

**ORDINANCE NO. 1717**

**AN ORDINANCE OF THE GOLDEN CITY COUNCIL  
AMENDING TITLE 3 OF THE GOLDEN MUNICIPAL CODE  
PERTAINING TO SALES AND USE TAX**

WHEREAS, the City of Golden, through the exercise of its home rule powers, imposes a Sales Tax and a Use Tax on transactions occurring within the City; and

WHEREAS, City Council wishes to clarify certain aspects of the sales and use taxes, to update certain provisions of the City of Golden's Sales and Use Tax Code.

THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GOLDEN, COLORADO:

Section 1. Section 3.02.010 (aa) of the Golden Municipal Code shall be amended to enact a new subsection under that part of the definition entitled "Price or Purchase Price includes", as follows:

(8) Software License Fees.

Section 2. Section 3.02.010 of the Golden Municipal Code shall be amended to add the following definitions of words and phrases, with remaining definitions renumbered accordingly:

(kk) "Software" includes pre-written, custom and customized software, regardless of whether the software is transmitted electronically from the Seller to the Buyer, or by a physical medium. The following definitions distinguish these different types of software:

a. "Pre-written (canned) software" means computer software in which the base program is not specifically written for a single user, but is sold, or held for sale, to more than one entity.

b. "Custom software" means computer software written for a specific application, and typically for a single user.

c. "Customized software" means pre-written software that is modified or enhanced to create a custom program for a particular user.

(ll) "Software License Fee" means a fee charged for the right to use, or maintain a copy of, software, regardless of the form of the software.

(mm) "Software Maintenance Agreement" means an agreement, typically with a software provider, that may include (1) provisions to maintain the right to use the software; (2) provisions for software upgrades including code updates, version updates, code fix modifications, enhancements, and added or new functional capabilities loaded into existing software, or (3) technical support.

Section 3. Section 3.03.010 (d) of the Golden Municipal Code is amended to read.

(d) Sales and use tax capital improvements fund. The City of Golden "Sales and Use Tax Capital Improvements Fund" is hereby created. Such fund shall not be available to be pledged or expended for any general municipal purposes. One-third (1/3) of the sales and use taxes collected by virtue of this title shall immediately be distributed to and deposited in the "Sales and Use Tax Capital Improvements Fund". Funds deposited to the "Sales and Use Tax Capital Improvements Fund" shall be used solely to provide

for capital needs throughout the City of Golden as determined by the public capital program budgeting process.

Section 4. Section 3.03.030 (a) of the Golden Municipal Code is amended to enact the following new subsections:

(11) Pre-written (canned) Software that is sold, licensed for use, leased or rented.

(12) Customized Software that is sold, licensed for use, leased or rented, provided that if the cost of customization is separately calculated and stated from the cost of the Pre-written (canned) Software, the cost of customization component of the purchase price shall not be subject to the sales tax.

(13) Software Maintenance Agreements when:

(i) the agreement is mandatory to maintain the right to use the associated software: or

(ii) the agreement includes software upgrades and the cost for upgrading is not separately calculated and stated from other aspects; or

(iii) the agreement includes technical support and the cost associated with technical support is not separately stated or calculated.

Section 5. Section 3.03.030 (b)(1) of the Golden Municipal Code is amended to read as follows:

(1) Tangible personal property, services and rights for all items described in Section 3.03.030(a) above, acquired by purchase, license, lease or rental without payment of the sales tax.

Section 6. Section 3.03.040(a) of the Golden Municipal Code is amended to add the following new subsection, with remaining subsections being renumbered accordingly:

(18) Sales, licensing, lease, or rental of Custom Software.

Section 7. Section 3.03.060(b) of the Golden Municipal Code is amended to read as follows:

(b) Construction equipment that is located within the boundaries of the city for a period of thirty (30) consecutive days or less shall be subjected to the city's use tax in an amount calculated as follows: the purchase price of the equipment shall be multiplied by a fraction, the numerator of which is one (1) and the denominator of which is twelve (12), and the result shall be multiplied by the use tax rate imposed pursuant to this title.

Section 8. Section 3.03.090(a) of the Golden Municipal Code shall be amended to read as follows:

(a) Any person who shall build, construct or improve any building, dwelling or other structure or improvement to realty whatsoever, including underground improvements, within the city, and who shall purchase the necessary construction materials needed therefore from any source either within or without

the corporate limits of the city, shall remit a deposit to the city prior to the issuance of any building permit, such deposit to insure and indemnify the city for the amount of the use tax due within three (3) years from the date of the issuance of the Certificate of Occupancy for the project. The amount of the deposit shall be based upon an estimate of the use tax to be payable on the construction materials needed therefore at the time that the respective building permit is obtained. The amount of the deposit for a particular project shall be determined by the city building official and shall equal three percent (3%) of fifty percent (50%) of the estimated value of the construction project. The building official may request the permit requestor to provide an estimated cost for the project to assist in the determination of the deposit amount. The taxpayer shall be issued a receipt identifying the property that is the subject of the deposit which receipt shall include the building permit number. The deposit shall be applied to any tax liability incurred under the provisions of this title.

Section 9. Section 3.03.090 of the Golden Municipal Code shall be amended to enact the following new subsection (b), with remaining subsections renumbered accordingly:

(b) The taxpayer shall calculate the final cost of construction materials and reconcile it to the estimated cost provided when the permit was issued to determine the actual use tax due, and remit any outstanding balance within 180 days of the issuance of the certificate of occupancy. If the outstanding balance has not been remitted to the City, interest and penalty shall begin to accrue on the 180<sup>th</sup> day following the issuance of the Certificate of Occupancy.

Section 10. Section 3.05.020(b) of the Golden Municipal Code shall be amended to read as follows:

(b) Licenses shall expire at midnight on December 31 of each even numbered calendar year, provided however, that no license shall be issued to temporary/transient vendors for a period of more than 30 days.

Section 11. Section 3.05.070 of the Golden Municipal Code shall be amended to read as follows:

If a license applicant withdraws an application after having paid the license fee, the finance director shall refund such fee to the applicant less an administrative fee of ten dollars (\$10.00).

Section 12. Section 3.06.020(6)(B) is repealed, with remaining subsections renumber accordingly.

Section 13. Section 3.06.060(e) of the Golden Municipal Code is amended to read as follows:

(e)(i) Notwithstanding the provisions of this section, the city manager or his/her designee may provide any information contained in tax returns and related documents filed pursuant to this title or any other reports, data or information prepared and submitted to the City pursuant to this title, to representative(s) designated by the Golden Urban Renewal Authority (GURA) . GURA's eligibility to receive such tax information from the City shall be based upon its public purposes and activities such as municipal economic development; elimination and/or prevention of blight; economic, financial and

physical revitalization, development and/or redevelopment of specifically designated urban renewal/redevelopment areas of the City.

(ii) Such tax information and data shall be kept confidential by GURA, shall not be made available to the public and shall be utilized only for the purposes defined in paragraph (e)(i) of this Section.

(iii) Statistical information described in paragraph (c) of this Section generated by the City, but not made public, may also be provided to GURA. However, GURA shall not make such statistical information public, except in compliance with the city manager's regulations promulgated under paragraph (f) of this Section.

(iv) GURA's designated representative(s) shall be responsible to the city manager for receipt of the confidential tax information and utilization of same as described and restricted in this Section.

Section 14. Section 3.07.050(a) of the Golden Municipal Code is amended to read as follows:

(a) Any individual who was a resident of the City for at least ninety (90) continuous days during the prior calendar year and who during such year was sixty five (65) years of age or older or disabled or low-income and who is not claimed as a dependent on another's State of Colorado income tax return for such year, is eligible for a rebate of City sales tax.

City Council shall establish the disabled and low-income eligibility criteria and the rebate amount by resolution. The rebate amount shall be established on a monthly basis and those eligible shall be entitled to receive such monthly amount for each calendar month they resided in the City during the applicable year.

Section 15. Section 3.08.010 (a) and (b) of the Golden Municipal code shall be amended to read as follows:

(a) If a person neglects or refuses to make a return in payment of the sales or use tax, or to pay any sales or use tax as required by this title, then the finance director shall make an estimate, based upon such information as may be available, of the amount of taxes due for the period for which the taxpayer is delinquent and shall add thereto a penalty equal to the sum of fifteen dollars (\$15.00) for such failure or ten percent (10%) thereof, whichever is greater, and interest on such delinquent taxes at the rate of one percent (1%) per month; provided however the penalty for taxpayers who are delinquent without good cause for three (3) or more months shall be fifty dollars (\$50.00) or fifty percent (50%) of the tax due, whichever is greater. Promptly thereafter, the finance director shall give to the delinquent taxpayer written notice of such estimated taxes, penalty and interest, which notice shall be hand delivered or sent by certified mail directed or other verification delivery methods, to the last address of such person on file with the finance department. Such estimate shall thereupon become a notice of deficiency.

(b) If any fees, taxes, penalty or interest imposed by this title and shown due by returns filed by the taxpayer or as shown by assessments duly made as provided in this section are not paid within five (5) days after the same are due, then the finance director shall issue a deficiency notice, setting forth the name of the taxpayer, the amount of the fees, tax, penalties and interest, the date of the accrual thereof, and that

the city claims a lien therefore on the real and tangible personal property of the taxpayer. Said notice shall be hand delivered or mailed to the taxpayer by certified mail or other verifiable delivery methods.

(1) Said notice shall be on forms furnished by the finance department and shall be verified by the city manager or by the finance director and may be filed in the office of the county clerk and recorder in which the taxpayer owns real or tangible personal property, and the filing of such notice shall create a lien on such property in that county and constitute notice thereof. If the City files the lien, there shall be a lien fee of \$50.00 imposed and added to the total assessment amount. At any time when taxes due are unpaid, whether such notice shall have been filed or not, the finance director may issue a warrant directed to any duly authorized revenue collector, or to any law enforcement officer or to the sheriff of the county, commanding such person to levy upon, seize, and sell sufficient of the real and personal property of the amount due together with interest, penalties, and costs as may be provided by law, subject to valid superior claims or liens.

(2) Jeopardy assessment.

(A) Issuance. If the collection of any tax due from a taxpayer, whether or not previously assessed, will be jeopardized by delay, the city manager may declare the taxable period immediately terminated, order the finance director to determine the tax, and issue a jeopardy assessment and demand for payment. Any tax so assessed shall be due and payable immediately.

(B) Security for payment. Enforcement of a jeopardy assessment and demand for payment may be stayed if the taxpayer gives security for payment which is satisfactory to the city manager.

(C) Dispute of jeopardy assessment. If, in the opinion of the taxpayer, the jeopardy assessment is not for the correct amount of tax due, the taxpayer shall pay the tax due as assessed and submit a claim for refund to the city.

Section 16. Section 3.09.020 of the Golden Municipal Code is repealed in its entirety.

Section 17. 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 constitutionality or validity 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 irrespectively of the fact that any one part or parts are declared unconstitutional or invalid.

Section 18. All ordinances or portions thereof which are inconsistent or that conflict with this ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

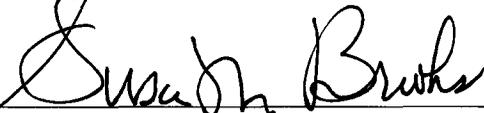
Section 19. This ordinance is deemed necessary for the protection of health, welfare and safety of the community.

Introduced, read, passed and ordered published the 13th day of October, 2005.

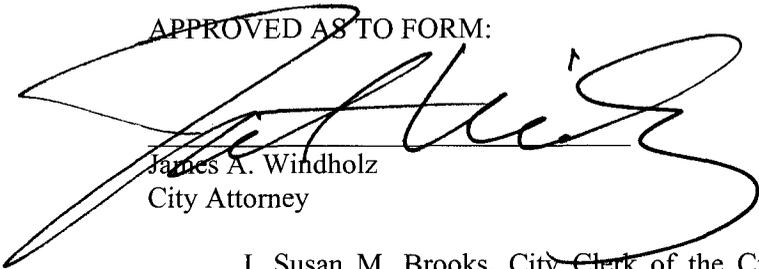
Passed and adopted upon second reading and ordered published the 27th day of October, 2005.

  
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Charles J. Baroch  
Mayor

ATTEST:

  
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Susan M. Brooks, MMC  
City Clerk

APPROVED AS TO FORM:

  
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James A. Windholz  
City Attorney

I, Susan M. Brooks, City Clerk of the City of Golden, Colorado, do hereby certify that the foregoing ordinance was introduced on first reading and read at a regular meeting of the City Council of said city, held on the 13th day of October, 2005, and was published as a proposed ordinance in the Golden Transcript, legal newspaper, as the law directs seven days or more prior to its passage. A public hearing was held on October 27th, 2005 and the said proposed ordinance was read on second reading. The ordinance was passed by the City Council and ordered published in the aforesaid newspaper, as the law directs on the 27<sup>th</sup> day of October, 2005.

Witness my hand and official seal of the City of Golden, Colorado, this 27<sup>th</sup> day of October, 2005.

(SEAL)

ATTEST:

  
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Susan M. Brooks, MMC, City Clerk of  
the City of Golden, Colorado