

**CITY OF CENTENNIAL,
COLORADO
ORDINANCE NO. 2021-O-02**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CENTENNIAL,
COLORADO, AMENDING ARTICLE 1 OF CHAPTER 4
OF THE CENTENNIAL MUNICIPAL CODE
GOVERNING SALES AND USE TAX,
TO ADOPT THE COLORADO MUNICIPAL LEAGUE
ECONOMIC NEXUS AND MARKETPLACE FACILITATOR MODEL ORDINANCE**

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

WHEREAS, pursuant to Article XX, Section 6 of the Colorado Constitution, the right to enact, administer and enforce sales taxes is clearly within the constitutional grant of power to the City and is necessary to raise revenue with which to conduct the affairs and render the services performed by the City; and

WHEREAS, pursuant to such authority and in accordance with the authority of the voters in the City in 2001 and 2003, the City has adopted and enacted Article 1 of Chapter 4 of the Centennial Municipal Code, cited as the Centennial Sales and Use Tax Code (the “Code”), under which City sales tax is levied on all sales and purchases of tangible personal property or taxable services at retail unless exempted or prohibited; and

WHEREAS, the United States Supreme Court in *South Dakota v. Wayfair*, 138 S.Ct. 2080 (2018), overturned prior precedent and held that a State is not prohibited by the Commerce Clause from requiring a retailer to collect sales tax based solely on the fact that such retailer does not have a physical presence in the State (“Remote Sales”); and

WHEREAS, based upon such decision, a retailer’s obligation to collect Remote Sales is no longer based on the retailer’s physical presence in the jurisdiction by the Constitution or law of the United States, and the City’s Code needs to be amended to clearly reflect such obligation consistent with said decision; and

WHEREAS, the delivery of tangible personal property, products, or services into the City relies on and burdens local transportation systems, emergency and police services, waste disposal, utilities and other infrastructure and services; and

WHEREAS, the failure to tax remote sales creates incentives for businesses to avoid a physical presence in the State and its respective communities, resulting in fewer jobs and increasing the share of taxes to those consumers who buy from competitors with a physical presence in the State and its municipalities; and

WHEREAS, it is appropriate for Colorado municipalities to adopt uniform definitions within their sales tax codes to encompass marketplace facilitators, marketplace sellers, and multichannel sellers that do not have a physical presence in the City, but that still have a taxable connection with the City; and

WHEREAS, the goal of adopting this ordinance is to join in on the simplification efforts of all the self-collecting home rule municipalities in Colorado; and

WHEREAS, this ordinance provides a safe harbor to those who transact limited sales within the City; and

WHEREAS, absent such amendment, the continued failure of retailers to voluntarily apply and remit sales tax owed on remote sales exposes the municipality to unremitted taxes and permits an inequitable exception that prevents market participants from competing on an even playing field; and

WHEREAS, the City adopts this ordinance with the intent to address tax administration, and, in connection with, establish economic nexus for retailers or vendors without physical presence in the State and require the retailer or vendor to collect and remit sales tax for all sales made within the marketplace.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CENTENNIAL, COLORADO, ORDAINS:

Section 1. **Incorporation of Recitals.** The foregoing recitals are hereby affirmed and incorporated herein by this reference as findings of the City Council.

Section 2. **Amended Definitions.** The definitions of *Engaged in Business* and of *Retailer*, as set forth in Section 4-1-30 of the Code, are hereby amended to read in full as follows:

Engaged in Business means performing or providing services or selling, leasing, renting, delivering or installing tangible personal property, products, or services, for storage, use or consumption within the City. *Engaged in Business* includes, but is not limited to, any one of the following activities by a person:

- (1) Directly, indirectly, or by a subsidiary maintains a building, store, office, salesroom, warehouse, or other place of business within the City;
- (2) Sends one or more employees, agents or commissioned salespersons 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) 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) Is a Retailer in the state of Colorado that makes more than one delivery into the City within a twelve month period; or
- (6) Makes retail sales sufficient to meet the definitional requirements of Economic Nexus as set forth in this Section 4-1-30.

Retailer means any person selling, leasing, renting, or granting a license to use tangible personal property or services at retail. The term “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; and
- (5) Marketplace facilitator, marketplace seller, or multichannel seller.

Section 3. New Definitions in Section 4-1-30. Section 4-1-30 of the Code is hereby further amended to include “Economic Nexus,” “Marketplace,” “Marketplace Facilitator,” “Marketplace Seller,” and “Multichannel Seller” as defined terms with the following assigned definitions:

Economic Nexus means the connection between the City and a person not having a physical nexus in the State of Colorado, which connection is established when the person or marketplace facilitator makes retail sales into the City, and:

- (1) In the previous calendar year, the person, which includes a marketplace facilitator, has made retail sales into the state exceeding the amount specified in C.R.S. § 39-26-102(3)(c), as amended; or

- (2) In the current calendar year, 90 days has passed following the month in which the person, which includes a marketplace facilitator, has made retail sales into the state exceeding the amount specified in C.R.S. § 39-26-102(3)(c), as amended.

This definition does not apply to any person who is doing business in this state but otherwise applies to any other person.

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, taxable products, or taxable services are offered for sale.

Marketplace Facilitator means

- (1) A person who:
 - (A) Contracts with a marketplace seller or multichannel seller to facilitate for consideration, regardless of whether or not 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;
 - (B) 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 or multichannel seller; and
 - (C) Either directly or indirectly, through agreements or arrangements with third parties, collects payment from the purchaser on behalf of the seller.
- (2) *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 or not the person is engaged in business in the city, which 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.

Multichannel Seller means a retailer that offers for sale tangible personal property, commodities, or services through a marketplace owned, operated, or controlled by a marketplace facilitator, and through other means.

Section 4. New Subsection (f) to Section 4-1-50. Section 4-1-50 of the Code is hereby amended by the addition of the following new subsection (f) to read as follows:

- (f) Liability for payment for marketplace sales.
- (1) A marketplace facilitator engaged in business in the city is required to collect and remit sales tax on all taxable sales made by the marketplace facilitator or facilitated by it for marketplace sellers or multichannel sellers to customers in the city, whether or not the marketplace seller for whom sales are facilitated would have been required to collect sales tax had the sale not been facilitated by the marketplace facilitator.
 - (2) A marketplace facilitator shall assume all the duties, responsibilities, and liabilities of a retailer or vendor under this Article, to include Section 4-1-30. Marketplace facilitators shall be liable for the taxes collected from marketplace sellers or multichannel sellers. The City may recover any unpaid taxes, penalties, and interest from the marketplace facilitator that is responsible for collecting on behalf of marketplace sellers or multichannel sellers.
 - (3) The liabilities, obligations, and rights set forth under this article are in addition to any duties and responsibilities of the marketplace facilitator has under this article if it also offers for sale tangible personal property, products, or services through other means.
 - (4) 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 made in or through the marketplace facilitator's marketplace.
 - (5) If a marketplace seller makes a sale that is not facilitated by a licensed 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.

- (6) Responsibilities, duties and liabilities described herein of a marketplace facilitator, marketplace seller, or multichannel seller begin upon the earlier of when they became licensed to collect the city's sales tax or when they became legally obligated to collect the city's sales tax under this article.

Section 5. **Amendment of Section 4-1-500(i).** Subsection (i) of Section 4-1-500 is hereby amended to read as follows:

- (i) License Fee: Each application for and renewal of a License shall be accompanied by payment of a fee in the amount, if any, as may be determined by City Council by resolution. Any Person Engaged in Business (a) whose obligation to collect City tax is solely established by Economic Nexus and has no physical presence or other grounds that would establish such Person is Engaged in Business, and (b) that registers and remits City tax solely through the online Colorado Department of Revenue Sales and Use Tax System ("SUTS"), is exempted from the requirement to pay a license fee.

Section 6. **Amendment of Section 4-1-850.** Section 4-1-850 is hereby amended by the addition of a new subsection (d) to read as follows:

- (d) Marketplace sales. With respect to any sale, the city shall solely audit the marketplace facilitator for sales made by marketplace sellers or multichannel sellers but facilitated by the marketplace. The city will not audit or otherwise assess tax against marketplace sellers or multichannel sellers for sales facilitated by a marketplace facilitator.

Section 7. **No retroactive obligations.** No obligation to collect the sales and use tax required by this ordinance shall be applied retroactively.

Section 8. **Severability.** Should any one or more sections or provisions of this Ordinance be judicially determined invalid or unenforceable, such judgment shall not affect, impair, or invalidate the remaining provisions of this Ordinance, the intention being that the various sections and provisions are severable.

Section 9. **Repeal.** Any and all ordinances or codes or parts thereof in conflict or inconsistent herewith are, to the extent of such conflict or inconsistency, hereby repealed; provided, however, that the repeal of any such ordinance or code or part thereof shall not revive any other section or part of any ordinance or code heretofore repealed or superseded and this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the effective date of this Ordinance.

Section 10. **Effective Date.** Except as otherwise expressly provided herein, the provisions of this Ordinance shall become effective thirty (30) days after publication following final passage.

INTRODUCED, READ, AND ORDERED PUBLISHED BY THE CITY COUNCIL OF THE CITY OF CENTENNIAL, COLORADO, UPON A MOTION DULY MADE, SECONDED AND PASSED AT ITS REGULAR MEETING HELD ON THE 1 DAY OF FEBRUARY, 2021.

CITY OF CENTENNIAL

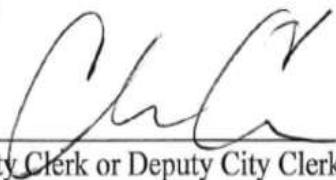
By 
Stephanie Piko, Mayor

Approved as to Form:

 /s/ Maureen Juran
For City Attorney's Office

I hereby certify that the above Ordinance was introduced to the City Council of the City of Centennial at its meeting of February 1 , 2021, and ordered published one time by title only in *The Centennial Citizen* newspaper on February 4, 2021 , 2021, and in full on the City web site in accordance with Section 2-1-110 of the Municipal Code.

SEAL

ATTEST:
By: 
City Clerk or Deputy City Clerk

FINALLY ADOPTED, PASSED, APPROVED WITH AMENDMENTS, IF ANY, AND ORDERED PUBLISHED BY TITLE ONLY, IN *THE CENTENNIAL CITIZEN* NEWSPAPER AND IN FULL ON THE CITY WEB SITE IN ACCORDANCE WITH SECTION 2-1-110 OF THE MUNICIPAL CODE BY THE CITY COUNCIL OF THE CITY OF CENTENNIAL, COLORADO, UPON A MOTION DULY MADE, SECONDED AND PASSED AT ITS MEETING HELD ON THE 1st DAY OF March , 2021, BY A VOTE OF 7 IN FAVOR AND 0 AGAINST.

CITY OF CENTENNIAL

By 
Stephanie Piko, Mayor

I hereby certify that the above Ordinance was finally adopted by the City Council of the City of Centennial at its meeting of March 1, 2021, and ordered published by title only, one time by *The Centennial Citizen* newspaper on March 4, 2021, and in full on the City web site in accordance with Section 2-1-110 of the Municipal Code.

SEAL

ATTEST:

By: 

City Clerk or Deputy City Clerk

