

CITY OF GRAND JUNCTION, COLORADO

ORDINANCE NO. 5118

AN ORDINANCE AMENDING VARIOUS SECTIONS OF THE GRAND JUNCTION MUNICIPAL CODE (GJMC) ON SALES AND USE TAX AND LODGERS TAX BY ADDING TERMS AND DEFINITIONS TO THE GJMC RELATED TO MARKETPLACE FACILITATORS AND MARKETPLACE SELLERS

WHEREAS, the City of Grand Junction, Colorado, (the "City"), is a home rule municipality, organized and existing under Article XX, Section 6 of the Colorado Constitution, and the City's Charter; 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 a sales and use tax under by which City sales tax is levied on all sales and purchases of tangible personal property under the Constitution and the laws of the State and City; and

WHEREAS, the GJMC imposes a sales tax upon all retail sales and purchases of tangible personal property within the boundaries of the City, "including delivery within the boundaries of the City"; and

WHEREAS the GJMC imposes a use tax upon the initial privilege of storing, using, or consuming within the boundaries of the City any articles of tangible personal property purchased at retail from sources outside the corporate limits of the City; and

WHEREAS, pursuant to such authority, the City has adopted and enacted a tax under by which City sales tax is levied on all sales and purchases of tangible personal property under the Constitution and the laws of the State and City, and by the City Charter/Peoples Ordinances the GJMC imposes a tax on lodging; and

WHEREAS, on June 21, 2018, the United States Supreme Court ruled those businesses without a physical presence in a State can be required to collect and remit sales taxes on transactions within the jurisdiction; and

WHEREAS, while most on-line retailers currently collect and remit Grand Junction sales tax for goods sold and delivered within the City for sales of their own products but may not collect sales tax for sale of products carried by retailers who sell their products through another on-line seller (marketplace or multichannel sellers/retailers); and

WHEREAS, a marketplace seller is an individual or legal entity who has an agreement with a marketplace facilitator and offers for sale tangible personal property, commodities, services or lodging in or through the marketplace facilitator's marketplace, and a multichannel seller offers tangible personal property, commodities, services or lodging for sale through other means—such as their own store, or on their own website; and

WHEREAS, all businesses and retailers, both brick and mortar and on-line, that are in compliance with the City's sales and use tax provisions, seek fair and balanced participation by all businesses that sell products within the City without advantage to marketplace or multichannel sellers/retailers; and

WHEREAS, the City seeks to maintain procedural conformity with the State of Colorado's established sales tax definitions and requirements regarding on-line marketplace and multichannel sellers/retailers, as set forth within C.R.S. 39-26-102; and,

WHEREAS, the City adopts this ordinance with the intent to address tax administration, and, in connection therewith simplify the tax collection process by requiring marketplace facilitators to collect tax on sales that are facilitated on their websites; and

WHEREAS, the City intends for marketplace facilitators to collect tax only on sales and uses of products and services already taxable under the existing GJMC;

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

That the following sections of the Code are hereby amended as follows. Additions are shown in *italic face type* and deletions are shown in ~~striketrough~~ face type. An ellipse (...) indicates text not reproduced and the City Council intends the same not to be amended by this ordinance.

3.08.030 Definitions

...

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

Marketplace Facilitator means a person who:

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

(b) Engages directly or indirectly, through one or more affiliated persons, in transmitting or otherwise communicating the offer or acceptance between a purchaser and the marketplace seller or multichannel seller; or

(c) Either directly or indirectly, through agreements or arrangements with third parties, collects payment from the purchaser on behalf of the seller.

Marketplace Facilitator does not include a person that exclusively provides internet advertising services or lists products for sale, and that does not otherwise meet this definition.

Marketplace Seller means a person, regardless of whether or not the person is engaged in business in the city, which has an agreement with a marketplace facilitator and offers for sale tangible personal property, products, or services through a marketplace owned, operated, or controlled by a marketplace facilitator.

Multichannel Seller means a retailer that offers for sale tangible personal property, commodities, or services through a marketplace owned, operated, or controlled by a marketplace facilitator, and through other means.

...

Vendor means a person making sales of or furnishing lodging to a purchaser in the City. The term Vendor shall include, but is(are) not limited to, any selling, leasing, renting, or granting a license to use Lodging by a marketplace facilitator or a marketplace seller engaged in business in the City.

3.08.040(b) Payment of Tax and Filing of Reports. Every vendor making a sale to a purchaser in the City which sale is taxable under the provisions of this chapter shall, at the time of the sale, collect and pay to the Finance Director all tax funds collected by him during each calendar month not later than 20 days after the last day of said month

and each payment shall be accompanied by a report for said month. *With respect to sale of lodging made by marketplace sellers in or through a marketplace facilitator's marketplace, a marketplace facilitator has all liabilities, obligations, and rights under this chapter. Except as otherwise provided in 3.08.0101 et. seq. the provisions set forth in 3.12.0101 et. seq. which governs a marketplace facilitator or marketplace seller for purposes of collection of sales tax shall also apply to the lodger's tax except to the extent of conflict with the provisions of this chapter.*

3.12.020 Definitions

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

...

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

Marketplace Facilitator means a person who:

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

(b) Engages directly or indirectly, through one or more affiliated persons, in transmitting or otherwise communicating the offer or acceptance between a purchaser and the marketplace seller or multichannel seller; or

(c) Either directly or indirectly, through agreements or arrangements with third parties, collects payment from the purchaser on behalf of the seller.

Marketplace Facilitator does not include a person that exclusively provides internet advertising services or lists products for sale, and that does not otherwise meet this definition.

Marketplace Sales means

(1) A marketplace facilitator engaged in business in the city is required to collect and remit sales tax on all taxable sales 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 sales are facilitated would have been required to collect sales tax had the sale not been facilitated by the marketplace facilitator.

(2) A marketplace facilitator shall assume all the duties, responsibilities, and liabilities of a retailer under 3.12.020.

Marketplace facilitators shall be liable for the 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 chapter are in addition to any duties and responsibilities of the marketplace facilitator has under this chapter if it also offers for sale tangible personal property, products, or services through other means.

(4) A marketplace seller, with respect to sales of tangible personal property, products, or services made in or through a marketplace facilitator's marketplace, does not have the liabilities, obligations, or rights of a retailer under this chapter if the marketplace seller can show that such sale was facilitated by a marketplace facilitator:

- a. With whom the marketplace seller has a contract that explicitly provides that the marketplace facilitator will collect and remit sales tax on all sales subject to tax under this chapter; or*
- b. From whom the marketplace seller requested and received in good faith a certification that the marketplace facilitator is registered to collect sales tax and will collect sales tax on all sales subject to tax under this chapter made in or through the marketplace facilitator's marketplace.*

(5) If a marketplace seller makes a sale that is not facilitated by a licensed marketplace facilitator in a marketplace, the marketplace seller is subject to all of the same licensing, collection, remittance, filing and recordkeeping requirements as any other retailer.

With respect to any sale, 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 seller.

No obligation to collect the sales and use tax required by this chapter may be applied retroactively. Responsibilities, duties, and liabilities described in Section 4(A) of a marketplace facilitator, marketplace seller, or multichannel seller begin upon the earlier

of when they became licensed to collect the city's sales tax or when they became legally obligated to collect the city's sales tax under this a chapter.

Marketplace Seller means a person, regardless of whether or not the person is engaged in business in the city, which has an agreement with a marketplace facilitator and offers for sale tangible personal property, products, or services through a marketplace owned, operated, or controlled by a marketplace facilitator.

Multichannel Seller means a retailer that offers for sale tangible personal property, commodities, or services through a marketplace owned, operated, or controlled by a marketplace facilitator, and through other means.

...

Retailer or Vendor means any person selling, leasing, renting, or granting a license to use tangible personal property or services at retail. The terms Retailer or Vendor shall include, but is(are) not limited to, any:

...

(4) Retailer-contractor, when acting in the capacity of a seller of building supplies, construction materials, and other Tangible personal property.;

and

(5) *Marketplace facilitator, marketplace seller, or multichannel seller.*

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.

This ordinance is necessary to protect the public health, safety, and welfare of the residents of the city and covers matters of local concern.

This ordinance shall become effective on the first day of the month that is at least thirty (30) days after its effective date.

INTRODUCED ON FIRST READING, PASSED for publication in pamphlet form and setting a hearing for January 4, 2023, this 21st day of December 2022.

HEARD, PASSED and ADOPTED ON SECOND READING and ordered published in pamphlet form this 4th day of January 2023.



Anna M. Stout
President of the Council

ATTEST:



Amy Phillips
City Clerk



I HEREBY CERTIFY THAT the foregoing Ordinance, being Ordinance No. 5118 was introduced by the City Council of the City of Grand Junction, Colorado at a regular meeting of said body held on the 21st day of December 2022 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 4th day of January 2023, at which Ordinance No. 5118 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 6th day of January 2023.


Deputy City Clerk

Published: December 23, 2022
Published: January 06, 2023
Effective: February 05, 2023

