

1 CITY OF LITTLETON, COLORADO

2  
3 ORDINANCE NO. 42

4  
5 Series, 2020

6  
7 AN ORDINANCE OF THE CITY OF LITTLETON,  
8 COLORADO, AMENDING SECTION 3-9-1-2 AND ADDING  
9 SECTION 3-9-1-8 OF THE LITTLETON MUNICIPAL CODE  
10 REGARDING ECONOMIC NEXUS AND THE  
11 OBLIGATION OF REMOTE SELLERS TO COLLECT AND  
12 REMIT SALES TAX

13  
14 WHEREAS, the City of Littleton, Colorado, (the “City”), is a home rule  
15 municipality, organized and existing under Article XX, Section 6 of the Colorado Constitution;  
16 and

17  
18 WHEREAS, pursuant to Article XX, Section 6 of the Colorado Constitution, the  
19 right to enact, administer and enforce sales taxes is clearly within the constitutional grant of power  
20 to the City and is necessary to raise revenue with which to conduct the affairs and render the  
21 services performed by the City; and

22  
23 WHEREAS, pursuant to such authority, the City has adopted and enacted a Sales  
24 Tax Code (the “Code”), under which City sales tax is levied on all sales and purchases of tangible  
25 personal property or taxable services at retail unless prohibited, as applicable to the provision of  
26 this Ordinance, under the Constitution or laws of the United States; and

27  
28 WHEREAS, the United States Supreme Court in *South Dakota v. Wayfair*, 138 S.  
29 Ct. 2080 (2018), overturned prior precedent and held that a State is not prohibited by the  
30 Commerce Clause from requiring a retailer to collect sales tax based solely on the fact that such  
31 retailer does not have a physical presence in the State (“Remote Sales”); and

32  
33 WHEREAS, based upon such decision, the retailer’s obligation to collect Remote  
34 Sales is no longer based on the retailer’s physical presence in the jurisdiction by the Constitution  
35 or law of the United States, and the City’s Sales and Use Tax Code needs to be amended to clearly  
36 reflect such obligation consistent with said decision; and

37  
38 WHEREAS, the delivery of tangible personal property, products, or services into  
39 the City relies on and burdens local transportation systems, emergency and police services, waste  
40 disposal, utilities and other infrastructure and services; and

41  
42 WHEREAS, the failure to tax remote sales creates incentives for businesses to  
43 avoid a physical presence in the State and its respective communities, resulting in fewer jobs and  
44 increasing the share of taxes to those consumers who buy from competitors with a physical  
45 presence in the State and its municipalities; and

46  
47

1                   **WHEREAS**, it is appropriate for Colorado municipalities to adopt uniform  
2 definitions within their sales tax codes to encompass marketplace facilitators, marketplace  
3 sellers, and multichannel sellers that do not have a physical presence in the City, but that still  
4 have a taxable connection with the City; and

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6                   **WHEREAS**, the goal of adopting this ordinance is to join in on the simplification  
7 efforts of all the self-collecting home rule municipalities in Colorado; and

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9                   **WHEREAS**, this ordinance provides a safe harbor to those who transact limited  
10 sales within the City; and

11  
12                   **WHEREAS**, absent such amendment, the continued failure of retailers to  
13 voluntarily apply and remit sales tax owed on remote sales exposes the municipality to  
14 unremitted taxes and permits an inequitable exception that prevents market participants from  
15 competing on an even playing field; and

16  
17                   **WHEREAS**, the City adopts this ordinance with the intent to address tax  
18 administration, and, in connection with, establish economic nexus for retailers or  
19 vendors without physical presence in the State and require the retailer or vendor to collect and  
20 remit sales tax for all sales made within the marketplace.

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22  
23                   **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF**  
24 **THE CITY OF LITTLETON, COLORADO, THAT:**

25  
26                   **Section 1:**     Section 3-9-1-2, “Standardized Definitions” of the Littleton City  
27 Code is hereby amended by the deletion and addition of the following defined terms, to be inserted  
28 in alphabetical order, to read as follows:

29  
30 **ECONOMIC NEXUS:** means the connection between the City and any retailer who does not have  
31 a physical presence in the State of Colorado, which connection is established when the retailer  
32 meets any one of the following criteria:

33  
34                   (A) In the previous calendar year, the retailer has made retail sales of goods or services delivered  
35 into the State of Colorado exceeding the amount specified in C.R.S. § 39-26-102(3)(c), as amended,  
36 and the location at which property or a product is delivered or the service rendered is within the city;  
37 or

38                   (B) In the current calendar year, 90 days has passed following the month in which a retailer has  
39 made retail sales of goods or services delivered into the State of Colorado exceeding the amount  
40 specified in C.R.S. § 39-26-102(3)(c), as amended, and the location at which property or a product is  
41 delivered or the service rendered is within the city.

42  
43 **ENGAGED IN BUSINESS IN THE CITY:** means performing or providing services or selling,  
44 leasing, renting, delivering, or installing tangible personal property for storage, use or  
45 consumption within the city. Engaged in business in the city includes, but is not limited to, any

1 one of the following activities by a person:

2

3 (A) Directly, indirectly, or by a subsidiary maintains a building, store, office, salesroom,  
4 warehouse, or other place of business within the taxing jurisdiction;

5 (B) Sends one or more employees, agents or commissioned salespersons into the taxing  
6 jurisdiction to solicit business or to install, assemble, repair, service, or assist in the use of its  
7 products, or for demonstration or other reasons;

8 (C) Maintains one or more employees, agents or commissioned salespersons on duty at a  
9 location within the taxing jurisdiction;

10 (D) Owns, leases, rents or otherwise exercise control over real or personal property within the  
11 taxing jurisdiction; or

12 (E) Retailer or vendor in the state of Colorado that makes more than one delivery into the taxing  
13 jurisdiction within the twelve (12) month period – by means other than a common carrier, or

14 (F) Makes retail sales sufficient to meet the definitional requirements of economic nexus, as set  
15 forth in this Section 3-9-1-2.

16

17 **MARKETPLACE:** means a physical or electronic forum, including, but not limited to, a store, a  
18 booth, an internet website, a catalog, or a dedicated sales software application, where tangible  
19 personal property, taxable products, or taxable services are offered for sale.

20

21 **MARKETPLACE FACILITATOR:** means a person who:

22 (A) Contracts with a marketplace seller or multichannel seller to facilitate for consideration,  
23 regardless of whether or not the consideration is deducted as fees from the transaction, the sale of the  
24 marketplace seller’s tangible personal property, products, or services through the person’s  
25 marketplace;

26

27 1. Engages directly or indirectly, through one or more affiliated persons, in transmitting or  
28 otherwise communicating the offer or acceptance between a purchaser or consumer and  
29 the marketplace seller or multichannel seller; and

30

31 2. Engages directly or indirectly, through agreements or arrangements with third parties,  
32 collects payment from the purchaser or consumer on behalf of the seller.

33

34 (B) “Marketplace Facilitator” does not include a person that exclusively provides internet  
35 advertising services or lists products for sale, and that does not otherwise meet this definition.

36

37 **MARKETPLACE SELLER:** means a person, regardless of whether or not the person has a  
38 physical presence in the State of Colorado, which has an agreement with a marketplace facilitator  
39 and offers for sale tangible personal property, products, or services through a marketplace owned,  
40 operated, or controlled by a marketplace facilitator.

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2 MULTICHANNEL SELLER: means a retailer that offers for sale tangible personal property,  
3 commodities, or services through a marketplace owned, operated, or controlled by a marketplace  
4 facilitator, and through other means.

5 RETAILER OR VENDOR: means any person selling, leasing, renting, or granting a license to  
6 use tangible personal property or services at retail. "Retailer" shall include, but is not limited  
7 to, any:

8 (A) Auctioneer;

9 (B) Salesperson, representative, peddler or canvasser, who makes sales as a direct or indirect  
10 agent of or obtains such property or services sold from a dealer, distributor, supervisor or employer;

11 (C) Charitable organization or governmental entity which makes sales of tangible personal  
12 property to the public, notwithstanding the fact that the merchandise sold may have been acquired  
13 by gift or donation or that the proceeds are to be used for charitable or governmental purposes;

14 (D) Retailer-contractor, when acting in the capacity of a seller of building supplies,  
15 construction materials, and other tangible personal property;

16 (E) A marketplace facilitator, marketplace seller, or multichannel seller.

17  
18 **Section 2:** Section 3-9-1 of the Code is hereby amended by the addition of the  
19 following new subsection 8:

20  
21 Section 3-9-1-8: Marketplace Sales.

22 (A) *Obligation to collect tax.*

23 1. A marketplace facilitator engaged in business in the city is required to collect and  
24 remit sales tax on all taxable sales made by the marketplace facilitator, or facilitated  
25 by it for marketplace sellers or multichannel sellers to customers in the city,  
26 whether or not the marketplace seller for whom sales are facilitated would have  
27 been required to collect sales tax had the sale not been facilitated by the marketplace  
28 facilitator.

29 2. A marketplace facilitator shall assume all the duties, responsibilities, and liabilities  
30 of a retailer under this title. Marketplace facilitators shall be liable for the taxes  
31 collected from marketplace sellers or multichannel sellers. The City may recover  
32 any unpaid taxes, penalties, and interest from the marketplace facilitator that is  
33 responsible for collecting on behalf of marketplace sellers or multichannel sellers.

34 3. The liabilities, obligations, and rights set forth under this title are in addition to any  
35 duties and responsibilities of the marketplace facilitator imposed under this title, if  
36 it also offers for sale tangible personal property, products, or services through other  
37 means.

1           4.       A marketplace seller shall be subject to all of the same licensing, collection,  
2                   remittance, filing and recordkeeping requirements as any other retailer under this  
3                   Article for retail sales made on its own behalf and not facilitated by or through a  
4                   licensed marketplace facilitator in a marketplace.

5 (B)   *Marketplace seller relief.* A marketplace seller, with respect to sales of tangible personal  
6           property, products, or services made in or through a marketplace facilitator’s marketplace,  
7           does not have the liabilities, obligations, or rights of a retailer under this title, if the  
8           marketplace seller can show that such sale was facilitated by a marketplace facilitator:  
9

10           1.       With whom the marketplace seller has a contract that explicitly provides that the  
11                   marketplace facilitator will collect and remit sales tax on all sales subject to tax under  
12                   this article; or  
13

14           2.       From whom the marketplace seller requested and received in good faith a certification  
15                   that the marketplace facilitator is registered to collect sales tax and will collect sales  
16                   tax on all sales subject to tax under this article made in or through the marketplace  
17                   facilitator’s marketplace.  
18

19 (C)   *Auditing.* With respect to any sale, the city shall solely audit the marketplace facilitator for  
20           sales made by marketplace sellers or multichannel sellers but facilitated by the  
21           marketplace. The city will not audit or otherwise assess tax against marketplace sellers or  
22           multichannel sellers for sales facilitated by a marketplace facilitator.  
23

24 (D)   *No retroactive application.* The obligations to collect and remit the sales and use tax  
25           required by this title are applicable at the effective date of the ordinance from which this  
26           section was derived.  
27

28                   **Section 3:**   Severability. If any part, section, subsection, sentence, clause or  
29           phrase of this ordinance is for any reason held to be invalid, such invalidity shall not affect the  
30           validity of the remaining sections of this ordinance. The City Council hereby declares that it would  
31           have passed this ordinance, including each part, section, subsection, sentence, clause or phrase  
32           hereof, irrespective of the fact that one or more parts, sections, subsections, sentences, clauses or  
33           phrases may be declared invalid.  
34

35                   **Section 4:**   Repealer. All ordinances or resolutions, or parts thereof, in conflict  
36           with this ordinance are hereby repealed, provided that this repealer shall not repeal the repealer  
37           clauses of such ordinance nor revive any ordinance thereby.  
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41                   INTRODUCED AS A BILL at a regularly scheduled meeting of the City Council  
42           of the City of Littleton on the 20<sup>th</sup> day of October, 2020, passed on first reading by a vote of 7  
43           FOR and 0 AGAINST; and ordered published by posting at Littleton Center, Bemis Library, the

1 Municipal Courthouse and on the City of Littleton Website.

2 PUBLIC HEARING on the Ordinance to take place on the 17<sup>th</sup> day of November,  
3 2020, in the Council Chamber<sup>1</sup>, Littleton Center, 2255 West Berry Avenue, Littleton, Colorado,  
4 at the hour of 6:30 p.m., or as soon thereafter as it may be heard.

5 PASSED on second and final reading, following public hearing, by a vote of \_\_\_\_  
6 FOR and \_\_\_\_ AGAINST on the 17<sup>th</sup> day of November, 2020, and ordered published by posting at  
7 Littleton Center, Bemis Library, the Municipal Courthouse and on the City of Littleton Website.

8 ATTEST:

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10 \_\_\_\_\_

11 Colleen L. Norton

12 CITY CLERK

13

14 APPROVED AS TO FORM:

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16 \_\_\_\_\_

17 Reid Betzing

18 CITY ATTORNEY

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24 <sup>1</sup> Due to COVID19, the City of Littleton is providing virtual coverage of city council meetings to protect the health of  
25 citizens, council members and staff. Meetings will not be held in the council chamber until further notice.

\_\_\_\_\_  
Jerry Valdes

MAYOR

