whose primary purpose is to use energy from the sun to produce heat or cold for: (1) Heating or cooling a residential or commercial building; (2) Heating or cooling water; or (3) Any industrial, commercial, or manufacturing process.
- (90) **“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.
- OLD: “Sound System Services” means ~~sound system services involving~~ 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.
- (91) **“Special Fuel”** means kerosene oil, kerosene distillate, diesel fuel, all liquefied petroleum gases, and all combustible gases and liquids for use in the generation of power for propulsion of motor vehicles upon the public highways. The term does not include fuel used for the propulsion or drawing of aircraft, railroad cars or railroad locomotives. (New)
- (92) **“Special Sales Event”** means any sales event which includes more than three (3) Vendors taking place at a single location for a limited period of time not to exceed seven (7) consecutive days.
- (93) **“Storage”** means any keeping or retention of, or ~~exercise~~ *exercising* 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~~ *retailer*.

OLD: “Storage” ~~or “storing”~~ means any keeping or retention of, or exercise ~~of~~ 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 ~~in~~ the City from any person or ~~vendor~~ retailer.*

(94) **“Student”** means any person enrolled in a school. (New)

(95) **“Tangible Personal Property”** means personal property that can be, *or is designed to be*, one or more of the following: seen, weighed, measured, felt, touched, stored, transported, ~~or~~ exchanged, or that is in any other manner perceptible to the senses *with or without the aid of an instrument or device*.

OLD: “Tangible Personal Property” means ~~corporeal~~ personal property *that can be, or is designed to 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 with or without the aid of an instrument or device, and includes Digital Products.*

(96) **“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. (No change)

(97) **“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 *Tax Code*.

OLD: “Tax deficiency” means any amount of tax, *penalty, interest, or other fee that is not reported and/or not paid on or before the ~~due~~ date that any return or payment of the tax is required under the terms of this Tax Code.*

(98) **“Taxable Sales”** means gross sales less any exemptions and deductions specified in this *Tax Code*.

OLD: “Taxable Sales” means gross sales less any exemptions and deductions specified in this ~~chapter~~ *Tax Code*.

(99) **“Taxable Services”** means services subject to tax pursuant to this *Tax Code*.

OLD: “Taxable Services” means services subject to tax pursuant to ~~Section 3.01.120 of this chapter~~ *Tax Code*.

(100) **“Taxpayer”** means any person obligated to collect ~~and/or~~, pay *and/or remit* tax under the terms of this *Tax Code*.

OLD: “Taxpayer” means any person obligated to collect and/or pay tax under the terms of this ~~chapter~~ *Tax Code*.

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

media, including any form of mobile two-way communication. “Telecommunications service” does not include separately stated non-transmission services ~~which that~~ constitute computer processing applications used to act on the information to be transmitted.

OLD: “Telecommunications Service” means the *service of which the object is the* transmission of any two-way interactive *electronic or* electromagnetic communications including but not limited to voice, image, data and any other information, by the use of any means but not limited to wire, cable, fiber optical cable, microwave, radio wave, *Voice over Internet Protocol (VoIP)*, or any combinations of such media, *including any form of mobile two-way communication*. ~~“Telecommunications service” includes but is not limited to basic local exchange telephone service, toll telephone service and teletypewriter service, including but not limited to residential and business service, directory assistance, cellular mobile telephone or telecommunication service, specialized mobile radio and two-way pagers and paging service, including any form of mobile two-way communication.~~ “Telecommunications services” does not include separately stated non-transmission services ~~which that~~ constitute computer processing applications used to act on the information to be transmitted.

(102) “Television & Entertainment Services” means audio or visual content, that can be transmitted electronically by any means, for which a charge is imposed.

OLD:: ~~“Pay television” shall include, but not be limited to, cable, microwave or other television service for which a charge (charge) is imposed.~~

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

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

(105) “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. (New)

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

(107) “Transient / Temporary Vendor” means any person who engages in the business of Transient / Temporary Sales.

(108) “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 outside~~ the City from any person or ~~vendor-retailer~~ 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. (New)

(109) “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. (No change)

(110) “Wholesale Sale” 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; *the* latter types of sales shall be deemed to be Retail Sales and shall be subject to the provisions of this ~~chapter~~-Tax Code.

OLD: “Wholesale Sales” means a sale by wholesalers to ~~retail merchants~~, *retailers*, jobbers, dealers, or other wholesalers for resale and does not include a sale by Wholesalers to users or consumers not for resale; ~~the~~ latter types of sales shall be deemed to be Retail Sales and shall be subject to the provisions of this ~~chapter~~-Tax Code.

(111) “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.

OLD: “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.

EXHIBIT C - CURRENT CODE MAPPING TO REVISED CODE

| CURRENT CODE | | REVISED CODE | | NOTES |
|--------------------|---|----------------------------|--|--|
| Section | Title | Section | Title | |
| General Provisions | | | | |
| 3.01.010 | Short title | 3.01.110 | Short title | Subtle changes |
| 3.01.020 | Definitions | 3.01.230 | Definitions | See enclosed summary. |
| 3.01.030 | Confidential nature of returns | 3.01.550 | Confidential Nature of Returns (no change) | |
| 3.01.040 | Tax cannot be absorbed | 3.01.240 | Tax Cannot be Absorbed | Same language in 3.01.240(A); expanded section to address exceptions previously addressed elsewhere in the code. |
| 3.01.050 | Excess tax - Remittance | 3.01.570 | Excess Tax; Remittance | Specific language regarding the 3% tax rate has been removed and replaced with a reference to the section of the code where the rate is stated. |
| 3.01.060 | License and tax additional | 3.01.370 3.01.410(D) | License Additional Imposition of Tax; Rate - Taxes Additional | The new code splits out the language on additional license and additional tax in separate sections. |
| 3.01.065 | Duty to keep records | 3.01.260 3.01.660 | Duty to Keep Records Coordinated Audit | Updated language to address both sales and use tax. Split out the language on coordinated audits to a separate section. |
| 3.01.070 | Administration | 3.01.130 3.01.140 | Sales and Use Tax Regulations General Administration (no change) | Split the current language into two sections. Removed "in conformity with this chapter" in the Sales and Use Tax Regulations section. |
| 3.01.075 | Notice of sales and use tax ordinance amendment | 3.01.120 | Notice of Sales and Use Tax Ordinance Amendment (no change) | |
| 3.01.076 | Participation in simplification meetings | 3.01.150 | Participation in Simplification Meetings | Replaced "Said committee.." with "Such committee..." |
| 3.01.080 | Receipts-Disposition | 3.01.170 | Disposition of Sales and Use Tax Revenue (no change) | |
| 3.01.085 | Economic Development Assistance | 3.26.050(B) | Economic Development Assistance; Use Tax Rebates | Proposal to move out of the tax code and into the Economic Development chapter; minor changes to language; removed reference to sales tax in (B)(1). |
| 3.01.090 | Applicability to banks | 3.01.220 | Applicability to Banks (no change) | |
| 3.01.100 | Statute of limitations | 3.01.560 | Limitations Period | Expanded section and separated out based on circumstance. |
| Licensing | | | | |
| 3.01.110(A)(1) | Licensing-Fees-Revocation | 3.01.310 3.01.340 | License Required; Exceptions License Non-Transferable | Rewritten to more clearly outline the requirements and process of licensing. |
| 3.01.110(A)(2) | Licensing-Fees-Revocation | 3.01.320 | License Fee | The fee is no longer stated in the Code. Will need to have Council approve a fee schedule. Consider charging use tax applicants. |
| 3.01.110(B) | Licensing-Fees-Revocation | 3.01.350 | Multiple Locations - Separate Licenses Required | Rephrased |
| 3.01.110(C) | Licensing-Fees-Revocation | 3.01.360 | Posted in Conspicuous Location (no change) | |
| 3.01.110(D) | Licensing-Fees-Revocation | 3.01.330(A) 3.01.330(B) | Denial or Revocation; Review and Appeal (Denial) Denial or Revocation; Review and Appeal (Revocation) | Added language about license denials; expanded language on revocations. |
| 3.01.110(E) | Licensing-Fees-Revocation | 3.01.330(C) | Denial or Revocation; Review and Appeal - Review | |
| 3.01.110(F) | Licensing-Fees-Revocation | 3.01.310(D) | License Required; Exceptions | Rephrased |
| Sales Tax | | | | |
| 3.01.120(A) | Property and services taxed | 3.01.420(Q) | Tangible Personal Property | Incorporated digital products. |

EXHIBIT C - CURRENT CODE MAPPING TO REVISED CODE

| CURRENT CODE | | REVISED CODE | | NOTES |
|-----------------|--|--|---|---|
| Section | Title | Section | Title | |
| 3.01.120(B) | Property and services taxed - Exchange of property | 3.01.230 | Definitions "Price" or "Purchase Price" | Removed - Captured in the definition of "Price" or "Purchase Price" (A). |
| 3.01.120(C) | Property and services taxed | 3.01.420(R) | Telecommunication Services | Simplified the language and formatting. Carrier Access Services is now summarized as capturing interstate and intrastate. The taxation of Mobile Telecommunications taxation is directly linked to the Mobile Telecommunication Sourcing Act. |
| 3.01.120(D) | Property and services taxed | 3.01.420(I) | Gas, Electricity and Other Fuel | Steam has been removed; all other language relatively unchanged, but presented as a list. |
| 3.01.120(E) | Property and services taxed | 3.01.420(G) | Food, Beverages and Candy | Slight changes in wording, but same content. Removed portion - language in definition "Purchase" or "Sale". |
| 3.01.120(F) | Property and services taxed | 3.01.420(L) | Lodging Services | Slight changes in wording, but same content. Removed portion - language in definition "Purchase" or "Sale". |
| 3.01.120(G) | Property and services taxed | 3.01.420(S) | Television and Entertainment Services | Updated for the new defined term; same content. |
| 3.01.120(H) | Property and services taxed | 3.01.420(C) | Automotive Vehicles | Change in wording, but same content. |
| 3.01.120(I) | Property and services taxed | 3.01.420(J) | Lease, Contract, License or Subscription | Slight changes in wording, but same content. |
| 3.01.120(J) | Property and services taxed | 3.01.420(M) 3.01.420(O) | Security System Services Sound System Services | Split into 2 separate sections. |
| 3.01.120(K) | Property and services taxed | 3.01.420(K) | Linen Services | Slight changes in wording, but same content. |
| 3.01.120(L) | Property and services taxed | 3.01.420(U) | Warranty and Maintenance Contracts and Services | Changes in wording, but same content. Added warranty contract, extended warranty contract, service contract and maintenance contract. |
| 3.01.120(M) | Property and services taxed | 3.01.420(N) | Software Services - Modified or Custom | Slight changes in wording, but same content. |
| 3.01.120(N) | Property and services taxed | 3.01.420(A) | Admissions | Slight changes in wording, but same content. |
| 3.01.130(A) | Collection of sales tax | 3.01.250 3.01.410(A) 3.01.250(B) | Collection, Payment and Remittance of Tax Imposition of Tax; Rate (sales tax; rate) Collection and Remittance of Tax (filing frequencies) | Changes in wording, but same content. Reorganized to have related content together. DOR language removed in code and add as a policy. |
| 3.01.130(B) | Collection of sales tax | 3.01.250(B)(2) 3.01.250(B)(3) | Collection and Remittance of Tax (filing frequencies - hardship) - same Collection and Remittance of Tax (other filing frequencies; quarterly) | Slight changes in wording, but same content. |
| 3.01.130(C) | Collection of sales tax | 3.01.510 (C)(1) | Recovery of Taxes; Penalty and Interest - Extension | Slight change in wording, clarified process. |
| 3.01.130(D) | Collection of sales tax | 3.01.250(E) | Collection and Remittance of Tax (exempt sales) - same | Slight changes in wording, but same content. |
| 3.01.130(E) | Collection of sales tax | 3.01.250(F) | Collection and Remittance of Tax (disputed exemptions) | Slight changes in wording, but same content. |
| 3.01.130(F) | Collection of sales tax | 3.01.410(C) | Imposition of Tax (Taxes Paid to Other Municipality) | Slight change in wording, clarified process. |
| 3.01.140(A) | Sales tax base-Schedule of sales tax | 3.01.420 (F) 3.01.230 | Transactions, Services and Tangible Personal Property - Custom Orders Definitions - "Purchase" or "Sale" (B)(9) | Slight changes in wording, but same content. Removed portion - language in definition "Purchase" or "Sale". |
| 3.01.140(B)/(D) | Sales tax base-Schedule of sales tax | 3.01.410(A)/(F) | Imposition of Tax (Sales Tax) Imposition of Tax (Specific Uses - Voter-Approved Increase) | Changes in wording, but same content. tax rate updated from 2% - 3%. Charge on sale decreased to \$.16 or less for \$.22 (to reflect 3% calc). |
| 3.01.140(C) | Sales tax base-Schedule of sales tax | 3.01.240(A)/(B) | Tax Cannot be Absorbed; Tax Separately Stated; Exception Base | Changes in wording, but same content. Added Admission and vending devices to reflect business practices. |

EXHIBIT C - CURRENT CODE MAPPING TO REVISED CODE

| CURRENT CODE | | REVISED CODE | | NOTES |
|--------------------|---|--|---|--|
| Section | Title | Section | Title | |
| 3.01.150 | Retailer - Multiple locations | 3.01.250(D) | Collection and Remittance of Tax | Changed from filing single return to separate - necessary for new tax system, reporting & other reasons. |
| 3.01.160 | Credit sales | 3.01.270 | Credit Sales | Same language, updated definition "purchase" or "sale" subdivision from 11 to 9. |
| 3.01.170 | Bad debt charge-offs | 3.01.280 | Bad Debt Charge-Offs | Slight changes in wording, but same content. |
| 3.01.180 | Exemptions | 3.01.430 | Exemptions (combined sales and use tax) | |
| 3.01.190 | Reserved | - | | |
| 3.01.200 | Map of location guide of city boundaries | 3.01.210(A) | Map/Location Guide of City Boundaries; Electronic Database - same | |
| 3.01.205 | Electronic Database | 3.01.210(B)/(C) | Map/Location Guide of City Boundaries; Electronic Database | Change in wording, but same content. |
| Use Tax | | | | |
| 3.01.210 | Property and services taxed | 3.01.410(B) 3.01.410(F) | Imposition of Tax; Rate (Use Tax) Imposition of Tax; Rate (Schedules/Systems) | Change in wording, but same content. |
| 3.01.220(A) | Collection of use tax | 3.01.410(B) 3.01.250 3.01.250(B) 3.01.250 | Imposition of Tax; Rate Collection and Remittance of Tax (filing frequencies) Duty to Keep Records Sign under penalty of perjury | Change in wording, but same content. |
| 3.01.220(B) | | 3.01.410(F) 3.01.240(A) | Imposition of Tax; Rate (schedules/systems) Tax Cannot be Absorbed; Tax Separately Stated; Exception Base | Simplified language to follow a less complicated process. |
| 3.01.220(C) | Use tax on automotive vehicles | 3.01.250 (G) 3.01.420(C) | Collection, Payment and Remittance of Tax - Collection of Tax by DOR Automotive Vehicles | Slight changes in wording, but same content. |
| 3.01.220(D) | Construction materials | 3.01.450 | Provisions Related to Construction Materials. Automotive Vehicles | Rewritten to more clearly outline the requirements and process of construction contracts and materials. |
| 3.01.230 | Exemptions | 3.01.430 | Exemptions (combined sales and use tax) | |
| 3.01.240 | Proration of use tax for certain construction equipment | 3.01.440 | Provisions Related to Construction Equipment | Rewritten to more clearly outline the requirements and process of construction equipment. |
| Refunds | | | | |
| 3.01.250 | Refunds | 3.01.540 | Refunds | Rewritten to simplify process. Increased refund timeframe from 60 days to 3 years for disputes to match other refunds. |
| Enforcement | | | | |
| 3.01.260(A) | Recovery of taxes, penalty and interest | 3.01.410(A)(2) | Imposition of Tax; Rate; Sales Tax | Change in wording, but same content. |
| 3.01.260(B) | | 3.01.510(A)(1)/(B) 3.01.510(B)(1) | Recovery of Taxes; Penalty and Interest - Delinquency- Estimate Recovery of Taxes; Penalty and Interest | Change in wording, but same content. Removed 1st class mail requirement. |
| 3.01.260(C) | | 3.01.510(E) | Recovery of Taxes; Penalty and Interest - Delinquency-Lien - Notice; Warrant and Seizure | Change in wording but same content. Increased time to issue a lien from 5 days to 30 days to corresponded with collection process. |
| 3.01.260(D) | | 3.01.510(F) | Recovery of Taxes; Penalty and Interest - Business Seizure - Tax Sale | Change in wording, but same content. |
| 3.01.260(E) | | 3.01.520(A)(3) | Tax Lien Imposed; Exemptions - Lien - Release - same | |

EXHIBIT C - CURRENT CODE MAPPING TO REVISED CODE

| CURRENT CODE | | REVISED CODE | | NOTES |
|-----------------------------|---|----------------------------------|--|--|
| Section | Title | Section | Title | |
| 3.01.260(F) | | 3.01.510(H) | Recovery of Taxes; Penalty and Interest - Additional Remedies | Change in wording, but same content. |
| 3.01.260(G) | | 3.01.520(C) | Tax Lien Imposed; Exemptions - Adjudication of Lien - City as Defendant - same | |
| 3.01.260(H) | | 3.01.510(C)(1)/(2) | Recovery of Taxes; Penalty and Interest - Extension and Waiver (Waivers) - same | |
| 3.01.260(I) | | 3.01.510(D) | Recovery of Taxes; Penalty and Interest - Insufficient Funds - Fees; Alternate Payment | Change in wording, but same content. |
| 3.01.260(J) | | 3.01.160 | Intercity Claims for Recovery | Change in wording, but same content. |
| 3.01.260(K) | | 3.01.510(H)(3) | Recovery of Taxes; Penalty and Interest - Additional Remedies - same | |
| 3.01.270(A)(1) | Tax lien-Exemption from lien | 3.01.520(A) | Tax Lien Imposed; Exemptions | Slight changes in wording, but same content. |
| 3.01.270(A)(2) | | 3.01.520(B)(1) | Tax Lien Imposed; Exemptions; Exemption - Certain Leases | Slight changes in wording, but same content. |
| 3.01.270(A)(3) | | 3.01.520(B)(4) | Tax Lien Imposed; Exemptions; Exemption - Certain Leases - same | |
| 3.01.270(A)(4) | | 3.01.530(A) | Sale/Purchase of Business | Slight changes in wording, but same content. |
| 3.01.270(A)(5) | | 3.01.530(B) | Sale/Purchase of Business | Change in wording, but same content. |
| 3.01.270(B) | | 3.01.510(G) | Recovery of Taxes; Penalty and Interest (Bankruptcy, Receivership, Assignment) | Change in wording, but same content. |
| 3.01.280(A) | Tax deficiency | 3.01.510(B)(1) | Recovery of Taxes; Penalty and Interest (Penalties and Interest) | Change in wording, but same content. |
| 3.01.280(B) | | 3.01.510(B)(2) | Recovery of Taxes; Penalty and Interest (Penalties and Interest) | Change in wording, but same content. |
| 3.01.290 | Interest rate on delinquent taxes | 3.01.510(B)(1) 3.01.510(C)(1) | Interest on extensions of time for payment | Change in wording, but same content. |
| 3.01.300(A) | Interest rate on underpayment, overpayment, nonpayment or extensions of time for payment of tax | 3.01.510(B)(4) | Recovery of Taxes; Penalty and Interest (Penalties and Interest) | Change in wording, but same content. |
| 3.01.300(B) | | 3.01.510(B)(3) | Recovery of Taxes; Penalty and Interest (Penalties and Interest) | Change in wording, but same content. |
| 3.01.300(C) | | 3.01.510(B)(4) | Recovery of Taxes; Penalty and Interest (Penalties and Interest) | Slight changes in wording, but same content. |
| 3.01.310 | Penalty interest on unpaid use tax | 3.01.510(B)(1) | Recovery of Taxes; Penalty and Interest (Penalties and Interest) | Change in wording, but same content. |
| 3.01.320 | Other remedies | 3.01.580 | Other Remedies (no change) | Change in wording, but same content. |
| Hearings and Appeals | | | | |
| 3.01.330 | Hearings by Finance Director | 3.01.710 | Local Hearings | Expanded on current language and outlined the process more thoroughly. Appeal process (Department of Revenue and District Court) is aligned with the state statute. |
| 3.01.340 | Review by District Court | 3.01.720 | Appeal | |
| 3.01.350 | Alternative review by Department of Revenue | 3.01.720 | Appeal | |

Proposed Taxed Code
Chapter 3.01
Sales and Use Tax

Proposed Tax Code

Chapter 3.01

SALES AND USE TAX

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PART 1. GENERAL PROVISIONS

3.01.110 Short Title

This chapter 3.01 shall be known as the City of Lakewood Sales and Use Tax Code and may be cited herein as this "Tax Code."

3.01.120 Notice of Sales and Use Tax Ordinance Amendment

- A. In order to initiate a central register of tax ordinances of municipalities that administer local sales tax collection, the Chief Financial Officer shall file with the Colorado Municipal League, prior to the effective date of this section, a copy of this Tax Code reflecting all provisions in effect on the effective date of this section.
- B. In order to keep current the central register of sales and use tax ordinances for municipalities that administer local sales tax collection, the Chief Financial Officer shall file with the Colorado Municipal League prior to the effective date of any amendment hereto a copy of each Tax Code amendment enacted by the City.
- C. Failure of the City to file a copy of this Tax Code or amendment to this Tax Code in accordance with this section shall not invalidate any provision of this Tax Code or any amendment thereto.

3.01.130 Sales and Use Tax Regulations

The City Council shall adopt rules and regulations for the proper administration and enforcement of this Tax Code, which rules and regulations shall be known hereinafter as the "Sales and Use Tax Regulations."

3.01.140 General Administration

The administration of this Tax Code is vested in and shall be exercised by the City Manager. The Chief Financial Officer shall assist the City Manager in the administration of this Tax Code to the extent provided herein and in the Sales and Use Tax Regulations.

3.01.150 Participation in Simplification Meetings

The Chief Financial Officer shall cooperate with and participate on an as-needed basis with a permanent, statewide sales and use tax committee convened by the Colorado Municipal League, which is composed of state and municipal sales and use tax officials and business officials. Such committee will meet for the purpose of discussing and seeking resolution to sales and use tax problems that might arise.

3.01.160 Intercity Claims for Recovery

The City will comply with Colorado state law with respect to intercity claims for the recovery of sales and use taxes paid to the wrong taxing jurisdiction. The intent and procedure for filing an intercity "claim for recovery" is set forth in the Sales and Use Tax Regulations.

3.01.170 Disposition of Sales and Use Tax Revenue

The moneys received by the Chief Financial Officer from the tax imposed and collected pursuant to this Tax Code shall be deposited in the general fund of the City. One-half cent (\$0.005) of every dollar of such moneys shall be applied as follows:

- A. To the next maturing payment of the principal of, premium, if any, and interest on the City's outstanding general obligation bonds; and
- B. To the extent currently available after application to such purpose, to defray directly the cost of capital improvements of the City and the operation and maintenance of such capital improvements.

PART 2. ADMINISTRATIVE

3.01.210 Map/Location Guide of City Boundaries; Electronic Database

- A. Map/Location Guide. The Finance Department shall make available to any requesting Retailer a map or location guide showing the boundaries of the City. The requesting Retailer may rely on such map or location guide and any update thereof available to such Retailer in determining whether to collect a Sales or Use Tax or both. No penalty shall be imposed or action for Deficiency maintained against a Retailer who in good faith complies with the most recent map or location guide available to such Retailer.
- B. Electronic Database.
1. Any Retailer that collects and remits Sales Tax to the Chief Financial Officer as provided in this section may use an electronic database of state addresses that is certified by the Colorado Department of Revenue pursuant to C.R.S. § 39-26-105.3 to determine the jurisdictions to which tax is owed.
 2. Any Retailer that uses the data contained in an electronic database certified by the Colorado Department of Revenue pursuant to C.R.S. § 39-26-105.3 to determine the jurisdictions to which tax is owed shall be held harmless for any tax, penalty, or interest owed the City that otherwise would be due solely as a result of an error in the electronic database, provided that the Retailer demonstrate that it used the most current information available in such electronic database on the date that the Sale occurred.
 3. The provisions of this section shall not apply to Use Tax.
- C. Safe Harbor. Each Retailer shall keep and preserve such records as prescribed by the City's Revenue Manager to demonstrate that it used the most current information available in the map/location guide or electronic database on the date that the Sale occurred. Notwithstanding the above, if the error in collecting and remitting is a result of a deceptive representation, a false representation, or fraud, the provisions of this section shall not apply.

3.01.220 Applicability to Banks

The provisions of this Tax Code shall apply to national banking associations and to banks organized and chartered under state law.

3.01.230 Definitions

As used in this Tax Code, unless the context otherwise requires, the following terms shall have the following meanings:

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

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

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

"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 and mobile homes. "Automotive Vehicle" shall not include devices moved by human power or used exclusively upon stationary rails or tracks.

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

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

"Carrier Access Services" means the services furnished by a local exchange company to its customers who provide Telecommunications Services, which allow such customers to provide those Telecommunications Services.

"Charitable Organization" means any entity that:

- 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, and thereby lessens the burden of government.

"Chief Financial Officer" or "CFO" means the Chief Financial Officer/City Treasurer of the City of Lakewood, or designee, or such other Person designated by the City.

"City" means the municipality of Lakewood, Colorado.

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

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

"Commercial Packaging Materials" means containers, labels and/or cases that become part of the finished product to the purchaser, used by or sold to a Person engaged in Manufacturing, compounding, wholesaling, jobbing, retailing, packaging, distributing or bottling for Sale, profit or Use, and are 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 and 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, and other items which do not remain as an integral and inseparable part of a completed structure or project, are not Construction Materials.

“Consumer” means any Person in the City who Purchases, Uses, stores, distributes or otherwise consumes Tangible Personal Property or Taxable Services, Purchased from sources inside or outside the City.

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

“Cover Charge” means a charge paid to a club or similar entertainment establishment which may, or may not, entitle the patron paying such charge to receive Tangible Personal Property, such as food and/or beverages.

“Digital Product” means an electronic product including, but not limited to:

- A. “Digital images,” which are works generally recognized in the ordinary and usual sense as “photographs,” “logos,” “cartoons,” “drawings” or the like;
- B. “Digital audio-visual works,” which are 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 are 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 are 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 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”

- A. 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 makes retail sales into the City, and:
 - 1. In the previous calendar year, the Person has made retail sales into the State exceeding the amount specified in C.R.S. § 36-102(3)(c), as amended; or
 - 2. In the current calendar year, ninety (90) days has passed following the month in which the Person has made retail sales into the State exceeding the amount specified in C.R.S. § 36-102(3)(c), as amended.
- B. This definition does not apply to any Person who is doing business in this state but otherwise applies to any other Person.
- C. For the purpose of clarity, the definition of “Person” includes any Marketplace Facilitator.

“Engaged in Business in the City” means performing or providing services or selling, leasing, renting, delivering or installing Tangible Personal Property for Storage, Use or consumption, within the City. Engaged in Business in the City includes, but is not limited to, any one of the following activities by a Person:

- 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 salespersons 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 salespersons on duty at a location within the City;
- D. Owns, leases, rents or otherwise exercises control over real or personal property within the City;
- E. If the Person is a Retailer in the state of Colorado, the Person makes more than one (1) delivery into the City within a twelve (12) -month period; or
- F. Makes retail sales sufficient to meet the definitional requirements of “Economic Nexus” as set forth in this section.

“Factory-Built Housing” means a Manufactured Home or Modular Home.

“Farm Closeout Sale” means the full and final disposition of all Tangible Personal Property previously used by a farmer or rancher in farming or ranching operations which are being abandoned.

“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, for the purpose of this definition, “food” does not include:

- A. Carbonated water marketed in containers;
- B. Chewing gum;
- C. Seeds and plants to grow food;
- D. Prepared salads and salad bars;
- E. Packaged and unpackaged cold sandwiches;
- F. Deli trays; and
- G. Hot or cold beverages served in containers or cups that are vended by or through machines or non-coin-operated coin-collecting food and snack devices on behalf of a Retailer.

“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 of Lakewood Sales and/or Use Tax license.

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

“Lodging Services” means the furnishing of any rooms or accommodations by any Person, whether or not in a representative capacity, to another Person who, for consideration, possesses or has the right to Use or possess any room, including but not limited to, any portion of a hotel, inn, bed and breakfast, apartment, single family residence, lodging house, condominium, motor hotel, guesthouse, guest ranch, trailer coach, mobile home, auto camp, trailer court and park, dwelling unit, or other area that accommodates a guest, or any similar establishment, under any agreement, concession, permit, right of access, license to use or other arrangement.

“Machinery” means any apparatus consisting of interrelated parts used to produce an article of Tangible Personal Property. The term includes both the basic unit and any adjunct or attachment necessary for the basic unit to accomplish its intended function.

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

“Manufacturing” means the operation or performance of an integrated series of operations which places a product, article, substance, commodity or other Tangible Personal Property in a form, composition or character different from that in which it was acquired whether for Sale or for Use by a manufacturer. The change in form, composition or character must result in a different product having a distinctive name, character or Use from the raw or prepared materials.

“Marketplace” means a physical or electronic forum, including, but not limited to, a store, a booth, an internet website, a catalog or a dedicated sales software application where Tangible Personal Property or Taxable Services are offered for Sale.

“Marketplace Facilitator”

A. Means a Person who:

1. Contracts with a Marketplace Seller to facilitate for consideration, whether or not the consideration is deducted as fees from the transaction, the Sale of the Marketplace Seller’s Tangible Personal Property or Taxable Services through the Person’s Marketplace;
2. Engages directly or indirectly, through one or more affiliated Persons, in transmitting or otherwise communicating the offer or acceptance between a purchaser and the Marketplace Seller; and
3. Either directly or indirectly, through agreements or arrangements with third parties, collects the payment from the purchaser on behalf of the seller.

B. “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, whether or not engaged in business in the City, which has an agreement with a Marketplace Facilitator and offers for Sale Tangible Personal Property or Services through a Marketplace owned, operated or controlled by a Marketplace Facilitator.

“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 C.R.S. § 24-32-706, and is designed to be installed on a permanent foundation.

“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 of the foregoing acting in a fiduciary or representative capacity, whether appointed by court or otherwise, or any group or combination acting as a unit, and includes a Marketplace Facilitator.

“Prescription Drugs for Animals” means a drug that, 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 that, 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:”

A. “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 Tax Code, and, in the case of Retail Sales involving the exchange of property, also exclusive of the fair market value of the property exchanged at the same time and place of the exchange, if:

1. Such exchanged property is to be sold thereafter in the usual course of the Retailer’s Business; or
2. Such exchanged property is a vehicle and is exchanged for another vehicle and both vehicles are subject to licensing, registration or certification under the laws of this state, including, but not limited to, vehicles operating upon public highways, off-highway recreation vehicles, watercraft and Aircraft.

Any money or other consideration paid over and above the value of the exchanged property is subject to tax.

B. “Price” or “Purchase Price” includes:

1. The amount of money received or due in cash and/or credits.
2. Property at fair market value taken in exchange but not for resale in the usual course of the Retailer’s Business.
3. Any consideration valued in money, such as trading stamps or coupons whereby the manufacturer or someone else reimburses the Retailer for part of the Purchase Price and other media of exchange.
4. The total Price charged on credit Sales including finance charges that 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.
5. Installation, applying, remodeling or repairing the property, and 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 Automotive Vehicles, tires and floor stock.
8. The gross Purchase Price of articles sold after Manufacturing or after having been made to order, including the gross value of all the materials used, labor and service performed and the profit thereon.

C. “Price” or “Purchase Price” shall not include:

1. Any sales or use tax imposed by the State of Colorado or by any political subdivision thereof.
2. The fair market value of property exchanged if such property is to be sold thereafter in the Retailers’ usual course of Business. This is not limited to exchanges in Colorado. Out-of-state trade-ins are authorized by this Tax Code as adjustments 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. In reporting Gross Sales, an anticipated discount to be allowed for payment on or before a given date is not authorized under this Tax Code as an adjustment to the Price.

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

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

“Purchase” or “Sale”

- A. Inclusions. “Purchase” or “Sale” means the acquisition for any consideration by any Person of Tangible Personal Property 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 or Taxable Services;
 - 2. A lease, lease-purchase agreement, rental or grant of a license, including royalty agreements, to Use Tangible Personal Property or Taxable Services;
 - 3. Performance of Taxable Services; or
 - 4. Barter or exchange for other Tangible Personal Property or services.
- B. Exclusions. “Purchase” and “Sale” does not mean or include:
 - 1. A division of partnership assets among the partners according to their interests in the partnership;
 - 2. The transfer of assets of shareholders in the formation or dissolution of professional corporations, if no consideration, including, but not limited to, the assumption of a liability, is paid for the transfer of assets;
 - 3. The dissolution and the pro rata distribution of the corporation’s assets to its stockholders, if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets;
 - 4. A transfer of a partnership or limited liability company interest;
 - 5. The transfer of assets to a commencing or existing partnership or limited liability company, if no consideration, including, but not limited to, the assumption of a liability, is paid for the transfer of assets;
 - 6. The repossession of personal property by a chattel mortgage holder or foreclosure by a lienholder;
 - 7. The transfer of assets from a parent company to a subsidiary company or companies which are owned at least eighty percent (80%) by the parent company, which transfer is solely in exchange for stock or securities of the subsidiary company;
 - 8. The transfer of assets from a subsidiary company or companies which are owned at least eighty percent (80%) by the parent company to a parent company or to another subsidiary which is owned at least eighty percent (80%) by the parent company, which transfer is solely in exchange for stock or securities of the parent company or the subsidiary which received the assets;
 - 9. The transfer of assets between parent and closely held subsidiary companies, or between subsidiary companies closely held by the same parent company, or between companies which are owned by the same shareholders in identical percentage of stock ownership amounts, computed on a share-by-share basis,

when a tax imposed by this Tax Code was paid by the transferor company at the time it acquired such assets, except to the extent that there is an increase in the fair market value of such assets resulting from the Manufacturing, fabricating, or physical changing of the assets by the transferor company. To such an extent any transfer referred to in this paragraph (9) shall constitute a Sale. For the purposes of this paragraph (9), a closely held subsidiary company is one in which the parent company owns stock possessing or membership interest at least eighty percent (80%) of the total combined voting power of all classes of stock entitled to vote and owns at least eighty percent (80%) of the total number of shares of all other classes of stock.

“Qualified Hospital Organization” means any of the following:

- A. An organization that is exempt from federal income tax under Section 115 or Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, but only if the organization holds a license to operate a “general hospital” for people issued pursuant to C.R.S. § 25-3-101 and § 25-3-102, as amended, including any successor provisions to those sections, and operates a general hospital within the City of Lakewood; or
- B. A corporation or trust that:
 - 1. Is exempt from federal income tax under Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended; and
 - 2. Owns or employs personal property or improvements that are used in the operations of one or more organizations described in paragraph (A) of this definition; and
 - 3. Either: (i) directly controls, or is controlled by, one or more organizations described in paragraph (A) of this definition, (ii) is controlled by a management organization as defined in paragraph (C) of this definition in common with one or more organizations described in paragraph (A) of this definition, or (iii) owns a hospital that is licensed to operate as a “general hospital” for people pursuant to C.R.S. § 25-3-101 and § 25-3-102 (2012), as amended, including any successor provisions to those sections, and that is operated by an organization described in paragraph (1) of this definition; or
- C. An organization that is exempt from federal income tax under Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, and which organization’s principal function is to manage the property or operations, or both, of one or more organizations described in paragraphs (A) or (B) of this definition; or
- D. A partnership, limited partnership, limited liability limited partnership, limited liability partnership, limited liability company, or joint venture if all of the partners, members, joint ventures or other participants in such partnership, limited partnership, limited liability limited partnership, limited liability partnership, limited liability company or joint venture are organizations described in paragraphs (A), (B) or (C) of this definition.

“Resident” means a Person who resides or maintains one or more places of Business within the City, regardless of whether that Person also resides or maintains a place of Business outside of the City.

“Retail Sales” means all Sales except Wholesale Sales.

“Retailer” means any Person selling, leasing, renting or granting license to Use Tangible Personal Property or services at retail. Retailer shall include, but is not limited to, 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 that 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; or

D. Marketplace Facilitator or Marketplace Seller.

“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 Tax Code.

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

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

“Soft Drink” means a nonalcoholic beverage that contains natural or artificial sweeteners.

“Soft Drink” does not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than fifty percent (50%) of vegetable or fruit juice by volume.

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

“Software License Fee” means a fee charged for the right to Use, access, or maintain Software Programs.

“Software Maintenance Agreement” means an agreement, typically with a software provider, that may include:

- A. Provisions to maintain the right to Use the software;
- B. Provisions for software upgrades including code updates, version updates, code fix modifications, enhancements, and added or new functional capabilities loaded into existing software; or
- C. Technical support.

“Software Maintenance Agreement” does not include an agreement that provides only for technical support.

“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,” “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.

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

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

“Storage” means any keeping or retention of, or exercising 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 Retailer.

“Student” means any Person enrolled in a School.

“Tangible Personal Property” means personal property that can be, or is designed to be, one or more of the following: seen, weighed, measured, felt, touched, stored, transported or exchanged, or that is in any other manner perceptible to the senses with or without the aid of an instrument or device, and includes Digital Products.

“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 Tax Code.

“Taxable Sales” means Gross Sales less any exemptions and deductions specified in this Tax Code.

“Taxable Services” means services subject to tax pursuant to this Tax Code.

“Taxpayer” means any Person obligated to collect, pay and/or remit tax under the terms of this Tax Code.

“Telecommunications Service” means the service of which the object is the transmission of any two-way interactive electronic or electromagnetic communications including but not limited to voice, image, data and any other information, by the use of any means but not limited to wire, cable, fiber optical cable, microwave, radio wave, Voice Over Internet Protocol (VOIP), or any combinations of such media, including any form of mobile two-way communication. “Telecommunications Service” does not include separately stated non-transmission services that constitute computer processing applications used to act on the information to be transmitted.

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

“Total Tax Liability” 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 outside the City from any Person or Retailer or used in the performance of a contract in the City whether such Tangible Personal Property is owned or not owned by the Taxpayer. Use also includes the withdrawal of items from inventory for consumption.

“Use Tax” means the tax paid or required to be paid by a Consumer for using, storing, distributing or otherwise consuming Tangible Personal Property or Taxable Services inside the City.

“Wholesale Sale” 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; the latter types of Sales shall be deemed to be Retail Sales and shall be subject to the provisions of this Tax Code.

“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.

3.01.240 Tax Cannot be Absorbed; Tax Separately Stated; Exception Base

- A. Cannot Absorb Tax. Except as provided in subsection (B) of this Section 3.01.240, it is unlawful for any Retailer to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof imposed by this Tax Code shall be

assumed or absorbed by the Retailer or that it shall not be added to the Purchase Price of the property sold or the services tendered, or, if added, that it or any part thereof shall be refunded.

- B. **Tax Must be Separately Stated; Exceptions.** Except as provided in subsections (B)(1), (2) and (3), the Retailer shall provide to the purchaser a receipt that identifies the property and/or services taxed, the date such property and/or services were sold or ordered, the rate of the tax imposed, and the amount of tax collected or paid, all as separate and distinct items.
1. **Liquor by the Drink.** Any Retailer selling malt, vinous, or spirituous liquors by the drink may include in the Purchase Price the tax levied under this Tax Code, except that no such Retailer shall advertise or hold out to the public in any manner, directly or indirectly, that such tax is not included as part of the Purchase Price to the purchaser. The schedule referred to in section 3.01.410(E) of this Tax Code shall be used by such Retailer in determining amounts to be included in such Purchase Price. No such Retailer shall gain any benefit from the collection or payment of such tax, nor shall the use of the schedule referred to in Section 3.01.410(E) of this Tax Code relieve such Retailer from liability for payment of the full amount of the tax imposed pursuant to Section 3.01.410.
 2. **Admission to Liquor Licensed Establishment.** Any establishment licensed to serve malt, vinous or spirituous liquors that is open to the public upon payment of a Cover Charge or fee may incorporate into such charge or fee the tax levied under this Tax Code.
 3. **Vending Devices.** City Sales Tax may be incorporated into the Purchase Price of Tangible Personal Property sold through vending devices. The operator, owner or Person selling Tangible Personal Property through vending devices shall be liable additionally for the Sales and Use Tax on the Purchase or Use of the vending devices and on any subsequent lease, rental or Sale thereof on the full lease, rental or sale Price.

3.01.250 Collection, Payment and Remittance of Tax

Every Retailer subject to the provisions of this chapter shall be liable and responsible for the collection and remittance of sales tax as set forth in this chapter. Except as otherwise provided in this section, every Taxpayer shall make a Return and payment or remittance of taxes to the City as provided for herein. The Taxpayer or its authorized agent shall sign any such Return under penalty of perjury. Sales and Use Tax Returns, and any payment of taxes to the City in accordance herewith, shall be made via the City's online tax filing system or by such other method as approved by the Chief Financial Officer.

A. Marketplace Sales.

1. General.

- a. A Marketplace Facilitator Engaged in Business in the City is required to collect and remit Sales Tax on all Taxable Sales made by the Marketplace Facilitator, or facilitated for Marketplace Sellers to customers in the City, whether or not the Marketplace Seller for whom sales are facilitated would have been required to collect Sales Tax had the Sale not been made in or through the Marketplace. A Marketplace Facilitator has all the liabilities, obligations and rights of a Retailer under this Tax Code.
- b. The liabilities, obligations and rights set forth under this Tax Code are in addition to any requirements the Marketplace Facilitator has under this Tax Code if it also offers for sale Tangible Personal Property or Taxable Services through other means.
- c. Except as provided in subsection (2) of this section, a Marketplace Seller, with respect to sales of Tangible Personal Property or taxable services made in or through a Marketplace Facilitator's Marketplace, does not have the liabilities, obligations or rights of a Retailer under this Tax Code if the Marketplace Seller can show that such Sale was facilitated by a Marketplace Facilitator:

- i. With whom the Marketplace Seller has a contract that explicitly provides that the Marketplace Facilitator will collect and remit Sales Tax on all Sales subject to tax under this Tax Code; or
 - ii. From whom the Marketplace Seller requested and received in good faith a certification that the Marketplace Facilitator is registered to collect Sales Tax and will collect Sales Tax on all Sales subject to tax under this Tax Code made in or through the Marketplace Facilitator's Marketplace.
 - 2. Auditing. The City shall audit only the Marketplace Facilitator for Sales made by Marketplace Sellers facilitated by the Marketplace Facilitator. The City will not audit or otherwise assess tax against Marketplace Sellers for Sales facilitated by a Marketplace Facilitator.
- B. Third-Party Collectors.
- 1. Definition. "Third-Party Collector" means any Person, whether through a physical store or an online platform, which collects payments for Sales of Taxable Tangible Personal Property, products, Services, lodging, admissions or telecommunications services for a Retailer.
 - 2. Duties and Liabilities.
 - a. Third-Party Collectors are deemed to be collection agents for the City and shall assume the duties, responsibilities and liabilities of a Retailer with respect to the collection and remittance of the Taxes imposed under this Tax Code, including obtaining and maintaining a Sales and Use Tax License in accordance with Part 3 of this Tax Code. Third-Party Collectors and the Retailers for which Third-party Collectors collect, withhold and/or remit Taxes hereunder are jointly liable for the collection and remittance of the Taxes imposed by this Tax Code.
 - b. The Finance Department may recover unpaid taxes, penalties and interest from Third-Party Collectors, as well as each Retailer for which Third-party Collectors collect, withhold and/or remit Taxes hereunder, in the same manner authorized in this Tax Code for the recovery from Retailers of unpaid taxes, penalties and interest.
- C. Filing Frequencies.
- 1. Standard Filing Frequency. Unless otherwise provided for herein, every Taxpayer shall make a Return and payment of taxes to the City before the twentieth (20th) day of each month for the preceding calendar month.
 - 2. Filing Frequencies – Hardship. If the accounting methods regularly employed by a Taxpayer in the transaction of its Business or other conditions are such that making Returns on a calendar month basis impose unnecessary hardship, the Chief Financial Officer, upon written request of the Taxpayer, may accept Returns at such intervals as shall, in the Chief Financial Officer's opinion, better suit the convenience of the Taxpayer and shall not jeopardize the collection of the tax.
 - 3. Other Filing Frequencies.
 - a. Quarterly. The Chief Financial Officer may permit Taxpayers whose monthly collected tax is less than three hundred dollars (\$300) to make Returns and pay taxes at intervals not greater than every three (3) months. Such Returns and payment of taxes shall be made before the twentieth (20th) day of the month immediately following the quarter during which such taxes were collected.
 - b. Seasonal. The Chief Financial Officer may permit Taxpayers engaged in a seasonal Business, which is not operated at all in the City during certain months of the year, to make Returns and pay taxes monthly only for the months of the year during which the Business is operated. Such Returns and payment of taxes shall be made before the twentieth (20th) day of the month immediately following the month during which such taxes were collected.

- c. Annual.
 - i. Taxpayers required to pay Use Tax under this Tax Code, which are not obligated under this Tax Code to collect and remit any Sales Tax, shall make a Return and remit such Use Tax to the City before the twentieth (20th) day of January each year for the preceding calendar year.
 - ii. Notwithstanding subsection (c)(i) above, Taxpayers located within areas of the City that are subject to public improvements fees (PIF) shall make a Return and remit such taxes to the City before the twentieth (20th) day of each month for the preceding calendar month, unless authorized by the City to make less-frequent Returns in accordance with applicable PIF collection agreements.
- D. Amended Returns. Taxpayers may submit amended Returns, subject to the limitations set forth in Section 3.01.560 hereof. If requested by the Finance Department, the Taxpayer shall provide documentation sufficient to support such amendment, as determined by the Finance Department its sole, reasonable discretion.
- E. Multiple Locations. Any Retailer Engaged in Business in the City in two (2) or more locations shall file a separate Return for each location.
- F. Exempt Sales. The burden of proving that a Sale of goods or Taxable Services is exempt from the collection of Sales Tax shall be on the Retailer under such reasonable requirements of proof as set forth in the Sales and Use Tax Regulations prescribed therefor.
- G. Disputed Exemptions. If a dispute arises between the purchaser and seller as to whether or not any Sale, service or commodity is exempt from taxation under Section 3.01.430, the seller shall collect, and the purchaser shall pay, the tax. The seller shall thereupon issue to the purchaser a receipt or certification showing the name of the seller, the items Purchased, the date, Price, and amount of tax paid. The purchaser may apply to the Chief Financial Officer for a refund of such taxes pursuant to Section 3.01.540.
- H. Collection of Tax by Department of Revenue – Automotive Vehicles. If the owner of an Automotive Vehicle is required to register, license or obtain a certificate of title for such Automotive Vehicle at an address located within the City, the Department of Revenue, through its authorized agent in the county, shall collect the Use Tax imposed under this Tax Code pursuant to one or more agreements entered into between the City and such authorized agent. Such authorized agent shall pay proceeds of such Use Tax to the City periodically in accordance with such agreement(s). If such authorized agent fails to collect the Use Tax imposed under this Tax Code, the Chief Financial Officer shall then collect such Use Tax in the manner set forth in Part 5 of this Tax Code.

3.01.260 Duty to Keep Records

It is the duty of every Taxpayer to keep and preserve suitable records and such other books or accounts as may be necessary to determine the amount of tax the Taxpayer is liable for collecting, paying and/or remitting under this Tax Code. It is the duty of every such Taxpayer to keep and preserve for a period of three (3) years all invoices of goods and merchandise Purchased for Sale, Use, consumption or lease; provided, however, that any Person Engaged in Business in the City, which has not obtained a License hereunder, is obligated to keep and preserve, from the date such Person first became Engaged in Business in the City, all invoices of goods and merchandise Purchased for Sale, Use, consumption or lease without limitation. All such books, invoices, and other records shall be open for examination and audit at any time by the Chief Financial Officer or duly authorized agent. The Taxpayer shall produce all such records, if required by the Chief Financial Officer, at the Lakewood Civic Center, 480 South Allison Parkway, Lakewood, Colorado 80226.

3.01.270 Credit Sales

- A. In the case of a Sale upon credit, or a contract for Sale where the Price is paid in installments, and title does not pass until a future date, or a Sale secured by a chattel mortgage or a

conditional Sale, there shall be paid upon each payment that portion of the total tax which the amount paid bears in relation to the total Purchase Price.

- B. If a Retailer transfers, sells, assigns or otherwise disposes of an account receivable, it shall be deemed to have received the full balance of the consideration for the original Sale and shall be liable for the remittance of the Sales Tax on the balance of the total Sale Price not previously reported. Except, however, that such transfer, Sale, assignment or other disposition of an account receivable by a Retailer to a closely held subsidiary, as defined in subsection (B)(9). Exclusions in the definition of "Purchase or Sale" in section 3.01.230 shall not be deemed to require the Retailer to pay the Sales Tax on the credit Sale represented by the account transferred prior to the time that the customer makes payment on said account.

3.01.280 Bad Debt Charge-Offs

Taxes paid on Taxable Sales represented by accounts found to be worthless and actually charged off for income tax purposes may be credited upon a subsequent payment of the tax provided in this Tax Code, but if any such accounts are thereafter collected by the Taxpayer, then a tax shall be paid upon the amounts so collected.

PART 3. SALES AND USE TAX LICENSE

3.01.310 License Required; Exceptions

- A. Subject to the provisions of this Tax Code, a Sales and Use Tax License is required for the following:
 - 1. When a Person is Engaged in Business in the City and selling Tangible Personal Property or services that are:
 - a. Purchased in the City; and
 - b. Subject to Sales Tax pursuant to this Tax Code; or
 - 2. Tangible Personal Property that is stored, Used or consumed in the City and subject to Use Tax pursuant to this Tax Code.
- B. Every Person required to obtain a License hereunder shall make application to the City via the City's online tax filing system or, at the discretion of the Finance Department, on forms supplied by the Finance Department. Such application shall state the following:
 - 1. The legal name and mailing address of the Person applying for the License;
 - 2. The trade name of the Business, if any, for which the License is sought;
 - 3. The physical location, including the street number, of the place of Business, if different from the mailing address stated on the application; and
 - 4. Such other information as the City might require on the application.The Taxpayer shall notify the City of any changes to the information stated on the application.
- C. Approval of a License shall be conditioned upon the proposed Business and the location thereof meeting all applicable provisions of the Lakewood Municipal Code.
- D. No License is required for any Person engaged exclusively in the Business of selling, or who stores, Uses or consumes, Tangible Personal Property that is exempt from taxation under this Tax Code.
- E. A License issued by the City shall be in force and effect until the earlier of:
 - 1. The revocation of such License; or
 - 2. The sale or termination of the Business, if any, relating to such License.

3.01.320 License Fee

A nonrefundable fee, in an amount set by the City Council, shall accompany each License application.

3.01.330 Denial or Revocation; Review and Appeal

- A. Denial. The Chief Financial Officer, upon notice of denial to the applicant, may deny a Sales and Use Tax License application for any one or more of the following reasons:
1. The proposed location for the applicant's Business is not zoned for the type of use proposed;
 2. Any person holding an ownership interest of 10% or more in the applicant is in arrears or delinquent with the City in any way;
 3. Any individual holding an ownership interest of 10% or more in the applicant also holds an ownership interest of 10% or more in a Business that is in arrears or delinquent with the City in any way;
 4. Any individual holding an ownership interest in the applicant who cannot provide legally acceptable proof of lawful presence in the United States as required under C.R.S. § 24-76.5-103, as amended; or
 5. Incomplete application.
- B. Revocation. The Chief Financial Officer may revoke the License of any Person found by the Chief Financial Officer to have violated any material provision of this Tax Code, as follows:
1. The Chief Financial Officer shall first provide to the Person written notice of intent to revoke the License, which notice of intent shall notify the Person of its right to request a hearing.
 2. The Person may make a written request for a hearing to the Chief Financial Officer not more than ten (10) days after the mailing date of such notice.
 3. If the Person requests a hearing, the Chief Financial Officer shall conduct the hearing within fourteen (14) days after receipt of the written request unless the Person has requested a later date, but in no event shall such hearing be held later than forty-five (45) days after the mailing date of such notice.
 4. The Chief Financial Officer's decision shall be in writing and, if revoking the License, shall set forth the bases for revocation.
- C. Review. Any final decision of the Chief Financial Officer pursuant to this section shall be subject to review in Colorado District Court in accordance with Colorado Rule of Civil Procedure 106 only.

3.01.340 License Non-Transferable

No License issued pursuant to this Part 3 shall be transferred to any other Retailer, owner, Business or location, except as expressly provided for herein.

3.01.350 Multiple Locations – Separate Licenses Required

A Retailer engaged in Business in two (2) or more places or locations within the City must obtain a separate License for each such place or location.

3.01.360 Posted in Conspicuous Location

Each License shall be numbered and shall display the name of the licensee and the place of Business of the licensee and shall be posted in a conspicuous place at the place of Business for which it is issued. If the licensee does not have a place of Business, the License shall display the mailing address of such licensee.

3.01.370 License Additional

The License shall be in addition to all other licenses required by law, except as otherwise provided in this Tax Code.

3.01.380 Certificate of Exemption

Charitable Organizations, as defined in this Tax Code, desiring to be exempt from certain City Sales and/or Use Tax, as described in this Tax Code, must apply to the Finance Department for a Lakewood Certificate of Exemption.

PART 4 SALES AND USE TAX

3.01.410 Imposition of Tax; Rate

A. Sales Tax.

1. **Imposition; Rate.** Subject to the provisions of this Tax Code, Sales Tax at the rate of three percent (3%) is hereby levied, and shall be collected and paid to the City, upon the Purchase Price of:
 - a. All services identified in section 3.01.420 and provided within the City; and
 - b. All Tangible Personal Property, including Digital Products, software and similar items, sold within the City.
2. **Held in Trust.** All sums of money paid by purchasers to Retailers as Sales Taxes imposed by this Tax Code shall be and remain public money and the property of the City. Each Retailer shall hold such monies in trust for the sole use and benefit of the City until paid to the City. Any Retailer that fails to hold such monies in trust for, and pay such monies to, the City shall be subject to the penalties herein.

B. Use Tax. Subject to the provisions of this Tax Code, Use Tax at the rate of three percent (3%) is hereby levied, and shall be paid, upon the privilege of Using, storing or consuming Tangible Personal Property or services, whether Purchased inside or outside the City, where Sales Tax or Use Tax has not otherwise been lawfully imposed and paid. Tangible Personal Property initially exempt from the imposition of Sales Tax as a Wholesale Sale, but subsequently used by the initial purchaser, is subject to Use Tax. Any subsequent Sale of such Tangible Personal Property shall be subject to Sales Tax as set forth in section 3.01.420(P).

C. Taxes Paid to Other Municipality. With the exception of Construction Materials, which are addressed elsewhere in this Tax Code, where City Sales or Use Tax would otherwise be due under this Tax Code, but a sales or use tax has been lawfully imposed by and paid to a municipality other than the City, then City Sales or Use Tax, as applicable, shall be imposed and paid only on the difference between: (a) the sales or use tax legally imposed by and paid to such other municipality; and (b) the amount of Sales or Use Tax imposed by the City. In the event the amount of the City's Sales or Use Tax imposed is less than the amount of sales or use tax legally imposed by and paid to such other municipality, no City Sales or Use Tax would be due on such transaction.

D. Taxes Not Paid. In the event a purchase is reflected on the financial records of a Person located in the City, and no legally imposed sales or use tax was paid or remitted to another municipality, the Person shall pay or remit such tax to the City.

E. Taxes Additional. The taxes imposed by this Tax Code shall be in addition to all other taxes imposed by law, except as otherwise provided in this Tax Code.

F. Schedules/Systems. The Sales and Use Taxes imposed herein shall be computed in accordance with the schedules or systems set forth in the Sales and Use Tax Regulations prescribed therefor. Such schedules or systems shall be designed so that no tax is charged on any Sale of sixteen cents (\$0.16) or less.

G. Specific Uses – Voter-Approved Increase. On November 1, 2005, the voters of the City of Lakewood approved an increase in the Lakewood Sales and Use Tax rate from two percent (2%) to three percent (3%). In accordance with such approval, and notwithstanding section 3.01.170 of this Tax Code, the City shall apply the revenue generated from such one percent (1%) Sales and Use Tax increase as follows:

1. At least fifty percent (50%) of such revenue shall be used for the following:
 - a. public safety purposes;
 - b. maintenance and construction of streets; and
 - c. parks and recreation purposes.
2. The balance of such revenue shall be used to maintain City services and the emergency fund balance.

H. Belmar – Temporary Partial Waiver of Sales Tax: Expiration.

1. Pursuant to Ordinance O-2002-7, the City temporarily waived, only within the geographic areas specifically described in Exhibit A to Ordinance O-2002-7, one percent (1%) of the Sales Tax imposed under this Tax Code. Pursuant to Ordinance O-2005-26, the Sales Tax increase addressed in subsection (F) of this section is also temporarily waived within the geographic areas specifically described in Exhibit A to Ordinance O-2002-7. The geographic areas described in Exhibit A to Ordinance O-2002-7 are therefore temporarily subject to a Sales Tax rate of one percent (1%).
2. The temporary Sales Tax waivers described above shall expire or terminate as set forth in Ordinances O-2002-7 and O-2005-26, as the case may be, at which time the Sales Tax rate for the areas specifically described in Exhibit A to Ordinance O-2002-7 shall increase as appropriate.
3. The temporary Sales Tax waivers described in this subsection (G) do not and shall not apply to any Use Tax imposed under this Tax Code.

3.01.420 Transactions, Services and Tangible Personal Property – Taxability

Sales or Use Tax, as applicable, shall be imposed upon the Purchase Price of the transactions, services and Tangible Personal Property enumerated in this section, except as otherwise set forth herein. With the exception of “lump sum” construction transactions, any transaction involving services or Tangible Personal Property that would otherwise be exempt or nontaxable under this Tax Code shall be subject to Tax hereunder if such services or Tangible Personal Property are not stated separately from any taxable services or Tangible Personal Property that are part of the same transaction. The enumeration of the transactions and Tangible Personal Property herein is not intended, and shall not be construed, as limiting the taxability of any transactions or Tangible Personal Property subject to taxation under section 3.01.410 of this Tax Code.

- A. Admissions. The Price, fee or Cover Charge paid to gain admission or access to a performance of a motion picture, or to a Retailer licensed to serve malt, vinous or spirituous liquors that is open to the public upon payment of a charge or fee.
- B. Auctions. Tangible Personal Property sold at Auction.
- C. Automotive Vehicles. The Sale, lease or lease-purchase of an Automotive Vehicle if the owner of the Automotive Vehicle for which registration, licensing or titling is required by the state pursuant to Article 6 of Title 42, C.R.S., as amended, is required to register, license or obtain a certificate of title for such Automotive Vehicle at an address located within the City.
- D. Commercial Shipping Materials. Commercial Shipping Materials when sold at retail, except as set forth in section 3.01.430(J)(3) hereof.
- E. Construction Equipment.
 1. Construction Equipment located within the boundaries of the City for a period of more than thirty (30) consecutive days shall be subjected to the full applicable Use Tax of the City.
 2. Construction Equipment located within the boundaries of the City for thirty (30) consecutive days or less may be prorated as set forth in Section 3.01.440.
- E. Construction Materials. Construction Materials in accordance with Section 3.01.450;
- F. Custom Orders. Articles sold after manufacture or after having been made to order, including the cost of material used, the service performed in connection therewith, overhead and profit.
- G. Food, Beverages and Candy.
 1. Except as exempt pursuant to section 3.01.430(G) of this Tax Code, food and drink served or furnished in or by restaurants, cafes, lunch counters, cafeterias, hotels, 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;
 2. Upon all other Sales of Candy, Soft Drinks and food, except as exempt pursuant to Section 3.01.430(G).

- H. Freight, Shipping, Transportation and Delivery. Transportation and other charges to effect delivery of Tangible Personal Property to the purchaser, including:
1. Freight, shipping, transportation or delivery charges paid by a Retailer to obtain Tangible Personal Property before resale, which is passed on to the purchaser in the Price of the property or through a separate invoice;
 2. Charges to the purchaser for delivery, including fuel surcharges, where the Retailer transports the property being sold; and
 3. Freight, shipping, transportation or delivery charges included in the Price of the property being delivered, whether or not billed separately or included as a separate charge on the Retailer's invoice for common carrier, postal or other third-party delivery services.
- I. Gas, Electricity and Other Fuel.
1. Gas and electric service, whether furnished by municipal, public or private corporations or enterprises;
 2. Gas and electricity furnished and sold for commercial consumption and not for resale;
 3. Electricity, coal, wood, gas, fuel oil or coke sold, not for resale, to occupants of residences, whether owned, leased or rented by said occupants, for the purpose of operating residential fixtures and appliances that provide light, heat or power for such residences. For the purposes of this subsection (I), "gas" includes natural, manufactured and liquefied petroleum gas.
- J. Lease, Contract, License or Subscription.
1. When the right to possession or Use of any Tangible Personal Property is granted under a lease, contract, license or subscription, and such Use or transfer of possession would be taxable under this Tax Code if an outright Sale were made, then such lease, contract, license or subscription shall be considered the Sale of such article, and the tax shall be computed and imposed on each individual lease, contract, license or subscription payment as it occurs, as though an outright Sale taxable under this Tax Code were occurring upon each payment.
 2. When the right to possession or Use of any Tangible Personal Property is granted under a lease, contract, license or subscription where the lessor, contracting party, licensor or subscription offeror is located outside the City and such Tangible Personal Property is not delivered to a location within the City by the lessor, contracting party, licensor or subscription offeror, but is picked up by the lessee, other contracting party, licensee or subscriber and Used within the City for a period exceeding thirty (30) days, and such transfer of possession would be taxable under this Tax Code if an outright Sale were made by a lessor, contracting party, licensor or subscription offeror located within the City, then such lease, contract, license or subscription shall be taxed as follows:
 - a. Sales tax shall be imposed on the first thirty (30) days of such lease, contract, license or subscription and shall be payable to the taxing jurisdiction, through the lessor, contracting party, licensor or subscription offeror, in which such lessor, contracting party, licensor or subscription offeror is located and Sales Tax shall be imposed on the remaining term of such lease, contract, license or subscription and shall be payable to the City through the lessor, contracting party, licensor or subscription offeror.
 - b. Such Sales Tax shall be computed and imposed on each individual lease, contract, license or subscription payment as it occurs, as though an outright Sale taxable under this Tax Code were occurring upon each payment. The payment of the Sales Tax shall be made to the lessor, contracting party, licensor or subscription offeror by the lessee, other contracting party, licensee or subscriber. Except as hereinabove otherwise provided, the lessor, contracting party, licensor or subscription offeror, as trustee, shall make payment of any Sales Tax obligation to the City in the manner provided by Section 3.01.250.
- K. Linen Services. Linen Services.
- L. Lodging Services. Lodging Services.

- M. Security System Services. Security System Services, including monitoring, whether Purchased, leased or rented.
- N. Software Services – Modified or Custom. Modified software program services or custom software program services.
- O. Sound System Services. Sound system services, whether Purchased, leased or rented.
- P. Subsequent Sale. Except as may be otherwise provided herein, the resale of Tangible Personal Property.
- Q. Tangible Personal Property. Tangible Personal Property, including Digital Products, software and similar items.
- R. Telecommunications Services.
 - 1. Telecommunication Services, whether furnished by public or private corporations or enterprises, for all intrastate Telecommunication Services originating from or received on telecommunication equipment in the City if the charge for the service is billed to (i) a Person in the City; or (ii) an affiliate or division of such Person in the City on behalf of a Person in the City;
 - 2. Mobile Telecommunications to the fullest extent allowed by the Mobile Telecommunication Sourcing Act, 4 U.S.C. §§ 116 to 126.
 - 3. Carrier Access Services, whether furnished by public or private corporations or enterprises, for all interstate or intrastate Telecommunication Services originating from or received on telecommunication equipment in the City if the charge for the service is billed to: (i) a Person in the City; or (ii) an affiliate or division of such Person in the City on behalf of a Person in the City.
- S. Television and Entertainment Services. Television and Entertainment Services sold, Purchased, leased, rented, furnished, streamed or Used.
- T. Vending Devices. Tangible Personal Property, including food and beverages, dispensed by a vending device.
- U. Warranty and Maintenance Service Contracts. Any warranty or maintenance service contract relating to Tangible Personal Property, including Software Maintenance Agreements, whether included in the cost of the Tangible Personal Property relating thereto or sold separately as part of a warranty contract, extended warranty contract, service contract or maintenance contract.

3.01.430 Exemptions.

This section sets forth the only exemptions from the City Sales and Use Tax. The exemptions set forth in this section shall not be expanded by implication or similarity. In all cases, the burden of proof shall be on the Taxpayer to establish the applicability of an exemption by the presentation of clear and convincing evidence. The following are exempt from imposition of City Sales and Use Tax, unless stated otherwise:

- A. Cigarettes. All cigarettes.
- B. Constitutional Preclusion from City Sales and Use Tax. All Sales the City is prohibited from taxing under the constitution or laws of the United States, the State or the City's home rule charter.
- C. Construction Materials.
 - 1. Railroad tracks. Construction Materials to a common carrier by rail operating in interstate or foreign commerce for use by such common carrier in construction and maintenance of its railroad tracks.
 - 2. Delivered outside City. Construction Materials if delivered to a location outside the City.
 - 3. Tax prepaid on building permit. Construction Materials if the purchaser of such materials presents to the Retailer a building permit where Use Tax has been prepaid.
 - 4. Certain exempt entities. Construction Materials to be used on a project for an exempt entity identified in subsection (D) below, if the purchaser of such materials presents to the Retailer documentation from the City evidencing that tax is not required to be paid. This

exemption shall not apply to Construction Materials used by contractors who perform contracts for a Qualified Hospital Organization.

5. Storage. The Storage of Construction Materials.

D. Exempt Entities.

1. Government - United States, State of Colorado, and their subdivisions. All Sales to the United States government and the State of Colorado, and their respective departments, agencies, institutions, and political subdivisions, in their governmental capacities only, when billed to and paid for by the governmental entity;
2. Schools. All Sales to Schools, including pre-Schools and post-secondary Schools, other than Schools held or conducted for private or corporate profit; when billed to and paid for by the School;
3. Charitable Organizations.
 - a. All Sales to Charitable Organizations, which have been granted a Lakewood Certificate of Exemption, in the conduct of their regular charitable functions and activities, when billed to and paid for by the Charitable Organization;
 - b. Individual Sales made by Charitable Organizations of five thousand dollars (\$5,000.00) or less under the following conditions:
 - i. The Charitable Organization has been granted a Lakewood Certificate of Exemption;
 - ii. The funds raised by the Charitable Organization through such Sales in Lakewood do not exceed \$250,000.00 in a calendar year; and
 - iii. The Sale of Tangible Personal Property is not the principal use of any premises from or at which such Sales are made, if such premises are owned, leased or otherwise controlled by the Charitable Organization.
4. Qualified Hospital Organizations.
 - a. All Sales made to, billed directly to, and paid for directly by, a Qualified Hospital Organization as defined in Section 3.01.230, provided the Tangible Personal Property or service Purchased by the Qualified Hospital Organization is employed in furtherance of an exempt function. As used in this section, "employed in furtherance of an exempt function" means employed by a Qualified Hospital Organization in an activity from which none of the proceeds are treated as unrelated Business income. As used in this section, "unrelated Business income" means gross income derived from any unrelated trade or Business within the meaning of Section 512 of the United States Internal Revenue Code of 1986, as amended.
 - b. Notwithstanding any other exemption granted to a Qualified Hospital Organization pursuant to this Tax Code, Construction Materials, as set forth in subsection (C)(4) of this section, used by contractors who perform contracts for the Qualified Hospital Organization are not exempt from taxation hereunder.
 - c. If the Purchase and Sale of any Tangible Personal Property or service would be exempt under this subsection but for the fact that the Tangible Personal Property or service is employed in an activity from which a portion of the proceeds is treated as unrelated Business income, the Chief Financial Officer is authorized to approve written formulas or methods (including formulas or methods of individual Qualified Hospital Organizations) as may be appropriate and reasonable to determine, based on the evidence available, the percentage of the proceeds from such activity that is not treated as unrelated Business income. This calculated percentage shall be the percentage of the cost of such property or service that will be exempt under this section. The Chief Financial Officer may condition approval of formulas and methods on receipt of such information as is reasonably deemed necessary for proper implementation of such formulas and methods.

E. Factory-Built Housing not Requiring a City Building Permit. For Factory-Built housing for which a City building permit (other than for utility hook-ups such as electrical, plumbing, natural

gas and the like) is not required, forty-eight percent (48%) of the Purchase Price on the initial Sale of Factory-Built Housing and the entire Purchase Price in any subsequent Sale.

F. Farms and Agricultural.

1. Farm Closeout Sales. All Farm Closeout Sales;
2. Fertilizer for use in the production of agricultural commodities, not including commercial fertilizer distributed primarily for nonfarm use, such as home gardens, lawns, shrubbery, flowers, golf courses, parks and cemeteries.
3. Livestock. Cattle, sheep, lambs, poultry, swine and goats; mares and stallions for breeding purposes; and live fish for stocking purposes in a commercial fishery or fish hatchery;
4. Livestock bedding. Straw and other bedding for use in the care of livestock or poultry;
5. Livestock feed. Feed for consumption by livestock, including horses, or poultry;
6. Seeds and orchard trees. Seeds Purchased by an Agricultural Producer, whether or not food-producing, and orchard trees;
7. Packaging and shipping materials. Packaging materials and shipping materials Purchased by Agricultural Producers for use in the Agricultural Producers' Business.

G. Food.

1. Food for Home Consumption. Food for Home Consumption, as defined in Section 3.01.230;
2. Food Purchased under Supplemental Nutrition Assistance Program. Food, as specified in 7 U.S.C. § 2012(k), as amended, Purchased with benefits pursuant to the federal Supplemental Nutrition Assistance Program;
3. Food Purchased with a WIC food instrument. Food, as specified in 42 U.S.C. § 1786, as amended, Purchased with a WIC food instrument pursuant to the federal special supplemental nutrition program for women, infants and children;
4. Articles furnished with food. Any article to be furnished by a Retailer to a Consumer or user, together with food, meals or beverages Purchased for human consumption, if: a separate charge is not made for the article to the Consumer or user; such article becomes the property of the Consumer or user, together with the food, meals or beverages Purchased; and a tax is paid on the Retail Sale as required by Section 3.01.420(G);
5. Containers or bags furnished by food Retailers. Any container or bag furnished by a Retailer of food, meals or beverages for human consumption to a Consumer or user for the purpose of packaging or bagging Tangible Personal Property Purchased at retail, if: a separate charge is not made for the container or bag to the Consumer or user; such container or bag becomes the property of the Consumer or user, together with the food, meals or beverages Purchased; and a tax is paid on the Retail Sale as required by Section 3.01.420(G);
6. Employee meals. Meals provided to employees of the places described in Section 3.01.420(G)(1) at no charge or at a reduced charge and which are considered as part of their salary, wages or income;
7. Food for Residents of a retirement community. Food, food products, beverages and meals provided for consumption by Residents on the premises of a retirement community, as defined by C.R.S. § 39-26-707(2.5);

H. Fuel and Power.

1. Gasoline and Special Fuel. Gasoline and Special Fuel subject to the State gasoline and Special Fuel tax under C.R.S. §§ 39-27-101, et seq.;
2. Electricity and other fuels. Electricity, coal, gas, fuel oil, coke or nuclear fuel for use in mining, refining, irrigation, construction, Telecommunication Services and street and railroad transportation services;

I. Lodging Services. Lodging Services provided to a Person, pursuant to a written agreement, for a period of thirty (30) consecutive days or more;

J. Manufacturing.

1. Testing, modification, inspection or similar for Manufacturing. Tangible Personal Property for testing, modification, inspection or similar type of activities in the City if the ultimate use of such property in Manufacturing or similar type of activities occurs outside the City, and if the test, modification or inspection period does not exceed ninety (90) days;
2. Manufacturing or compounding. Tangible Personal Property sold to or Purchased by a Person engaged in Manufacturing or compounding for Use, profit or Sale, which Tangible Personal Property meets all of the following conditions:
 - a. Is actually and factually transformed by the process of Manufacturing;
 - b. Becomes, by the Manufacturing processes, a necessary and recognizable ingredient component and constituent part of the finished product; and
 - c. Is, by its physical presence in the finished product, essential to the Use thereof in the hands of the ultimate Consumer; or
 - d. Such Tangible Personal 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 used for the purpose of producing or inducing a chemical or physical change in a food product or 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 that is intended to be sold ultimately at retail for human consumption.
3. Shipping and Packaging Materials. Commercial Shipping Materials used by or sold to a Person engaged in Manufacturing, compounding, wholesaling, jobbing, retailing, packaging, distributing or bottling for Sale, profit or Use, and Commercial Packaging Materials.

K. Medical.

1. Medical supplies. The following medical supplies for humans:
 - a. Wheelchairs and hospital beds;
 - b. Prescription eyeglasses and contact lenses;
 - c. Prescription hearing aids;
 - d. Urine- and blood-testing kits and materials;
 - e. Drugs or medical materials when furnished by a licensed medical or dental practitioner of the healing arts as part of professional services provided to a patient (the foregoing exemptions shall not include items used or consumed at a medical or dental office/facility in providing medical services, even though certain of those items might be packaged for single use by individual patients after which the item would be discarded, unless the item leaves the medical or dental office/facility with the patient);
 - f. The following items for treatment and testing relating to diabetic conditions:
 - i. insulin in all its forms dispensed pursuant to the direction of a licensed medical practitioner of the healing arts;
 - ii. glucose to be used for the treatment of insulin reactions;
 - iii. insulin measuring and injecting devices, including hypodermic syringes and needles;
 - g. Batteries, including replacement materials and parts, required for the operation and maintenance of the foregoing items.
2. Prescription drugs. Prescription drugs for Humans and Animals.
3. Prosthetic devices. Prosthetic Devices for Humans and Animals.
4. Oxygen concentrators with related accessories.

L. Mobile Communications. In accordance with the Mobile Telecommunications Sourcing Act, 4 U.S.C. §§ 116 to 126, as amended, on or after August 1, 2002, mobile Telecommunications Service provided to a customer whose place of primary use is outside the boundaries of the City.

- M. Newsprint, Printer's Ink and Newspapers. Newsprint and printer's ink for Use by publishers of Newspapers and commercial printers of Newspapers.
- N. Non-Residents. Tangible Personal Property, not including Construction Equipment or Construction Materials, brought into the City by a non-Resident: (i) for the non-Resident's own Storage, Use or consumption while temporarily within the City; or (ii) where the non-Resident acquires residency within 30 days from the date such Tangible Personal Property is brought into the City.
- O. Packaging Materials. Commercial Packaging Materials shall be deemed to be Wholesale Sales and shall be exempt.
- P. Payment of Other Municipal Tax. Tangible Personal Property, excluding Construction Materials, or Taxable Services if the transaction was previously subjected to a municipal sales or Use Tax lawfully imposed on the purchaser equal to or greater than the applicable City Sales Tax.
- Q. Tangible Personal Property outside the City.
 - 1. Deliveries outside the City. All Sales of Tangible Personal Property, made by a Retailer located within the City, where the Tangible Personal Property is delivered, and title thereto is transferred at the point of delivery, to a purchaser outside of the City.
 - 2. Samples transferred outside the City without consideration. The transfer of Tangible Personal Property for no consideration, other than the Purchase, Sale or promotion of the transferor's product, to a Retailer located outside the City for use outside the City in selling products normally sold at wholesale by the transferor.
- R. Transportation.
 - 1. Aircraft. Aircraft for Use in interstate commerce by an Airline Company;
 - 2. Automotive vehicles registered outside the City. Automotive vehicles as defined in this Tax Code that are registered and required by state law to be registered outside the City;
 - 3. Electric-powered Automotive Vehicles. Electric-powered automotive vehicles, including both the original and all subsequent Purchases of such vehicles, and batteries and controls required for the operation and maintenance of such vehicles.
- S. Vending. Individual items of Tangible Personal Property sold through vending machines at sixteen cents (\$0.16) or less or the price paid to operate vending machine games of chance where the acquisition of Tangible Personal Property is not guaranteed.
- T. Wholesale Sales. Tangible Personal Property Purchased in the City for resale, either in its original form or as an ingredient of a manufactured or compounded product, in the regular course of Business.

3.01.440 Provisions Related to Construction Equipment

- A. Equipment Declaration; Amendment.
 - 1. Prior to or on the date Construction Equipment is located within the boundaries of the City, the Taxpayer shall file with the City an equipment declaration form provided by the City for any Construction Equipment with a Purchase Price of two thousand five hundred dollars (\$2,500) or more. Such declaration shall state: the dates on which the Taxpayer anticipates that the equipment shall be located within, and removed from, the boundaries of the City; a description of each such anticipated piece of equipment; the actual or anticipated Purchase Price of each piece of equipment; and other information as reasonably deemed necessary by the City.
 - 2. The Taxpayer shall file an amended equipment declaration with the City reflecting any changes in the information contained in any previous equipment declaration no less than once every ninety (90) days after the equipment is brought into the boundaries of the City or, for equipment that is brought into the boundaries of the City for a project of less than ninety (90) days' duration, no later than ten (10) days after substantial completion of such project.
- B. Taxation.

1. Construction Equipment located within the boundaries of the City for a period of thirty (30) consecutive days or fewer shall be subject to the City's Use Tax, the amount of which is calculated as follows: the Purchase Price of the equipment shall be multiplied by one-twelfth ($\frac{1}{12}$), and the resulting product shall be multiplied by the amount of the Use Tax imposed pursuant to Section 3.01.410.
2. Construction Equipment located within the boundaries of the City for a period of more than thirty (30) consecutive days, or equipment for which a declaration has not been properly filed, shall be subject to Use Tax on the full Price of such equipment.
3. Where the provisions of subsection (B)(1) above are employed, the provisions of section 3.01.430(P) shall apply.

3.01.450 Provisions Related to Construction Materials

A. Construction Work Requiring a Building Permit. Any Contractor who Purchases or acquires Construction Materials for work to be performed on real property located within the City and the owner of such real property shall be jointly and severally responsible for paying the Tax set out in this Tax Code.

1. The owner or Contractor shall remit a deposit to the City prior to the issuance of any building permit. For purposes of this subsection, Use Tax shall be calculated on fifty (50%) percent of the total valuation of the construction contract. Upon payment of such deposit, the City shall issue a Tax receipt identifying the address of the permitted project and the City building permit number.
2. The building permit must be presented when Construction Materials are Purchased, whether inside or outside of the City, for the Purchase to be exempt from Tax hereunder. Credit will not be given for taxes paid on Purchases of Construction Materials in another municipality.
3. Upon demand made by the Finance Department, the owner and/or Contractor hired to do the above-stated work, or any portion thereof, to submit to the City, within one hundred eighty (180) days after the issuance of a Certificate of Occupancy, the final costs of the project, including any supporting documentation reasonably required by the City, including, but not limited to, a project cost report, an application and certificate for payment, and final bill for the project. Project cost reports and other documentation shall be submitted on forms approved by the Finance Department and shall state the actual amounts of any Purchases of Construction Materials for such work, including materials Purchased by the owner.
 - a. The owner and/or Contractor shall remit to the City any Use Taxes and City fees due in excess of Use Taxes and City fees previously paid.
 - b. In the event the City determines that the deposit remitted by the owner and/or Contractor pursuant to this subsection A exceeds the amount of Use Taxes and City fees due, the City will refund the amount of such excess to the Person who paid the initial Use Tax deposit.
4. The owner and/or Contractor shall be held liable for the payment of all Taxes on such Construction Materials and the amount of any Use Tax due and not paid shall constitute a lien upon the real property benefited by the use of such Construction Materials.
5. The Finance Department, in its discretion, may choose to perform an Audit of the project pursuant to Part 6 of this Tax Code. In such event, the owner or contractor shall comply with the applicable requirements of such Part 6.
6. The owner and/or Contractor shall keep and preserve all invoices, receipts and statements, along with a summary sheet, showing such Purchases of Construction Materials and supplies and Tangible Personal Property for a period of three (3) years after the issuance of Certificate of Occupancy.

B. Construction Work Not Requiring a Building Permit. Any Contractor who Purchases or acquires Construction Materials for work to be performed on real property located within the

City for which a building permit is not required is responsible for paying the Tax set out in this Tax Code.

- a. Time and materials billing. When a Contractor bills or invoices its customer on a time and materials basis, the Contractor shall collect Sales Tax on the Construction Materials from the Purchaser and remit such Sales Tax to the City.
- b. Lump sum billing. When a Contractor bills or invoices its customer on lump sum basis, the Contractor shall pay Sales Tax on the Construction Materials at the time the Contractor acquires the Construction Materials.
- c. Failure to pay or collect and remit Sales Tax. In the event the Contractor fails to pay or collect and remit the Sales Tax as set forth in this subsection B, the Contractor shall be liable for payment to the City of Use Tax on such Construction Materials.

PART 5. COLLECTION AND ENFORCEMENT; REFUNDS

3.01.510 Recovery of Taxes; Penalty and Interest

A. Deficiency; Notice.

1. Estimate. When a Person fails to make a Return in payment of Sales or Use Tax within the timeframe required under this Tax Code, the Finance Department shall make an estimate, based upon such information as may be available, of the amount of taxes due for the period for which the tax is deficient and shall add thereto the amount of fees, penalties and interest calculated as set forth in subsection B below.
2. Assessment. When the Finance Department determines through an audit that the amount of taxes paid is less than the amount owed hereunder, the Finance Department may make an assessment as set forth in this Tax Code.
3. Notice. Promptly after making an estimate or assessment hereunder, the Finance Department shall deliver to the Taxpayer a written notice of Deficiency with an estimate or assessment of the amount of taxes, penalty and interest due, the time limit to file a protest to such notice, and that the Taxpayer has the right to elect a hearing on the Deficiency. The Finance Department shall send such notice to the last address of the Taxpayer on file with the Finance Department. Not more than thirty (30) days after such notice is sent, the Taxpayer may petition the Chief Financial Officer for a hearing in the manner set forth in Section 3.01.710. The Taxpayer may appeal any adverse decision from such hearing as provided for in this Tax Code.

B. Penalties and Interest.

1. Any Deficiency without intent to defraud shall be a debt to the City and there shall be added thereto the greater of an administrative fee of fifteen dollars (\$15) or a penalty equal to ten percent (10%) of the deficient taxes, plus interest on such delinquent or deficient taxes at the rate established by the State Commissioner of Banking pursuant to C.R.S. § 39-21-110.5 plus one-half percent (0.5%) per month, not exceeding one and one-half percent (1.5%) per month, from the date when due.
2. If any part of a Deficiency is the result of fraud with the intent to evade the tax, a penalty of one hundred percent (100%) of the total amount of the Deficiency shall be added to the amount due, and an additional three percent (3%) per month on such amount shall be added from the date the Return was due until paid.
3. If any portion of a tax is satisfied by credit of an overpayment, no interest shall be imposed hereunder Tax Code on the portion of the tax so satisfied for any period during which, if the credit had not been made, interest would have been allowed with respect to such overpayment.
4. Interest and penalties imposed hereunder may be assessed and collected at any time after the tax, to which such interest and penalties relate, is due and shall be assessed, collected and paid, upon notice and demand, as set forth in this Tax Code.

C. Extension and Waiver.

1. Extensions. The Chief Financial Officer is hereby authorized to grant, for good cause shown, extensions of time to make payment of taxes due hereunder; provided, however, that interest and penalties shall continue to accrue on such unpaid taxes until all such taxes, interest and penalties are paid in full.
2. Waivers. The Chief Financial Officer is hereby authorized to waive, for good cause shown, any penalty assessed as provided in this Tax Code and any interest imposed in excess of the rate established by the State Commissioner of Banking, which excess interest is hereby deemed to be a penalty.

D. Insufficient Funds – Fees; Alternate Payment. If a Person pays any tax imposed hereunder by a check for which there are insufficient funds, the Finance Department may assess a fee, and the Chief Financial Officer may further require such Taxpayer to make all current and future tax payments by certified funds, cashier's check or cash.

E. Lien – Notice; Warrant and Seizure.

1. In the event of any Deficiency, if the amount of taxes, penalty or interest imposed by this Tax Code is not paid within thirty (30) days after the same are due, the Finance Department may issue a notice of lien, setting forth the name of the Taxpayer; the amount of the tax, penalties and interest owing; the date of the accrual thereof; and that the City claims a first and prior lien therefor on the real and Tangible Personal Property of the Taxpayer, except as to preexisting claims or liens of a bona fide mortgagee, pledgee, judgment creditor or purchaser whose rights have attached prior to the filing of the notice of lien as provided in this section on property of the Taxpayer; provided, however, that the goods, stock in trade, and Business fixtures of such Taxpayer shall be subject to such lien.
2. The notice of lien shall be verified by the Chief Financial Officer, or any duly qualified agent of the Chief Financial Officer whose duties are the collection of such tax, and may be filed in the office of the county clerk and recorder in which the Taxpayer owns real or Tangible Personal Property. The filing of such notice of lien shall create a lien on such property in that county and constitute notice thereof.
3. Any Person who takes any stock of goods or Business fixtures of, or used by, any seller under lease, title-retaining contract or other contract arrangement, by Purchase, foreclosure Sale or otherwise, takes the same subject to the lien for any deficient Sales Taxes owed by such seller and shall be liable for the payment of all delinquent or deficient Sales Taxes of such seller, not, however, exceeding the value of property so taken or acquired.

F. Business Seizure – Tax Sale.

1. After the Finance Department has filed a notice of lien as authorized in subsection (E) of this section, or concurrently therewith, or at any time when taxes due are unpaid, whether or not such notice has been filed, the Chief Financial Officer may issue a warrant directed to any duly authorized revenue collector or the sheriff of the county commanding such Person to seize and sell the real and personal property of the Taxpayer to pay the amount due, together with interest, penalties and Collection Costs, as may be provided by law, subject to valid preexisting claims or liens.
2. The revenue collector or sheriff commanded to seize and sell the real and personal property of the Taxpayer shall forthwith sell such property or any other property used by such Taxpayer in conducting its retail Business, except property made exempt from the tax lien pursuant to Section 3.01.520, to pay the amount due. Such property shall be sold in such manner and method as determined by the Chief Financial Officer, and the remedies of garnishment shall apply. The sheriff shall be entitled to such fees in executing such warrants as are allowed by law for similar services.

G. Bankruptcy, Receivership, Assignment.

1. Whenever the Business or property of any Taxpayer is placed in receivership, bankruptcy or assignment for the benefit of creditors, or seized under distraint for property taxes, then all City taxes, penalties and interest imposed under this Tax Code, and for which such Taxpayer is in any way liable under the requirements of this Tax Code, shall be a prior and preferred claim in favor of the City against all the property of such Taxpayer, except as to preexisting claims or liens of a bona fide mortgagee, pledgee, judgment creditor or purchaser whose rights shall have attached prior to the filing of the notice as provided in Section 3.01.510(E) on the property of the Taxpayer, but the goods, stock in trade and Business fixtures of such Taxpayer shall not be excepted from the City's lien.
2. No sheriff, receiver, assignee or other officer shall sell the property of any Person subject to this Tax Code under process or order of any court without first ascertaining from the Finance Department the amount of any taxes due and payable under this Tax Code, and if any such taxes are due, owing or unpaid, it is the duty of such officer to first pay the amount of such taxes out of the proceeds of the Sale before making payment of any moneys to any judgment creditor or other claims of whatsoever kind or nature, except the costs of the proceedings and other preexisting claims or liens as provided in this section.

H. Additional Remedies.

1. Notwithstanding the foregoing, the Chief Financial Officer may treat any such taxes, penalties or interest due and unpaid as a debt due the City from the Taxpayer. The Taxpayer's Return, or any estimate or assessment made by the Finance Department, as provided in this Tax Code, shall be prima facie proof of the amount due.
2. To recover such taxes, penalties or interest due, the Chief Financial Officer may bring an action in attachment, and a writ of attachment may be issued to the sheriff. In any such proceedings, no bond shall be required of the City, nor shall any sheriff require of the City an indemnifying bond for executing the writ of attachment or writ of execution upon any judgment entered in such proceedings. The Chief Financial Officer may prosecute appeals in such cases without the necessity of providing bond therefor. When requested by the Chief Financial Officer, the City Attorney or designee shall commence action for the recovery of taxes due under this Tax Code, and this remedy shall be in addition to all other existing remedies or remedies provided in this Tax Code.
3. The Chief Financial Officer may issue summons and complaints for violations of this Tax Code as set forth in the Lakewood Municipal Code.

3.01.520 Tax Lien Imposed; Exemptions

A. Lien.

1. Sales Tax. The Sales Tax imposed hereunder shall be a first and prior lien upon the Tangible Personal Property and Business fixtures of, or used by, any Retailer under lease, title retaining contract or other contract arrangement, including stock of goods sold or for Sale in the ordinary course of Business, and shall take precedence over other liens or claims of any kind or nature of whatsoever.
2. Use Tax. The Use Tax imposed by hereunder shall be a first and prior lien on the Tangible Personal Property stored, used or consumed, subject only to any valid mortgage or other liens of record on and prior to the recording of notice as set forth in Section 3.01.510(E), which lien shall have precedence over all other liens of any kind or nature whatsoever, except as to preexisting claims or liens of a bona fide mortgagee, pledgee, judgment creditor or purchaser whose rights have attached prior to the filing of the notice on such Tangible Personal Property.
3. Release. Any lien for taxes as shown on the records of the county clerks and recorders as provided in this section, upon payment of all taxes, penalties, and interest covered thereby shall be released by the Chief Financial Officer in the same manner as mortgages and judgments are released.

B. Exemption – Certain Leases.

1. General. The real or personal property of an owner who has made a bona fide lease to a Retailer, or to any Person owing a Use Tax, shall be exempt from the lien created in subsection (A) of this section if: (a) such property can reasonably be identified from the lease description; and (b) the lessee is given no right to become the owner of the leased property. This exemption shall be effective from the date of the execution of the lease if the lease is recorded with the county clerk and recorder of the county where the property is located or if a memorandum of the lease is filed with the Finance Department within ten (10) days after the execution of the lease.
 2. Automotive Vehicles. Automotive vehicles properly registered in the City, showing a lessor as the owner thereof, are exempt from the lien created in subsection (A) of this section, except that such lien shall apply to the extent the lessee has an earned reserve, allowance for depreciation not to exceed fair market value, or similar interest that is or may be credited to the lessee.
 3. Exception – Certain Relationships. Where the lessor and the lessee are blood relatives or relatives by law or have twenty-five percent (25%) or more common ownership in the Taxpayer, a lease between such lessee and such lessor shall not be exempt from the lien created in subsection (A) of this section.
 4. Filing Frequency. Any Retailer in possession of property under the terms of a lease, which property is exempt from the tax lien as provided in this section, may be required by the Chief Financial Officer to remit taxes collected at more frequent intervals than monthly, but not more frequently than semimonthly, or may be required to furnish security for the proper payment of taxes whenever the collection of taxes appears to be in jeopardy.
- C. Adjudication of Lien – City as Defendant. In any action affecting the title to real estate or the ownership or rights to possession of personal property, the City may be made a party defendant for the purpose of obtaining an adjudication or determination of its lien upon the property involved therein. In any such action, service of summons upon the City in accordance with the Colorado Rules of Civil Procedure shall be required.

3.01.530 Sale/Purchase of Business

- A. Any Taxpayer that sells out its Business or stock of goods or quits Business (hereinafter, the “seller”) shall be required to make a Return, as required in this Tax Code, within ten (10) days after the date such seller sold its Business or stock of goods or quit Business. The purchaser of any such Business shall withhold sufficient Purchase money to cover the amount of any taxes due and unpaid until such time as the seller or the purchaser produces a receipt from the Finance Department showing that the taxes have been paid or a certificate that no taxes are due.
- B. If a purchaser fails to withhold the Purchase money as provided in subsection (A) of this section, and the taxes are due and unpaid after the ten (10) -day period allowed, such purchaser, as well as the seller, shall be liable for the payment of the taxes unpaid by the seller.

3.01.540 Refunds/Credits

- A. Bases for Refunds/Credits. The City shall make a refund or allow a credit for City sales or Use Tax paid only in the event of one of the following:
 1. Tax, fees, penalties or interest were overpaid or paid when not due; or
 2. Tax was paid on a Purchase made by or on behalf of a Person entitled to an exemption under this Tax Code.
- B. Conditions. The City will approve a refund request or give a credit only upon satisfaction of the following conditions, as applicable:
 1. An application for refund or credit is made upon the forms prescribed therefor;
 2. The application for refund or credit is made within the Limitations Period set forth in section 3.01.560;

3. The application for refund or credit is made by the Person that Purchased the goods or services and paid the tax thereon as shown on the invoice of the Sale thereof or other documentation satisfactory to the City;
4. The application for refund or credit is supported by the original paid invoice or Sales receipt issued by the seller;
5. Neither a refund nor a credit has been previously granted on the goods or services for which the refund or credit is claimed;
6. The refund or credit applied for is not in an amount greater than the tax paid.

The burden of proving that a transaction for which a refund or credit is claimed is exempt from taxation under this Tax Code shall be on the Person making such claim, under such reasonable requirements of proof as set forth in the Sales and Use Tax Regulations prescribed therefor.

C. Procedure.

1. Upon receipt of an application for a refund or credit, the Finance Department shall examine the application with due speed and shall notify the claimant of a decision thereon in writing.
2. An aggrieved claimant, within thirty (30) days after such decision is mailed to it, may petition the Chief Financial Officer for a local hearing on the claim in the manner provided in Section 3.01.710 and may appeal such decision as set forth in Part 7 of this Tax Code.

D. No Assignment. The right of any Person to a refund under this Tax Code shall not be assignable.

E. False Statements. Any Person who makes any false statement in connection with an application for a refund or credit under this section is guilty of a violation of this Tax Code and shall be punished in the manner provided by state law. If any Person is convicted under the provisions of this section, such conviction shall be prima facie evidence that all refunds received by such Person during the current year were obtained unlawfully, and the Chief Financial Officer is empowered to bring appropriate action for recovery of such refunds. A brief summary statement of the above-described penalties shall be printed on each form application for a refund.

F. Certain Refund Claims.

1. Claims for tax moneys paid in error shall be processed for refund in accordance with the Sales and Use Tax Regulations, with the following exceptions:
 - a. The Finance Department may first apply the proceeds from any claim for refund to any preexisting tax deficiencies or liabilities existing against the claimant.
 - b. In the event excess payment of tax moneys in any period is discovered by an Audit, and deficiencies are discovered and assessed against the Taxpayer as a result of such Audit, then such excess moneys may be first applied against such deficiencies outstanding to the date of the assessment but shall not be applied to any future tax liabilities.
2. In accordance with the Mobile Telecommunications Sourcing Act, all refunds for charges of mobile Telecommunications Service shall be made in accordance with the Sales and Use Tax Regulations adopted in conformity with this Tax Code.

3.01.550 Confidential Nature of Returns

- A. Except in accordance with judicial order or as otherwise provided herein, the City Manager, the Chief Financial Officer, and their agents, clerks and employees shall not divulge any information gained from any Return filed under the provisions of this Tax Code.
- B. The City officials charged with the custody of Returns filed pursuant to this Tax Code shall not be required to produce such Returns or evidence of any matters contained therein in any action or proceeding in any court, except on behalf of the Chief Financial Officer in an action under the provisions of this Tax Code to which the Chief Financial Officer is a party, or on behalf of any party to an action or proceeding under the provisions of this Tax Code or to punish a violator thereof or pursuant to any judicial order in which event the court may require

the production of and may admit in evidence so much of such Returns or of the facts shown thereby as are pertinent to the action or proceeding and no more.

- C. No provision of this section shall be construed to prohibit the delivery to a Taxpayer or to its duly authorized representative of a copy of any Return or report filed in connection with its tax, nor to prohibit the publication of statistics so classified as to prevent the identification of particular reports or Returns and the information contained therein, nor to prohibit the inspection of the City Attorney or any other legal representative of the City of the report or Return of any Taxpayer who shall bring an action to set aside or review the tax based thereon or against whom an action or proceeding is contemplated or has been instituted under this Tax Code.
- D. The provisions of this section shall not preclude the City Manager or the Chief Financial Officer, or any of their respective agents, clerks or employees, from divulging any information gained from any Return or audit to the federal government, the State, the Colorado Department of Revenue, the City or any other municipality, the City Attorney, the City Manager or the Chief Financial Officer, nor shall the City Manager, the Chief Financial Officer or their respective agents, clerks or employees be liable to any Person for such disclosure made for the purpose of computing or collecting the tax due and owing from any Person, or for the purpose of verifying compliance with this Tax Code or for the purpose of investigating any criminal or illegal activity.
- E. Any City officer or employee, or any agent thereof, who shall divulge any information classified by this Tax Code as confidential in any manner except in accordance with proper judicial order or as otherwise provided herein or by other law shall be guilty of a violation of this Tax Code and shall be punished in the manner provided by state law.

3.01.560 Limitations Period

- A. Limitations Period Established; Automatic Tolling. The "Limitations Period" under this Tax Code shall be three (3) years.
 - 1. Except as expressly set forth in this Tax Code, once the Limitations Period has run, no Person shall engage in any of the following actions:
 - a. initiating the recovery of unpaid taxes, interest or penalties, which shall include:
 - i. engaging an Audit pursuant to Part VI hereof;
 - ii. issuing a notice of Deficiency; or
 - iii. issuing a distraint warrant.
 - b. applying for a refund hereunder; or
 - c. seeking an intercity claim for recovery.
 - 2. Once any action identified in subsection 1 above has been initiated, the Limitations Period shall be tolled, and shall not continue to run, until the action, including any final payment flowing therefrom, has been completed or is abandoned. No tolling of refunds or intercity claims shall be effective until receipt by the City of an application therefor that is complete in every detail.
- B. Application.
 - 1. Return Filed; Underpayment. Except as otherwise set forth herein, the Limitations Period for each of the following actions shall begin to run on the date upon which the respective tax is or was payable:
 - a. The assessment of taxes for any period, including the imposition of interest and/or penalties thereon;
 - b. The filing of any notice of lien;
 - c. The issuance of any distraint warrant; and
 - d. Any suit or other action for collection of such tax, interest and penalties;
 - 2. Construction Materials. The Limitations Period for a construction project for which the City has issued a building permit or construction permit shall begin on the date of issuance of

- a certificate of occupancy for the construction project or the date of the City's final inspection of the construction project, whichever occurs later.
3. Refunds/Credits. The Limitations Period for refunds and credits under section 3.01.540 shall begin to run upon the date the taxes for which the refund or credit is claimed became due and payable.
 4. Intercity Claims for Recovery. Subject to the provisions of C.R.S. 29-2-106.1(5), the Limitations Period for intercity claims shall begin upon payment to the City of the tax or taxes at issue.
- C. Exceptions. The Limitations Period shall not apply or run under any of the following circumstances:
1. Return Not Filed. When a Person, whether or not licensed, fails to file a Return. In such instance, the taxes due, together with interest and penalties thereon, may be assessed, and proceedings for the collection of such taxes may be commenced, at any time.
 2. False or Fraudulent Return. Notwithstanding anything herein to the contrary, when a Person files a false or fraudulent return.
- D. Extension. Prior to the expiration of a limitations period, the Taxpayer and the City may agree in writing to an extension thereof, and the period so agreed upon may be extended by subsequent agreements in writing.

3.01.570 Excess Tax; Remittance

If any Retailer, during any reporting period, collects as a tax an amount in excess of the tax rate imposed under section 3.01.410 of its total taxable Sales, then it shall remit to the Chief Financial Officer the full net amount of the tax imposed in this Tax Code and also such excess amount. The retention by the Retailer of any excess amount of tax collections the tax rate imposed under section 3.01.410 on the total taxable Sales of such Retailer or the intentional failure to remit punctually to the Finance Department the full amount required to be remitted by the provisions of this Tax Code is declared to be a violation of this Tax Code and shall be recovered, together with interest, penalties and costs, as provided in Section 3.01.510.

3.01.580 Other Remedies

- A. No provision of this Tax Code shall preclude the City from using any other lawful penalties or other remedies applicable to the collection of Sales or Use Taxes. If the City must use other lawful penalties or other remedies for the collection of the Sales or Use Taxes, the City shall be entitled to recover its attorney fees, costs of litigation and any other legal fees associated with any legal action undertaken to collect the Sales and/or Use Taxes due. The Chief Financial Officer is authorized to make a compromise settlement of any claim for Sales or Use Tax due under this Tax Code.
- B. The Chief Financial Officer is authorized to issue subpoenas to require the presence of Persons and the production of papers, books and records necessary to the determination of any matter the Chief Financial Officer is authorized to determine. It is unlawful for any Person to fail to comply with any subpoena issued by the Chief Financial Officer.
- C. A subpoena shall be served in the same manner as a subpoena issued by the District Court of the state. Upon failure of any witness to comply with such subpoena, the City Attorney shall, at the direction of the Chief Financial Officer:
 1. Petition any judge of the Municipal Court of the City, setting forth that due notice has been given of the time and place of attendance of the witness and the service of the subpoena, that the court after hearing evidence in support of or contrary to the petition, enter its order compelling the witness to attend and testify or produce books, records or other evidence, under penalty of punishment for contempt in case of willful failure to comply with such order of court; or
 2. Petition the District Court in and for the county, setting forth that due notice has been given of the time and place of attendance of the witness and the service of the subpoena, that

the court after hearing evidence in support of or contrary to the petition, enter its order as in other civil actions, compelling the witness to attend and testify or produce books, records or other evidence, under penalty of punishment for contempt in case of willful failure to comply with such order of court.

3.01.590 Jeopardy Assessment

- A. Jeopardy Determination. If, at any time, the Chief Financial Officer determines that collection of any City tax, whether or not previously assessed, will be jeopardized for any reason, the Chief Financial Officer may, in his or her discretion, declare the taxable period immediately terminated, determine the tax, and issue a notice of lien and notice of Deficiency, and demand immediate payment thereof.
- B. Collection. Upon the Chief Financial Officer's jeopardy determination, the tax, along with any interest and penalties thereon, shall be due and payable forthwith, and the Chief Financial Officer may immediately proceed to collect such tax as provided in this Tax Code.
- C. Security. Collection of the tax under this section may be stayed if the Taxpayer provides security for payment satisfactory to the Chief Financial Officer.

PART 6. AUDIT AND ASSESSMENT

3.01.610 Audit of Records

The Finance Department may, for the purpose of ascertaining the total correct tax liability from any Person Engaged in Business in the City, conduct an "Audit" by examining all books, accounts and records of such Person to determine the Person's tax liability to the City and/or the amount of any credit due to the Person. In lieu of a full audit of all such books, accounts and records, the Chief Financial Officer, in his or her sole and absolute discretion, may authorize the use of a test-period Audit or other appropriate sampling techniques to compute the tax liability of any Person under Audit.

3.01.620 Duty to Keep Records; Availability

It is the duty of every Person liable to the City for any tax imposed under this Tax Code to keep and preserve suitable records and make them available for examination and Audit at any time, as provided in Section 3.01.260.

3.01.630 Engagement; Time and Location

- A. Engagement Letter. The Finance Department shall engage an Audit by sending notice to the Taxpayer in the form of an "Audit Engagement Letter." The Audit Engagement Letter shall:
 - 1. Notify the Taxpayer of the Audit;
 - 2. Provide detailed instructions about the audit process, including the nature of the documents, papers and records to be produced; and
 - 3. Notify the Taxpayer that the Finance Department and the Taxpayer will attempt to come to a mutual agreement on one or more dates and times for the Audit.
- B. Time and Location.
 - 1. In the event the parties are unable to agree on one or more dates and times for the Audit, the Chief Financial Officer shall designate the time and location of the Audit.
 - 2. Any Person under Audit may request to have the Audit conducted at a location outside of the Denver metropolitan area. If the Chief Financial Officer, in the exercise of his/her reasonable discretion, grants such request, the Person shall pay all reasonable costs and expenses incurred by the Finance Department to conduct the Audit at such location.

3.01.640 Subpoena to Obtain Records

If any Person refuses to voluntarily produce any of the foregoing information, the Chief Financial Officer is authorized to issue subpoenas to require the presence of Persons and the production of papers, books and records, as provided in section 3.01.580.

3.01.650 Exempt Organizations

Any exempt organization claiming exemption under the provisions of this Title is subject to audit in the same manner as any other Person Engaged in Business in the City.

3.01.660 Coordinated Audit

Taxpayers licensed with the City under this Tax Code and holding a similar Sales Tax license in at least four (4) other Colorado municipalities that administer their own Sales Tax collection, may request a coordinated audit as provided for in the City Sales and Use Tax Regulations.

3.01.670 Estimated Audit Assessment

If the Finance Department is unable to audit the records of a Person due to the Person's failure or refusal to provide sufficient records necessary to complete the audit, the Chief Financial Officer shall make an estimate of tax due based upon or reasonably inferred from such information as may be available and shall issue to the Person a notice of Deficiency based on such estimate.

PART 7. HEARINGS AND APPEALS

3.01.710 Local Hearing

A. Request for Hearing. If any Taxpayer contests any Deficiency notice or denial of refund, the Taxpayer may make a written request to the Chief Financial Officer for a hearing and a correction of the amount of the tax so assessed or refund requested. If protesting any amount in a Deficiency notice, the Taxpayer shall pay any unprotested tax, penalty and interest, in full, within the time period specified in the Deficiency notice.

1. Timing of Request. The request for hearing must be postmarked, emailed or hand-delivered to the Finance Department within thirty (30) days after such Deficiency notice or denial of refund is sent to the Taxpayer.
2. Content of Request. Such application for hearing shall contain the following information:
 - a. The Taxpayer's name, address and account number;
 - b. The taxable period(s) involved;
 - c. The type and amount of tax in dispute;
 - d. An itemized schedule of the findings with which the Taxpayer disagrees; and
 - e. A summary statement of the grounds upon which the Taxpayer relies for the purpose of showing the tax is not due.
3. Time and Location of Hearing. If an administrative hearing is granted, the Chief Financial Officer shall notify the Taxpayer in writing, within one hundred fifty (150) days after receipt of the Taxpayer's request for hearing, of the time and location for the hearing; provided, however, that the City and the Taxpayer shall have the option to extend the hearing date by mutual written agreement.

B. Hearing.

1. A hearing officer chosen by the City shall hold a hearing on the merits of the application in accordance with the provisions hereof.
2. The hearing shall be informal in nature, and no transcript, rules of evidence or filing of briefs shall be required. However, the Taxpayer may elect to submit a brief, in which case the City may also submit a brief. Any brief submitted by the Taxpayer shall be submitted to the hearing officer not less than thirty (30) days prior to the date set for the hearing.

Any brief filed by the City in response shall be submitted to the hearing officer not less than fifteen (15) days prior to the date set for the hearing.

3. At the request of the Taxpayer and upon the agreement by the Chief Financial Officer, the hearing officer may hold the hearing solely on the briefs filed by the parties.

C. Decision.

1. The hearing officer shall make such decision in the matter as is just and lawful and shall furnish a copy of such decision to both the Taxpayer and the Chief Financial Officer in the form of a written order. The hearing shall be held and the order rendered within one hundred and eighty (180) days after the City's receipt of the Taxpayer's request for a hearing.
2. The order shall state the grounds for the hearing officer's decision and shall set forth the amount of the claim for refund that is denied, and/or the amount of taxes found still due and owing, if any.
3. The hearing officer's decision shall become final, and all amounts due shall be paid to the City, including accrued interest and penalties, within thirty (30) days after the date of the order, unless an appeal is timely filed pursuant to Section 3.01.620.
4. If the hearing officer finds in favor of the Taxpayer, all interest and penalties imposed or assessed upon the amounts to be refunded or the taxes found not to be due shall be eliminated. Any interest and/or penalties assessed or imposed upon taxes due shall continue to accrue until such amounts are paid in full.

D. Exhaustion of Local Remedies.

1. Failure to strictly comply with the requirements of subsections (A)(1) and (A)(2) of this section shall result in denial of the request for hearing and shall constitute a failure to exhaust local remedies. In such event, the City's shall respond to the request for hearing in writing, setting forth the reasons for denial.
2. Failure by the Taxpayer to appear at the hearing shall constitute a failure by the Taxpayer to exhaust local remedies.
3. If a Taxpayer protested a notice of final determination, assessment and demand for payment, but elects to pay the assessment in lieu of proceeding to a protest hearing, such Taxpayer shall be deemed to have exhausted local remedies and cannot subsequently submit an application for a refund of amounts paid under the notice of final determination.
4. Conclusion of the hearing provided for herein shall constitute exhaustion of local remedies for purposes of C.R.S. § 29-2-106.1, as amended.

3.01.720 Appeal

Upon exhaustion of local remedies, the Taxpayer may appeal in accordance with the provisions of C.R.S. § 29-2-106.1, as amended, or Colorado Rules of Civil Procedure 106, as amended.

Proposed Rules and Regulations
Sales and Use Tax

PROPOSED RULES AND REGULATIONS

SALES AND USE TAX

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PART 4. SALES AND USE TAX

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Unless otherwise noted, all references herein to Chapter 3.01 or to any Section or subsection shall refer to Chapter 3.01 of the City of Lakewood Municipal Code.

PART 1. GENERAL PROVISIONS

Regulation 3.01.160 Intercity Claims for Recovery

The intent of this section is to streamline and standardize procedures related to situations where tax has been remitted to the incorrect municipality. It is not intended to reduce or eliminate the responsibilities of the taxpayer or retailer to correctly pay, collect, and remit sales and use taxes to the City.

- (1) Defined. As used herein, "Claim for Recovery" means a claim for reimbursement of sales and use taxes paid to the wrong taxing jurisdiction.
- (2) Limitation Period. The period subject to a Claim for Recovery shall be limited to the thirty-six (36) month period prior to the date the municipality that was wrongly paid the tax receives the Claim for Recovery, subject to the provisions of C.R.S. 29-2-106.1(5).
- (3) Claims for Recovery made by the City.
 - (a) When it is determined by the Chief Financial Officer that sales and use tax owed to the City has been reported and paid to another municipality, the City shall promptly notify the retailer that taxes are being improperly collected and remitted, and that as of the date of the notice the retailer must cease improper tax collections and remittances.
 - (b) The City may make a written Claim for Recovery directly to the municipality that received tax and/or penalty and interest owed to the City, or, in the alternative, may initiate procedures for collection of the tax from the taxpayer or retailer. The decision to make a Claim for a Recovery lies in the sole discretion of the City. Any Claim for Recovery shall include a properly executed release of claim from the taxpayer and/or retailer releasing its claim to the taxes paid to the wrong municipality, evidence to substantiate the Claim, and a request that the municipality approve or deny in whole or in part, the claim within ninety (90) days of its receipt. The municipality to which the City submits a Claim for Recovery may, for good cause, request an extension of time to investigate the Claim, and approval of such extension by the City shall not be unreasonably withheld.
 - (c) A municipality may deny a Claim on the grounds that it has previously paid a Claim for Recovery arising out of an audit of the same taxpayer. In such event, the City shall seek recovery from such taxpayer, which shall be responsible for paying or remitting the tax to the City and seeking a refund from the municipality to which the taxpayer incorrectly paid or remitted the tax.

- (4) Claims for Recovery made against the City.

Within ninety (90) days after the City's receipt of a Claim for Recovery, the City shall verify to its satisfaction whether or not all or a portion of the tax claimed was improperly received and shall notify the municipality submitting the claim in writing that the Claim is either approved or denied in whole or in part, including the reasons for the decision. If the Claim is approved in whole or in part, the City shall remit the undisputed amount to the municipality submitting the claim within thirty (30) days of approval. If a Claim is submitted jointly by a municipality and a retailer or taxpayer, the check shall be made to the parties jointly. Denial of a Claim for

Recovery may be made only for good cause, including that the City has previously paid a Claim for Recovery arising out of an audit of the same taxpayer conducted by the municipality submitting the claim.

PART 2. ADMINISTRATIVE

Regulation 3.01.230 Definitions: Purchase or Sale

"Purchase" or "Sale" shall mean any transaction whereby a person, in exchange for any consideration, such as money or its equivalent, property, the rendering of a service, or any promise thereof: (i) transfers or agrees to transfer all or part of its interest, or the interest of any other for whom it is acting as an agent, in any tangible personal property to any other person; or (ii) performs or furnishes, or agrees to perform or furnish, or contracts to have another perform or furnish, any service taxable under Chapter 3.01 for any other person. Whether the transaction is absolute or conditional, it shall be considered a sale if it transfers from a seller to a buyer the ownership or possession of tangible personal property or specified services.

A bona fide gift of tangible personal property is not a "sale."

Regulation 3.01.230 Definitions: Tangible Personal Property

"Tangible personal property" embraces all goods, wares, merchandise, products and commodities, and all tangible or corporeal things and substances, including "digital products," which are dealt in and capable of being possessed and exchanged.

"Digital products" include, but are not limited to, digital images, digital audio-visual works, digital audio works and digital books. "Digital audio-visual works" include, but are not limited to, television programs, movies, video games and any similar works.

"Tangible personal property" does not include any of the following:

- (1) Real property, such as land and buildings;
- (2) Tangible personal property that loses its identity when it becomes an integral and inseparable part of the realty, irremovable without substantial damage to the premises. Property severed from real estate becomes tangible personal property.
- (3) Intangible personal property constituting mere rights of action and having no intrinsic value, such as most contracts (not including maintenance contracts and warranty agreements), deeds, mortgages, stocks, bonds, certificates of deposit or certificates of membership, or redeemable United States postage or revenue stamps sold for postage or revenue purposes.
- (4) Water in pipes, conduits, ditches or reservoirs, but does include water in bottles, wagons, tanks or other containers.

"Taxable sales" means gross sales less any exemptions and deductions during any given reporting period.

(1) "Taxable sales" excludes:

- (a) The sales price of any property returned during the period after the sales price has been included in taxable sales, but only after the full sales price including the tax has been refunded by cash or credit;
- (b) Sales exempt from the sales tax;
- (c) The fair market value of property taken in exchange by a retailer for resale in the usual course of its business;
- (d) Deposits on returnable containers;
- (e) Any worthless account actually charged off for income tax purposes during the reporting period, to the extent that such account has been included in taxable sales, except that a loss from a worthless check in excess of the taxable sale is not allowed as a bad debt deduction for the excess (See Section 3.01.280); and

(2) "Taxable sales" includes:

- (a) Any recovery of a bad debt previously deducted from gross sales to determine taxable sales. See Regulation 3.01.270 for Credit Sales.
- (b) Authorized adjustments in a sales price, such as discounts and credits. The tax must be based upon the original price unless the adjustments actually have been made prior to the filing of the return wherein such sale is reported. If the price upon which the tax was computed and paid to the City by the retailer is subsequently adjusted prior to payment of the tax by the purchaser, a proper credit may be taken by the retailer against the tax due on the next return.

No credit for discount shall be allowed to a retailer unless the related decrease in sales tax is actually passed on to the purchaser.

A cash discount allowed for payment on or before a given date is not an allowable adjustment to the selling price in determining taxable sales.

If any sold article is returned to the retailer for adjustment, replacement or exchange under a guarantee as to quality or service, and if another article is substituted pursuant to the guarantee free or at a reduced price, then the tax shall be recomputed on the actual amount paid to the retailer for the substituted article, taking into consideration any other adjustments made at the time of the replacement.

- (c) Any sales of tangible personal property, including otherwise taxable sales of food, where all or part of the proceeds of such sales are donated to an organization that is exempt from taxation under the Tax Code.

Regulation 3.01.240(B)(1) Tax Must be Separately Stated; Liquor by the Drink

A retailer who sells malt, vinous or spirituous liquors by the drink shall at the time of making the first retail sale of such beverage, elect either of the following methods to impose the tax:

- (1) The tax may be included in the price of the drink; or
- (2) The tax may be separately stated and added to the price of the drink.

The retailer may elect to operate under method (1) for drinks sold at the bar and method (2) for drinks sold at the tables, or it may elect to operate under the same method for drinks sold at the bar and tables. Once having made the election, the retailer must continue to collect the tax in the manner elected, unless permission to change the election is first obtained from the Finance Department. If the retailer elects to use different methods on bar and table sales, tax must continue to be collected in the manner elected, unless permission to change the election is first obtained from the Finance Department. The retailer must keep adequate records if using different methods on bar and table sales.

If the retailer elects to include the tax in the price of the drink, the following method must be used to determine taxable sales: exempt sales are deducted from gross sales, and the difference is divided by the total of one (1) plus the applicable sales tax percentage. Example: taxable sales = (gross sales – deductions)/(1+0.075), where 7.5% is the combined state and city sales tax percentage.

Retailers dispensing liquor, wine or beer by the drink, who purchase ingredients which they use in mixing the drink, are not required to pay sales tax on the purchase of such ingredients.

Regulation 3.01.250 Collection and Remittance of Tax

All purchases subject to sales or use tax must be reported on the City of Lakewood Sales and Use Tax Return form found on the city's online tax filing system. Completed forms may be submitted via the online system or printed and mailed to the City.

If any retailer makes overpayment of the tax or is entitled to a credit on its tax payments because of mistake, errors or canceled sales, credit for the amount of overpayment may be taken by the retailer on a subsequent return or returns. All credits are subject to review by the Chief Financial Officer. If the retailer is no longer engaged in business, then it should apply for a refund. (See Regulation 3.01.540.)

Regulation 3.01.250(A) Collection and Remittance of Tax: Filing Frequencies

Approval of requests for thirteen four-week, quarterly, or seasonal reporting periods shall be granted only if, in the opinion of the Chief Financial Officer, such approval shall not jeopardize the collection of the tax. Permission to change the time or interval for filing reports and paying tax shall not be granted to a retailer who is delinquent.

If any retailer has been granted permission to file reports and pay tax on other than a monthly basis, and such retailer becomes delinquent, then such permission may be revoked by the Chief Financial Officer at any time. Immediately following notice of such revocation, such retailer shall be required to file reports and pay tax, interest and penalties on a monthly basis.

Requests for permission to file reports and pay tax on a quarterly basis, if approved, shall take effect on the first (1st) day of the next calendar quarter which begins at least fifteen (15) days after the date of approval.

Regulation 3.01.250(A)(3)(b) Collection of Tax: Filing Frequencies – Seasonal

The applicant shall state on its sales tax license application the months during which it expects to operate the business in the City and the place or places where the business shall be operated and must notify the Finance Department of any changes thereof.

Regulation 3.01.250(A)(3)(c) Collection of Tax: Filing Frequencies – Annual

Retailers who provide non-taxable services and do not sell at retail must still file use tax returns with the City, even if the tax liability is zero. Such retailers may make a request to the Finance Department to make returns and pay taxes annually. Annual filers are encouraged to review contact information, business address, and phone numbers of the business when filing the annual return.

Regulation 3.01.250(D) Collection of Tax; Exempt Sales

Some transactions are exempt from Lakewood sales tax. To show that a sale qualifies as exempt under the Lakewood code, the retailer is responsible for ensuring it has the proper documentation from the purchaser. Purchasers must be able to prove to the satisfaction of the retailer that they are exempt from Lakewood sales tax. In the event that the purchaser does not have the appropriate documentation, the retailer must assess tax on the transaction and should suggest that the purchaser follow-up with the Lakewood Finance Department.

The purchaser must, at the time of transaction, provide to the seller a completed Home Rule Affidavit of Exempt Sale. The Affidavit is to be used for each exempt purchasing transaction by: resellers/wholesalers, Lakewood-qualified charitable entities, government entities (federal, state, or local), foreign and diplomat officials, and construction permit holders. By signing the Affidavit, the purchaser is swearing, under penalty of perjury, to the accuracy of the statements on the Affidavit. A single Affidavit may be used for exemption from both State and Lakewood tax with the appropriate supporting documentation for each taxing entity. A purchase exempt under State law does not automatically result in exemption of the Lakewood tax.

Purchases must be made for official business purposes. Items purchased by a charitable organization must be for the regular charitable function or purpose. Items purchased by a wholesaler must be purchased for sale in the wholesaler's ordinary course of business.

Purchases must be billed to and paid directly by the funds of the organization or agency in order to qualify for exemption. Purchases do not qualify for tax exemption when: payment is made with cash (without a purchase order), personal check, or personal credit card; or the purchase is made with the exempt organization's credit card, but the bill for such credit card is paid out of non-organization funds. A purchase is not exempt if made by an exempt organization on behalf of either an individual or a non-exempt organization where: (i) the individual or non-exempt organization reimburses the exempt organization for the full purchase price of the good or service; and (ii) the purchased good, or right to the

taxable service purchased, is transferred to the individual or non-exempt organization for its use, consumption or benefit.

The retailer must verify the information on the Affidavit and complete the lower portion of the form. Supporting documentation, as well as the Affidavit, must be retained by the retailer. Supporting documentation varies by purchaser:

- (1) Reseller/Wholesaler – A copy of its business or sales tax license (does not need to be located in Lakewood)
- (2) Charitable Organization – A copy of its Lakewood-issued Certificate of Exemption
- (3) Government – A copy of its State-issued Certificate of Exemption
- (4) Foreign and Diplomat Officials – A state department issued card with the name/photo of the bearer on the card
- (5) Construction permit holder – A copy of a valid permit issued by the City of Lakewood or another municipality where a local use tax has been paid.

Regulation 3.01.260 Duty to Keep Records

- (1) General. It is the duty of every Taxpayer to keep adequate and complete records. These records must show the following:
 - (a) Gross receipts from all sales, or from rental payments from leases, of tangible personal property (including any services that are a part of the sale or lease), irrespective of whether the seller or lessor regards the sale(s) or lease(s) to be taxable or nontaxable.
 - (b) All deductions and exemptions allowed by law and claimed in filing returns.
 - (c) Total purchase price of all tangible personal property purchased for sale, use, consumption or lease in the City.

Records shall also include the books of account maintained by or on behalf of the Taxpayer, together with all bills, receipts, invoices, cash register tapes, general ledgers, depreciation schedules or fixed assets listings, invoices for expenses and fixed assets, purchase contracts, or other documents supporting the entries in the books of accounts together with all schedules or working papers used in connection with the preparation of tax returns.

- (2) Records Formats. Taxpayers must comply with applicable standards for legibility, reproducibility, access, maintenance and retention regardless of the format on or in which such records are kept. Such records shall not require the City to use any special or unique apparatus, software, process or handling in order to examine such records without unreasonable delay or undue burden on the City.
- (3) Records prepared by automated data processing systems. An automated data processing (ADP) tax accounting system must be capable of producing visible and legible records for verification of the Taxpayer's tax liability.
 - (a) *Recorded or re-constructible data.* ADP records must provide an opportunity to trace any transaction back to the original source or forward to a final total. If detail printouts

are not made of transactions at the time that they are processed, then the system must have the ability to reconstruct these transactions.

- (b) *General and Subsidiary Books of Account.* General ledgers and subsidiary ledgers, with source references, shall coincide with financial reports for tax reporting periods.
 - (c) *Supporting Documents and Audit Trail.* The audit trail should be designed so that the details underlying the summary accounting data may be identified and made available to the Finance Department upon request. The system should be designed so that supporting documents, such as sales invoices, purchase invoices, credit memoranda, and similar items are readily available.
 - (d) *Program Documentation.* A description of the ADP portion of the accounting system should be available. The statements and illustrations as to the scope of operations should be sufficiently detailed to indicate: (A) the application being performed; (B) the procedures employed in each application (which, for example, might be supported by flow charts, block diagrams, or other satisfactory description of the input or output procedures); and (C) the controls used to ensure accurate and reliable processing. Important changes, together with their effective dates, should be noted in order to preserve an accurate chronological record.
- (4) Record Retention. All records pertaining to transactions involving sales or use tax liability must be preserved for a period of not less than three (3) years from the date of the transaction.
- (5) Examination of Records. All of the foregoing records must be made available for examination on request by the Finance Department.

Regulation 3.01.270

Credit Sales

For the purpose of this Regulation, a "credit sale" is a retail sale that is created by a time payment plan, a conditional sale, or a sale secured by a chattel mortgage whereby the remittance of the full selling price is to be paid at a future date. Credit sales do not include credit card sales. Credit card sales are cash sales and must be reported currently.

If the retailer elects to report the credit sales on the cash basis, it must keep adequate and complete records to show separately the sales price of the tangible personal property, the sales tax applicable to each credit sale, and any interest, insurance or carrying charges that have been added to the sale. No deduction for bad debts is allowable when the retailer is reporting its taxable sales on the cash basis.

If the retailer reports the credit sale on the accrual basis, it shall include the selling price in the return for the month in which the sale was made and remit the entire applicable sales tax. The retailer on the accrual basis is allowed a deduction for bad debts on the taxable portion of worthless credit sales.

A cash discount, also known as a sales discount or purchase discount or early payment discount, allowed for payment made on or before a given date is not an allowable adjustment to the selling price in determining taxable sales (see Regulation 3.01.230 "Taxable Sales").

When a repossessed article is resold, the transaction constitutes an entirely new, separate and distinct sale upon which the sales tax shall be collected in the regular manner.

PART 3. SALES AND USE TAX LICENSE

THERE ARE NO REGULATIONS FOR THIS PART

PART 4. SALES AND USE TAX

Regulation 3.01.410 Imposition of Tax

A sale by a licensed or unlicensed retailer to a user or consumer and which is not for resale is a retail sale. The amount of the tax is measured by the purchase price of the property or service.

Where tangible personal property is traded or exchanged between unlicensed persons, the sales or use tax is based on the fair market value of each article. Each person owes the tax on the fair market value of the tangible personal property received in exchange, except as addressed in 3.01.230 under the definition of "Price or Purchase Price."

Regulation 3.01.410(A)(2) Imposition of Tax; Sales Tax – Trusteeship

The use of recognized accounting procedures to segregate and account for the sales tax collected shall be considered proper trusteeship of the funds. No statute of limitations applies to funds of the City in the possession of the retailer, and such moneys are collectible at any time after their due date upon demand of the Chief Financial Officer.

Regulation 3.01.410(B) Imposition of Tax; Use Tax

The primary purpose of the use tax is to impose a tax upon the privilege of storing, using, or consuming any tangible personal property purchased at retail. "Consuming" means the act or process of consumption and includes waste, destruction, or using up. The use tax is complementary to the sales tax in those situations where a sales tax cannot, as a practical matter, be collected, or has not, for any reason, been collected in the course of the retail transaction. The obligation for the payment of the tax is upon the user whether the tax is a sales tax or a use tax. However, in the event that a retailer fails to collect the appropriate sales tax, the Chief Financial Officer may assess the tax due against either the retailer or the purchaser.

The use to which property is put, in order to bring about imposition of the use tax, is not necessarily the actual and ultimate use, but may be only such use as is made by the owner or purchaser in exercising control. Use shall be deemed sufficient for the imposition of the use tax when the article purchased is actually used or made available for use after delivery is completed, as well as when keeping, storing, withdrawing from storage, moving, installing, or performing any other act by which dominion or control over the property is assumed by the purchaser.

Tangible personal property withdrawn from inventory for use by the business where sales tax was not lawfully imposed shall be subject to use tax.

Regulation 3.01.410(E) Imposition of Tax; Schedules/Systems

The tax imposed pursuant to Section 3.01.410 shall be imposed in accordance with the following schedule:

| <u>Purchase Price</u> | <u>Lakewood Tax (3%)</u> |
|-----------------------|--------------------------|
| \$0.00 - 0.16 | \$.00 |
| 0.17 - 0.49 | .01 |
| 0.50 - 0.83 | .02 |
| 0.84 - 1.16 | .03 |
| 1.17 - 1.49 | .04 |
| 1.50 - 1.83 | .05 |
| 1.84 - 2.16 | .06 |
| 2.17 - 2.49 | .07 |
| 2.50 - 2.83 | .08 |
| 2.84 - 3.16 | .09 |
| 3.17 - 3.49 | .10 |

On all sales in excess of three dollars and forty-nine cents (\$3.49), the tax shall continue to be imposed at three percent (3%). Fractional amounts equal to or greater than one-half cent (\$.005) shall be rounded upward to the next highest cent. If the sale consists of a number of items, each of which has a sales price less than the minimum taxable sale, then tax must be collected on the combined total sales prices of all the items.

Use tax at the rate of three percent (3%) shall be paid where sales tax or use tax has not otherwise been lawfully imposed and paid.

Regulation 3.01.420 Transactions, Services and Tangible Personal Property - Taxability

Except in the case of specific statutory exemptions, tax is imposed upon the sale of tangible personal property to the user or consumer in this City and also upon the sale of those services specifically enumerated in Chapter 3.01 as taxable.

Services taxable under Chapter 3.01 include: (i) admissions to motion pictures and establishments which are licensed to serve malt, vinous or spirituous liquors; (ii) gas, electric and steam services; (iii) linen services; (iv) lodging services (v) security system services; (vi) software services – modified or custom; (vii) sound system services; (viii) telecommunication services; (ix) television and entertainment services; and (x) warranty and maintenance service contracts. All such sales are subject to the tax imposed by Chapter 3.01. This tax is imposed upon the transaction called the sale and is applicable whether the transaction is between a retailer and a purchaser or between private parties.

Regulation 3.01.420(B) Transactions, Services and Tangible Personal Property - Taxability; Auctions

The auctioneer of any sale of tangible personal property, whether or not in possession of such property and regardless of how the property might have been acquired, must collect the tax, file a return, and remit the tax thereon.

Regulation 3.01.420(C) Transactions, Services and Tangible Personal Property - Taxability; Automotive Vehicles

The collection of sales tax as provided in Section 3.01.420(C) does not apply to the registration, licensing or titling of automotive vehicles transferred by gift or operation of law or where the transaction is otherwise exempt from the imposition of sales tax. A bona fide gift of tangible personal property is not a "sale." (Refer to Special Regulation: Gifts, Premiums and Prizes)

Regulation 3.01.420(F) Transactions, Services and Tangible Personal Property – Taxability; Custom Orders

Sales and use tax applies to charges for manufacturing, producing, fabricating and processing tangible personal property made-to-order or tailor-made for the customer.

Manufacturing, producing, fabricating or processing is usually deemed to have occurred when tangible personal property is created, transformed or reduced to a different state, quality, form, property or thing. Transformation may occur by hand, machine, art, chemical action or natural means.

An operation that restores a used or worn item of tangible personal property to its essentially original form and use is not considered made-to-order or tailor-made.

Tailoring and alterations are not considered taxable.

The amount charged by the purchaser for labor or services rendered in installing and applying purchased tangible personal property is not subject to tax, provided that such amount is separately stated, and such separate statement is not to avoid the tax upon the actual sales price of tangible personal property.

Any person making a sale subject to this regulation must be licensed and may purchase tax-free all articles of tangible personal property which enter into and become a component part of the article sold. Purchases of all other articles of tangible personal property not becoming an ingredient or component part of the finished product are taxable.

Regulation 3.01.420(G) Transactions, Services and Tangible Personal Property - Taxability; Food, Beverages and Candy

Any food or drink not purchased with federal food stamps or WIC vouchers or WIC checks is subject to tax, unless exempted by §3.01.430(F) or the related Regulation.

Food and drink sold to or purchased by offices and commercial establishments are subject to sales tax. If sales tax is not charged at the point of purchase, use tax shall be due.

In determining whether a product is food for domestic home consumption, unless the retailer is described in section 3.01.420(G)(1) of the Tax Code, no inference is drawn from the type of retailer selling the product, the location of the product within a store, or the manner in which the product is marketed.

Regulation 3.01.420(I)(2) Transactions, Services and Tangible Personal Property – Taxability; Gas, Electricity and Other Fuel - Commercial Consumption

Gas and electric service furnished within the City is subject to the tax imposed by Section 3.01.420, whether furnished by public, private, mutual, cooperative, or governmental corporations or enterprises for commercial use. The tax attaches to all amounts paid by the user or consumer for gas and electric service, whether or not there is actual consumption, and regardless of the manner in which the payment is made.

(See Regulation 3.01.430(H) for certain limited exemptions.)

Regulation 3.01.420(I)(3) Transactions, Services and Tangible Personal Property - Taxability; Gas, Electricity and Other Fuel - Residential Consumption

Gas and electricity are used by occupants of residences if exclusively for domestic purposes, such as lighting, refrigeration, cooking, water, heating, space heating and air conditioning in a private home or individual living unit served through a single meter or a master metered multi-unit apartment, condominium, townhouse or mobile/trailer home used exclusively for domestic purposes. Residential use of gas and electricity includes service to a building appurtenant to the residence, including garages, barns, and other minor buildings for use of the residents served through the residential meter.

Users in a private home or individual living unit, such as apartments, condominiums, townhomes, and mobile/trailer homes, who are served through a single meter and whose rate has been classified by statute or PUC regulations as residential are subject to sales tax.

Users in multi-unit apartments, mobile/trailer home parks or condominium and townhouse associations who are billed through a master meter and are taking service under a commercial rate are subject to sales tax if the gas or electricity is used for residential use as defined herein.

Sales of butane, propane, fuel oils, coal, coke or wood are subject to sales tax if used for residential use as defined above.

Regulation 3.01.420(L) Transactions, Services and Tangible Personal Property – Taxability; Lodging Services - Lodging Payments or Deposit

Amounts paid for lodging services, as defined under Section 3.01.230, are subject to the tax imposed under Section 3.01.410 unless the rental period is for a term of thirty (30) consecutive days or more, in which case the rental paid is exempt. (See also Section 3.01.430(I) and Regulation 3.01.430(I).)

Deposits paid for lodging services are not taxable when paid in advance. When lodging services are provided, then any deposits previously paid are taxable. If lodging services are not provided, then any deposits previously paid are taxable to the extent that such deposits are not refunded to the customer.

Regulation 3.01.420(M) Transactions, Services and Tangible Personal Property – Taxability; Security System Services

Security system services includes the amount paid or charged for electronic monitoring, whether the system is leased, rented or owned. Any amount paid or charged for installation of such a security system would not be subject to sales tax, if separately stated.

All materials and equipment used in providing such services that are located inside the City are subject to use tax, if the requisite sales tax has not been paid. If title of the material or equipment is transferred to the customer, then the material or equipment is deemed a retail sale and subject to the City sales tax. Sales of material and equipment are considered separate and distinct retail transactions from the charges for security and/or monitoring system services.

Regulation 3.01.420(N) Transactions, Services and Tangible Personal Property - Taxability; Software Services – Modified or Custom

Modified software or custom software program services include, but are not limited to, analysis of the customer's requirements, consulting, programming, testing, and updates, regardless of which retailer supplies each of the services.

The internalized instruction code that controls the basic operations (i.e., arithmetic and logic) of the computer causing it to execute instructions contained in system programs is an integral part of the computer. It is not normally accessible or modifiable by the user. Such internal code systems are considered part of the hardware and are subject to sales tax. It is immaterial that the retailer does or does not charge separately for such internal code systems.

A software program is one in which instructions and routines (programs) are determined necessary to program the customer's electronic data processing equipment to enable the customer to accomplish specific functions with his electronic data processing system. The software program may be in the form of:

- (1) System software programs (except for the instruction codes that are considered tangible personal property, as described above, which control the hardware itself and allow it to compile, assemble, and process application programs).
- (2) Applications software programs created to perform business functions or to control or to monitor processes.
- (3) Pre-written software programs (canned programs) that are either systems programs or application programs and are not written specifically for the user.
- (4) Custom software programs: programs created specifically for the user. Section 3.01.230 defines a "modified or customized computer program" as meeting the following elements:

- (a) The preparation or selection of a program for the customer's use requires a retailer to analyze the customer's requirements; and
- (b) The program must be created, or requires adaptation, by a retailer in order to be used by a specific output device.

For the purposes of this subsection 4, "retailer" includes, but is not limited to, a retailer from whom the program is acquired, or who provides consulting or programming.

Programs meeting the criteria in (a) and (b) above, whether on machine-readable media, downloaded over the Internet, accessed via a web browser or web-based application or entered into a computer directly, are considered modified or customized programs and are subject to tax pursuant to Section 3.01.410(N).

Programs not meeting the criteria in (a) and (b) above are subject to sales tax pursuant to Section 3.01.410(Q). For example, a retailer that sells prepackaged or "off-the-shelf" programs, when such programs are fully usable by the customer without modification, is considered to be a sale of tangible personal property subject to sales tax on the purchase price of such property pursuant to Section 3.01.410(Q).

Consulting service or analysis time charges are not subject to sales or use tax if a program is not purchased.

Regulation 3.01.420(Q) Transactions, Services and Tangible Personal Property - Taxability; Tangible Personal Property

Unless otherwise exempt, all sales of tangible personal property, including digital products, at retail in the City, whether between a licensed retailer and a purchaser or between private parties, are subject to the imposition of the sales tax. "Tangible Personal Property" is defined in Section 3.01.230.

Failure to separately state taxable and non-taxable purchases shall subject the entire purchase price to sales tax except where a contractor has billed "lump sum."

Digital Products – Digital Audio-Visual Works. The method of delivery does not impact the taxability of a sale of tangible personal property. Examples of methods used to deliver tangible personal property under current technology include, but are not limited to, the following: DVD, electronic download and internet streaming.

The purchase of a subscription that provides the purchaser with access to any tangible personal property that can be streamed, downloaded or delivered by any other method constitutes a sale of tangible personal property. The purchase price paid for a periodic subscription is subject to tax if the property accessed or received via the subscription is subject to tax. Each periodic payment is a separate sale.

Examples (non-exhaustive list):

- (1) Purchaser buys a movie or video game on a DVD, Blu-Ray or other electronically readable disc. Sales tax is due on the purchase price of the movie.

- (3) Purchaser buys a movie or video game through the internet, and then downloads the movie or video game to the purchaser's computer or other device. Sales tax is due on the purchase price of the movie or video game.
- (4) Purchaser buys a movie or video game, which purchaser accesses through an internet browser or other platform. Purchaser does not save a copy of the movie or video game to purchaser's computer. Sales tax is due on the purchase price of the movie or video game.
- (5) Purchaser pays a monthly fee, which allows purchaser to stream movies and/or television shows or play video games from a library of available titles. Sales tax is due on the monthly fee.

Regulation 3.01.420(R) Transactions, Services and Tangible Personal Property – Taxability; Telecommunication Services - Intrastate, Mobile & Data

Intrastate telecommunication service furnished within the City is subject to the tax imposed by Section 3.01.410, whether furnished by public, private, mutual, cooperative or governmental corporations or agencies. The term "service" includes carrier access services, additional listings, joint-user service, nontalking circuits, leased circuits and facilities, local exchange service (whether on a flat or measured basis), information charges, and any other charges assessed or passed on to the consumer.

Regulation 3.01.420(U) Transactions, Services and Tangible Personal Property - Taxability; Warranty & Maintenance Contracts

If a separate warranty or maintenance contract is purchased at the time of acquiring tangible personal property, or subsequent to the purchase of tangible personal property, regardless of whether the tangible personal property is rented, leased or purchased, then the entire sales price of the warranty or maintenance contract is subject to sales tax. Parts and other goods or services, if provided in performance of such separate warranty or maintenance contract on which tax was paid hereunder, are not taxable under this section.

For the purposes of this Regulation, "a separate warranty or maintenance contract" shall mean and include any agreement between a purchaser and a retailer whereby the purchaser pays, whether up front or over time, for the privilege of receiving, at a future date, repair or maintenance services on or for the tangible personal property at a reduced cost or no cost, and regardless of whether the amount paid for such privilege was included in the transaction for purchase of the tangible personal property.

When an item of tangible personal property is rented or leased with a warranty or other contract for the maintenance, repair or servicing of the tangible personal property for a given period of time, then the sales tax shall be imposed, collected and paid upon the rented or leased items, including the value of the warranty or other contract, if the rental or lease is subject to the sales tax under the provisions of Section 3.01.120(9).

Regulation 3.01.430(A) Exemptions; Cigarettes

"Cigarette" is defined as a well-known, recognized, and definite article consisting of tobacco of a peculiar kind distinguished by its light color and mildness and rolled in a paper wrapper. "Cigarette" does not include an article consisting of a cylindrical roll of cigar-leaf tobacco.

The sale of any tobacco product that is not a cigarette is subject to sales tax.

Regulation 3.01.430(B) Exemptions; Constitutional Preclusion from City Sales and Use Tax

All sales the City is prohibited from taxing under the constitution or laws of the United States, the State, or the city's charter are exempt.

- (1) *Diplomatic tax exemption.* Sales to ambassadors, consuls, and their employees who are citizens of the nation that they are representing are exempt. Retailers must obtain from purchasers a completed Affidavit of Exempt Sale and a U.S. Department of State issued card with the name and photo of the bearer on the card.
- (2) *Interstate commerce.* Sales involving interstate commerce are exempt only in cases where the tax would be unconstitutional. Retailers' must retain shipping records, bills of lading, or other proof satisfactory to the Chief Financial Officer to substantiate any exemption allowed for sales in interstate commerce.
 - (a) Sales involving construction materials for the construction and maintenance of railroad tracks operating in interstate or foreign commerce are exempt.
 - (b) Sales of merchandise ordered for delivery from a location outside the City to a location in the City are not necessarily exempt even though the merchandise may be shipped from outside the City directly to the purchaser or indirectly through the retailer. Contact the City to determine taxability.
- (3) *Satellite television and radio.* Pay satellite television services and pay satellite radio services are exempt from tax under 3.01.430(B) of the Tax Code.
- (4) *Internet access services.* Providers of internet access services, as defined in the Tax Code, shall collect from their customers, and remit to the City, City sales tax imposed on such services. *Note: On June 30, 2020, the Internet Tax Freedom Act will sunset. At such time, internet access services will no longer be taxable, and providers will no longer be obligated to collect and remit such taxes.*

Regulation 3.01.430(D)(1-2) Exemptions; Exempt Entities – Governments and Schools

No sales or use tax is imposed on the purchase, storage, use or consumption by the United States government, the State of Colorado, or any department, institution or subdivision of either, when the purchase, storage, use or consumption is executed in such entity's governmental capacity. No sales or use tax is imposed on the purchase, storage, use or consumption by schools, as set forth in 3.01.440(D)(2).

To secure exemption from sales and use tax, the goods must be paid for directly to the seller by warrant, credit card or check drawn on governmental or school funds.

Regulation 3.01.430(D)(3)(a) Exemptions; Exempt Entities - Sales to Charitable Organizations

There is no sales tax on articles *sold to* a charitable organization holding a Lakewood-issued certificate of exemption, if purchased by the charitable organization in the conduct of its regular charitable functions and activities and purchased using the charitable organization's funds.

For the City to determine whether an organization qualifies for the exemption, the organization must submit the following information to the Finance Department:

- (1) A copy of the organization's federal exemption letter;
- (2) A copy of the organization's articles of incorporation;
- (3) A copy of the organization's bylaws;
- (4) A list of the organization's officers and directors (if not contained within the organization's bylaws or articles of incorporation);
- (5) The organization's financial statements showing the source of funds and its expenditures; and
- (6) A detailed list of all fundraising and sales activities taking place within Lakewood.

Whenever a charitable organization not holding a State store license or a City sales tax license purchases tangible personal property (such as cards, cookies, candies, food, religious articles, and similar items) which is to be transferred to anyone else for personal use and all or part of the price of the goods is recouped from the user through direct payment, donation or games of chance, then the organization's exempt status does not apply, and the exempt organization must pay sales tax to the retailer. If such purchases are made outside the City or in the City without payment of the City sales tax, then the organization must pay the tax directly to the City.

Purchases by a nonprofit organization or association are subject to the tax if the organization does not present a Lakewood certificate of exemption.

Regulation 3.01.430(D)(3)(b) Exemptions; Exempt Entities - Sales by Charitable Organizations

A charitable organization that makes repeated sales of tangible personal property to the public, where the principal use of the premises from or at which such sales are made is to make such sales, must have a sales tax license and collect and remit tax in the same manner as any other retailer. The fact that the merchandise sold was acquired by gift or donation or that the proceeds are to be used for charitable purposes does not make the sale exempt from tax.

Regulation 3.01.430(F)(1) Exemptions; Farm - Farm Closeout Sale

In a farm closeout sale, a farmer or rancher may retain ownership of his improved and unimproved real property and his personal property not used in the farming or ranching operations and still be eligible for this exemption if he is abandoning his farming or ranching operations.

Regulation 3.01.430(F)(2-4) Exemptions; Farm - Livestock and Poultry

"Livestock" means domestic animals as found on a farm or ranch such as cattle, sheep, swine, goats, mares and stallions. "Livestock" does not include animals kept as pets for pleasure and recreation.

"Poultry" means domesticated birds kept for eggs or meat.

Regulation 3.01.430(G) Exemptions; Food: Food for Home Consumption, SNAP and WIC

The City follows the State of Colorado's Regulations for taxation of food pursuant to C.R.S. § 39-26-102(4.5).

The following items might qualify for exemption as food under the Supplemental Nutrition Assistance Program (SNAP) or the federal special supplemental nutrition program, but do not qualify for exemption as "Food for Home Consumption" (unless purchased with federal food stamps or a WIC instrument):

- (1) Carbonated water marketed in containers (e.g., sparkling or seltzer water, tonic water, soft drinks and other sugar or sugar substitute carbonated beverages);
- (2) Chewing gum and candy;
- (3) Seeds to grow food and plants to grow food;
- (4) Prepared salads, other than frozen salads, requiring refrigeration sold in any size or type of container (e.g. egg salad, potato salad, fruit salad, pasta salad, gelatin salad, bean salad, fish salad, poultry salad, meat salad, etc.,) whether prepared by the retailer on site or at a warehouse, or by a manufacturer for sale to and by a retailer;
- (5) Salad bars (*i.e.*, cut up fruits and vegetables sold in various sized servings, usually by the pound or plate, along with accessory foods and condiments, such as soup, rolls, crackers, and salad dressings);
- (6) Cold sandwiches other than frozen sandwiches;
- (7) Deli trays (e.g., meats, fish, cheeses, fruits or vegetables, etc., sold on trays prepared by or for the retailer); and
- (8) Food and beverages sold by or through vending machines.

Prepared food or food marketed for immediate consumption do not qualify for tax exemption under "Food for Home Consumption," as defined in Section 3.01.230, or SNAP. This includes all hot foods and food marketed to be heated on the premises.

Regulation 3.01.430(H) Exemptions; Fuel and Power

Electricity, coal, gas, fuel oil, coke, or nuclear fuel are exempt when used for any of the following purposes: mining (including oil and gas exploration and production), refining, irrigation, construction, telecommunication services, and street and railroad transportation services.

The use of electricity, coal, gas, fuel oil, coke or nuclear fuel in a continuing business activity of manufacturing or producing tangible personal property or services as set forth in Section 3.01.420(I) is subject to sales tax.

Regulation 3.01.430(I) Exemptions; Lodging Services

The written agreement must provide for occupancy of thirty (30) or more consecutive days. A written agreement includes a hotel registration, rent receipt, or similar document. A canceled check by itself shall not qualify as a written agreement. In the event the initial occupancy was for less than thirty (30) days, but is extended for a total of thirty (30) consecutive days or more, the lodging services become exempt for the entire period of occupancy.

Additional fees or charges separately stated on the invoice for specific hotel room services are taxable, such as pet fees, room service fees, telephone fees, movie/game rentals, cancellation fees, and forfeited deposits. The taxability of other purchases or services charged to the room, such as massages, laundry, salon and similar services, or purchases made at a hotel store, is determined by whether the purchases or services would otherwise be taxable.

Regulation 3.01.430(J) Exemptions; Manufacturing

Licensed persons engaged in manufacturing or compounding for use, profit or sale may purchase tax-free all articles of tangible personal property that enter into and become a component part of the article sold. Such tangible personal property that becomes a physical part of such product or service shall be deemed to have been sold at wholesale and shall be exempt from taxation. Any container, label or shipping case used to encase or enclose such product may be purchased tax-free by the manufacturer or compounder. Purchases of all other articles of tangible personal property not becoming an ingredient or component part of the finished product are taxable.

Sales tax applies to the sale of tangible personal property to the manufacturer or compounder that purchases it for use as an aid in manufacturing, producing or processing tangible personal property and not for the purpose of physically incorporating it into the manufactured article to be sold. Examples of such property are machinery, tools, furniture, office equipment and chemicals used as catalysts or otherwise to produce a chemical or physical reaction such as the production of heat or the removal of impurities.

An operation that changes the form or state of tangible personal property is one of fabrication. Persons regularly engaged in the fabrication or production of articles for sale at retail shall collect and remit the tax on the sales price of the article. If the fabricator converts such property to its own use, it shall remit the tax based on its acquisition cost.

Examples of tangible personal property used as an aid in manufacturing, fabricating, producing or processing tangible personal property that are not exempt include, but are not limited to, the following:

- (1) Sales of carbon dioxide gas for use in the sale of draft beer shall be taxable to the retailer of the beer because the retailer buys the gas for use in forcing the draft beer through the pipes rather than for the purpose of reselling the gas.

If the gas is purchased for the sole purpose of incorporating it into a product to be sold and is so incorporated into a product to be sold, as in soda water or other beverages, then the sale of the gas is exempt as a sale for resale.

- (2) Phosphoric and sulfuric acids used in a process known as anodizing aluminum are primarily used as electrolytes, acting as a catalyst, and do not become a component part of the aluminum objects that are processed. Accordingly, the processor is the consumer of such acids, which are taxable to the processor at the time of purchase of such items.
- (3) Flux, if used as a cleaning agent or as means of reducing oxidation, is taxable to the manufacturer at the time of purchase. It may also be used for transmitting desirable alloys to the deposited metal. To the extent it is used for the latter purpose, it is not subject to sales tax to the manufacturer at the time of purchase. Because the different functions are not mutually exclusive, exempt and nonexempt purposes may be served simultaneously, and in such cases the tax shall have to be apportioned between the various uses.
- (4) Sulphur used in drying and curing fruit is regarded as used by the manufacturer, not as incorporated and resold, and the tax is to be paid by the manufacturer when he purchases the sulphur.
- (5) Forged steel balls used in a ball mill to grind silica sand to a desired fineness. In the course of the grinding, the balls wear out, and they become incorporated into the finished product which is sold. The steel balls are purchased for the purpose of using them in the manufacturing processes and not primarily for the purpose of incorporating steel into a finished product. Accordingly, the manufacturer must pay sales tax on the steel balls at the time of purchase.
- (6) If ice is in fact used for the sole purpose of becoming an ingredient of the finished product, as where it is used solely to supply all or a part of the water content of sausage and luncheon meats, then the sale of the ice may be regarded as a sale for resale, and the processor is not required to pay tax at the time of purchase of the ice.

If the ice or dry ice is used for any purpose other than to become an ingredient or component part of the finished product, then it is purchased for a purpose other than for resale and is subject to tax to be paid at the time of purchase by the processor.

- (7) A rubber chemical used as a lubricant to facilitate mold release of rubber products, such as tires, and that might remain as a film on the finished rubber product is a manufacturing aid used as a lubricant by the manufacturer, which is required to pay the sales tax at the time of purchase.
- (8) Cleaners purchased for use in preparing metal part surfaces prior to rustproofing do not become incorporated in the product, and, therefore, the manufacturer is the user and must pay sales tax at the time of purchase.
- (9) When paint thinner, abrasives, cleaning compounds, masking tape and similar items are used by a person in painting tangible personal property, that person is the user of such items and must pay sales tax at the time of purchase.
- (10) Talc used as an anti-adhesive or lubricant in the manufacture of rubber products is a manufacturing aid, and sales tax is imposed on the manufacturer at the time of purchase.

Regulation 3.01.430(K)(1) Exemptions; Medical - Medical Supplies

Physicians, surgeons, dentists, veterinarians and other licensed practitioners of the healing arts, as well as hospitals, nursing homes, clinics and the like, shall pay tax on their purchases of any equipment, instruments, furniture, fixtures and medical and surgical supplies used or consumed in the ordinary and usual course of business.

Medical care providers (i.e. hospitals, medical clinics, nursing homes, physicians in private practice) use a variety of medical goods in the course of performing services for which they are paid. If not specifically exempt under the Code, such goods are taxable to the purchaser at cost. Nutrition supplements, vitamins, personal hygiene products, and over the counter medicinal substances are taxable to the purchaser.

Purchases of medical supplies that would otherwise be taxable (i.e., nonexempt) are not rendered exempt if the provider is reimbursed under any government program or by any charitable organization. Purchases of such medical supplies remain taxable regardless of source of the funds unless purchased by an exempt entity.

Sales of prescription eyeglasses, including lenses and frames, are exempt from the imposition of sales tax; provided, however, that any additions to the lenses, such as anti-fog, scratch-resistant, anti-glare or anti-UV coatings, and coloring/tinting, are taxable and shall be separately stated on the customer's invoice. If such additions are not separately stated, the retailer shall collect from the purchaser and remit to the City sales tax on the entire Purchase Price.

If a transaction involves both exempt and nonexempt tangible personal property, and the nonexempt tangible personal property is not itemized on the patient's bill or invoice, the total purchase price of all tangible personal property in the transaction is subject to Sales Tax. The provider must charge, collect and remit the Sales Tax to the City. If the tangible personal property is consumed by the provider in the rendition of the service and not separately stated on the patient's bill or invoice, then the tangible personal property is subject to Use Tax at the provider's cost.

Regulation 3.01.430(K)(2) Exemptions; Medical - Prescription Drugs and Prosthetic Devices

Prescription drugs do not include medicinal substances that can be purchased over the counter, whether or not the substance is prescribed by a physician, or food. All sales and purchases of non-prescription drugs are taxable.

Regulation 3.01.430(M) Exemptions; Newsprint, Printer's Ink and Newspapers

Sales of newsprint and printer's ink to publishers of newspapers or commercial printers are exempt, but retailers must collect tax on all sales of equipment and other materials.

"Newsprint" is defined as inexpensive, machine-finished paper, chiefly from wood pulp, and used mostly for newspapers.

Regulation 3.01.430(N) Exemptions; Non-Residents

The purpose of this exemption is to exempt tools, equipment and similar tangible personal property, other than construction materials and construction equipment, from the imposition of City use tax on non-residents. Where a non-resident engaged in business within the City purchases tangible personal property for use or consumption in the business, such tangible personal property is subject to sales or use tax as set forth in the tax code.

Regulation 3.01.430(Q)(1) Exemptions; Tangible Personal Property Outside the City - Deliveries

Sales of tangible personal property located within the City at the time of sale and delivered within the City are taxable, irrespective of: (i) the ultimate destination of the property sold; (ii) where the parties to the contract of sale are located; or (iii) where the contract was made or accepted or the funds paid.

Regulation 3.01.430(S) Exemptions; Vending

When the selling price of the item is more than sixteen cents (\$.16), tax applies to the selling price, not only the amount in excess of sixteen cents (\$.16).

A retailer making vending machine sales of individual items of merchandise at a selling price of sixteen cents (\$.16) or less and also making vending machine sales at a price of more than sixteen cents (\$.16) must include the sales price of all vended items in the gross sales on its sales tax return but may deduct the tax-exempt sales of sixteen cents (\$.16) or less to determine taxable sales.

Vending machine games of chance means vending machines that vend tangible personal property based on random chance or the operator's skill, such as "claw games" and similar machines.

Regulation 3.01.430(T) Exemptions; Wholesale Sales

Use tax is a complement to sales tax. Because sales tax is imposed on retail sales, which are all sales other than wholesale sales, as defined in section 3.01.230, use tax shall not apply to the storage, use or consumption of tangible personal property purchased by a retailer for resale within the regular course of business.

Tangible personal property purchased tax-free for resale, or as an ingredient of a manufactured or compounded product, and subsequently withdrawn from stock for the purchaser's own use or consumption is not exempt from use tax and shall be taxed at the acquisition cost of all materials. The tax liability attaches at the time that the tangible personal property is withdrawn from stock.

To be exempt from the operation of the sales tax and use tax, tangible personal property purchases by a manufacturer, which property enters into the processing of the manufactured article, must become a necessary and desirable constituent part thereof, wholly or partially, either by chemical or mechanical means. (See Regulation 3.01.430(J).)

It is the duty of the wholesaler to collect the tax unless the purchaser furnishes the wholesaler with satisfactory proof that the sale is exempt under Chapter 3.01, such as the purchaser's tax license number

or a building permit. In case of doubt, the wholesaler should contact the Finance Department or collect the tax. (See also Regulation 3.01.250(D).)

It shall be presumed that any purchaser not having a valid sales and/or use tax license is the ultimate user or consumer of any property that is purchased. Any sale to such a person shall be a taxable retail sale regardless of the disposition of the property sold, unless the retailer can establish that the purchase was for resale in the ordinary course of the purchaser's business.

PART 5. COLLECTION AND ENFORCEMENT; REFUNDS

Regulation 3.01.530 Sale of Business

Sales tax shall be remitted by the purchaser of the business on the price paid for tangible personal property, other than inventory, acquired with the purchase of business and for use or consumption in the operation of the business. The tax shall be based on the price paid for such chattels as are recorded in the bill of sale or purchase agreement and which constitute part of the total transaction at the time of sale or transfer. Where the transfer of ownership is a "package deal" in a lump sum transaction, then the sales tax shall be based on the book value set up by the purchaser for income tax depreciation purposes or, if no such value is established, then the fair market value.

Regulation 3.01.540 Refunds

- (1) Process.
 - (a) Claims for refund shall be executed and submitted to the Finance Department through the City's online system or on forms furnished by the Finance Department in accordance with instructions accompanying such forms or appearing thereon.
 - (b) Claims shall be signed by the claimant or its authorized officer or employee.
 - (c) Claims for refund must be submitted within three (3) years after the applicable return is filed; provided, however, that if the three-year limitation period for assessment of tax has been extended, then a claim for refund or credit may be made within such extended period.
 - (d) The Finance Department may require such additional information as may be deemed necessary to properly verify the contents of a claim for refund before any refund payment will be authorized.
- (2) Third Parties. A purchaser who paid tax to a Lakewood retailer but asserts that a sale is exempt from or not subject to tax must submit a claim for refund along with all invoices showing where tax was collected and documentation showing the basis for exemption.
- (3) Refunds – Exempt Entity – Building Permits. In addition to the requirements of section 3.01.450(A), claims for refund by a tax-exempt entity involving a building permit shall be supported by such documentation the Finance Department may reasonably require, including, but not limited to, proof of payment by the tax-exempt entity to the contractor for the project.

- (4) Taxes Remitted by Retailers. If, after a retailer has submitted a sales or use tax return to the City, it is determined that the amount paid exceeds what is due, the City, upon a claim for refund submitted in accordance with this regulation, shall refund the excess to the retailer or credit such amount against a subsequent remittance by the retailer.
- (5) Taxes Erroneously Paid to Another Jurisdiction. When the Chief Financial Officer determines that sales and/or use taxes owed to the City were paid to another municipality, the City will promptly notify the taxpayer and direct that improper collection and remittance cease. In order to recover such taxes, the City may either:
 - (a) Make a written claim for recovery directly to the municipality that received the tax, penalty and/or interest owed to Lakewood; or
 - (b) Institute procedures for collection of the tax, penalty and/or interest from the taxpayer or retailer.
- (6) Inter-period Credits Not Permitted

A retailer who refunds tax to a purchaser that was paid to the City on a previously filed tax return must amend the return and request a refund by submitting a refund in the city's online system, or on forms furnished by the Finance Department, to obtain a refund of the claimed overpayment.

Retailers are not permitted to take a credit against future liabilities for such tax by, for example, taking a deduction for the amount of the sale or reporting no tax due. Retailers taking inter-period credits will be assessed for the actual tax due plus penalties and interest.

Similarly, retailers are not permitted to take deductions for returned goods or bad debts if the deduction exceeds the current period's gross sales. If this occurs, the retailer must submit a claim for refund. The City does not consider issuing a refund or a credit for the tax invoiced on an exempt sale a "returned good" eligible for deduction on a subsequent return.

PART 6. AUDIT AND ASSESSMENT

Regulation 3.01.660 Coordinated Audit

- (1) Any taxpayer licensed in the City pursuant to Chapter 3.01.310 and holding a similar sales tax license in at least four (4) other Colorado municipalities that administer their own sales tax collection, may request a coordinated audit as provided herein.
- (2) Within 14 days of receipt of notice of an intended audit by any municipality that administers its own sales tax collection, the taxpayer may provide to the Lakewood Finance Department, by certified mail, return receipt requested, a written request for a coordinated audit indicating the municipality from which the notice of intended audit was received and the name of the official who issued such notice. Such request shall include a list of those Colorado municipalities utilizing local collection of their sales tax in which the retailer holds a current sales tax license and a declaration that the retailer will sign a waiver of any limitations period on the City's right to recover tax owed by the taxpayer for the audit period.
- (3) Except as provided in paragraph (7) below, any taxpayer that submits a complete request for a coordinated audit and promptly signs a waiver of the three (3) year limitations period may

be audited by this City during the succeeding twelve (12) month period only through a coordinated audit involving all municipalities electing to participate in such an audit.

- (4) If the City desires to participate in the audit of a taxpayer that submits a complete request for a coordinated audit pursuant to paragraph (3), the Chief Financial Officer shall so notify the Chief Financial Officer of the municipality whose notice of audit prompted the taxpayer's request within ten (10) days after receipt of the taxpayer's request for a coordinated audit. The Chief Financial Officer shall then cooperate with other participating municipalities in the development of arrangements for the coordinated audit, including arrangement of the time during which the coordinated audit will be conducted, the period of time to be covered by the audit, and a coordinated notice to the taxpayer of those records most likely to be required for completion of the coordinated audit.
- (5) If the taxpayer's request for a coordinated audit was in response to a notice of audit issued by this City, the City's Finance Department shall facilitate arrangements between this City and other municipalities participating in the coordinated audit unless and until an official from some other participating municipality agrees to assume this responsibility. The Finance Department shall cooperate with other participating municipalities to, whenever practical, minimize the number of auditors that will be present on the retailer's premises to conduct the coordinated audit on behalf of the participating municipalities.
- (6) If the taxpayer's request for a coordinated audit was in response to a notice of audit issued by the City, the City's Finance Department shall, once arrangements for the coordinated audit between the City and other participating municipalities are completed, provide written notice to the taxpayer of which municipalities will be participating, the period to be audited and the records most likely to be required by participating municipalities for completion of the coordinated audit. The Finance Department shall also propose a schedule for the coordinated audit.
- (7) The coordinated audit procedure set forth in this section shall not apply:
 - (a) When the proposed audit is a jeopardy assessment.
 - (b) To audits for which a notice of audit was given prior to the effective date of this section.
 - (c) When a taxpayer refuses to promptly sign a waiver of the three (3)-year limitations period.
 - (d) When a taxpayer fails to request a coordinated audit within the specified time.

SALES AND USE TAX SPECIAL REGULATIONS

THESE SPECIAL REGULATIONS ARE PROMULGATED FOR SPECIFIC BUSINESSES AND SPECIAL CIRCUMSTANCES. THEY SHALL APPLY IN ADDITION TO AND HAVE THE SAME EFFECT AS THE NUMBERED SALES AND USE TAX RULES AND REGULATIONS. UNLESS OTHERWISE NOTED, ALL REFERENCES HEREIN TO CHAPTER 3.01 OR ANY SECTION OR SUBSECTION SHALL REFER TO CHAPTER 3.01 OF THE CITY OF LAKEWOOD MUNICIPAL CODE, AND ALL REFERENCES HEREIN TO RULES OR REGULATIONS SHALL REFER TO THE NUMBERED SALES AND USE TAX RULES AND REGULATIONS.

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ADVERTISING AGENCIES, COMMERCIAL ARTISTS AND DESIGNERS

Advertising agencies primarily furnish a service for their clients and, in connection with furnishing such service, acquire items of tangible personal property which are used by the agencies to perform a service or which go to their clients in connection with the performance of the service.

- (1) *Tangible personal property used by advertising agency and not for resale to clients.* If the advertising agency is primarily performing a service and does not sell tangible personal property, it does not need a sales tax license. Purchases by advertising agencies of articles delivered to a location in the City are subject to sales tax imposed by the retailer. If the retailer fails to collect sales tax, the advertising agency must remit use tax to the City. Invoices must be retained for all purchases of tangible personal property, including those for service contracts, to determine whether tax was appropriately paid.
- (2) *Tangible personal property sold to clients of advertising agency.*
 - (a) Sales tax also applies to the entire amount charged to customers or clients, including fabrication labor, for items of tangible personal property including, but not limited to, drawings, paintings, films, designs, photographs, lettering, assemblies, and printed matter, as well as tapes, CDs and DVDs (visual and audio). The format in which the items are delivered to the customer is irrelevant. These items are taxable whether they are delivered in electronic or hard copy formats. It is also irrelevant whether the items are used for reproduction or display purposes only.
 - (b) If an agency acquires articles for resale to its clients, then the agency must have a sales tax license in order to purchase such property tax-free for resale. The sales tax to be charged by the agency applies to the total amount of the retail sale of property, whether prepared by its employees or acquired from outside sources. Sales by an advertising agency, including direct mail advertising pieces, handouts, throwaways, and similar articles, are subject to sales tax if delivered to clients in the City. If the agency fails to collect sales tax, the client must remit use tax to the City. Records must be maintained to account for retail sales to customers.
- (3) *Flat rate for service.* If an advertising agency charges one flat fee for both the non-taxable service and the taxable tangible personal property, then the entire amount is taxable.
- (4) *Non-taxable services.* Non-taxable services, if separately stated, include, but are not limited to:
 - Writing copy for use in advertising to be broadcast on television or radio;
 - Writing copy for use directly in magazines or newspapers (does not include inserts. Inserts are taxable.)
 - Typesetting, color separation, and design;
 - Compiling statistical and other information;
 - Placing, or arranging for the placing, of advertising in print media, on billboards, and other forms of outdoor advertising, including on or in cars, buses, trains, or other facilities used in public advertising;
 - Charges for supervision, consultation, and research.

AGRICULTURAL PRODUCERS

"Agricultural producer" has the meaning as set forth in Section 3.01.230 of the Code.

Agricultural producers are likened to manufacturers. As such, commercial packaging materials and commercial shipping materials purchased by an agricultural producer to deliver its products to its customers are not subject to tax. "Containers" and "shipping cases" include wire, twine, rope, tape and similar binding materials, together with any other material or product used to wrap, bag, bundle, or similarly contain products. Containers not used to deliver a product, or which are used for any purpose whatsoever prior to use in delivering a product to a customer, are subject to tax at the time of acquisition.

Fertilizer purchased by an agricultural producer is not subject to tax. "Fertilizer" includes compounds of nitrogen, phosphorus, potassium, trace elements or similar materials or substances which provide essential plant food elements and which become ingredients of the growing plant. "Fertilizer" does not include soil, sand, peat moss, limestone, disinfectants, mulches and similar materials primarily used to condition the soil or the preserve or facilitate plant growth, regardless of incidental nutritive value. Therefore, purchases of such materials are taxable. Similarly, the purchases of insecticides, fungicides, germicides, herbicides, and similar materials or substances are taxable.

AUTOMOBILE DEALERS AND DEMONSTRATION VEHICLES

Any motor vehicle purchased and offered for sale by a licensed motor vehicle dealer or wholesaler, as defined in C.R.S. § 44-20-102, which has received a full-use dealer plate or demonstration plate in accordance with C.R.S. § 42-3-116 and/or Colo. Code Regs. § 204-10:48, shall not be subject to use tax.

AUTOMOTIVE REPAIRS

Parts and accessories installed in automotive vehicles are of the same nature as other sales of tangible personal property and, therefore, are taxable, unless provided in performance of a separate warranty, service or maintenance contract on which tax was paid. The taxable amount is the total charge made to the customer, with deductions therefrom allowed for service or labor charges if separately stated.

If a repair shop subcontracts a portion of the repair job to another repair shop, the total amount charged to the end customer is taxable, unless the charges for parts and labor are separately stated on both the subcontractor's invoice and on the invoice to the end customer. If separately stated, only the parts are subject to sales tax on the invoice to the end user.

Automotive vehicle dealers, garages, repairmen, and the like may purchase tax-free only tangible personal property for resale. These items must be separately stated on the invoice at the time of purchase. This exemption does not apply to service vehicles, machinery, equipment, supplies, tools, and similar items which they purchase for their own use or consumption and not for resale. Supplies consumed in the performance of a job (such as sandpaper and masking tape), and not separately stated on the invoice to the customer, are taxable to the repairman.

Automotive repair shops may also invoice for delivery and other miscellaneous fees, charges and overhead recoveries. These fees and charges include, but are not limited to, delivery fees, freight fees, waste fees, environmental fees, handling fees, and "shop supply" charges. These fees and charges are subject to City sales tax and must be included in the taxable selling price.

BROADCASTING STATIONS AND OTHER MEDIA

The purchase of tangible personal property by broadcasting stations for use in their operations inside the City is subject to City sales tax. Personal property includes, but is not limited to, satellite dishes, transmitting towers and other electronic receiving or transmitting equipment; records, tapes, compact

discs and other recording or playback media; and equipment used in the studio, business office and general station facilities.

Tax must also be paid on the purchase price of promotional and advertising items. The purchase of items for resale would be exempt from City sales tax, provided that sales tax is collected on the price charged to the end user. The sale of on-air advertising spots is not subject to sales/use tax.

Advertisements for a City retailer making retail sales of tangible personal property to City residents through a broadcasting station or by direct orders to the advertiser must state that sales tax must be added to the sales price remitted by City residents.

CEMETERIES

Cemeteries must charge sales tax on the selling prices of cement vaults, liners, markers, sod and similar items.

Persons constructing above ground burial structures or below ground concrete foundations are deemed to be constructing improvements to real property and must follow the rules set forth herein under "Contractors."

COINS AND BULLION

If any coin or currency is exchanged in the open market at the current exchange rate, then the transaction is not subject to sales tax. If coins, however, are commemorative or otherwise, and the coins, although legal tender in the issuing country and also acceptable as legal tender in other countries, are purchased at rates not reflecting actual currency value (as for numismatic or coin collecting purposes or where the previous metal content of the coins determine their value), then the transaction is the sale of tangible personal property and is subject to sales tax.

Sales of bullion are subject to sales tax. Bullion sold within the City and physically or constructively transferred into the City is subject to the sales tax. If the purchaser, however, paid a sales tax in the city or state in which he took delivery, then he is liable to the City for the difference between the sales tax paid and the City sales tax. Sales of gold and silver commodity contracts are not subject to sales tax unless delivery of the commodity is taken in the City.

CONSIGNED MERCHANDISE SALES

Sales tax must be collected on the retail sale of consigned inventory. The consignee must collect and remit the sales tax to the City. While consigned inventory is owned by the consignor, it is the consignee that actually makes the retail sale and is therefore accountable for tax collection and remittance.

CONTRACTOR BILLING – APPLICATION OF TAX

This section does not apply to Contractors operating under a City of Lakewood building permit where Tax has been prepaid.

- (1) Types of billing and types of contracts can affect the way tax is imposed on a Contractor and/or its customer. The following applies to Contractors that bill their customers on a lump sum and/or time and material basis.

- (a) Time and Materials. A Contractor that invoices separately for labor and materials must have a Sales and Use Tax License and charge applicable City tax on the marked-up price of all materials sold at retail. Labor separately stated on the invoice is exempt from taxation under the Tax Code. The Contractor is liable for Use Tax on the cost of all materials and supplies not separately billed to the customer, as well as on tools and equipment.
- (b) Lump Sum. A lump sum contract does not distinguish between labor and materials; rather, the amount is invoiced together as one total. The Contractor must either pay Sales Tax upon the purchase of all materials, including supplies, prefabricated materials and rentals, used to complete the lump sum contract or, if all such materials are purchased tax-free (wholesale), pay Use Tax directly to the City for all such materials used to complete the contract. The Contractor does not charge to its customer Tax on the lump sum price.
- (c) Completed Units. Completed units, not made-to-order, are tangible personal property that can be purchased at retail as standalone items and do not require significant on-site fabrication labor at the installation location. Examples of completed units include stoves, refrigerators, furnaces, air conditioners, washing machines, dryers, carpets, electrical fixtures, ready-made cabinets, storm doors, garage doors, storm windows, screens, sod and similar items.

Contractors selling/installing completed units are considered Retailers and must bill their customers on a time and materials basis and collect from the customer, and remit to the City, Sales Tax on all tangible personal property used to complete the contract, including all materials, supplies, prefabricated materials and rentals.

Repairs and maintenance of completed units are not repairs to real property and must be billed on a time and materials basis.

- (1) Governments, Schools and Charitable Organizations. Construction materials purchased by Contractors for construction work on property owned by the United States Government, State of Colorado, charitable organizations having a Lakewood Certificate of Exemption, schools not held or conducted for private or corporate profit, and political subdivisions are exempt from sales or use tax. For charitable organizations, only those construction materials purchased *after* receiving a Certificate of Exemption will be exempt. The City will provide an exemption letter to the Contractor for a qualifying project upon request.
- (3) Sales and Use Tax Returns.
 - (a) Lump Sum Billers. Contractors that invoice on a lump sum basis are not required to file Sales Tax returns, but may be liable to the City for Use Tax. Such Contractors located within the City must remit Use Tax to the City on materials and supplies upon use in a job or in fulfillment of a contract, when initially purchased tax-free (wholesale) and for which an exemption certificate has not been obtained.
 - (b) Time and Materials Billers. Contractors that invoice on a time and materials basis must file Sales Tax returns and may also have Use Tax liability to the City. Such Contractors located within the City must remit Use Tax to the City on materials and supplies not separately billed to the customer unless an exemption certificate for the customer has been obtained.
- (4) Licenses. Contractors that invoice on a time and materials basis must have a Lakewood Sales and Use Tax license. Contractors located within the City that invoice on a lump sum basis must have a Lakewood Sales and Use Tax license.

- (5) Subcontractors. Subcontractors are treated as Contractors for the purposes of this Special Regulation.

COUPONS

Retailers accept coupons from their customers for a reduction in the regular selling price of an article. These coupons are classified as either manufacturer's coupons or store coupons.

A manufacturer coupon is issued by the manufacturer and allows the customer a reduction in the sales price of the product upon presentation of the coupon to the retailer. Because the retailer is reimbursed by the manufacturer for the amount of the reduction, sales tax applies to the full selling price before the deduction of the manufacturer coupon.

A store coupon is issued by the retailer for a reduction in the price of an article when the coupon is presented to the retailer by the customer. Because there is no reimbursement to the retailer for such reduction, the sales tax applies to the reduced selling price of the article.

When a coupon, gift card or similar instrument provided to a customer for in-store use is a form of payment, such instrument is deemed to be a manufacturer coupon. "Form of payment" means the instrument is not a discount to or for any specific item, is not redeemable for cash, and when items purchased with such instrument are returned to the store, the dollar amount of the purchase made with such instrument is returned to the customer only as in-store credit, store gift card or similar.

The sale of coupon books or cards to the general public is not a taxable transaction. The publisher of the book must pay sales/use tax to the printer based on the cost of the books or cards.

DENTAL LABORATORIES AND DENTISTS

Dental laboratories and dentists engaged in business in the City must obtain a sales and use tax license. Dentists who have monthly retail sales of less than three hundred dollars (\$300) may request to make returns and pay taxes at intervals not greater than every three (3) months. Dentists who do not have retail sales may request to submit use tax returns on an annual basis, covering all purchases of equipment and supplies upon which sales tax has not been paid. Annual use tax returns must be filed even if the use tax liability is zero.

Prosthetic devices are replacements for lost or missing natural parts or are the addition of devices through prosthetic dentistry to aid dental bodily functions. Prosthetic dentistry consists of the replacement of lost teeth, and the use of inlays, crowns, bands, brackets and other band attachments, wires, intraoral and/or extraoral traction devices, and retaining or holding appliances and other devices that aid in dental bodily functions.

Items subject to tax include, but are not limited to:

- general business equipment
- hand instruments and other items used for patient care
- dental equipment and furnishings
- supplies used for patient diagnostic records
- supplies and materials that do not become constituent parts of a prosthetic device
- samples purchased by the dentist and provided to patients

Items exempt from tax include, but are not limited to:

- supplies and materials that become a constituent part of a prosthetic device to be resold to a dentist
- prosthetic devices sold to a dentist
- gold, silver and other materials used for fillings
- orthopedic dental devices or appliances intended to treat or reconstruct skeletal or dental issues, including mouth guards and night guards, when manufactured, altered or adjusted to fit a particular patient and prescribed by a licensed practitioner of the healing arts.

DONATIONS

A retailer or manufacturer who purchases tangible personal property for the purpose of donating it to a charitable organization must pay sales or use tax on the purchase (and cannot claim the charitable organization's exemption). Such retailer or manufacturer cannot claim a resale exemption by asserting that the property was donated, and not resold, to the charitable organization.

A retailer or manufacturer who initially makes a wholesale (exempt) purchase of an item for resale (*e.g.*, retailer buys an item for its inventory it plans to resell it) and later withdraws the item from inventory and donates it to a charitable organization is subject to use tax on the withdrawal from inventory.

EATING AND DRINKING ESTABLISHMENTS

Tax must be collected by eating and drinking establishments whether the food is eaten at the establishment or off its premises. Sales tax must be separately stated on the bill or invoice of the service establishment, with the exception of vending machines and drinking establishments selling drinks by the glass which may include tax in the selling price.

Caterers. Caterers and other persons similarly engaged are liable for sales tax on the total selling price for items sold and/or charges for services essential to providing meals and beverages. If tables, chairs, linens or similar items are leased, such items are subject to tax pursuant to section 3.01.420(J) of the Tax Code. Where catering services, including food, are sold as a package, the entire purchase price of the services is taxable.

Delivery charges. Delivery charges to deliver taxable items are taxable, even if separately stated.

Employee meals. Private enterprises, such as commercial and manufacturing companies, and public agencies, such as governmental organizations, regularly serving and charging their employees or the public for meals and beverages are liable for sales tax based upon the selling price of such meals and beverages. Meals provided to employees at no charge and are considered as part of their salary, wages, or income are exempt from sales and use tax.

Fundraisers. When an eating and drinking establishment donates to charity any portion of the price charged to the customer for a meal, tax is imposed, and shall be collected and remitted to the City, on such price charged. Eating and drinking establishments serving fund-raising meals priced in excess of the regular purchase price are liable for sales tax on the regular selling price.

Disposable and non-disposable products. The retailer of meals and drinks must pay the tax on purchases of most products used or consumed in the operation of its business, including fixtures, linens, silverware and glassware. Plastic and paper products such as towelettes, napkins, soda straws, plates, knives, forks, spoons and cups are specifically exempt from sales tax if: such items become the property

of the consumer along with the food, no charge for such items is made and sales tax is paid on the food. (Sections 3.01.430(G)(4) and (5)).

Coupons. When a customer purchases one meal and receives another meal free as a result of presenting a coupon issued by the restaurant, sales tax applies only to the actual amount charged. However, tax applies to the full (non-discounted) price of the meal when an entity other than the restaurant issues a coupon or similar chit for a price reduction or free meal.

Complimentary food and drink. Food and drink provided by the establishment at no charge to the customer is subject to use tax on the cost to the establishment. This shall include promotional items or items provided as reparation for sub-standard food or service.

Gratuity. The following gratuities are not subject to sales tax if the total amount of the gratuity is distributed by the vendor to persons who actually render the service: cash tips (money left by the patrons for use of those providing the service), charge tips (amounts added to sales check by the patrons for use of those providing the service), banquet tips, and tips separately stated and added to the sales check by the vendor at a flat rate.

FABRICATING, PRODUCING AND PROCESSING

"Fabricating, producing, and processing" includes any operation which results in the creation or production of an article of tangible personal property, or which is a step in a process or series of operations resulting in the creation or production of such an article, excluding operations not so related for the creation or production of such an article.

Fabrication/manufacturing labor is subject to sales/use tax. The Lakewood Municipal Code (Code) includes fabrication/manufacturing labor in the definition of "Price" or "Purchase Price" at section 3.01.230: "The gross purchase price of articles sold after manufacturing or after having been made to order, including the gross value of all of the materials used, labor and service performed, and the profit thereon."

An operation that changes the form or state of tangible personal property is one of fabrication. Persons regularly engaged in the fabrication or production of articles of sale at retail shall collect and remit the tax on the sales price. If the fabricator converts such property to its own use, then it shall remit the tax based on his acquisition cost.

The tax applies to the total charges for the fabrication or production of an article of tangible personal property made to order. For example, if a manufacturer orders a machine part from a machine shop for the purpose of completing a custom order, then the tax shall be paid on the total charge for the part, including labor, even if charges for labor are segregated from the cost of the materials. Similarly, the total charges for making drapes are subject to sales tax.

FACTORY-BUILT HOUSING

- (1) Any Factory-Built Housing where a Lakewood building permit is required shall be subject to section 3.01.450 of the Tax Code.
- (2) Any Factory-Built Housing for which a Lakewood building permit is not required (other than for utility hook-ups, etc.) shall be subject to the following:
 - (a) Lump Sum Contracts. A lump-sum contract for the construction of fixtures to real property is treated as a contract for services, and the contractor providing those services is treated as the end user and consumer of the tangible personal property used to construct such fixtures. This means that a builder who uses a lump-sum contract

with the homeowner must pay sales tax to the manufacturer on fifty-two percent (52%) of the purchase price the builder paid to the manufacturer. If, after the builder purchases the manufactured home from the manufacturer, the builder purchases additional materials to perform finish work on the manufactured home, then the builder pays sales tax (or use tax) on the entire purchase price for those materials. The homeowner is not liable for any sales or use tax.

- (b) Time and Materials Contracts. If the builder uses a time and materials contract with the homeowner, then the builder is not treated as the ultimate consumer of the manufactured home but, instead, is treated as a retailer who resells the home to the homebuyer. The builder's purchase of the manufactured home charged by the manufacturer is an exempt wholesale purchase for resale and the subsequent sale by the builder to the homeowner is subject to sales tax. The tax paid by the homeowner is calculated on fifty-two percent (52%) of both the price charged by the manufacturer to the builder and the markup, if any, on the manufacturer's price charged by the builder to the homeowner. For materials that were not purchased from the manufacturer but purchased by the builder to complete the finish work (*e.g.*, plaster to finish drywall seams), sales tax is calculated on the full price charged by the builder to the homeowner for such materials.
- (3) Materials Not Part of the Factory-Built Housing. Materials that are not part of the manufactured home are taxed on one hundred percent (100%) of the price for such materials. For example, sales tax (whether paid by the builder that uses a lump-sum contract or paid by the homeowner under a time and materials contract) applies to the entire purchase price of materials to construct the foundation, to bring electricity and other utilities to the home, kitchen appliances and window coverings are not considered part of the Factory-Built Housing.

FEDERAL AREAS, SALES ON

Sales on federally owned land are subject to City sales tax, except when made to the U.S. government, as set forth in 3.01.430(D)(1); provided, however, sales to authorized persons as defined in 4 U.S.C. 107 are not subject to sales tax.

FIDUCIARIES

Trustees, receivers, executors, or administrators who, by virtue of their appointment by a State or Federal court, operate, manage, or control a business engaged in buying and selling tangible personal property, including the liquidation of assets of a bankrupt, insolvent, or deceased person, must acquire a sales tax license in the fiduciary's name and otherwise meet the collection and reporting requirements of Chapter 3.01.

FINANCIAL INSTITUTIONS

Banks, savings and loan associations, and similar financial organizations who offer gifts or premiums of tangible personal property as an inducement for opening an account, making a deposit or adding to an account are, for purposes of Chapter 3.01, making sales of tangible personal property (see (1) below) or are making taxable purchases (see (2) below).

These gifts and premiums are purchased by the financial institution and given to the customer or offered to the customer at a reduced price when a deposit is made to the customer's account. The purchase of these gifts and premiums or sales thereof are to be reported in the following manner:

- (1) The sales of these premiums and gifts at their reduced price are treated as retail sales and the financial institutions must collect the sales tax from the depositor.
- (2) The difference between the bank's purchase price and the cash price paid by the depositor shall be taxable to the financial institutions.
- (3) If an item is given to the depositor in consideration of depositing funds or using other financial services from which the bank may profit, the item's purchase price (cost) will be reported as a taxable sale on the appropriate line of the sales tax return.

FREIGHT, DELIVERY AND TRANSPORTATION

Transportation or delivery charges are subject to tax. This includes, but is not limited to, freight charges, delivery charges and other like charges to transport tangible personal property. When other charges are not separately stated on the invoice and are commingled with delivery charges, such as set-up and handling charges, they would also be subject to tax. The Code includes these charges in the definition of "Price" or "Purchase Price" in section 3.01.230.

The freight charges are considered a part of the negotiated purchase price to the vendor. Therefore, freight, delivery or transportation charges billed by the vendor are subject to tax.

A contract between a delivery company and the purchaser of tangible personal property would be exempt from tax, provided that the purchaser pays the delivery company directly and the delivery charges do not appear on the seller's invoice. The freight charges would not be considered part of the negotiated purchase price. This would be considered a non-taxable service contract.

GAS AND ELECTRIC SERVICES

Gas and electric services, whether furnished by municipal, public or private corporations or enterprises, are taxable when furnished for domestic and commercial consumption, but are not taxable when sold for resale or for any of the uses set out in Section 3.01.430(H) or when subject to any of the general exemptions of Chapter 3.01.

The tax applies to all amounts paid for taxable gas or electrical services, irrespective of whether there is an actual consumption. The tax is imposed on all payments, whether in the form of a minimum charge, a flat rate, or otherwise.

GIFT CERTIFICATES

Sales of gift certificates and similar documents, as well as their redemption for cash, are not subject to tax. If the gift certificates or similar documents are redeemed for merchandise and not cash, then sales tax is due on the total selling price of the merchandise.

GIFTS, PREMIUMS AND PRIZES

Purchases of tangible personal property for use as gifts, premiums or prizes for which no valuable consideration is received from the recipient are subject to sales tax on the total purchase price. The purchaser is deemed to be the user and consumer of such property. Examples would be gifts given to all individuals who attend a time-share real estate presentation, regardless of whether the individual buys or invests in the proposals. If the property is purchased from a licensed City retailer, all applicable sales tax should be paid to the retailer upon such purchase.

Any person purchasing tangible personal property to give away in any manner without contingencies is a user or consumer and is liable for the tax thereon. Such property includes advertising gifts and articles given as prizes, premiums, or for goodwill.

If a legally imposed municipal sales tax was not collected at the time of purchase, then use tax is due.

Vehicles claimed as gifts between family members that are truly gifts without consideration are not subject to sales tax. However, assumption of a debt (lien) between family members is consideration and subjects the transaction to sales tax. The taxable value of the vehicle would be the debt plus any other consideration given. See also Regulation 3.01.420(C).

The donor and the recipient are considered family members if one of the following relationships exists: spouse, parents, grandparents, child, grandchild, brother or sister. Claimed gifts between parties not included in these family relationships are presumed to be with consideration and subject to sales tax. The exchange of a vehicle is taxed at fair market value as determined using the Kelly Blue Book average wholesale value. If unrelated parties insist the change of ownership is a bona fide gift, without consideration, the new owner may appeal to the Sales Tax Division for review and evaluation. If the claimed gift is in fact a gift without consideration, the transaction is not subject to tax.

HOTELS, MOTELS AND OTHER LODGING SERVICES

Such supplies as toilet tissue, soap, shoeshine cloths, clothes bags, matches, facial tissue, coffee and other items available for guests in their room are considered part of the purchase price of the lodging service and are not subject to sales or use tax at the time of purchase by the hotel or motel. This exemption is based on resale of these consumables in a taxable transaction and does not apply to rooms rented continuously for over thirty days that are not subject to sales tax under Chapter 3.01.

Linens, furniture, pool equipment and supplies, and similar items are subject to sales or use tax at the time of purchase by the hotel or motel. Any items offered to guests outside of their rooms, including but not limited to continental breakfast, coffee, drinks, snacks, etc., is subject to sales tax at the time of purchase by the hotel or motel. If a legally imposed municipal sales tax was not collected at the time of purchase, then use tax is due.

If a hotel or motel operates a restaurant or lounge, see the rules set forth herein under "Eating and Drinking Establishments."

Banquet and Meeting Rooms. A room used exclusively for a banquet, meeting or sales/display room is not subject to sales or accommodations tax on charges for these uses. A room or suite with beds cannot qualify as exclusively used for any of the above exempt purposes.

Fees. Cancellation charges, forfeited deposits and similar charges for cancelling a reservation or failing to check-in on time or at all are subject to sales tax. Other taxable fees include, but are not limited to, pet, early or late departure, rollaway bed, and additional persons.

ICE

Ice sold for home consumption is exempt from sales tax.

Sales of ice to other sellers of ice or to sellers of soft drinks for use as a component part of a drink are wholesale sales and, therefore, are not subject to sales tax. If ice is used for the sole purpose of becoming an ingredient or component of the finished product, as when it is used solely to supply all or a

part of the water content of the sausage and luncheon meats, the sale of the ice is a sale for resale and is not subject to sales tax. If not purchased for these purposes, and the purchase is not otherwise exempt, as in the case of a purchase for resale, then the purchase is subject to tax.

Persons selling ice to manufacturers, carriers, or any other consumer for the purpose of cooling or keeping perishable items or property or for other uses are making taxable sales.

INITIAL USE OF PROPERTY

Any item purchased for use or consumption by the purchaser is subject to sales or use tax at the time of purchase, even though the item might be resold later in either its original or altered form. A tax-free purchase is taxable in full at the first time it is used by the purchaser for a nonexempt purpose.

Examples:

1. Electronic devices such as television sets, audio equipment, mobile phones, gaming systems, computers and similar items available for customers to handle, use, play, experience, experiment with, test, try out, etc., whether or not eventually sold, are subject to sales or use tax on the initial purchase.
2. Ceiling fans, light fixtures, doorbells and similar items when affixed to walls, ceilings, overhangs, displays, etc., for purposes of use or display at a retailer's business, whether or not eventually sold, are subject to sales or use tax on the initial purchase.
3. A junkman may not buy a new car tax-free under the theory that the car is going to be junked someday and resold through his business for scrap.

INSURANCE COMPANIES

Insurance companies are not exempt from sales tax on purchases of tangible personal property for their consumption.

Purchases of articles by an insurance company to replace insured damaged property are subject to tax. Articles purchased by the insured with the proceeds of a damage claim settlement received from an insurance company are subject to tax.

JANITORIAL SERVICES

Items such as hand soaps, paper towels, toilet tissue, and disinfectants which are furnished under service contract and which are billed to the customer as a separate and distinct item from the service that is performed are considered retail sales of tangible personal property. Sales tax shall be collected from the customer and remitted by the janitorial service.

If such consumable items are not separately stated but are included in the janitorial service contract, then the janitorial service shall be deemed to be the user or consumer of the products and shall pay sales tax at the time of purchase.

No sales or use tax is applicable to the charge for service rendered.

LEASED DEPARTMENTS IN RETAIL STORES

Leased departments in retail stores are separate and distinct stores, just the same as if the various businesses conducted in such departments were conducted in separate and distinct buildings. The fact

that the various departments are in one building or on one floor of a building does not alter the fact that ownership and control of merchandise is different in each leased department. Where a store has leased departments to persons for retail sales of tangible personal property, each leased department shall make separate monthly sales tax returns. The lessee shall keep his own books and make his own sales tax collections on retail sales. If the lessor store keeps the books for the lessee departments and makes collections for their sales, then the lessor store shall make separate sales tax returns for such departments and shall pay the taxes due thereon, but the lessee is not relieved of his ultimate liability under Chapter 3.01 if the lessor store fails to make the proper sales tax returns or to remit the taxes to the Chief Financial Officer.

LINEN SERVICES

A linen business's purchase of linens, including but not limited to, uniforms, tablecloths, rugs and other textiles to be provided as part of the service, is exempt from tax as a wholesale purchase. Other items used in the performance of the service, such as soaps, starch, cleaners, hangers, bags, wrap, twine, or other consumables items are taxable to the linen company on the purchase price.

For purposes of taxation to the customer, the only non-taxable service a linen business provides is the cleaning and mending of linens or other tangible personal property not owned by the linen business. All other services where the linen business owns the property being provided are considered taxable rentals of tangible personal property. The entire charge for such rentals, inclusive of cleaning and mending charges, is subject to tax.

MAINTENANCE, RENOVATION AND DECORATING SERVICES (NON-STRUCTURAL)

Persons engaged in the business of rendering non-structural maintenance, renovation and decorating services, such as painters and paper hangers, floor waxing services, resurfacing and others under a maintenance or service contract are rendering a service and are considered the users of the articles purchased and are subject to tax on such articles at the time that they are purchased.

No sales or use tax is applicable to the charges made for these services.

MANUFACTURERS AND PREFABRICATORS ACTING AS CONTRACTORS

A manufacturer or prefabricator may contract to build into real property that which it manufactures or prefabricates. If the contract provides for the transfer of title to the materials prior to the time that the materials are built into the real property, and if the material price is separately stated from the installation price, then the manufacturer shall be considered to have sold the material. Therefore, sales tax must be charged only on the selling price of the material. If not properly segregated, then the amount included for installation is also part of the taxable price.

If a manufacturer or prefabricator builds materials into real property, and title to the materials does not pass until incorporated in the real property, then the manufacturer is a contractor contemplated in the Special Regulation for "Contractors" and must follow such Special Regulation.

MORTICIANS AND FUNERAL HOMES

Morticians and funeral homes are considered to be rendering services and making sales of tangible personal property and shall collect sales tax in accordance with the following rules:

1. If a funeral service is contracted for in one lump sum, with no itemizations, sales tax shall be imposed on the entire amount.
2. If a funeral service is contracted for in such a manner that the charges for such tangible personal property as caskets, urns, vaults, shipping boxes, clothing, floral items and similar tangible personal property, are separately stated from the charges for such services as music, police escort, clergy honorarium, and similar services, then sales tax shall be imposed only upon the selling price of such tangible personal property.

The fact that the remains are consigned to a common carrier for delivery elsewhere, whether inside or outside the City, does not change the fact that such tangible personal property was first used in the City and, therefore, a Lakewood taxable sale. These rules apply to all sales of funeral services and related tangible personal property within the City.

Tangible personal property that is purchased and that is not to be resold in the normal course of business is subject to tax at the time of purchase. Tax-free purchases for resale, when removed from inventory and used in the regular course of a mortician's business, must be included in the Lakewood tax return for the month in which such articles are removed from inventory.

NEWSPAPERS, MAGAZINES AND OTHER PUBLICATIONS

Newspapers, as defined in Section 3.01.230 of the City Code, are exempt from sales and use tax, whether delivered on newsprint or accessed digitally. The term "published regularly at short intervals," as stated in the definition of newspapers, shall mean published at least once each week.

A publisher who only makes sales of newspapers is not required to obtain a sales tax license. The publisher shall pay sales tax upon all purchases of tangible personal property except newsprint and printer's ink used in the production of the newspaper products. If the newspaper publisher makes retail sales of other articles delivered in the City, then it shall obtain a sales tax license and collect sales tax and may purchase such articles tax-free for resale.

Magazines, periodicals, trade journals and similar items are tangible personal property whose retail sale is subject to sales tax. If such publications are printed and sold within the City, including subscriptions for such publications, whether or not accessed digitally, then the price is subject to sales tax. If the publication is printed in the City and delivery is made outside the City, then the sale is not subject to sales tax.

Trade journals, advertising pamphlets, circulars, etc. which are to be distributed free of charge and are distributed by means of house-to-house delivery are not exempt from sales tax. "Distributed free of charge" does not include publications that are provided as part of a paid membership. Organizations which produce and distribute free trade publications, and similar items, are deemed to be purchasers for their consumption, and such items are subject to sales tax based on the purchase price of the tangible personal property consumed.

Purchasers of a paid membership who receive trade journals, magazines, etc. as part of such membership are responsible for the sales tax on the publication. If the membership and publication are not separately stated, sales tax shall be due on the entire amount paid for the membership.

Sales tax must be paid to the printer by the advertiser/organization at the time that such items are prepared by the printer. If such items are purchased outside the City, and no sales tax has been paid thereon, then the advertiser must pay the City's use tax on such items.

OPTICAL SALES

Eyeglasses, lenses, frames, contact lenses and similar articles, together with cases or similar containers used to transfer the property to the customer, when dispensed under a prescription or other written order of a licensed practitioner of the healing arts are considered to be prosthetic devices and are exempt from sales and use tax.

Add-ons, including but not limited to non-prescription coatings such as scratch resistant, UV protection and glare reduction coatings, should be separately stated and are subject to sales tax.

Such articles not dispensed under a qualified prescription are subject to sales tax.

PHOTOGRAPHERS, PHOTOFINISHERS AND X-RAYS

Photographers and photofinishers are primarily engaged in the business of selling tangible personal property to their customers, and such sales are subject to sales tax. Purchases of materials that become ingredients or component parts of the finished picture, such as mounts, frames and sensitized paper, are not subject to sales tax because such items are purchased by the photographer or photofinisher for resale. Conversely, purchases of materials that do not become a part of the product sold to the customer are taxable to the photographer or photofinisher. Mounted negatives sold by photographers and photofinishers are subject to sales tax on the total price charged on negative and mount. Only the sale of developed negatives, such as movie film, would be exempt from sales tax.

The charge made by photographers and photofinishers for only the development of film is a service charge and is not subject to sales tax. If individuals deliver their own pictures to photographers for tinting or coloring, then the transaction is a service and is not subject to sales tax. If prints made from developed negatives are sold to a customer, then tangible personal property has been sold, and the selling price is subject to sales tax.

Physicians, surgeons, dentists, hospitals, X-ray laboratories and others who purchase X-ray film and then expose it for the purpose of diagnosis are considered the consumers of the X-ray film. Consequently, tax applies to the purchase of all materials and supplies used to expose and develop the finished X-ray film. These materials include, but are not limited to, film and chemicals.

PRINTERS AND PRINTING

Sales of catalogs, books, letterheads, bills, envelopes, folders, advertising circulars and other printed matter are taxable retail sales if the purchaser does not resell the articles but consumes them as by distributing them free of charge. Except as herein stated, a printer shall not deduct from the selling price any charge for labor or service in performing the printing, even though the labor or service charges may be billed separately from the charge for stock. The labor or service is expended in the production of the article sold. Consequently, it is manufacturing labor incorporated in the product.

If separately stated on the invoice, the services of typesetting, color separation, design, and art and camera mechanicals performed by a printer or its subcontractor for a customer or another printer are not subject to sales or use tax.

On commercial printing of postal cards or stamped envelopes purchased from the United States Postal Service, the amount subject to tax does not include the amount of postage involved.

Printed matter that is partially printed, invoiced to the customer, held in stock for further imprinting, and finally invoiced for subsequent imprinting is subject to sales tax on the full price charged by the printer

for the item. Sales tax must be collected on the selling price of each part of the job. The subsequent imprinting before delivery is deemed to be completion of the initial sale and not a separate transaction.

Exempt purchases of tangible personal property for resale include:

- (1) **Paper:** Newsprint, stock on which the finished product is printed and delivered to the customer, and wrapping materials for finished products sold to customers.
- (2) **Ink:** Printer's ink, ink additives, and overprint varnishes.
- (3) **Chemicals:** Anti-offset sprays, fountain etch solutions, gum solutions, and all component chemicals when used with the above materials.
- (4) **Materials:** Padding compound, stitching wire and staples, and bookbinder's tape.
- (5) **Pre-press preparation materials:** Light sensitive film, plates and proofing materials. Such exemption shall be allowed upon compliance with the procedures stated below.

Printers who are merely performing a service shall be subject to the Special Regulations relating to "Service Enterprises." Printer's ink and newsprint are exempt under Section 3.01.430(M), but all other above listed items are subject to use tax when applied to property which is not sold or incorporated into the final product.

Pre-press preparation materials (which shall be defined as light sensitive films, plates, and proofing materials) shall qualify as exempt purchases of tangible personal property to the extent that such items are utilized for the production of a specific product for a specific customer, and title passes to the customer as part of the total sale, and adequate cost records for the particular job showing amount of prepress preparation material are retained by the printer. If separately invoiced as herein provided, pre-press preparation materials used in the production of a product sold and delivered to a tax-exempt entity will not be deemed subject to the payment of use tax by the printer.

The printer must maintain adequate records of pre-press preparation materials not sold or incorporated into the final product in detail as to each specific job, so that the indication of pre-press material designation on the ultimate billing can be determined upon audit and segregated from other pre-press materials, manufacturing aids or plant property. There must be an audit trail that clearly reflects the passing on to the customer of a particular item of pre-press preparation material and collection of sales tax on a particular invoice when such sales are subject to tax.

A printer may at times retain a customer's property in his place of business. When tangible personal property is retained in the printer's place of business, the department may examine the various records applicable to this property, such as who is liable for the payment of insurance and personal property tax on the property, who is allowed to deduct the depreciation expense on the property, and who benefits from salvage of the item in making a determination of the ownership of the property.

PRIVATE CLUBS

Sales of tangible personal property and taxable services at retail by private clubs, such as country clubs, athletic clubs, fraternal organizations or organizations of persons formerly in the armed services of the United States, are subject to tax. Such transactions are taxable even when the transactions are with club members. Private club memberships are not taxable.

READY-MIX CONCRETE

Ready-mix concrete is subject to sales tax on the delivered price, which includes minimum load and transportation charges. (See sec. 3.01.420 of the Tax Code.) Standby charges charged after arrival at the destination are not taxable if segregated on the customer's invoice.

REPOSSESSED PROPERTY

If the reposessor of tangible personal property sold the property to the person from whom it was taken and remitted the tax on the total selling price, then the retailer-reposessor may deduct the uncollected selling price from the gross sales on the sales tax return for the period during which the repossession occurred. Repossessed property must be held exclusively for resale by a person holding a valid license. The subsequent retail sale of the repossessed property is subject to sales tax.

No deduction or other credit may be taken from gross sales on account of the repossession when:

- (1) The repossessed property is a motor vehicle. However, a deduction may be allowed when there is a seller-financed sale. See CRS 39-26-113(6);
- (2) The retailer-reposessor reports sales tax on the cash basis; or
- (3) The retailer-reposessor reports sales tax on the accrual basis but elects, consistent with Regulation 3.01.230 for "Taxable Sales," to report on the cash basis the collections of such credit sales as that subject to repossession.

A person is not liable for sales or use tax on the transaction of repossessing tangible personal property for which he retained a security interest so long as the repossessed property is placed in the reposessor's inventory and held for resale (at retail or wholesale). Repossessed property converted to personal or business use is subject to sales or use tax calculated at the fair market value at the date of conversion.

SAND AND GRAVEL

Sand and gravel removed from the ground becomes tangible personal property and are subject to the sales or use tax that applies to retail sales of tangible personal property. Sales of sand and gravel are taxable unless sold to a licensed retailer for resale.

Tax must be imposed on the delivered price of sand and gravel, including minimum load and transportation charges, in accordance with the provisions of Regulation 3.01.230 for "Price" or "Purchase Price." Stand-by charges made after arrival at the destination are not taxable if segregated on the customer's invoice.

The retailer of sand and gravel who removes sand and gravel stocks to fulfill its own construction obligations is subject to sales or use tax on the acquisition cost of the products used or consumed at the time of conversion to its own consumption.

Persons who purchase the right to remove sand and gravel from another's land are subject to a use tax on the purchase price of the sand and gravel when removed, unless the same is held for resale.

SERVICE ENTERPRISES

Business engaged in rendering a service are generally consumers rather than sellers of tangible personal property. Tangible personal property which is incidentally transferred with the service to the customer is taxable to the service provider, not to the customer. Service businesses that also sell tangible personal property or taxable services must collect sales tax on these sales. If the charge for service is not separately stated from the charge for tangible personal property, the entire amount is subject to sales/use tax.

To determine if a transaction is a sale of tangible personal property or the transfer of tangible personal property incidental to the performance of a service, one must look to the true nature of the transaction. If the transaction is for advisory services, record keeping, payroll, architectural, tax and like services and the tangible personal property is forms, binders, blueprints, reports or other like property, the tangible personal property is incidental to the performance of the service and, therefore, taxable to the service provider, not the customer. If the purchaser's primary interest is in the physical property of the item purchased, the item is subject to sales/use tax when sold.

Copies sold of the tangible personal property incidental to the performance of a service are subject to sales/use tax. The transfer of the original manuscript by an author to the publisher for the purpose of publication is not subject to sales/use tax. However, the sale of printed copies of the author's book would be subject to sales/use tax.

Sales/use tax would apply to the sale of artistic expressions in the form of paintings, photographs, sculptures and similar artwork, even though the work of art may express an original idea. Generally custom-made items are subject to sales/use tax, with the exception of an original prototype. The materials used to make original prototypes are subject to sales/use tax. The purchaser's primary interest in custom-made items is in the physical property of the item being purchased. Therefore, they are taxable when sold.

The development of information in a research and development contract is not a sale of tangible personal property in the form of a prototype, model, plan, design or like items. Rather it is a contract for information which is an intangible service that cannot be conveyed orally and can only be conveyed via tangible personal property, which is incidental to the service. The materials used to make the prototypes, models, plans, design and like items are subject to sales/use tax to be paid by the service provider. Any copies or additional prototypes and models would be subject to sales/use tax when sold.

When the transaction is determined to be the sale of tangible personal property, sales tax would apply to the full sale price for the item. Deductions are not allowed for labor, management, thought, time or other separately stated items.

Examples:

1. An architectural design firm contracts with a land developer to design a subdivision. The architect transfers blueprints and a 3-D model of the development. The developer requests two additional sets of blueprints and two additional models for his two partners. The original set of blueprints and 3-D model are not taxable to the developer, because they are incidental to the service; but the materials used to make them are taxable to the architect. The additional two sets of blueprints and models are taxable to the developer because they are copies.
2. A law firm contracted with an artist to design and build a sculpture for the firm's lobby. The artist's invoice read: materials \$500.00, design work \$1,000.00 and labor \$2,000.00. The

entire invoice is subject to sales/use tax, even though it is separately stated. A deduction for labor and design is not allowed when the transaction is a sale of tangible personal property.

TOOLS, JIGS, DIES, PATTERNS, MOLDS AND SIMILAR ITEMS

A person who makes and sells tools, jigs, dies, patterns, molds and similar items to a purchaser for use in the purchaser's manufacturing or processing is making retail sales of the articles and is required to collect and remit the sales tax. After using such items, the purchaser may resell them to the customer for whom the purchaser is manufacturing articles. Such resales, however, do not exempt the sale first described above because the purchaser purchased the article primarily for use and not for resale. The resale of the article to a customer after use by the initial purchaser is taxable.

UPHOLSTERERS

An upholsterer engaged in the repair, recovering, upholstering or similar work on a customer's personal property is engaged in the sale of tangible personal property and shall charge its customers sales tax on the tangible personal property used in this service. If the upholsterer separately states the tangible personal property and the service or labor charges on the billing to the customer, then the labor or services charges are not taxable.

A sale by the upholsterer of upholstery material, manufactured articles or other tangible personal property to a retail customer, without service rendered in connection with the sale, is also taxable on the full selling price of the property.

Upholstery material and other items of tangible personal property that become a part of the upholstered item may be purchased tax-free, but the upholsterer must pay use tax on those items used or consumed that do not become a part of the completed upholstered property.

Where an upholsterer purchases personal property, which it upholsters and then offers for sale, the upholsterer is required to charge sales tax on the full selling price of such property. The labor to process and prepare such property for sale to a customer is a taxable part of the transaction of sale.