

AGENDA ITEM SUMMARY

July 2, 2019

City Council

STAFF

Jennifer Poznanovic, Project and Revenue Manager
Ryan Malarky, Legal

SUBJECT

Items Related to Sales Tax Code Updates.

EXECUTIVE SUMMARY

- A. First Reading of Ordinance No. 085, 2019, Amending Article XVIII of Chapter 15 of the Code of the City of Fort Collins Relating to Short-Term Rental Licenses.
- B. First Reading of Ordinance No. 086, 2019, Amending Article II of Chapter 25 of the Code of the City of Fort Collins Relating to the City's Tax Rebate Programs.
- C. First Reading of Ordinance No. 087, 2019, Amending Article III of Chapter 25 of the Code of the City of Fort Collins Relating to the Imposition, Collection, and Enforcement of the City's Sales and Use Taxes.

The purpose of this item is to amend City Code sections in Chapter 15 and 25 to provide clarification for definitions and the application of various sections of the Code.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinances on First Reading.

BACKGROUND / DISCUSSION

The various Code changes being requested are as follows:

Chapter 15, Article XVIII

City Code Section 15-647 establishes the term of a Short Term Rental license and the renewal date. The one-year term will remain the same; however, City staff desires to change the renewal date from December 31 to June 30. This adjustment will help staff streamline year-end tax activity. Current licenses will have an extra six months on their term as the transition occurs. A current license will expire on June 30, 2020, rather than December 31, 2019. Prior to December 31, 2019, staff will communicate the change with licensees and will issue updated licenses. No additional fees will be assessed for the one-time extension.

Chapter 25, Article II

City Code Sections 25-26 and 25-46 establish the definitions related to the City's Tax Refund and Rebate Program. City staff desires to update references to Internal Revenue Service income tax return forms to reflect changes the IRS made for tax year 2018.

Chapter 25, Article III

City Code Section 25-75 establishes the rate of tax and distribution of the 3.85 percent total for the various voter approved taxes. City staff desires to update the language to reflect the extension of a 0.85 percent tax approved by the voters at the City's regular election held on April 2, 2019. Staff is also recommending revisions to make Section 25-75 easier to read.

City Code Section 25-128 allows a business with more than one location to file a consolidated return. Due to staff's desire to report by geographic location, a return for each location will be required and a consolidated return will be prohibited. This Code update reflects what is already the current practice.

City Code Section 25-147 allows a taxpayer to apply for a refund of tax paid under dispute when claiming the transaction was not taxable or claiming an exemption. City staff desires to update the language to include tax paid in error or by mistake. This Code update will bring the language back in line with previous wording, which was inadvertently removed by Ordinance No. 016, 2017.

City Code Section 25-166 outlines the confidentiality requirements for taxpayers' financial information in returns and other records. City staff desires to add language to allow the Financial Officer to disclose financial information within the City organization or to City contractors in certain circumstances when reasonable precautions and requirements are in place to prevent the disclosure of such information to the public.

ORDINANCE NO. 085, 2019
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING ARTICLE XVIII OF CHAPTER 15 OF THE CODE OF THE CITY
OF FORT COLLINS RELATING TO SHORT-TERM RENTAL LICENSES

WHEREAS, on March 21, 2017, the City Council adopted Ordinance No. 045, 2017, creating licensing regulations regarding the rental of dwelling units for periods of less than thirty days (“Short Term Rental”) in Chapter 15 of the City Code; and

WHEREAS, those Short Term Rental regulations establish a specific term for which a short term rental license will be valid; and

WHEREAS, since the adoption of the Short Term Rental regulations, City staff has determined that adjusting the term of such licenses so that they expire on June 30 rather than December 31 will assist staff with streamlining year-end tax activity; and

WHEREAS, the City Council hereby finds that the change as proposed in this Ordinance is in the best interests of the citizens of Fort Collins and promotes health, safety and welfare of the community by contributing to the efficient administration of the Short Term Rental licensing system.

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 15-647 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 15-647. Term of license and renewal.

- (a) Licenses issued pursuant to this Article shall be valid from the time of issuance through ~~December 31~~ **the following June 30** ~~of the same calendar year~~. Licenses must be renewed annually and a renewed license shall be valid for ~~an additional~~ **the** period from ~~January 1~~ **July 1** through ~~December 31~~ **the subsequent June 30**.

...

Introduced, considered favorably on first reading, and ordered published this 2nd day of July, A.D. 2019, and to be presented for final passage on the 16th day of July, A.D. 2019.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 16th day of July, A.D. 2019.

Mayor

ATTEST:

City Clerk

ORDINANCE NO. 086, 2019
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING ARTICLE II OF CHAPTER 25 OF THE CODE OF THE CITY
OF FORT COLLINS RELATING TO THE CITY'S TAX REBATE PROGRAMS

WHEREAS, Division 2 in Article II of City Code Chapter 25 authorizes a refund program to provide relief from property taxes for low-income elderly persons and disabled persons residing in the City (the "Property Tax Refund Program"); and

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

WHEREAS, the Property Tax Refund Program serves the public purpose of relieving qualified low-income elderly persons and disabled persons from the City's portion of the ad valorem taxes applicable to their dwellings; 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, as part of the application process for both programs, an applicant is required to provide income information, and the City Code directs an applicant to provide information contained in Internal Revenue Service Forms 1040, 1040A, 1040EZ, and 1040NR; and

WHEREAS, the Internal Revenue Service ("I.R.S.") updated its Form 1040 for tax year 2018 by consolidating the former Forms 1040, 1040A and 1040EZ; and

WHEREAS, City staff has recommended that references in the Code to specific I.R.S. forms be updated to reflect the changes the I.R.S. made for tax year 2018; and

WHEREAS, the City Council hereby finds that amending the Property Tax Refund Program and the Sales Tax Rebate Program 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 establishing accurate requirements for the Programs.

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 25-26 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 25-26. Definitions.

The following words, terms and phrases, when used in this Division, shall have the meanings ascribed to them in this Section:

...

Income shall mean:

- (1) total income of an individual as shown on the individual's federal income tax form on the line noted for the applicable form, as set forth in the chart below, or if the individual is not required to file any ~~of these~~ **such** tax forms with the Internal Revenue Service, the amount that would be so reported in the most applicable form if the individual was required to file; 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:

I.R.S. Form 1040	Line 22 6 "Total Income"
I.R.S. Form 1040A	Line 15 "Total Income"
I.R.S. Form 1040EZ	Line 4 "Adjusted Gross Income"
I.R.S. Form 1040NR	Line 23 "Total Effectively Connected Income"

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.

The following words, terms and phrases, when used in this Division, shall have the meanings ascribed to them in this Section:

...

Income shall mean:

- (1) total income of an individual as shown on the individual's federal income tax form on the line noted for the applicable form, as set forth in the chart below, or if the individual is not required to file any ~~of these~~ **such** tax forms with the Internal Revenue Service, the amount that would be so reported in the most applicable form if the individual was required to file; 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:

I.R.S. Form 1040	Line 226 "Total Income"
I.R.S. Form 1040A	Line 15 "Total Income"
I.R.S. Form 1040EZ	Line 4 "Adjusted Gross Income"
I.R.S. Form 1040NR	Line 23 "Total Effectively Connected Income"

Introduced, considered favorably on first reading, and ordered published this 2nd day of July, A.D. 2019, and to be presented for final passage on the 16th day of July, A.D. 2019.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 16th day of July, A.D. 2019.

Mayor

ATTEST:

City Clerk

ORDINANCE NO. 087, 2019
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING ARTICLE III OF CHAPTER 25 OF THE CODE OF THE CITY
OF FORT COLLINS RELATING TO THE IMPOSITION, COLLECTION
AND ENFORCEMENT OF THE CITY'S SALES AND USE 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 Article III of 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 rate of tax imposed, including updating the rate of tax to include the extension of the eighty-five one-hundredths (0.85) percent tax approved by the voters at the City's regular election held on April 2, 2019; and

WHEREAS, City staff has also recommended revisions to require retailers doing business at more than one location to file a separate return for each location, to clarify that the refund procedures apply to taxes paid in error or by mistake, and to provide that taxpayer financial information may be shared within the City organization or with City contractors if reasonable precautions are in place to prevent disclosure of such information to the public; and

WHEREAS, the City Council hereby finds that amending the Sales and Use Tax 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 sales and use 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 Section 25-75 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 25-75. Rate of tax.

(a) The amount of tax hereby levied is three and eight-five hundredths (3.85) percent of the purchase price of tangible personal property ~~or~~ **and** taxable services except that the amount of use tax levied on manufacturing equipment is three (3) percent of the purchase price. **This tax is composed of a rate of two and twenty-five hundredths (2.25) percent that does not expire and is not restricted in the use of its proceeds and the remaining rate of one and sixty hundredths (1.60) percent is comprised of the following voter-approved taxes:**

(1) **A ~~Twenty~~ twenty-five one-hundredths (0.25) percent ~~of such amount is a tax which shall that~~ expires at midnight on December 31, 2030, the proceeds of which ~~shall~~ **are to** be used for the purposes of acquiring, operating and maintaining open spaces, community separators, natural areas, wildlife habitat, riparian areas, wetlands and valued agricultural lands, and to provide for the appropriate use and enjoyment of these areas by the citizenry, pursuant to the provisions of the Citizen-Initiated Ordinance No. 1, 2002-;**

(2) **Another ~~A~~ twenty-five one-hundredths (0.25) percent ~~is a tax which shall that~~ expires at midnight on December 31, 2025, the proceeds of which ~~shall~~ **are to** be used for the purpose of paying the costs of planning, design, right-of-way acquisition, incidental upgrades and other costs associated with the repair and renovation of City streets, including, but not limited to, curbs, gutters, bridges, sidewalks, parkways, shoulders and medians-;**

(3) **Another ~~A~~ twenty-five one-hundredths (0.25) percent ~~is a tax which shall that~~ expires at midnight on December 31, 2025, the proceeds of which ~~shall~~ **are to** be used for the purpose of paying the costs of planning, design, real property acquisition, and construction, the capital projects specified in the "Community Capital Improvement Program" and five (5) years of operation and maintenance for those capital projects specified in Ordinance No. 013, 2015 , all of which shall be subject to the terms and conditions of Ordinance No. 013, 2015-; **and****

(4) **Another ~~An~~ eighty-five one-hundredths (0.85) percent ~~is a tax which shall that~~ expires at midnight on December 31, 2020, the proceeds of which ~~shall~~ **are to** be used in accordance with the terms and conditions of Ordinance No. 126, 2010.**

When the tax described in subsection (a)(4) above expires at midnight on December 31, 2020, the eighty-five one-hundredths (0.85) percent tax approved at the City's regular election held on April 2, 2019, shall commence. Of this tax, the rate of twenty-five one-hundredths (0.25) percent shall expire at midnight on December 31, 2030, and its revenues shall be used to fund municipal operations and maintenance and for any other public purposes. The remaining rate of sixty one-hundredths (0.60) percent shall not expire and its revenues shall be used to help sustain public safety service levels and fund municipal operations and maintenance, and to fund any other public purposes, except fifteen and sixty one-

hundredths (15.6) percent of these revenues shall be used to fund the fire protection and emergency services being provided by the Poudre Fire Authority (PFA) under the City's existing agreement with the Poudre Valley Fire Protection District (District), or in such other amount as the City and the District may agree, but absent an agreement between them for PFA's services, these revenues may be used as determined by City Council.

...

Section 3. That Section 25-128 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 25-128. Consolidation of returns prohibited.

A retailer doing business in two (2) or more places or locations, whether within or without the City, and collecting taxes hereunder ~~may~~ **must** file one (1) return ~~covering all for each~~ such places or locations ~~if there are no owners, employees, agents or commissioned sales persons of such business on duty at any location in the City.~~ Any retailer conducting online sales must file a separate return covering online sales, ~~even if the retailer is filing a consolidated return for sales at physical locations.~~

Section 4. That Section 25-147 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 25-147. Procedure for refund of disputed tax.

A refund shall be made or credit allowed for the tax paid under dispute by any person who claims that the transaction or item was not taxable, ~~or~~ claims an exemption as provided in this Article, **or claims that taxes were paid in error or by mistake.** Such refund shall be made by the Financial Officer after compliance with the following:

(1) *Application.* An application for a refund of sales or use tax paid under dispute, ~~or~~ paid in error by a purchaser or user who claims an exemption under Subsection 25-73(c) or Subsection 25-74(b), **or paid in error or by mistake** shall be made within three (3) years after the date of purchase, storage, use or consumption of the goods or services whereon an exemption is claimed. Such applications must be accompanied by the original paid invoice or sales receipt and must be made upon such forms as shall be prescribed and furnished by the Financial Officer;

(2) *Burden of proof.* The burden of proving that any transaction or item is not taxable, ~~or~~ is exempt from the tax, **or that tax was paid in error or by mistake** shall be upon the person asserting such claim under such reasonable requirements of proof as the Financial Officer may prescribe;

...

Section 5. That Section 25-166 of the Code of the City of Fort Collins is hereby amended by the addition of a new subsection (g) to read as follows:

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

...

(g) Notwithstanding the provisions of this Section, the Financial Officer may disclose financial information within the City organization or to City contractors as required for the conduct of City business or in furtherance of City purposes and objectives, so long as the release of the information is conditioned upon reasonable precautions and requirements to prevent disclosure of said information to the public.

Introduced, considered favorably on first reading, and ordered published this 2nd day of July, A.D. 2019, and to be presented for final passage on the 16th day of July, A.D. 2019.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 16th day of July, A.D. 2019.

Mayor

ATTEST:

City Clerk