

Council Agenda Summary

February 2, 2021

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Title:

Public hearing and final reading of an ordinance amending Chapters 4.04 and 4.08 of the Code of the City of Greeley regarding Economic Nexus and the obligation of remote sellers to collect and remit sales tax

Summary:

This ordinance modifies the City municipal code to clarify the City's legal authority to collect taxes from large-volume remote retailers, vendors, and marketplace facilitators with economic nexus in the jurisdiction. The ordinance adds new definitions to the municipal code and provides clear guidance for these large-scale remote businesses engaged in business in the City. This ordinance was introduced at the January 19, 2021 Council meeting.

Fiscal Impact:

Does this item create a fiscal impact on the City of Greeley?	No
If yes, what is the initial, or, onetime impact?	
What is the annual impact?	
What fund of the City will provide Funding?	
What is the source of revenue within the fund?	
Is there grant funding for this item?	N/A
If yes, does this grant require a match?	
Is this grant onetime or ongoing?	
Additional Comments:	

Legal Issues:

This ordinance was drafted in response to the U.S. Supreme Court's decision in *Wayfair v. South Dakota*, 138 S.Ct. 2080 (2018). In that case, the Court held that sellers who engage in a significant quantity of business within a state may be required to collect and remit taxes despite not having a physical presence in the state. In essence, the decision allowed local taxing jurisdictions such as Greeley to collect sales tax from remote retailers who had previously asserted exemption from local sales tax due to their remote status. Exemption from taxation had given these internet retailers an unfair competitive advantage over local small businesses and deprived municipalities such as Greeley of much-needed revenue. Under *Wayfair*, local sales tax regimes must still avoid being unduly burdensome on interstate commerce. To prevent any undue hardship on remote businesses, this ordinance provides guardrails to protect small out-of-state retailers, adopts uniform definitions in conformity with other Colorado

municipalities, and is adopted with the intention that the City will join a single point of remittance portal through the state later this year.

Consideration of this matter is a legislative process which includes the following public hearing steps:

- 1) City staff presentation (if requested)
- 2) Council questions of staff
- 3) Public input (hearing opened, testimony - up to three minutes per person, hearing closed)
- 4) Council discussion
- 5) Council decision

Other Issues and Considerations:

The ordinance will update the City's sales tax code to reflect current case law, bringing clarity for both the City's finance department and high-volume remote retailers, marketplace facilitators, and vendors operating within the City of Greeley as to their sales tax obligations. The model upon which the ordinance is based was developed by tax professionals working with the Colorado Municipal League and has been adopted by almost every major Colorado municipality. The proposed modification to the municipal code is not a tax policy change subject to TABOR restrictions.

Applicable Council Priority and Goal:

A Dynamic and Resilient Economy: In 2040, Greeley is a community of choice for forward-thinking commerce supporting a diverse, vibrant, and resilient economy. We incubate small local business and draw national and international industrial leaders. Our economy supports and sustains an attractive standard of living by providing a healthy continuum of employment opportunities for its residents. Further, our work environment fully complements and capitalizes on our world-class educational system.

Decision Options:

- 1) Adopt the ordinance as presented; or
- 2) Amend the ordinance and adopt as amended; or
- 3) Deny the ordinance; or
- 4) Continue consideration of the ordinance to a date certain.

Council's Recommended Action:

A motion to adopt the ordinance and publish with reference to title only.

Attachments:

Ordinance

Memo to Council

PowerPoint Presentation