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Memorandum

TO: Town Council

FROM: Finance Department

DATE: February 19, 2019

SUBJECT: Sales Tax Standard Definitions Ordinance No.2, Series 2019

## **I. PURPOSE**

The purpose of Ordinance No. 2, Series 2019 is to standardize, amend, and simplify sales tax definitions as defined by Title 4, Chapter 3, of the Vail Town Code through the adoption of Colorado Municipal League (CML) standard tax definitions.

The Town of Vail self- collects a 4% sales tax which represents approximately 39% of annual revenues.

## **II. BACKGROUND**

It has been long recognized that various home rule municipalities define the same or similar terms within their code but with varied meanings causing confusion and complexity in our tax system for the business community. The standardization of definitions was deemed desirable to streamline sales tax collections and help to minimize this complexity for businesses who file in multiple jurisdictions within the state.

In 2014, the Colorado General Assembly adopted Senate Joint Resolution 14-038 asking CML to develop and lead an effort to standardize definitions. A steering committee along with many sub committees worked intensively to create a draft for review by internal stakeholders consisting of 69 municipalities and select attorneys. A draft was also circulated to representatives of external stakeholders including Colorado Retail Council, Municipal tax practitioners, and the Colorado Association of Commerce and Industry. On February 23<sup>rd</sup> 2016, a package of 106 standardized definitions was finalized and ready for review by each municipality. CML requested that municipalities assess these definitions and identify which could be adopted. Over the next two years, individual towns and cities began adopting their version of the standard definitions for sales tax code. As of January 23, 2019, 46 municipalities had adopted these definitions, with 24 remaining.

In preparation to adopt the standard definitions, staff participated in the majority of internal stakeholder meetings held by CML. An extensive legal review was also performed by Hoffman, Parker, Wilson, and Carberry to identify which definitions could be adopted, based on the tax code as written. Further detailed review was conducted by staff to ensure these definitions would also be revenue neutral with regard to historical application of the code.

### **III. DISCUSSION**

Due to limitations imposed by the Taxpayer's Bill of Rights, Art. X, § 20 of the Colorado Constitution ("TABOR"), staff is only recommending the adoption of definitions which will not cause material increases or decreases to tax revenues, or "revenue neutral".

Minor revisions to the code were also included to preserve and clarify the Town's taxes and exemptions which may have otherwise been impacted by the new definitions.

### **IV. ACTION REQUESTED FROM COUNCIL**

Staff requests that Council approve or approve with amendments Ordinance No. 2, Series 2019 upon first reading.

**ORDINANCE NO. 2  
SERIES 2019**

**AN ORDINANCE AMENDING PORTIONS OF TITLE 4, CHAPTER 3, OF  
THE VAIL TOWN CODE RELATED TO SALES TAX TO ADOPT  
CERTAIN STATEWIDE STANDARDIZED DEFINITIONS AND TO MAKE  
REVENUE-NEUTRAL AMENDMENTS NEEDED TO IMPLEMENT  
THOSE DEFINITIONS**

WHEREAS, in Senate Joint Resolution 14-038 the General Assembly asked the Colorado Municipal League to revive the tax simplification project from the 1990s to address current systemic problems associated with local tax collection;

WHEREAS, the Town Council has determined that the standard tax definitions project is a major collaborative sales tax simplification initiative by Colorado's home rule municipalities that locally collect their sales tax and the retail business community;

WHEREAS, the Town Council has determined that the Town will cooperate in furtherance of a statewide goal to have all locally collecting municipalities agree to use standard definitions in their sales and use tax codes;

WHEREAS, the Town Council has determined that maintaining the local collection of sales and use taxes for the Town is of paramount importance to the continued financial strength of the Town;

WHEREAS, the Town Council has determined that the retail business community desires better uniformity and simplicity when operating in the Town;

WHEREAS, the Town Council has determined that sales tax revenue is directly tied to how well the Town's retail business community is faring, Council and staff have generally supported the idea that the Town should simplify the tax code, without sacrificing revenue;

WHEREAS, the Town Council has determined that revenue-neutral tax simplification is generally construed as good for business and good for the community as a whole;

WHEREAS, the Town Council has determined that, as part of the adoption of certain standard definitions, minor modifications of the Town's sales and use tax code's substantive provisions are required to ensure compliance with the Taxpayer Bill of Rights ("TABOR") by remaining revenue neutral, and that this is also an appropriate time to make minor housekeeping revisions to the sales and use tax code, which was first adopted in 1991 and has not been comprehensively revised since;

WHEREAS, as part of modernizing the tax code, the Town Council has determined it is necessary to adopt the standard definition of tangible personal property to reflect the current economy that involves the transfer of digital goods and services;

WHEREAS, notwithstanding the change in definitions, Town has historically and consistently taxed discreet items within this broad category of digital goods and services;

WHEREAS, in particular, the inclusion of digital products and internet subscription services as tangible personal property is consistent with prior practice, does not amount to a new tax, does not require voter approval under TABOR, and will be revenue neutral; and

WHEREAS, the Town Council has also determined more generally, following careful review and recommendation by staff, that none of the changes proposed by this ordinance constitute a change in tax policy requiring voter approval under TABOR and that all of the proposed changes are revenue neutral.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF VAIL, COLORADO, THAT:**

Section 1. Section 4-3-1-2 of the Vail Town Code is repealed and reenacted as follows:

**4-3-1-2: DEFINITIONS:**

As used in this chapter, unless the context otherwise requires, the following terms shall have the following meanings:

**ACQUISITION CHARGES OR COSTS:** Includes "purchase price" as defined in this Section.

**APARTMENT HOTEL:** A building containing apartments that may be rented to paying guests.

**AUCTION:** Any sale where tangible personal property is sold by an auctioneer who is either the agent for the owner of such property or is in fact the owner thereof.

**AUTOMOTIVE VEHICLE:** Any vehicle or device in, upon, or by which any person or property is or may be transported or drawn upon a public highway, or any device used or designed for aviation or flight in the air. Automotive vehicle includes, but is not limited to, motor vehicles, trailers, semi-trailers, or mobile homes. Automotive vehicle shall not include devices moved by human power or used exclusively upon stationary rails or tracks.

**BUSINESS:** All activities engaged in or caused to be engaged in with the object of gain, benefit, or advantage, direct or indirect.

**CHARITABLE ORGANIZATION:** Any entity that (1) has been certified as a nonprofit organization under Section 501(c)(3) of the Internal Revenue Code, and (2) is an organization which exclusively, and in a manner consistent with existing laws and for the benefit of an indefinite number of persons or animals, freely and voluntarily ministers to the physical, mental, or spiritual needs of persons or animals, and thereby lessens the burden of government.

**COMMERCIAL PACKAGING MATERIALS:** Containers, labels, and/or cases, that become part of the finished product to the purchaser, used by or sold to a person engaged in manufacturing, compounding, wholesaling, jobbing, retailing, packaging, distributing or bottling for sale, profit or use, and is not returnable to said person for reuse. Commercial Packaging Materials does not include Commercial Shipping Materials.

**COMMERCIAL SHIPPING MATERIALS:** Materials that do not become part of the finished product to the purchaser which are used exclusively in the shipping process. Commercial Shipping Materials include but are not limited to containers, labels, pallets, banding material and fasteners, shipping cases, shrink wrap, bubble wrap or other forms of binding, padding or protection.

**CONSTRUCTION AND BUILDING MATERIALS:** Tangible personal property which, when combined with other tangible personal property, loses its identity to become an integral and inseparable part of a completed structure or project. Construction materials include, but are not limited to, such things as: asphalt, bricks, builders' hardware, caulking material, cement, concrete, conduit, electric wiring and connections, fireplace inserts, electrical heating and cooling equipment, flooring, glass, gravel, insulation, lath, lead, lime, lumber, macadam, millwork, mortar, oil, paint, piping, pipe valves and pipe fittings, plaster, plumbing fixtures, putty, reinforcing mesh, road base, roofing, sand, sanitary sewer pipe, sheet metal, site lighting, steel, stone, stucco, tile, trees, shrubs and other landscaping materials, wallboard, wall coping, wallpaper, weather stripping, wire netting and screen, water mains and meters, and wood preserver. The above materials, when used for forms, or other items which do not remain as an integral or inseparable part of a complete structure or project, are not construction and building materials.

**CONSUMER:** Any person in the Town who purchases, uses, stores, distributes or otherwise consumes tangible personal property or taxable services, purchased from sources inside or outside the Town.

**CONTRACTOR:** Any person who shall build, construct, reconstruct, alter, expand, modify, or improve any building, dwelling, structure, infrastructure, or other improvement to real property for another party pursuant to an agreement. For purposes of this definition, Contractor also includes subcontractor.

**COUNTY:** Eagle County, Colorado.

**COUNTY CLERK AND RECORDER:** The county clerk and recorder for the county.

**COVER CHARGE:** A charge paid to a club or similar entertainment establishment which may, or may not, entitle the patron paying such charge to receive tangible personal property, such as food and/or beverages.

DEPARTMENT OF REVENUE: The department of revenue of the state.

DIGITAL PRODUCT: An electronic product including without limitation: (1) “digital images” which means works that include, but are not limited to, the following that are generally recognized in the ordinary and usual sense as “photographs,” “logos,” “cartoons,” or “drawings”; (2) “digital audio-visual works” which means a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any; and (3) “digital audio works” which means works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones. For purposes of the definition of “digital audio works,” “ringtones” means digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication; and (4) “digital books” which means works that are generally recognized in the ordinary and usual sense as “books.”

DISTRICT COURT: The district court in and for Eagle County, Colorado.

DRUGS DISPENSED IN ACCORDANCE WITH A PRESCRIPTION: Drugs dispensed in accordance with any 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 address of the person for whom the medicine or drug is offered and directions, if any, to be placed on the label.

ENGAGED IN BUSINESS IN THE TOWN: Performing or providing services or selling, leasing, renting, delivering or installing tangible personal property for storage, use or consumption within the town. Engaged in business in the town includes, but is not limited to, any one 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 or more employees, agents or commissioned salespersons 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 or more employees, agents or commissioned salespersons 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 (12) month period.

**EXEMPT COMMERCIAL PACKAGING MATERIALS:** Containers, labels and shipping cases sold to a person engaged in manufacturing, compounding, wholesaling, jobbing, retailing, packaging, distributing or bottling for sale, profit or use that meets all of the following conditions:

A. Is used by the manufacturer, compounder, wholesaler, jobber, retailer, packager, distributor or bottler to contain or label the finished product;

B. Is transferred by said person along with and as a part of the finished product to the purchaser; and

C. Is not returnable to said person for reuse.

**FINANCE DEPARTMENT:** The finance department of the Town.

**FINANCE DIRECTOR:** The Finance Director of the Town of Vail or such other person designated by the town; Finance Director shall also include such person's designee.

**GARAGE SALES:** Sales of tangible personal property, except automotive vehicles, occurring at the residence of the seller, where the property to be sold was originally purchased for use by members of the household where such sale is being conducted. The term includes, but is not limited to, yard sales, estate sales, and block sales.

**GROSS SALES:** The total amount received in money, credit, property or other consideration valued in money for all sales, leases, or rentals of tangible personal property or services.

**GROSS TAXABLE SALES:** The total amount received in money, credits, or property, excluding the fair market value of exchanged property which is to be sold thereafter in the usual course of the retailer's business, or other consideration valued in money from sales and purchases at retail within the Town and embraced within the provisions of this chapter. The taxpayer may take credit in his/her report of gross sales for an amount equal to the sale price of property returned by the purchaser when the full sale price thereof is refunded whether in cash or by credit. The fair market value of any exchanged property which is to be sold thereafter in the usual course of the retailer's business, if included in the full price of a new article, shall be excluded from the gross sales. On all sales at retail that are valued in money, when such sales are made under conditional sales contract, or under other forms of sale where the payment of the principal sum thereunder is extended over a period longer than sixty (60) days from the date of sale thereof, only such portion of the sale amount thereof may be counted for the purpose of imposition of the tax imposed by this chapter as has actually been received in cash by the taxpayer during the period for which the tax imposed by this chapter is due and payable.

**GUEST RANCH:** A resort patterned after a western ranch, where overnight accommodations are offered to paying guests.

**GUESTHOUSE:** A private single-family home, townhome or condominium that may be rented in its entirety to paying guests.

**INTERNET SUBSCRIPTION SERVICE:** Software 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.

**LICENSE:** A sales tax license.

**LINEN SERVICES:** Services involving the provision and cleaning of linens, including but not limited to rags, uniforms, coveralls and diapers.

**MANUFACTURING:** the operation or performance of an integrated series of operations which places a product, article, substance, commodity, or other tangible personal property in a form, composition or character different from that in which it was acquired whether for sale or for use by a manufacturer. The change in form, composition or character must result in a different product having a distinctive name, character or use from the raw or prepared materials.

**LODGING HOUSE:** A private single-family home, townhome or condominium with individual rooms that may be rented to paying guests.

**LODGING SERVICES:** The furnishing of rooms or accommodations by any person, partnership, association, corporation, estate, representative capacity or any other combination of individuals by whatever name known to a person who for a consideration uses, possesses, or has the right to use or possess any room in a hotel, apartment hotel, lodging house, motor hotel, guesthouse, guest ranch, trailer coach, mobile home, auto camp, or trailer court and park, for a period of less than thirty (30) consecutive days under any concession, permit, right of access, license to use, or other agreement, or otherwise.

**MAYOR:** The mayor of the Town.

**MODIFIED COMPUTER SOFTWARE PROGRAMS:** One of the following elements must be present:

A. The preparation or selection of the program for the customer's uses requires an analysis of the customer's requirement by the vendor, or

B. The program requires adaptation by the vendor to be used in a specific output device.



**NEWSPAPER:** A publication, printed on newsprint, intended for general circulation, and published regularly at short intervals, containing information and editorials on current events and news of general interest. The term Newspaper does not include: magazines, trade publications or journals, credit bulletins, advertising inserts, circulars, directories, maps, racing programs, reprints, newspaper clipping and mailing services or listings, publications that include an updating or revision service, or books or pocket editions of books.

**PAY TELEVISION:** Shall include, but not be limited to, cable, microwave or other television service for which a charge is imposed, except for cable or subscription television fees which are not charged on a pay per view basis.

**PERSON:** Any individual, firm, partnership, joint venture, corporation, limited liability company, estate or trust, receiver, trustee, assignee, lessee or any person acting in a fiduciary or representative capacity, whether appointed by court or otherwise, or any group or combination acting as a unit.

**PRESCRIPTION DRUGS FOR ANIMALS:** A drug which, prior to being dispensed or delivered, is required by the federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 301, *et. seq.*, as amended, to state at a minimum the symbol "Rx Only," and is dispensed in accordance with any order in writing, dated and signed by a licensed veterinarian 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:** A drug which, prior to being dispensed or delivered, is required by the federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 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 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 for whom the medicine, drug or poison is offered and directions, if any, to be placed on the label.

**PRICE OR PURCHASE PRICE:**

A. "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 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, 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 profit thereon.

B. "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 retailers' 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.

3. 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.

**PROSTHETIC DEVICES FOR HUMANS:** 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 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, and oxygen concentrators with related accessories.

**PURCHASE OR SALE:** 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 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;

B. A lease, lease purchase agreement, rental or grant of a license, including royalty agreements, to use tangible personal property or taxable services; the utilization of coin operated devices, except coin operated telephones, which do not vend articles of tangible personal property shall be considered short term rentals of tangible personal property;

C. Performance of taxable services; or

D. Barter or exchange for other property or services including coupons.

E. "Sale" or "sale and purchase" excludes:

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 of 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. The transfer of assets from a parent corporation to a subsidiary corporation or corporations which are owned at least eighty percent (80%) by the parent corporation, which transfer is solely in exchange for stock or securities of the subsidiary corporation;

6. The transfer of assets from a subsidiary corporation or corporations which are owned at least eighty percent (80%) by the parent corporation

to a parent corporation, which transfer is solely in exchange for stock or securities of the parent corporation or the subsidiary which received the assets;

7. A transfer of a partnership interest;

8. The transfer in a reorganization qualifying under Section 368(a)(1) of the Internal Revenue Code of 1954, as amended;

9. 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;

10. The repossession of personal property by a chattel mortgage holder or foreclosure by a lien holder; and

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 chapter 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 definition shall constitute a sale provided by subsection 4-3-3-3A of this chapter. For the purposes of this definition, a closely held subsidiary corporation is one in which the parent corporation owns stock possessing at least eighty percent (80%) of the total combined voting power of all classes of stock entitled to vote and owns at least eighty percent (80%) of the total number of shares of all other classes of stock.

**PURCHASE PRICE:** The price to the consumer, exclusive of any direct tax imposed by the federal or state 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.

B. Such exchanged property is an automotive vehicle and is exchanged for another automotive vehicle and both vehicles are subject to licensing, registration, or certification under the laws of this state, including, but not limited to, automotive vehicles operating upon public highways, off highway recreation

vehicles, watercraft and aircraft. Any money or other consideration paid over and above the value of exchanged property is subject to tax.

RETAIL SALES: All sales except wholesale sales.

RETAILER: Any person selling, leasing, renting, or granting a license to use tangible personal property or services at retail. Retailer shall include, but is not limited to, 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, 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 seller of building supplies, construction materials, and other tangible personal property.

RETAILER-CONTRACTOR: A contractor who is also a retailer of building supplies, construction materials, or other tangible personal property, and purchases, manufactures, or fabricates such property for sale (which may include installation), repair work, time and materials jobs, and/or lump sum contracts.

RETURN: Any form prescribed by Town administration for computing and reporting a total tax liability.

SALES TAX: The tax that is collected or required to be collected and remitted by a retailer on sales taxed under this Code.

SCHOOL: A public or nonpublic school for students in kindergarten through 12th grade or any portion thereof.

SPECIAL FUEL: Kerosene oil, kerosene distillate, diesel fuel, all liquefied petroleum gases, and all combustible gases and liquids for use in the generation of power for propulsion of automotive vehicles upon the public highways. The term does not include fuel used for the propulsion or drawing of aircraft, railroad cars or railroad locomotives.

SPECIAL SALES EVENT: Any sales event which includes more than three (3) Vendors taking place at a single location for a limited period of time not to exceed seven (7) consecutive days.

STATE: The state of Colorado.

STORAGE: Any keeping or retention of, or exercise dominion or control over, or possession of, for any length of time, tangible personal property not while in

transit but on a stand still basis for future use when leased, rented or purchased at retail from sources either within or without the City from any person or vendor.

**TANGIBLE PERSONAL PROPERTY:** 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 DEFICIENCY or DEFICIENCY:** any amount of tax, penalty, interest, or other fee that is not reported and/or not paid on or before the date that any return or payment of the tax is required under the terms of this Code.

**TAXABLE SALES:** Gross sales less any exemptions and deductions specified in this Code.

**TAXPAYER:** Any person obligated to collect and/or pay tax under the terms of this Code.

**TELECOMMUNICATION SERVICE:** Service of which the object is the transmission of any two-way interactive electronic or electromagnetic communications including but not limited to voice, image, data and any 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), or any combinations of such media, including any form of mobile two-way communication.

**TOWN:** The municipality of Town of Vail.

**TOWN CLERK:** The clerk of the Town.

**TOWN COUNCIL:** The council of the Town.

**TOWN MANAGER:** The manager of the Town.

**TEMPORARY SALE:** A sale by any person who engages in a temporary business of selling and delivering goods within the Town for a period of no more than seven (7) consecutive days.

**TEMPORARY VENDOR:** Any person who engages in the business of Temporary Sales.

**WHOLESALE SALES:** A sale by wholesalers to retailers, jobbers, dealers, or other wholesalers for resale and does not include a sale by Wholesalers to users or consumers not for resale; latter types of sales shall be deemed to be Retail Sales and shall be subject to the provisions of this chapter.

WHOLESALE: Any person selling to retailers, jobbers, dealers, or other wholesalers, for resale, and not for storage, use, consumption, or distribution.

Section 2. Section 4-3-2 of the Vail Town Code, subsection (C), is amended to read as follows:

C. Contents; Posting: Each license shall be numbered with a ~~town~~ Town of Vail sales tax account number and shall show the name of the licensee and the place of business of the licensee and shall be posted in a conspicuous place at the place of business for which it is issued. If the licensee does not have a place of business, then the license shall show the mailing address of such licensee. ~~Effective July 1, 2015, any licensee that advertises apartment hotels, lodging houses, guesthouses or guest ranch lodging services on the internet shall include the licensee's town of Vail sales tax account number in all such advertisements.~~

Section 3. Section 4-3-3-1 of the Vail Town Code is amended as follows:

There is levied, and there shall be collected and paid a sales tax in the amount stated in section 4-3-3-3 of this chapter as follows:

A. Tangible Personal Property: On the purchase price paid or charged upon all sales, purchases, rentals and leases of tangible personal property at retail, including without limitation, on the purchase price paid or charged for "digital products" and "internet subscription services" as those terms are defined in Section 4-3-1-2 of this chapter.

...

C. Telephone, Telegraph, Telecommunications: Upon telephone and telegraph services, whether furnished by public or private corporations or enterprises, for all intrastate telecommunication services originating from or received on telecommunication equipment in the town if the charge for the service is billed to a person in the town or billed to an affiliate or division of such person in the town on behalf of a person in the town. As used herein, "telecommunication service" does not include separately stated non-transmission services which constitute computer processing applications used to act on the information to be transmitted.

...

E. Food And Drink:

2. 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~~ automotive vehicles, and other mobile facilities. Cover charges shall be ~~included~~ taxable only when the amount includes ~~as part of the amount paid for such food or drink.~~ The amount paid for sales of meals by any of the employees of the above listed establishments, whether at full price or at reduced price, shall be included herein.

Section 4. Section 4-3-3-3 of the Vail Town Code, subsection (D), is amended to read as follows:

D. ~~Nonprofit~~ Charitable Organization Exempted: Special accounting sales by ~~qualified nonprofit charitable~~ organizations. ~~Nonprofit Charitable~~ organizations selling taxable "tangible personal property" or services as defined by this code must collect sales tax and purchasers must pay sales tax on such sales, subject to the conditions set forth below. It is the desire of the town council that the taxes collected by ~~qualified nonprofit charitable~~ organizations be retained by that organization as a contribution of additional funds to be used in the course of that organization's charitable service to the community. Therefore, organizations are not required to remit or report sales tax collections to the town provided that the organization meets the following criteria:

...

Section 5. Section 4-3-3-6 of the Vail Town Code is amended to read as follows:

The following goods and services shall be exempt from sales tax under the provisions of this chapter:

...

E. ~~"Medical supplies" as defined in section 4-3-1-2 of this chapter.~~ Prescription drugs for humans; glucose usable for treatment of insulin reactions; urine and blood testing kits and materials; insulin measuring and injecting devices, including hypodermic syringes and needles; oxygen, oxygen concentrators and oxygen-related accessories for medical use; 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.

F. All sales made to schools, including post-secondary schools, other than schools or post-secondary schools held or conducted for private or corporate profit. For purposes of this exemption, post-secondary schools are schools for enrollment after 12<sup>th</sup> grade.

...



H. The transfer of tangible personal property without consideration (other than the purchase, sales or promotion of the transferor's product) to a vendee located outside the town for use outside the town in selling products normally sold ~~at~~ by wholesale sales by the transferor.

I. All commodities which are taxed under the provisions of Colorado Revised Statutes title 39, article 27, and all commodities which are taxed under such provisions and for which the tax is refunded, ~~and the sale of special fuel, as defined in Colorado Revised Statutes section 39-27-201(8), and the sale of fuel used for the operation of farm vehicles are being used on farms and ranches.~~

...

L. 1. Sales to and purchases of tangible personal property, including without limitation sales and purchases of commercial packaging materials, commercial shipping materials, containers, labels, or the furnished shipping cases thereof, by a person engaged in the business of manufacturing, compounding for sale, profit or use, any article, substance, or commodity, ~~which when the tangible personal property enters into the processing of or becomes an ingredient or component part of the product or service which that is manufactured, compounded or furnished, and the container, label, or the furnished shipping case thereof, shall be exempt from taxation under this chapter.~~

...

N. In any case in which a sales tax has been imposed under this chapter on lubricating oil used other than in ~~motor~~ automotive vehicles, the purchaser thereof shall be entitled to a refund equal to the amount of the sales tax paid on that portion of the sales tax price thereof which is attributable to the federal excise tax imposed on the sale of such lubricating oil. The refund allowed under this subsection shall be paid by the finance director upon receiving under section 6425 of the Internal Revenue Code of 1954, as amended, a refund of the federal excise tax paid on the sale of such lubricating oil. The claim for a refund shall be made upon forms furnished by the finance department.

...

P. All sales and purchases of newsprint and printer's ink for use by publishers of newspapers ~~and commercial printers~~ and all sales and purchases of "newspapers", ~~as such term is defined in Colorado Revised Statutes section 24-70-102.~~

...

T. Garage or yard sales but only when the sales are conducted in a residential area; the sales do not exceed a consecutive three (3) day period nor a total of six (6) days per calendar year; the sales are not conducted by a

professional or compensated agent of the owner of the items to be sold; and 3) the items for sale are not also held out for sale in a commercial establishment.

...

Section 6. If any part, section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not effect the validity of the remaining portions of this ordinance; and the Town Council hereby declares it would have passed this ordinance, and each part, section, subsection, sentence, clause or phrase thereof, regardless of the fact that any one or more parts, sections, subsections, sentences, clauses or phrases be declared invalid.

Section 7. The Town Council hereby finds, determines and declares that this ordinance is necessary and proper for the health, safety and welfare of the Town of Vail and the inhabitants thereof.

Section 8. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith are repealed to the extent only of such inconsistency. This repealer shall not be construed to revise any bylaw, order, resolution or ordinance, or part thereof, theretofore repealed.

INTRODUCED, READ ON FIRST READING, APPROVED, AND ORDERED  
PUBLISHED ONCE IN FULL ON FIRST READING this 19th day of February, 2019 and  
a public hearing for second reading of this Ordinance set for the 6th day of March, 2019,  
in the Council Chambers of the Vail Municipal Building, Vail, Colorado.

\_\_\_\_\_  
David Chapin, Mayor

ATTEST:

\_\_\_\_\_  
Tammy Nagel, Town Clerk