

ORDINANCE NO. 1864

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GOLDEN AMENDING CERTAIN SECTIONS OF TITLE 3, "SALES AND USE TAX CODE," OF THE GOLDEN MUNICIPAL CODE

WHEREAS, Section 14.1 of the Charter for the City of Golden provides that the City Council has the authority to levy taxes; and

WHEREAS, Title 3 of the Golden Municipal Code implements Section 14.1 of the Charter, and sets forth the City's "Sales and Use Tax Code"; and

WHEREAS, City Council recognizes that over time, and as new products, technologies, and services are created, the Sales and Use Tax Code may not clearly address the taxability of such products, technologies, and services; and

WHEREAS, City Council recognizes that, based on taxpayer inquiries during audits and in general, clarification of certain provisions of the Sales and Use Tax Code will clarify areas of possible confusion for taxpayers; and

WHEREAS, City Council desires to amend certain provisions of the City's Sales and Use Tax Code, Title 3 of the Golden Municipal Code, in order to clarify certain definitions and procedures, and to sufficiently clarify the taxability of certain products, technologies, and services.

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

Section 1. Certain definitions in Section 3.02.010, "Definitions," of the Golden Municipal Code are amended or added to Section 3.02.010, as set forth below, and shall be codified in alphabetical order and relettered accordingly:

"Consumer" means (1) any individual person, or (2) person engaged in business in the city, who uses, stores, distributes or otherwise consumes in the city tangible personal property or taxable services purchased from sources inside or outside the city. "Consumer" shall also mean any person residing or engaged in business in the city who is an end user of software that was purchased, leased, rented, or subscribed from sources inside or outside the city.

"Contract auditor" means a duly authorized agent designated by the Finance Director and qualified to conduct sales and use tax audits on behalf of the City, and pursuant to an agreement with the City.

"Contractor" means an entity or person who bids for and performs work on real property for another party pursuant to an agreement, including but not limited to: building contractors, foundation, curb, or parking lot contractors, road, grading, and excavating contractors, electrical plumbing, and HVAC contractors, and roofing contractors. For purposes of this definition, "contractor" also includes subcontractors.

“Data processing equipment” means any equipment or system of equipment used in the storage, manipulation, management, display, reception or transmission of information including, but not limited to, computers, software, hardware or firmware.

“Data processing programs” means systems or applications that organize or manipulate data including, but not limited to, software, software as a service and internet subscription services.

“Internet subscription service” means 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.

“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.

"Medical supplies" means prescription drugs for humans; insulin in all its forms dispensed pursuant to the direction of a licensed medical or dental practitioner; glucose usable 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 licensed medical or dental practitioner as part of professional services provided to a patient; and correctable eyeglasses, contact lenses, or hearing aids.

"Prescription drugs for animals" means drugs dispensed in accordance with any order in writing, dated and signed by a doctor of veterinary medicine, or given orally by a doctor of veterinary medicine, 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 drugs dispensed in accordance with any order in writing, dated and signed by a licensed medical or dental practitioner, or given orally by a licensed medical or dental practitioner, and immediately reduced to writing by the pharmacist, assistant pharmacist, or pharmacy intern, specifying the name and address of the person for whom the medicine, drug or poison is offered and directions, if any, to be placed on the label.

"Price" or "Purchase Price" means the 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:

- (1) Such exchanged property is to be sold thereafter in the usual course of the retailer's business, or**
- (2) 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 whereupon 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 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.
- (9) Software license fees.

"Purchase" or "sale" means the acquisition for any consideration by any person of tangible personal property 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 shall include capital leases, installment and credit sales, and property and services acquired by:

- (1) Transfer, either conditionally or absolutely, of title or possession or both to tangible personal property;
- (2) A lease, lease-purchase agreement, rental, subscription or grant of a license, including royalty agreements, to use tangible personal property or taxable services either directly or remotely via the Internet;

- (3) Performance of taxable services; or
- (4) Barter or exchange for other property or services including coupons.

The terms "purchase" and "sale" do not include:

- (1) A division of partnership assets among the partners according to their interests in the partnership;
- (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 corporation's assets to its stockholders;
- (5) A transfer of a partnership interest;
- (6) The transfer in a reorganization qualifying under Section 368(a)(1) of the "Internal Revenue Code of 1954", as amended;
- (7) 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;
- (8) The repossession of personal property by a chattel mortgage holder or foreclosure by a lien holder;
- (9) 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;
- (10) 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;
- (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 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 corporation. To such an extent any transfer referred to in this paragraph (11) shall constitute a sale. 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.

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

- (1) Auctioneer;
- (2) 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, manufacturer, supervisor or employer;
- (3) 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.
- (4) Retailer-Contractor, when acting in the capacity of a retailer.

"Retailer-Contractor" means a contractor who is also a retail merchant of building supplies or construction materials, purchasing such property for resale (which may include installation), repair work, time and materials jobs, and/or lump sum contracts. When a building permit is pulled, the retailer-contractor is considered to be acting as a contractor. When a building permit is not pulled, the retailer-contractor is considered to be acting as a retailer.

"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, or accessed remotely via the Internet. 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 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.

"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.

"Telecommunications service" means the transmission or facilitation of any two-way interactive electromagnetic communications including, but not limited to, voice, image, data and 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), Internet access, remote access to computers and electronic storage equipment, or any combinations of such media. "Telecommunications service" includes but is not limited to basic local exchange telephone service, toll telephone service and tele-typewriter services, 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 software that constitutes computer processing applications used to act on the information to be transmitted.

Section 2. Sub-subsection 3.03.030(a)(11) of the Golden Municipal Code is repealed and reenacted to read as follows:

(11) Pre-written (canned) Software that is sold, licensed for use, subscribed to, leased or rented. Software is deemed to be used within the city if one of the following is true:

- (a) The end-user of the software is engaged in business in the city or resides in the city while using or accessing the software; or**
- (b) The server or other computer equipment upon which the software, electronic files or electronic data reside or are maintained is located within the city.**

Section 3. Subsection 3.03.030(a), "Transactions subject to tax," of the Golden Municipal Code is amended to add the following subsections (15) and (16):

3.03.030(a)(15) Sales of tangible personal property by a Retailer-Contractor, when acting as a retailer, shall be subject to sales tax on the total sales price. Labor and installation charges are not taxable if separately stated.

3.03.030(a)(16) Software as a service, internet subscription services, data processing equipment and data processing programs.

Section 4. Sub-subsection 3.03.030(b)(3) of the Golden Municipal Code is repealed and reenacted to read as follows:

(3) Taxable services described in Section 3.03.030(a) which are purchased without previous payment of the sales tax.

Section 5. Section 3.03.040(a)(3), "Exemptions from sales tax," of the Golden Municipal Code is repealed and reenacted to read as follows:

(3) Sales of medical supplies. This exemption shall not encompass items purchased for use by medical and dental practitioners or medical or dental facilities in providing their services, even though certain of those items may be packaged for single use by individual patients after which the item would be discarded. This exemption also shall not encompass the sale or purchase of "prescription drugs for animals" or the sale or purchase of "medical marijuana".

Section 6. Section 3.03.040(b), "Exemptions from sales tax," of the Golden Municipal Code is repealed and reenacted to read as follows:

(b) The city's sales tax shall not apply to the sale of tangible personal property or the furnishing of services if the transaction was previously subjected to a sales or use tax lawfully imposed on the purchaser or user by another statutory or home rule municipality equal to or in excess of the sales tax required to be paid pursuant to this title. A credit shall be granted against the city's sales tax with respect to such transaction equal in amount to the lawfully imposed municipal sales or use tax previously paid by the purchaser or user to the other municipality. The amount of the credit shall not exceed the amount of the sales tax required to be paid pursuant to this title. This exemption shall be denied if the tax paid to another municipality was not legally due under the laws of the municipality. This exemption shall be denied for subsequent transactions within the city, including, but not limited to, rentals and leases of the tangible personal property.

Section 7. Section 3.03.040(b) of the Golden Municipal Code is repealed and reenacted to read as follows:

(b) The city's use tax shall not apply to the storage, use or consumption of any article of tangible personal property the sale or use of which has already been subjected to a sales or use tax of another statutory or home rule municipality legally imposed on the purchaser or user equal to or in excess of the use tax required to be paid pursuant to this title. A credit shall be granted against the city's use tax with respect to the person's storage, use or consumption in the city of tangible personal property, the amount of the credit to equal the tax paid by the purchaser or user by reason of the imposition of a sales or use tax of the previous municipality on the purchase or use of the property. The amount of the credit shall not exceed the amount of the use tax required to be paid pursuant to this title. This exemption shall be denied if the tax paid to another municipality was not legally due under the laws of the municipality. This exemption shall be denied for subsequent transactions within the city, including, but not limited to, rentals and leases of the tangible personal property.

Section 8. Sub-subsection 3.03.060(d)(1) of the Golden Municipal Code is repealed and reenacted to read as follows:

(1) Prior to or on the date that the equipment is located within the boundaries of the city, the taxpayer shall file with the finance director an equipment declaration. Such declaration shall state the dates on which the taxpayer anticipates that the equipment shall be located within and removed from the boundaries of the city, shall include a description of each such anticipated piece of equipment, shall state the actual or anticipated purchase price and shall include such other information as reasonably deemed necessary by the city.

Section 9. Subsection 3.03.090(e) of the Golden Municipal Code is repealed and reenacted to read as follows:

(e) The amount of any use tax due and not paid on such a construction project shall constitute a lien upon real estate benefited by the use of such construction materials. A lien may also be placed upon the real or personal property of the contractor or authorized agent to whom the

building permit was issued. Both liens shall be released upon payment of the entire lien amount from either or both parties.

Section 10. Subsection 3.03.100(b)(1) of the Golden Municipal Code is repealed and reenacted to read as follows:

(b) Inception of business; initial use tax. Any person who purchases or establishes a business inside the city shall file an initial use tax return.

(1) Existing businesses. Use tax shall be due on tangible personal property, except inventory held for lease, rental or resale, which is acquired with the purchase, transfer of ownership, or any other form of acquisition of a business. The tax shall be based on the price of such property as recorded in the bill of sale or agreement and constituting a part of the total transaction at the time of the sale or transfer, provided the valuation is as great or greater than the fair market value of such property. If the fair market value of the property is greater than the price recorded in the bill of sale or agreement, then the fair market value of the property shall be the basis for calculating the amount of tax due. Such tax shall be reported on an initial use tax return.

Section 11. Section 3.04.020, "Trust status of tax in possession of retailer," of the Golden Municipal Code is repealed and reenacted to read as follows:

All sales or use tax collected by any retailer or contractor shall be the property of the city and remain public money in the hands of such retailer or contractor, who shall hold the same in trust for the sole use and benefit of the city until paid to the city.

Section 12. Subsection 3.04.050(a) of the Golden Municipal Code is repealed and reenacted to read as follows:

(a) Deductions from gross sales. If included in reported gross sales, and submitted within three (3) years of the date of the original sale, the following are deductible from gross sales:

(1) Refunds. The price of tangible personal property or taxable services returned by a purchaser when the price and the sales tax collected are refunded in cash or by credit.

(2) Bad debts charged off. Taxable sales which are represented by accounts not secured by conditional sales contract, rental purchase contract or security interest and which are found to be worthless and are actually and properly charged off as bad debts for the purpose of the income tax imposed by the laws of the State of Colorado; provided, however, that if such amounts are thereafter collected by the taxpayers, a tax shall be paid on the amounts collected.

Section 13. Subsection 3.04.060(c) of the Golden Municipal Code is repealed and reenacted to read as follows:

(c) All such records of the taxpayer shall be open for examination and audit by the finance director. The taxpayer shall produce all such records, if required by the finance director, at a suitable time and place within the city, to be designated by the finance director. If it is found

necessary by the finance director that the examination and audit of such records take place outside the city, the taxpayer shall reimburse the city for all costs and expenses incurred by the city to conduct the examination and audit.

Section 14. Subsection 3.06.010(h) of the Golden Municipal Code is repealed and reenacted to read as follows:

(h) Notices. Notices required by this chapter shall be in writing and delivered in person, or sent by first class mail, postage paid, to the last known address of the taxpayer, or sent by other verifiable delivery methods.

Section 15. Subsection 3.06.020(a) of the Golden Municipal Code is repealed and reenacted to read as follows:

(a) For the purpose of ascertaining the correct amount of tax due from any taxpayer or person engaged in business in the city, the finance director, or a contract auditor as designated by the finance director, may conduct an audit by examining any relevant books, accounts and records of such person. During the course of an audit the finance director may, when the finance director deems appropriate, utilize a representative sample of the taxpayer's records to project the amount of tax deficiency or over payment, if any.

Section 16. Section 3.06.020, "Audit of records," of the Golden Municipal Code is repealed and reenacted to read as follows:

(a) For the purpose of ascertaining the correct amount of tax due from any taxpayer or person engaged in business in the city, the finance director may conduct an audit by examining any relevant books, accounts and records of such person. During the course of an audit the finance director may utilize a representative sample of the taxpayer's records to project the amount of tax deficiency or over payment, if any.

(b) Coordinated audit procedure. Any taxpayer licensed in this city pursuant to this title, and holding a similar sales tax license in at least four (4) other Colorado municipalities that administer their own sales tax collection, may request a coordinated audit as provided herein.

(1) Within fourteen (14) days of receipt of notice of an intended audit by any municipality that administers its own sales tax collection, including notice from this city, the taxpayer may provide to the finance director of this city, by certified mail, return receipt requested, or by other verifiable delivery method, a written request for a coordinated audit indicating the municipality from which the notice of intended audit was received and the name of the official who issued such notice. Such request shall include a list of those Colorado municipalities utilizing local collection of their sales tax in which that taxpayer holds a current sales tax license. The first notice of an intended audit by any municipality that prompts the request for a coordinated audit shall toll the city's statute of limitations.

(2) Except as provided in paragraph six (6) of this section, any taxpayer that submits a complete request for a coordinated audit and promptly signs a waiver of Golden Municipal Code Section 3.08.060, may be audited by this city, solely at this city's

discretion as determined by the finance director, after such request is submitted only through a coordinated audit involving all municipalities electing to participate in such an audit. The first notice of an intended audit by any municipality that prompts a request for a coordinated audit shall toll this city's statute of limitations. The taxpayer shall cooperate with the city to schedule the audit so that it may be completed in a timely manner. The taxpayer shall promptly provide all books and records requested by the city, which shall be open for examination and audit by the finance director. The taxpayer shall produce all such records, if required by the finance director, at the office of the finance director. Any delay caused by the taxpayer, or any lack of cooperation by the taxpayer that prevents this city from completing its audit within 12 months shall not prejudice the city and shall not preclude or otherwise prevent the city from completing its audit of the taxpayer.

(3) If, at the discretion of the finance director, this city desires to participate in the audit of a taxpayer that submits a complete request for a coordinated audit pursuant to this subsection (b), the finance director shall so notify the finance director of the municipality whose notice of audit prompted the taxpayer's request within ten (10) days after receipt of the taxpayer's request for a coordinated audit. The finance director shall then cooperate with other participating municipalities in the development of arrangements for the coordinated audit, including arrangement of the time during which the coordinated audit will be conducted, the period of time to be covered by the audit, and a coordinated notice to the taxpayer of those records most likely to be required for completion of the coordinated audit.

(4) If the taxpayer's request for a coordinated audit was in response to a notice of audit issued by this city, this city's finance director shall facilitate arrangements between this city and other municipalities participating in the coordinated audit unless and until an official from some other participating municipality agrees to assume this responsibility. The finance director shall cooperate with other participating municipalities to, whenever practicable, minimize the number of auditors that will be present on the taxpayer's premises to conduct the coordinated audit on behalf of the participating municipalities. Information obtained by or on behalf of those municipalities participating in the coordinated audit may be shared only among such participating municipalities.

(5) If the taxpayer's request for a coordinated audit was in response to a notice of audit issued by this city, this city's finance director shall, once arrangements for the coordinated audit between the city and other participating municipalities are completed, provide written notice to the taxpayer of which municipalities will be participating, the period to be audited and the records most likely to be required by participating municipalities for completion of the coordinated audit. The finance director shall also propose a schedule for the coordinated audit.

(6) The coordinated audit procedure set forth in this section shall not apply:

(A) When the proposed audit is a jeopardy audit;

(B) When a taxpayer refuses to promptly sign a waiver of Golden Municipal Code Section 3.08.060; or

(C) When a taxpayer fails to provide a timely and complete request for a coordinated audit as provided in paragraph one (1) of this section.

(c) Coordinated audit initiated by the city. The city, through the finance director or through a contract auditor at the direction of the finance director, may initiate and participate in a coordinated audit of a taxpayer, together with one (1) or more Colorado municipalities that administer their own sales tax collection.

Section 17. The heading for Section 3.07.050 of the Golden Municipal Code shall be repealed and reenacted to read as follows:

3.07.050 Special refund - senior citizens; disabled and low-income individuals

Section 18. Subsection 3.07.070(b) of the Golden Municipal Code is repealed and reenacted to read as follows:

(b) Decision - hearing. The finance director shall examine the claim for refund and give written notice to the taxpayer of his or her decision thereon. Aggrieved applicants, within thirty (30) days after the date of the decision, may petition the finance director for a hearing on the claim as provided in this title. The petition shall specify the amount of the refund requested and the basis for such refund.

Section 19. Section 3.08.025, "Corporate and partnership liability," of the Golden Municipal Code is repealed and reenacted to read as follows:

In addition to the personal liability provided by this Title, all officers of a corporation, and all members of a partnership or other entity required to collect, account for, and pay any tax administered by this Title who willfully fail to collect, account for, or pay over such tax or who willfully attempt in any manner to evade or default any such tax, or the payment thereof, are subject to, in addition to other penalties provided by law, a penalty equal to one hundred fifty percent (150%) of the total amount of the tax not collected, accounted for, paid, or otherwise evaded. An officer of a corporation or a member of a partnership or other entity shall be deemed to be subject to this section if the corporation, partnership or other entity is subject to filing returns or paying taxes administered by this Title and if such officer or member voluntarily or at the direction of superiors assumes the duties or responsibilities of complying with the provisions of any tax administered by this Title on behalf of the corporation, partnership or other entity.

Section 20. Section 3.08.030, "Tax deficiency," of the Golden Municipal Code is repealed and reenacted to read as follows:

If the deficiency in payment of the sales or use tax occurs without intent to defraud, there shall be added ten percent (10%) of the total amount of the deficiency, and interest in such case shall be collected at the rate of one percent (1%) per month on the amount of such deficiency from the time the return was due, from the person required to file the return, which interest and addition shall become due and payable thirty (30) days after written notice and demand to such person by

the finance director. If any part of the deficiency is due to the taxpayer's careless disregard for the accuracy of the return, then there shall be added fifty percent (50%) of the total amount of the deficiency, and in such case, the whole amount of the tax unpaid, including the additions, shall become due and payable thirty (30) days after written notice and demand by the finance director. If any part of the deficiency is due to fraud with the intent to evade the tax, then there shall be added one hundred percent (100%) of the total amount of the deficiency, and in such case, the whole amount of the tax unpaid, including the additions, shall become due and payable thirty (30) days after written notice and demand by the finance director.

Section 21. Subsection 3.08.060(d) of the Golden Municipal Code is repealed and reenacted to read as follows:

(d) The statute of limitations period as set forth herein shall not apply, and the tax, together with interest and penalties thereon, may be assessed or proceedings for the collection of such taxes may commence at any time, if:

- (1) a taxpayer files a false return under circumstances that exhibit a careless disregard for the accuracy of the return; or
- (2) a taxpayer files a false or fraudulent return with the intent to evade the tax imposed by this title or;
- (3) a taxpayer fails to file a return as required by this title; or
- (4) a taxpayer registers an automotive vehicle outside the city with the intent to avoid tax liability imposed by this title.

Section 22. Subsection 3.09.010, "Hearings by the finance director," of the Golden Municipal Code is repealed and reenacted to read as follows:

(a) A taxpayer aggrieved by a decision or action of the finance director, including a deficiency notice or denial of refund, may submit to the finance director a request, in writing, for a hearing on such decision or action, within thirty (30) days after such decision or action. The request for hearing shall set forth the basis upon which the taxpayer wishes the decision or action to be modified. The finance director shall notify the taxpayer in writing of the time and place fixed by the finance director for such hearing. After such hearing, the hearing officer shall make a final decision in the matter as is just and lawful and shall furnish a copy of such decision to the taxpayer.

(b) Every decision of the hearing officer upon such hearing shall be in writing, and notice thereof shall be mailed, or sent via other verifiable delivery method, to the taxpayer within ninety (90) days after the finance director's receipt of the taxpayer's written request for the hearing. However, the period may be extended if the delay in holding the hearing or issuing the decision thereon is occasioned by the taxpayer; but, in any such event, such hearing shall be held and the decision thereon issued within one hundred eighty (180) days of the taxpayer's written request for the hearing.

Section 23. 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 24. The repeal or modification of any provision of the Municipal Code of the City of Golden 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 25. This ordinance is deemed necessary for the protection of the health, welfare and safety of the community.

Section 26. Violations of this ordinance shall be punishable as set forth in Section 1.01.110 of the Golden Municipal Code.

Introduced, read, passed and ordered published the 28th day of January, 2010.

Passed and adopted upon second reading and ordered published this 11th day of February, 2010.



A handwritten signature in cursive script, appearing to read "Susan Brooks", written over a horizontal line.

Susan Brooks
City Clerk, MMC

A handwritten signature in cursive script, appearing to read "Jacob Smith", written over a horizontal line.

Jacob Smith
Mayor

APPROVED AS TO FORM:

A handwritten signature in cursive script, appearing to read "David S. Williamson", written over a horizontal line.

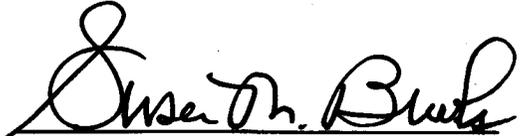
David S. Williamson
City Attorney

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 business meeting of the City Council of said city, held on the 28th day of January, 2010, 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 the 11th day of February, 2010, 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 11th day of February, 2010.

Witness my hand and official seal of the City of Golden, Colorado, this 12th day of February, 2010.



ATTEST:


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