

ORDINANCE NO. 2498

INTRODUCED BY: ALLEN-THOMAS, CHACON, DOUGLAS, FORD, HURST, HUSEMAN, KIM, MADERA, NOBLE

AN ORDINANCE AMENDING THE COMMERCE CITY SALES AND USE TAX CODE, ARTICLE I OF CHAPTER 20 OF THE COMMERCE CITY REVISED MUNICIPAL CODE, REGARDING ECONOMIC NEXUS AND THE OBLIGATION OF REMOTE SELLERS TO COLLECT AND REMIT SALES TAX

WHEREAS, the City of Commerce City, Colorado (“City”) is a home rule municipality, organized and existing under Article XX, Section 6 of the Colorado Constitution;

WHEREAS, pursuant to Article XX, Section 6 of the Colorado Constitution, the right to enact, administer and enforce sales taxes is clearly within the constitutional grant of power to the City and is necessary to raise revenue with which to conduct the affairs and render the services performed by the City;

WHEREAS, pursuant to such authority, the City has adopted and enacted a Sales and Use Tax Code, Chapter 20 of the Commerce City Revised Municipal Code, (“CCRMC”), under which City sales tax is levied on all sales and purchases of tangible personal property or taxable services at retail unless specifically exempted or prohibited, as applicable to the provision of this Ordinance, under the Constitution or laws of the United States;

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

WHEREAS, based upon the U.S. Supreme Court ruling, a retailer’s obligation to collect sales tax on Remote Sales is no longer based primarily on whether the retailer has physical presence in the jurisdiction by the Constitution or law of the United States, and the City’s Sales and Use Tax Code needs to be amended to clearly reflect such obligation consistent with said ruling;

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

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

WHEREAS, it is appropriate for Colorado municipalities to adopt uniform definitions within their sales tax codes to encompass marketplace facilitators, marketplace sellers, and multichannel sellers that do not maintain a physical presence in the City, but that still have a taxable connection with the City;

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

WHEREAS, this ordinance provides a safe harbor to those who transact limited sales within the City;

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

WHEREAS, the City adopts this ordinance with the intent to address tax administration, and, in connection with, define economic nexus for retailers or vendors without physical presence in the State or City and require the retailer or vendor to collect and remit sales tax for all sales made within the marketplace.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COMMERCE CITY, COLORADO AS FOLLOWS:

**SECTION 1. Findings.** The recitals to this ordinance are incorporated as findings of the City Council. This ordinance and changes to the Commerce City Sales and Use Tax Code are found to be supported and authorized by law and in the best interests of and necessary for the protection of the health, safety, and welfare of the public.

**SECTION 2. Amendments.** The Amendments to Article I of Chapter 20 of the Commerce City Revised Municipal Code as reflected in Exhibit A to this ordinance are hereby adopted.

**SECTION 3.** No obligation to collect the sales and use tax required by this ordinance may be applied retroactively. Responsibilities, duties and liabilities described in the Tax Code of a marketplace facilitator, marketplace seller, or multichannel seller begin upon the earlier of when they became licensed to collect the City's sales tax or when they became legally obligated to collect the city's sales tax under the City's Tax Code.

**SECTION 4.** If any provision of this ordinance, or the application of such provision to any person or circumstance, is held to be unconstitutional, then the remainder of this ordinance, and the application of the provisions of such to any person or circumstance, shall not be affected thereby.

**SECTION 5. Repealer.** All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof are hereby repealed to the extent of such inconsistency.

**SECTION 6. Effective Date.** This ordinance shall become effective on the first day of the month that is at least thirty (30) days after date of its adoption.

INTRODUCED, PASSED ON FIRST READING AND PUBLIC NOTICE ORDERED  
THIS 1ST DAY OF MAY 2023.

PASSED ON SECOND AND FINAL READING AND PUBLIC NOTICE ORDERED THIS  
5TH DAY OF JUNE 2023.

CITY OF COMMERCE CITY, COLORADO

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Benjamin A. Huseman, Mayor

ATTEST

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Dylan A. Gibson, City Clerk

**EXHIBIT A TO ORDINANCE 2498**  
(Clean version; ellipses (. . .) indicate no change)

\*\*\*BEGIN\*\*\*

**Section 20-3 GENERAL TERMS, DISTINCTIONS, WORDS AND PHRASES DEFINED**

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**3-30 “Economic Nexus”**

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

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

(B) In the current calendar year, 90 days has passed following the month in which the person, which includes a marketplace facilitator, has made retail sales into the state exceeding the amount specified in C.R.S. § 39-26-102(3)(c), as amended. This definition does not apply to any person who is otherwise engaged in business in this state or City, but otherwise applies to any other person.

**3-31 “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: (1) directly, indirectly, or by a subsidiary maintains a building, store, office, salesroom, warehouse, or other place of business within the City; (2) sends one or more employees, agents or commissioned sales persons into the City to solicit business or to install, assemble, repair, service, or assist in the use of its products, or for demonstration or other reasons; (3) maintains one or more employees, agents or commissioned sales persons on duty at a location within the City; (4) owns, leases, rents or otherwise exercises control over real or personal property within the City; (5) retailer or vendor in the state of Colorado that makes more than one delivery into the City within a twelve month period; or (6) makes retail sales sufficient to meet the definitional requirements of economic nexus as set forth in 20-3-30.

**3-32 “Excess Tax”**

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**3-33 “Exempt Institution”**

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**3-34 “Exemptions”**

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**3-35 “Factory Built Housing”**

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**3-36 “Farm Close-Out Sale”**

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**3-37 “Finance Director” or “Director”**

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**3-38 “Food for Home Consumption”**

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**3-39 “Garage Sales”**

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**3-40 “Gross Sales”**

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**3-41 “Lease”**

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**3-42 “License”**

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**3-43 “Linen Services”**

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**3-44 “Lodging Services”**

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**3-45 “Manufacturing”**

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**3-46 “Marketplace Facilitator”**

(A) Means a person who:

(1) Contracts with a marketplace seller or multichannel seller to facilitate for consideration, regardless of whether or not the consideration is deducted as fees from the transaction, the sale of the marketplace seller’s tangible personal property, products, or services through the person’s marketplace;

(2) Engages directly or indirectly, through one or more affiliated persons, in transmitting or otherwise communicating the offer or acceptance between a purchaser and the marketplace seller or multichannel seller; and

(3) Either directly or indirectly, through agreements or arrangements with third parties, collects payment from the purchaser on behalf of the seller.

(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.

**3-47 “Marketplace Seller”**

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

**3-48 “Medical Supplies”**

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**3-49 “Mobile Machinery” and “Mobile Equipment”**

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**3-50 “Multichannel Seller”**

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

- 3-51**    **“Net Taxable Sales and Services”**  
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- 3-52**    **“Newspaper”**  
...
- 3-53**    **“Online Garage Sales”**  
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- 3-54**    **“Pay Television”**  
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- 3-55**    **“Person”**  
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- 3-56**    **“Personal Property”**  
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- 3-57**    **“Pre-Printed Newspaper Supplements”**  
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- 3-58**    **“Prescription Drugs for Animals”**  
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- 3-59**    **“Prescription Drugs for Humans”**  
...
- 3-60**    **“Price” or “Purchase Price”**  
...
- 3-61**    **“Private Communications Services”**  
...
- 3-62**    **“Prosthetic Devices for Humans”**  
...
- 3-63**    **“Purchase” or “Sale”**  
...
- 3-64**    **“Purchaser” or “Consumer”**  
...
- 3-65**    **“Quasi-Governmental Organization**  
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- 3-66**    **“Real Property”**  
...
- 3-67**    **“Recreation Services”**  
...
- 3-68**    **“Rental”**  
...
- 3-69**    **“Resident”**  
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- 3-70**    **“Retail Sales”**  
...
- 3-71**    **“Retailer”**  
...
- 3-72**    **“Retailer-Contractor”**

- ...
- 3-73**    **“Return”**
- ...
- 3-74**    **“Sales Tax”**
- ...
- 3-75**    **“Sales Tax Defined”**
- ...
- 3-76**    **“Security System Services”**
- ...
- 3-77**    **“Software as a Service”**
- ...
- 3-78**    **“Software License Fee”**
- ...
- 3-79**    **“Software Maintenance Agreement”**
- ...
- 3-80**    **“Sound System Services”**
- ...
- 3-81**    **“Special Accounting Basis” or “Estimated Percentage Basis”**
- ...
- 3-82**    **“Storage”**
- ...
- 3-83**    **“Student”**
- ...
- 3-84**    **“Tangible Personal Property”**
- ...
- 3-85**    **“Tax”**
- ...
- 3-86**    **“Tax Deficiency or “Deficiency”**
- ...
- 3-87**    **“Taxable Sales”**
- ...
- 3-88**    **“Taxable Services”**
- ...
- 3-89**    **“Taxpayer”**
- ...
- 3-90**    **“Telecommunications Service”**
- ...
- 3-91**    **“Therapeutic Device”**
- ...
- 3-92**    **“Total Tax Liability”**
- ...
- 3-93**    **“Use”**
- ...
- 3-94**    **“Use Tax”**
- ...

**3-95    “Use Tax Defined”**

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**3-96    “Vendor’s Fee” or “Retainage”**

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**3-97    “Watts/800 Service”**

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**3-98    “Wholesale Sales”**

means sales to licensed retailers, jobbers, dealers or wholesalers for resale. Sales by wholesalers to consumers are not wholesale sales. Sales by wholesalers to non-licensed retailers are not wholesale sales unless the non-licensed retailer is a Marketplace Facilitator, Marketplace Seller or Multichannel Seller, as defined herein that is not located within the City.

**3-99    “Wholesaler”**

means any person selling to licensed retailers, jobbers, dealers, or other wholesalers, including a wholesaler who is also a Marketplace Facilitator, Marketplace Seller or Multichannel Seller, for resale, and not for storage, use, consumption, or distribution.

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**Section 20-6 TAXPAYER (VENDOR AND CONSUMER) LIABILITY - LICENSES - TAX REPORTS - SPECIAL ACCOUNTING - FORM OF LICENSE AND REPORTS**

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**6-3    Vendor Responsibility for Collection and Remittance of Tax and Licensing**

**(A)    Vendor Responsibility for Collection of Tax**

Every retailer or vendor engaged in business and selling at retail as the same are defined in this Code shall be liable and responsible for the payment of an amount equivalent to four and one-half percent (4.5%) of all sales made by him of commodities or services as specified in Section 20-4 of this Code.

**Regulation 20-6-3 (A)**

The vendors who deliver tangible personal property, or cause to be delivered such property purchased from them at retail to a Commerce City resident are subject to the provisions of the City Code. Any vendor who delivers or causes such deliveries to be made without first complying with the City Code or any other person aiding or abetting the noncomplying vendor, including, but not limited to, common or contract or commercial carriers so delivering such tangible personal property for the vendor, shall be deemed by the Director as guilty of a violation of this Code and shall be prosecuted accordingly. (Refer to Specific Industry Section “Common, Contract and Commercial Carrier”.)

Purchasers of tangible personal property, the storage, use or consumption of which is subject to the City sales and use tax, must pay the tax either to the vendor, if the vendor is

licensed and/or required to collect the tax, or directly to the City. It is illegal for any person to sell at retail in Commerce City without first having obtained a license. Except in cases where retailers are authorized to operate without a license as specified in this Code, it shall be presumed that any person not having a valid State of Colorado or Commerce City license is the ultimate user or consumer of any property that he purchases. Any sales to such a person will be taxable as a retail sale regardless of the disposition of the property sold.

**(B) Vendor Responsibility for Remittance of Tax**

Unless a different period for filing returns is permitted by this Code or the Finance Director, every retailer or vendor engaged in business and selling at retail as the same are defined in this Code shall file a return as prescribed herein with the Finance Director, including through the Colorado Sales and Use Tax Filing system on or before the twentieth (20th) day of the month following the required reporting period. If the twentieth (20th) day of the month occurs on a weekend or City recognized holiday, the due date for filing is the next business day. Retailers and vendors shall remit an amount equivalent to four and one half percent (4.5%) and also any excess tax collections over said four and one half percent (4.5%) as provided in Subsection 20-6-11, less the vendor's fee to cover the retailer's expense of collection and remittance of the tax. The retailer shall add the tax as a separate and distinct item and such tax shall be a debt from the consumer to the retailer and shall be recoverable at law in the same manner as other debts.

**Regulation 20-6-3 (B)**

- (1) The vendor of tangible personal property shall collect the sales tax on the purchase price paid for commodities and services specified in the Code and account for and remit the full amount of the tax. He is liable and responsible for the payment of an amount equivalent to four and one-half percent (4.5%) of the total amount received from taxable sales made in each return period.

Excess collections, if any, within the return period, shall be included in the total amount of the sales tax for which he is required to account. In computing the amount of tax he is required to remit, the vendor will multiply net taxable sales, which will include the cost of the merchandise the vendor withdrew from stock for his own business or personal use, by four and one-half percent (4.5%) and compute the difference between this sum and the tax actually collected. If the amount collected from all such sales is more than four and one half percent (4.5%) of the net taxable sales, the vendor will add the difference as excess tax prorated between the City and State. He is then permitted to deduct the vendor's fee from his tax liability to cover his cost of collecting the tax.

Purchasers or consumers may not deduct the vendor's fee on their use tax returns, and vendors may not deduct the vendor's fee unless their returns are timely filed.

The vendor shall complete a return upon his gross sales of tangible personal property during the preceding month and show exempted and non-taxable sales as permitted within the Code. Return forms are furnished by the Department and call for specific information. The forms must be

filled out in detail and separate sheets attached whenever necessary to show all the pertinent facts.

Every vendor must make monthly returns prior to the twentieth (20th) day of each month on the forms provided by the Department, unless permission has been obtained to make quarterly or annual returns. The return must have a United States Postal Service postmark dated no later than the twentieth (20th) day of the month to be considered timely filed. Metered postmarks will not be accepted as proof the return was timely filed.

The report, together with remittance, must be filed with the Department of Finance on or before the due date. Remittance must be by check, draft or money order and made payable to the City. Do not send postage stamps. Cash remittance should be by registered mail or personal messenger.

Unless otherwise stated in this Code, every vendor must make monthly returns prior to the twentieth (20th) day of each month on the forms provided by the Department, unless permission has been obtained to make quarterly or annual returns. The return must have a United States Postal Service postmark or electronic date stamp no later than the twentieth (20th) day of the month to be considered timely filed. If the twentieth (20th) day of the month occurs on a weekend or City recognized holiday, the due date for filing is the next business day. Metered postmarks will not be accepted as proof the return was timely filed.

**(C) Licenses for Vendors.**

Except as specified in subsection (D) of this section, it shall be unlawful for any person who is engaged in business in the City, as defined herein, to engage in the business of selling at retail, as the same is defined in this Code, tangible personal property and services subject to the tax imposed by this Code, without first having obtained a license therefor, which license shall be granted and issued by the Finance Director, with or without fee as determined and set by resolution of the City and shall be in force and effect until the business is sold, discontinued or relocated.

**Regulation 20-6-3 (C)**

- (1) Except as provided in Section 20-6-3(D), every person, retailer or lessor who is engaged in business, as defined herein, and comes within the definition of a retailer, as defined in this Code, shall obtain a license to do business in the City.
- (2) Except as provided in Section 20-6-3(D), a license is required for all forms of retail selling whether through stores, from private residence, by house to house canvass, by peddlers, by truckers, by vending machines, or in any other manner whatsoever.

Cooperative associations, clubs, chambers of commerce, lodges, churches, and similar organizations must be licensed and collect and remit the tax if regularly engaged in selling at retail, even though they may be non-profit organizations and may sell only to their own members.

- (3) Leased departments are separate and distinct stores just as if the various activities conducted in such departments were conducted in separate and distinct buildings. The fact that the various departments happen to be 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 certain of its departments to persons for the sale of tangible personal property, each such leased department shall obtain a license, collect the tax and remit same on a proper return.

The lessee may keep his own books and make his own collections on account of sales. If the store leasing such departments keeps the books for the leased departments and makes collections on account of their sales, the store shall make separate accountings for such departments and remit the taxes due. The lessee is not relieved of his liability in case the store fails to make the proper returns or fails to remit the taxes to the Director.

- (4) Except as provided in Section 20-6-3(D), engaging in business in the City, as defined in Section 20-3-30, without a license is a misdemeanor punishable by fine or imprisonment or both.

**(D)**

A license is not required for a Marketplace Facilitator, Marketplace Seller, or Multichannel Seller, provided they have no physical nexus with the City and their sole nexus with the City is either economic nexus or incidental physical presence as defined in Colorado Revised Statute 39-26-802.9(2)(c).

**6-4 Marketplace Sales**

**(A)**

(1) 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 by it for Marketplace Sellers or Multichannel 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 facilitated by the Marketplace Facilitator.

(2) A Marketplace Facilitator shall assume all the duties, responsibilities, and liabilities of a vendor under this Code. Marketplace Facilitators shall be liable for the taxes collected from Marketplace Sellers or Multichannel Sellers. The City may recover any unpaid taxes, penalties, and interest from the Marketplace Facilitator that is responsible for collecting on behalf of Marketplace Sellers or Multichannel Sellers.

(3) The liabilities, obligations, and rights set forth under this Code are in addition to any duties and responsibilities of the Marketplace Facilitator has under this Code if it also offers for sale tangible personal property, products, or services through other means.

(4) A Marketplace Seller, with respect to sales of tangible personal property, products, or services made in or through a Marketplace Facilitator's marketplace, does not have the liabilities, obligations, or rights of a retailer under this Code if the Marketplace Seller can show that such sale was facilitated by a Marketplace Facilitator:

- a. 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 Code; or
- b. 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 Code made in or through the Marketplace Facilitator's marketplace.

(5) If a Marketplace Seller makes a sale that is not facilitated by a licensed Marketplace Facilitator in a marketplace, the Marketplace Seller is subject to all of the same licensing, collection, remittance, filing and recordkeeping requirements as any other retailer.

(B) Auditing. With respect to any sale, the city shall solely audit the Marketplace Facilitator, but not the Marketplace Sellers or Multichannel Sellers, for sales facilitated by the marketplace.

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#### **6-6 Commerce City Business Consumer - Method of Payment**

Every person who operates or maintains, in this City, a business as defined in Subsection 20-3-6 hereof, and who purchases, leases or rents tangible personal property and taxable services for use, storage, distribution or consumption in the City in connection with the said business, from sources within or without the City and taxable hereunder, and who has not paid the Commerce City sales and use tax, imposed herein, to a vendor required or authorized to collect the same shall, under the authority vested in the City Manager in Subsection 20-6-2 of this Code and throughout this Code, be required to secure a license through application procedures set forth herein and monthly, or on a reporting basis agreed to by the City Manager, but no less than annually on a calendar year basis, make a return and pay the tax due, if any, to the City on or before the twentieth (20th) day of the month following the preceding month or months under report. If the twentieth (20th) day of the month occurs on a weekend or City recognized holiday, the due date for filing is the next business day.

#### **Regulation 20-6-6**

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(3) If the sales and use tax is not collected by the vendor, or his salesmen, the purchaser must pay the tax to the Finance Director directly. Except as provided in Section 20-6-3(D), all vendors or salesmen responsible for collecting the sales and use tax shall apply for and obtain from the City a license, and in the event there is a failure to so apply for a license

on the part of the salesman or vendor, then he shall be subject to the penalties as set forth herein.

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**6-17 Tax Returns - Content, Consolidation, Reporting Periods**

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**(C) Required Reporting Periods – Direct Filing**

The frequency of required tax reporting is based on the average monthly total tax owed during any rolling twelve-month period as follows:

If total tax owed is at least \$150 per month, monthly filing is required. If total tax owed is between \$15 and \$150 per month, quarterly filing is permitted. If total tax owed is under \$15 per month, annual filing is permitted.

If the accounting methods regularly employed by the vendor or licensed consumer in the transaction of his business, or other conditions, are such that in the returns aforesaid made on a calendar month basis, will impose unnecessary hardship, the City Manager may, upon request of the vendor, or licensed consumer, accept returns at such intervals as will, in his opinion, better suit the convenience of the taxpayer and will not jeopardize the collection of the tax.

**(D) Reporting Periods – State Centralized Filing**

A person that files tax returns through the Colorado centralized sales and use tax system (“SUTS”) may make returns and pay taxes at intervals consistent with that system.

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**6-18 Retailer and Consumer Licenses**

**(A) Application - Content**

Licenses shall be granted only upon application stating the name and address of the person desiring such license, the name of such business, the business type, the location, including the street number of such business and such other facts as may be required by the City Manager. ) Except as provided in Section 20-6-3(D), any person doing business as a wholesaler shall obtain a retailer’s license if any sales are made at retail as defined herein.

**Regulation 20-6-18**

Except as specified in Section 20-6-3(D) of this Code, every person who comes within the definition of a retailer must have in his possession a valid license.

Anyone operating a roadside stand or selling “door to door” or from other than an established store must have a license. Because of the transient character of persons who sell at retail from other than a store regularly established and carrying a stock of goods on hand at all times from which sales may be made at retail, such persons shall be required, as a condition of their obtaining a license under the Code, to post a bond satisfactory to the Director and payable to Commerce city, conditioned upon their full compliance with the provisions of the Code and their accounting to the Director for all monies due thereunder.

Except as specified Section 20-6-3(D) of this Code, anyone who repeatedly advertises, solicits or offers tangible personal property for sale must have a license and collect the tax due on such sales even though they are few and infrequent.

Except as specified in Section 20-6-3(D) of this Code, any person selling tangible personal property at retail in Commerce City who has never obtained a license, or any such person who continues to make such sales after his license has been revoked, shall be deemed guilty of a misdemeanor by the Director and, upon conviction thereof, shall be punished accordingly. (Refer to Subsection 20-6-18 (D) and (E).)

**(B) Each Retail Establishment to be Licensed**

In case business is transacted at two or more separate places in the City by one person, a separate license for each place of business shall be required; however, consolidated tax returns may be filed for those various locations as set forth in Subsection 20-6-17 (B).

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**(D) Sale at Retail Without License**

Except as specified in Section 20-6-3(D) of this Code, any person engaged in business in the City as defined in the Code, without having secured a license therefor, except as specifically provided herein, shall be guilty of a violation of this Code.

**SECTION IV - COMMERCE CITY SALES & USE TAX CODE - “SPECIFIC INDUSTRY” REGULATIONS**

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**AUCTIONEERS AND AUCTIONS**

**Regulation 20-S.I.6**

Every factor, auctioneer, or agent acting for an unknown or undisclosed principal, and who is entrusted with possession of any bill of lading, custom house permit, or warehouseman’s receipt for delivery of any tangible personal property, or entrusted with possession of any such personal

property, for the purpose of sale, shall be deemed to be the owner thereof, and upon the sale of such property shall be required to file a return and pay the tax thereon. A sale by a factor, auctioneer, or agent, when acting for a known or disclosed and properly licensed principal, shall be taxable to the principal. The same rules apply to lienholders, such as pawnbrokers, mechanics and artisans. In cases of retail sales by auctioneers at their established auction houses, sales yards or other places of business, the gross receipts are taxable regardless of how the property may have been acquired or by whom it may be owned. Except as specified in Section 20-6-3(D) of this Code, a license is required.

Persons engaged in the business of making retail sales at auction of tangible personal property owned by such person or others are retailers, and are, therefore, required to be licensed, except if acting for a known or disclosed principal licensed or otherwise authorized by the City to sell such tangible personal property.

The tax is measured by the gross receipts from such sales. The amount upon which tax is computed includes the amount charged for merchandise returned by a customer at an auction sale, if the sale is made under an agreement or understanding at the time of sale that the property will not be delivered or that any amount paid will be returned to the bidder.

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## **BARBERS, BEAUTY SHOP OPERATORS**

### **Regulation 20-S.I.8**

Barbers, beauty shop operators and other personal service proprietors, are the consumers of the supplies and other property used in performing their services. They are retailers, however, of any such supplies or of used articles or other tangible personal property which they sell to consumers in the regular course of business.

Barber shops and beauty parlors are primarily engaged in rendering services and their sales of services are usually not considered subject to the sales tax. Sales of tonics, skin preparations, and other cosmetics when made by the bottle, jar or package are sales of tangible personal property and subject to the tax. However, unless the barber shop or beauty parlor maintains an inventory of a value of \$50.00 or more, it will be deemed to be isolated or casual and not a regular engaging business, and barber and beauty supply houses are authorized to collect the sales or use tax on all sales to such barber shops and beauty parlors or the shops and parlors must report the use tax. If the inventory of package goods which is to be resold is in excess of \$50.00, however, the shop must have a License. Shops located within the City that engage in sales of wigs are required to obtain a license and collect the tax on such sales.

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## **COMMON, CONTRACT & COMMERCIAL CARRIERS, ETC.**

### **Regulation 20-S.I.14**

Resident and non-resident common, contract and commercial carriers for hire, including but not limited to package delivery service companies, trash pickup and hauling service companies, freight and materials hauling and freighting service companies, storage, express and transfer service companies and all other trucking companies, and also including companies hauling and freighting their own products and not for hire, must pay the tax on all their purchases, rentals and leases of tangible personal property delivered in this City, and on their use, storage, distribution and consumption of tangible personal property not otherwise exempted under this Code.

Non-resident and resident common, contract and commercial carriers are subject to the tax on all their purchases of tangible personal property which is delivered in this City, except as exempted from the tax under this Code.

Except as exempted under this Code, resident and non-resident common, contract and commercial carriers are subject to the tax on all their rentals and leases of tangible personal property, including automotive vehicles, when delivered in this City, to the full term and to the full amount of any original or renewed lease or rental contract or agreement, when original delivery of the tangible personal property, under question, was given in this City.

Except as exempted under this Code, rentals, leases or sales of tangible personal property by any common, contract or commercial carriers, including, but not limited to, storage and locker rental services, sale of storage or other containers to taxable persons, are taxable to the full amount charged to such customer.

Resident common carriers referenced above must pay the sales and use tax except if otherwise exempted under this Code on all their purchases of tangible personal property (1) where delivery is taken in the City, (2) where there is use, distribution or consumption in the City, or (3) where there is such storage in the City which terminates the flow of shipment of such property in interstate commerce. The tax is due and payable even though there is a subsequent shipment of such tangible personal property outside the City for actual use outside the City by the same common carrier at another of its branches or locations.

Common, Contract and Commercial Carriers, etc., as above, hiring individuals and leasing or renting those individual trucks and other equipment must pay the sales or use tax on such leases and rentals unless otherwise exempt under this Code.

Any Common, Contract or Commercial Carrier who, after being notified of a "non-complying" vendor status, (a non-complying vendor being a person who has failed to comply with the licensing and tax collection and/or remittance provisions of this Code) and who shall continue to deliver in this City any tangible personal property sold at retail by any such vendor, shall be considered in violation of this Code in aiding or abetting another to avoid the tax and shall be subject to the penalties provided and the tangible personal property so carried or delivered to this City for a noncomplying vendor shall be subject to distraint warrant.

The notice to the common carrier may take the form of listings furnished as to complying vendors, i.e. Commerce City licensed vendors and other vendors authorized to engage in business and sell at retail in this City.

...

## **DISTRIBUTING AND "WELCOMING" SERVICES**

### **Regulation 20-S.I.19**

Any person who owns the circular, samples, etc., distributed are required to pay the tax on the cost of printing or on the product distributed.

Any such distributing service or any person who distributed the circulars, etc., or products of others, the ownership of which does not reside in the distributor, and who fails to collect and remit any tax due the City from such tangible property owners shall be considered in violation of the Code in aiding or abetting another to avoid the tax.

Any such service businesses selling printed matter, products or other tangible personal property to any person for distribution, use, storage or consumption in this City or delivering in this City such property, except as specified in Section 20-6-3(D) of this Code, must license, collect, and remit the tax.

...

## **GOVERNMENTS - LICENSES – SALES**

### **Regulation 20-S.I.27**

Except as specified in Section 20-6-3(D) of this Code, any sales at retail, i.e., to the ultimate consumer, of tangible personal property requires the vendor to license with the City to collect and remit the City sales and use tax whether that "vendor" is a governmental or any other entity whatsoever, public or private, to the same degree and with the same liability as any other Commerce City vendor. Sales to officers or employees of such government entities for their personal use are taxable. Purchases by students, faculty, employees and staff of schools and school districts are taxable.

...

## **OCCASIONAL SALES - GENERAL, BUILDING AND FIXTURES, ETC. SUCCESSORS LIABILITY**

### **Regulation 20-S.I.33**

General. - The sales tax is definitely imposed upon all sales and purchases of tangible personal property at retail. If a store, apartment house, hotel, laundry, printing office, or other office or place of business is purchased, the sales tax must be paid on the purchase price paid for the equipment, furniture, fixtures, supplies, and all tangible personal property included in the sale except a stock or inventory of goods acquired for resale in the trade or business. There is no

exemption in the law for isolated or casual sales. Persons not regularly engaged in business who make occasional sales at retail, such as the sale of produce, farm products, household goods, furniture, farm equipment, machinery, etc., (except a "farm close-out sale") must collect and remit the sales tax. If the sales tax has not been collected by the vendor, the purchaser is liable for the use tax and should remit the same to the Finance Director.

Owners or operators of buildings who purchase construction materials for alterations and repairs, shelving, janitor's supplies and other tangible personal property for use by their tenants are the users or consumers of such articles and must pay the sales tax on such purchases, regardless of whether such articles are separately billed to and paid for by the tenants. All persons regularly engaged in the business of selling tangible personal property, including wholesalers, manufacturers and processors, must collect and remit the tax on all sales made to users or consumers even though they do not ordinarily sell at retail. It is immaterial that the property sold may be of a kind not ordinarily sold by the vendor such as used fixtures, equipment, tools, machinery, etc. If the vendor fails to collect the sales tax, the vendor is liable for payment thereof. The purchaser is also liable for payment of the tax. The City may pursue collection from either or both the vendor and the purchaser, but may only make one collection thereof.

Except as specified in Section 20-6-3(D) of this Code, anyone who advertises, solicits or offers tangible personal property for sale with the intention of making repeated sales, must have a license and collect the tax on such sales even if they are few and infrequent.

A person not engaged in the business of selling at retail need not obtain a license to make casual or occasional sales from time to time not in excess of One Hundred Dollars (\$100.00) per year or not exceeding one sale per year regardless of the value of the tangible personal property sold but such tangible property sold is subject to the tax.

\*\*\*END\*\*\*

**EXHIBIT B TO ORDINANCE 2498**

(Red strike-through text indicates removals; blue underline text indicates additions; ellipses (. . .) indicate no change)

\*\*\*BEGIN\*\*\*

**Section 20-3 GENERAL TERMS, DISTINCTIONS, WORDS AND PHRASES DEFINED**

...

**3-30 “Economic Nexus”**

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

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

(B) In the current calendar year, 90 days has passed following the month in which the person, which includes a marketplace facilitator, has made retail sales into the state exceeding the amount specified in C.R.S. § 39-26-102(3)(c), as amended. This definition does not apply to any person who is otherwise engaged in business in this state or City, but otherwise applies to any other person.

**3-301 “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: (1) directly, indirectly, or by a subsidiary maintains a building, store, office, salesroom, warehouse, or other place of business within the City; (2) sends one or more employees, agents or commissioned sales persons into the City to solicit business or to install, assemble, repair, service, or assist in the use of its products, or for demonstration or other reasons; (3) maintains one or more employees, agents or commissioned sales persons on duty at a location within the City; (4) owns, leases, rents or otherwise exercises control over real or personal property within the City; ~~or~~ (5) retailer or vendor in the state of Colorado that makes more than one delivery into the City within a twelve month period ~~by any means other than a common carrier~~; or (6) makes retail sales sufficient to meet the definitional requirements of economic nexus as set forth in 20-3-30.

**3-312 “Excess Tax”**

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**3-323 “Exempt Institution”**

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**3-334 “Exemptions”**

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**3-345 “Factory Built Housing”**

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**3-356 “Farm Close-Out Sale”**

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**3-367** “Finance Director” or “Director”

...  
**3-378** “Food for Home Consumption”

...  
**3-389** “Garage Sales”

...  
**3-3940** “Gross Sales”

...  
**3-401** “Lease”

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**3-412** “License”

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**3-423** “Linen Services”

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**3-434** “Lodging Services”

...  
**3-445** “Manufacturing”

...  
**3-46** “Marketplace Facilitator”

(A) Means a person who:

(1) Contracts with a marketplace seller or multichannel seller to facilitate for consideration, regardless of whether or not the consideration is deducted as fees from the transaction, the sale of the marketplace seller’s tangible personal property, products, or services through the person’s marketplace;

(2) Engages directly or indirectly, through one or more affiliated persons, in transmitting or otherwise communicating the offer or acceptance between a purchaser and the marketplace seller or multichannel seller; and

(3) Either directly or indirectly, through agreements or arrangements with third parties, collects payment from the purchaser on behalf of the seller.

(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.

**3-47** “Marketplace Seller”

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

**3-458** “Medical Supplies”

...  
**3-469** “Mobile Machinery” and “Mobile Equipment”

...  
**3-50** “Multichannel Seller”

[means a retailer that offers for sale tangible personal property, commodities, or services through a marketplace owned, operated, or controlled by a Marketplace Facilitator, and through other means.](#)

**3-4751** **“Net Taxable Sales and Services”**

...

**3-4852** **“Newspaper”**

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**3-4953** **“Online Garage Sales”**

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**3-504** **“Pay Television”**

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**3-515** **“Person”**

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**3-526** **“Personal Property”**

...

**3-537** **“Pre-Printed Newspaper Supplements”**

...

**3-548** **“Prescription Drugs for Animals”**

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**3-559** **“Prescription Drugs for Humans”**

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**3-5660** **“Price” or “Purchase Price”**

...

**3-5761** **“Private Communications Services”**

...

**3-5862** **“Prosthetic Devices for Humans”**

...

**3-5963** **“Purchase” or “Sale”**

...

**3-604** **“Purchaser” or “Consumer”**

...

**3-615** **“Quasi-Governmental Organization”**

...

**3-626** **“Real Property”**

...

**3-637** **“Recreation Services”**

...

**3-648** **“Rental”**

...

**3-659** **“Resident”**

...

**3-6670** **“Retail Sales”**

...

**3-671** **“Retailer”**

...

**3-6872** **“Retailer-Contractor”**

...

**3-6973** “Return”

...

**3-704** “Sales Tax”

...

**3-715** “Sales Tax Defined”

...

**3-726** “Security System Services”

...

**3-737** “Software as a Service”

...

**3-748** “Software License Fee”

...

**3-759** “Software Maintenance Agreement”

...

**3-7680** “Sound System Services”

...

**3-7781** “Special Accounting Basis” or “Estimated Percentage Basis”

...

**3-7882** “Storage”

...

**3-7983** “Student”

...

**3-804** “Tangible Personal Property”

...

**3-815** “Tax”

...

**3-826** “Tax Deficiency or “Deficiency”

...

**3-837** “Taxable Sales”

...

**3-848** “Taxable Services”

...

**3-859** “Taxpayer”

...

**3-8690** “Telecommunications Service”

...

**3-8791** “Therapeutic Device”

...

**3-8892** “Total Tax Liability”

...

**3-8993** “Use”

...

**3-904** “Use Tax”

...

**3-915** “Use Tax Defined”

...

**3-926** “Vendor’s Fee” or “Retainage”

...

**3-937** “Watts/800 Service”

...

**3-948** “Wholesale Sales”

means sales to licensed retailers, jobbers, dealers or wholesalers for resale. Sales by wholesalers to consumers are not wholesale sales. Sales by wholesalers to non-licensed retailers are not wholesale sales [unless the non-licensed retailer is a Marketplace Facilitator, Marketplace Seller or Multichannel Seller, as defined herein that is not located within the City.](#)

**3-959** “Wholesaler”

means any person selling to licensed retailers, jobbers, dealers, or other wholesalers, [including a wholesaler who is also a Marketplace Facilitator, Marketplace Seller or Multichannel Seller,](#) for resale, and not for storage, use, consumption, or distribution.

...

**Section 20-6 TAXPAYER (VENDOR AND CONSUMER) LIABILITY - LICENSES - TAX REPORTS - SPECIAL ACCOUNTING - FORM OF LICENSE AND REPORTS**

...

**6-3** **Vendor Responsibility for Collection and Remittance of Tax and Licensing**

**(D) Vendor Responsibility for Collection of Tax**

Every retailer or vendor engaged in business and selling at retail as the same are defined in this Code shall be liable and responsible for the payment of an amount equivalent to four and one-half percent (4.5%) of all sales made by him of commodities or services as specified in Section 20-4 of this Code.

**Regulation 20-6-3 (A)**

The vendors who deliver tangible personal property, or cause to be delivered such property purchased from them at retail to a Commerce City resident are subject to the provisions of the City Code. Any vendor who delivers or causes such deliveries to be made without first complying with the City Code or any other person aiding or abetting the noncomplying vendor, including, but not limited to, common or contract or commercial carriers so delivering such tangible personal property for the vendor, shall be deemed by the Director as guilty of a violation of this Code and shall be prosecuted accordingly. (Refer to Specific Industry Section “Common, Contract and Commercial Carrier”.)

Purchasers of tangible personal property, the storage, use or consumption of which is subject to the City sales and use tax, must pay the tax either to the vendor, if ~~he~~ [the](#)

vendor is licensed and/or required to collect the tax, or directly to the City. It is illegal for any person to sell at retail in Commerce City without first having obtained a license. Except in cases where retailers are authorized to operate without a license as specified in this Code, ~~It~~ shall be presumed that any person not having a valid State of Colorado or Commerce City license is the ultimate user or consumer of any property that he purchases. Any sales to such a person will be taxable as a retail sale regardless of the disposition of the property sold.

#### **(E) Vendor Responsibility for Remittance of Tax**

Unless a different period for filing returns is permitted by this Code or the Finance Director, ~~Every~~ retailer or vendor engaged in business and selling at retail as the same are defined in this Code shall file a return as prescribed herein with the Finance Director, including through the Colorado Sales and Use Tax Filing system on or before the twentieth (20th) day of the month ~~for the preceding month or months under report~~ following the required reporting period. If the twentieth (20th) day of the month occurs on a weekend or City recognized holiday, the due date for filing is the next business day. Retailers and vendors shall remit an amount equivalent to ~~said~~ four and one half percent (4.5%) and also any excess tax collections over said four and one half percent (4.5%) as provided in Subsection 20-6-11, less the vendor's fee to cover the retailer's expense of collection and remittance of the tax. The retailer shall add the tax as a separate and distinct item and such tax shall be a debt from the consumer to the retailer and shall be recoverable at law in the same manner as other debts.

#### **Regulation 20-6-3 (B)**

- (2) The vendor of tangible personal property shall collect the sales tax on the purchase price paid for commodities and services specified in the Code and account for and remit the full amount of the tax. He is liable and responsible for the payment of an amount equivalent to four and one-half percent (4.5%) of the total amount received from taxable sales made in each return period.

Excess collections, if any, within the return period, shall be included in the total amount of the sales tax for which he is required to account. In computing the amount of tax he is required to remit, the vendor will multiply net taxable sales, which will include the cost of the merchandise the vendor withdrew from stock for his own business or personal use, by four and one-half percent (4.5%) and compute the difference between this sum and the tax actually collected. If the amount collected from all such sales is more than four and one half percent (4.5%) of the net taxable sales, the vendor will add the difference as excess tax prorated between the City and State. He is then permitted to deduct the vendor's fee from his tax liability to cover his cost of collecting the tax.

Purchasers or consumers may not deduct the vendor's fee on their use tax returns, and vendors may not deduct the vendor's fee unless their returns are timely filed.

The vendor shall complete a return upon his gross sales of tangible personal property during the preceding month and show exempted and non-taxable sales as permitted within the Code. Return

forms are furnished by the Department and call for specific information. The forms must be filled out in detail and separate sheets attached whenever necessary to show all the pertinent facts.

Every vendor must make monthly returns prior to the twentieth (20th) day of each month on the forms provided by the Department, unless permission has been obtained to make quarterly or annual returns. The return must have a United States Postal Service postmark dated no later than the twentieth (20th) day of the month to be considered timely filed. Metered postmarks will not be accepted as proof the return was timely filed.

The report, together with remittance, must be filed with the Department of Finance on or before the due date. Remittance must be by check, draft or money order and made payable to the City. Do not send postage stamps. Cash remittance should be by registered mail or personal messenger.

Unless otherwise stated in this Code, every vendor must make monthly returns prior to the twentieth (20th) day of each month on the forms provided by the Department, unless permission has been obtained to make quarterly or annual returns. The return must have a United States Postal Service postmark or electronic date stamp no later than the twentieth (20th) day of the month to be considered timely filed. If the twentieth (20th) day of the month occurs on a weekend or City recognized holiday, the due date for filing is the next business day. Metered postmarks will not be accepted as proof the return was timely filed.

**(C) Licenses for Vendors.**

Except as specified in subsection (D) of this section, It shall be unlawful for any person who is engaged in business in the City, as defined herein, to engage in the business of selling at retail, as the same is defined in this Code, tangible personal property and services subject to the tax imposed by this Code, without first having obtained a license therefor, which license shall be granted and issued by the Finance Director, with or without fee as determined and set by resolution of the City and shall be in force and effect until the business is sold, discontinued or relocated.

**Regulation 20-6-3 (C)**

- (4) Except as provided in Section 20-6-3(D), every person, retailer or lessor who is engaged in business, as defined herein, and comes within the definition of a retailer, as defined in this Code, shall obtain a license to do business in the City.
- (5) Except as provided in Section 20-6-3(D), a license is required for all forms of retail selling whether through stores, from private residence, by house to house canvass, by peddlers, by truckers, by vending machines, or in any other manner whatsoever.

Cooperative associations, clubs, chambers of commerce, lodges, churches, and similar organizations must be licensed and collect and remit the tax if regularly engaged in selling at retail, even though they may be non-profit organizations and may sell only to their own members.

- (6) Leased departments are separate and distinct stores just as if the various activities conducted in such departments were conducted in separate and distinct buildings. The fact that the various departments happen to be 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 certain of its departments to persons for the sale of tangible personal property, each such leased department shall obtain a license, collect the tax and remit same on a proper return.

The lessee may keep his own books and make his own collections on account of sales. If the store leasing such departments keeps the books for the leased departments and makes collections on account of their sales, the store shall make separate accountings for such departments and remit the taxes due. The lessee is not relieved of his liability in case the store fails to make the proper returns or fails to remit the taxes to the Director.

- (4) [Except as provided in Section 20-6-3\(D\), engaging in business in the City, as defined in Section 20-3-30, without a license is a misdemeanor punishable by fine or imprisonment or both.](#)

#### (D)

[A license is not required for a Marketplace Facilitator, Marketplace Seller, or Multichannel Seller, provided they have no physical nexus with the City and their sole nexus with the City is either economic nexus or incidental physical presence as defined in Colorado Revised Statute 39-26-802.9\(2\)\(c\).](#)

#### **6-4 Marketplace Sales**

##### (A)

[\(1\) 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 by it for Marketplace Sellers or Multichannel 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 facilitated by the Marketplace Facilitator.](#)

[\(2\) A Marketplace Facilitator shall assume all the duties, responsibilities, and liabilities of a vendor under this Code. Marketplace Facilitators shall be liable for the taxes collected from Marketplace Sellers or Multichannel Sellers. The City may recover any unpaid taxes, penalties, and interest from the Marketplace Facilitator that is responsible for collecting on behalf of Marketplace Sellers or Multichannel Sellers.](#)

[\(3\) The liabilities, obligations, and rights set forth under this Code are in addition to any duties and responsibilities of the Marketplace Facilitator has under this Code if it also offers for sale tangible personal property, products, or services through other means.](#)

(4) A Marketplace Seller, with respect to sales of tangible personal property, products, or services made in or through a Marketplace Facilitator's marketplace, does not have the liabilities, obligations, or rights of a retailer under this Code if the Marketplace Seller can show that such sale was facilitated by a Marketplace Facilitator:

a. 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 Code; or

b. 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 Code made in or through the Marketplace Facilitator's marketplace.

(5) If a Marketplace Seller makes a sale that is not facilitated by a licensed Marketplace Facilitator in a marketplace, the Marketplace Seller is subject to all of the same licensing, collection, remittance, filing and recordkeeping requirements as any other retailer.

(B) Auditing. With respect to any sale, the city shall solely audit the Marketplace Facilitator, but not the Marketplace Sellers or Multichannel Sellers, for sales facilitated by the marketplace.

...

## **6-6 Commerce City Business Consumer - Method of Payment**

Every person who operates or maintains, in this City, a business as defined in Subsection 20-3-6 hereof, and who purchases, leases or rents tangible personal property and taxable services for use, storage, distribution or consumption in the City in connection with the said business, from sources within or without the City and taxable hereunder, and who has not paid the Commerce City sales and use tax, imposed herein, to a vendor required or authorized to collect the same shall, under the authority vested in the City Manager in Subsection 20-6-2 of this Code and throughout this Code, be required to secure a license through application procedures set forth herein and monthly, or on a reporting basis agreed to by the City Manager, but no less than annually on a calendar year basis, make a return and pay the tax due, if any, to the City on or before the twentieth (20th) day of the month following the preceding month or months under report. If the twentieth (20th) day of the month occurs on a weekend or City recognized holiday, the due date for filing is the next business day.

### **Regulation 20-6-6**

...

(3) If the sales and use tax is not collected by the vendor, or his salesmen, the purchaser must pay the tax to the Finance Director directly. Except as provided in Section 20-6-3(D), all vendors or salesmen responsible for collecting the sales and use tax shall apply for and obtain from the City a license, and in the event there is a failure to so apply for a license on the part of the salesman or vendor, then he shall be subject to the penalties as set forth herein.

...

## 6-17 Tax Returns - Content, Consolidation, Reporting Periods

...

### (F) Required Reporting Periods – Direct Filing

The frequency of required tax reporting is based on the average monthly total tax owed during any rolling twelve-month period as follows:

If total tax owed is at least \$150 per month, monthly filing is required. If total tax owed is between \$15 and \$150 per month, quarterly filing is permitted. If total tax owed is under \$15 per month, annual filing is permitted.

If the accounting methods regularly employed by the vendor or licensed consumer in the transaction of his business, or other conditions, are such that in the returns aforesaid made on a calendar month basis, will impose unnecessary hardship, the City Manager may, upon request of the vendor, or licensed consumer, accept returns at such intervals as will, in his opinion, better suit the convenience of the taxpayer and will not jeopardize the collection of the tax. ~~provided, however the City Manager may by rule permit a vendor or licensed consumer whose monthly tax collected is less than fifty dollars (\$50) to make returns and pay taxes at intervals not greater than three months, or as approved by the City Manager.~~

### (D) Reporting Periods – State Centralized Filing

A person that files tax returns through the Colorado centralized sales and use tax system (“SUTS”) may make returns and pay taxes at intervals consistent with that system.

...

## 6-19 Retailer and Consumer Licenses

### (A) Application - Content

~~Commerce City retailer and consumer~~ Licenses shall be granted only upon application stating the name and address of the person desiring such license, the name of such business, the business type, the location, including the street number of such business and such other facts as may be required by the City Manager. ) Except as provided in Section 20-6-3(D), any person doing business as a wholesaler shall obtain a retailer’s license if any sales are made at retail as defined herein.

### **Regulation 20-6-18**

Except as specified in Section 20-6-3(D) of this Code, every person who comes within the definition of a retailer must have in his possession a valid license.

Anyone operating a roadside stand or selling “door to door” or from other than an established store must have a license. Because of the transient character of persons who sell at retail from other than a store regularly established and carrying a stock of goods on hand at all times from which sales may be made at retail, such persons shall be required, as a condition of their obtaining a license under the Code, to post a bond satisfactory to the Director and payable to Commerce city, conditioned upon their full compliance with the provisions of the Code and their accounting to the Director for all monies due thereunder.

Except as specified Section 20-6-3(D) of this Code, anyone who repeatedly advertises, solicits or offers tangible personal property for sale must have a license and collect the tax due on such sales even though they are few and infrequent.

Except as specified in Section 20-6-3(D) of this Code, any person selling tangible personal property at retail in Commerce City who has never obtained a license, or any such person who continues to make such sales after his license has been revoked, shall be deemed guilty of a misdemeanor by the Director and, upon conviction thereof, shall be punished accordingly. (Refer to Subsection 20-6-18 (D) and (E).)

**(B) Each Retail Establishment to be Licensed**

In case business is transacted at two or more separate places in the City by one person, a separate license for each place of business shall be required; however, consolidated tax returns may be filed for those various locations as set forth in Subsection 20-6-17 (B).

...

**(D) Sale at Retail Without License**

Except as specified in Section 20-6-3(D) of this Code, any person engaged in business in the City as defined in the Code, without having secured a license therefor, except as specifically provided herein, shall be guilty of a violation of this Code.

## SECTION IV - COMMERCE CITY SALES & USE TAX CODE - "SPECIFIC INDUSTRY" REGULATIONS

...

### AUCTIONEERS AND AUCTIONS

#### Regulation 20-S.I.6

Every factor, auctioneer, or agent acting for an unknown or undisclosed principal, and who is entrusted with possession of any bill of lading, custom house permit, or warehouseman's receipt for delivery of any tangible personal property, or entrusted with possession of any such personal property, for the purpose of sale, shall be deemed to be the owner thereof, and upon the sale of such property shall be required to file a return and pay the tax thereon. A sale by a factor, auctioneer, or agent, when acting for a known or disclosed and properly licensed principal, shall be taxable to the principal. The same rules apply to lienholders, such as pawnbrokers, mechanics and artisans. In cases of retail sales by auctioneers at their established auction houses, sales yards or other places of business, the gross receipts are taxable regardless of how the property may have been acquired or by whom it may be owned. [Except as specified in Section 20-6-3\(D\) of this Code](#), ~~Aa~~ license is required.

Persons engaged in the business of making retail sales at auction of tangible personal property owned by such person or others are retailers, and are, therefore, required to ~~hold sellers' permits be licensed~~, except if acting for a known or disclosed principal licensed [or otherwise authorized by the City](#) to sell such tangible personal property.

The tax is measured by the gross receipts from such sales. The amount upon which tax is computed includes the amount charged for merchandise returned by a customer at an auction sale, if the sale is made under an agreement or understanding at the time of sale that the property will not be delivered or that any amount paid will be returned to the bidder.

...

### BARBERS, BEAUTY SHOP OPERATORS

#### Regulation 20-S.I.8

Barbers, beauty shop operators and other personal service proprietors, are the consumers of the supplies and other property used in performing their services. They are retailers, however, of any such supplies or of used articles or other tangible personal property which they sell to consumers in the regular course of business.

Barber shops and beauty parlors are primarily engaged in rendering services and their sales of services are usually not considered subject to the sales tax. Sales of tonics, skin preparations, and other cosmetics when made by the bottle, jar or package are sales of tangible personal property and subject to the tax. However, unless the barber shop or beauty parlor maintains an inventory of a value of \$50.00 or more, it will be deemed to be isolated or casual and not a regular

engaging business, and barber and beauty supply houses are authorized to collect the sales or use tax on all sales to such barber shops and beauty parlors or the shops and parlors must report the use tax. If the inventory of package goods which is to be resold is in excess of \$50.00, however, the shop must have a License. Shops [located within the City that](#) engage in sales of wigs are required to obtain a license and collect the tax on such sales.

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## **COMMON, CONTRACT & COMMERCIAL CARRIERS, ETC.**

### **Regulation 20-S.I.14**

Resident and non-resident common, contract and commercial carriers for hire, including but not limited to package delivery service companies, trash pickup and hauling service companies, freight and materials hauling and freighting service companies, storage, express and transfer service companies and all other trucking companies, and also including companies hauling and freighting their own products and not for hire, must pay the tax on all their purchases, rentals and leases of tangible personal property delivered in this City, and on their use, storage, distribution and consumption of tangible personal property not otherwise exempted under this Code.

Non-resident and resident common, contract and commercial carriers are subject to the tax on all their purchases of tangible personal property which is delivered in this City, except as exempted from the tax under this Code.

Except as exempted under this Code, resident and non-resident common, contract and commercial carriers are subject to the tax on all their rentals and leases of tangible personal property, including automotive vehicles, when delivered in this City, to the full term and to the full amount of any original or renewed lease or rental contract or agreement, when original delivery of the tangible personal property, under question, was given in this City.

Except as exempted under this Code, rentals, leases or sales of tangible personal property by any common, contract or commercial carriers, including, but not limited to, storage and locker rental services, sale of storage or other containers to taxable persons, are taxable to the full amount charged to such customer.

Resident common carriers referenced above must pay the sales and use tax except if otherwise exempted under this Code on all their purchases of tangible personal property (1) where delivery is taken in the City, (2) where there is use, distribution or consumption in the City, or (3) where there is such storage in the City which terminates the flow of shipment of such property in interstate commerce. The tax is due and payable even though there is a subsequent shipment of such tangible personal property outside the City for actual use outside the City by the same common carrier at another of its branches or locations.

Common, Contract and Commercial Carriers, etc., as above, hiring individuals and leasing or renting those individual trucks and other equipment must pay the sales or use tax on such leases and rentals unless otherwise exempt under this Code.

Any Common, Contract or Commercial Carrier who, after being notified of a "non-complying" vendor status, (a non-complying vendor being a person who has failed to comply with the licensing and tax collection and/or remittance provisions of this Code) and who shall continue to deliver in this City any tangible personal property sold at retail by any such vendor, shall be considered in violation of this Code in aiding or abetting another to avoid the tax and shall be subject to the penalties provided and the tangible personal property so carried or delivered to this City for a noncomplying vendor shall be subject to distraint warrant.

The notice to the common carrier may take the form of listings furnished as to complying vendors, i.e. Commerce City licensed vendors [and other vendors](#) authorized to engage in business and sell at retail in this City.

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## **DISTRIBUTING AND "WELCOMING" SERVICES**

### **Regulation 20-S.I.19**

Any person who owns the circular, samples, etc., distributed are required to pay the tax on the cost of printing or on the product distributed.

Any such distributing service or any person who distributed the circulars, etc., or products of others, the ownership of which does not reside in the distributor, and who fails to collect and remit any tax due the City from such tangible property owners shall be considered in violation of the Code in aiding or abetting another to avoid the tax.

Any such service businesses selling printed matter, products or other tangible personal property to any person for distribution, use, storage or consumption in this City or delivering in this City such property, [except as specified in Section 20-6-3\(D\) of this Code](#), must license, collect, and remit the tax.

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## **GOVERNMENTS - LICENSES – SALES**

### **Regulation 20-S.I.27**

[Except as specified in Section 20-6-3\(D\) of this Code](#), any sales at retail, i.e., to the ultimate consumer, of tangible personal property requires the vendor to license with the City to collect and remit the City sales and use tax whether that "vendor" is a governmental or any other entity whatsoever, public or private, to the same degree and with the same liability as any other Commerce City vendor. Sales to officers or employees of such government entities for their personal use are taxable. Purchases by students, faculty, employees and staff of schools and school districts are taxable.

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## **OCCASIONAL SALES - GENERAL, BUILDING AND FIXTURES, ETC. SUCCESSORS LIABILITY**

### **Regulation 20-S.I.33**

General. - The sales tax is definitely imposed upon all sales and purchases of tangible personal property at retail. If a store, apartment house, hotel, laundry, printing office, or other office or place of business is purchased, the sales tax must be paid on the purchase price paid for the equipment, furniture, fixtures, supplies, and all tangible personal property included in the sale except a stock or inventory of goods acquired for resale in the trade or business. There is no exemption in the law for isolated or casual sales. Persons not regularly engaged in business who make occasional sales at retail, such as the sale of produce, farm products, household goods, furniture, farm equipment, machinery, etc., (except a "farm close-out sale") must collect and remit the sales tax. If the sales tax has not been collected by the vendor, the purchaser is liable for the use tax and should remit the same to the Finance Director.

Owners or operators of buildings who purchase construction materials for alterations and repairs, shelving, janitor's supplies and other tangible personal property for use by their tenants are the users or consumers of such articles and must pay the sales tax on such purchases, regardless of whether such articles are separately billed to and paid for by the tenants. All persons regularly engaged in the business of selling tangible personal property, including wholesalers, manufacturers and processors, must collect and remit the tax on all sales made to users or consumers even though they do not ordinarily sell at retail. It is immaterial that the property sold may be of a kind not ordinarily sold by the vendor such as used fixtures, equipment, tools, machinery, etc. If the vendor fails to collect the sales tax, the vendor is liable for payment thereof. The purchaser is also liable for payment of the tax. The City may pursue collection from either or both the vendor and the purchaser, but may only make one collection thereof.

[Except as specified in Section 20-6-3\(D\) of this Code](#), anyone who advertises, solicits or offers tangible personal property for sale with the intention of making repeated sales, must have a license and collect the tax on such sales even if they are few and infrequent.

A person not engaged in the business of selling at retail need not obtain a license to make casual or occasional sales from time to time not in excess of One Hundred Dollars (\$100.00) per year or not exceeding one sale per year regardless of the value of the tangible personal property sold but such tangible property sold is subject to the tax.

\*\*\*END\*\*\*