

# AGENDA ITEM SUMMARY

## FORT COLLINS CITY COUNCIL

ITEM NUMBER: 29 A-B

DATE: August 17, 2004

STAFF: Wanda Krajicek

### SUBJECT

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Items Relating to a Citizen-Initiated Ordinance Relating to the Reduction of the Sales Tax on Grocery Food.

### RECOMMENDATION

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Staff recommends adoption of the Resolution placing the initiated ordinance on the April 5, 2005 Regular Municipal Election ballot (Option 2).

### EXECUTIVE SUMMARY

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- A. Presentation of a Petition Relating to Citizen-Initiated Ordinance No. 2, 2004 (Relating to the Reduction of the Sales Tax on Grocery Food) Certified by the City Clerk as Sufficient for Placement on a Special Election Ballot. (No Action Needed)
- B. First Reading of Ordinance No. 137, 2004, Relating to the Reduction of Sales Tax on Grocery Food. (Option 1)

### OR

Resolution 2004-101 Submitting Proposed Citizen-Initiated Ordinance No. 002, 2004, Relating to the Reduction of Sales Tax on Grocery Food to a Vote of the Registered City Electors at the Next Regular Municipal Election on April 5, 2005. (Option 2)

The City Clerk's Office received an initiative petition on July 19, 2004, which has been determined to contain a sufficient number of signatures to place the initiated measure before the registered electors of the City. Pursuant to the City Charter, upon presentation of an initiative petition certified as sufficient by the City Clerk, the Council must either (1) adopt the proposed ordinance without alteration within 30 days (Option 1); or (2) submit such proposed measure, in the form petitioned for, to the registered electors of the city (Option 2). If the Council chooses to submit the proposed measure to the voters, Resolution 2004-101 submits the measure to the voters and establishes the ballot language for the measure.

### BACKGROUND

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The City Clerk's Office has certified a sufficient number of signatures on an initiative petition received on July 19, 2004. Under Article X of the City Charter, 3,902 signatures of registered electors (at least 15% of the total ballots cast in the last regular City election) are required to place an initiative on a special election ballot. Upon presentation of an initiative petition certified as to

sufficiency by the City Clerk, the Council must either adopt the proposed ordinance without alteration or submit the proposed measure in the form petitioned for, to the registered electors of the city.

Article X, Section 1 of the City Charter normally requires that, if a petition requests a special election (which this petition does), the Council must call a special election to be held on a Tuesday within 120 days of the presentation of the certified petition to the Council. However, another section of the City Charter (Article X, Section 6(e)), states that not more than one special election on citizen-initiated measures may be held within any twelve month period. Because a special City election has just been held on August 10, 2004, this new measure relating to the reduction of a sales tax on grocery food must be placed on the April, 2005 ballot.

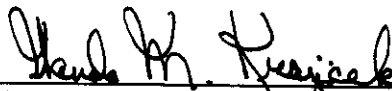
STATE OF COLORADO        )  
  )  
COUNTY OF LARIMER        ) SS.  
  )  
CITY OF FORT COLLINS        )

## PETITION CERTIFICATION

I, the undersigned, duly appointed and authorized City Clerk of the City of Fort Collins, Colorado, do hereby certify that a petition received from Mary Brophy on Monday, July 19, 2004, requesting that Council place an initiated ordinance on the ballot at a special election has been determined to contain more than **3,902** signatures of registered voters who live within the Fort Collins city limits, and the petition is determined to be sufficient to require placement of the measure on a special municipal election ballot.

Said ordinance pertains to the reduction of the sales tax on grocery food.

Dated at Fort Collins, Colorado this 2nd day of August, A.D. 2004.

  
\_\_\_\_\_  
Wanda Krajicek, City Clerk



ORDINANCE NO. 137, 2004  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
RELATING TO THE REDUCTION OF SALES TAX ON GROCERY FOOD

Whereas, the growth of taxation and regulatory burdens upon the private sector in Fort Collins has exceeded the growth of population plus inflation; and

Whereas, said burdens are stunting the orderly development of Fort Collins, especially in comparison to nearby cities;

Therefore, be it enacted by the citizens of Fort Collins that “(2.25) percent” in Section 25-73(d)(1) of the Municipal Code is changed to “(2.25) percent prior to January 1, 2005; (1.5) percent on January 1, 2005; (0.75) percent on January 1, 2006; and (zero) percent on January 1, 2007;”

Introduced, considered favorably on first reading, and ordered published this 17th day of August, A.D. 2004, and to be presented for final passage on the 7th day of September, A.D. 2004.

\_\_\_\_\_  
Mayor

ATTEST:

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

Passed and adopted on final reading this 7th day of September, A.D. 2004.

\_\_\_\_\_  
Mayor

ATTEST:

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

RESOLUTION 2004-  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
SUBMITTING A CITIZEN-INITIATED ORDINANCE  
TO A VOTE OF THE REGISTERED ELECTORS OF THE CITY  
AT THE NEXT REGULAR MUNICIPAL ELECTION ON APRIL 5, 2005

WHEREAS, under Article X, Section 1 of the Charter of the City of Fort Collins, the registered electors of the city have the power to propose a measure to the Council, and if the Council fails to adopt a measure so proposed, then to adopt or reject such ordinance or resolution at the polls; and

WHEREAS, an initiative petition relating to the reduction of sales tax on grocery food has been submitted to the City, and the City Clerk has certified said petition as sufficient for submission of the initiated ordinance to a vote of the people at a special municipal election; and

WHEREAS, the City Clerk has presented said petition to the City Council as provided in Article X, Section 5(f)(4) of the City Charter; and

WHEREAS, under Article X, Section 1(e) of the City Charter, upon presentation of an initiative petition certified as to sufficiency by the City Clerk, the Council must either adopt the citizen-initiated ordinance without alteration within thirty (30) days or submit said citizen-initiated ordinance in the form petitioned for, to the registered electors of the city; and

WHEREAS, when a special election is requested in the initiative petition and the petition has been certified as sufficient, the measure must generally be submitted at the next special municipal election to be held within one-hundred twenty days, unless any other regular or special city election is to occur within said period, in which case the initiative measure must be consolidated with such other election; and

WHEREAS, notwithstanding the foregoing general rule, Article X, Section 6(e) of the City Charter states that not more than one special election on citizen-initiated measures shall be held in any twelve (12) months; and

WHEREAS, since a special election on a citizen-initiated measure has been held by the City on August 10, 2004, the above-referenced initiative petition relating to the reduction of sales tax on grocery food must be referred to the registered electors of the city at the next regular city election on April 5, 2005.

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

Section 1. That there is hereby submitted to the registered electors of the City of Fort Collins at the next regular city election to be held on Tuesday, April 5, 2005, the following proposed citizen-initiated ordinance:

CITIZEN-INITIATED ORDINANCE NO. 2, 2004

Whereas, the growth of taxation and regulatory burdens upon the private sector in Fort Collins has exceeded the growth of population plus inflation; and

Whereas, said burdens are stunting the orderly development of Fort Collins, especially in comparison to nearby cities;

Therefore, be it enacted by the citizens of Fort Collins that "(2.25) percent" in Section 25-73(d)(1) of the Municipal Code is changed to "(2.25) percent prior to January 1, 2005; (1.5) percent on January 1, 2005; (0.75) percent on January 1, 2006; and (zero) percent on January 1, 2007;"

Section 2. That the foregoing proposed citizen-initiated ordinance is hereby submitted to the registered electors of the City of Fort Collins at said regular municipal election in substantially the following form:

CITIZEN-INITIATED ORDINANCE NO. 2, 2004

PROPOSED ORDINANCE

An ordinance amending Section 25-73(d)(1) of the Code of the City of Fort Collins to phase in the elimination of the existing 2.25 percent City sales tax on food for domestic home consumption by reducing said sales tax to 1.5 percent on January 1, 2005; 0.75 on January 1, 2006; and zero percent on January 1, 2007.

FOR THE ORDINANCE \_\_\_\_\_

AGAINST THE ORDINANCE \_\_\_\_\_

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 17th day of August, A.D. 2004.

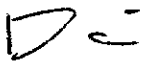
\_\_\_\_\_  
Mayor

ATTEST:

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



**MEMORANDUM**

**DATE:** July 29, 2004  
**TO:** Mayor and City Council Members  
**FROM:** Darin A. Atteberry, Interim City Manager   
**RE:** Background on the Exemption of Sales Tax on Food  
Recommended Action in Response to the Citizen Initiative

**Introduction and Recommendation.** On August 17, the City Council will be presented with an initiative petition that has been certified by the City Clerk as sufficient for placement on the ballot in November. The measure proposes elimination of the City's sales tax on grocery food. Under the City Charter, the Council must either adopt the proposed ordinance without alteration or place the ordinance on the ballot.

In determining how to respond to this ballot measure, it is important for Council to understand that the City's existing sales tax rebate program already relieves low income residents of the City of the sales tax on grocery food. Thus, this measure is not needed for that purpose. Also, for the reasons explained below, the passage of this ordinance would have an extremely detrimental financial impact on the provision of City services, at a time when those services are already severely constrained by other revenue shortfalls.

Therefore, staff strongly recommends that Council not adopt this measure and instead place it on the ballot. This recommendation is based on the following:

- a. The effects of the revenue loss would be devastating to many municipal services.
- b. Fairness: A major portion of our community is the students at Colorado State University; they use City facilities and services and the major way that they pay is through the sales tax, a significant portion represented by the tax on grocery food. This is also true of the many visitors to Fort Collins that use our services as they enjoy the community.
- c. There may be a much better solution. By expanding the existing rebate program, the City could better tailor the benefits to meet the households most in need of tax relief.

**Background.** City of Fort Collins voters first approved sales and use taxes effective January, 1968. The tax rate was 1.0% and grocery food for home consumption was included as a taxable item. The sales tax base was intended to be broad in order to maintain a low tax rate. Since 1968, the base sales tax rate has risen to 2.25%. Our base rate is lower than many other Colorado cities and towns. Even when the three dedicated ¼ cent taxes are included, our rate is lower than many other cities.

A Citizen's Tax Committee formed in the late 1970's first recommended a rebate of sales tax on food for low income families. An October 4, 1979 Citizen's Tax Committee report to the Fort Collins City Council recommended that the City discontinue taxing grocery food – but instead raise the sales tax from 2.0% to 2.5% to make up for the lost revenue. The timing of the Committee's recommendation coincided with the State of Colorado's exemption for grocery food that became effective in 1979. The City chose not to follow

## Background on the Exemption of Sales Tax on Food

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this recommendation. The Council was concerned about the loss of revenue and the ability to provide services to a rapidly growing community and keep tax rates low.

Council and management continued to be concerned about the burden of the sales tax on grocery food. In 1984, City Council adopted Ordinance No. 174, 1984 to provide a sales tax rebate on food for low-income residents. Also in 1984, voters approved two new quarter-cent sales taxes for which grocery food was exempt. Grocery food has been exempted from each new quarter-cent sales tax that has been approved since 1984 – leaving grocery food to be taxed at the base rate of 2.25%.

**What is the proposed initiative?** If passed by voters, the initiative will repeal the sales tax that the City currently collects on food purchased for domestic home consumption. The 2.25% tax would sunset in three steps, from 2.25% this year, to 1.5% in 2005, to 0.75% in 2006, and zero in 2007. In 2004, the City collected \$5,643,514 in sales tax from grocery food. By 2007, the City estimates this total would be over \$6 million.

### Proposed Citizen Initiated Ordinance

Whereas, the growth of taxation and regulatory burdens upon the private sector in Fort Collins has exceeded the growth of population plus inflation: and  
Whereas, said burdens are stunting the orderly development of Fort Collins, especially in comparison to nearby cities;  
Therefore, be it enacted by the citizens of Fort Collins that “(2.25) percent” in Section 25-73(d)(1) of the Municipal Code is changed to “2.25%” prior to January 1, 2005; (1.5) percent on January 1, 2005; (0.75) percent on January 1, 2006; and (zero) percent on January 1, 2007:”

According to the City's annual financial report, taxation and total City revenues have not kept up with population and inflation over recent years. When adjusted for population and inflation, the sales tax has decreased the last four years. The use tax has declined in three of the last four years.

With regard to the “stunting orderly development,” the City of Fort Collins is recognized as a leader in Colorado and the nation the field of planning and zoning. It is also true that the City continues to grow faster than the rate used in the City Plan.

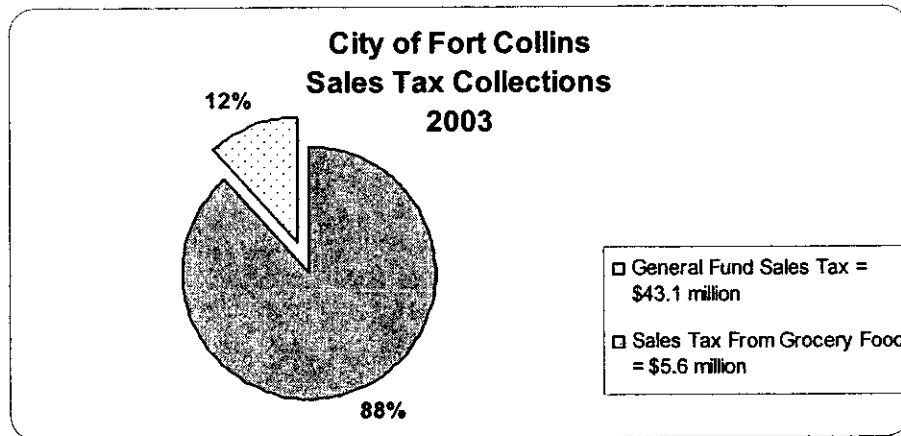
### **What does this tax cut mean along with the recent decreases in sales tax collections?**

The City of Fort Collins has been through extremely difficult economic times the last two years. In both years, sales and use tax collections fell short of original budget projections, leading to cuts in programs and services. The total General Fund cuts in the last two years are about \$5.9 million. By the end of the third step of the initiative, The City will have lost another \$6 million. Additional funding losses exacerbate the problem in providing the services that citizens need.

The City's outlook is that programs and services will have to remain below previous levels until the economy regains enough strength to support them. It is very difficult to find and implement tax revenues once they have been reduced -- especially when a recession rolls around or when budgets are otherwise pressured. By including grocery food in the revenue base, economists note that “governments are more assured that their revenue base can finance a floor of governmental services in difficult economic times.” (John Mikesell as quoted by Penelope Lemov in *Governing Magazine*, November, 1996)

**What is the projected impact on the City's budget?** The sales tax from grocery food was 12% of the sales taxes collected for the general fund in 2003. The chart below graphically displays the significance of the sales tax on grocery food in relation to the total tax available for general government uses.





**What service is the tax used for?** The sales tax on food is used for general fund services. Those services include: police services (including uniformed officers); fire protection provided by the Poudre Fire Authority; cultural, library and recreation; community planning and environmental services; communication and technology; administrative services; and other special city needs. Here are some examples of what \$6 million of sales tax provides in services to the community.

- All of the Community Planning and Environmental Service Area, \$5.5 million.
- 58 uniformed positions in the Police Department, about one-half of the \$11.6 million budget.
- All of the Communications and Technology Services Area, \$5.1 million.
- Nearly half of the City's contribution to the Poudre Fire Authority for fire protection services, total amount is \$12.6 million.
- More than the total budget for the Library system.
- Nearly all of the Parks Department budget.

The City has not decided which services would be cut if the initiative passes. To prepare for the possibility of such cuts, the City will have to prepare two separate plans for 2005. This will absorb time and energy that otherwise would be spent providing services to the public.

**What does the exemption mean?** By exempting grocery food from the sales tax base, the City would narrow its existing base. To offset the narrower base and sustain the existing service level, the tax rate would have to be increased. Based on a recent survey from the Colorado Municipal League (CML), self-collected cities that do not tax food have a much higher rate of tax than the cities and towns that include grocery food in their sales tax base. The difference is significant. With food in the base, the average rate is about 3.15%; with food exempted, the average rate is 3.95%.

**Who pays the tax on grocery food?** Both residents and non-residents of Fort Collins, including students and tourists pay the 2.25% tax on grocery food. Recent studies indicate that about 35% of the sales tax paid in Fort Collins comes from non-residents who shop here. *The only group of people who do not pay a sales tax on food are low-income families who purchase their groceries with food stamps*

**Wouldn't most of the tax savings from this exemption go to the poor?** No. The bulk of the tax savings would go to the most affluent households. While many people think the exemption would provide tax relief for the poor, the households with the highest incomes receive the greatest benefits. In the City of Fort Collins, low income households that participate in the City's sales tax rebate program would be hurt even more. Under the program, an average household (2.5 persons) currently is eligible for \$100 of sales tax

## Background on the Exemption of Sales Tax on Food

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rebate. The grocery tax burden on these households is about \$75. If the initiative passes, the City would eliminate its rebate program for sales tax on food. This would mean that the poorest of the poor in Fort Collins would take an additional hit to their income.

**How common is it have a sales tax on food?** Of the 58 cities and towns that collect their own sales taxes, 47 tax grocery food. Statewide, over 80% of all cities and towns include grocery food in the sales tax base. Over 60% of the counties in Colorado that have a sales tax also include grocery food in the sales tax base.

**Is Fort Collins the largest City in Colorado to tax grocery food?** No. Lakewood taxes grocery food. Of the larger cities who exempt grocery food, all have higher base tax rates than Fort Collins. Aurora at 3.75%, Denver at 3.5% and Colorado Springs at 2.5% all exempt grocery food. The State of Colorado does not tax grocery food, but has a base rate of 2.9%. The following table shows the tax rate for grocery food in neighboring communities.

City	Sales Tax Rate for Grocery Food
Loveland	3.0%
Greeley	3.3%
Estes Park	4.0%
Johnstown	3.0%
Windsor	3.2%
Cheyenne, Wyoming	6.0%

**Couldn't the reduction in sales tax revenues be absorbed by the City through increased efficiencies?** Absolutely not. The magnitude of the cuts in services that the City will have to make if the exemption is passed cannot be made up through more efficient service delivery. Major programs, including basic services, will likely be reduced and some eliminated if the initiative is approved by the voters.

**Is there anything else about the sales tax on grocery food?** Food is a basic necessity, but like shelter, utilities and clothing, it is subject to City sales tax as a percentage of the final price. Sales tax on food is an appropriate form of taxation in Colorado, and is utilized by many municipalities including Fort Collins. From the very beginning of tax systems, necessities have been subject to tax because everyone benefits from the services provided and it is fair for everyone to pay a share of the costs.

CML's 2004 annual report opposes further reductions in state and local sales and use tax rates. CML also support a broadening of the state sales and use tax base. (Elimination of the state's tax on grocery food was the single largest exemption ever provided by the State of Colorado.) Many of the funding shortfalls now being experienced by the state could have been funded if the base was still broad.

/kab

cc: Executive Lead Team  
Alan Krcmarik, Financial Officer  
Sherrie Temple, Assistant Finance Director