

**FINANCE MEMORANDUM
#7-2022**

DATE: Sept. 12, 2022
TO: Honorable Mayor Meredith Leighty and City Council Members
THROUGH: Heather Geyer, City Manager *hmg*
FROM: Jason Loveland, Director of Finance *AL*
SUBJECT: CB-1992 – Exemption of State Imposed Delivery Fees and Carryout Bag Fees from City Sales and Use Tax

PURPOSE

To consider CB-1992, an ordinance on first reading amending Section 5-3-6 of the Municipal Code to establish an exemption from the City’s sales and use tax for newly imposed State fees on deliveries and carryout bags.

BACKGROUND

In 2021, the Colorado Legislature passed Senate Bill 21-260 and House Bill 21-1162. These add a delivery charge to delivered taxable goods and require customers to pay for single-use plastic or paper bags at certain retailers. Under the Municipal Code, both the delivery charge and bag charge are taxable.

Delivery Fee

Senate Bill 21-260, “Concerning the Sustainability of the Transportation System in Colorado,” imposes a 27-cent “delivery fee” on all retail deliveries involving at least one taxable item. The purpose of the fee is to support the electric vehicle programs, invest in transportation infrastructure, and provide grants or rebates for the construction of charging stations and acquisition of electric motor vehicles, particularly in disproportionately impacted communities (areas with 40% or more low income or 40% or more housing “cost-burdened”, meaning more than 30% of income spent on housing.) The 27-cent fee is distributed to the State as follows:

Fee Type	Rate July 2022 to June 2023
Community Access Retail Delivery Fee	\$ 0.069
Clean Fleet Retail Delivery Fee	\$ 0.053
Clean Transit Retail Delivery Fee	\$ 0.030
General Retail Delivery Fee	\$ 0.084
Bridge and Tunnel Retail Delivery Fee	\$ 0.027
Air Pollution Mitigation Retail Delivery Fee	\$ 0.007
Total Retail Delivery Fee	\$ 0.27

The 27-cent fee is added to the total cost of any delivered purchase, and taxable in most local government tax codes as part of the purchase of the taxable item.

Single-Use Paper and Plastic Carryout Bag Fee

House Bill 21-1162, “Concerning the Management of Plastic Products,” imposes a 10-cent fee on all single-use paper or plastic carryout bags provided by retailers. Beginning January 2024, Safeway and other retail establishments will be prohibited from providing single-use plastic

carryout bags to customers without charging 10 cents per bag. Exceptions are allowed for customers who participate in State or Federal food assistance programs, certain retail carryout food establishments, small stores that operate solely in Colorado and have three or fewer locations, and to allow for existing inventory of plastic bags to be reduced.

In the City's current tax code, tangible personal property is taxed at the time of retail sale and providing (selling) a bag for 10 cents is considered a taxable transaction.

H.B. 21-1162 prohibits the taxation of the bag fee by declaring it non-taxable. The law states that 60% of the bag fee (six cents for every bag sold) must be paid to the local government where the store is located, and the store keeps four cents. The six cents per bag remitted to local governments must be accounted for separately as the revenue can only be used for "Recycling, composting, or other waste diversion programs and related outreach and education activities" and administrative and enforcement costs."

UPDATE

The amount of revenue generated from receiving 60% of the bag fee is unknown. The revenue received from the bag fee will be additional to what is already being collected as sales tax. The accounting and management of the spending restrictions will be evaluated over the next several months.

BUDGET/TIME IMPLICATIONS

There are no financial or time impacts to the City.

If CB-1992 is approved on first reading, a public hearing and second reading of the proposed ordinance will be scheduled for Sept. 26, 2022.

STAFF RECOMMENDATION

Council has the following alternatives to consider:

1. Do not exempt the 27-cent delivery from City sales and use tax.
2. Do not exempt the 10-cent carryout bag fee from City sales and use tax.
3. Exempt both the delivery fee and carryout bag fee from City sales and use tax.

Staff recommends Option 3, to exempt the State imposed fees on delivery and carryout bag fees. This recommendation is consistent with what other Home Rule Municipalities in the state have done or are planning to do with their tax laws.

Staff recommends approval of CB-1992 on first reading.

STAFF REFERENCE

If Council members have any questions, please contact Jason Loveland, Director of Finance, at jloveland@northglenn.org or 303.450.8817.

SPONSORED BY: MAYOR LEIGHTY

COUNCILMEMBER'S BILL

ORDINANCE NO.

No. CR-1992
Series of 2022

Series of 2022

A BILL FOR AN ORDINANCE AMENDING SECTION 5-3-6 OF THE NORTHGLENN MUNICIPAL CODE TO ESTABLISH AN EXEMPTION FROM THE CITY'S SALES AND USE TAX FOR CERTAIN RETAIL DELIVERY FEES AND CARRYOUT BAG FEES ENACTED BY THE STATE OF COLORADO

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

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;

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

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 Northglenn Municipal Code; and

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

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

Section 1. Section 5-3-6 of the Northglenn Municipal Code is amended by the addition thereto of new subsections (d)(34) and (d)(35) to read as follows:

(d) Exempt from the imposition of the Northglenn Sales, Use or Accommodation Taxes, or any combination thereof, as the context sets forth are the following:

* * *

(34) 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; and

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

INTRODUCED, READ AND ORDERED POSTED this ____ day of _____,
2022.

MEREDITH LEIGHTY
Mayor

ATTEST:

JOHANNA SMALL, CMC
City Clerk

PASSED ON SECOND AND FINAL READING this ____ day of _____,
2022.

MEREDITH LEIGHTY
Mayor

ATTEST:

JOHANNA SMALL, CMC
City Clerk

APPROVED AS TO FORM:

COREY Y. HOFFMANN
City Attorney