

ORDINANCE NO. 2020-19

A BILL

FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, AMENDING VARIOUS SECTIONS OF CHAPTER 130 OF THE CITY CODE RELATED TO MARKETPLACE SELLERS AND MARKETPLACE FACILITATORS

WHEREAS, the City of Aurora, Colorado, (the "City"), is a home rule municipality, organized and existing under Article XX, Section 6 of the Colorado Constitution; and

WHEREAS, the City is authorized under Article XX, Section 6 of the Colorado Constitution to pass ordinances and regulate local affairs including ordinances for the administration and collection of sales and use tax; and

WHEREAS, the City intends to simplify the collections process of the city's existing sales and use tax by requiring marketplace facilitators to collect sales tax on sales that they have facilitated on their website; and

WHEREAS, the City intends for marketplace facilitators to collect taxes only on sales of taxable products and services already taxable under the existing city code.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO:

Section 1. Section 130-31 of the Aurora City code is hereby amended to read as follows:

Sec. 130-31. - Definitions.

***Marketplace*** means a physical or electronic forum, including, but not limited to, a store, a booth, an internet website, a catalog, or a dedicated sales software application, where tangible personal property, products, or services are offered for sale.

***Marketplace Facilitator*** means a person who:

- (1) Contracts with a marketplace seller to facilitate for consideration, regardless of whether the consideration is deducted as fees from the transaction, the sale of the marketplace seller's tangible personal property, products, or services through the person's marketplace;

- (2) Engages directly or indirectly, through one or more affiliated persons, in transmitting or otherwise communicating the offer or acceptance between a purchaser and the marketplace seller; and
- (3) Either directly or indirectly, through agreements or arrangements with third parties, collects the payment from the purchaser and transmits the payment to the marketplace seller.
- (4) A Marketplace Facilitator” does not include a person that exclusively provides internet advertising services or lists products for sale, and that does not otherwise meet this definition.

***Marketplace Seller*** means a person, regardless of whether the person engaged in business in this city, who has an agreement with a marketplace facilitator and offers for sale tangible personal property, products, or services through a marketplace owned, operated, or controlled by a marketplace facilitator.

Retailer means any person selling, leasing, renting, or granting a license to use tangible personal property or services at retail. The terms "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-;
- (5) Marketplace facilitator, or a marketplace seller engaged in business in the city.

Section 2. Section 130-168 of the Aurora City code shall read as follows:

**Sec. 130-168. – Marketplace Sales.**

(A)

- (1) A marketplace facilitator engaged in business in the city is required to collect and remit sales or use tax on all taxable sales made by the marketplace facilitator or facilitated for marketplace sellers to customers in the city regardless of whether the marketplace seller for whom sales are facilitated would have been required to collect sales or use tax had the sale not been facilitated by the marketplace facilitator. A marketplace

facilitator has all the liabilities, obligations, and rights of a retailer under Article II of this chapter 130.

- (2) The liabilities, obligations, and rights set forth under this article are in addition to any requirements the marketplace facilitator has under this article if it also offers for sale tangible personal property, products, or services through other means.
- (3) Except as provided in (B) of this section, a marketplace seller, with respect to sales of tangible personal property, products, or services made in or through a marketplace facilitator's marketplace, does not have the liabilities, obligations, or rights of a retailer under this article if the marketplace seller can show that such sale was facilitated by a marketplace facilitator:
  - a. With whom the marketplace seller has a contract that explicitly provides that the marketplace facilitator will collect and remit sales tax on all sales subject to tax under this article; or
  - b. From whom the marketplace seller requested and received in good faith a certification that the marketplace facilitator is registered to collect sales tax and will collect sales tax on all sales subject to tax under this Article II made in or through the marketplace facilitator's marketplace.

**(B)**

- (1) If a marketplace facilitator demonstrates to the satisfaction of the Finance Director that the marketplace facilitator made a reasonable effort to obtain accurate information regarding the obligation to collect tax from the marketplace seller and that the failure to collect tax on any tangible personal property, products, or services sold was due to incorrect information provided to the marketplace facilitator by the marketplace seller, then the marketplace facilitator, but not the marketplace seller, is relieved of liability under section 130-160 for the amount of the tax the marketplace facilitator failed to collect, plus applicable penalties and interest.
- (2) If a marketplace facilitator is relieved of liability under subsection (B)(1) of this section, the marketplace seller is liable under this section and section 130-160 for tax the marketplace facilitator failed to collect, plus applicable penalties and interest.
- (3) This subsection (B)(1) does not apply to any sale by a marketplace facilitator that is not facilitated on behalf of a marketplace seller or that is facilitated on behalf of a marketplace seller who is an affiliate of the marketplace facilitator.

**(C)** With respect to any sale a marketplace seller makes that is not facilitated by a marketplace facilitator in a marketplace, the marketplace seller is subject to all of the same licensing, collection, remittance, filing and recordkeeping requirements as any other retailer.

Section 3. Section 130-361 of the Aurora City code is hereby amended to read as follows:

Sec. 130-361. - Definitions

*Vendor* means any person selling lodging **including any marketplace facilitator, or a marketplace seller engaged in business in the city. Marketplace facilitator and marketplace seller shall have the same meaning as in Article II, Section 130-31.**

Section 4. Section 130-365 of the Aurora City code is hereby amended to read as follows:

Sec. 130-365. – Collection of tax.

**(e) With respect to sales of lodging made by marketplace sellers in or through a marketplace facilitator’s marketplace, a marketplace facilitator has all the liabilities, obligations, and rights under this article.**

**(f) Except as elsewhere provided in Article IV, the provisions set forth in article II section 130-168 which govern a marketplace facilitator or marketplace seller for purposes of collection of retail sales tax shall also apply to the lodger’s tax except to the extent they conflict with the provisions of this article.**

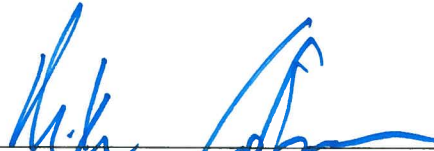
Section 5. All ordinances or parts of ordinances of the City Code of the City of Aurora, Colorado, in conflict herewith are expressly repealed.

Section 6. That, notwithstanding any provision of the Charter or the City Code of the City of Aurora, Colorado, to the contrary, this ordinance shall become effective on the first day of the month which is at least thirty days after date of adoption.

Section 7. Pursuant to Section 5-5 of the Charter of the City of Aurora, Colorado, the second publication of this ordinance shall be by reference, utilizing the ordinance title. Copies of this ordinance are available at the office of the city clerk.

INTRODUCED, READ AND ORDERED PUBLISHED this 1st day of June, 2020.


PASSED AND ORDERED PUBLISHED BY REFERENCE this 22nd day of June, 2020.

  
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MIKE COFFMAN, Mayor

ATTEST:

  
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STEPHEN J. RUGER, City Clerk

APPROVED AS TO FORM:

  
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Hanosky Hernandez,  
Assistant City Attorney