

ORDINANCE NO. 030, 2021
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING CERTAIN SECTIONS OF CHAPTER 25 OF THE CODE OF THE CITY OF
FORT COLLINS RELATING TO THE IMPOSITION, COLLECTION AND ENFORCEMENT
OF THE CITY'S SALES, USE AND LODGING TAXES

WHEREAS, Article XX, Section 6.g. of the Colorado Constitution grants to the City of Fort Collins, as a home rule municipality, all powers necessary to levy and collect taxes for municipal purposes, subject to any limitations in the Colorado Constitution; and

WHEREAS, on November 16, 1967, the City Council, in the exercise of its home rule taxing powers, adopted Ordinance No. 058, 1967, to levy, collect and enforce beginning on January 1, 1968, a sales and use tax on the purchase of tangible personal property sold at retail in the City and on certain taxable services provided in the City (the "Sales and Use Tax Code"); and

WHEREAS, the Sales and Use Tax Code is currently found in Chapter 25, Article III of the City Code, which has been significantly amended many times since its adoption in 1967; and

WHEREAS, Chapter 25, Article II, Division 2 of the City Code authorizes rebates of City property tax revenues to low-income elderly residents and disabled residents of the City, and the City Council desires to amend the City Code to eliminate the property tax rebate program; and

WHEREAS, on February 21, 1984, the City Council, in the exercise of its home rule taxing powers, adopted Ordinance No. 20, 1984, adding a new chapter to the City Code to levy, collect and enforce a three percent (3%) tax on the price of lodging accommodations provided in the City (the "Lodging Tax Code"); and

WHEREAS, the Lodging Tax Code is found in Chapter 25, Article IV of the City Code, as amended since its adoption in 1984; and

WHEREAS, City staff has reviewed the Sales and Use Tax Code and the Lodging Tax Code and has recommended revisions to clarify definitions and taxable transactions, to make clear that the sales tax exemption for lodging services is available only to natural persons, to create an exception to the sales tax license requirement for minor-operated businesses, to allow for written notice of enforcement matters to taxpayers via electronic mail, and other changes that may be characterized as clean-up items; and

WHEREAS, City Council hereby finds that amending the City Code as proposed in this Ordinance is in the best interests of the City and its taxpayers and promotes the health, safety and welfare of the community by providing for the accurate and efficient imposition, collection and enforcement of the City's taxes.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That the provisions of Chapter 25, Article II, Division 2 of the Code of the City of Fort Collins are hereby deleted in their entirety, and Sections 25-26 through 25-32 are reserved.

Section 3. That Section 25-46 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 25-46. Definitions.

...

Household shall mean collectively the applicant, applicant's spouse, and applicant's children by birth or adoption, step children, foster children and children under legal guardianship who reside with the applicant and any other person who the applicant may claim as a dependent on his or her federal income tax return. The City's determination shall be final with regard to eligibility as a household.

Income shall mean:

- (1) the gross income for the entire household from any and all sources, including but not limited to, rental real estate income, royalties, partnerships, S corporations, estates or trusts; and
- (2) plus any nontaxable income including, without limitation, individual retirement account distributions (not including rollovers), pensions and annuities, social security benefits, disability benefits, worker's compensation benefits and any other nontaxable income.

Section 4. That Section 25-48 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 25-48. Application for rebate.

Application for the sales tax rebate on food shall be made on forms to be provided by the City. In order to qualify for such rebate, the application must be filed with the City between August 1 and October 31 of each year, and shall be for the rebate of the taxes imposed and paid in the prior year. Only one (1) application shall be filed per household. The Financial Officer or their designee shall prepare, adopt and make available all forms necessary to apply for this rebate, including requirements for proof of income. The application shall contain a notice that willful misstatement, falsification or omission of material fact is a violation of this Section. The applicant shall attest the application and any affidavits required therewith under penalty of perjury.

Section 5. That Section 25-49 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 25-49. Qualifications.

In order to qualify for the sales tax rebate, all members of the applicant's household must have resided within the City or the City's Growth Management Area, as defined in § 1-2 and as amended, during the entirety of the rebate year for which the application is made. The applicant's household shall have a total annual income that does not exceed fifty (50) percent of the area median income for the applicable household size in the Fort Collins-Loveland metropolitan statistical area, up to a maximum household income of fifty (50) percent of the area median income for a household of eight (8), as most recently published by the United States Department of Housing and Urban Development as of August 1 of the year in which the tax to be rebated was imposed.

Section 6. That Section 25-50 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 25-50. Amount of rebate.

The rebate amount for the 2019 tax year will be sixty-five dollars (\$65.) per calendar year for each person in the qualified household not to exceed eight (8) household members. This amount of the rebate will be increased annually according to the Denver-Aurora-Lakewood Consumer Price Index for All Urban Consumers, as published by the Bureau of Labor Statistics.

Section 7. That Section 25-51 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 25-51. Payment.

The City shall make a single rebate payment to each qualified household for which an application has been properly filed by joint payment to adult members of the household and to parents or guardians on behalf of all children of the household. If a recipient dies prior to the rebate being received or cashed pursuant hereto, any check representing such rebate shall be null and void, and such rebate shall not become an asset of the decedent's estate. If the decedent is survived by a spouse who would be qualified as a recipient for such rebate and is not otherwise included on the joint payment, the City will honor an application for a rebate by such surviving spouse, even though the application is not timely made in accordance with the provisions of this Division. If there are multiple recipients on a check and a recipient dies prior to the rebate being received or cashed, the City shall reissue the rebate payment excluding the decedent.

Section 8. That Section 25-66 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 25-66. Qualifications.

In order to qualify for a rebate under the provisions of this Division, the following requirements must be met:

...

- (6) The use tax paid by the qualifying manufacturer must not have been the result of a retailer failing to collect City of Fort Collins sales tax as required by law.

Section 9. That Section 25-71 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 25-71. Definitions.

...

Food shall mean: food for domestic home consumption as defined in 7 U.S.C. § 2012(k) as amended, for purposes of the supplemental nutrition assistance program, or any successor program, as defined in 7 U.S.C. § 2012(t), as amended; except that food does not include prepared food or food for immediate consumption; carbonated water marketed in containers; chewing gum; seeds and plants to grow food; prepared salads and salad bars; packaged and unpackaged cold sandwiches; deli trays; and hot or cold beverages served in unsealed containers or cups that are vended by or through machines or non-coin-operated coin-collecting food and snack devices on behalf of a retailer.

...

Use shall mean the exercise for any length of time by any person within the City of any right, power or dominion over tangible personal property or taxable services when rented, leased or when purchased at retail from sources either within or without the City, from any person or retailer or used in the performance of a contract in the City whether such tangible personal property is owned or not owned by the taxpayer. *Use* also includes the withdrawal of items from inventory for consumption.

Section 10. That Section 25-73 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 25-73. Imposition of the sales tax and exemptions.

...

- (b) Taxable transactions and items. The sales tax shall apply, without limitation, as follows:

...

- (2) On the total amount due when the right to possession or use of any tangible personal property, product or service taxable under the terms of this Article is granted under a lease, hire, rental contract or grant of a license to use (including royalty agreements).

(3) In the case of retail sales involving the exchange of property, on the purchase price paid or charged, including the fair market value of the property exchanged at the time and place of the exchange, excluding, however, from the consideration or purchase price, the fair market value of the exchanged property, provided that such exchanged property is to be sold in the usual course of the retailer's business.

...

(12) Upon the purchase price paid for food, but only at the tax rate of two and twenty-five hundredths percent (2.25%) of the purchase price;

(13) Upon marketplace sales, pursuant to § 25-131;

(14) Upon all marijuana, marijuana products, paraphernalia and other tangible personal property used or sold at a medical marijuana licensed premises and retail marijuana stores; and

(15) Upon the services of an operator when furnished with the lease or rental of tangible personal property, except when such services are separately stated.

(c) Transactions and items exempt from the sales tax. The following shall be exempt from the sales tax:

...

(4) All sales of goods manufactured in the City and sold by the manufacturer thereof directly to the ultimate consumer when delivery of such goods is made by common, contract or commercial carrier or by conveyance of the retailer or the purchaser to a point outside the City for use outside the City;

...

(6) All sales to charitable organizations of tangible personal property or taxable services to be used in the conduct of the organization's regular activities to foster its religious or other expressed charitable purpose, provided that the organization obtains from the City an exempt organization license pursuant to § 25-94 and presents the license to the retailer at the time of the sale;

...

(11) All charges for the furnishing of a room or other accommodation by any person to another natural person who, for consideration and as a permanent resident, uses, possesses or has the right to use or possess that room or accommodation in a hotel, motel, inn, bed and breakfast residence, apartment hotel, lodging house, motor hotel, guest house, guest ranch, trailer coach, mobile home, auto camp, trailer court or park, dwelling unit, or any

similar establishment or accommodation pursuant to a written agreement for a period of thirty (30) consecutive days or more;

...

(13) All sales of tangible personal property sold in excess of fifteen cents (\$0.15) through a coin-operated device unless the sale shall be otherwise exempt as provided in this Article. Notwithstanding and provision in this Article regarding the requirement to separately state the tax, any retailer selling tangible personal property through a coin-operated device may include in the purchase price for the vended item the tax levied by this Article, but no such retailer shall advertise or hold out to the public in any manner, directly or indirectly, that such tax is not included as part of the sales price to the purchaser;

...

(16) All sales of construction materials if such materials are picked up by the purchaser and if the purchaser of such materials presents to the retailer a building permit or other documentation acceptable to the City evidencing that a local sales or use tax has been paid or is required to be paid;

...

Section 11. That Section 25-74 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 25-74. Imposition of the use tax and exemptions.

...

(b) Transactions and items exempt from the use tax. The use, storage, distribution or consumption in the City of the following are hereby exempted from the use tax:

...

(14) The storage of construction materials and construction materials picked up by the purchaser if the purchaser of such materials presents to the retailer a building permit or other documentation acceptable to the City evidencing that a local sales or use tax has been paid or is required to be paid;

...

(16) Goods manufactured in the City and sold by the manufacturer thereof directly to the ultimate consumer when delivery of such goods is made by common, contract or commercial carrier or by conveyance of the retailer or the purchaser to a point outside the City for use outside the City;

...

Section 12. That Section 25-91 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 25-91. Sales/use tax license required.

(a) Except as provided in § 25-97, no person shall engage in the business of selling at retail tangible personal property and taxable services subject to the tax imposed by this Article without first having obtained a license therefor, which license shall be granted and issued by the Financial Officer and shall be in full force and effect until revoked.

(b) Except as provided in § 25-97, no person shall use, store, distribute or consume any tangible personal property or taxable services subject to the tax imposed by this Article without first having obtained a license therefor, which license shall be granted and issued by the Financial Officer and shall be in full force and effect until revoked.

...

Section 13. That Section 25-94 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 25-94. Exempt organization license; application procedure.

(a) No charitable organization shall purchase tax free in the City or use in the City tangible personal property or taxable services without payment of the tax imposed by this Article unless the organization first obtains an exempt organization license from the Financial Officer and presents its license to the retailer before making a purchase, lease or use of the property or services.

...

Section 14. That the Code of the City of Fort Collins is hereby amended by the addition of a new Section 25-97 which reads in its entirety as follows:

Sec. 25-97. Exception to license requirements for a minor business.

(a) As used in this Article III, a "minor business" means any enterprise carried on for the purpose of economic gain or profit that is:

- (1) Operated by a child or children seventeen (17) years of age or younger;
- (2) Located in a neighborhood, defined as a geographical area within the City that is zoned for single-family or multi-family residential use only;

- (3) Sells tangible personal property at retail, including but not limited to food, lemonade, cold or hot tea, coffee or hot chocolate in single-use, disposable cups and articles for use by customers;
- (4) Operated no more than eighty-four (84) days total in a calendar year;
- (5) Operated no closer than two hundred (200) feet from a retailer licensed by the City selling the same or similar goods as the minor business; and
- (6) Operated in a manner that does not obstruct the public right-of-way.

“Minor business” does not include the act of employees rendering services to employers.

(b) Notwithstanding any other provisions of the Code of the City of Fort Collins and any rules and regulations promulgated thereunder, a person operating a minor business need not obtain any license or permit otherwise required under Chapter 25 of this Code.

Section 15. That Section 25-116 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 25-116. Collection of tax.

...

(b) Nothing herein contained shall be deemed to prohibit any retailer from selling malt, vinous or spirituous liquors by the drink or any retailer selling items through coin-operated vending machines from including in the purchase price for such drinks or vended items, respectively, any tax levied under this Article. The brackets and tax amounts designated in § 25-75 shall be used by such retailers in determining amounts to be included in such prices as provided herein. No such retailer shall advertise or hold out to the public in any manner, directly or indirectly, that the tax levied by this Article is not considered as an element in the purchase price to the consumer.

Section 16. That Section 25-121 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 25-121. Location guide available.

The Financial Officer shall make available to any requesting retailer a location guide showing the boundaries of the City. For transactions consummated on or after January 1, 1986, the requested retailer may rely on such location guide and any update available to such retailer in determining whether to collect a sales or use tax. No penalty shall be imposed or action for deficiency maintained against such a retailer who in good faith complies with the most recent location guide available.

Section 17. That Section 25-173 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 25-173. Coordinated audit.

...

(b) Within fourteen (14) days of receipt of notice of an intended audit by any municipality that administers its own sales tax collection, the taxpayer may provide to the Financial Officer of the City, by certified mail, return receipt requested, a written request for a coordinated audit indicating the municipality from which the notice of intended audit was received and the name of the official who issued such notice. Such request shall include a list of those Colorado municipalities utilizing local collection of their sales tax in which the taxpayer holds a current sales tax license and a declaration that the taxpayer will sign a waiver of any passage-of-time based limitation upon the City's right to recover tax owed by the taxpayer for the audit period.

...

Section 18. That Section 25-186 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 25-186. Failure to make return; estimate of taxes; notices; appeal; audit.

...

(b) The Financial Officer shall serve upon the delinquent taxpayer personally, by first-class mail or certified mail directed to the last address of the taxpayer on file with the City, or by electronic mail directed to the last such address on file with the City, written notice of such estimated taxes, penalty and interest. Such notice shall constitute a notice of determination, assessment and demand for payment and, which payment shall be due and payable within twenty-one (21) days from the date the notice is mailed.

(c) The Financial Officer may at any time within three (3) years of the date a tax is due, serve upon any taxpayer personally, by first-class mail or certified mail directed to the last address of the taxpayer on file with the City, or by electronic mail directed to the last such address on file with the City, a written notice of audit notifying the taxpayer that the Financial Officer will be conducting an audit of the taxpayer's books and records to determine the exact amount of any tax, penalty, interest, collection costs and other charges due. Within thirty (30) days of the date such notice is mailed or within such longer time period as permitted by the Financial Officer, the taxpayer shall make available to Financial Officer all of the taxpayer's relevant books and records requested by the Financial Officer for the audit. If as a result of the audit the Financial Officer determines the taxpayer owes the City any additional tax, penalties, interest, collection costs or other charges under this Article, the Financial Officer shall serve upon the taxpayer a notice of determination, assessment and demand for payment for such tax deficiency as provided in paragraph (b) above and payment shall be due and payable twenty-one (21) days from the date such notice is mailed.

...

Section 19. That Section 25-194 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 25-194. Enforcing the collection of taxes due.

(a) The Financial Officer may issue a warrant directed to any employee, agent or representative of the City or any sheriff of any county of the State, commanding such person to distrain, seize and sell any personal property in which the taxpayer has an ownership interest, except such property as is exempt from the execution and sale by any statute of the State, for the payment of tax due together with interest, penalties, collection costs and other charges thereon in the following circumstances:

...

(2) When assessed tax deficiency is not paid within twenty-one (21) days from the date of mailing of the notice of determination, assessment and demand for payment and no appeal from such notice has been docketed within twenty-eight (28) days after such notice in a court having jurisdiction, except that if the Financial Officer finds that collection of the tax deficiency will be jeopardized during such period, the Financial Officer may immediately issue a distraint warrant;

...

Section 20. That Section 25-218 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 25-218. Notices.

Except as otherwise expressly provided in this Article, all written notices required to be mailed, served or given to any taxpayer under the provisions of this Article shall be hand delivered, mailed by first class mail or certified mail, postage prepaid, addressed to such taxpayer at the last known address of the taxpayer on file with the City, or electronically mailed to such taxpayer at the last known such address on file with the City and shall be deemed to have been received by the taxpayer when so delivered or mailed.

Section 21. That Section 25-276 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 25-276. Failure to make return; estimate taxes; penalty; collection costs; notices; audit; appeal.

(b) The Financial Officer shall then serve upon the delinquent taxpayer a written notice of determination, assessment and demand for payment of such estimated taxes, penalties, interest, collection costs and other charges, which notice must be served either personally, by first class or certified mail directed to the last address of the taxpayer on file with the City, or electronically mailed to such taxpayer at the last known such address on file with the City. Payment of the assessment stated in the notice shall be due and payable by the taxpayer to the City within twenty-one (21) days from the date the notice is mailed.

...

Section 22. That Section 25-278 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 25-278. Enforcing the collection of taxes due.

(a) The Financial Officer may issue a warrant directed to any employee, agent or representative of the City or any sheriff of any county of the state, commanding such person to distrain, seize and sell any personal property in which the taxpayer has an ownership interest, except such property as is exempt from the execution and sale by any state statute, for the payment of lodging tax due together with interest, penalties, collection costs and other charges thereon in the following circumstances:

...

(2) When any assessed lodging tax deficiency is not paid within twenty-one (21) days from the date of mailing of the notice of determination, assessment and demand for payment and no appeal from such notice has been docketed within twenty-eight (28) days after such notice in a court having jurisdiction, except that if the Financial Officer finds that collection of the tax will be jeopardized during such period, the Financial Officer may immediately issue a distraint warrant;

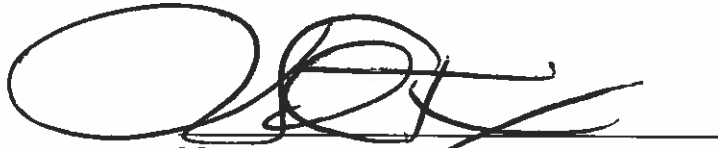
...

Section 23. That Section 25-283 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 25-283. Notices.

Except as otherwise expressly provide in this Article, all notices required to be given to any taxpayer under the provisions of this Article shall be in writing and hand delivered, mailed by prepaid first class or certified to the taxpayer's last-known address on file with the City, or electronically mailed to such taxpayer at the last known such address on file with the City, and such notice shall be deemed to have been received by the taxpayer when so delivered or mailed.

Introduced, considered favorably on first reading, and ordered published this 16th day of February, A.D. 2021, and to be presented for final passage on the 2nd day of March, A.D. 2021.



Mayor

ATTEST:



City Clerk



Passed and adopted on final reading on this 2nd day of March, A.D. 2021.



Mayor

ATTEST:



City Clerk

