

ORDINANCE NO. 5
Series 2018

July 17, 2018: Introduced as Council Bill 5, Series 2018 by Councilor Katy Brown, seconded by Councilor Mike Gallagher and considered in full text on first reading. Passed by a vote of 6 yes and 0 no.

August 7, 2018: Considered in full text on second reading. Passed by a vote of 6 yes and 0 no.

A BILL FOR AN ORDINANCE
OF THE CITY OF CHERRY HILLS VILLAGE
AMENDING ARTICLE IV OF CHAPTER 4 OF THE CHERRY HILLS VILLAGE
MUNICIPAL CODE CONCERNING SALES TAX DEFINITIONS

WHEREAS, through Senate Joint Resolution 14-038, the Colorado General Assembly requested the Colorado Municipal League ("CML") to revisit the sales tax simplification project (previously implemented in the 1990's) to address current systematic problems with local sales tax collection ("Tax Simplification Project"); and

WHEREAS, the purpose of the Tax Simplification Project is to standardize definitions among the municipalities in Colorado to reduce the complexity of sales tax collection and remittance for the business community and taxpayers without triggering a TABOR election; and

WHEREAS, a committee of municipal sales tax representatives, under the direction of CML staff, formulated uniform sales and use tax definitions for adoption by all self-collecting home rule municipalities within Colorado; and

WHEREAS, City of Cherry Hills Village is a home rule municipality that self-collects sale and use tax within its jurisdiction; and

WHEREAS, City Council enacted sales and use tax regulations as amended and codified in Chapter 4 of the Municipal Code; and

WHEREAS, the City Council desires to amend and adopt sales tax definitions consistent with the standard definitions formulated through the Tax Simplification Project; and

WHEREAS, the City Council finds that such amendments to its sales definitions will provide better uniformity and simplicity for businesses operating in the City; and

WHEREAS, the City Council has determined that amending such definitions will be revenue neutral and will further the public health and welfare of the community.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CHERRY HILLS VILLAGE, COLORADO, ORDAINS:

Section 1. Section 4-4-10 of the Cherry Hills Village Municipal Code, *Definitions*, is amended to amend the following definitions with additions shown as underlined text and deletions shown as strike-throughs, and definitions not amended herein shall remain in full force and effect:

The following words and phrases as used in this Article shall have the following meanings:

Charitable organization means any entity which: a) has been certified as a ~~not-for-profit~~ nonprofit organization under Section 501(c)(3) of the Internal Revenue Code; and b) is a ~~religious or charitable organization. As used in this definition, a charitable organization is an~~ organization which exclusively, and in a manner consistent with existing laws and for the benefit of any indefinite number of persons or animals, freely and voluntarily ministers to the physical, mental or spiritual needs of persons or animals, and ~~which~~ thereby lessens the burden of government.

Consumer means any person ~~individual person engaged in business~~ in the City who purchases, uses, stores, distributes or otherwise consumes ~~in the City~~ tangible personal property or taxable services purchased from sources inside or outside the City.

Prescription Drugs for Humans ~~Drugs dispensed in accordance with a prescription~~ 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 ~~in writing~~ 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 address

of the person for whom the medicine, or drug or poison is offered, and directions, if any, to be placed on the label.

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 (1) of the following activities by a person:

- a. Directly, indirectly or by a subsidiary maintains a building, store, office, salesroom, warehouse or other place of business within the taxing jurisdiction;
- b. Sends one (1) or more employees, agents or commissioned sales persons into the taxing jurisdiction to solicit business or to install, assemble, repair, service or assist in the use of its products, or for demonstration or other reasons;
- c. Maintains one (1) or more employees, agents or commissioned sales persons on duty at a location within the taxing jurisdiction;
- d. Owns, leases, rents or otherwise exercises control over real or personal property within the taxing jurisdiction; or
- e. Makes more than one delivery into the taxing jurisdiction within a twelve month period by any means other than a common carrier.

~~f. A home occupation as permitted in Section 16-5-10 of this Code.~~

Finance Director means the Finance Director of the City or such other person designated by the City; Finance Director shall also include such person's designee.

License means a City sales and/or use tax license.

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 individual patient; and is prescribed by a licensed practitioner of the healing arts. *Prosthetic devices* include, but are not limited to, prescribed auditory, ophthalmic or ocular, cardiac, dental or orthopedic devices or appliances, oxygen concentrators and oxygen with related accessories.

Price or Purchase price means the aggregate value measured in currency paid or delivered or promised to be paid or delivered in consummation of a sale, without any discount from the price on account of the cost of materials used, labor or service cost, and price to the consumer exclusive of any direct tax imposed by the federal government or by this Article, 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 ~~vendor's~~ retailer's business.
- 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:

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 ~~vendor~~ retailer for part of the purchase price and other medium of exchange.
4. The total price charged on credit sales, including finance charges which are not separately stated at the time of sale. An amount charged as interest on the unpaid balance of the purchase price is not part of the purchase price unless the amount added to the purchase price is included in the principal amount of a promissory note; except the interest or carrying charge set out separately from the unpaid balance of the purchase price on the face of the note is not part of the purchase price. An amount charged for insurance on the property sold and separately stated at the time of sale is not part of the purchase price.

5. Installation, applying, remodeling or repairing the property, delivery and wheeling-in charges included in the purchase price and not separately stated.
6. Transportation and other charges to effect delivery of tangible personal property to the purchaser.
7. Indirect federal manufacturers' excise taxes, such as taxes on automobiles, tires and floor stock.
8. The gross purchase price of articles sold after manufacturing or after having been made to order, including the gross value of all the materials used, labor and service performed and the profit thereon.

Price or Purchase price shall not include:

1. Any sales or use tax imposed by the State of Colorado or by any political subdivision thereof.
2. The fair market value of property exchanged if such property is to be sold thereafter in the ~~vender's-retailer's~~ usual course of business. This is not limited to exchanges in the ~~State~~ Colorado. Out-of-state trade-ins are an allowable adjustment to the purchase price.
3. Discounts from the original price, if such discount and the corresponding decrease in sales tax due is actually passed on to the purchaser, and the seller is not reimbursed for the discount by the manufacturer or someone else. 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.

Return means any form prescribed by the city administration for computing and reporting a total tax liability the sales and use tax reporting form used to report sales and use tax.

Purchase or Sale means the acquisition for any consideration by any person of tangible personal property, other taxable products or taxable services that are purchased, leased, rented, sold, ~~used, stored, distributed or consumed~~, 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:

- a. Transfer, either conditionally or absolutely, of title or possession or both to tangible personal property, other taxable products, or taxable services;
- b. A lease, lease-purchase agreement rental or grant of a license, including royalty agreements, to use tangible personal property, other taxable products or taxable services;
- c. Performance of taxable services; or
- d. Barter or exchange for other tangible personal property, other taxable products, or services.

The terms Purchase and Sale does not include:

- a. A division of partnership assets among the partners according to their interests in the partnership;
- b. The transfer of assets of shareholders in ~~the~~ formation or dissolution of professional corporations, if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets;
- ~~e.~~ ~~The transfer of assets of shareholders in the formation or dissolution of professional corporations~~;
- ~~cd.~~ The dissolution and the pro rata distribution of the corporation's assets to its stockholders, if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets;
- ~~d-e.~~ A transfer of a partnership or limited liability company interest;
- ~~e f.~~ The transfer of assets to a commencing or existing partnership or limited liability company, if not consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets; ~~in a reorganization qualifying under Section 368(a)(1) of the Internal Revenue Code~~;
- ~~g.~~ ~~The formation of a partnership by the transfer of assets to the partnership or transfers to a partnership in exchange for proportionate interests in the partnership; or~~

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

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

Tangible personal property means corporeal 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 vendor or the sum of both due from a vendor 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 due date that any return or payment of the tax is required under the terms of this Code.

Therapeutic device means devices, appliances or related accessories that are sold to correct or treat a human physical disability or surgically created abnormality; if such device, appliance, or related accessory has a retail value of more than one hundred dollars (\$100.00), it must be sold in accordance with a written recommendation from a licensed doctor to qualify as a therapeutic device for purposes of this Code.

Vendor means any person selling, or leasing, renting tangible personal property or services at retail. Vendor shall include any:

- a. Auctioneer;
- b. Salesperson, representative, peddler or canvasser, who makes sales as a direct, or indirect, agent of or obtains such property or services sold from a dealer, distributor, supervisor or employer;
- c. Charitable organization or governmental entity which makes sales of tangible personal property to the public, notwithstanding the fact that the merchandise sold may have been acquired by gift or donation or that the proceeds are to be used for charitable or governmental purposes.

Wholesale sales means a sale by wholesalers to licensed vendors retailers, jobbers, dealers or wholesalers for resale and does not include a sales by wholesalers to users or consumers are not wholesale sales for resale; latter types of sales shall be deemed to be Retail Sales and shall be subject to the provisions of this chapter. Sales by wholesalers to unlicensed vendors are not wholesale sales.

Wholesaler means any person selling to vendors, doing an organized wholesale or jobbing business and selling to Retailers, jobbers, dealers or other wholesalers for the purpose of resale, and not for storage, use, consumption or distribution.

Section 2. Severability. If any provision of this Ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remaining portions or applications of this Ordinance that can be given effect without the invalid portion, provided that such remaining portions or applications of this ordinance are not determined by the court to be inoperable. The City Council declares that it would have adopted this Ordinance and each

section, subsection, sentence, clause, phrase, or portion thereof, despite the fact that any one or more section, subsection, sentence, clause, phrase, or portion be declared invalid.

Section 3. Safety. This Ordinance is deemed necessary for the protection of the health, welfare and safety of the community.

Section 4. Effective Date. This Ordinance shall become effective ten (10) days after publication after second reading in accordance with Section 4.5 of the Charter for the City of Cherry Hills Village.

Adopted as Ordinance No. 5 Series 2018, by the City Council of the City of Cherry Hills Village, Colorado this 7th day of August, 2018.

(SEAL)


Laura Christman, Mayor

ATTEST:

APPROVED AS TO FORM:


Laura Smith, City Clerk


Linda Michow, City Attorney

Published in the Villager
Published 8-16-18
Legal # 8470

**CITY OF CHERRY HILLS
VILLAGE
ADOPTION OF ORDINANCE
ORDINANCE 5, SERIES 2018**

A BILL FOR AN ORDINANCE OF
THE CITY OF CHERRY HILLS
VILLAGE AMENDING ARTICLE IV
OF CHAPTER 4 OF THE MUNICI-
PAL CODE CONCERNING RETAIL
SALES TAX DEFINITIONS

Copies of the Ordinances are on
file at the office of the City Clerk
and may be inspected during
regular business hours.

Published in The Villager
Published: August 16, 2018
Legal # 8470