

ORDINANCE NO. 5195

AN ORDINANCE AMENDING SECTIONS OF CHAPTER 3 OF THE GRAND JUNCTION MUNICIPAL CODE RELATED TO ECONOMIC NEXUS AND AMENDING ORDINANCE 4749 AS CODIFIED IN THE GRAND JUNCTION MUNICIPAL CODE AS 3.12.100(b)(1) TO CORRECT A SCRIVENER'S ERROR IN THAT SECTION

WHEREAS, the City of Grand Junction, Colorado, ("City") is a home rule municipality, organized and existing under Article XX, Section 6 of the Colorado Constitution, and the City Charter; and

WHEREAS, pursuant to Article XX, Section 6 of the Colorado Constitution and the City Charter, the City may pass ordinances and regulate local matters including but not limited to ordinances for the administration and collection of sales and use taxes, which is necessary to raise revenue to conduct the affairs and render the services performed by the City; and

WHEREAS, pursuant to such authority, the City has adopted and enacted a Sales and Use Tax Code ("Code"), under which City sales tax is levied on all sales and purchases of tangible personal property 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* 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 City's Code needs to be amended to clearly reflect such obligation consistent with the Supreme Court 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 participate 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 unremitted taxes and permits an inequitable exception that prevents market participants from competing on an even playing field; and

WHEREAS, the City Council 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.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION, COLORADO:

1. The foregoing Recitals are incorporated and adopted, and in accordance with and pursuant to this Ordinance, the City Council of the City of Grand Junction hereby amends the Grand Junction Municipal Code ("GJMC" or "Code") Code as follows: (additions to the Code are shown in bold type face and deletions are shown in strikethrough-type face)

Section 3.12.020 of the GJMC is amended to provide:

Engaged in Business in the City means performing or providing services or selling, leasing, renting, delivering, or installing tangible personal property, products, or services for storage, use or consumption, within the City. Engaged in Business in the City includes, but is not limited to, any one of the following activities by a person: (1) Directly, indirectly, or by a subsidiary maintains a building, store, office, salesroom, warehouse, or other place of business within the taxing jurisdiction; (2) Sends one or more employees, agents or commissioned sales persons into the taxing jurisdiction to solicit business or to install, assemble, repair, service, or assist in the use of its products, or for demonstration or other reasons; (3) Maintains one or more employees, agents or commissioned sales persons on duty at a location within the taxing jurisdiction; (4) Owns, leases, rents or otherwise exercises control over real or personal property within the taxing jurisdiction; or (5) retailer or vendor in the state of Colorado that makes more than one delivery into the taxing jurisdiction within a

twelve month period; or (6) Makes retail sales sufficient to meet the definitional requirements of economic nexus as set forth in this chapter.

2. Section 3.12.020 of the of the GJMC is hereby amended to add and include the following:

Economic Nexus means the connection between the City 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 City, 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), as amended; 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), as amended.

This definition does not apply to any person who is doing business in this state but otherwise applies to any other person.

3. The City Manager or his designee may delay utilizing the enforcement provisions of Chapter 3 of the Code in regards to retailers that only meet the economic nexus definition of engaged in business until adequate simplification measures, as determined by the City Manager in consultation with the Finance Director and City Attorney, are in place so as to not place an undue burden on interstate commerce.

4. Section 3.12.100(b)(1) of the of the GJMC is hereby amended to add the following (shown in relevant part only) to correct a scrivener's error. The remainder of the section is unchanged:

... The credit shall not exceed \$500.00 (five hundred dollars) per month for taxpayers filing monthly; \$1,500 (one thousand five hundred dollars) per month per quarter for taxpayers filing quarterly; and, \$6000 (six thousand dollars) per year for taxpayers filing annually. ...

5. All acts, orders, resolutions, ordinance, or parts thereof in conflict with this Ordinance are hereby repealed only to the extent of such conflict. This provision shall not be construed as reviving any resolution, ordinance, or part therefore heretofore repealed.


6. If any provision of this ordinance, or the application of such provision to any person or circumstance, is held to be unconstitutional, then the remainder of this ordinance, and the application of the provisions of such to any person or circumstance, shall not be

affected thereby. If any provision is found to be unconstitutional or illegal, such finding shall only invalidate that part or portion found to violate the law. All other provisions shall be deemed severed or severable and shall continue in full force and effect.

7. This Ordinance shall become effective and be applied when and after it becomes effective as provided by the City Charter.

INTRODUCED on first reading the 20th day of December 2023 and ordered published in pamphlet form.

ADOPTED on second reading the 3rd day of January 2024 and ordered published in pamphlet form.



Anna M. Stout
President of the City Council

ATTEST:

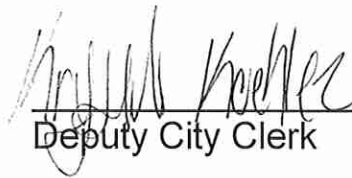

Amy Phillips
City Clerk



I HEREBY CERTIFY THAT the foregoing Ordinance, being Ordinance No. 5195 was introduced by the City Council of the City of Grand Junction, Colorado at a regular meeting of said body held on the 20th day of December 2023 and the same was published in The Daily Sentinel, a newspaper published and in general circulation in said City, in pamphlet form, at least ten days before its final passage.

I FURTHER CERTIFY THAT a Public Hearing was held on the 3rd day of January 2024, at which Ordinance No. 5195 was read, considered, adopted, and ordered published in pamphlet form by the Grand Junction City Council.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said City this 5th day of January 2024.


Deputy City Clerk

Published: December 22, 2023
Published: January 5, 2024
Effective: January 21, 2024

