

CITY OF GLENDALE, COLORADO

ORDINANCE NO. 19

SERIES OF 2007

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GLENDALE, COLORADO AMENDING CERTAIN SECTIONS OF CHAPTER 3.20 AND SECTION 17.60.030 REGARDING THE ELIMINATING AN EXEMPTION FOR EXTENDED STAYS IN A LODGING/HOTEL ESTABLISHMENT WITHIN THE CITY OF GLENDALE.

WHEREAS, the City Council of the City of Glendale, Colorado (the "City"), finds and determines that there exists the necessity for the elimination of a municipal sales tax exemption for extended stays at lodging/hotel establishments; and

WHEREAS, Article X, Section 20 of the Colorado Constitution requires voter approval for any tax policy change resulting in a net revenue gain; and

WHEREAS, a Special Election was held on November 6, 2007, in part, to submit to the voters the elimination of a sales tax exemption for extended stays in a lodging/hotel establishments within the City; and

WHEREAS, the voters approved the elimination of the exemption from the City's sales tax code, so that the property and services subject to the City retail sales tax shall include the lease, rental or furnishing of rooms or accommodations to any person who for consideration uses, possesses, or has the right to use or possess any room or rooms or any other accommodation in any hotel, apartment, hotel, guest house, guest ranch, mobile home, auto camp, trailer court or park, or any other place furnishing rooms and accommodations under any concession, permit, right of access, license to use or other agreement or otherwise, regardless of the duration of the rental period; and

WHEREAS, The City Council recognizes the right of a local or municipal concern to levy a tax to raise revenue with which to conduct the affairs and business of the City. This right is clearly within the constitutional grant of power to the home rule cities contained in Article XX, Section 6 or the Constitution of Colorado.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Glendale, Colorado, that:

SECTION 1. The Sections listed below of Chapter 3.20 and a definition in Section 17.60.030 are hereby amended to read as follows (words to be deleted shown in ~~strikeout~~; words to be added underlined):

3.20.130 Property and services subject to sales tax.

A. Sales and Services. There is levied and there shall be collected and paid sales tax in the amount stated in Section 3.20.200 on all sales and services including, but not limited to, the following:

1. The sale, purchase, lease, rental, or grant of license for use of tangible personal property, and any subsequent lease, rental, or sale of tangible personal property by any person to any consumer or purchaser, regardless of whether the person purchasing, leasing, renting or selling the personal property paid the tax imposed on his initial purchase and use of the property so acquired which is subsequently leased, rented, or sold. When a retail sale involves the exchange or trade-in of property, the tax shall be collected on the purchase price paid or charged, including the fair market value of the property exchanged or traded-in at the time and place of exchange of trade-in;

2. Upon the sale of telecommunications services, whether furnished by public or private corporations or enterprises for all intrastate, interstate and international telecommunications service charged to an apparatus, telephone, or account in Glendale, or to a customer location within Glendale, or to a person residing in Glendale, without regard to where the bill for such service is physically received. For purposes of this section, "telecommunications service" includes the installation of any telecommunications equipment or apparatus. A credit shall be allowed for any telecommunications services subject to the tax that are also subject to a municipal sales tax outside of this city and properly assessed by and paid to such other municipal jurisdiction;

3. Upon the charge within the city for electrical energy and natural or manufactured gas sold for domestic or commercial consumption and not for resale;

4. Upon the amount paid for food or drink served or furnished in or by restaurants, cafes, lunch counters, cafeterias, hotels, drugstores, social clubs, nightclubs, cabarets, resorts, snack bars, caterers, carryout shops, and other like places of business at which prepared food or drink is regularly sold, including sales from pushcarts, motor vehicles, and other mobile facilities.

a. On the selling price of food or drink, whether sold to the public or to employees,

b. On the cost of food or drink which is given to employees in return for their labor or services rendered or otherwise given away,

c. Food or drink provided to employees of the places mentioned in this subsection at no charge or at a reduced charge and which is considered part of their salary, wages, or income shall be exempt from taxation under the provisions of this chapter;

5. Pay, cable or subscription television services sold, purchased, leased, rented or furnished, including charges for service connections, installations, connection charges and all and any other similar charges made for such services. Sales tax is due on all pay, cable or subscription television services sold to the full amount of the charge for such services rendered;

6. On the purchase price paid for sales of tangible personal property at retail to national banking associations and banks organized and chartered under the laws of the state for use within the city;

7. Machinery, machine tools and specific processing equipment and repair parts and replacements thereof, exclusively and directly used in manufacturing or processing tangible personal property;

8. Upon "used merchandise" which has previously been purchased and which has been remanufactured or rebuilt and, as so remanufactured or rebuilt, been sold to a subsequent owner;

9. On the design, development, writing, translation, fabrication, maintenance, lease, or transfer of computer program (software) services;

10. On the total lease or rental charges for storage lockers/units;

11. On the purchase price paid or charged on the lease, rental or on the transaction of furnishing rooms or accommodations to any person who for a consideration uses, possesses, or has the right to use or possess, any room or rooms or other accommodations in any hotel, apartment hotel, guest house, guest ranch, mobile home, auto camp, trailer court or park, or any other place furnishing rooms and accommodations under any concession, permit, right of access, license to use or other agreement or otherwise, ~~where the rental period is for a term of less than thirty (30) days.~~ regardless of the duration of the rental period.

The term "room" means, in addition to a regular sleeping room or unit, a meeting room, a display room, a banquet room or any special purpose room for which a charge is made. The term "accommodations" includes the furnishing of a space in any auto camp, trailer court or park under any concession, permit, right of access, license to use, or any other agreement, by or through which any of the above rooms or accommodations may be used or occupied.

Governmental and "exempt" organizations shall not transfer their exemption status to any person who rents rooms or accommodations from or through them. Any such organizations which rent rooms or accommodations to their members or guests, regardless of how the charge is made, must apply for and obtain a license and must collect and remit the tax due, regardless of whether the rooms or accommodations are paid for by drafts on government or "exempt" institution funds;

12. Upon tangible personal property used in motor vehicle repairs performed substantially within the boundaries of the city, including extended warranty.

B. Rental Property. If tangible personal property is purchased for use exclusively in the rental or leasing business and is not at any time used for the purchaser's general business or personal use, a sales tax is due upon the rental or leasing of tangible personal property used in the rental or leasing business, regardless of whether a sales tax has been paid upon a previous purchase of the property.

C. Vending Machine Property. Every retailer or vendor vending items of tangible personal property through coin-operated vending machines shall pay sales tax at the rate specified in Section 3.20.160 on the tangible personal property sold or vended in the coin-operated machine unless the sale shall be otherwise exempt as provided in this chapter. Owners of vending machines that vend articles of tangible personal property and other coin-operated devices are subject to sales tax on the cost of the vending or coin-operated devices.

3.20.140 Sales Tax Exemptions.

A. There are exempt from taxation under the provisions of this chapter the following items and services, including, but not limited to:

1. All direct sales to the United States government, to the state of Colorado, its departments and institutions, and the political subdivisions thereof in their governmental capacities only;

2. All direct sales, except of building materials and supplies, to charitable corporations, as defined in Section 3.20.020 in the conduct of their regular religious, charitable and eleemosynary functions and activities;

3. All sales which the city is prohibited from taxing under the constitution or laws of the United States or the state of Colorado;

4. All sales of cigarettes;
5. All sales of food for domestic home consumption, as food is defined in Section 3.20.020, Definitions, of this chapter, including food purchased with food stamps or WIC (Women, Infant and Children) vouchers;
6. Motor fuel upon which there has been accrued or has been paid either the gasoline tax or special fuel tax required by Article 27 of Title 39, C.R.S., and which is not subject to refund;
7. Consideration received for labor or services sold, except those specific services defined as taxable, if such services are separately stated from the tangible personal property sold. Manufacturing or fabrication labor is not exempt;
8. Newspapers as defined in Section 3.20.020;
9. Construction and building materials if the purchaser of such materials presents to the retailer a building permit or other documentation acceptable to the city evidencing that a local use tax has been paid or is required to be paid on the materials;
10. Tangible personal property or the furnishing of services if the transaction was previously subjected to a sales tax, lawfully imposed on the purchaser or user by another municipality, equal to or in excess of the rate established pursuant to Section 3.20.200. A credit shall be granted against the city's sales tax with respect to such transaction equal to the lawfully imposed local sales or use tax previously paid by the purchaser or user to the previous municipality. The amount of the credit shall not exceed the rate established pursuant to Section 3.20.200;
11. The sale price of property returned by the purchaser when the full sale price including the tax levied is refunded, either in cash or by credit;
12. Discounts from the original selling price if such discount or decrease in purchase price and the corresponding decrease in sales tax due is actually passed on to the consumer. An anticipated cash discount to be allowed for payment on or before a given date is not an allowable adjustment to the selling price in determining gross taxable sales on any vendor's return prior to the date when the customer actually receives the discount. Any adjustments in sale price such as allowable discounts, rebates, and credits cannot be anticipated and the tax must be based upon the original selling price unless such adjustments have actually been made prior to the filing of the return wherein such sale is reported; except that, if the price upon which the tax was computed and paid to the city by the vendor is subsequently readjusted, prior to the payment of the tax by the purchaser, a proper credit may be taken against the tax due on the next subsequent return.

B. Additional provisions of exemption from the tax under this chapter:

1. All sales of tangible personal property if both the following conditions exist: (1) the sales are to those who reside or do business outside the city for their use outside the city, and (b) the article or commodity is delivered to the purchaser by common carrier, by mail or conveyed by the seller;
2. All sales of tangible personal property to a public utility doing business both within and outside the city, for use in its business outside the city, even though sale and/or delivery thereof is made within the city;
- ~~3. Rooms or accommodations permanently occupied and which occupancy is secured by a written agreement. "Permanently occupied" is defined as being a period of thirty (30) or more consecutive days during the calendar year or preceding year. A "written agreement" means and includes a hotel or motel registration or a rental receipt.
—All rentals or leases of accommodations and rooms in excess of thirty (30) days are nonetheless subject to collection of the sales tax for any tangible personal property provided in~~

~~the sale of the room and accommodation rental. In the absence of a separate statement or breakdown of the rentals of rooms or accommodations from the rental or lease of the tangible personal property, the Tax Inspector shall make such breakdown upon any available evidence and assess the tax accordingly.~~

~~—The Tax Inspector may utilize such accounting and administrative methods as agreed upon by both the Tax Inspector and the vendor to reduce burdensome recordkeeping by the vendor for certain extended room rental agreements between the vendor and its customers. Any such methods adopted to account for long term room rentals are deemed to be necessary only to the extent a specific vendor's circumstances warrant such treatment. A determination of the need for such special treatment is to be made solely by the City Attorney. The use of special accounting methods in no way constitutes supplemental regulations which would have the effect of extending, or superseding the city's tax ordinance as written and explained in this chapter;~~

3. Rental of a dwelling or a dwelling unit in residential use in compliance with Title 17, and is secured by a written agreement. For purposes of this exemption, “dwelling,” “dwelling unit,” and “residential use” are defined by Section 17.60.030.

4. All permits, licenses, service charges, fines and assessments, for benefit or penalty, charged by and in accordance with the city;

5. All sales of personal property, provided that such sales do not exceed four, three-day periods per year, that the sale occurs at the residence of the owner, that the property to be sold was originally purchased for use by members of the household (i.e., garage sales, yard sales, etc.);

6. All wholesale sales or sales of tangible personal property purchased for resale;

7. Sales of tangible personal property to a person engaged in manufacturing for sale shall be deemed a wholesale sale when it meets all of the following conditions:

a. The property is transformed in fact by the process of manufacture,

b. The property becomes by the manufacturing process a necessary and recognized ingredient, component and constituent part of the finished product, and

c. The physical presence of the property in the finished product is essential to the use thereof in the hands of the ultimate consumer;

8. Commercial packaging materials as defined in Section 3.20.020;

9. The fair market value of any exchanged or traded-in property which is to be resold thereafter in the usual course of the retailer's business, if included in the full price of an article sold;

10. All medical supplies and prescription drugs for animals as defined in Section 3.20.020.

C. The exemptions stated in this section shall not include natural gas and/or electricity used in the processing or manufacturing of goods or commodities or substances.

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

17.60.030 Definitions

“Hotel (motel)” means a building designed for occupancy by short-term residents who are lodged with or without meals. ~~For purposes of this definition, “short term” shall mean and include rentals extending for less than thirty (30) continuous days in any one rental period.~~

SECTION 3. Validity and Severability. If any action, subsection or clause of this ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining section, subsections or clauses shall not be affected thereby, each provision, to the extent possible, being severable from the others.

SECTION 4. Repeal. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 5. Effective date. This ordinance shall take effect five (5) days after final publication; however, the provisions contained within the ordinance shall not become effective until January 1, 2008.

INTRODUCED BY COUNCIL MEMBER King, SECONDED BY COUNCIL MEMBER St. James AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF GLENDALE, COLORADO THIS 13th, DAY OF November, 2007, ORDERED PUBLISHED AND SET FOR PUBLIC HEARING.

ADOPTED ON SECOND READING BY THE CITY COUNCIL OF THE CITY OF GLENDALE, COLORADO THIS 4th DAY OF December, 2007 AND ORDERED PUBLISHED.

Larry Harte, Mayor

ATTEST:

APPROVED AS TO FORM:

Anna S. Fine, City Clerk

Jeff Springer, City Attorney