

**CITY OF EDGEWATER**  
**ORDINANCE NO. 2021-09**  
**SERIES OF 2021**

**AN ORDINANCE AMENDING CHAPTERS 4 AND 6 OF THE CODE OF ORDINANCES OF THE CITY OF EDGEWATER, COLORADO, CONCERNING REVENUE AND FINANCE, AND BUSINESS LICENSES AND REGULATIONS, RESPECTIVELY, BY AMENDING SECTIONS 4-2-20, CONCERNING DEFINITIONS RELATED TO THE CITY'S SALES TAX; 4-2-220 CONCERNING THE COLLECTION AND PAYMENT OF SALES TAXES; 6-1-30, CONCERNING THE REQUIREMENT FOR A BUSINESS LICENSE; AND 6-1-190, CONCERNING THE REQUIREMENT FOR A SALES AND USE TAX LICENSE; ALL IN ORDER FACILITATE THE USE OF THE STATEWIDE ELECTRONIC SALES AND USE TAX FILING AND PAYMENT SYSTEM ESTABLISHED PURSUANT TO COLORADO STATUTES TO SIMPLIFY, STANDARDIZE, AND MAKE MORE EFFICIENT THE REPORTING AND PAYMENT OF SALES TAXES COLLECTED BY PERSONS AND ENTITIES DEFINED HEREIN AS MARKETPLACE FACILITATORS, AMONG OTHERS.**

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

WHEREAS, this ordinance is adopted pursuant to the City's home rule authority and the City's authority under Colorado Revised Statutes Section 31-23-301; and

WHEREAS, the use of standardized sales and use tax definitions by home rule municipalities that locally collect their sales tax, and use of a statewide system by marketplace facilitators, marketplace sellers, and multichannel sellers that do not have a physical presence in the City, simplifies the municipal sales tax system and benefits businesses, particularly those engaged in business in multiple locally collecting home rule municipalities, and those without a physical presence in one or more municipalities in which they are engaged in business; and

WHEREAS, in recognition of such benefits, in SB 19-006, codified as C.R.S §39-26-802.7, the Colorado General Assembly mandated the creation of such a statewide system for use by Colorado municipalities, including locally collecting home rule municipalities at the discretion of such municipality; and

WHEREAS, the City has determined that it is in the best interests of the City and its business community that the City participate in this effort to simplify Colorado's municipal tax system by adopting such definitions and otherwise amending the City's Code to facilitate the use of the statewide system for certain tax reporting and payment purposes.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EDGEWATER, COLORADO THAT:

Section 1. Section 4-2-20, "Definitions," of the Code of Ordinances of the City of Edgewater ("Code"), related to sales taxation is hereby amended by the amendment or addition of the following definitions, placed in their appropriate alphabetic locations, to read as follows:

*Retailer or vendor* means any person selling, leasing, renting or granting a license to use tangible personal property or services at retail. 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 multi-channel seller.

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 or 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 or multichannel seller's tangible person property 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, collect 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 tangible personal property or services for sale, and does not otherwise meet this definition.

Marketplace seller means a person that has an agreement with a marketplace facilitator and offers tangible personal property 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 or services through a marketplace owned, operated or controlled by a marketplace facilitator, and through other means.

Section 2. Section 4-2-220, concerning responsibility for collection and payment of sales taxes, is hereby amended by the addition of a new subsections (g) and (h) to read as follows:

- (g) Any provision of this section notwithstanding, a marketplace facilitator, marketplace seller, or multi-channel seller is not required to submit returns pursuant to this section if the marketplace facilitator, marketplace seller or multi-channel seller: (1) does not have a physical place of business within the City of Edgewater; and (2) holds a valid license for the use of the statewide sales and use tax system established pursuant to C.R.S. § 39-26-802.7, as amended, and makes use of that system for payment of taxes due to the City, or (3) in the case of a marketplace seller or multichannel seller, if any tax that would otherwise be due from the marketplace seller or multichannel seller has been collected by a marketplace facilitator and remitted to the City through the statewide sales and use tax system.
- (h) Any provision of this section notwithstanding, a marketplace seller or multi-channel seller is not liable or responsible for the payment of taxes under this section, nor entitled to the benefits of this section or article, if the marketplace seller or multi-channel seller can show that the subject sale (1) was made in or through a marketplace facilitator’s marketplace; and (2) that the marketplace seller or multichannel seller has a contract with the marketplace facilitator that explicitly provides that the marketplace facilitator will collect and remit sales tax on all sales subject to tax under this article, or (3) the marketplace facilitator has provided the marketplace seller or multichannel seller with a certification that the marketplace facilitator is registered to collect and will collect sales tax on all sales subject to tax under this article made in or through the marketplace facilitator’s marketplace.

Section 3. Section 6-1-30 of the Code, concerning the requirement for a business license and exceptions to that requirement, is hereby amended to read as follows:

**Sec. 6-1-30. License required; exceptions.**

(a) No person shall establish, engage or be engaged in the operation, conduct or carrying on of any trade, profession, business, privilege, occupation or calling of any kind within the City without first obtaining a general business license as required by this Article.

(b) If a person owns or operates more than one (1) business or has more than one (1) business location, a separate license for each business or location shall be obtained. A business that consists of related trades or activities need not obtain a separate license for each trade or activity.

(c) The following are exempt from the requirements of this Article:

- (1) Activities performed by the City or under the sponsorship of the City.
- (2) An individual having an occasional or isolated sale of tangible personal property from his or her private residence.
- (3) Any sexually oriented business, pawnbroker, refuse hauler, contractor, peddler, home occupation, purchaser of valuable articles or body art establishment that is subject to another Article of this Chapter.
- (4) A person conducting a garage sale as set forth in Article 11 of this Chapter.
- (5) A person who has registered a residential dwelling unit under the provisions of Article 13.
- (6) A marketplace facilitator, marketplace seller or multi-channel seller, each as defined in section 4-2-20, is not required to obtain a business license pursuant to this article if the marketplace facilitator, marketplace seller or multi-channel seller: (1) does not have a physical place of business within the City; and (2) holds a valid license for the use of the statewide sales and use tax system established pursuant to C.R.S. § 39-26-802.7, as amended, and makes use of that system for payment of taxes due to the City, or (3) in the case of a marketplace seller or multichannel seller, if any tax that would otherwise be due from the marketplace seller or multichannel seller has been collected by a marketplace facilitator and remitted to the City through the statewide sales and use tax system.

Section 4. Section 6-1-190 of the Code, concerning the requirement for a sales and use tax license and exceptions to that requirement, is hereby amended to read as follows:

**Sec. 6-1-190. Sales and use tax license required.**

(a) General.

(1) A sales and use tax license shall be required for any person to engage in the business of selling at retail in the City tangible personal property or services that are taxable hereunder which are purchased in the City and are subject to sales and use tax pursuant to this Article. A sales and use tax license may be required for tangible personal property that is stored, used or consumed in the City and is subject to use tax pursuant to this Article. Such sales and use tax licenses shall be granted and issued by the Finance Director and shall be in force and effect until the earlier of: (a) revocation of such license; or (b) sale or termination of the business, if any, relating to such license. Such licenses shall be granted only upon application stating the name and address of the person desiring such license, the name of such business, if any, and the location, including the street number of such business, if any, and such other facts as the Finance Director may require. No license issued pursuant to this Section shall be transferable.

(2) For each sales and use tax license issued, no fee shall be required for those businesses holding a current City business license. A fee of fifteen dollars (\$15.00) shall be required for those businesses not holding a current City business license.

(b) In case business is transacted at two (2) or more separate places by one (1) person, a separate license for each place of business shall be required.

(c) Each license shall be numbered and shall show the name of the licensee and the place of business of the licensee and shall be posted in a conspicuous place at the place of business for which it is issued. If the licensee does not have a place of business, then the license shall show the mailing address of such licensee.

(d) The Finance Director, after reasonable notice and a full hearing, may revoke the license of any person found by him or her to have violated any provision of this Article.

(e) Any finding and order of the Finance Director revoking the license of any person shall be subject to review by the District Court upon application of the aggrieved party. The procedure for review shall be, as nearly as possible, the same as provided for the review of findings as provided by proceedings in the nature of certiorari.

(f) No license shall be required for any person engaged exclusively in the business of selling commodities which are exempt from taxation under this Article.

(g) No license shall be required for a marketplace facilitator, marketplace seller or multi-channel seller, each as defined in section 4-2-20, if the marketplace facilitator, marketplace seller or multi-channel seller: (1) does not have a physical place of business within the City; and (2) holds a valid license for the use of the statewide sales and use tax system established pursuant to C.R.S. § 39-26-802.7, as amended, and makes use of that system for payment of taxes due to

the City, or (3) in the case of a marketplace seller or multichannel seller, if any tax that would otherwise be due from the marketplace seller or multichannel seller has been collected by a marketplace facilitator and remitted to the City through the statewide sales and use tax system.

Section 5. Savings Clause. If any part, section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional or invalid, the remainder of this ordinance shall continue in full force and effect, it being the legislative intent that this ordinance would have been adopted even if such unconstitutional or invalid matter had not been included herein.

Section 6. Effective Date. This ordinance shall become effective five (5) days after final publication.

INTRODUCED, READ BY TITLE, PASSED ON FIRST READING AND ORDERED PUBLISHED this 18th day of May, 2021.

/s/ Laura Keegan  
Laura Keegan, Mayor

ATTEST:

/s/ L Pedroza  
Lenore Pedroza, CMC, City Clerk

APPROVED AS TO FORM:

PASSED AND ADOPTED ON SECOND READING AND ORDERED PUBLISHED this 1st day of June, 2021.

/s/ Laura Keegan  
Laura Keegan, Mayor

ATTEST:

/s/ L Pedroza  
Lenore Pedroza, CMC, City Clerk

APPROVED AS TO FORM:

/s/ Thad Renaud  
Thad W. Renaud, City Attorney

