

Agenda Item No: GB-B
Meeting Date: August 8, 2022

Subject: CONSIDERATION AND APPROVAL OF ORDINANCE NO. 927, APPROVING AN AMENDMENT TO THE CITY'S SALES AND USE TAX CODE TO ADD CERTAIN EXEMPTIONS ON FIRST READING

Presenter(s): Kelly Stroh, Finance Director

Background: With the passing of SB21-260, the Colorado Department of Revenue ("CDOR") started requiring all retailers or marketplace facilitators to charge a retail delivery fee on all orders that are mailed, shipped or otherwise requiring delivery via motor vehicle as of July 1, 2022. Furthermore, the State has determined that the twenty-seven cent (\$.27) fee is not taxable because it is separable from the cost of the item(s) purchased.

Likewise, HB21-1162 created a statewide mandate for a new bag fee which will go into effect January 1, 2023. The ten cent (\$.10) fee will be split between the business owner, retaining 40% and the local municipality, receiving 60% of the total per bag fee. Even though a plastic bag is considered a tangible item and therefore could be considered taxable, this fee will be short lived as single use plastic bags and Styrofoam containers will be completely banned from Colorado as of January 1, 2024.

Both of these bills have created confusion between business owners and home-rule government officials as to whether or not these items can be taxed according to each municipalities' tax code. The Sales Tax Simplification Committee took up the conversation in a meeting held on June 16. The main item on the agenda was to determine whether the member communities thought they would or would not tax the retail delivery fee and the bag fee. All members agreed that whatever the decision, it should be unified.

After the City attorney's office review and the committee's survey results came back, it was determined that the fees should be exempted from sales tax. The City has already agreed to be part of the sales tax simplification process in Colorado, has approved the standard definitions and has typically used State statute as a guide for the City sales tax code. Also, the City code currently does not tax delivery services therefore taxing this particular service fee could pose an opportunity for a TABOR challenge. The bag fee will already provide additional revenue to the City since the fee is split between the retailer and the local government. This is also a short lived fee, covering only one year until plastic bags are banned from the state altogether. Staff concluded that the challenges of taxing these items is not worth the small gains they would provide.

Finally, HB 1055 expanded State sales tax exemptions to include period products, incontinence products and youth diapers which will go into effect on January 1, 2023 as well. Staff feels that this is a worthy effort and therefore the City should follow the States decision.

Recommended Action: Staff recommends approval of Ordinance 927, on first reading.

ORDINANCE NO. 927

AN ORDINANCE AMENDING THE CITY’S SALES AND USE TAX CODE TO ADD CERTAIN EXEMPTIONS

WHEREAS, the City of Dacono is a home rule municipality, organized and existing under Article XX, Section 6 of the Colorado Constitution; and

WHEREAS, pursuant to Article XX, Section 6 of the Colorado Constitution, the right to enact, administer and enforce sales and use taxes is clearly within the constitutional grant of power to the City and is necessary to raise revenue with which to conduct the affairs and render the services performed by the City; and

WHEREAS, pursuant to such authority, the City has adopted and enacted a Sales and Use Tax Code, under which City sales and use tax is levied; and

WHEREAS, the City does not wish to impose local sales tax on retail delivery fees and carryout bag fees enacted by the State of Colorado that would otherwise be taxable under the Code; and

WHEREAS, the Colorado Legislature recently exempted period products and incontinence products and diapers from the State sales tax; and

WHEREAS, the City Council has determined it is in the best interests of its citizens to exempt such products from the City’s sales tax as well; and

WHEREAS, the City adopts this ordinance with the intent to exempt such fees and products from local sales tax.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DACONO, COLORADO:

Section 1. Section 4-12(b) of the Dacono Municipal Code is hereby amended by the addition of subsections (26) – (28) to read as follows:

Sec. 4-12. - Sales tax; exempt property and services.

(b) The tax levied by Section 4-6 shall not apply to the following:

(26) The retail delivery fee consisting of the community access retail delivery fee imposed in C.R.S. § 24-38.5-303(7), the clean fleet retail delivery fee imposed in C.R.S. § 25-7.5-103(8), the clean transit retail delivery fee imposed in C.R.S. § 43-4-1203(7), the retail delivery fee imposed in C.R.S. § 43-4-218(3), the bridge and tunnel retail delivery fee imposed in C.R.S. § 43-4-805 (5)(g.7), and the air pollution mitigation retail delivery fee imposed in C.R.S. § 43-4-1303(8), as such sections existed on June 17, 2021.

(27) The carryout bag fee imposed in C.R.S. § 25-17-505, as such section existed on July 6, 2021.

(28) Period products and incontinence products and diapers purchased after January 1, 2023. The terms “period products” and “incontinence products and diapers” shall have the meanings set forth in C.R.S. § 39-26-217, as amended from time to time.

Section 2. If any portion of this ordinance is held to be invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each part hereof irrespective of the fact that any one part be declared invalid.

Section 3. The repeal or modification of any provision of the Municipal Code of the City of Dacono by this ordinance shall not release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture, or liability, either civil or criminal, which shall have been incurred under such provision, and each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings, and prosecutions for the enforcement of the penalty, forfeiture, or liability, as well as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions.

Section 4. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

INTRODUCED, READ, ADOPTED ON FIRST READING, AND ORDERED PUBLISHED BY TITLE AND POSTED IN FULL this 8th day of AUGUST, 2022.

PUBLIC HEARING AND SECOND READING WILL BE THE 22nd day of AUGUST, 2022, AT 6:00 P.M. AT DACONO CITY HALL, 512 CHERRY STREET, DACONO, CO.

READ, ADOPTED ON SECOND READING, APPROVED, SIGNED, AND ORDERED PUBLISHED BY TITLE this ____ day of _____, 2022.

CITY OF DACONO, COLORADO

Adam Morehead, Mayor

ATTEST:

Valerie Taylor, City Clerk

Summary of Ordinance No. _____, **“AN ORDINANCE AMENDING THE CITY’S SALES AND USE TAX CODE TO ADD CERTAIN EXEMPTIONS:”** Adds exemptions from the City’s sales tax for the following: retail delivery fees and carryout bag fees enacted by the State of Colorado; period products; and incontinence products and diapers.

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CML Sales Tax Simplification Committee

June 16, 2022

1:30 pm to 2:30 pm

Meeting Minutes

1. Welcome and Introductions

2. Taxing Retail Delivery Fees (SB 21-260)

- Committee co-chair Don Korte (Denver) shared that the retail delivery fee is taxable under Denver's code, but their attorney drafted an exemption to present to their officials. Don, as well as Leslie Edwards (Frisco), relayed the conversation that took place about taxation of the retail delivery fee at the Sales and Use Tax Task Force meeting last week. Don noted that when this committee established standard definitions, the intention was to maintain the standard definitions and impose exemptions in each respective municipality rather than altering standard definitions.
- Committee co-chair Ezequiel Vasquez (Arvada) shared that it does not seem worth the administrative trouble and potential lawsuits to tax the retail delivery fee, particularly given that this fee has not previously been part of the municipal tax base and is unlikely to result in significant revenue.
- Meghan Dollar (CML) discussed how local taxation of the retail delivery fee is a target in the Sales and Use Tax Task Force, could be a target in the next legislative session, and is currently getting significant negative media attention. Because of this, it is in the committee's interest to uniformly pursue an exemption for the retail delivery fee.
- Other committee members shared that the retail delivery fee is currently taxable under their municipality's code, but they agree with pursuing an exemption for the retail delivery fee and would like CML to create a model ordinance to circulate to the committee. Committee members requested that the model ordinance include an exemption for the bag fee, as well.

3. Next Committee Meeting

- The next committee meeting will likely take place sometime in mid-September. If CML's large conference room is hybrid ready by the time of the next committee meeting, CML will host a hybrid committee meeting.

Any questions, comments, or concerns can be sent to the committee co-chairs, Don Korte and Ezequiel Vasquez, or CML Associate Counsel Rachel Bender.