

COUNCIL COMMUNICATION

Meeting Date: October 26, 2021	Agenda Item: 10D	Agenda Location: Consent Calendar	Goal(s):	Legal Review: <i>TY</i>	<input type="checkbox"/> 1 st Reading <input checked="" type="checkbox"/> 2 nd Reading
Subject: An ordinance amending Section 390 of Chapter 26 of the Thornton City Code to eliminate the sales and use tax exemption for cigarettes.					
Recommended by: Kim Newhart <i>DB/KN</i> Approved by: Kevin S. Woods <i>KW</i> Presenter(s): Doug Buchanan, Deputy Finance Director					Ordinance previously introduced by: <hr/> Nizam

SYNOPSIS:

This amendment would modify the City Code (Code) pertaining to sales and use tax to eliminate the tax exemption for cigarettes and subject cigarettes to the City’s 3.75% sales and use tax rate. This amendment would simplify the administrative burden of the tax code for retailers, as other tobacco products are not exempt from taxation, and cigarettes are currently subject to State sales tax, as well as taxation by Regional Transportation District (RTD), Scientific and Cultural Facilities District (SCFD), and several other home rule municipalities. The estimated revenue to be generated for the City from eliminating the exemption is approximated at \$400,000 annually.

RECOMMENDATION:

Staff recommends Alternative No. 1, approval of the ordinance.

BUDGET/STAFF IMPLICATIONS:

Approval of the ordinance is expected to result in additional sales tax collections for the City.

ALTERNATIVES:

1. Approve the ordinance amending the Code eliminating the cigarette exemption.
2. Do not approve the ordinance.

BACKGROUND (ANALYSIS/NEXT STEPS/HISTORY): (includes previous City Council action)

In 1973, the State of Colorado imposed a \$.20 per pack excise tax on cigarettes, 27% of which would be shared with municipalities if they eliminated their own regulation and taxation of cigarettes. While continuing to impose the excise tax, the State eliminated their cigarette sales tax exemption in 2009. RTD and SCFD similarly eliminated their cigarette sales tax exemptions in 2013. Although there have been several voter-approved measures to increase the cigarette excise tax imposed by the state, the tax amount allocated to local governments has not changed; this amount is still 27% of the original \$.20 per pack tax. Colorado HB 19-1033, passed in 2019, clarifies that local governments are free to regulate and levy sales taxes on cigarettes.

At the August 31, 2021 Planning Session, Council heard and considered a staff presentation regarding the proposed Amendment to the City’s Sales and Use Tax Code to eliminate the tax exemption for cigarettes and expressed its support for this ordinance to be brought forward at a City Council meeting.

INTRODUCED BY: Nizam

AN ORDINANCE AMENDING SECTION 390 OF CHAPTER 26 OF THE THORNTON CITY CODE TO ELIMINATE THE SALES AND USE TAX EXEMPTION FOR CIGARETTES.

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

WHEREAS, the City is authorized under Article XX, Section 6 of the Colorado Constitution to pass ordinances and regulate local affairs including ordinances for the administration and collection of sales and use tax; and

WHEREAS, the City intends to simplify the collections process of the City's existing sales and use tax by eliminating the tax exemption of cigarettes and subjecting them to sales and use tax similar to other tobacco products and most other tangible personal property; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF THORNTON, COLORADO, AS FOLLOWS:

1. Subsection 26-390(7)(b) of the Thornton City Code is hereby amended by the addition of the words double-underlined and deletion of the words stricken below, to read as follows:

Sec. 26-390. – Exempt transactions, commodities and persons.

(7) Gasoline ~~and cigarettes.~~

~~(b) Sales of cigarettes. The sale or purchase of cigarettes.~~

2. No obligation to collect the sales and use tax required by the amendments contained in this ordinance may be applied retroactively. Responsibilities, duties and liabilities of a retailer begin upon the earlier of when such seller became licensed to collect the city's sales tax or when they became legally obligated to collect the city's sales tax under Section 26-388 of the Thornton City Code.
3. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portions hereof are hereby repealed to the extent of such inconsistency or conflict.
4. The repeal or amendment of any provision of the code 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.

5. This ordinance shall become effective on January 1, 2022.

INTRODUCED, READ, PASSED on first reading, ordered posted in full, and title ordered published by the City Council of the City of Thornton, Colorado, on October 12, 2021.

PASSED AND ADOPTED on second and final reading on _____, 2021.

CITY OF THORNTON, COLORADO

Jan Kulmann, Mayor

ATTEST:

Kristen N. Rosenbaum, City Clerk

THIS ORDINANCE IS ON FILE IN THE CITY CLERK'S OFFICE FOR PUBLIC INSPECTION.

APPROVED AS TO LEGAL FORM:

Tami Yellico, City Attorney

PUBLICATION:

Posted at City Hall, Margaret W. Carpenter Recreation Center, and Thornton Active Adult Center after first and second readings.

Published on the City's official website after first reading on October 13, 2021, and after second and final reading on _____, 2021.