

AGENDA ITEM SUMMARY

City Council



STAFF

Jennifer Poznanovic, Sr. Revenue Manager
Ryan Malarky, Legal

SUBJECT

Items Relating to Sales Tax Code Updates.

EXECUTIVE SUMMARY

A. First Reading of Ordinance No. 081, 2023, Amending Article VIII, Article XI and Article XIV of Chapter 15 of the Code of the City of Fort Collins Relating to Pawnbrokers, Secondhand Dealers, and Outdoor Vendors.

B. First Reading of Ordinance No. 082, 2023, Amending Article III of Chapter 25 of the Code of the City of Fort Collins Relating to Sales and Use Tax.

The purpose of Ordinance A is to amend Chapter 15 of the City Code to include annual renewal dates for pawnbroker and secondhand dealer licenses, to create exemptions from secondhand dealer regulation for flea markets and secondhand furniture stores, and to restrict mobile food truck vendors and pushcart vendors from operating on the renovated portion of Linden Street.

The purpose of Ordinance B is to amend Chapter 25 of the City Code concerning sales and use tax. The updates to Chapter 25 include clarifying the process for a taxpayer to obtain a refund or credit for overpayment of tax discovered in an audit, updating licensing to align with Senate Bill 22-032, and the time period that a business relocating to Fort Collins will owe use tax on items brought into the City that were purchased while a nonresident.

STAFF RECOMMENDATION

Staff recommends adoption of both Ordinances on First Reading.

BACKGROUND / DISCUSSION

The various Code changes being requested are as follows:

CHAPTER 15, ARTICLE VIII - Pawnbrokers

Annual License Fee

City Code Section 15-263 establishes the fee for an annual license and requires an application for such license. City staff recommends the section be amended to include a specific expiration date for pawnbroker licenses to be December 31st. This allows for the tracking and the renewal process to be automated

through the sales tax online portal and effectively decreases the amount of staff time spent monitoring pawnbroker businesses for renewal.

CHAPTER 15, ARTICLE XI - Secondhand Dealers

Definitions

City Code Sections 15-316, 15-317, 15-318, 15-322, 15-323 and 15-327 include regulatory requirements specific to flea markets and/or dealers of secondhand property. Within the Definitions section of Chapter 15, Article XI, City staff recommends creating an exemption from regulatory requirements for flea markets and to amend the Code to make clear that secondhand furniture stores are not considered secondhand dealers. Fort Collins Police Services determined that regulating these types of stores is not necessary. There has not been a reported incident or area of concern at any flea market or secondhand furniture store and the cost of City staff time and effort to monitor and license these types of stores can now be spent on other areas of need.

City staff is further recommending that other regulatory requirements specific to flea markets be removed, and another revision to records retention for tax purposes, the latter of which is properly characterized as a “clean-up” revision.

License Required, Annual Fee

City Code Section 15-317 establishes that secondhand dealers are required to obtain an annual license. City staff recommends amending secondhand dealer license expiration dates to be the same for all secondhand dealer businesses to December 31st of each year. This allows for the license tracking and the renewal process to be automated through the sales tax online portal and decreases the amount of staff time spent monitoring these businesses for renewal.

CHAPTER 15, ARTICLE XIV

Sec. 15-387. - Restrictions on Mobile Food Truck Vendors and Pushcart Vendors on Linden Street.

City Code Section 15-387 imposes license and other regulatory requirements on outdoor vendors. Outdoor vendors include mobile food truck vendors and pushcart vendors that serve food. City staff recommends the Code be amended to make clear that mobile food truck vendors and pushcart vendors be restricted from vending in the new parallel parking spaces on the portion of Linden Street in downtown between Walnut Street and Jefferson Street. The City completed renovation of Linden Street in 2022 into a convertible space that would allow for pedestrian gathering space during special events. The renovation included the conversion of diagonal parking spaces to parallel parking spaces. Under the current regulations, mobile food truck vendors and pushcart vendors are permitted to vend on streets in non-neighborhood zones where parallel parking is allowed. The City did not intend for such vendors to utilize the parallel parking spaces, and therefore, a change to the Code is warranted.

CHAPTER 25, ARTICLE III

Exception from Sales/Use Tax License for Remote Sellers

City Code Sec. 25-91 establishes the requirement that those engaged in the business of retail sales of tangible personal property and taxable services must obtain a sales/use tax license. In the 2022 session, the General Assembly passed Senate Bill 22-032, which places a requirement on the Colorado Department of Revenue in administering the state’s electronic sales and use tax simplification system (SUTS). The requirement is that the Dept. of Revenue collect information from retailers that do not have a physical presence within a local taxing jurisdiction or have only an incidental physical presence within a taxing jurisdiction so that the local jurisdiction can alleviate the retailer of the requirement to have a local sales/use

tax license. The intent of the bill was to streamline the imposition, collection, and administration of sales and use taxes by local jurisdictions.

City staff recommends adding an exception to the City's sales/use tax license requirement to align with SB 22-032. City staff recommends to not require a sales and use tax license for remote sellers that have only an economic nexus with the City, as compared to a physical nexus. The City would issue such businesses an account for City staff to track payment but would not require such businesses to have a City license.

Creation of Explicit Process for Refund or Credit of Tax Overpayment during Audit

City Code Sec. 25-186(c): City staff recommends adding the treatment of tax overpayments determined through audit. Currently, taxpayers have no recourse if an audit determines an overpayment because the statute of limitations for submitting a refund claim would have expired in most audit circumstances. Staff recommends sending a notice of overpayment to the taxpayer that serves as documentation for a claim for refund if the taxpayer signs and submits the claim within 30 days of the notice.

Clarification of the Use Tax Exemption for Property Purchase Outside the City

City Code Sec. 25-74(b) establishes exemptions from the City's use tax. Subsection (b)(4) establishes a limited exemption for property that is either brought into the City temporarily by a nonresident or that is purchased prior to the owner becoming a resident of the City. City staff recommend revising this section into two sections. The first would retain the exemption for property temporarily brought into the City by nonresidents. The second would retain, but clarify, the exemption for property purchased outside the City but brought into the City by a resident to better define a timeframe when property is subject to use tax.

CITY FINANCIAL IMPACTS

Not applicable.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

Not applicable.

PUBLIC OUTREACH

Not applicable.

ATTACHMENTS

1. Ordinance A for Consideration
2. Ordinance B for Consideration