

CITY OF LITTLETON, COLORADO

ORDINANCE NO. 42

Series, 2020

**AN ORDINANCE OF THE CITY OF LITTLETON,
COLORADO, AMENDING SECTION 3-9-1-2 AND ADDING
SECTION 3-9-1-8 OF THE LITTLETON MUNICIPAL CODE
REGARDING ECONOMIC NEXUS AND THE
OBLIGATION OF REMOTE SELLERS TO COLLECT AND
REMIT SALES TAX**

WHEREAS, the City of Littleton, 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, the City has adopted and enacted a 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

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

5
6 **WHEREAS**, the goal of adopting this ordinance is to join in on the simplification
7 efforts of all the self-collecting home rule municipalities in Colorado; and

8
9 **WHEREAS**, this ordinance provides a safe harbor to those who transact limited
10 sales within the City; and

11
12 **WHEREAS**, absent such amendment, the continued failure of retailers to
13 voluntarily apply and remit sales tax owed on remote sales exposes the municipality to
14 unremitted taxes and permits an inequitable exception that prevents market participants from
15 competing on an even playing field; and

16
17 **WHEREAS**, the City adopts this ordinance with the intent to address tax
18 administration, and, in connection with, establish economic nexus for retailers or
19 vendors without physical presence in the State and require the retailer or vendor to collect and
20 remit sales tax for all sales made within the marketplace.

21
22
23 **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF**
24 **THE CITY OF LITTLETON, COLORADO, THAT:**

25
26 **Section 1:** Section 3-9-1-2, “Standardized Definitions” of the Littleton City
27 Code is hereby amended by the deletion and addition of the following defined terms, to be inserted
28 in alphabetical order, to read as follows:

29
30 **ECONOMIC NEXUS:** means the connection between the City and any retailer who does not have
31 a physical presence in the State of Colorado, which connection is established when the retailer
32 meets any one of the following criteria:

33
34 (A) In the previous calendar year, the retailer has made retail sales of goods or services delivered
35 into the State of Colorado exceeding the amount specified in C.R.S. § 39-26-102(3)(c), as amended,
36 and the location at which property or a product is delivered or the service rendered is within the city;
37 or

38 (B) In the current calendar year, 90 days has passed following the month in which a retailer has
39 made retail sales of goods or services delivered into the State of Colorado exceeding the amount
40 specified in C.R.S. § 39-26-102(3)(c), as amended, and the location at which property or a product is
41 delivered or the service rendered is within the city.

42
43 **ENGAGED IN BUSINESS IN THE CITY:** means performing or providing services or selling,
44 leasing, renting, delivering, or installing tangible personal property for storage, use or
45 consumption within the city. Engaged in business in the city includes, but is not limited to, any

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1 one of the following activities by a person:

2

3 (A) Directly, indirectly, or by a subsidiary maintains a building, store, office, salesroom,
4 warehouse, or other place of business within the taxing jurisdiction;

5 (B) Sends one or more employees, agents or commissioned salespersons into the taxing
6 jurisdiction to solicit business or to install, assemble, repair, service, or assist in the use of its
7 products, or for demonstration or other reasons;

8 (C) Maintains one or more employees, agents or commissioned salespersons on duty at a
9 location within the taxing jurisdiction;

10 (D) Owns, leases, rents or otherwise exercise control over real or personal property within the
11 taxing jurisdiction; or

12 (E) Retailer or vendor in the state of Colorado that makes more than one delivery into the taxing
13 jurisdiction within the twelve (12) month period – by means other than a common carrier, or

14 (F) Makes retail sales sufficient to meet the definitional requirements of economic nexus, as set
15 forth in this Section 3-9-1-2.

16

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

20

21 MARKETPLACE FACILITATOR: means a person who:

22 (A) Contracts with a marketplace seller or multichannel seller to facilitate for consideration,
23 regardless of whether or not the consideration is deducted as fees from the transaction, the sale of the
24 marketplace seller's tangible personal property, products, or services through the person's
25 marketplace;

26

27 1. Engages directly or indirectly, through one or more affiliated persons, in transmitting or
28 otherwise communicating the offer or acceptance between a purchaser or consumer and
29 the marketplace seller or multichannel seller; and

30

31 2. Engages directly or indirectly, through agreements or arrangements with third parties,
32 collects payment from the purchaser or consumer on behalf of the seller.

33

34 (B) "Marketplace Facilitator" does not include a person that exclusively provides internet
35 advertising services or lists products for sale, and that does not otherwise meet this definition.

36

37 MARKETPLACE SELLER: means a person, regardless of whether or not the person has a
38 physical presence in the State of Colorado, which has an agreement with a marketplace facilitator
39 and offers for sale tangible personal property, products, or services through a marketplace owned,
40 operated, or controlled by a marketplace facilitator.

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1
2 MULTICHANNEL SELLER: means a retailer that offers for sale tangible personal property,
3 commodities, or services through a marketplace owned, operated, or controlled by a marketplace
4 facilitator, and through other means.

5 RETAILER OR VENDOR: means any person selling, leasing, renting, or granting a license to
6 use tangible personal property or services at retail. "Retailer" shall include, but is not limited
7 to, any:

8 (A) Auctioneer;

9 (B) Salesperson, representative, peddler or canvasser, who makes sales as a direct or indirect
10 agent of or obtains such property or services sold from a dealer, distributor, supervisor or employer;

11 (C) Charitable organization or governmental entity which makes sales of tangible personal
12 property to the public, notwithstanding the fact that the merchandise sold may have been acquired
13 by gift or donation or that the proceeds are to be used for charitable or governmental purposes;

14 (D) Retailer-contractor, when acting in the capacity of a seller of building supplies,
15 construction materials, and other tangible personal property;

16 (E) A marketplace facilitator, marketplace seller, or multichannel seller.

17
18 **Section 2:** Section 3-9-1 of the Code is hereby amended by the addition of the
19 following new subsection 8:

20
21 Section 3-9-1-8: Marketplace Sales.

22 (A) *Obligation to collect tax.*

23 1. A marketplace facilitator engaged in business in the city is required to collect and
24 remit sales tax on all taxable sales made by the marketplace facilitator, or facilitated
25 by it for marketplace sellers or multichannel sellers to customers in the city,
26 whether or not the marketplace seller for whom sales are facilitated would have
27 been required to collect sales tax had the sale not been facilitated by the marketplace
28 facilitator.

29 2. A marketplace facilitator shall assume all the duties, responsibilities, and liabilities
30 of a retailer under this title. Marketplace facilitators shall be liable for the taxes
31 collected from marketplace sellers or multichannel sellers. The City may recover
32 any unpaid taxes, penalties, and interest from the marketplace facilitator that is
33 responsible for collecting on behalf of marketplace sellers or multichannel sellers.

34 3. The liabilities, obligations, and rights set forth under this title are in addition to any
35 duties and responsibilities of the marketplace facilitator imposed under this title, if
36 it also offers for sale tangible personal property, products, or services through other
37 means.

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1 4. A marketplace seller shall be subject to all of the same licensing, collection,
2 remittance, filing and recordkeeping requirements as any other retailer under this
3 Article for retail sales made on its own behalf and not facilitated by or through a
4 licensed marketplace facilitator in a marketplace.

5 (B) *Marketplace seller relief.* A marketplace seller, with respect to sales of tangible personal
6 property, products, or services made in or through a marketplace facilitator’s marketplace,
7 does not have the liabilities, obligations, or rights of a retailer under this title, if the
8 marketplace seller can show that such sale was facilitated by a marketplace facilitator:
9

10 1. With whom the marketplace seller has a contract that explicitly provides that the
11 marketplace facilitator will collect and remit sales tax on all sales subject to tax under
12 this article; or
13

14 2. From whom the marketplace seller requested and received in good faith a certification
15 that the marketplace facilitator is registered to collect sales tax and will collect sales
16 tax on all sales subject to tax under this article made in or through the marketplace
17 facilitator’s marketplace.
18

19 (C) *Auditing.* With respect to any sale, the city shall solely audit the marketplace facilitator for
20 sales made by marketplace sellers or multichannel sellers but facilitated by the
21 marketplace. The city will not audit or otherwise assess tax against marketplace sellers or
22 multichannel sellers for sales facilitated by a marketplace facilitator.
23

24 (D) *No retroactive application.* The obligations to collect and remit the sales and use tax
25 required by this title are applicable at the effective date of the ordinance from which this
26 section was derived.
27

28 **Section 3:** Severability. If any part, section, subsection, sentence, clause or
29 phrase of this ordinance is for any reason held to be invalid, such invalidity shall not affect the
30 validity of the remaining sections of this ordinance. The City Council hereby declares that it would
31 have passed this ordinance, including each part, section, subsection, sentence, clause or phrase
32 hereof, irrespective of the fact that one or more parts, sections, subsections, sentences, clauses or
33 phrases may be declared invalid.
34

35 **Section 4:** Repealer. All ordinances or resolutions, or parts thereof, in conflict
36 with this ordinance are hereby repealed, provided that this repealer shall not repeal the repealer
37 clauses of such ordinance nor revive any ordinance thereby.
38
39
40

41 INTRODUCED AS A BILL at a regularly scheduled meeting of the City Council
42 of the City of Littleton on the 20th day of October, 2020, passed on first reading by a vote of 7
43 FOR and 0 AGAINST; and ordered published by posting at Littleton Center, Bemis Library, the

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1 Municipal Courthouse and on the City of Littleton Website.

2 PUBLIC HEARING on the Ordinance to take place on the 17th day of November,
3 2020, in the Council Chamber¹, Littleton Center, 2255 West Berry Avenue, Littleton, Colorado,
4 at the hour of 6:30 p.m., or as soon thereafter as it may be heard.

5 PASSED on second and final reading, following public hearing, by a vote of 7 FOR
6 and 0 AGAINST on the 17th day of November, 2020, and ordered published by posting at Littleton
7 Center, Bemis Library, the Municipal Courthouse and on the City of Littleton Website.

8 ATTEST:

9

DocuSigned by:

Colleen Norton

Colleen L. Norton

CITY CLERK

DocuSigned by:

Jerry Valdes

Jerry Valdes

MAYOR

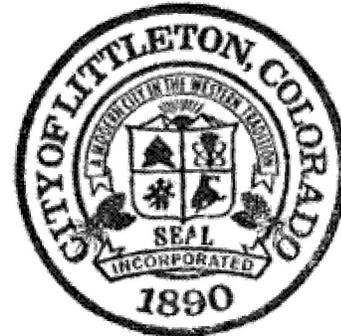
14 APPROVED AS TO FORM:

DocuSigned by:

Reid Betzing

Reid Betzing

CITY ATTORNEY



¹ Due to COVID19, the City of Littleton is providing virtual coverage of city council meetings to protect the health of citizens, council members and staff. Meetings will not be held in the council chamber until further notice.