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Proposed Municipal Code Revisions for Marketplace Facilitator Language



Purpose of the Ordinance

- A recent United States Supreme Court case has made it possible for the City to continue to collect sales tax from high-volume internet retailers such as Amazon so long as certain guardrails are in place.
- Previously, some remote sellers argued they were largely exempt from local sales tax, giving them an unfair competitive advantage over local small businesses and depriving the City of much-needed revenue.
- This ordinance will bring clarity to the City's sales tax code for remote retailers and bring the code into conformity with other municipalities such as Denver, Fort Collins, Pueblo, Longmont and Colorado Springs.



Legal Background

- In 2018, the US Supreme Court issued *South Dakota v. Wayfair*, 138 S.Ct. 2080 (2018):
 - The Court ruled that states may charge tax on purchases made from out-of-state sellers, even if the seller does not have a physical presence in the taxing state.
 - Provided a path for states and municipalities to adopt language regulating remote retailers, who had previously avoided local sales taxes despite their reliance on local infrastructure (i.e. streets and roads).
 - The Court indicated that taxation of out-of-state retailers was not unconstitutional in part because SD had several protections in place that removed the burden on interstate commerce, including a safe harbor for those who do minimal transactions in the state (a threshold), a clause eliminating taxes be paid retroactively, a state level tax administration, and standard definitions.

Greeley's Response

- Here in Colorado, the sales tax system is more complicated than in South Dakota, as there are 72 individual home rule municipalities who each self-collect their own sales tax.
- This ordinance, based upon a CML model drafted by tax experts, clarifies which remote sellers must now remit sales tax to Greeley under *Wayfair* to clearly include large remote retailers and vendors of services like Airbnb.
- To prevent any undue hardship on high volume remote businesses, it provides guardrails to exclude 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.



Definitions to be Added

- Marketplace Facilitator
 - 3rd party Sellers, who bring Vendors & Buyers together
 - Amazon, EBay, Etsy, Airbnb
- Marketplace Seller
 - Seller who owns their product
 - Nike, Apple
- Multi-Channel Seller
 - Seller who may market through multiple avenues, as in: Brick & Mortar, Online, Email, Phone, Mail, Social Media, etc.
 - Walmart, Target



Greeley Sales Tax Departmental Goals

- Ensure compliance, and to make sure there is a level playing field for all retailers
 - Local, remote, & online
- Taking part in an initiative already adopted and well received by the State and many other Colorado municipalities
- Keeping up on current business trends as businesses moves more toward a remote/online presence





Questions?

