

CITY OF GLENDALE, COLORADO

ORDINANCE NO. 4
SERIES OF 2010

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GLENDALE, COLORADO, AMENDING CERTAIN SECTIONS OF CHAPTER 3.20 OF THE CODE OF ORDINANCES OF THE CITY OF GLENDALE TO NARROW THE EXISTING EXEMPTIONS FROM THE SALES AND USE TAX OF SPECIFIC ITEMS SIMILAR TO THE CHANGES MADE BY THE STATE UNDER HB 10-1191

WHEREAS, the City Council of the City of Glendale has a fiduciary responsibility to the residents of the City to insure that all municipal taxes properly and fairly assessed are collected; and

WHEREAS, the City Council recognizes the right of a local and 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; and

WHEREAS, the City Council enacted Ordinance Number 5, Series of 2004 on June 1, 2004 amending certain sections to Chapter 3.20 and enacting a use tax; and

WHEREAS, the State Legislature under HB 10-1191 narrowed the existing exemption from the State sales and use taxes of food; and

WHEREAS, the City Council wishes to make certain amendments to Chapter 3.20 to aid its business community with the collection of such taxes by also narrowing its food exemption to be consistent with the changes made by the state.

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

SECTION 1. Select Sections of Chapter 3.20 are hereby amended to read as follows (words to be deleted shown in ~~strikeout~~; words to be added are underlined):

Chapter 3.20
SALES AND USE TAX

3.20.020 Definitions.

As used in this chapter, the following words and phrases shall have the following meanings:

"Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruit, nuts, or other ingredients or flavoring in the form of bars, drops or pieces.

"Food" means food for domestic home consumption as defined in 7 U.S.C. Section 2012 (g) as amended for purposes of the federal food stamp program as defined in 7 U.S.C.

Section 2012 (h), as amended, except that "food" does not include carbonated water marketed in containers; chewing gum; candy; soft drinks; seeds and plants to grow food; prepared salads and salad bars; cold sandwiches; deli trays; and food or drink vended by or through machines or non coin-operated or coin-collecting food and snack devices on behalf of a vendor.

"Medical supplies" means drugs dispensed in accordance with a prescription; insulin in all its forms dispensed pursuant to the direction of a licensed physician; glucose useable for treatment of insulin reactions; urine and blood-testing kits and materials; insulin measuring and injecting devices, including hypodermic syringes and needles; prosthetic devices; wheelchairs and hospital beds; drugs or materials when furnished by a doctor as part of professional services provided to a patient; and corrective eyeglasses, contact lenses or hearing aids. Medical supplies does not include medical marijuana in any form or equipment for its use.

"Nonessential articles and containers" means articles or containers that are primarily used for the convenience of the consumer and is not necessary to effectuate the sale of food. Nonessential articles or containers include, but are not limited to, non-reusable: utensils; skewers; napkins and towelettes; bibs; serving trays, platters, and dome lid covers to plates or platters; placemats, tray liners, and tablecloths; sacks; grocery bags; bags for grocery bulk produce or bread; bag ties; carryout containers for leftovers of food sold for immediate consumption; straws; toothpicks; stirring sticks; cup lids and cup sleeves; portion dividers; single-use baking dishes; film wrap, plastic wraps, wax paper, foils, butcher paper; and carryout containers used by a consumer to carry leftover meals from the restaurant.

"Price" or "purchase price" means the price to the consumer, exclusive of any direct tax imposed by the federal government or by this chapter, and, in the case of all retail sales involving the exchange of property, also exclusive of the fair market value of the property exchanged at the same time and place of the exchange, if:

A. Such exchanged property is to be sold thereafter in the usual course of the retailer's business; or

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

"Price" or "purchase price" includes:

A. The amount of money received or due in cash credits;

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

C. Any consideration valued in money, such as trading stamps or coupons whereby the manufacturer or someone else reimburses the retailer for part of the purchase price and other media of exchange;

D. The total price charged on credit sales including finance charges which are not separately stated. An amount charged as interest on the unpaid balance of the purchase price is not part of the purchase price unless the amount added to the purchase price is included in the principal amount of a promissory note; except the interest or carrying charge set out separately from the unpaid balance of the purchase price on the face of the

note is not part of the purchase price. An amount charged for insurance on the property sold and separately stated is not part of the purchase price;

E. Installation ~~labor, delivery and wheeling-in charges~~ included in the purchase price and not separately stated;

F. Transportation and other charges to effect delivery of tangible personal property to the purchaser;

G. Indirect federal manufacturers' excise taxes, such as taxes on automotive vehicles, tires and floor stock;

H. The gross purchase price of articles sold after manufacturing or having been made to order, including the gross value of all the materials used, labor and service performed and the profit thereon.

"Price" or "purchase price" shall not include:

A. Any sales or use tax imposed by the State of Colorado or by any political subdivision thereof;

B. The fair market value of property exchanged if such property is to be sold thereafter in the retailer's usual course of business. This is not limited to exchanges in Colorado. Out of state trade-ins are an allowable adjustment to the purchase price.

C. Discounts from the original price if such discount and the corresponding decrease in sales tax due is actually passed on to the purchaser. An anticipated discount to be allowed for payment on or before a given date is not an allowable adjustment to the price in reporting gross sales.

"Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. Soft drinks do not include beverages that contain milk or milk products, soy, rice or similar milk substitutes or beverages that contain fifty (50) percent or more vegetable or fruit juice by volume.

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:

10. On the design, development, writing, translation, fabrication, maintenance, lease, or ~~sale transfer~~ of computer program (software) services, which includes electronic downloads, software licenses, and software maintenance agreements;

3.20.170 Use Tax Exemptions.

The use tax imposed pursuant to Section 3.20.150 is declared to be supplementary to the sales tax imposed pursuant to Section 3.20.130 and shall not apply:

~~R. To the storage, use, or consumption of any article by a retailer or vendor of food, meals, or beverages, which article is to be furnished to a consumer or user for use with articles of tangible personal property purchased at retail, if: (A) a separate charge is not made for the article to the consumer or user; (B) such article becomes the property of the consumer or user, together with the food, meals, or beverages purchased; and (C) a tax is paid on the retail sale as required by Section 3.20.130;~~

~~S. To the storage, use, or consumption of any container or bag by a retailer or vendor of food, meals, or beverages, which container or bag is to be furnished to a consumer or user for the purpose of packing or bagging articles of tangible personal property purchased at retail, if: (A) a separate charge is not made for the container or bag to the consumer or user; (B) such container or bag becomes the property of the consumer or user, together with the food, meals, or beverages purchased; and (C) a tax is paid on the retail sale as required by Section 3.20.130;~~

R. Essential articles or containers which include, but are not limited to, non-reusable: plates, cups, or bowls on, or in which, unwrapped or unpackaged hot or prepared food is served to the consumer; cups used in vending machines dispensing beverages; disposable containers or packaging material on, or in which, food is transferred to the consumer (eg. Pizza delivery box), including baskets, boxes, sleeves for French fries, buckets or other containers if the retailer cannot transfer the food to the consumer without such article or container. Non-essential articles or containers are not exempt and are subject to the use tax.

S. (Intentionally left blank)

T. To the storage, use or consumption of all 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;

U. To the storage, use, or consumption by a contractor or subcontractor of construction and building materials for use in the building, erection, alteration, or repair of structures, highways, roads, streets, and other public works owned and used by:

1. The United States government, the State, its departments and institutions, and the political subdivisions thereof in their governmental capacities only,

2. Schools, other than schools held or conducted for private or corporate profit;

V. To the storage, use or consumption of aircraft used or purchased for use in interstate commerce by a commercial airline;

W. To the storage of construction materials;

X. The city's use tax shall not be imposed with respect to the use or consumption of tangible personal property within the city which occurs more than three years after the most recent sale of the property if, within the three years following such sale, the property has been significantly used within the state for the principal purpose for which it was purchased;

Y. To the storage, use or consumption of food, as specified in 7 U.S.C. Section 2012(g), as such section existed on October 1, 1987, or is thereafter amended, which is purchased with food stamps pursuant to the federal food stamp program, or the storage, use or consumption of food, as specified in 42 U.S.C. Section 1786, as such section existed on October 1, 1987, or is thereafter amended, which is purchased with WIC vouchers or checks pursuant to the federal special supplemental program for women, infants, and children. (Ord. O-93-26 § 7, 1993; Ord. O-91-61 § 60 & 63, 1991; Ord. O-86-104 § 20, & 21, 1986; Ord. O-85-137 § 1 (part), 1985).

3.20.280 Deficiency notice—Taxpayer's remedies.

B. In the event the taxpayer disputes the tax liability imposed by any deficiency notice, he shall file a written demand with the City Manager for an administrative hearing and determination of tax liability by the City Manager within ~~twenty (20)~~ thirty (30) calendar days of receipt of the deficiency notice, which demand will stay the sale under any distraint warrant until the conclusion of the hearing. This demand shall include the name, business address and license number of the taxpayer, a copy of the notice sent by the city, the taxable periods and the amounts of tax which are being disputed, and a statement of the grounds upon which the taxpayer bases his claim. In the event it is determined at the hearing that the taxpayer's liability is less than the amount in the possession of the City Manager, such excess shall be paid to the taxpayer forthwith. Failure to demand an administrative hearing and determination of tax liability shall constitute of waiver of the right to contest such liability; however, when such determination is requested or when a request for a refund is timely made, the decision rendered therein shall be appealable as provided in this section.

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 as provided in the Glendale City Charter.

INTRODUCED BY COUNCIL MEMBER King, SECONDED BY COUNCIL MEMBER Bovo AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF GLENDALE, COLORADO THIS 3rd, DAY OF August, 2010, ORDERED PUBLISHED AND SET FOR PUBLIC HEARING.

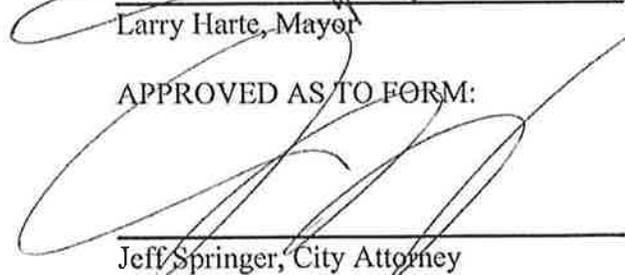
ADOPTED ON SECOND READING BY THE CITY COUNCIL OF THE CITY OF GLENDALE, COLORADO THIS 7th, DAY OF September, 2010 AND ORDERED PUBLISHED.

ATTEST:


Anna S. Fine, City Clerk


Larry Harte, Mayor

APPROVED AS TO FORM:


Jeff Springer, City Attorney