

**TOWN OF SNOWMASS VILLAGE
TOWN COUNCIL**

**ORDINANCE NO. 7
SERIES OF 2020**

**AN ORDINANCE AMENDING ARTICLE IV - SALES TAX OF CHAPTER 4 -
REVENUE AND FINANCE OF THE SNOWMASS VILLAGE MUNICIPAL CODE BY
AMENDING AND ADDING CERTAIN DEFINITIONS TO SECTION 4-52 AND ADDING
SECTION 4-75 TO THE SNOWMASS VILLAGE MUNICIPAL CODE**

WHEREAS, the Town of Snowmass Village, Colorado, (“TOSV”), 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 TOSV and is necessary to raise revenue with which to conduct the affairs and render the services performed by TOSV; and

WHEREAS, pursuant to such authority, TOSV has adopted and enacted the Snowmass Village Sales Tax Code (the “Code”), under which TOSV 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

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 TOSV Sales 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 TOSV 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 marketplace facilitators, marketplace sellers, and multichannel sellers that do not have a physical presence in TOSV, but that still have a taxable connection with TOSV; 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 TOSV; 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, TOSV 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.

WHEREAS, the Town Council has determined that an update of the Snowmass Village Sales Tax Code would be beneficial to the efficient application of the Sales Tax Code; and

WHEREAS, Town staff has undertaken a review and analysis of methods to clarify, simplify and update the Snowmass Village Sales Tax Code in cooperation with other home-rule municipalities in Colorado in order to avoid any undue burdens to interstate commerce in keeping with the U.S. Supreme Court decision in *South Dakota v. Wayfair*, 138 S.Ct. 2080 (2018); and

WHEREAS, the Town Council has reviewed and considered the staff proposals and desires to enact certain amendments to the Snowmass Village Sales Tax Code; and

WHEREAS, the Town Council finds that the adoption of this Ordinance is necessary for the immediate preservation of the public health, safety and welfare.

**NOW, THEREFORE, BE IT ORDAINED, BY THE TOWN COUNCIL OF THE TOWN
OF SNOWMASS VILLAGE, COLORADO**

1. That Section 4-52 of the Snowmass Village Municipal Code is hereby amended, by the following amendments to existing definitions, to read as follows:

Doing business in the Town, for the purpose of this Article, means the selling, leasing or delivering in the Town or any activity in the Town in connection with the selling, leasing or delivering in the Town of tangible personal property by a retail sale as defined in this Section, for use, storage, distribution or consumption within the Town. This term shall include, but shall not be limited to, the following methods of transacting business:

- a. The maintaining within the Town directly, or indirectly, or by a subsidiary, an office, distributing house, salesroom or house, warehouse or other place of business or other real or personal property within the Town.
- b. The soliciting, either by direct representatives, indirect representatives or manufacturers' agents, by distribution of catalogues or other advertising, by use of any communications media, by maintaining one or more employees, agents or commissioned sales persons on duty at a location within the Town, or by any other means whatsoever, of business from persons residing in the Town and by reason thereof receiving orders from, or selling or leasing tangible personal property to, such persons residing in the Town for use, consumption, distribution and storage for use or consumption in the Town.
- c. A retailer or vendor in the state of Colorado making more than one delivery into the Town within a twelve-month period.
- d. Conducting retail sales sufficient to meet the definitional requirements of economic nexus as set forth in this Section 4-52.

Retailer or vendor means a person doing a retail business, known to the trade and public as such, and selling to a user or consumer, and not for resale, specifically including but not limited to any marketplace facilitator, marketplace seller, or multichannel seller.

2. That Section 4-52 of the Snowmass Village Municipal Code is hereby amended by adding the following new definitions to be inserted in alphabetical order amongst the existing definitions of Section 4-52, which new definitions read as follows:

Economic Nexus means the connection between the Town 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 Town, 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); 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.

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 Town, 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.

3. That of the Snowmass Village Municipal Code is hereby amended by adding Section 4-75, which Section reads as follows:

4-75. Marketplace Sales

(a) Notwithstanding any other provision of this Article IV or of this Code to the contrary:

(1) A marketplace facilitator engaged in business in the Town 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 Town, 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 this Article. Marketplace facilitators shall be liable for the taxes collected from

marketplace sellers or multichannel sellers. The Town 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 makes 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 Town shall solely audit the marketplace facilitator for sales made by marketplace sellers or multichannel sellers but facilitated by the marketplace. The Town will not audit or otherwise assess tax against marketplace sellers or multichannel sellers for sales facilitated by a marketplace facilitator.

4. No obligation to collect the sales and use tax required by this Ordinance may be applied retroactively. Responsibilities, duties and liabilities described in

this Ordinance of a marketplace facilitator, marketplace seller, or multichannel seller begin upon licensure or when the municipal sales taxes were first collected from taxable sales made to retail customers prior to licensure.

5. Severability. If any provision of this Ordinance or application hereof to any person or circumstance is held invalid, the invalidity shall not affect any other provision or application of this Ordinance which can be given effect without the invalid provision or application, and, to this end, the provisions of this Ordinance are severable.
6. Effective Date. The effective date of this Ordinance shall be September 1, 2020.

READ, APPROVED AND ADOPTED by the Town Council of the Town of Snowmass Village on First Reading on July 6, 2020 upon a motion by Council Member Sirkus, the second of Council Member Goode, and upon a vote of 5 in favor and 0 against.

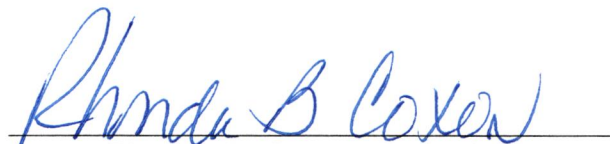
READ, APPROVED AND ADOPTED by the Town Council of the Town of Snowmass Village on Second Reading on July 20, 2020 upon a motion by Council Member Goode, the second of Council Member Madsen, and upon a vote of 5 in favor and 0 against.

TOWN OF SNOWMASS VILLAGE



Markey Butler, Mayor

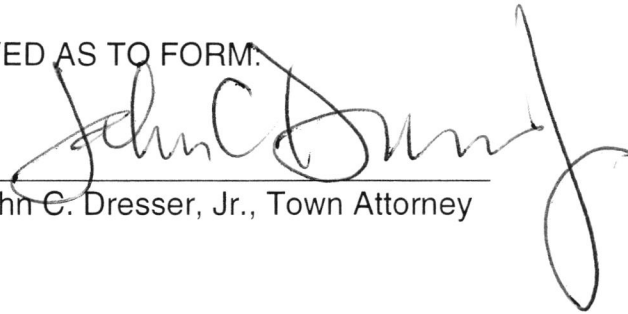
ATTEST:



Rhonda B. Coxon, Town Clerk

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APPROVED AS TO FORM:



John C. Dresser, Jr., Town Attorney