

AGENDA ITEM SUMMARY

July 17, 2018

City Council

STAFF

Peggy Streeter, Senior Sales Tax Auditor
Jennifer Poznanovic, Project and Revenue Manager
Ryan Malarky, Legal

SUBJECT

Items Relating to the City's Various Tax Provisions.

EXECUTIVE SUMMARY

- A. First Reading of Ordinance No. 097, 2018, Amending Article II of Chapter 25 of the Code of the City of Fort Collins Concerning the City's Tax Rebate Programs.
- B. First Reading of Ordinance No. 098, 2018, Amending Article III of Chapter 25 of the Code of the City of Fort Collins Concerning the Imposition, Collection, and Enforcement of the City's Sales and Use Taxes.
- C. First Reading of Ordinance No. 099, 2018, Amending Article IV of Chapter 25 of the Code of the City of Fort Collins Concerning the City's Lodging Tax.
- D. First Reading of Ordinance No. 100, 2018, Amending Article V of Chapter 25 of the Code of the City of Fort Collins Concerning the City's Telephone Occupation Tax.

The purpose of this item is to amend City Code sections in Chapter 25 to provide clarification for definitions and the application of various sections of the Code, and to make clear the City may use a third-party auditor or collections service for delinquent accounts.

STAFF RECOMMENDATION

Staff recommends adoption of these Ordinances on First Reading.

BACKGROUND / DISCUSSION

The various Code changes being requested are as follows:

Chapter 25, Article II (Ordinance No. 097, 2018)

City Code Section 25-50 establishes that the amount of sales tax rebate for food is increased annually based on the "Denver-Boulder-Greeley" Consumer Price Index (CPI) published by the federal Bureau of Labor Statistics. In January 2018, the Bureau of Labor Statistics updated the geographic area sample for the CPI has changed it to Denver-Aurora-Lakewood. Therefore, the Code is being updated to reflect this change. The City Code contains other limited references to the CPI, and City staff will review whether additional Code changes are appropriate to bring before Council at a later time.

City Code Chapter 25, Article II, Division 5 establishes the City's use tax rebate program on manufacturing equipment. City Code Section 25-66 sets forth the qualifications a qualifying manufacturer must meet to be eligible for the use tax rebate. Use tax is owed by a consumer for using, storing, distributing, or otherwise

consuming tangible personal property or taxable services in the City. In general, a manufacturer owes use tax to the City when City sales tax is not otherwise collected by a vendor. City staff desires to clarify in the Code that the use tax rebate is not available when a vendor should have collected City sales tax from the manufacturer, consistent with both the historical administration of the program and rules adopted by the Financial Officer.

Chapter 25, Article III (Ordinance No. 098, 2018)

The definition of charitable organization in Section 25-71 specifies an entity must have a current sales tax exemption certification from the State of Colorado. City staff has determined the State does not issue a State of Colorado sales tax exemption certificate to out-of-state organizations. As a result, out-of-state organizations cannot qualify for exemption from the City of Fort Collins sales tax because they cannot obtain a State of Colorado tax exemption certificate. The definition has been updated to allow for the exemption of out-of-state organizations that would otherwise qualify for City of Fort Collins tax exemption.

The definition of Financial Officer and the requirements regarding confidentiality of tax information is being changed to make clear City staff: (1) may continue to use the services of a third-party auditor for tax audits; and (2) may have the option to utilize a third-party collection service to collect outstanding sales or use tax due in cases of severe noncompliance with the City's remittance requirements. The changes expand the definition of Financial Officer slightly to allow for delegation of certain responsibilities to entities, rather than only individual persons. The changes also allow the disclosure of otherwise confidential tax information to third parties, on the condition that the third parties commit in a written agreement to non-disclosure.

Chapter 25, Article IV (Ordinance No. 099, 2018)

In Ordinance No. 098, 2018, City staff is recommending a change to the definition of charitable organization in Section 25-71, located in the Sales and Use Tax Code as noted above. A similar definition is in Section 25-241 of the Lodging Tax Code. City staff is recommending the same change be made to the definition of charitable organization in the Lodging Tax Code so that both codes are administered in substantially the same manner and with the same requirements.

Chapter 25, Article V (Ordinance No. 100, 2018)

Article V, Division 2 establishes an occupation tax levied on telephone utility companies engaged in the business of furnishing local exchange telephone service within the City. Since the establishment of the telephone occupation tax in 1979, technological advances have occurred that allow telephone service to be provided over the Internet, otherwise known as Voice over Internet Protocol (VoIP). The City currently collects, and VoIP providers currently remit, the telephone occupation tax. City staff desires to make clear that VoIP service is subject to said tax, and is recommending a change to Section 25-326 to make specific reference to VoIP.

CITY FINANCIAL IMPACTS

No known financial impacts.

ORDINANCE NO. 097, 2018
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING ARTICLE II OF CHAPTER 25 OF THE CODE OF THE CITY
OF FORT COLLINS CONCERNING THE CITY'S TAX REBATE PROGRAMS

WHEREAS, Division 3 in Article II of City Code Chapter 25 authorizes a rebate on the City's sales tax charged on food purchases by low-income persons residing in the City (the "Sales Tax Rebate Program"); and

WHEREAS, Division 5 in Article II of City Code Chapter 25 authorizes the rebate of the City's use tax imposed on manufacturing equipment paid by certain qualifying manufacturers (the "Manufacturing Equipment Use Tax Rebate Program"); and

WHEREAS, the Sales Tax Rebate Program serves the public purpose of assisting certain low-income individuals in better affording the necessities of life related to food; and

WHEREAS, the Manufacturing Equipment Use Tax Rebate Program serves the public purpose of encouraging manufacturers to establish, continue and expand their manufacturing activities within the City to benefit the local economy and provide manufacturing jobs within the City; and

WHEREAS, City staff has reviewed the Sales Tax Rebate Program and is recommending a revision to account for a geographical revision in the consumer price index published by the Bureau of Labor Statistics; and

WHEREAS, City staff has reviewed the Manufacturing Equipment Use Tax Rebate Program and is recommending a revision to clarify that the rebate is not available for purchases for which City sales tax should have been collected by the vendor; and

WHEREAS, the City Council hereby finds that amending the Sales Tax Rebate Program and the Manufacturing Equipment Use Tax Rebate Program as proposed in this Ordinance is in the City's and its taxpayers' best interests and necessary for the public's health, safety and welfare.

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 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 2016 2017 tax year will be sixty-three dollars (\$60-63.) 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 Boulder Greeley Consumer Price Index for Urban Consumers~~ Denver-Aurora-Lakewood Consumer Price Index for All Urban Consumers, as published by the Bureau of Labor Statistics.

Section 3. 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:

- (1) The qualifying manufacturer must have a sales and use tax license from the City and be classified as a "manufacturer" under the North American Industry Classification System (NAICS), as amended;
- (2) The qualifying manufacturer must certify compliance with all federal, state and local laws and regulations applicable to a manufacturing facility located within the City limits;
- (3) The qualifying manufacturer must be current in all payments to the City and in compliance with any contractual agreements with the City;
- (4) Machinery and equipment must be tangible personal property when purchased; be necessary for, and used directly in, the manufacturing of tangible personal property to be sold; not be used in any activity other than the actual manufacturing process; not be merely useful or incidental to the manufacturing operation; and be purchased in the year the rebate is being applied for;
- (5) The qualifying manufacturer must have paid the appropriate use tax when due and not as a consequence of a tax audit conducted by the City; and
- (6) The use tax paid by the qualifying manufacturer must not have been the result of a vendor failing to collect City of Fort Collins sales tax as required by law.

Introduced, considered favorably on first reading, and ordered published this 17th day of July, A.D. 2018, and to be presented for final passage on the 21st day of August, A.D. 2018.

Mayor Pro Tem

ATTEST:

City Clerk

Passed and adopted on final reading on the 21st day of August, A.D. 2018.

Mayor

ATTEST:

City Clerk

ORDINANCE NO. 098, 2018
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING ARTICLE III OF CHAPTER 25 OF THE CODE OF THE CITY
OF FORT COLLINS CONCERNING THE IMPOSITION, COLLECTION,
AND ENFORCEMENT OF THE CITY'S SALES AND USE TAXES

WHEREAS, Article XX, § 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 Article III of the City Code Chapter 25, which has been significantly amended many times since its adoption in 1967; and

WHEREAS, City staff has reviewed Article III and has recommended revisions to clarify the manner in which charitable organizations may qualify for a tax-exempt organization license from the City; and

WHEREAS, City staff is recommending revisions to make clear the City's Financial Officer may use the services of a third-party auditor or collections service to ensure the proper payment of tax owed to the City; and

WHEREAS, the City Council hereby finds that amending the Sales and Use Tax Code as proposed in this Ordinance is in the City's and its taxpayers' best interests and necessary for the public's health, safety and welfare.

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 Section 25-71 of the Code of the City of Fort Collins is hereby amended to change the definition of "charitable organization" to read as follows:

Sec. 25-71. Definitions.

...

Charitable organization shall mean:

(1) any entity that has and maintains a current sales tax exemption certificate from the Colorado Department of Revenue; or

(2) any out-of-state entity that has been certified as a nonprofit organization under Internal Revenue Code Section 501(c)(3) and maintains a current tax exemption certificate from another state.

...

Section 3. That Section 25-71 of the Code of the City of Fort Collins is hereby amended to change the definition of “Financial Officer” to read as follows:

Sec. 25-71. Definitions.

...

Financial Officer shall mean the Financial Officer of the City of Fort Collins or such other individual person designated by the Financial Officer.

...

Section 4. 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.

...

(b) The application for an exempt organization license shall include copies of the organization's current certificate of incorporation , bylaws, financial statements showing sources of revenues and expenditures, and the organization's current sales tax exemption certificate from the Colorado Department of Revenue or from another state, and, if the organization has been issued one, a copy of the Internal Revenue Service's letter of determination recognizing the organization as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code.

...

Section 5. That Section 25-166 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 25-166. Preservation of returns and other records; confidentiality.

...

(f) Nothing in this Section shall be construed to prohibit the Financial Officer from disclosing information to an individual with whom, or an organization with which, the Financial Officer has contracted or engaged to assist the City in examining or auditing tax records or collecting taxes, provided that the individual or organization is required by written agreement not to disclose any of said information to any person other than the Financial Officer and the authorized agents and employees thereof.

Introduced, considered favorably on first reading, and ordered published this 17th day of July, A.D. 2018, and to be presented for final passage on the 21st day of August, A.D. 2018.

Mayor Pro Tem

ATTEST:

City Clerk

Passed and adopted on final reading on the 21st day of August, A.D. 2018.

Mayor

ATTEST:

City Clerk

ORDINANCE NO. 099, 2018
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING ARTICLE IV OF CHAPTER 25 OF THE CODE OF THE
CITY OF FORT COLLINS CONCERNING THE CITY'S LODGING TAX

WHEREAS, Article XX, § 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 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");

WHEREAS, the Lodging Tax Code is found in Article IV of City Code Chapter 25 and has existed in substantially its current form since its adoption in 1984 with only minor amendments since that time; and

WHEREAS, City staff has recommended to City Council for its consideration Ordinance No. 098, 2018, which includes changes to the City's sales and use tax provisions found in Article III of City Code Chapter 25 (the "Sales and Use Tax Code") to clarify the manner in which charitable organizations may obtain a tax-exempt organization license from the City; and

WHEREAS, City staff has reviewed the Lodging Tax Code and is recommending a similar revision to the definition of "charitable organization" so that the Sales and Use Tax Code and the Lodging Tax Code will be administered in essentially the same manner and with the same requirements; and

WHEREAS, the City Council hereby finds that collecting and enforcing the Sales and Use Tax Code and the Lodging Tax Code in substantially the same manner is in the City's and its taxpayers' best interests and necessary for the public's health, safety and welfare.

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 Section 25-241 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 25-241. Definitions.

...

Charitable organization shall mean:

(1) any entity that has and maintains a current sales tax exemption certificate from the Colorado Department of Revenue; or

(2) any out-of-state entity that has been certified as a nonprofit organization under Internal Revenue Code Section 501(c)(3) and maintains a current tax exemption certificate from another state.

...

Introduced, considered favorably on first reading, and ordered published this 17th day of July, A.D. 2018, and to be presented for final passage on the 21st day of August, A.D. 2018.

Mayor Pro Tem

ATTEST:

City Clerk

Passed and adopted on final reading on the 21st day of August, A.D. 2018.

Mayor

ATTEST:

City Clerk

ORDINANCE NO. 100, 2018
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING ARTICLE V OF CHAPTER 25 OF THE CODE OF THE CITY OF
FORT COLLINS CONCERNING THE CITY'S TELEPHONE OCCUPATION TAX

WHEREAS, Article XX, § 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, since January 1, 1979, the City, through the City Council's exercise of its home rule taxing powers, has levied, collected and enforced a telephone occupation tax in the amount of seventy cents (\$0.70) per account for local exchange telephone service to customers in the City (the "Telephone Occupation Tax"); and

WHEREAS, the City has been collecting, and Voice over Internet Protocol ("VoIP") providers have been remitting, the Telephone Occupation Tax; and

WHEREAS, City staff has reviewed the Telephone Occupation Tax and is recommending a revision to state more clearly that VoIP is subject to the tax; and

WHEREAS, the City Council hereby finds that amending the Telephone Occupation Tax as proposed in this Ordinance is in the City's and its taxpayers' best interests and necessary for the public's health, safety and welfare.

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 Section 25-326 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 25-326. Levy of tax.

There is hereby levied against every telephone utility company engaged in the business of furnishing local exchange telephone service within the City a tax on the privilege of engaging in such business. The amount of such tax shall be seventy cents (\$0.70) per account per month. For the purposes of this Division, *account* shall be defined as a billing of a telephone utility company for service to a customer. **For the purposes of this Division, *telephone utility company engaged in the business of furnishing local exchange telephone service* shall include Voice over Internet Protocol (VoIP) service.**

Introduced, considered favorably on first reading, and ordered published this 17th day of July, A.D. 2018, and to be presented for final passage on the 21st day of August, A.D. 2018.

Mayor Pro Tem

ATTEST:

City Clerk

Passed and adopted on final reading on the 21st day of August, A.D. 2018.

Mayor

ATTEST:

City Clerk