

**CITY OF GLENDALE, COLORADO**

**ORDINANCE NO. 2  
SERIES OF 2021**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
GLENDALE, COLORADO, AMENDING CHAPTER 3.20 TO PROVIDE  
FOR COLLECTION OF SALES TAXES FOR MARKETPLACE  
FACILITATORS AND SIMILAR ENTITIES.**

WHEREAS, the City of Glendale (“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, the City has adopted and enacted a Chapter 3.20, Sales 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 prohibited, as applicable to the provision of this Ordinance, under the Constitution or laws of the United States; 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, the 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 Sales and Use Tax 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, this amendment does not tax sales of tangible personal property and taxable services that are not currently taxable under the Code, but allows the another method of collection by entities that have created new modern forms of retailing venues; 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, BE IT ORDAINED by the City Council of the City of Glendale, Colorado, that:

SECTION 1. The Sections of Chapter 3.20 listed below are to be amended, only pertinent parts of sections will be shown to provide context for any amendments. (words to be deleted shown in ~~strikeout~~; words to be added underlined):

Section 3.20.020 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:

A. 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

B. 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.

“Engaged in business in the city” means performing or providing services or selling, leasing, renting, delivering 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:

- A. Directly, indirectly, or by a subsidiary maintains a building, store, office, salesroom, warehouse, or other place of business within the city;
- 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 (1) delivery into the taxing jurisdiction within a twelve (12) month period.
- F. Makes retail sales sufficient to meet the definitional requirements of economic nexus as defined in this Chapter.

“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”

A. Means a person who:

1. 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;
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 or multichannel seller; and
3. Either directly or indirectly, through agreements or arrangements with third parties, collects payment from the purchaser on behalf of the seller.

B. “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.

“Retailer” means any person selling, leasing or renting tangible personal property or services at retail. Retail shall include any:

- A. Auctioneer;
- B. Salesperson, representative, peddler, or canvasser, who makes sales as a director indirect agent of or obtains such property or services sold from a dealer, distributor, supervisor or employer;
- C. 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;
- D. A marketplace facilitator, marketplace seller, or multichannel seller.

### 3.20.215 Collection- Liability of Marketplace Sales

#### A. Marketplace Sales Liability.

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 as defined in this Chapter. 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 Chapter 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 and the tax liability was remitted to the City by said 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. A marketplace seller shall be subject to all the same licensing, collection, remittance, filing and recordkeeping requirements as any other retailer under this Chapter for retail sales made on its own behalf and not facilitated by or through a licensed marketplace facilitator in a marketplace.

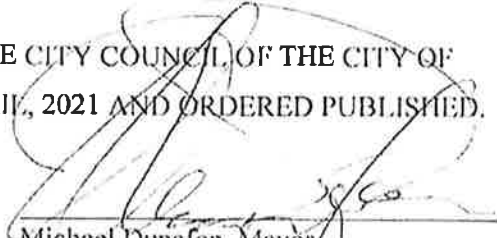
SECTION 2. Validity and Severability. If any action, subsection or clause of this ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining section, subsections or clauses shall not be affected thereby, each provision, to the extent possible, being severable from the others.

SECTION 3. Repeal. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 4. Effective date. This ordinance shall take effect five (5) days after final publication as provided in Section 5.6 of the Charter.


INTRODUCED BY MAYOR PRO TEM RIGONI, SECONDED BY COUNCIL MEMBER TUCHSCHERER AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF GLENDALE, COLORADO THIS 2nd, DAY OF MARCH, 2021, ORDERED PUBLISHED AND SET FOR PUBLIC HEARING.

ADOPTED ON SECOND READING BY THE CITY COUNCIL OF THE CITY OF  
GLENDALE, COLORADO THIS 6<sup>TH</sup> DAY OF APRIL, 2021 AND ORDERED PUBLISHED.

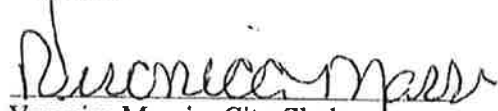


Michael Dunafon, Mayor

APPROVED AS TO FORM:

DocuSigned by:  
  
38918710341F388  
Jeff Springer, City Attorney

ATTEST:



Veronica Marvin, City Clerk