

# AVON TOWN COUNCIL MEETING AGENDA

TUESDAY, August 11, 2020

MEETING BEGINS AT 5:00 PM (ALL START TIMES LISTED IN RED ARE APPROXIMATE)

!! SETUP AS A VIRTUAL MEETING VIA ZOOM DUE TO COVID-19



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## AVON TOWN COUNCIL PUBLIC MEETING BEGINS AT 5:00 PM

1. **CALL TO ORDER AND ROLL CALL 5:00**
2. **APPROVAL OF AGENDA**
3. **DISCLOSURE OF ANY CONFLICTS OF INTEREST RELATED TO AGENDA ITEMS**
4. **PUBLIC COMMENT – COMMENTS ARE WELCOME ON ITEMS NOT LISTED ON THE FOLLOWING AGENDA**  
*Public comments are limited to three (3) minutes. The speaker may request an additional one (1) minute, which may be approved by a majority of Council.*
5. **BUSINESS ITEMS**
  - 5.1. Avon Town Council Sign-off on the updated CC4CA Policy Statement (Executive Assistant to the Town Manager Ineke de Jong) **(15 Minutes) 5:15**
  - 5.2. Consideration of Bang the Table Community Engagement Website Platform (Communications Manager Elizabeth Wood) **(30 Minutes) 5:30**
  - 5.3. **PUBLIC HEARING:** Second Reading Ordinance No. 20-09: Amendment of Section 3.08 of Avon Municipal Code to Provide for the Collection of Taxes on Remote Sales (Town Attorney Paul Wisor) **(15 Minutes) 6:00**
  - 5.4. **PUBLIC HEARING:** Second Reading Ordinance No. 20-10 Amending Section 12.04.380 of the Avon Municipal Code to Require the Installation of Conduit in Public Streets (Town Attorney Paul Wisor) **(15 Minutes) 6:15**
  - 5.5. Notice of Award for Avon Stormwater Quality Project (Town Engineer Justin Hildreth) **(10 Minutes) 6:30**
  - 5.6. Work Session: 5G Wireless Safety and Legal Review (IT Manager Robert McKenner and Town Attorney Paul Wisor) **(20 Minutes) 6:40**
  - 5.7. Work Session: Recreation Center Financial Update Report (Recreation Director John Curutchet) **(30 Minutes) 7:00**
  - 5.8. Approval of Intergovernmental Agreement 2020 Eagle County General Election (Town Clerk Brenda Torres) **(5 Minutes) 7:30**
  - 5.9. Discussion of Proposed Amendment to Avon Home Rule Charter (Town Council member Jake Wolf) **(30 Minutes) 7:35**
    - Presentation (Jake Wolf)
    - Council Questions
    - Public Input
    - Ballot Question Deadlines (Paul Wisor)
    - Council Discussion/Motion

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MEETING AGENDAS AND PACKETS ARE FOUND AT: [WWW.AVON.ORG](http://WWW.AVON.ORG)

AGENDAS ARE POSTED AT AVON TOWN HALL, AVON RECREATION CENTER, AVON ELEMENTARY AND AVON PUBLIC LIBRARY

IF YOU HAVE ANY SPECIAL ACCOMMODATION NEEDS, PLEASE, IN ADVANCE OF THE MEETING,

CALL TOWN CLERK BRENDA TORRES AT 970-748-4001 OR EMAIL [BTORRES@AVON.ORG](mailto:BTORRES@AVON.ORG) WITH ANY SPECIAL REQUESTS.

- 5.10. Approval of Minutes for July 28, 2020 Council Meeting (Town Clerk Brenda Torres) **(5 Minutes)**  
**8:05**

**6. WRITTEN REPORTS**

- 6.1. August 4<sup>th</sup> Planning and Zoning Commission Meeting Abstract (Planner David McWilliams)  
6.2. Confluence Operating Agreement (Finance Director Scott Wright)  
6.3. Update on Management of Richardson Ground Squirrels (Public Works Director Gary Padilla)  
6.4. 2020 Special Events Budget Update (CASE Manager Danita Dempsey)  
6.5. 2021 Community Grant Funding Update (Communications Manager Elizabeth Wood)  
6.6. Gallagher Ballot Question (Town Attorney Paul Wisor)  
6.7. Mayor Meeting Comment (Mayor Sarah Smith Hymes)

**7. Mayor and Council Comments & Meeting Updates (20 Minutes) 8:10**

**8. Adjourn 8:30**

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**Public Comments:** Council agendas shall include a general item labeled "Public Comment" near the beginning of all Council meetings. Members of the public who wish to provide comments to Council greater than three minutes are encouraged to schedule time in advance on the agenda and to provide written comments and other appropriate materials to the Council in advance of the Council meeting. The Mayor shall permit public comments for any action item or work session item and may permit public comment for any other agenda item, and may limit such public comment to three minutes per individual, which limitation may be waived or increased by a majority of the quorum present. **Article VI. Public Comments, Avon Town Council Simplified Rules of Order, Adopted by Resolution No. 17-05.**

TO: Honorable Mayor Smith Hymes and Council  
FROM: Ineke de Jong, Executive Assistant to the Town Manager  
RE: Council Sign-Off on the Updated CC4CA Policy Statement  
DATE: August 6, 2020



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**SUMMARY:**

The Town of Avon was contacted by Jacob Smith, who is the Executive Director of Colorado Communities for Climate Action (CC4CA).

The CC4CA board adopted a new 2020-2021 Policy Statement at the end of June. The 'adopted' new Policy Statement is attached in two versions, one showing tracked changes (substantive changes only) and the other a clean version.

"Ratification" is the final step in the process, where each member jurisdiction, including Town of Avon, uses whatever process they wish, to confirm they support the new Policy Statement. The deadline for ratification by each individual jurisdiction is August 30.

**"Support" doesn't necessarily mean you enthusiastically support every sentence and every position, but that you generally support the document and that you don't object to anything specific.** This falls very much in the "can you live with this" vein.

If council is interested in supporting this Policy Statement, staff will send CC4CA an email indicating that the Town of Avon supports the updated Policy Statement

**SAMPLE MOTION:**

"I move to approve and support the updated CC4CA Policy Statement and direct staff to email CC4CA to indicate Avon's support of the new Policy Statement".

**AVAILABLE ACTIONS:**

1. Approve the sample motion as drafted.
2. Approve the sample motion, with modifications.
3. Continue to August 25, 2020, or other meeting defined by Town Council.
4. Reject the motion if council is not interested in considering support.

**ATTACHMENTS:**

- A. CC4CA Advocacy Priorities for 2020-2021 - Adopted for Ratification
- B. CC4CA Advocacy Priorities for 2020-2021 - Adopted for Ratification (tracked changes)

## Attachment A



### **CC4CA 2020-2021 Policy Statement**

#### **Adopted by the Board of Directors on June 19, 2020 For Ratification By Each CC4CA Member Jurisdiction**

Colorado Communities for Climate Action is a coalition of local governments advocating for stronger state and federal climate policy. CC4CA's policy priorities for 2020-2021 reflect unanimous agreement among the coalition members on steps that should be taken at the state and federal level, often in partnership with local governments, to enable Colorado and its communities to lead in protecting the climate.

CC4CA generally focuses on legislative, regulatory, and administrative action, supporting efforts that advance the general policy principles and the detailed policy positions described below, and opposing efforts that would weaken or undermine these principles and positions.

#### **General Policy Principles**

The following general principles guide the specific policies that Colorado Communities for Climate Action supports:

Collaboration between state and federal government agencies and Colorado's local governments to advance local climate protection and resilience.

State and federal programs to reduce carbon pollution, including adequate and ongoing funding of those programs.

Analyses, financial incentives, infrastructure, and enabling policies for the development and deployment of clean energy technologies.

Locally driven and designed programs to support communities impacted by the clean energy transformation.

Prioritizing policies that put people at the center of decision-making, minimizing disparities in growing the clean economy, especially for historically marginalized communities, and enhancing equitable outcomes for all.

## Attachment A

### Policy Positions

Colorado Communities for Climate Action supports the following policy positions:

#### *Statewide Climate Strategies*

- 1. Reduce statewide carbon emissions consistent with or greater than the State of Colorado's 2019 codified goals.**
- 2. Secure accurate, frequent state greenhouse gas inventories and forecasts for Colorado which are made accessible to local governments and designed to be useful for stakeholders.**
- 3. Adopt a comprehensive market-based approach to reduce Colorado's greenhouse gas emissions that ensures the benefits accrue justly and equitably to impacted communities.**
- 4. Expand consideration of the environmental and health costs associated with the use of fossil fuels in making and implementing climate-related policy.**

#### *Local Climate Strategies*

- 5. Remove barriers and promote opportunities that allow counties and municipalities to maximize the deployment of local clean energy and climate-related strategies, including resilience-oriented strategies, while promoting affordable, accessible, and equitable delivery of reliable clean energy.**
- 6. Enable local governments to obtain the energy use and other data from utilities and state agencies that they need to effectively administer climate and clean energy programs.**
- 7. Support a comprehensive public process for evaluating retail and wholesale energy choice options for communities, informed by a broad variety of stakeholders.**
- 8. Support policies that promote the efficient use of energy in buildings.**
- 9. Provide for cost-effective and equitable policies, strategies, and practices that enable and accelerate beneficial electrification, reduce GHG emissions, improve quality of life, and make the electric grid more robust and resilient.**

## Attachment A

### *Energy Generation*

- 10. Accelerate retirement of existing fossil fuel generation facilities and their replacement with cost-effective and reliable clean energy supplies, through means that protect both utilities and consumers.**
- 11. Expand the ability of electric cooperatives to independently purchase local renewable electricity and take other steps to reduce carbon pollution.**
- 12. Modernize energy infrastructure to enhance community-based resilience and integrate distributed energy resources.**

### *Energy Efficiency*

- 13. Expand demand side savings from efficiency and conservation for all energy types.**
- 14. Support ongoing and sustainable funding for weatherization and renewable energy assistance to low-income households, including those from coal-dominated economies, so that all Coloradans have access to comfortable and affordable homes.**
- 15. Support ongoing and sustainable funding for programs that assist communities in transition from coal-dominated economies.**
- 16. Provide counties and statutory cities and towns with the same authority held by home rule cities to implement local energy conservation policies and programs.**

### *Transportation*

- 17. Ensure effective implementation of Colorado's vehicle emissions standards and other regulatory and programmatic activities designed to reduce carbon emissions from vehicles.**
- 18. Implement the 2020 Colorado Electric Vehicle Plan and other efforts to increase electrification of all motor vehicles.**
- 19. Increase funding and policy incentives for multimodal transportation and multimodal-friendly development statewide.**

## Attachment A

**20. Incentivize and select mobility alternatives, including movement of both people and goods, based on energy efficiency and environmental costs and benefits.**

### *Fossil Fuel Extraction Activities*

**21. Expand monitoring and reduction of the full life cycle emissions from fossil fuel extractive industry activities.**

### *Solid Waste Reduction*

**22. Grant CDPHE the authority to implement a plan for meeting Colorado's statewide and regional solid waste diversion goals.**

**23. Reduce the use of disposable/single-use products and promote the reuse of materials, including construction and demolition waste.**

**24. Foster infrastructure, policies, incentives, and programs for reuse, recycling, and composting.**

### *General*

**25. Encourage the adoption of climate-positive innovations like telecommuting, drawing from the lessons learned during the coronavirus pandemic, to substantially reduce air and carbon pollution.**

**26. Promote proactive programs and efforts that improve the resilience and adaptability of Colorado communities in the face of natural disasters and other major challenges associated with climate change, including ensuring that disaster stabilization and recovery efforts result in reduced carbon pollution and improved resilience to future disasters.**

**27. Optimize the potential for carbon sequestration through regenerative agriculture, improved soil health, and forest management.**

**28. Incorporate equity, accessibility, and just transition considerations into climate policies and actions.**

**29. Encourage investments that achieve climate-positive solutions, including policies that encourage entities investing public dollars to consider partial or full divestment as part of their investment strategies.**

**30. Maintain protections and authorities currently provided under environmental laws like the National Environmental Policy Act, the Clean Air Act, and the Clean Water Act.**

# Attachment B

## CC4CA 2020-2021 Policy Statement

**Adopted by the Board of Directors on June 19, 2020  
For Ratification By Each CC4CA Member Jurisdiction  
(Substantive Changes from the 2019-2020 Policy Statement are Displayed)**

Colorado Communities for Climate Action is a coalition of local governments advocating for stronger state and federal climate policy. CC4CA's policy priorities for 2020-2021 reflect unanimous agreement among the coalition members on steps that should be taken at the state and federal level, often in partnership with local governments, to enable Colorado and its communities to lead in protecting the climate.

CC4CA generally focuses on legislative, regulatory, and administrative action, supporting efforts that advance the general policy principles and the detailed policy positions described below, and opposing efforts that would weaken or undermine these principles and positions.

### General Policy Principles

The following general principles guide the specific policies that Colorado Communities for Climate Action supports:

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Locally driven and designed programs to support communities impacted by the clean energy transformation.

Prioritizing policies that put people at the center of decision-making, minimizing disparities in growing the clean economy, especially for historically marginalized communities, and enhancing equitable outcomes for all.



# Attachment B

## Policy Positions

Colorado Communities for Climate Action supports the following policy positions:

### *Statewide Climate Strategies*

1. Reduce statewide carbon emissions consistent with or greater than the State of Colorado's 2019 codified goals.
2. Secure accurate, frequent state greenhouse gas inventories and forecasts for Colorado which are made accessible to local governments and designed to be useful for stakeholders.
3. Adopt a comprehensive market-based approach to reduce Colorado's greenhouse gas emissions that ensures the benefits accrue justly and equitably to impacted communities.
4. Expand consideration of the environmental and health costs associated with the use of fossil fuels in making and implementing climate-related policy.

### *Local Climate Strategies*

5. Remove barriers and promote opportunities that allow counties and municipalities to maximize the deployment of local clean energy and climate-related strategies, including resilience-oriented strategies, while promoting affordable, accessible, and equitable delivery of reliable clean energy.
6. Enable local governments to obtain the energy use and other data from utilities and state agencies that they need to effectively administer climate and clean energy programs.
7. Support a comprehensive public process for evaluating retail and wholesale energy choice options for communities, informed by a broad variety of stakeholders.
8. Support policies that promote the efficient use of energy in buildings.
9. Provide for cost-effective and equitable policies, strategies, and practices that enable and accelerate beneficial electrification, reduce GHG emissions, improve quality of life, and make the electric grid more robust and resilient.

Deleted: 7. Support a public process for evaluating retail and wholesale energy choice options for local jurisdictions that is led by the state and informed by a broad variety of stakeholders.¶

# Attachment B

## *Energy Generation*

10. Accelerate retirement of existing fossil fuel generation facilities and their replacement with cost-effective and reliable clean energy supplies, through means that protect both utilities and consumers.
11. Expand the ability of electric cooperatives to independently purchase local renewable electricity and take other steps to reduce carbon pollution.
12. **Modernize energy infrastructure to enhance community-based resilience and integrate distributed energy resources.**

Deleted: Expanding distributed generation, energy storage, high levels of renewable energy generation (distributed and utility-scale), and appropriate technologies through grid modernization.

## *Energy Efficiency*

13. Expand demand side savings from efficiency and conservation for all energy types.
14. Support ongoing and sustainable funding for weatherization and renewable energy assistance to low-income households, **including those from coal-dominated economies**, so that all Coloradans have access to comfortable and affordable homes.
15. **Support ongoing and sustainable funding for programs that assist communities in transition from coal-dominated economies.**
16. Provide counties and statutory cities and towns with the same authority held by home rule cities to implement local energy conservation policies and programs.

## *Transportation*

17. Ensure effective implementation of Colorado's vehicle emissions standards and other regulatory and programmatic activities designed to reduce carbon emissions from vehicles.
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## Attachment B

20. Incentivize and select mobility alternatives, including movement of both people and goods, based on energy efficiency and environmental costs and benefits.

### *Fossil Fuel Extraction Activities*

21. Expand monitoring and reduction of the full life cycle emissions from fossil fuel extractive industry activities.

### *Solid Waste Reduction*

22. Grant CDPHE the authority to implement a plan for meeting Colorado's statewide and regional solid waste diversion goals.

23. Reduce the use of disposable/single-use products and promote the reuse of materials, **including construction and demolition waste.**

24. Foster infrastructure, policies, incentives, and programs for **reuse, recycling, and composting.**

### *General*

**25. Encourage the widespread adoption of telecommuting options and other climate-positive innovations, drawing from the lessons learned during the coronavirus pandemic, to substantially reduce transportation-related air and carbon pollution.**

26. Promote proactive programs and efforts that improve the resilience and adaptability of Colorado communities in the face of natural disasters and other major challenges associated with climate change, **including ensuring that disaster stabilization and recovery efforts result in reduced carbon pollution and improved resilience to future disasters.**

27. Optimize the potential for carbon sequestration through regenerative agriculture, improved soil health, and forest management.

28. Incorporate equity, accessibility, and just transition considerations into climate policies and actions.

Deleted: ↵



## Attachment B

29. Encourage investments that achieve climate-positive solutions, including policies that encourage entities investing public dollars to consider partial or full divestment as part of their investment strategies.

30. Maintain protections and authorities currently provided under environmental laws like the National Environmental Policy Act, the Clean Air Act, and the Clean Water Act.

**TO:** Honorable Mayor Smith Hymes and Council members  
**FROM:** Elizabeth Wood, Communications & Marketing Manager  
**RE:** Bang the Table Engagement HQ  
**DATE:** July 23, 2020



**SUMMARY:** The *2020 Strategic Plan* references Community Engagement as a top priority for the Avon Town Council with a goal of increasing community participation. Website enhancements provide a great opportunity to engage the public about a variety of projects, however our current website platform does not provide any method for two-way communication beyond emailing Town Council and Staff.

Staff researched different web-based platforms that allow for two-way communication. Specifically researched were municipalities that use Civic Plus as their website host and have a different platform for community engagement on their website. The Bang the Table Engagement HQ platform was widely used and recommended by a variety of municipalities as highlighted below.

**BACKGROUND:** Bang the Table (“BtT”) is an Australian-based company that has gained traction worldwide through their mission to form constructive relationships between communities and governments through public engagement. Their Engagement HQ platform is used by more than 570 organizations worldwide to deliver best-practice community and stakeholder engagement, providing accessible opportunities for a community to learn about and contribute to decisions that affect their daily lives.

The product offers a spectrum of engagement tools that can be combined and used for different types of projects. A brief description of each engagement tool is below:

**Forum:** A safe and interactive space for the community to discuss and debate pertinent issues. Multithreaded discussions enable deeper engagement for passionate stakeholders. This appears similar to a blog post, where people can write a post and others, including Town Staff, can respond.

**Ideas:** Similar to virtual post-it notes, this is a way for the community to share what inspires them and can include images or media for context. People can like and comment directly on ideas.

**Places:** Gather feedback and photos directly on a map with a single pin drop.

**Stories:** Help the community better understand and relate to a project. Stories can be interactive and can include images or media to support context.

**Guestbook:** Simple, streamlined, and moderated space for the community to upload comments. Comments are moderated to manage what appears publicly so the engagement stays on topic.

**Q & A:** Receive questions in a managed space that accommodates both public or private responses.

**Quick Poll:** Ask a single question and get immediate insight. Polls are an easy way to activate simple engagement with a single question.

**Surveys:** Encourage the community to voice their opinions using a variety of question types and rich media in a convenient and guided way.

In addition to the engagement tools listed above, the product offers a spectrum of informational tools that can be used by Town Staff to customize the content and resources available for each project and provide a highly visual experience. A complete list of informational tools is available on page 15 of Attachment A.

**PEER ANALYSIS:** Staff reached out to peer communities using Bang the Table Engagement HQ. A summary of their experience and feedback is below.

**Aspen:** The City of Aspen has used it as a blanket platform for all City projects with much success. They found the back-end reporting to be most advantageous, particularly being able to capture webpage visitors, clicks, and 'engaged' participants because it provided more depth in reporting to Boards and Council beyond how many folks took a survey. The City of Aspen reported that the available informational tools are very effective and require thoughtful planning to ensure the correct tools are being used for each specific project. They purchased the project for eight simultaneous planning code projects and then spread out for use across all departments. The platform is managed by the Community Development department with a counterpart in Communications. You can see it in action at <https://www.aspencommunityvoice.com/>.

**Vail:** The Town of Vail purchased Engagement HQ in December of 2018 specifically for the Vail Civic Area Master Plan project. They found the platform worked very well and have continued to use it for other projects, including the West Vail Master Plan. They find the most impressive features to be the back-end functions, and report that the layout and design flexibility are particularly impressive. The Communications department does most of the management for the platform. You can see it in action at <https://www.engagevail.com/>.

**Steamboat Springs:** The City of Steamboat Springs has been using the BtT Engagement HQ platform since November of 2017. They purchased the product for a specific 'visioning project' around the city-owned ski area, Howelsen Hill. Since then, it has been used for 18 projects and more departments become familiar with resource and gathering/meeting limitations due to COVID-19. The City has been most pleased with the ease of setting up projects that can be easily used and updated by project managers. They use the *survey, news feed, forum, quick poll* and *places* features the most. They also link to their social channels and website. The reporting is quick and provides a good snapshot of activity. In addition, they have found the support to be fantastic and any issues they've had have been quickly resolved. In terms of limitations, they've had difficulty making the BtT tools work when a 3<sup>rd</sup> party consultant has been brought into a project, and it was slow for community members to adopt the platform for engagement. The Communications department manages the platform to ensure consistency and other city standards are maintained, but project managers are involved. You can see it in action at <https://www.engagesteamboat.net/>.

Bang the Table provided an extensive list of additional reference communities, including [Boulder](#), [Chaffee County](#), [Golden](#) and [Mammoth Lakes](#) (California).

## **FINANCIAL CONSIDERATIONS:**

The annual base cost for the Engagement HQ platform is a \$12,000 with additional options and add-ons outlined on page 3 of Attachment A. Town Staff surveyed peer communities, and none recommended supplemental products. All peer communities surveyed only pay the annual base cost of \$12,000.

**RECOMMENDATION:** Town Staff recommends purchasing the BtT Engagement HQ platform in 2020 or 2021 to grow community engagement and participation through the Town of Avon website.

*Thank you,*

*Elizabeth Wood*

**ATTACHMENTS:**

Attachment A: Bang the Table Engagement HQ Proposal

**TO:** Honorable Mayor Smith Hymes and Council Members  
**FROM:** Paul Wisor, Town Attorney; Scott Wright  
Assistant Town Manager and Finance Director  
**RE:** Ordinance 20-09 – Amendment to Section 3.08 of the AMC  
To Provide for the Collection of Taxes on Remote Sales  
**DATE:** August 4, 2020

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**SUMMARY:** Ordinance 20-09 is provided to Council in order to assure the Town can collect sales taxes through a newly established statewide portal, and do so in compliance with certain standards set forth in a recent Supreme Court case.

**BACKGROUND:** In 2018, the United States Supreme Court issued its opinion in *South Dakota v. Wayfair*, holding states may impose taxes on sales made by sellers without a physical presence in the state in which the tax was imposed. The Court reasoned such a tax is permissible so long as the taxing system is not overly burdensome on the out-of-state sellers.

In response to *Wayfair*, the Colorado General Assembly adopted, and the Governor signed, SB 19-06, which provides for the establishment of a Sales and Use Tax Software system (“SUTS”). SUTS is an internet portal that provides for the collection of remittance of sales and use taxes (of course, Avon does not currently have a use tax). SUTS is intended, in light of *Wayfair*, to establish a less burdensome means by which sellers may remit sales and use taxes.

In order to assure it is able to collect sales taxes imposed on out-of-state sellers without a physical presence in Avon, the Town has entered into an agreement with the State to join SUTS.

**PROPOSED ORDINANCE:** In *Wayfair*, the Supreme Court made clear that any system that imposed sales taxes on out-of-state sellers without a physical presence in the taxing jurisdiction could not place an undue burden on the seller. SUTS goes a long way to easing perceived burdens on out-of-state sellers. However, Colorado, more so than other states, has a myriad of taxing jurisdictions with a variety of approaches to the imposition and collection of sales taxes, including statutory municipalities, special districts and self-collecting home rule municipalities. As such, out-of-state sellers are forced to comply with hundreds of regulatory approaches to sales tax collection.

A working group formed by the Colorado Municipal League and the Colorado Department of Revenue determined uniformity with respect to basic provisions in sales tax ordinances would reduce the burdens on out-of-state sellers, and therefore assure municipalities, including the Town, would be in compliance with *Wayfair* when utilizing SUTS. Therefore, CML and the Department of Revenue have strongly recommended all home rule municipalities utilizing SUTS adopt the provisions contained in Ordinance 20-09.

In order to enhance compliance with *Wayfair*, Ordinance 20-09 adopts certain uniform definitions:

- Economic Nexus
- Engaged in business in the Town
- Marketplace
- Marketplace facilitator
- Marketplace seller
- Multichannel seller



- Vendor

The ordinance also clarifies that third-party facilitators must provide for the remittance of taxes owed by out-of-state sellers.

**FINANCIAL CONSIDERATIONS:** Adoption of Ordinance 20-09 will not result in additional Town expenditures.

**RECOMMENDATION:** Staff recommends approval of Ordinance 20-09.

**PROPOSED MOTION:** "I move to approve on Second Reading Ordinance 20-09, amending Chapter 3.08 of the Avon Municipal Code to provide for the collection of taxes on remote sales."

*Thank you, Paul and Scott*

**ATTACHMENTS:**

Exhibit A – Ordinance 20-09

**Exhibit A**



**ORDINANCE NO. 20-20-09**

**AMENDING SECTION 3.08 OF THE AVON MUNICIPAL CODE TO PROVIDE FOR  
THE COLLECTION OF TAXES ON REMOTE SALES**

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

**WHEREAS**, pursuant to such authority, the Town has adopted and enacted a Sales Tax Code (the “Code”), under which Town 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**, the United States Supreme Court in *South Dakota v. Wayfair*, 138 S.Ct. 2080 (2018), overturned prior precedent and held that a State is not prohibited by the Commerce Clause of the United States Constitution 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 Code 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 Town 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 Town, but that still have a taxable connection with the Town;

**WHEREAS**, the goal of adopting this ordinance is to join in on the simplification efforts of all the self-collecting home rule municipalities in Colorado; and

## Exhibit A

**WHEREAS**, this ordinance provides a safe harbor to those who transact limited sales within the Town; 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 Town 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 and require the retailer or vendor to collect and remit sales tax for all sales made within the marketplace.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF AVON, COLORADO** the following:

**Section 1. Recitals Incorporated.** The above and foregoing recitals are incorporated by reference and adopted as findings and determinations of the Town Council.

**Section 2. Amendment to Section 3.08.010 - Words and phrases defined.** The following definitions contained in Section 3.08.010 are hereby amended to read as follows with ~~strike out~~ indicating language to be deleted and underline indicating language to be adopted:

Economic Nexus means the connection between the Town and a person not having a physical nexus with the State of Colorado, which connection is established when the person or marketplace facilitator makes retail sales into the Town, 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); 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).

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

*Engaged in Business in the Town* 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 Town. *Engaged in Business in the Town* includes, but is not limited to, any one (1) of the following activities by a person:

- a. Directly, indirectly, or by a subsidiary maintains a building, store, office, salesroom, warehouse, or other place of business within the taxing jurisdiction;
- b. Sends one (1) or more employees, agents or commissioned salespersons into the taxing

## Exhibit A

jurisdiction to solicit business or to install, assemble, repair, service, or assist in the use of its products, or for demonstration or other reasons;

- c. Maintains one (1) or more employees, agents or commissioned sales persons on duty at a location within the taxing jurisdiction;
- d. Owns, leases, rents or otherwise exercises control over real or personal property within the taxing jurisdiction;
- e. Makes more than one delivery into the taxing jurisdiction within a twelve-month period; or
- f. By any means other than a common carrier Makes retail sales sufficient to meet the definitional requirements of economic nexus as set forth in this section

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

- a. Means a person who:

(1) 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;

(2) 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; and

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

- b. 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 Town, 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. Retailer shall include, but is not limited to, any:

## Exhibit A

- a. Auctioneer;
- b. Salesperson, representative, peddler or canvasser, who makes sales as a direct or indirect agent of or obtains such property or services sold from a dealer, distributor, supervisor or employer;
- c. Charitable organization or governmental entity which makes sales of tangible personal property to the public, notwithstanding the fact that the merchandise sold may have been acquired by gift or donation or that the proceeds are to be used for charitable or governmental purposes;
- d. Retailer-contractor, when acting in the capacity of a seller of building supplies, construction materials, and other tangible personal property;
- e. Marketplace facilitator, marketplace seller, or multichannel seller.

**Section 3. Amendment to Section 3.08.020 – Sales tax levy.** Section 3.08.020 is hereby amended by the addition of the following new subsection (5):

(5) Upon the purchase price paid or charged upon all marketplace sales

(a)

(1) A marketplace facilitator engaged in business in the Town 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 Town, 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 or vendor as defined by Section 3.08.010. Marketplace facilitators shall be liable for the taxes collected from marketplace sellers or multichannel sellers. The Town 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 has under this article 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 article 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 article; 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 article 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..

## Exhibit A

(b) Auditing. With respect to any sale, the Town shall solely audit the marketplace facilitator for sales made by marketplace sellers or multichannel sellers but facilitated by the marketplace. The Town will not audit or otherwise assess tax against marketplace sellers or multichannel sellers for sales facilitated by a marketplace facilitator.

**Section 4.**     **No retroactive application.** No obligation to collect the sales and use tax required by this article may be applied retroactively. Responsibilities, duties and liabilities described in Section 5(a) of a marketplace facilitator, marketplace seller, or multichannel seller begin upon licensure or when the municipal sales taxes were first collected from taxable sales made to retail customers prior to licensure.

**Section 5.**     **Severability.** If any provision of this ordinance, or the application of such provision to any person or circumstance, is for any reason held to be invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable. The Town Council hereby declares that it would have passed this Ordinance and each provision thereof, even though any one of the provisions might be declared unconstitutional or invalid. As used in this Section, the term “provision” means and includes any part, division, subdivision, section, subsection, sentence, clause or phrase; the term “application” means and includes an application of an ordinance or any part thereof, whether considered or construed alone or together with another ordinance or ordinances, or part thereof, of the Town.

**Section 6.**     **Effective Date.** This ordinance shall become effective on the first day of the month that is at least thirty (30) days after date of its adoption.

**Section 7.**     **Codification of Amendments.** The codifier of the Town’s Municipal Code, Colorado Code Publishing, is hereby authorized to make such numerical and formatting changes as may be necessary to incorporate the provisions of this Ordinance within the Avon Municipal Code. The Town Clerk is authorized to correct, or approve the correction by the codifier, of any typographical error in the enacted regulations, provided that such correction shall not substantively change any provision of the regulations adopted in this Ordinance. Such corrections may include spelling, reference, citation, enumeration, and grammatical errors.

**Section 8.**     **Publication.** The Town Clerk is ordered to publish this Ordinance in accordance with Chapter 1.16 of the Avon Municipal Code.

*[SIGNATURE PAGE FOLLOWS]*

**Exhibit A**

**INTRODUCED AND ADOPTED ON FIRST READING AND REFERRED TO PUBLIC HEARING** on July 28, 2020 and setting such public hearing for August 11, 2020 at the Council Chambers of the Avon Municipal Building, located at One Hundred Mikaela Way, Avon, Colorado.

BY:

ATTEST:

\_\_\_\_\_

Sarah Smith Hymes, Mayor

\_\_\_\_\_

Brenda Torres, Town Clerk

ADOPTED ON SECOND AND FINAL READING on August 11, 2020.

BY:

ATTEST:

\_\_\_\_\_

Sarah Smith Hymes, Mayor

\_\_\_\_\_

Brenda Torres, Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_

Paul Wisor, Town Attorney