

ORDINANCE NO. 082, 2023
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 SALES AND USE TAX

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

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

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

WHEREAS, City staff has reviewed the Sales and Use Tax Code and has recommended revisions to it to clarify an exemption from use tax for property purchased outside the city and to create an explicit process by which a taxpayer can claim a refund or credit resulting from an overpayment of tax discovered during an audit; and

WHEREAS, City staff has also recommended a change to the sale and use tax license requirements to conform to Senate Bill 2022-032 regarding the simplification of local licensing requirements in coordination with the Department of Revenue’s administration of the state sales and use tax simplification system; and

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

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

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

Section 2. That Section 25-74 of the Code of the City of Fort Collins is hereby amended by the amendment of Subsection (4) and the addition of a new Subsection (5) to read as follows, with the remaining Subsections renumbered accordingly:

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

...

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

...

(4) Tangible personal property brought into the City by a nonresident for that person's own use, storage, distribution or consumption while temporarily in the City, ~~and the tangible personal property of a resident if such property was purchased prior to becoming a resident of the City;~~

(5) Tangible personal property that is first used, stored, consumed or distributed within the City more than one (1) year after the most recent sale of the property if, within the year following such sale, the property has been used in a significant way outside the City for the principal purpose for which it was most recently purchased. This exemption shall not apply to:

(a) construction equipment, tools, and machinery;

(b) construction materials;

(c) vehicles that are capable of moving themselves, or of being moved from place to place upon wheels or endless tracks, excluding bicycles and other devices moved by human power; and

(d) farm machinery and farm machinery parts used in farming operations, but not farm machinery parts installed on farm machinery in the City. Trucks having a manufacturer's rated capacity of one (1) ton or less shall not be considered farm machinery;

...

Section 3. That Section 25-91 of the Code of the City of Fort Collins is hereby amended to read as follows:

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

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

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

...

(e) The requirement to obtain a license under Subsections (a) and (b) shall not apply to a person identified therein who either does not have a physical presence in, or has only an incidental physical presence, in the city as defined in C.R.S. § 39-26-802.9(2)(c) and (e), who has a state standard retail license, and who remits tax to the City through the state electronic sales and use tax simplification system.

Section 4. That Section 25-186 of the Code of the City of Fort Collins is hereby amended to read as follows:

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

...

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

...

Introduced, considered favorably on first reading, and ordered published this 6th day of June, 2022, and to be presented for final passage on the 20th day of June, 2022.

Mayor

ATTEST:

Chief Deputy City Clerk

Passed and adopted on final reading on this 20th day of June, 2023.

Mayor

ATTEST:

Chief Deputy City Clerk