

CITY OF STEAMBOAT SPRINGS, COLORADO

ORDINANCE NO. 2773

AN ORDINANCE AMENDING CHAPTER 20, SECTIONS 86, 143, 183, 197 AND 226 OF THE STEAMBOAT SPRINGS REVISED MUNICIPAL CODE REGARDING ADMINISTRATION OF TAXES FOR REMOTE SELLERS; PROVIDING AN EFFECTIVE DATE AND REPEALING ALL CONFLICTING ORDINANCES.

WHEREAS, the City of Steamboat Springs, 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”) at Chapter 22 of the City’s Revised Municipal Code, under which City sales tax is levied on all sales and purchases of tangible personal property or taxable services at retail unless prohibited, 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, it is appropriate for the City, alongside other Colorado municipalities to adopt uniform definitions within its sales tax code 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 City previously adopted in 2019 ordinance no. 2674 providing for tax simplification through amendment of tax definitions and the goal of adopting this ordinance is to continue simplification efforts alongside 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 City 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 therewith, 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 STEAMBOAT SPRINGS, COLORADO:

SECTION 1. Chapter 22, Section 86 of the Steamboat Springs Revised Municipal Code shall be amended to remove all numbers ordering definitions. Definitions shall be listed in alphabetical order. The following definitions shall be amended to read as follows (changes in underline):

“Engaged in Business in the City” 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 in the City 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 taxing jurisdiction; (2) Sends one or more employees, agents or commissioned sales persons 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; (3) Maintains one or more employees, agents or commissioned sales persons on duty at a location within the taxing jurisdiction; (4) Owns, leases, rents or otherwise exercises control over real or personal property within the taxing jurisdiction; ~~or (e) Makes more than one delivery into the taxing jurisdiction within a twelve month period by any means other than a common carrier.~~ (5) retailer or vendor in the state of Colorado that makes more than one delivery into the taxing jurisdiction 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 22-86.

“Retailer or Vendor” 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, marketplace seller, or multichannel seller.

SECTION 2. Chapter 22, Section 86 of the Steamboat Springs Revised Municipal Code is hereby amended to add the following definitions, to be placed in alphabetical order within the existing 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.

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”

(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.

“Marketplace Sales”

(A)

(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 the Retailer or Vendor definition of this Section 22-86. 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.

(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 3. No obligation to collect the sales and use tax required by this Article III may be applied retroactively. Responsibilities, duties and liabilities described in the definition of “Marketplace Sales” part A 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 the definition of “Economic Nexus”.

SECTION 4. The following sections of Chapter 22 are amended to remove numerical references to definitions in Section 22-86 and shall hereafter read as follows:

Section 22-143

(c) *Combined Sales of services and Personal Property.* Every contractor or Vendor conducting a Business in which the transaction between the Vendor and the Consumer or Purchaser consists of the supply of Tangible Personal Property and services in connection with the maintenance or servicing of same, shall be required to pay the Tax levied under this article upon the full contract Price, unless application is made to the City Treasurer for permission to use a percentage basis or reporting the Tangible Personal Property sold and the services supplied under such contract. The City Treasurer 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 Tax levied pursuant to the provisions of this article. The section shall not be construed to include terms upon which the Tax is imposed on the full Purchase Price as defined in subsection 22-86(42), nor shall it be construed as an allowance for the Vendor to fail to itemize to the customer the Taxable, and non-taxable portions of the bill.

Section 22-183(d)(2)b. *Commercial packaging materials.* The Sales to and Purchases of Tangible Personal Property for Use as Commercial Packaging Materials by a Person engaged in Manufacturing or compounding for Sale, profit or Use, shall be deemed a Wholesale Sale. (See section 22-86 definition of Commercial Packaging Materials (24).)

Section 22-183(d)(11)d. *Cattle, sheep and other animals; farm auctions.* The Sale or Purchase of meat cattle, sheep, lambs, swine and goats and Purchases of mares and stallions for breeding purposes; and all Farm Closeout Sales (see section 22-86(26)).

Section 22-183(d)(11)f.2. Charitable Organizations in possession of a Colorado Exempt Institution License number, and used in the conduct of their regular charitable functions and activities (refer to section 22-86(40)); or

Section 22-183(d)(11)f.3. Schools, other than Schools held or conducted for private or corporate profit (refer to section 22-86(52)); shall be exempted from the operation of this division.

Section 22-197(1) *Automotive vehicles*. On the purchase price paid or charged on the sale or the purchase for use or storage of an automotive vehicle or mobile machinery and self-propelled construction equipment to a resident of this city (refer to ~~subsections 22-86(7) and 22-86(34)~~ for definitions).

Section 22-226(4) The construction of Photovoltaic Systems and Solar Thermal Systems as both are defined in ~~subsections 22-86(58) and 22-86(80)~~ of this Code.

SECTION 5. If any provision of this ordinance, or the application of such provision to any person or circumstance, is held to be unconstitutional, then the remainder of this ordinance, and the application of the provisions of such to any person or circumstance, shall not be affected thereby.

SECTION 6. All ordinances heretofore passed and adopted by the City Council of the City of Steamboat Springs, Colorado, are hereby repealed to the extent that said ordinances, or parts thereof, are in conflict herewith.

SECTION 7. The City Council hereby finds, determines and declares that this ordinance is necessary for the immediate preservation of the public peace, health and safety.

SECTION 8. Pursuant to Section 7-11 of the Charter of the City of Steamboat Springs, Colorado, the second publication of this ordinance may be by reference, utilizing the ordinance title.

SECTION 9. The Ordinance shall take effect December 1st, 2020.

SECTION 10. A public hearing on this ordinance shall be held on November 10, 2020 at 5:00 P.M. in the Citizens Hall meeting room, Centennial Hall, Steamboat Springs, Colorado.

INTRODUCED, READ AND ORDERED PUBLISHED, as provided by law, by the City Council of the City of Steamboat Springs, at its regular meeting held on the 20th day of October 2020.

Jason Lacy, President
Steamboat Springs City Council

ATTEST:

Julie Franklin
City Clerk

FINALLY READ, PASSED AND APPROVED this 10th day of November, 2020.

**Jason Lacy, President
Steamboat Springs City Council**

ATTEST:

Julie Franklin, City Clerk

Signature: *Jason Lacy*
Jason Lacy (Nov 11, 2020 12:33 MST)

Email: jlacy@steamboatsprings.net

Signature: *Julie Franklin*
Julie Franklin (Nov 11, 2020 12:43 MST)

Email: jfranklin@steamboatsprings.net









2773_REMOTESSELLERS

Final Audit Report

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