

EFFECTIVE DATE: 1-23-21

ORDINANCE NO. 2020-69

A BILL

FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, AMENDING VARIOUS SECTIONS OF CHAPTER 130 OF THE CITY CODE RELATED TO ECONOMIC NEXUS

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

WHEREAS, the City is authorized under Article XX, Section 6 of the Colorado Constitution to pass ordinances and regulate local affairs including ordinances for the administration and collection of sales and use tax; 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 Colorado municipalities to adopt uniform definitions within their sales tax codes to encompass retailers, 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; and

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; 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 municipality 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 with, establish economic nexus for retailers or vendors without physical presence in the State.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO:

Section 1. Section 130-31 of the Aurora City code is hereby amended to read as follows:

Sec. 130-31. - 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 § 39-26-102(3)(c) C.R.S.; 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).

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

***Engaged in business in the city*** means performing or providing services or selling, leasing, renting, delivering or installing tangible personal property 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 or 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 salespersons 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 salespersons 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
- (5) Makes more than one delivery into the taxing jurisdiction within a 12-month period ~~by any means other than a common carrier; or~~
- (6) Makes retail sales sufficient to meet the definitional requirements of economic nexus as set forth in this section.**

Section 2. The Finance Director may delay utilizing the enforcement provisions of chapter 130 in regards to retailers that only meet the economic nexus definition of engaged in business, until adequate simplification measures are in place, so as to not place an undue burden on interstate commerce.

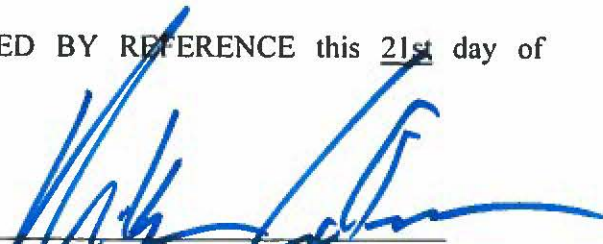
Section 3. Repealer. All acts, orders, resolutions, ordinances, or parts thereof, in conflict with this Ordinance or with any of the documents hereby approved, are hereby repealed only to the extent of such conflict. This repealer shall not be construed as reviving any resolution, ordinance, or part thereof, heretofore repealed.

Section 4. Severability. The provisions of this Ordinance are hereby declared to be severable. If any section, paragraph, clause, or provision of this Ordinance shall, for any reason, be held invalid or unenforceable by a court of competent jurisdiction, the invalidity of unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

Section 5. Pursuant to Section 5-5 of the Charter of the City of Aurora, Colorado, the second publication of this Ordinance shall be by reference, utilizing the ordinance title. Copies of this Ordinance are available at the Office of the City Clerk.

INTRODUCED, READ AND ORDERED PUBLISHED this 7th day of December, 2020.


PASSED AND ORDERED PUBLISHED BY REFERENCE this 21st day of December, 2020.

  
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MIKE COFFMAN, Mayor

ATTEST:

  
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KADEE RODRIGUEZ, City Clerk

APPROVED AS TO FORM:

 RLA  
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Hanosky Hernandez,  
Assistant City Attorney