

## SUBJECT

Items Relating to Sales, Use and Lodging Tax.

- A. First Reading of Ordinance No. 054, 2010, Amending Chapter 25, Article III of the City Code Concerning Sales and Use Tax.
- B. First Reading of Ordinance No. 055, 2010, Amending Section 25-252 of the City Code Relating to the Vendor Fee for Collecting and Remitting Lodging Tax.

## EXECUTIVE SUMMARY

Ordinance No. 054, 2010, modifies City Code to allow for use of a certified electronic address database for determining whether or not a customer is in the City, and it simplifies tax collection regarding definitions, waivers, and notice.

Ordinance No. 055, 2010, will eliminate the City's current vendor fee for lodging tax licensees. The proposed modification will result in approximately \$25,000 of ongoing additional revenue available for the promotion of convention and visitor activities and for cultural development and programming services. This change will not increase taxes or fees charged, but rather eliminate the amount of City lodging taxes that vendors are allowed to retain in exchange for the service they provide in collecting City taxes. Currently, vendors are allowed to retain 3% of the lodging tax collected.

## BACKGROUND / DISCUSSION

- A. **Ordinance No. 054, 2010 Amending Chapter 25, Article III of the City Code Concerning Sales and Use Tax.**

The amendment to Section 25-123 allows the businesses (taxpayers) that rely on the certified database to be "held harmless" in a future audit if they did not collect the City of Fort Collins sales tax due to an error in the address locator database. The Ordinance encourages the use of the database, which provides retailers with great accuracy as to which municipality they are making deliveries. Presently, some retailers are often unaware of where a delivery address is located, and City of Fort Collins tax is often not collected. For example, ABC sells a couch to a customer with a Fort Collins address. ABC enters the address into one of the two databases and it indicates what tax rate should be collected. The rate is determined by whether or not the address is located in the city limits of Fort Collins.

The City of Fort Collins Management Information Services department is currently working with the two database companies to confirm the accuracy of their data. The two companies are First American Spatial Solutions and Group 1 Software (part of Pitney Bowes).

In addition to the State of Colorado, the home rule cities that have adopted similar provisions in their tax codes include Arvada, Aurora, Boulder, Brighton, Denver, Longmont, Loveland, Northglenn, Silverthorne, Westminster, Wheat Ridge, and Woodland Park. The Colorado Municipal League is a proponent of the databases and has urged municipalities to adopt a sales and use tax locator/hold-harmless ordinance (Attachment 1).

The remaining portion of the Ordinance addresses areas of confusion in the Code regarding definitions, waivers, and notice.

- The definition of drugs dispensed in accordance with a prescription has been clarified.
- Section 25-186 has been clarified to indicate notices of assessment should be sent via first class mail or certified mail.
- Section 25-225 has clarified the statute of limitations ruling with regard to audits.

**B. Ordinance No. 055, 2010, Amending Section 25-252 of the City Code Relating to the Vendor Fee for Collecting and Remitting Lodging Tax**

The vendor fee is a service fee that is retained by sales tax licensees in recognition of their work in collecting the City's sales and use taxes. The fee was originally established to acknowledge that merchants incurred a cost for collecting lodging taxes, including accounting work and the completion of paper forms for remitting the lodging tax collection. With increasingly automated accounting processes, the cost incurred by vendors has greatly diminished as their "point of sale" software makes these calculations for the vendor. On November 3, 2009, Council adopted an ordinance to eliminate the vendor fee for sales and use tax licensees.

The current vendor fee for lodging tax licensees allows licensees to keep 3% of the lodging tax collected during each reporting period as a service fee for collecting the tax. The fee may be taken only if the return is filed and paid on time. There are 23 active lodging tax licenses. This Ordinance eliminates the vendor fee for lodging tax licensees.

This change has been discussed with Jim Clark, Executive Director of the Fort Collins' Convention and Visitors' Bureau. Mr. Clark agreed the change was consistent with elimination of the broader vendor fee that applied to sales and use tax collections.

### **FINANCIAL IMPACT**

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Ordinance No. 054, 2010 does not have any immediate financial impacts. As updates need to be made to the database to reflect future annexations to the City boundary, the Finance Department will coordinate with the City's Management Information Systems Department to validate the accuracy of the database. This will ensure that vendors relying upon these databases are calculating the appropriate taxes and collecting the appropriate amount on the behalf of the City.

Ordinance No. 055, 2010 amends the City Code to eliminate the vendor fee paid to merchants who collect City lodging tax. Elimination of the fee will result in approximately \$25,000 of ongoing additional revenue available for the promotion of convention and visitor activities and for cultural development and programming services.

### **SUSTAINABILITY: ECONOMIC, ENVIRONMENTAL AND SOCIAL IMPACTS**

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The economic impact of Ordinance No. 054, 2010 would be that vendors would be able to collect the appropriate tax at the time of sale rather than when an audit is performed. The City would be receiving the monies in a more timely manner.

The economic impact of Ordinance No. 055, 2010 would be additional funds would be available for use in promoting convention and visitor activities which ultimately could increase tourism and spending in the City.

### **STAFF RECOMMENDATION**

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Staff recommends adoption of these Ordinances on First Reading.

### **ATTACHMENTS**

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1. Memo from the Colorado Municipal League



1144 Sherman Street ● Denver, Colorado 80203-2207 ● Phone (303)831-6411, Fax (303)860-8175 ● [cml@cml.org](mailto:cml@cml.org)

## MEMORANDUM

**TO:** Sales Tax Committee Representatives for home rule municipalities that locally collect their sales tax

**FROM:** Geoff Wilson, General Counsel

**SUBJECT:** Request for Adoption of Model Address Locator/"Hold-harmless" Ordinance

**DATE:** February 9, 2007

*By this memorandum, we respectfully urge your municipality to adopt a sales and use tax address locator/"hold-harmless" ordinance similar to the enclosed ordinance, which was adopted by Denver earlier this year.*

### **Introduction**

Adoption of these ordinances by home rule municipalities that locally collect their sales tax will be the culmination of a multi-year tax simplification effort involving CML, the business community and the CML Sales Tax Committee (which includes a member representing each locally collecting home rule municipality). The "Address Locator Project" is described below. The project has been unanimously endorsed by CML's Executive Board and the CML Sales Tax Simplification Committee.

In a nutshell, these ordinances will hold retailers harmless if they fail to remit tax to the correct municipality, based *solely* on an error in a state-certified address locator database. The ordinances thus encourage use of these databases, which tell retailers with great accuracy in which municipality they are making a sale or, more often, a delivery. Presently, retailers are often unaware of where, exactly, a delivery address is located, and tax is often remitted to the wrong municipality.

Municipal tax officials have viewed use of address locator databases as a "win-win" proposition for municipalities and business owners alike. Business owners remit properly in the first place and avoid unpleasant news at audit time. Municipalities receive the correct tax right away, and are able to avoid forcing an unwitting retailer to remit a second time, or squabbling with another municipality over who is entitled to the money. Plus, this is important tax simplification that doesn't hurt municipalities and can be adopted without a TABOR election.

### **Colorado's Home Rule Municipal Tax System: Critical, but Complicated**

As you are no doubt aware, Colorado municipalities, compared to municipalities in other states, are quite dependant upon the sales tax. On average, Colorado municipalities derive nearly 73 percent of their general purpose tax revenues from the sales tax. By comparison, municipalities in other

states derive over 51 percent of their general purpose tax revenues from the property tax, and only 28 percent from sales and use taxes. Colorado has a fairly unusual sales tax system, in that home rule municipalities are permitted to locally collect their sales taxes, as well as locally control their tax base and tax rate (statutory municipalities in Colorado are permitted to set their own tax rate, and have limited discretion with respect to certain tax base elements). This tax structure reflects Colorado's traditional philosophy of "local control," in which local governments provide a far greater share of services than do municipalities in many states, and our revenue raising authority corresponds with this responsibility.

On the other hand, although it acts as an extremely effective revenue raising mechanism for Colorado municipalities, for retailers, Colorado's municipal tax system is widely regarded as one of the most complex in the country. This complexity is particularly apparent for vendors that operate in multiple jurisdictions, either because they have multiple fixed retail locations, or because they make deliveries into multiple jurisdictions. These vendors are generally required to obtain a license from and periodically remit tax directly to each jurisdiction in which they do business. Each of these jurisdictions may have its own tax rate and vendors may be affected by variations between jurisdictions in tax base (often due to varying tax exemptions or varying administrative interpretations of ordinance language). Multi-jurisdictional vendors must also be careful to correctly determine in which jurisdiction they are making a delivery; if they fail to remit to the correct jurisdiction, they may be subject to later assessment (this is where the address locator databases can help — more on that later). Additionally, vendors are subject to audit by each of the Colorado home rule, locally collecting municipalities in which they do business.

This makes the Colorado system different from the municipal sales tax systems of most other states. In most states, (as is the case with *statutory* jurisdictions here in Colorado) the municipal sales tax is state-collected, using the state tax base, and "shared back" with the municipalities. Like Colorado, many of these states permit local tax *rate* variation among state-collected jurisdictions. Colorado retailers often complain about all of the various local requirements with which they must contend, particularly in comparison with the tax systems in other states.

### **Being Proactive on Reasonable Tax Simplification**

All of this puts Colorado municipalities in a delicate position. On the one hand, the sales tax is our main revenue stream and we will fight, and have fought vigorously over the years, to protect the critical aspects of our home rule authority associated with it. On the other hand, retailers are our principal *partner* in collecting this tax, as it is levied on the *customer*, not the retailer.

Most thoughtful municipal officials acknowledge that we have a complicated tax system here in Colorado, and agree that there's no reason that this system should be any more complicated than it needs to be. We can defend *essential* complexity in the tax system; what we cannot defend is *unnecessary* complexity, or an unwillingness to discuss potential solutions. Failure to address reasonable tax simplification proposals is what coalitions in favor of eviscerating our tax authority are formed around. The League's philosophy over the years has thus been to actively support sales tax simplification, so long as this can be done without jeopardizing the viability of the sales tax as our principal revenue raising device.

The CML Sales Tax Simplification Committee is the principal forum in which home rule locally collecting municipalities discuss sales tax simplification initiatives among themselves. We have to agree among ourselves on any tax simplification measures that we decide to pursue. Fortunately,

the General Assembly is constitutionally precluded from telling us how to run our tax systems; over the years, we have had many occasions to be thankful for this fact. As described below, the address locator project is the product of several years of work involving the Sales Tax Simplification Committee, CCI, The Colorado Department of Revenue (DOR) and the business community.

### **Background on the Address Locator Project**

Under Colorado's "point of use" tax system, multi-jurisdictional vendors are required to collect tax on behalf of the jurisdictions in which they do business, either at fixed locations or where they make deliveries. A long-standing complaint of the business community, particularly in areas where jurisdictional boundaries are changing or where taxing jurisdictions abut one another, is that vendors find it exceedingly difficult to determine precisely in which taxing jurisdiction their delivery is made. All sorts of problems result. Vendors remit to the wrong jurisdiction. The vendor is later assessed following an audit and then finds that she is unable to secure a refund, the refund period having elapsed. So (in the hard case) a vendor who in good faith tried to do the right thing ends up "paying twice." Meanwhile, the municipalities involved bicker over who should get the money.

Informal discussions with municipal tax professionals and other interested parties (public and private) beginning in 2003 revealed a broad consensus that this was a significant complexity for the business community that we could do something about. Furthermore, unlike many other tax simplification proposals, a solution to this problem could be implemented without a TABOR election and without municipalities sacrificing tax revenue. Indeed, municipalities would benefit from receiving proper remittance in the first instance, thereby being able to avoid forcing vendors to "pay twice" or having to attempt to recover the money from the municipality that wrongfully received it.

Since 2003, several members of the CML Sales Tax Committee, Colorado Counties, Inc., DOR and representatives of the business community (including the Colorado Association of Commerce and Industry, the Colorado Retail Council, Qwest, Xcel Energy and American Furniture Warehouse), have been working to encourage use of "address locator" databases by multi-jurisdictional vendors. These databases would be certified by DOR as achieving a high degree of accuracy. Vendors relying on a certified database would then be "held harmless" in an audit, if they remitted to the wrong jurisdiction *solely* due to an error in the address locator database. The address locator project has been unanimously endorsed by the CML Sales Tax Committee and CML's Executive Board.

During its 2004 session, the General Assembly approved HB 04-1237, which put this structure in place at the state level. The legislation directed the Department of Revenue to develop regulations for review and certification of address locator databases and provides that vendors utilizing a state certified database would be held harmless as to *state collected* sales and use taxes (including those levied by statutory municipalities).

During the interim between the 2004 and 2005 sessions of the General Assembly, League staff and members of the Sales Tax Committee worked closely with DOR on the database certification regulations. The working group agreed that it was not practical for the state certification process to conduct individual field trials of *each* address locator database in *each* sales taxing jurisdiction in Colorado. Consequently, our focus was to develop a certification process that tested database accuracy on a sample of addresses that would provide an overall level of confidence to tax administrators and their elected officials.

A priority of municipal representatives in the state rulemaking was assuring that, in addition to the state's certification process, affected local governments could *directly* check addresses within their

jurisdiction against a database. The rules make it a condition of certification that local governments be afforded this opportunity, and further require that the database provider promptly make corrections to its database as to any errors discovered. Indeed, the final regulations provide that addresses may be tested against the database either individually or in batches.

### **The Next Phase: Municipal Ordinance Adoption**

HB 04-1237 was the first phase of a two-step process. In the second phase, similar "hold harmless" protection will be provided by home rule municipalities that locally collect their sales taxes, for vendors that utilize state certified address locator databases. It has been well understood that, for this to occur, each home rule, locally collecting municipality will need to adopt an ordinance enacting the "hold harmless" provision.

Denver is the state's largest locally collecting home rule municipality, and like most other Colorado home rule municipalities, it is heavily dependant upon sales tax revenues. Not surprisingly, therefore, Denver has developed a reputation over the years of having its legal staff and its revenue managers very highly focused on sales tax matters. For these reasons, we decided to work with Denver's attorneys and tax professionals on a hold-harmless ordinance for Denver that could then serve as a model for other home rule municipalities. The Denver City Council adopted the enclosed ordinance on March 20, 2006, and it was signed by the Mayor on March 21, 2006.

The next step in the address locator project will be to secure adoption of ordinances functionally identical to the Denver ordinance in home rule, locally collecting municipalities.

We would prefer that municipalities adopt an ordinance as close to the Denver model as possible; however, I do want to highlight one aspect of the Denver ordinance that you may, or may not, wish to include. Denver chose to include an automatic repealer in its ordinance, which requires the council to revisit the address locator issue in 2008 and readopt the ordinance. This is fine; however, another approach would be to simply leave the automatic repealer out of your ordinance. We have every confidence that this program will work out just fine, and be a "win-win" for all concerned. If, for whatever reason, your municipality ever wishes to stop participating in this program, your municipality can simply repeal its ordinance.

Your municipality's representative on the Sales Tax Committee will be the principal point of contact within your municipality for information concerning this project. Of course, please feel free to call me at the League or one of the following individuals for information concerning the operation of this ordinance.

- Laura Fisher, Revenue Officer, City of Boulder and Chair, CML Sales Tax Simplification Committee: 303.441.4017
- Robin Peterson, Manager, Tax and Licensing, Aurora, 303.739.7341.
- Lori Burns, Revenue Manager, City of Lakewood, 303.987.7631.

### **How the Address Locator/Hold-harmless Ordinance will Affect your Municipality**

While incentivizing retailers to use address-locator databases and thus dramatically increasing the likelihood that tax will be properly remitted to your municipality, the revenue loss possibility, due to the hold-harmless provision, is small.

To illustrate, in order for a retailer to be held harmless for tax owed to your municipality under this ordinance, all of the following must occur:

- (a) Vendor makes a delivery into your municipality.
- (b) Vendor uses a state certified database to locate the delivery address.
- (c) There is an error in the database.
- (d) Vendor fails to remit tax to your municipality *solely* because of the error in the database.
- (e) Your municipality selects this vendor for an audit.
- (f) Vendor is able to prove reliance on the version of the database current at the time of delivery.
- (g) Result: Vendor is held harmless *only* for the tax owed on the particular transaction affected by the error. For example, on a \$2500.00 couch, a 3 percent local tax would mean \$75.00 in lost tax revenue to your municipality.

This combination of circumstances is unlikely to occur with any regularity. In the first place, the databases certified by the State Department of Revenue are quite accurate. The Department of Revenue's database certification rules require that the databases achieve a 95 percent accuracy rate against the test sample; the accuracy of these databases is further borne out in tests run by Denver and other municipalities. Furthermore, municipal tax professionals have the opportunity check addresses within their jurisdiction against the databases for accuracy. This enables municipalities to assure that particularly important "high tax" addresses (e.g., construction sites or newly annexed areas) are properly coded in the databases, to guard against potential loss of revenue. Both the database providers and municipalities have a mutual interest in the accuracy of these databases; it is expected that, over time, cooperation between database providers and municipal officials will only enhance the already high degree of accuracy in these databases.

#### **Attachments**

In this packet you will find the following materials:

- A copy of the recently adopted City and County of Denver address locator/"hold-harmless" ordinance, to serve as a model for your jurisdiction.
- A list of the members of the CML Sales Tax Simplification Committee.

ORDINANCE NO. 054, 2010  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AMENDING CHAPTER 25, ARTICLE III OF THE CODE OF THE  
CITY OF FORT COLLINS CONCERNING SALES AND USE TAX

WHEREAS, under Article V, Section 22 of the City Charter, the Financial Officer is responsible for collecting, receiving and disbursing all money belonging to the City; and

WHEREAS, in the past three years initiatives have been undertaken at the state level to simplify tax collection in the State; and

WHEREAS, in the past several years City staff has identified several areas of confusion in the Code regarding definitions, waivers, and notice; and

WHEREAS, the Financial Officer and the City Manager recommend that the City Code be amended to allow for more simplified tax collection; and

WHEREAS, the City Council wishes to accept the recommendations of the Financial Officer and the City Manager and adopt an ordinance to that effect.

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

Section 1. That the definition “*Drugs dispensed in accordance with a prescription*” contained in Section 25-71 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 25-71. Definitions.**

...

*Drugs dispensed in accordance with a prescription* shall mean drugs dispensed in accordance with any order in writing, dated and signed by a licensed practitioner of ~~the healing arts~~ **medicine, dentistry, optometry, or podiatry**, or given orally by such practitioner, and immediately reduced to writing, specifying the name and address of the person for whom the medicine, drug or poison is offered and directions, if any, to be placed on the label.

...

Section 2. That Section 25-123 of the Code of the City of Fort Collins is hereby amended by the addition of new subparagraphs (f) and (g) which read in their entirety as follows:

**Sec. 25-123. Remittance of sales tax collected by retailer.**

...

(f) Any retailer that collects and remits sales tax to the Financial Officer as provided in this Article may use an electronic database of state addresses that is certified by the State Department of Revenue pursuant to § 39-26-105.3, C.R.S., to determine the jurisdictions to which tax is owed.

(g) Any retailer that uses the data contained in an electronic database certified by the State Department of Revenue pursuant to § 39-26-105.3, C.R.S., to determine the jurisdictions to which tax is owed shall be held harmless for any tax, penalty, or interest owed the City that otherwise would be due solely as a result of an error in the electronic database, provided that the retailer demonstrates that it used the most current information available in such electronic database on the date that the sale occurred. Each retailer shall keep and preserve such records as prescribed by the Financial Officer to demonstrate that it used the most current information available in the electronic database on the date that the sale occurred. Notwithstanding the above, if the error in collecting and remitting is a result of a deceptive or false representation or fraud, the provisions of this Section shall not apply.

Section 3. That Section 25-186 (b) 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 or by first class mail, **or certified mail**, directed to the last address of the taxpayer 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 shall be due and payable within twenty (20) days from the date the notice is mailed.

...

Section 4. That Section 25-225(d) of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 25-225. Limitations on actions to collect.**

...

~~(d) Before the expiration of such period of limitation, the taxpayer and the Financial Officer may agree in writing to an extension thereof, and the period so agreed on may be extended by subsequent agreements in writing made before the~~

~~expiration of the previously agreed upon time.~~ The ability to complete an audit will not lapse, once the taxpayer has been notified of the audit period, until thirty (30) days after the date of the notice of determination, assessment and demand for payment issued as a result of such audit.

...

Introduced, considered favorably on first reading, and ordered published this 4th day of May, A.D. 2010, and to be presented for final passage on the 18th day of May, A.D. 2010.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

Passed and adopted on final reading on the 18th day of May, A.D. 2010.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

ORDINANCE NO. 055, 2010  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AMENDING SECTION 25-252 OF THE CODE OF THE CITY OF FORT COLLINS  
RELATING TO THE VENDOR FEE FOR COLLECTING AND  
REMITTING LODGING TAX

WHEREAS, Sections 25-252(a), (e), and (f) of the City Code authorize lodging providers to retain three percent of the amount of lodging tax they collect for the City (the "Vendor's Fee"); and

WHEREAS, the Vendor's Fee was originally adopted in recognition of the time and effort expended by lodging providers to collect the City's lodging tax from their customers; and

WHEREAS, current business practices include automated accounting processes that have significantly reduced the time lodging providers need to invest in collecting the City's lodging tax; and

WHEREAS, the total amount currently retained by lodging providers is approximately \$25,000 per year; and

WHEREAS, the loss of this amount of lodging tax revenues has a negative effect on the City and its citizens given the recent budget constraints; and

WHEREAS, the City incurs an administrative expense of approximately \$5,000 per year associated with monitoring the Vendor's Fee and eliminating the Vendor's Fee would eliminate that expense; and

WHEREAS, the City Council believes it to be in the best interests of the City to eliminate the Vendor's Fee and to utilize the resulting savings to help defray City expenses.

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

Section 1. That Sections 25-252(a), (e), and (f) of the City Code are hereby amended to read as follows:

**Sec. 25-252. Payment of tax.**

(a) Every lodging provider shall be liable and responsible for the payment of an amount equal to three (3) percent of all proceeds derived from the providing of lodging accommodations as established pursuant to § 25-242 and any such lodging provider shall file a return each month with the Financial Officer on or before the twentieth day of each month for the preceding month and remit any amount equivalent to the lodging tax collected to the Financial Officer. ~~Every lodging provider may deduct three (3) percent of the amount of the tax to be paid~~

~~by such lodging provider under this Article to cover the expense of collection and remittance of the tax.~~

~~...~~

~~(e) The lodging provider shall be entitled, as collecting agent of the City, to apply and credit three (3) percent of the amount of tax collected pursuant to (a) above, remitting excess of collections over that amount, together with the taxes due, to the Financial Officer in the lodging provider's next monthly lodging tax return.~~

~~(f) No person other than the City may take enrichment from the collection or payment of such tax or from liability for payment of the full amount of the tax as levied by § 25-242 as such amount is adjusted by the provisions of (e) above.~~

Section 2. That this Ordinance shall become effective on July 1, 2010.

Introduced, considered favorably on first reading, and ordered published this 4th day of May, A.D. 2010, and to be presented for final passage on the 18th day of May, A.D. 2010.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

Passed and adopted on final reading on the 18th day of May, A.D. 2010.

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Mayor

ATTEST:

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City Clerk