

ORDINANCE NO. 832

**AN ORDINANCE AMENDING CHAPTER 4, ARTICLE 1 OF THE
DACONO MUNICIPAL CODE TO STANDARDIZE SALES AND USE
TAX DEFINITIONS**

WHEREAS, by Senate Joint Resolution (“SJR”)14-038, the General Assembly asked the Colorado Municipal League to revive the tax simplification project from the 1990’s to address current systemic problems associated with local tax collection; and

WHEREAS, the City Council recognizes 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; and

WHEREAS, the City Council has determined it to be in the best interest of the City and its residents, retailers and taxpayers for the City to cooperate in furtherance of the statewide goal to have all locally collecting municipalities agree to use standard definitions in their sales and use tax codes; and

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

WHEREAS, the City Council recognizes the retail business community desires better uniformity and simplicity when operating in the City; and

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

WHEREAS, the City Council has determined that revenue-neutral tax simplification, as set forth herein, is generally good for business and good for the community as a whole; and

WHEREAS, the City Council has determined that the modification of the City’s sales and use tax definitions as set forth herein complies with Article X, § 20 of the Colorado Constitution (the “Taxpayer’s Bill of Rights” or “TABOR”) by staying revenue neutral.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE
CITY OF DACONO, COLORADO:**

Section 1. Section 4-3 of the Dacono Municipal Code is hereby amended to read as follows (words to be added underlined; words to be deleted ~~stricken~~):

Sec. 4-3. Definitions.

For the purpose of this Article, the definitions of words contained in this Article shall be defined in Sections 39-26-102 and 39-26-201, C.R.S., said definitions are incorporated herein by this reference. Where the statutory definitions reference the State as the geographic extent of the taxing authority, such reference shall mean the City. Additionally, as used in this Article, unless the context clearly indicates otherwise, certain other words, terms and phrases are defined as follows:

Business means all activities engaged in or caused to be engaged in with the object of gain, benefit or advantage, direct or indirect.

Charitable organization means any entity which:

(1) Has been certified as a ~~not-for-profit~~ non-profit organization under Section 501(c)(3) of the Internal Revenue Code; and

(2) ~~Is an entity organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office, or any veterans' organization registered under Section 501(c)(19) of the Internal Revenue Code, for the purpose of sponsoring a special event, meeting or other function in the State so long as such event, meeting or function is not part of such organization's regular activities in the State.~~ Is an organization which exclusively, 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.

~~*Claim for recovery* means a claim for reimbursement of sales and use taxes paid to the wrong taxing jurisdiction.~~

Collection costs shall include, but is not limited to, all costs of audit, assessment, bank fees, hearings, execution, lien filing, distraint, litigation, locksmith fees, auction fees and costs, prosecution and attorney fees.

~~*Collection proceedings* shall include the mailing of a notice of audit, an audit and all remedies exercised by the Finance Officer pursuant to this code to collect any unpaid taxes, penalties and interest.~~

~~Construction or building materials~~ means 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, including public and private improvements. *Construction materials* include, but are not limited to, such things as: asphalt, bricks, builder's hardware, caulking material, cement, concrete, conduit, electric wiring and connections, 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 completed structure or project, are not construction materials.

Engaged in business in the City means performing or providing services, or selling, leasing, renting, delivering, ~~installing or any activity in connection with the selling, leasing, renting, delivering or installing in the City of tangible personal property by a retail sale as defined in this Article, for use, storage, distribution or consumption within the City.~~ This term includes, but shall not be limited to, ~~the following acts or methods of transacting business or installing tangible personal property for storage, use, or consumption within the City.~~ *Engaged in business in the City* includes, but is not limited to, any one of the following activities by a person:

(1) ~~Maintaining within the City, directly or indirectly or by a subsidiary, an office, building, structure, store, distributing house, salesroom or house, warehouse, mobile vendor or other place of business. Directly, indirectly, or by a subsidiary maintains a building, store, office, salesroom, warehouse, or other place of business within the City.~~

(2) ~~Maintaining within the City an office for employees, agents or commissioned sales persons to solicit business or to install, assemble, repair, service or assist in the use of its products, or for demonstration or other reasons. Sends one or more employees, agents, or commissioned sales persons into the City to solicit business or to install, assemble, repair, service, or assist in the use of its products, or for demonstration or other reasons.~~

(3) ~~Owning, leasing, renting or otherwise exercising control over real or personal property within the City. Maintains one or more employees, agents, or commissioned salespersons on duty at a location within the City.~~

(4) Owns, leases, rents, or otherwise exercises control over real or personal property within the City.

(5) Makes more than one delivery into the City within a twelve (12) month period by any means other than a common carrier.

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

Food for home consumption means food for domestic home consumption as defined in 7 U.S.C. § 2012~~(g)~~ (k), as amended, for purposes of the ~~federal food stamp program~~ supplemental assistance program, or any successor program, as defined in 7 U.S.C. § 2012~~(h)~~ (t), as amended; except that "food for home consumption" does not include carbonated water marketed in containers, chewing gum, seeds and plants to grow foods, prepared salads and salad bars, packaged and unpackaged cold sandwiches, deli trays and hot or cold beverages served in unsealed containers or cups that are vended by or through machines or non-coin-operated coin-collecting food and snack devices on behalf of a vendor.

~~License means a City sales tax license.~~

Manufacturing means the operation ~~of producing a new product, article, substance or commodity different from and having a distinctive name, character or use from raw or prepared materials~~ 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 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.

~~Manufacturing machinery~~ Machinery means any apparatus consisting of interrelated parts used to produce an article of tangible personal property. The term includes both the basic unit and any adjunct or attachment necessary for the basic unit to accomplish its intended function.

~~Occasional sales~~ means ~~retail sales of tangible personal property, including concessions, for fund-raising purposes, if the funds raised by the charitable organization through these sales are retained by the organization to be used in the course of the organization's charitable service, and:~~

~~(1) The sale of tangible personal property by the charitable organization takes place for no more than twelve (12) days, whether consecutive or not, during any one (1) calendar year; or~~

~~(2) The funds raised by the charitable organization through these sales do not exceed twenty five thousand dollars (\$25,000.00) of gross profit during any one (1) calendar year.~~

~~Person includes any individual, firm, limited liability company, partnership, joint venture, corporation, estate or trust or any group or combination acting as a unit, and the plural as well as the singular number means 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 a court or otherwise, or any group or combination acting as a unit.~~

~~Point of sale. For the purpose of this Article, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his or her agent to a destination outside the limits of the City or to a common carrier for delivery to a destination outside the City. The gross receipts from such sales shall include delivery charges. If a retailer has no permanent place of business in the City or has more than one (1) place of business, the place at which the retail sales are consummated for the purpose of this Article shall be determined by the provisions of Title 39, Chapter 26, C.R.S., and by rules and regulations promulgated by the Department of Revenue. Notwithstanding any other provision of this Article, the value of construction and building materials on which a use tax has previously been collected by an incorporated town, city or county shall be exempt from this sales tax if the materials are delivered by the retailer or his or her agent to a site within the limits of the City.~~

~~Retail sale sales means all sales made within the City except wholesale sales.~~

~~Retailer or seller or vendor means a any person doing a retail business, known to the trade and public as such, and selling to the user or consumer, and not for resale. 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 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.

School means an educational institution having a curriculum comparable to grade, grammar, junior high, high school or college, or any combination thereof, requiring daily attendance, having an enrollment of at least forty (40) students, and charging a tuition fee a public or nonpublic school for students in kindergarten through 12th grade, or any portion thereof, and can also refer to colleges and universities.

Special sales event means 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, which includes three (3) or more vendors.

Tangible personal property means corporeal personal property. The term shall not be construed to include newspapers, as legally defined by Section 24-70-102, C.R.S., preprinted newspaper supplements which become attached to or inserted in and distributed with such newspapers, or direct mail advertising materials which are distributed in the State by any person engaged solely and exclusively in the business of providing cooperative direct mail advertising personal property that can be one or more of the following: seen, weighed, measured, felt, touched, stored, transported, exchanged, or that is in any other manner perceptible to the senses.

Tax means either the sales tax payable by the purchaser of a commodity or service subject to tax and due from the retailer, or the use tax due and payable from a consumer, or the sum of both due and payable from a retailer that also consumes the use tax due from a consumer or the sales tax due from a retailer, or the sum of both due from a retailer who also consumes.

Taxpayer means any person obligated to collect tax, pay tax, or account for tax, or any combination thereof, under the terms of this Article. The term taxpayer includes but is not limited to a retailer, a vendor, and such other person as context may require and/or pay tax under the terms of this Article.

Use means the exercise for any length of time by any person within the City of a any right, power or dominion over tangible personal property or services when rented, leased or purchased at retail from sources either within or without the City, from any person or vendor or used in the performance of a contract in the City, whether such tangible personal property is owned or not owned by the taxpayer. Use also includes the withdrawal of items from inventory for consumption.

Vendor fee means a credit, as designated by the Finance Officer, to be allowed against the tax due on timely filed sales tax returns. The amount of the

~~credit, and any limitation per return, will be stated on the sales tax return as approved by the Finance Officer.~~

~~*Wholesale sale sales* means a sale by wholesalers to ~~retail merchants~~ retailers, jobbers, dealers, or other wholesalers for resale and does not include a sale by wholesalers to users or consumers not for resale; ~~and the latter types of~~ sales shall be deemed retail sales and shall be subject to the provisions of this Article. ~~This term includes sales of all pre-press preparation printing materials, as defined by Section 39-26-102(6.7), C.R.S., which are used by a printer for a specific printing contract where the printed product is sold at retail to a customer accepting delivery within the City. Documentation of a wholesale sale shall include a valid resale certificate from the customer, and the customer's state and local resale license number prominently located on the invoice.~~~~

~~*Wholesaler* means a any person doing a ~~regularly an~~ organized wholesale or jobbing business, ~~known to the trade as such~~ and selling to ~~retail merchants~~ retailers, jobbers, dealers or other wholesalers, for the purpose of resale, and not for storage, use, consumption, or distribution.~~

Section 2. Section 4-10 of the Dacono Municipal Code is hereby amended to read as follows (words to be added underlined; words to be deleted ~~stricken~~):

Sec. 4-10. Tax included in selling price.

Only retailers selling malt, vinous or spirituous liquors by the drink, vending machine sales and special sales event vendor sales may include the tax levied by this Article in the sales price or charge. No retailer shall advertise or hold out to the public in any manner, directly or indirectly, that tax is not included as a part of the sales price to the consumer. No retailer shall gain any benefit from the collection or payment of such tax, nor shall the use of rates set forth in this Article release such retailer from liability for payment of the full amount of the tax levied by this Article.

Section 3. Section 4-11(a) of the Dacono Municipal Code is hereby amended to read as follows (words to be added underlined; words to be deleted ~~stricken~~):

Sec. 4-11. Sales tax; taxable property and services.

(a) There is hereby levied and there shall be collected a sales tax in the amount stated in Section 4-6 of this Article, upon the sale at retail of such tangible personal property and the furnishing of such certain services as are set forth in Title 39, Chapter 26, C.R.S., which provisions are incorporated herein by this reference; and upon the sale at retail of tangible personal property, on sales of food for home consumption and purchases of machinery or machine tools, and the furnishing of services on sales and purchases of electricity, coal, gas, fuel oil and

coke for domestic and commercial consumption.

Section 4. Sections 4-12(b)(21) and (22) of the Dacono Municipal Code are hereby amended to read as follows (words to be added underlined; words to be deleted ~~stricken~~):

Sec. 4-12. Sales tax; exempt property and services.

(b) The tax levied by Section 4-6 shall not apply to the following:

(21) Food purchased with federal food stamps or with funds provided by the ~~special~~ supplemental assistance food program ~~for women, infants and children~~ (42 U.S.C. § 1786), or any successor program, from retailers who qualify as:

a. Retail food stores which primarily sell for home preparation and consumption and in which one (1) or more staple food items make up more than fifty percent (50%) of eligible food sales. These stores shall include: full-line grocery stores; convenience stores; stores which sell meat, poultry or fish; stands which sell agricultural commodities; farmers' markets; milk routes; bread routes; day-old bread stores; bakeries which sell bread; and nonprofit cooperative food-purchasing ventures which are properly licensed to sell food in the State and locality in which they are operating.

b. Firms whose primary business is not the sale of food for home preparation and consumption, but who have recognized grocery departments in which staple foods make up more than fifty percent (50%) of eligible food sales.

(22) Meals purchased with federal food stamps or with funds provided by the ~~special~~ supplemental assistance food program ~~for women, infants and children~~ (42 U.S.C. § 1786), or any successor program, in the following instances:

a. The meals are prepared for and served to residents of federally subsidized housing for the elderly; or are prepared for and served to persons who are sixty (60) years of age or over or who receive supplemental security income benefits, and their spouses, in senior citizens centers, apartment buildings occupied primarily by such persons, public or private nonprofit establishments (eating or otherwise) that contract with the appropriate agency of the State to offer meals for such persons at concession prices;

b. The meals are prepared for and delivered to persons sixty (60) years of age or over and persons who are physically or mentally handicapped or otherwise so disabled that they are unable adequately to prepare all of their meals, when such meals are prepared for and delivered to them (and their spouses) at their home by a public or private nonprofit establishment that contracts with the appropriate State agency to perform such services at concession prices;

c. The meals are prepared for and served to narcotics addicts or alcoholics as part of drug addiction or alcoholic treatment and rehabilitation programs;

d. The meals are prepared for and served to disabled or blind recipients of federal financial benefits under the Social Security Act who are residents in a public or private nonprofit group living arrangement that is certified for no more than sixteen (16) residents by the appropriate State agency or agencies under regulations issued under the Social Security Act; or

e. The meals are prepared for and served to women and children temporarily residing in public or private nonprofit shelters for battered women and children.

Section 5. Section 4-14 of the Dacono Municipal Code is hereby amended to read as follows (words to be added underlined; words to be deleted ~~stricken~~):

Sec. 4-14. Imposition of use tax.

Any person who builds, constructs, reconstructs, alters, expands, modifies or improves any building, dwelling, or other structure or improvement to any real property located within the City and who purchases the lumber, fixtures or any other building construction materials and supplies used therefor from any source outside of the corporate limits of the City, or any resident of the City who purchases any motor vehicle or any other vehicle for which registration is required under the laws of the State, either new or used, outside the corporate limits of the City, shall be liable for the payment of a tax of three percent (3%) of the gross purchase price thereof.

Section 6. Section 4-16 of the Dacono Municipal Code is hereby amended to read as follows (words to be added underlined; words to be deleted ~~stricken~~):

Sec. 4-16. ~~Building and construction~~ Construction materials tax – Amount – Payment.

The tax imposed on the privilege of storing, using or consuming in the City any construction ~~and building~~ materials, purchased at retail, shall be paid to the City Clerk at the time building permits are issued for the ~~building and~~ construction. The payment of the tax shall be the responsibility of the person applying for the building permit. For the purposes of this Section, the retail purchase price of the construction ~~and building~~ materials to be stored, used or consumed as part of any project shall be deemed to be an amount equal to fifty percent (50%) of the total valuation of the construction project as approved by the Building Official and State on the building permit issued. Accordingly, the calculation of said use tax shall be as follows: Three percent (3%) (use tax) of fifty percent (50%) of the total valuation of the construction project as approved by the Building Official and stated on the building permits equals the amount of tax to be paid. The City's use tax shall not apply to the storage of construction ~~and building~~ materials.

Section 7. Sections 4-19(8) and (9) of the Dacono Municipal Code are hereby amended to read as follows (words to be added underlined; words to be deleted ~~stricken~~):

Sec. 4-19. Nonpayment of use tax – Property lien.

For the purpose of this Article, the use tax imposed under this Article shall not apply:

(8) To the storage, use or consumption of any construction ~~and building~~ materials and motor and other vehicles on which registration is required, if a written contract for the purchase thereof was entered into prior to the effective date of this Article.

(9) To the storage, use or consumption of any construction ~~and building~~ materials required or made necessary in the performance of any construction contract bid, let or entered into any time prior to the effective date of this Article.

Section 8. 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 9. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

INTRODUCED, READ, ADOPTED ON FIRST READING, AND ORDERED PUBLISHED BY TITLE AND POSTED IN FULL this 24th day of July, 2017.

PUBLIC HEARING AND SECOND READING WILL BE THE 14th day of August, 2017, AT 6:00 P.M. AT DAcono CITY HALL, 512 CHERRY STREET, DAcono, CO.

READ, ADOPTED ON SECOND READING, APPROVED, SIGNED, AND ORDERED PUBLISHED BY TITLE this 14th day of August, 2017.

CITY OF DAcono, COLORADO



Joe Baker, Mayor

ATTEST:



Valerie Taylor, City Clerk

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Summary of Ordinance No. 832, **“AN ORDINANCE AMENDING CHAPTER 4, ARTICLE 1 OF THE DACONO MUNICIPAL CODE TO STANDARDIZE SALES AND USE TAX DEFINITIONS”** Amends certain definitions used in the City’s sales and use tax ordinances to conform with state-wide standard definitions developed in response to a Senate Joint Resolution requesting the Colorado Municipal League to work with the business community and self-collecting home rule municipalities to develop a package of standardized definitions.