



**Background Paper for Proposed Ordinance**

COUNCIL MEETING DATE: May 11, 2020

TO: President Dennis E. Flores and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Brenda Armijo, City Clerk

FROM: Charles Hernandez, Director of Finance

Robert P. Jagger, Sr. Assistant City Attorney

SUBJECT: AN ORDINANCE AMENDING CHAPTER 4 OF TITLE XIV OF THE PUEBLO MUNICIPAL CODE RELATING TO ESTABLISHING ECONOMIC NEXUS FOR RETAILERS WITHOUT PHYSICAL PRESENCE IN THE STATE OF COLORADO AND ESTABLISHING REPORTING AND REMITTANCE REQUIREMENTS OF CITY SALES TAX FOR SUCH RETAILERS

**SUMMARY:**

The proposed Ordinance establishes economic nexus for retailers who do not have a physical presence in the State of Colorado and establishes reporting and remittance requirements with respect to City sales tax owed on sales made by such retailers.

**PREVIOUS COUNCIL ACTION:**

Not applicable to this Ordinance.

**BACKGROUND:**

Under the City's Sales and Use Tax Code, City sales tax is levied on all sales and purchases of tangible personal property at retail unless prohibited under the Constitution or law of the United States. The United States Supreme Court recently 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"). Based upon such decision, the retailer's obligation to collect Remote Sales is no longer prohibited by the Constitution or law of the United States, and the City's Sales and Use Tax Code should be amended to clearly reflect such obligation consistent with said decision. The proposed Ordinance accomplishes such amendment. Absent such amendment, the continued failure of retailers to voluntarily apply and remit sales tax owed on remote sales will unfairly allow remote sale customers to evade a lawful tax and will permit an inequitable exception that prevents market participant from competing on an even playing field.

**FINANCIAL IMPLICATIONS:**

The financial impact will be recognition of additional sales tax revenue from those taxpayers filing via the Department of Revenue Portal that are otherwise not required to file and remit taxes directly to the City of Pueblo.

**BOARD/COMMISSION RECOMMENDATION:**

Not applicable to this Ordinance.

**STAKEHOLDER PROCESS:**

Not applicable to this Ordinance.

**ALTERNATIVES:**

If the proposed Ordinance is not passed and approved, retailers who fail to voluntarily apply and remit sales tax owed on remote sales will continue to unfairly allow remote sale customers to evade a lawful tax and will continue to permit an inequitable exception that prevents market participant from competing on an even playing field.

**RECOMMENDATION:**

The proposed Ordinance be passed and approved.

**Attachments: Proposed Ordinance**

AS AMENDED  
JUNE 22, 2020

ORDINANCE NO. 9723

AN ORDINANCE AMENDING CHAPTER 4 OF TITLE XIV OF THE PUEBLO MUNICIPAL CODE RELATING TO ESTABLISHING ECONOMIC NEXUS FOR RETAILERS WITHOUT PHYSICAL PRESENCE IN THE STATE OF COLORADO AND ESTABLISHING REPORTING AND REMITTANCE REQUIREMENTS OF CITY SALES TAX FOR SUCH RETAILERS

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

WHEREAS, pursuant to Article XX, Section 6 of the Colorado Constitution, the right to enact, administer and enforce sales and use tax 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;

WHEREAS, pursuant to such authority, the City has adopted and enacted a Sales and Use Tax Code. Under said Code, 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 law of the United States;

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");

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;

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

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;

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;

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;

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

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;

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; and

WHEREAS, the City has entered into an agreement with the Colorado Department of Revenue to use its Single Point of Remittance Software to reduce administrative and compliance costs with respect to a retailer's obligation to remit sales tax owed on Remote Sales.

NOW THEREFOR BE IT ORDAINED BY THE CITY COUNCIL OF PUEBLO, that:  
(brackets indicate matter being deleted, underscoring indicates new matter being added)

#### SECTION 1.

Section 14-4-21 of Chapter 4 of Title XIV of the Pueblo Municipal Code is amended to read as follows:

#### **Sec. 14-4-21. - Definitions.**

When not clearly otherwise indicated by the context, the following words and phrases, as used in this Chapter, shall have the following meanings:

(1) *Access services* means the services furnished by a local exchange company to its customers who provide telecommunications services which allow them to provide such telecommunications services.

(2) *Auction* means any sale where tangible personal property is sold by an auctioneer who is either the agent for the owner of such property or is in fact the owner thereof.

(3) *Automotive vehicle* means any vehicle or device in, upon, or by which any person or property is or may be transported or drawn upon a public highway, or any device used or designed for aviation or flight in the air. Automotive vehicle includes, but is not limited to, motor vehicles, trailers, semitrailers or mobile homes. Automotive vehicle shall not include devices moved by human power or used exclusively upon stationary rails or tracks.

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

(5) *Charitable organization* means any entity which:

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

- b. Is a religious or charitable organization.

As used in this definition, a *charitable organization* is an organization which exclusively, and in a manner consistent with existing laws and for the benefit of an indefinite number of persons, freely and voluntarily ministers to the physical, mental or spiritual needs of persons, and which thereby lessens the burdens of government.

(6) *Construction 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, builders' hardware, caulking material, cement, concrete, conduit, electric wiring and connections, fireplace inserts, electrical heating or cooling equipment, flooring, glass, gravel, insulation, lath, lead, lime, lumber, macadam, millwork, mortar, oil, paint, piping, pipe valves, 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, wall board, wall coping, wallpaper, weather stripping, wire netting and screen, water mains and meters, and wood preservatives. Such materials, when used for forms or other items which do not become and remain as an integral or inseparable part of a completed structure or project are not construction materials.

(7) *Consumer* means (a) any individual person, or (b) any person engaged in business in the City who uses, stores, distributes or otherwise consumes in the City tangible personal property or taxable services purchased from sources inside or outside the City.

(8) *Drugs dispensed in accordance with a prescription* means drugs dispensed in accordance with any order in writing, dated and signed by a licensed practitioner of the healing arts, or given orally by such a practitioner, and immediately reduced to writing by the pharmacist, assistant pharmacist or pharmacy intern, specifying the name and address of the person for whom the medicine, drug or poison is offered and directions, if any, to be placed on the label.

**(8.5) *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.**

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

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

- a. Maintaining a building, store, office, salesroom, warehouse or other place of business within the City either directly, indirectly or through a subsidiary;
- b. Sending one (1) or more employees, agents or commissioned salespersons into the City to solicit business or to demonstrate, install, assemble, repair, service or assist in the use of its products, or for other business reasons;
- c. Maintaining one (1) or more employees, agents or commissioned salespersons on duty at a location within the taxing jurisdiction;
- d. Owning, leasing, renting or otherwise exercising control over real or personal property within the City;
- e. **Retailer or vendor in the state of Colorado making** [Making] more than one (1) delivery into the City within any twelve-month period[.];
- f. **Making retail sales sufficient to meet the definitional requirements of economic nexus as set forth in Subsection 8.5 of this Section.**

(10) *Exempt commercial packaging materials* means containers, labels and shipping cases used by a person engaged in manufacturing, compounding, wholesaling, jobbing, retailing, packaging, distributing or bottling, for sale, profit or use, that meet all of the following conditions: (a) are used by such person to contain or label the finished product; (b) are transferred by said person to the purchaser along with and as a part of the finished product; and (c) are not returnable to said person for reuse.

(11) *Farm closeout sale* means full and final disposition of all tangible personal property previously used by a farmer or rancher in farming or ranching operations which are being abandoned.

(12) *Finance Director* means the Director of Finance of the City.

(13) *Food* means food for domestic home consumption as defined in 7 U.S.C. §2012(g), as amended, for purposes of the Federal Food Stamp Program as defined in 7 U.S.C. §2012(h), as amended; except that food does not include carbonated water marketed in containers; chewing gum; seeds and plants to grow foods; prepared salads and salad bars; cold sandwiches; deli trays; and food or drink vended by or through machines or noncoin-operated coin-collecting food and snack devices on behalf of a vendor.

(14) *Gross sales* means the total amount received in money, credit, property or other consideration valued in money for all sales, leases or rentals of tangible personal property or services.

(15) *License* means a City sales tax, use tax or tax exempt license.

(16) *Lodging services* means the furnishing of rooms or accommodations by any person, limited liability company, partnership, association, corporation, estate, receiver, trustee, assignee, lessee, or any person acting in a representative capacity or any other combination of individuals by whatever name known, to a person who for a consideration uses, possesses or has the right to use or possess any room in a hotel, inn, bed and breakfast residence, apartment hotel, lodging house, motor hotel, guesthouse, guest ranch, trailer coach, mobile home, auto camp or trailer court and park, or similar establishment, for a period of less than thirty (30) days under any concession, permit, right of access, license to use or other agreement, or otherwise.

(17) *Resident of the City* means a person, if an individual, whose primary or principal residence is within the City or, if a firm, limited liability company, partnership or corporation, whose primary or principal place of business is within the City.

**(17.1) 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.**

**(17.2) Marketplace facilitator means a person who:**

**a. 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;**

**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 the payment from the purchaser on behalf of the seller.**

**"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.**

**(17.3) Marketplace seller means a person, regardless of whether the person is doing business in the 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.**

(18) *Medical supplies* means drugs, prosthetic medical and dental appliances, and special beds for patients with neuromuscular or similar debilitating ailments, when sold for the direct, personal use of a specific individual in accordance with a prescription or other written directive issued by a licensed practitioner of medicine, dentistry or podiatry; corrective eyeglass lenses (including eyeglass frames), and corrective contact lenses, when sold for the direct, personal use of a specific individual in accordance with a prescription or other written directive issued by a licensed practitioner of medicine or optometry; wheelchairs and crutches, when sold for the direct, personal use of a specific individual; oxygen and hemodialysis products for use by a medical patient, hearing aids, hearing aid batteries, insulin, insulin measuring and injecting devices, glucose to be used for treatment of insulin reactions, and human whole blood, plasma, blood products and derivatives. This exemption excludes items purchased for use by medical and dental practitioners or medical facilities in providing their services, even though certain of those items may be packaged for single use by individual patients after which the item would be discarded.

(19) *Mobile machinery and self-propelled construction equipment* means those vehicles, self-propelled or otherwise, which are not designed primarily for the transportation of persons or cargo over the public highways, and those motor vehicles which may have originally been designed for the transportation of persons or cargo over the public highways, and those motor vehicles which may have originally been designed for the transportation of

persons or cargo but which have been redesigned or modified by the mounting thereon of special equipment or machinery, and which may be only incidentally operated or moved over the public highways. This definition includes but is not limited to wheeled vehicles commonly used in the construction, maintenance and repair of roadways, the drilling of wells and the digging of ditches.

**(19.5) *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.**

(20) *Newspaper* means a publication, printed on newsprint, intended for general circulation, and published regularly at short intervals, containing information and editorials on current events and news of general interest. The term *newspaper* does not include: magazines, trade publications or journals, credit bulletins, advertising inserts, circulars, directories, maps, racing programs, reprints, newspaper clipping and mailing services or listings, publications that include an updating or revision service, or books or pocket editions of books.

(21) *Pay television* shall include, but not be limited to, cable, microwave or other television service for which a charge is imposed.

(22) *Person* means any individual, firm, limited liability company, partnership, joint venture, corporation, estate or trust, receiver, trustee, assignee, lessee or any person acting in the fiduciary or representative capacity, whether appointed by court or otherwise or any group or combination acting as a unit.

(23) *Preprinted newspaper supplements* shall mean inserts, attachments or supplements circulated in newspapers that are: (a) primarily devoted to advertising; and (b) the distribution, insertion or attachment of which is commonly paid for by the advertiser.

(24) *Price* or *purchase price* means the price to the consumer, exclusive of any direct tax imposed by the federal government or by this Article, and, in the case of all retail sales involving the exchange of property, also exclusive of the fair market value of the property exchanged at the same time and place of the exchange, if:

a. Such exchanged property is to be sold thereafter in the usual course of the retailer's business; or

b. Such exchanged property is a vehicle and is exchanged for another vehicle and both vehicles are subject to licensing, registration or certification under the laws of this State, including, but not limited to, vehicles operating upon public highways, off-highway recreation vehicles, watercraft and aircraft. Any money or other consideration paid over and above the value of the exchanged property is subject to tax.

*Price* or *purchase price* includes:

a. The amount of money received or due in cash and credits.

b. Property at fair market value taken in exchange but not for resale in the usual course of the retailer's business.



c. Any consideration valued in money, such as trading stamps or coupons whereby the manufacturer or someone else reimburses the retailer for part of the purchase price and other media of exchange.

d. The total price charged on credit sales, including finance charges which are not separately stated. An amount charged as interest on the unpaid balance of the purchase price is not part of the purchase price unless the amount added to the purchase price is included in the principal amount of a promissory note; except the interest or carrying charge set out separately from the unpaid balance of the purchase price on the face of the note is not part of the purchase price. An amount charged for insurance on the property sold and separately stated is not part of the purchase price.

e. Installation, delivery and wheeling-in charges included in the purchase price and not separately stated.

f. Transportation and other charges to effect delivery of tangible personal property to the purchaser.

g. Indirect federal manufacturers' excise taxes, such as taxes on automobiles, tires and floor stock.

h. The gross purchase price of articles sold after manufacturing or after having been made to order, including the gross value of all the materials used, labor and service performed and the profit thereon.

*Price or purchase price* shall not include:

a. Any sales or use tax imposed by the State or by any political subdivision thereof.

b. The fair market value of property exchanged if such property is to be sold thereafter in the retailer's usual course of business. This is not limited to exchanges in Colorado. Out-of-state trade-ins are an allowable adjustment to the purchase price.

c. Discounts from the original price if such discount and the corresponding decrease in sales tax due is actually passed on to the purchaser. An anticipated discount to be allowed for payment on or before a given date is not an allowable adjustment to the price in reporting gross sales.

(25) *Private communications services* means telecommunications services furnished to a subscriber, which entitles the subscriber to exclusive or priority use of any communication channel or groups of channels, or to the exclusive or priority use of any interstate intercommunications system for the subscriber's stations.

(26) *Prosthetic devices* means any artificial limb, part, device or appliance for human use which aids or replaces a bodily function; is designed, manufactured, altered or adjusted to fit a particular individual; and is prescribed by a licensed practitioner of the healing arts. Prosthetic devices include but are not limited to prescribed auditory, ophthalmic or ocular, cardiac, dental or orthopedic devices or appliances, oxygen concentrators and oxygen with related accessories.

(27) *Purchase or sale* means the acquisition for any consideration by any person of tangible personal property or taxable services that are purchased, leased, rented, sold, used,

stored, distributed or consumed, but excludes a bona fide gift of property or services. These terms include capital leases, installment and credit sales, and property and services acquired by:

- a. Transfer, either conditionally or absolutely, of title or possession or both to tangible personal property;
- b. A lease, lease-purchase agreement, rental or grant of a license, including royalty agreements, to use tangible personal property or taxable services;
- c. Performance of taxable services; or
- d. Barter or exchange for other property or services including coupons.

The terms *purchase* and *sale* do not include:

- a. A division of partnership or limited liability company assets among the partners or limited liability company members according to their interests in the partnership or limited liability company;
- b. The formation of a corporation by the owners of a business and the transfer of their business assets to the corporation solely in exchange for all the corporation's outstanding stock, except qualifying shares, in proportion to the assets contributed;
- c. The transfer of assets of shareholders in the formation or dissolution of professional corporations;
- d. The dissolution and the pro rata distribution of the corporation's assets to its stockholders;
- e. A transfer of a limited liability company or partnership interest;
- f. The transfer in a reorganization qualifying under Section 368(a)(1) of the "Internal Revenue Code of 1954" as amended;
- g. The formation of a limited liability company or partnership by the transfer of assets to the limited liability company or partnership or transfers to a limited liability company or partnership solely in exchange for proportionate interests in the limited liability company or partnership;
- h. The repossession of personal property by a chattel mortgage holder or foreclosure by a lienholder;
- i. The transfer of assets from a parent corporation to a subsidiary corporation or corporations which are owned at least eighty percent (80%) by the parent corporation, which transfer is solely in exchange for stock or securities of the subsidiary corporation;
- j. The transfer of assets from a subsidiary corporation or corporations which are owned at least eighty percent (80%) by the parent corporation to a parent corporation or to another subsidiary which is owned at least eighty percent (80%) by the parent corporation, which transfer is solely in exchange for stock or securities of the parent corporation or the subsidiary which received the assets;

k. The transfer of assets between parent and closely held subsidiary corporations, or between subsidiary corporations closely held by the same parent corporation, or between corporations which are owned by the same shareholders in identical percentage of stock ownership amounts, computed on a share-by-share basis, when a tax imposed by this Article was paid by the transferor corporation at the time it acquired such assets, except to the extent that there is an increase in the fair market value of such assets resulting from the manufacturing, fabricating or physical changing of the assets by the transferor corporation. To such an extent any transfer referred to in this paragraph k shall constitute a sale. For the purposes of this paragraph k, a closely held subsidiary corporation is one in which the parent corporation owns stock possessing at least eighty percent (80%) of the total combined voting power of all classes of stock entitled to vote and owns at least eighty percent (80%) of the total number of shares of all other classes of stock.

(28) *Retail sales* means all sales except wholesale sales.

(29) *Retailer or Vendor* means any person selling, leasing or renting tangible personal property or services at retail. Retailer shall include any:

a. Auctioneer;

b. 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;

c. Charitable organization, school 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, school or governmental purposes[.];

**d. Retailer-contractor, when acting in the capacity of a seller of building supplies, construction materials, and other tangible personal property;**

**e. Marketplace facilitator, marketplace seller, or multichannel seller.**

(30) *Return* means the sales and use tax reporting form used to report sales and use tax.

(31) *Sales tax* means the tax to be collected and remitted by a retailer on sales taxed under this Code.

(31.5) *School* means an educational institution not held or conducted for private gain or profit, 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.

(32) *Security system services* means electronic security system services. Such term does not include nonelectronic security services such as consulting or human or guard dog patrol services.

(33) *Sound system services* means sound system services involving provision of broadcast or prerecorded audio programming to a building or portion thereof. Such term does

not include installation of sound systems where the entire system becomes the property of the building owner or the sound system service is for presentation of live performances.

(34) *Tangible personal property* means corporeal personal property.

(35) *Tax* means the use tax due from a consumer, the sales tax due from a retailer or the sum of both due from a retailer who also consumes.

(36) *Tax deficiency* means any amount of tax that is not reported or not paid on or before the due date.

(37) *Taxable sales* means gross sales less any exemptions and deductions specified in this Code.

(38) *Taxable services* means services subject to sales tax or use tax pursuant to this Code.

(39) *Taxpayer* means any person obligated to collect and/or pay tax under the terms of this Code.

(40) *Telecommunications service* means the transmission of any two-way interactive electromagnetic communications, including but not limited to voice, image, data and any other information, by the use of any means but not limited to wire, cable, fiber optical cable, microwave, radio wave or any combinations of such media. Telecommunications service includes but is not limited to basic local exchange telephone service, toll telephone service and teletypewriter service, including but not limited to residential and business service, directory assistance, cellular mobile telephone or telecommunication service, specialized mobile radio and two-way pagers and paging service, including any form of mobile two-way communication. Telecommunications service does not include separately stated nontransmission services which constitute computer processing applications used to act on the information to be transmitted.

(41) *Total tax liability* means the total of all tax, penalties or interest owed by a taxpayer and shall include sales tax collected in excess of such tax computed on total sales.

(42) *Use tax* means the tax paid or required to be paid by a person for using, storing, distributing or otherwise consuming tangible personal property or taxable services inside the City.

(43) *WATS/800 service* means any outbound or inbound interstate wide area telecommunications service or other similar service which entitles the subscriber, upon payment of a periodic charge, based upon a flat amount and/or usage, to make or receive a large volume of telephonic communications to or from persons having telephone or radio telephone stations in specified areas which are outside the telephone system area in which the subscriber's station is located.

(44) *Wholesale sales* means sales to licensed retailers, jobbers, dealers or wholesalers for resale.

a. Sales by wholesalers to consumers are not wholesale sales. Sales by wholesalers to nonlicensed retailers are not wholesale sales.

b. Sales to and purchases of tangible personal property by a person engaged in the business of manufacturing, compounding for sale, profit or use, any

article, substance or commodity, which tangible personal property enters into the processing of or becomes an ingredient or component part of the product which is manufactured, compounded or furnished or the container, label or the furnished shipping case thereof, shall be deemed to be wholesale sales and shall be deemed to be exempt from taxation under this Chapter.

c. Sales and purchases of electricity, gas, coal, fuel, oil or coke, for use in processing, manufacturing, mining, refining, irrigation, telegraph, telephone and radio communication, street and railroad transportation services and all industrial uses, and newsprint and printers' ink for use by publishers of newspapers and commercial printers shall be deemed to be wholesale sales and shall be exempt from taxation under the provisions of this Chapter, except that electricity, gas, coal, fuel oil or coke used for lighting or space heating in these operations shall not be exempt.

(45) *Wholesaler* means any person selling to retailers, jobbers, dealers or other wholesalers, for resale, and not for storage, use, consumption or distribution.

## SECTION 2.

Section 14-4-86 of Chapter 4 of Title XIV of the Pueblo Municipal Code is amended to read as follows:

### **Sec. 14-4-86. - Responsibility for payment; return; remittance; allowance.**

**[Every] Except for qualifying limitations with respect to marketplace sales as set forth in Section 14-4-86.5 of this Chapter, every** retailer, also herein called vendor, shall, irrespective of the provisions of Section 14-4-85, be liable and responsible for the payment of an amount equivalent to the rate of tax imposed by Section 14-4-85 on all sales made by him or her of commodities or services specified in Section 14-4-61 and shall, before the twentieth day of each month, make a return to the Director of Finance for the preceding calendar month and remit an amount equivalent to the rate of tax imposed by Section 14-4-85 of this Chapter on such sales to the Director of Finance.

(1) Return; Content, Form, Etc. Such returns of the taxpayer, or his or her duly authorized agent, shall contain such information and be made in such manner and upon such forms as the Director of Finance may prescribe, and the Director of Finance may extend the time for making returns and paying the taxes due under such reasonable rules and regulations as he or she may prescribe, but no such extension shall be for a greater period than is provided in Section 14-4-92.

(2) Exemption; Burden of Proof. The burden of proof that any retailer is exempt from collecting a tax upon any goods sold and paying same to the Director of Finance, or from making such returns, shall be on the retailer or vendor under such reasonable requirements of proof as the Director of Finance may prescribe.

(3) Every retailer or vendor conducting a business in which the transaction between the vendor and the consumer consists of the supplying of tangible personal property and services in connection with the maintenance of servicing of the same, shall be required to pay the taxes levied under this Chapter upon the full contract price unless application is made to the Director for permission to use a percentage basis of reporting the tangible personal property sold and the services supplied under such contract. The Director is hereby authorized to determine the percentage based upon the ratio of the tangible personal property included in the consideration as it bears to the total of the consideration paid under said combination contract or sale which shall be subject to the sales tax levied pursuant to the

provisions of this Chapter. This Section shall not be construed to include items upon which the sales tax is imposed on the full purchase price as defined in Section 14-4-62 or otherwise in this Chapter.

(4) Every vendor vending individual items of personal property through coin-operated vending machines shall be exempt from the provisions of Sections 14-4-85 and 14-4-86 of this Chapter, but nevertheless such vendor shall pay a sales or use tax at the rate of tax imposed by Section 14-4-85 of this Chapter on the personal property sold in excess of ten cents (\$0.10) so vended in the coin-operated machines unless the sale shall be otherwise exempt under the provisions of this Chapter.

(5) Excess Collections Failure to Remit Collections. If any vendor shall, during the reporting period, collect as a tax an amount in excess of the rate of tax imposed by Section 14-4-85 of this Chapter on his or her total taxable sales, he or she shall remit to the Director of Finance the full net amount of the tax herein imposed and also such excess. If records of City and State sales tax collections are kept separately, the vendor will remit the excess of City tax and state tax collections, and if it is not possible to determine the excess to be remitted to each, the vendor shall remit one-half (1/2) of such excess to the City. The retention by the vendor of any excess of tax collections over the rate of tax imposed by Section 14-4-85 of this Chapter on the total taxable sales of such vendor, or the intentional failure to remit punctually to the Director of Finance the full amount required to be remitted by the provisions of this Chapter, is hereby declared to be a violation of this Chapter.

### SECTION 3.

Chapter 4 of Title XIV of the Pueblo Municipal Code is amended by the addition of a new Section 14-4-86.5 to read as follows:

#### **Sec. 14-4-86.5. – Marketplace Sales.**

##### **(a) Responsibility.**

**(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 vendor under Section 14-4-86 of 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 Chapter 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 Chapter 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 Chapter; 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 Chapter made in or through the marketplace facilitator's marketplace.**

**(5) With respect to sales of tangible personal property, products, or services made by a marketplace seller which 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.**

**(b) Auditing. 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 4.

No obligation to collect the sales and use tax under Section 3 of this Ordinance may be applied retroactively. Responsibilities, duties and liabilities described under Section 3 of this Ordinance begin upon the earlier of when a person becomes licensed to collect the City's sales tax or when a person becomes legally obligated to collect the City's sales tax as provided under this Ordinance.

#### SECTION 5.

In the event any section, subsection, clause, phrase or portion of this Ordinance is for any reason held illegal, invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remainder of this Ordinance. It is the legislative intent of the City Council that this Ordinance would have been adopted if such illegal provision had not been included or any illegal application had not been made.

#### SECTION 6.

The officers and staff of the City are authorized and directed to perform any and all acts consistent with the intent of this Ordinance to effectuate the policies and procedures described herein.

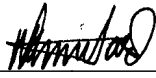
#### SECTION 7.

This Ordinance shall become effective on the first day of the month which is at least thirty (30) days after the date of final action by the Mayor and City Council.

**Action by City Council:**

Introduced and initial adoption of Ordinance by City Council on May 11, 2020.

Final adoption of Ordinance by City Council on June 22, 2020.

  
\_\_\_\_\_

President of City Council

**Action by the Mayor:**

Approved on June 26, 2020.

Disapproved on \_\_\_\_\_ based on the following objections:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

  
\_\_\_\_\_

Mayor

**Action by City Council After Disapproval by the Mayor:**


Council did not act to override the Mayor's veto.

Ordinance re-adopted on a vote of \_\_\_\_\_, on \_\_\_\_\_

Council action on \_\_\_\_\_ failed to override the Mayor's veto.

\_\_\_\_\_  
President of City Council

ATTEST

  
\_\_\_\_\_  
City Clerk