

**CITY OF LAFAYETTE, COLORADO**

**ORDINANCE NO. 16, Series 2021**

**INTRODUCED BY: COUNCILOR TIM BARNES**

**AN ORDINANCE OF THE CITY COUNCIL OF LAFAYETTE, COLORADO  
AMENDING CHAPTER 110 OF THE CODE OF ORDINANCES, CITY OF  
LAFAYETTE, COLORADO REGARDING SALES AND USE TAX  
LICENSES AND ECONOMIC NEXUS AND THE OBLIGATION OF  
REMOTE SELLERS TO COLLECT AND REMIT EXCISE TAX ON  
LODGING SERVICES**

**WHEREAS**, the City of Lafayette, Colorado, (the “City”), 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 the City and is necessary to raise revenue with which to conduct the affairs and render the services performed by the City; and

**WHEREAS**, pursuant to such authority, the City has adopted and enacted, as Article III of Chapter 110 of the Code of Ordinances, City of Lafayette, Colorado, a Sales and Use Tax Code (the “Code”), under which City 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**, pursuant to such authority, the City has adopted and enacted, as Article V of Chapter 110 of the Code of Ordinances, City of Lafayette, Colorado, under which an excise tax is levied on all taxable lodging services at retail unless prohibited, as applicable to the provision of this Ordinance, under the Constitution or laws of the United States; and

**WHEREAS**, based upon the United States Supreme Court decision in *South Dakota v. Wayfair*, 138 S.Ct. 2080 (2018), the retailer’s obligation to collect and remit excise tax due and owing on remote sales of lodging services 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 code provisions relating to the excise tax on lodging services 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 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 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 unremitting taxes and permits an inequitable exception that prevents market participants from competing on an even playing field; and

**WHEREAS**, City Council wishes to amend certain provisions of Chapter 110 of the Code of Ordinances, City of Lafayette, Colorado to address tax administration, and, in connection with, establish economic nexus for retailers or vendors of lodging services without physical presence in the State and require such retailers to collect and remit the excise tax levied pursuant to Article V of Chapter 110 for all sales made within the marketplace; and

**WHEREAS**, City Council also believes these amendments will increase the effectiveness of the City's Sales and Use Tax Code with regard to licensing regulations and their underlying goals.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LAFAYETTE, COLORADO, AS FOLLOWS:<sup>1</sup>**

Section 1. Subsection 110-36(a), "Title; intent," of the Code of Ordinances, City of Lafayette, Colorado is amended to read as follows:

(a) This article shall be known and cited as the city ~~retail~~ sales and use tax ordinance.

Section 2. Section 110-37, "Definitions," of the Code of Ordinances, City of Lafayette, Colorado is amended by the deletion and addition of the following defined terms:

~~*Retailer, vendor* means any person selling, leasing, renting or bartering tangible personal property or taxable services to the ultimate user or consumer or to a person operating a retail business known to the trade and public as such, at retail and not for resale in the city or elsewhere, except as provided under the occasional sales rule as herein defined. To prevent evasion and to provide for the more efficient administration, the "retailer" or "vendor" shall also include any salesman, representative, peddler, canvasser, or delivery person, who, individually or as an agent, directly or indirectly, of the dealer, distributor, supervisor or employer under whom he operates or from whom he obtains the tangible personal property sold by him, makes sales of tangible personal property subject to the tax imposed herein. In such event, the agent shall be~~

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<sup>1</sup> Additions to the current text of the Code are indicated by underlining, and deletions are indicated by ~~strikethrough~~

~~responsible for the collection and payment of the tax imposed. Whenever the principal of such agent refuses to become licensed as a vendor, he shall be in violation of this article.~~

*Occasional sale* means up to two (2) sales of taxable items during a twelve-month period through such means but not limited to garage sales, newspaper advertisements, etc. by residents of the city of previously owned personal property, not regularly used in a business. ~~It also includes sales of taxable items by charitable organizations recognized by the State of Colorado and/or the City of Lafayette as part of their fund-raising efforts.~~

Section 3. Section 110-81, "Mailing of notice," of the Code of Ordinances, City of Lafayette, Colorado is amended to read as follows:

All notices required to be given ~~to the retailer or vendor~~ under this article shall be in writing and, if mailed postpaid by certified or registered mail "return receipt requested" to ~~him~~ the person at ~~his~~ their last known address, shall be sufficient.

Section 4. Division 2 of Article III of Chapter 110 of the Code of Ordinances, City of Lafayette, Colorado is hereby repealed in its entirety and re-enacted to read as follows:

## **DIVISION 2 LICENSE**

### **Sec. 110-96. License required; period of license.**

(a) No person shall establish, engage or be engaged in the operation, conduct or carrying on of any trade, profession, business, privilege, occupation or calling of any kind within the city without having first obtained a sales and use tax license from the city in the manner provided in this article. If a person owns or operates more than one business or has more than one business location, a separate license for each business or location must be obtained. Each license shall be posted in a conspicuous place at the business location for which it is issued.

(b) All licenses issued pursuant to this article shall expire at midnight on December 31 of each odd-numbered year.

### **Sec. 110-97. Application.**

(a) Applications for a sales and use tax license shall be made to the finance director upon forms prescribed by the finance director. Applicants shall provide such documents as are reasonably requested by the finance director. It is unlawful for any person to make any false statement or representation in connection with any application for a license under this article.

(b) An application for renewal shall be submitted to the finance director on forms prescribed by the finance director prior to expiration of the existing license. Any application for renewal not timely filed shall be subject to a late charge of \$5.00 for each month or any portion of a month in which an application is not filed.

### **Sec.110-98. Exemptions.**

(a) Transient/temporary retailers shall be exempt from the provisions of this article if all of the following conditions are met:

- (1) The transient/temporary sale is held as a part of a special event conducted by a charitable organization which is licensed under the provisions of this chapter;
- (2) The charitable organizations conducting the special event sponsors the transient/temporary vendor participating in the event; and
- (3) The charitable organization collects taxes and files tax returns for sales by all transient/temporary vendors which it sponsors, as required in accordance with this chapter.

When the charitable organization does not choose to sponsor the transient/temporary vendors at its special event, the charitable organization shall furnish information provided by the finance director to all non-sponsored transient/temporary vendors participating in the event informing said vendors of the requirements of this article.

(b) Any retailer having only an economic nexus with the city and that has not established a physical presence in the city shall be exempt from the provisions of subsections 110-96(b) and 110-97(b); provided, however, such retailer furnishes in writing to the finance director any change to the name and address or contact information of the licensee or any other material change to the information submitted on an application for a license within 30 calendar days of such change.

(c) Any person making sales that qualify as occasional sales, as defined in this article.

#### **Sec. 110-99. Issuance.**

(a) Licenses shall be issued by the finance director and each license shall state the name and address of the licensee, and issuance and expiration date.

(b) The finance director shall not issue a sales and use tax license to any business that is proposing to conduct business activities that are in violation of any of the provisions of the Lafayette City Code.

#### **Sec. 110-100. Transferability.**

No license issued under the provisions of this article shall be transferable except that a person may move its place of business. Upon moving a place of business, a person shall notify in writing the finance director of such change.

#### **Sec. 110-101. License cancellation; revocation.**

(a) *Cancellation.* The finance director may cancel any license upon written notice from the taxpayer that the taxpayer is no longer engaged in business in the city.

(b) *Revocation.* The finance director may, after a reasonable notice and after a full hearing, revoke the license of any person found to have violated any provision of this chapter.

(c) *Appeal.* Any person may appeal an order revoking their license in district court, pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

**Sec.110-103. Duty to keep books and records.**

(a) Every person engaged in business in the city shall keep and preserve for at least three years after the date of the taxable transaction suitable records, to include but not limited to, numbered sales invoices or dated sales register tapes, purchase invoices, or other relevant source documents, which would allow the accurate determination of the tax due. The date of such taxable transaction for construction projects inside the city shall be the date that the final certificate of occupancy is issued.

(b) All such records of the taxpayer shall be open for examination and audit by the finance director. The taxpayer shall produce all such records, if required by the finance director, at a suitable time and place within the city, to be designated by the finance director. If it is found necessary by the finance director that the examination and audit of such records take place outside the city, the taxpayer shall reimburse the city for all costs and expenses incurred by the city to conduct the examination and audit.

Section 5. Section 110-122, “Items exempt from taxation,” of the Code of Ordinances, City of Lafayette, Colorado is amended by the addition of a new subsection (23) to read as follows:

(23) Occasional sales of tangible personal property, including those made by a charitable organization for fund-raising purposes; provided, however, the net proceeds are retained and used for a charitable purpose.

Section 7. Section 110-200, “Definitions,” of the Code of Ordinances, City of Lafayette, Colorado is amended by the deletion and addition of the following defined terms, to be inserted in alphabetical order, to read as follows:

*Economic Nexus* shall have the same meaning as defined in Section 110-37.

*Engaged in business in the city* shall have the same meaning as defined in Section 110-37.

*Lodging provider* shall mean any person furnishing lodging services or such provider's authorized agent. "Lodging provider" shall include, but is not limited to, any marketplace facilitator, marketplace seller, or multichannel seller.

*Marketplace* shall have the same meaning as defined in Section 110-37.

*Marketplace Facilitator* shall have the same meaning as defined in Section 110-37.

*Marketplace Seller* shall have the same meaning as defined in Section 110-37.

*Multichannel Seller* shall have the same meaning as defined in Section 110-37.

Section 8. Article V of Chapter 110 of the Code of Ordinances, City of Lafayette, Colorado is amended by the addition of a new section 110-215, to read as follows:

**Section 110-215. -Marketplace Sales.**

(a) *Obligation to collect tax.*

- (1) A marketplace facilitator engaged in business in the city is required to collect and remit the excise tax levied pursuant to this article on all taxable lodging transactions made by the marketplace facilitator, or facilitated by it for marketplace sellers or multichannel sellers to customers in the city, whether or not the marketplace seller for whom such lodging transactions are facilitated would have been required to collect such excise tax had the transaction not been facilitated by the marketplace facilitator.
- (2) A marketplace facilitator shall assume all the duties, responsibilities, and liabilities of a lodging provider under this article. Marketplace facilitators shall be liable for the excise taxes collected from marketplace sellers or multichannel sellers. The City 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 imposed under this article, if it also offers lodging services through other means.
- (4) A marketplace seller shall be subject to all of the same licensing, collection, remittance, filing and recordkeeping requirements as any other lodging provider under this article for taxable lodging transactions made on its own behalf and not facilitated by or through a licensed marketplace facilitator in a marketplace.

(b) *Marketplace seller relief.* A marketplace seller, with respect to sales or furnishing of lodging services made in or through a marketplace facilitator's marketplace, does not have the liabilities, obligations, or rights of a lodging provider under this article, if the marketplace seller can show that such lodging transaction was facilitated by a marketplace facilitator:

- (1) With whom the marketplace seller has a contract that explicitly provides that the marketplace facilitator will collect and remit the excise tax levied pursuant to this article on all lodging transactions subject to tax under this article; or
- (2) From whom the marketplace seller requested and received in good faith a certification that the marketplace facilitator is registered to collect the excise tax levied pursuant to this article and will collect such tax on all lodging transactions subject to tax under this article made in or through the marketplace facilitator's marketplace.

(c) *Auditing.* With respect to any sales of lodging services, the city shall solely audit the marketplace facilitator for sales made by marketplace sellers or multichannel sellers but facilitated by the marketplace. The city will not audit or otherwise assess tax against marketplace sellers or multichannel sellers for sales facilitated by a marketplace facilitator.

(d) *No retroactive application.* The obligations to collect and remit the excise tax required by this article are applicable at the effective date of the ordinance from which this section was derived.

Section 9. If any article, section, paragraph, sentence, clause or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

Section 10. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof is hereby repealed to the extent of such inconsistency or conflict.

Section 11. The repeal or modification of any provision of the Code of Ordinances, City of Lafayette, Colorado by this ordinance shall not release, extinguish, alter, modify or change in whole or in part any penalty, forfeiture or liability, either civil or criminal, which shall have been incurred under such provision. Each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions for enforcement of the penalty, forfeiture or liability, as well as for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered or made in such actions, suits, proceedings or prosecutions.

Section 12. This ordinance is deemed necessary for the protection of health, welfare and safety of the community.

Section 13. This ordinance shall become effective upon the latter of the 10<sup>th</sup> day following enactment, or the day following final publication of the ordinance.

INTRODUCED AND PASSED ON FIRST READING THIS 17<sup>th</sup> DAY OF AUGUST 2021.

PASSED ON SECOND AND FINAL READING AND PUBLIC NOTICE ORDERED THIS 9<sup>th</sup> DAY OF SEPTEMBER 2020.

CITY OF LAFAYETTE, COLORADO

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Jamie Harkins, Mayor

APPROVED AS TO FORM:

ATTEST:

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Mary Lynn Macsalka, City Attorney

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Lynnette Beck, City Clerk