

**ORDINANCE NO. 26, SERIES 2020
INTRODUCED BY: MAYOR PRO TEM WALTON**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAFAYETTE, COLORADO,
AMENDING SECTION 110-37 OF THE LAFAYETTE CODE OF ORDINANCES,
COLORADO, REGARDING SALES AND USE TAX DEFINITIONS**

WHEREAS, in SJR14-038 the General Assembly asked the Colorado Municipal League to revive the tax simplification project from the 1990's to address current systemic problems associated with local tax collection; and

WHEREAS, City Council has determined that the standard tax definitions project is a major collaborative sales tax simplification initiative by Colorado's home rule municipalities that locally collect their sales tax and the retail business community; and

WHEREAS, City Council has determined that the City will cooperate in furtherance of a statewide goal to have all locally collecting municipalities agree to use standard definitions in their sales and use tax codes; and

WHEREAS, City Council has determined that maintaining the local collection of sales and use taxes for the City is of paramount importance to the continued financial strength of the City; and

WHEREAS, City Council has determined that the retail business community desires better uniformity and simplicity when operating in the City; and

WHEREAS, City Council has determined that sales tax revenue is directly tied to how well the City's retail business community is faring, City Council and staff have generally supported the idea that the City should simplify the tax code, without sacrificing revenue; and

WHEREAS, City Council has determined that revenue neutral tax simplification is generally construed as good for business and good for the community as a whole.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LAFAYETTE, COLORADO, AS FOLLOWS:¹

Section 1. Section 110-37, Definitions, of the Code of Ordinances, City of Lafayette, Colorado, is amended by the deletion and addition of the following definitions, to be inserted in alphabetical order, to read as follows:

Access services or Carrier access services means the services furnished by a local exchange company to its customers who provide telecommunications services which allow them to provide such telecommunications services.

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

¹ Additions to the current text of the Code are indicated by underlining, and deletions are indicated by ~~strikethrough~~

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.

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

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.

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.

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.

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

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

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.

Charitable Organization means any entity which: (1) has been certified as a nonprofit organization under Section 501(c)(3) of the Internal Revenue Code, and (2) is an organization which exclusively, and in a manner consistent with existing laws and for the benefit of an indefinite number of persons or animals, freely and voluntarily ministers to the physical, mental, or spiritual needs of persons or animals, and thereby lessens the burden of government.

City means the municipality of Lafayette.

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.

Coin Operated Device means any device operated by coins or currency or any substitute therefor.

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 is not returnable to said person for reuse. Commercial Packaging Materials does not include Commercial Shipping Materials.

Commercial Shipping Materials means materials that do not become part of the finished product to the purchaser which are used exclusively in the shipping process. Commercial Shipping Materials include but are not limited to containers, labels, pallets, banding material and fasteners, shipping cases, shrink wrap, bubble wrap or other forms of binding, padding or protection.

Construction Equipment means any equipment, including mobile machinery and mobile equipment, which is used to erect, install, alter, demolish, repair, remodel, or otherwise make improvements to any real property, building, structure or infrastructure.

Construction Materials means tangible personal property which, when combined with other tangible personal property, loses its identity to become an integral and inseparable part of a structure or project including public and private improvements. Construction Materials include, but are not limited to, such things as: asphalt, bricks, builders' hardware, caulking material, cement, concrete, conduit, electric wiring and connections, fireplace inserts, electrical heating and cooling equipment, flooring, glass, gravel, insulation, lath, lead, lime, lumber, macadam, millwork, mortar, oil, paint, piping, pipe valves and pipe fittings, plaster, plumbing fixtures, putty, reinforcing mesh, road base, roofing, sand, sanitary sewer pipe, sheet metal, site lighting, steel, stone, stucco, tile, trees, shrubs and other landscaping materials, wall board, wall coping, wallpaper, weather stripping, wire netting and screen, water mains and meters, and wood preserver. The above materials, when used for forms, or other items which do not remain as an integral and inseparable part of 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.

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.

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.

Data Processing Equipment means any equipment or system of equipment used in the storage, manipulation, management, display, reception or transmission of information.

Digital Product means an electronic product including, but not limited to: (1) “digital images” which means works that include, but are not limited to, the following that are generally recognized in the ordinary and usual sense as “photographs,” “logos,” “cartoons,” or “drawings.” (2) “digital audio-visual works” which means a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any, (3) “digital audio works” which means works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones. For purposes of the definition of “digital audio works”, “ringtones” means digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication, and (4) “digital books” which means works that are generally recognized in the ordinary and usual sense as “books”.

Distribution means the act of distributing any article of tangible personal property for use or consumption, which may include, but not be limited to, the distribution of advertising gifts, shoppers guides, catalogs, directories, or other property given as prizes, premiums, or for goodwill or in conjunction with the sales of other commodities or services.

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.

Factory Built Housing means a manufactured home or modular home.

Farm Equipment means any farm tractor, as defined in Section 42-1-102(33), C.R.S., any implement of husbandry, as defined in Section 42-1-102(44), C.R.S., and irrigation equipment having a per unit purchase price of at least one thousand dollars (\$1,000.00). Farm Equipment also includes, regardless of purchase price, attachments and baling wire, binders twine and surface wrap used primarily and directly in any farm operation. Farm Equipment also includes, regardless of purchase price, parts that are used in the repair or maintenance of the Farm Equipment described in this Paragraph, all shipping pallets, crates, or aids paid for by a farm operation, and aircraft designed or adapted to undertake agricultural applications. Farm Equipment also includes, regardless of purchase price, dairy equipment. Except for shipping pallets, crates or aids used in the transfer or shipping of agricultural products, Farm Equipment does not include: (1) Vehicles subject to the registration

requirements of Section 42-3-103, C.R.S., regardless of the purpose for which such vehicles are used; (2) Machinery, equipment, materials, and supplies used in a manner that is incidental to a farm operation; (3) Maintenance and janitorial equipment and supplies; and (4) Tangible personal property used in any activity other than farming, such as office equipment and supplies and equipment and supplies used in the sale or distribution of farm products, research, or transportation.

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

Food For Home Consumption shall have the same meaning as SNAP foods, as defined herein. Food for home consumption does not include any food items that would otherwise be ineligible for purchase using SNAP benefits, such as alcoholic beverage, food items containing alcohol or tobacco products; carbonated water marketed in containers; chewing gum; seeds and plants to grow foods; prepared salads and salad bars; hot foods or food products prepared for immediate consumption; packaged and unpackaged cold sandwiches; deli trays; and hot or cold beverages served in unsealed containers or cups that are vended by or through vending machines or other devices on behalf of a retailer.

Fuel means coal, wood, gas, oil, petroleum, coke, nuclear fuel or other energy-producing products

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.

Gas means natural, manufactured, and liquefied petroleum gas.

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.

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.

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.

License means a Lafayette sales and use tax license.

Lodging services means the furnishing of rooms or accommodation by any person, partnership, association, corporation, estate, representative capacity or any other combinations 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 establishment under any concession, permit, right of access, license to use, or other agreement, or otherwise

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

Manufactured Home means any preconstructed building unit or combination of preconstructed building units, without motive power, which is: (a) fabricated, manufactured, or constructed in compliance with the National Manufactured Housing Construction Safety Standards Act of 1974, 42 U.S.C. 5401 *et seq* or factory-built residential requirements adopted by the State Division of Housing under 24-32-3301 *et seq*; (b) assembled in a factory or at a location other than the residential site of the completed home; (c) designed and commonly used for occupancy by persons for residential purposes, in either temporary or permanent locations; and (d) 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.

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.

Mobile Machinery and Self-Propelled Construction Equipment means those vehicles, self-propelled or otherwise, which are not designed primarily for the transportation of persons or cargo over the public highways, and those motor vehicles which may have originally been designed for the transportation of persons or cargo over the public highways, and those motor vehicles which may have originally been designed for the transportation of persons or cargo but which have been redesigned or modified by the mounting thereon of special equipment or machinery, and which may be only incidentally operated or moved over the public highways. This definition includes but is not limited to wheeled vehicles commonly used in the construction, maintenance, and repair of roadways, the drilling of wells, and the digging of ditches.

Modular Home means any structure that consists of multiple sections fabricated, formed or assembled in manufacturing facilities for installation and assembly at the building site, and is constructed to the building codes adopted by the State Division of Housing, created in Section 24-32-706, C.R.S., and is designed to be installed on a permanent foundation.

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.

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.

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.

Person means any individual, firm, partnership, joint venture, corporation, limited liability company, estate or trust, receiver, trustee, assignee, lessee or any person acting in a fiduciary or representative capacity, whether appointed by court or otherwise, or any group or combination acting as a unit, and the plural as well as the singular number.

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.

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.

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.

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.

Prescription Drugs for Animals means a drug which, prior to being dispensed or delivered, is required by the federal Food, Drug, and Cosmetic Act, 21 U.S.C. 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.

Prescription Drugs for Humans means a drug which, prior to being dispensed or delivered, is required by the federal Food, Drug, and Cosmetic Act, 21 U.S.C. 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. Over-the-counter medicines and services even if prescribed by a physician will not be considered medicine or drug for the purposes of exemption.

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 orthopedic devices or appliances, and oxygen concentrators with related accessories.

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 orthopedic devices or appliances, and oxygen concentrators with related accessories.

Purchase or sale means the acquisition for any consideration by any person of tangible personal property or taxable services that are purchased, leased, 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) The transfer, either conditionally or absolutely, of title or possession or both to tangible personal property.
- (2) A lease, lease-purchase agreement, rental or grant of a license, including royalty agreements, to use tangible personal property or taxable services. The utilization of coin operated devices, except coin-operated telephones, which do not vend articles of tangible personal property shall be considered short term rentals of tangible personal property.
- (3) Performance of taxable services.
- (4) Barter or exchange for other property or services including coupons.

The terms “purchase” or “sale” do not include:

- (1) A division of partnership or limited liability company assets among the partners or limited liability company members according to their interests in the partnership or limited liability company;
- (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 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;
- (4) The dissolution and the pro rata distribution of the corporations assets to its stockholders;
- (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 limited liability company or partnership interest;
- (8) The transfer in a reorganization qualifying under section 368(a)(1) of the "Internal Revenue Code", as amended;
- (9) The formation of a limited liability company or partnership by the transfer of assets to the limited liability company or partnership or transfers to a limited liability company or partnership in exchange for proportionate interests in the limited liability company or partnership;
- (10) The repossession of personal property by a chattel mortgage holder or foreclosure by a lienholder;
- (11) The transfer of assets between parent and closely held subsidiary corporations, or between subsidiary corporations closely held by the same parent corporation, or between corporations which are owned by the same shareholders in identical percentage of stock ownership amounts, computed on a share-by-share basis, when a tax imposed by this article was paid by the transferor corporation at the time it acquired such assets, except sales tax is imposed only on the amount of any increase in the fair market value of such assets resulting from the manufacturing, fabricating, or physical changing of the assets by the transferor corporation. Under such circumstances, the sales price is the gross value of all materials, labor, and service, and the profit thereon, included in the price charged to the user or consumer. For the purposes of this paragraph (11) a closely held subsidiary corporation is one in which the parent corporation owns stock possessing at least eighty percent of the total combined voting power of all classes of stock entitled to vote and owns at least eighty percent of the total number of shares of all other classes of stock.

Purchase price or Price or Acquisition costs means aggregate price or total value for all sales of tangible personal property to the consumer, 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. The term "price," "purchase price" or "acquisition costs" includes:

- (1) The amount of money received or due in cash and credits;
- (2) Property at fair market value taken in exchange but not for resale in the usual course of the retailer's business;
- (3) Any consideration valued in money, 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 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, delivery (whether separable or severable from the tangible personal property), 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 (whether separable or severable from the tangible personal property);
- (7) Indirect federal manufacturers' excise taxes, such as taxes on automobiles, tires and floor stock;
- (8) The gross 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.

The term "price," "purchase price" or "acquisition costs" does 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 as specified in Section 110-122;
- (3) Discounts from the original price if such discount is actually passed onto the purchaser, and the seller is not reimbursed for the discount by the manufacturer or someone else. An anticipated discount to be allowed for payment on or before a given date is not an allowable adjustment to the price in reporting gross sales.

Rail Carrier means as defined in 49 U.S.C. § 10102(5), as amended.

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.

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.

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.

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 sale means all sales except wholesale sales.

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

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

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

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

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

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

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 of vegetable or fruit juice by volume.

Software Program means a sequence of instructions that can be measured, interpreted and executed by an electronic device (e.g. a computer, tablets, smart phones) regardless of the means by which it is accessed or the medium of conveyance. Software program includes: (1) Custom software program, which is a software program prepared to the special order or specifications of a single customer; (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;" (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 (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.

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.

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.

Special Sales Event means any sales event which includes more than three (3) retailers taking place at a single location for a limited period of time not to exceed seven (7) consecutive days.

Storage means any keeping or retention of, or exercise dominion or control over, or possession of, for any length of time, tangible personal property not while in transit but on a stand still basis for future use when leased, rented or purchased at retail from sources either within or without the City from any person or vendor.

Supplemental Nutrition Assistance Program or SNAP means the federal Supplemental Nutrition Assistance Program, codified under Chapter 51 of Title 7 of the United States Code, as amended.

SNAP foods shall have the same meaning as the term “food” provided in 7 U.S.C. § 2012(k), as amended, which defines only those food items eligible for purchase using SNAP benefits

Tangible personal property means personal property that can be one or more of the following: seen, weighed, measured, felt, touched, stored, transported, exchanged, or that is in any other manner perceptible to the senses.

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

Tax Deficiency or Deficiency means any amount of tax, penalty, interest, or other fee that is not reported and/or not paid on or before the date that any return or payment of the tax is required under the terms of this Code.

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

Taxable Services means services subject to tax pursuant to this Code.

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

Telecommunications service means the transmission of any two-way interactive electromagnetic communications including, but not limited to, voice, image, data and any other information, by the use of any means but not limited to wire, cable, fiber optical cable, microwave, radio wave, Voice over Internet Protocol (VoIP), or any combinations of such media. "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 service* does not include separately stated non-transmission services which 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.

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

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

Total Tax Liability means the total of all tax, penalties and/or interest owed by a taxpayer and shall include sales tax collected in excess of such tax computed on total sales.

Use means the exercise, for any length of time by any person within the City of any right, power or dominion over tangible personal property or services when rented, leased or purchased at retail from sources either within or without the City from any person or vendor or used in the performance of a contract in the City whether such tangible personal property is owned or not owned by the taxpayer. Use also includes the withdrawal of items from inventory for consumption.

Use Tax means the tax paid or required to be paid by a consumer for using, storing, distributing or otherwise consuming inside the City tangible personal property or taxable services as set forth in this article.

Wholesale sale means a sale by a wholesaler to retail merchants, jobbers, dealers or other wholesalers for resale and does not include a sale by a wholesaler 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 provision of this article.

Women, infants and Children or WIC Program means the federal Special Supplemental Food Program for women, infants and children, codified under Section 1786 of Title 42 of the United States Code, as amended.

WIC food shall have the same meaning as the term "supplemental foods" provided in 42 U.S.C. 1786(b)(14), as amended, which defines only those food items eligible for purchase using WIC benefits.

Section 2. Section 110-117, Sales of tangible personal property to manufacturers generally, of the Code of Ordinances, City of Lafayette, Colorado, is amended to read as follows:

Sales to and purchases of tangible personal property by a person engaged in the business of manufacturing, compounding for sale, profit or use, any article, substance or commodity which tangible personal property enters into the processing of or becomes an ingredient or component part of the product which is manufactured, compounded or furnished or the ~~container, label or the furnished shipping case~~ commercial packaging materials and commercial shipping materials thereof, shall be deemed to be wholesale sales and shall be deemed to be exempt.

Section 3. Subsection 110-121(2), Matters taxed, of the Code of Ordinances, City of Lafayette, Colorado, is amended to read as follows:

(2) ~~Upon the amount paid for the use of facilities and accommodations of a hotel, apartment hotel, cottage camp, motor court, trailer park or camp operated for the accommodation of the general public, when occupied for thirty (30) days or less~~ price of the sale or provision of lodging services.

Section 4. Subsection 110-121(6), Matters taxed, of the Code of Ordinances, City of Lafayette, Colorado, is amended to read as follows:

(8) On computer software programs contained on cards, tapes, discs, coding sheets or other machine-readable or human-readable form, including software that has been modified, but excluding custom-designed software.

Section 5. Subsection 110-122(4), Items exempt from taxation, of the Code of Ordinances, City of Lafayette, Colorado, is amended to read as follows:

(4) Sales of motor fuel used for the operation of internal combustion engines and sales of special fuel for use in operating farm vehicles on farms and ranches. All commodities which are taxed under the provisions of the Colorado Motor Fuel Tax of 1933, shall be exempt from taxation hereunder.

Section 5. Subsection 110-122(6), Items exempt from taxation, of the Code of Ordinances, City of Lafayette, Colorado, is amended to read as follows:

(6) ~~Medicine and prosthetic devices sold under prescription of a physician~~ Prescription drugs for humans and prosthetic devices for humans.

Section 6. Subsection 110-122(17), Items exempt from taxation, of the Code of Ordinances, City of Lafayette, Colorado, is repealed in its entirety and re-enacted to read as follows:

(17) The sale or purchase of SNAP food purchased with food stamps or Supplemental Nutrition Assistance Program benefits.

Section 7. Subsection 110-122(18), Items exempt from taxation, of the Code of Ordinances, City of Lafayette, Colorado, is repealed in its entirety and re-enacted to read as follows:

(18) The sale or purchase of WIC food purchased with vouchers, checks or WIC Program benefits.

Section 8. Section 110-122, Items exempt from taxation, of the Code of Ordinances, City of Lafayette, Colorado, is amended by the addition of a new subsection (22), to read as follows:

(22) The fair market value of any exchanged or traded-in property shall be excluded from the consideration or purchase price under the following conditions:

- (a) when such exchanged property is to be resold thereafter in the usual course of the retailer's business, if included in the full resale price of an article sold.
- (b) when the transaction involves the purchase of a vehicle and the exchange or trade-in of another vehicle, and both vehicles are subject to licensing, registration and certification under the laws of this state. For purposes of this section, the term vehicle shall include vehicles operating upon public highways, off-highway recreation vehicles, watercraft, and aircraft.
- (c) when there is no additional consideration involved in the transaction.

Any money or other consideration paid which exceeds the value of the exchanged property is subject to city tax.

Section 9. If any article, section, paragraph, sentence, clause or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

Section 10. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof is hereby repealed to the extent of such inconsistency or conflict.

Section 11. The repeal or modification of any provision of the Code of Ordinances, City of Lafayette, Colorado, by this ordinance shall not release, extinguish, alter, modify or change in whole or in part any penalty, forfeiture or liability, either civil or criminal, which shall have been incurred under such provision. Each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions for enforcement of the penalty, forfeiture or liability, as well as for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered or made in such actions, suits, proceedings or prosecutions.

Section 12. This ordinance is deemed necessary for the protection of the health, welfare and safety of the community.

Section _____ 13. This ordinance shall become effective upon the latter of the 10th day following enactment, or the day following final publication of the ordinance.

INTRODUCED AND PASSED ON FIRST READING THE 17TH DAY OF NOVEMBER,
2020.

PASSED ON SECOND AND FINAL READING AND PUBLIC NOTICE ORDERED THE 1ST
DAY OF DECEMBER, 2020.

CITY OF LAFAYETTE, COLORADO

Jamie Harkins, Mayor

ATTEST:

Lynette Beck, CMC, City Clerk

APPROVED AS TO FORM:

Mary Lynn Macsalka, City Attorney