

**ORDINANCE OF THE
CITY OF LONE TREE**

Series of 2020

Ordinance No. 20-07

**AN ORDINANCE AMENDING ARTICLE III OF CHAPTER 4 OF THE CITY OF
LONE TREE MUNICIPAL CODE CONCERNING SALES TAX AND
ECONOMIC NEXUS FOR RETAILERS OR VENDORS WITHOUT PHYSICAL
PRESENCE IN THE STATE**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LONE TREE,
COLORADO:**

ARTICLE 1 – AUTHORITY

The City of Lone Tree (the “City”) is a home rule municipality operating under the Lone Tree Home Rule Charter (the “Charter”) adopted on May 5, 1998 and a Municipal Code (the “Code”), codified and adopted on December 7, 2004. 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. Under the Charter, the Code and the authority given home rule cities, the City may adopt and amend sales tax ordinances.

ARTICLE 2 –DECLARATIONS OF POLICY

- A. The City Council has adopted a comprehensive sales and use tax code codified in Article III of Chapter 4 of the Municipal Code (“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
- B. Based on the United States Supreme Court in *South Dakota v. Wayfair*, 138 S. Ct. 2080 (2018), a retailer’s obligation to collect sales tax is no longer based on the retailer’s physical presence in the jurisdiction by the Constitution or law of the United States (“Physical Presence Rule”); and
- C. Especially with the proliferation of internet sales, the Supreme Court in *Wayfair* found that the Physical Presence Rule creates an artificial and unfair taxing scheme and market distortions by prejudicing in-state businesses and creating a tax benefit for out-of-state businesses. Under *Wayfair*, the Physical Presence Rule is no longer required for a business to have a substantial nexus with the taxing state, or other taxing jurisdiction, and to be subject to that jurisdiction’s sales taxes.
- D. The City Council finds and determines:

1. The delivery of tangible personal property, products, or services into the City through internet sales relies on and burdens local transportation systems, emergency and police services, waste disposal, utilities and other infrastructure and services;
2. 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;
3. 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;
4. The goal of adopting this Ordinance is to join the simplification efforts of all the self-collecting home rule municipalities in Colorado; and
5. Without this Ordinance, 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
6. The City adopts this Ordinance with the intent to address tax administration, and to 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.

ARTICLE 3 – SAFETY CLAUSE

The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare.

ARTICLE 4 – ADOPTION

The following sections of Article III, Sales and Use Tax, of Chapter 4 of the Municipal Code, are hereby amended:

A. The following definitions in Section 4-3-20, titled *Definitions*, are amended to read in full as follows:

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; (5) 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 4-3-20.

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; or (5) marketplace facilitator, marketplace seller, or multichannel seller.

B. Section 4-3-20, titled *Definitions*, is further amended to add the following new 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, ninety (90) days has passed following the month in which the person, which includes a marketplace facilitator, has made retail sales into the state of Colorado exceeding the amount specified in C.R.S. § 39-26-102(3)(c), as amended.

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 means a person who:

(A) 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;

(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 payment from the purchaser on behalf of the seller.

A 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.

C. Section 4-3-320 of the Code is hereby amended by the addition of the following new subsection (d) and (e) to read in full as follows:

(d) Marketplace Sales.

(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 under this article. 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) A marketplace seller that is not facilitated by a licensed marketplace facilitator in a marketplace is subject to all of the same licensing, collection, remittance, filing and recordkeeping requirements as any other retailer.

(6) Responsibilities, duties and liabilities of a marketplace facilitator, marketplace seller, or multichannel seller begin upon the earlier of when they become licensed to collect the City's sales tax or when they become engaged in business in the City. No obligation to collect the sales and use tax required by this Article may be applied retroactively.

(e) 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 facilitator. The City will not audit or otherwise assess tax against marketplace sellers or multichannel sellers for sales facilitated by a marketplace facilitator.

ARTICLE 5 – SEVERABILITY

If any part or provision of this Ordinance, or its application to any person or circumstance, is adjudged to be invalid or unenforceable, the invalidity or unenforceability of such part, provision, or application shall not affect any of the remaining parts, provisions or applications of this Ordinance which can be given effect without the invalid provision, part or application, and to this end the provisions and parts of this Ordinance are declared to be severable.

ARTICLE 6 – CAUSES OF ACTION RETAINED

Nothing in this Ordinance hereby adopted shall be construed to affect any suit or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Ordinance.

ARTICLE 7 - CODIFICATION AMENDMENTS

The codifier of the City's Municipal Code is hereby authorized to make such numerical and formatting changes as may be necessary to incorporate the provisions of this Ordinance within the Lone Tree Municipal Code.

ARTICLE 8 –EFFECTIVE DATE

This Ordinance shall take effective thirty (30) days following publication after the first reading if no changes are made on second reading, or twenty (20) days following publication after the second reading if changes are made upon second reading, provided that implementation and enforcement of the provisions contained in this Ordinance shall take place on the first day of the month that is at least thirty (30) days after the date of its adoption.

INTRODUCED, READ AND ORDERED PUBLISHED ON AUGUST 18, 2020.

**PUBLISHED IN THE DOUGLAS COUNTY NEWS PRESS ON AUGUST 27, 2020
(LEGAL NOTICE NO. 937834).**

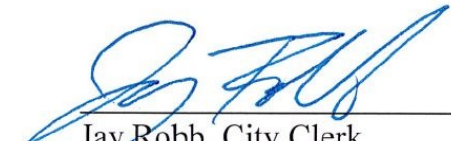
**APPROVED AND ADOPTED ON SECOND READING ON SEPTEMBER 1, 2020,
TO BECOME EFFECTIVE ON SEPTEMBER 26, 2020.**

CITY OF LONE TREE

By:


Jacqueline A. Millet, Mayor

ATTEST:


Jay Robb, City Clerk

