

AGENDA
LAKEWOOD CITY COUNCIL
STUDY SESSION
CITY OF LAKEWOOD, COLORADO
VIRTUAL MEETING
FEBRUARY 1, 2021
7:00 P.M.

To watch the Council meeting live, please use either one of the following links:

City of Lakewood Website: <https://www.Lakewood.org/CouncilVideos>

or

Lakewood Speaks: <https://lakewoodspeaks.org/>

Phone Number for Public Input: 1-346-248-7799

Webinar ID: 920 3950 5230

(press # after entering the webinar id then press # once more to join the meeting)

Press *9 to Request to Speak

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ITEM 1 – CALL TO ORDER

ITEM 2 – ROLL CALL

ITEM 3 – PRESENTATION – FINANCIAL UPDATE

PUBLIC INPUT

ITEM 4 – PRESENTATION – REVIEW OF SALES TAX EXEMPTIONS

PUBLIC INPUT

ITEM 5 – REPORTS

ITEM 6 – ADJOURNMENT

STAFF MEMO

DATE OF COUNCIL MEETING: February 1, 2021/ AGENDA ITEM NO. 3

To: Mayor and City Council

From: Holly Björklund, Chief Financial Officer, 303-987-7601

Subject: Financial Update: Preliminary 2020 General Fund Financial Results

SUMMARY STATEMENT: Staff will provide City Council with a review of City of Lakewood preliminary financial results for 2020 general fund. The review will be informational and requires no specific action by City Council.

BACKGROUND INFORMATION: 2020 proved to be a challenging year for Lakewood from a financial perspective. The 2020 general fund budget was reduced by \$12.8M to offset projected revenue declines related to the COVID-19 crisis. Preliminary financial results indicate that the goals outlined in the revised 2020 budget have been achieved.

BUDGETARY IMPACTS: There is no budget impact associated with the presentation

STAFF RECOMMENDATIONS: Staff recommends City Council provide any specific questions in advance, so thoughtful answers may be researched and responded to suitably.

ALTERNATIVES: City Council may delay or forgo this presentation.

PUBLIC OUTREACH: This item was promoted through the regular communication channels for items that come before the City Council.

NEXT STEPS: Not Applicable.

ATTACHMENTS: There is no attachment to this staff memo.

REVIEWED BY: Kathleen E. Hodgson, City Manager
Benjamin B. Goldstein, Deputy City Manager
Alison McKenney Brown, City Attorney

STAFF MEMO

DATE OF STUDY SESSION: FEBRUARY 1, 2021 / AGENDA ITEM NO. 4

To: Mayor and City Council

From: Holly Björklund, Chief Financial Officer, 303-987-7601

Subject: **Tax Code Exemptions and Other Administrative Items**

SUMMARY STATEMENT: Staff will provide City Council an overview of certain tax code exemptions that could be eliminated or modified to simplify taxation for businesses, increase compliance, or broaden the tax base. Staff will also highlight some areas that should be considered for revision in order to better align with the recently adopted Sales and Use Tax Code or other municipalities. All documents will be distributed to City Council in advance of the Budget & Audit Board meeting (1/27/21). Suggested revisions from the Board will be incorporated and any revised documents will be sent out to City Council prior to this study session.

BACKGROUND INFORMATION: Chapter 3.01 of the Lakewood Municipal Code (“LMC”) was revised to incorporate standardized definitions, transform the language to be more user (business) friendly and more clearly articulate current processes and tax determinations. The revised code was adopted unanimously by City Council on December 14th, 2020. The purpose of this study session will be to dive deeper into certain tax exemptions and discuss other administrative updates to the code language.

BUDGETARY IMPACTS: It is anticipated that the revised Code will result in better compliance and therefore, increased revenue.

STAFF RECOMMENDATIONS: Staff recommends City Council provide any specific questions in advance, so thoughtful answers may be researched and responded to suitably.

ALTERNATIVES: City Council may delay or forgo this presentation.

PUBLIC OUTREACH: This item was promoted through the regular communication channels for items that come before the City Council.

NEXT STEPS: Staff will incorporate feedback from the City Council in advance of the 1st Reading on February 22, 2021.

ATTACHMENTS: City Council Study Session February 1, 2021 PowerPoint
New Revenue White Papers – January 2021
Chapter 3.01 Sales and Use Tax Code Accommodations and Licensing - redline
Chapter 3.02 Registration of a Motor Vehicle - redline
Chapter 3.03 Accommodations Tax - redline

REVIEWED BY: Kathleen E. Hodgson, City Manager
Benjamin B. Goldstein, Deputy City Manager
Alison McKenny Brown, City Attorney

NEW REVENUE OPPORTUNITIES

Updated January 2021

OVERVIEW

As the City strives to overcome the challenge of restoring balance to the budget, the Leadership Team has been developing robust plans to reduce operational costs by \$17 million by the end of 2021. Current revenue streams are also being re-evaluated to ensure that the City's fees and program costs are competitive in the market.

Historically, the City has been heavily reliant on sales tax to fund operations, accounting for roughly 53% of the revenue for the General Fund. The impact of the COVID-19 pandemic has been detrimental to local retail, as businesses have been forced to shut down or limit their operations. The impact to sales tax revenue is significant for City finances. Staff has identified a list of strategic revenue ideas for City Council's review. While these ideas do not move us away from being reliant on sales tax, they do, in many cases, broaden the tax base, simplify taxation for businesses, increase compliance, or offer additional flexibility to how the current revenue funds can be used. The attached "white papers" have been drafted to provide City Council with background and options for each of the following areas:

- Adoption of Standardized Sales Tax Definitions and Revised Chapter 3 of the Lakewood Municipal Code
- Removal/Modification of Certain Tax Exemptions
- Taxation of Specific Services
- Legalization of Specific Business Activities
- Adoption of Occupational Privilege Tax
- Modification of TABOR
- Annexation of Certain Commercial Areas

Action Needed

These white papers were presented to City Council in August 2020 to seek a recommendation on which items they would like for staff to research or pursue. City Council approved the adoption of the revised tax code on December 14th. It will go into effect on January 16, 2021. The remainder of the items will be reviewed during 2021.

Adoption of Revised Tax Code – Approved 12/14/2020

1. Standardized Sales Tax Definitions & Revised Lakewood Municipal Code (“LMC”) Chapter 3

Simplifies taxation for businesses and increases compliance.

Background

The Colorado Constitution gives local municipalities the ability to determine their tax base, establish rates, and perform their own tax collection. Lakewood is one of more than seventy-two locally-collecting municipalities. For businesses that operate in more than one jurisdiction, managing the (sales/use) taxation can be complex and burdensome. The General Assembly adopted Senate Joint Resolution (SJR) 14-038 urging Colorado’s home rule municipalities that locally collect their sales tax to work with the Colorado Municipal League to develop a package of uniform tax definitions. The intent of this resolution was to simplify taxation by having the municipalities utilize standardized terminology in their taxation policy. Definitions were drafted in a way that added clarity about current business practices without triggering a TABOR election. Standardized definitions were finalized February 2016. To date, 55 of the 72 self-collecting home rule jurisdictions have adopted the standardized definitions.

When incorporating the 2016 standardized definitions into LMC, it became clear that the LMC should be reviewed in totality. Over the years, changes had been made to the LMC in response to state legislative changes, the 1992 standardized definition project, and local legal disputes and challenges. The Code in its current state has typos, spelling errors, and inconsistencies. In addition, the Code is difficult for businesses to read and interpret.

Option

- ❖ City Council can adopt the rewritten tax code, LMC Chapter 3. Staff has spent more than four years working on a draft of the code that incorporates the 2016 standardized definitions. The revised code has been written to make sales and use tax easy to understand by business owners and accountants, without the interpretation of an attorney. It is organized in a way that is logical, and the language more clearly articulates the taxation policy. It is anticipated that the adoption of the rewritten code will result in incremental revenue from better compliance. In addition, it will be an opportunity for other items, such as Economic Nexus and Marketplace Facilitators (below) to be incorporated.

2. Economic Nexus, Marketplace Facilitators, and Sales & Use Tax System

Simplifies taxation for businesses, increases compliance, and broadens the tax base.

Background

The U.S. Supreme Court’s June 2018 ruling in *South Dakota v. Wayfair* (hereinafter “Wayfair”) changed the taxation landscape when the Court ruled that South Dakota could require internet sellers with no physical presence in the state to collect and remit taxes. The Supreme Court held that South Dakota had several measures in place that removed the burden on interstate commerce, including a threshold amount to not require small businesses to remit, a clause eliminating taxes from being owed retroactively, a single state-level tax administration, and uniform definitions.

Following the Wayfair ruling, Colorado passed HB19-240, which addressed the areas highlighted in the Wayfair ruling to remove the burden of interstate commerce.

- Economic nexus – Effective June 1, 2019, sellers who do not have a physical presence in Colorado are required to collect and remit taxes if their total sales exceed \$100,000 in a calendar year. This obligation is not retroactive.
- Destination sourcing – The State clarified their expectation of sourcing sales to the destination (vs. seller's location). However, small businesses (<\$100,000 in sales) with physical locations in Colorado were given reprieve until the State could implement an electronic system.
- Marketplace seller rules – Beginning October 1, 2019, marketplace facilitators, such as Amazon and Etsy, must collect and remit taxes on behalf of remote sellers selling through their platforms.

The *Wayfair* decision also reinforced the importance of a single portal for remote sellers. The State has since developed a single point of remittance portal (hereinafter "SUTS"), which will allow those municipalities who want to sign up for the State portal to collect taxes from (1) marketplace facilitators who collect on behalf of third-party sellers, and (2) businesses that are only connected to the municipality by economic presence. SUTS is not limited to remote/online retailers.

In efforts to have cohesive economic nexus requirements among all jurisdictions in Colorado, home rule municipalities agreed upon similar language as the State to lessen the burden on businesses and minimize legal risk. Definitions for Marketplace Facilitator and Economic Nexus were added to the standardized definitions from February 2016. The CML recommends that municipalities only adopt the Economic Nexus definition if they will be signing up for the SUTS. Requiring businesses to remit directly to the City without the option of the portal could result in a constitutional challenge under the Commerce Clause.

Definitions:

"Marketplace" means a physical or electronic forum, including, but not limited to, a store, a booth, an internet website, a catalog, or a dedicated sales software application, where tangible personal property, taxable products, or taxable services are offered for sale.

"Marketplace Facilitator"

(A) Means a person who:

- (1) Contracts with a marketplace seller or multichannel seller to facilitate for consideration, regardless of whether or not the consideration is deducted as fees from the transaction, the sale of the marketplace seller's tangible personal property, products, or services through the person's marketplace;
 - (2) Engages directly or indirectly, through one or more affiliated persons, in transmitting or otherwise communicating the offer or acceptance between a purchaser and the marketplace seller or multichannel seller; and
 - (3) Either directly or indirectly, through agreements or arrangements with third parties, collects payment from the purchaser on behalf of the seller.
- (B) "Marketplace Facilitator" does not include a person that exclusively provides internet advertising services or lists products for sale, and that does not otherwise meet this definition.

“Marketplace Seller” means a person, regardless of whether or not the person is engaged in business in the city, which has an agreement with a marketplace facilitator and offers for sale tangible personal property, products, or services through a marketplace owned, operated, or controlled by a marketplace facilitator.

“Multichannel Seller” means a retailer that offers for sale tangible personal property, commodities, or services through a marketplace owned, operated, or controlled by a marketplace facilitator, and through other means.

Options

- ❖ The City Manager can sign the agreement with the State for SUTS if City Council adopts the rewritten LMC, to include the 2016 standardized definitions and the addition of Marketplace Facilitator and Economic Nexus. New guidelines would go into effect no sooner than 30 days after passed by City Council to allow time for communication to businesses. By taking these actions, Lakewood would meet the requirements specified in the South Dakota v. Wayfair ruling. (\$1.2-1.9 million)
- ❖ City Council could adopt the definition for Marketplace Facilitators only. The adoption of this term only (without Economic Nexus) will likely not lead to much additional revenue, as taxation would only apply to marketplace facilitators with a physical presence in Lakewood. Those businesses should already be collecting and remitting.

3. Tax Licensing Application Fees

Broadens the tax base.

Background

Businesses wishing to operate in the City of Lakewood must submit an application. The application review process is the same for both service-only businesses and retail businesses. Currently, the City charges an application fee of \$15 for Sales & Use Tax Licenses and \$0 for Use (service) Licenses.

The Colorado Municipal League is requesting that licensing fees not be required for marketplace facilitators that only have economic nexus and submit returns via the State’s SUTS portal.

Option

- ❖ City Council can approve the alignment of application fees for Sales & Use Tax Licenses and Use Tax Licenses (with the exception of marketplace facilitators as mentioned above). (<\$10,000)

4. Tax License Renewals

Broadens the tax base and increases compliance.

Background

Currently, there are roughly 11,000 licensed businesses in the City. Businesses commonly close or relocate without notifying the Revenue Division; contact information also gets outdated. This impedes communication when trying to reach taxpayers regarding filing compliance or collections.

Use Tax License (service only) holders strongly oppose the annual filing requirement. On average, about 40% of Use Tax filers do not file their returns on time, which results in delinquency letters and additional staff time. By requiring a license renewal for a business to continue to operate in the City, businesses would be required to update all information and could confirm that they continue to have non-taxable sales only (i.e. no changes to their business model). This would significantly decrease staff time in tracking down the zero-returns of the Use Tax filers.

Other cities that have a renewal process include: Denver (\$50 fee, 2 year renewal), Golden (\$20 fee, 2 year renewal, Edgewater (\$18 fee, 1 year renewal), Wheat Ridge (\$20 fee, 1 year renewal).

Option

- ❖ City Council could request that staff explore tax license renewals. Revenue from renewals would be dependent on the fee and frequency. (\$160,000-220,000)

Removal/Modification of Certain Tax Exemptions

1. Medical Supplies of Practitioners

Simplifies taxation for businesses, increases compliance, and broadens the tax base.

Background

Lakewood's Municipal Code (LMC) §3.01.180(5) exempts certain medical supplies, some of which are exempt only when dispensed pursuant to a prescription. LMC §3.01.020, defines medical supplies as

“drugs dispensed in accordance with a prescription; insulin in all its forms dispensed pursuant to the direction of a licensed physician; glucose usable for treatment of insulin reactions; urine and blood testing kits and materials; insulin measuring and injecting devices, including hypodermic syringes and needles; prosthetic devices; wheelchairs and hospital beds; drugs or materials when furnished by a doctor as a part of professional services provided to a patient; and corrective eyeglasses, contact lenses or hearing aids.”

The intent behind the exemption was to provide tax relief to patients purchasing or consuming certain medically necessary supplies (as determined by a doctor). Medical professionals and others have veered away from the original intent and have challenged that the exemption should apply to purchases by medical facilities.

The exemption is also unclear and difficult for vendors, licensed practitioners and auditors to determine which items are subject to tax, because the same material can be taxable or exempt depending on how the material is used. These items include bandages, braces, band-aids, sutures, gauze, aspirin and other items that are provided to the patient as part of their professional services.

Other home rule municipalities have chosen to limit their exemption to patients.

Options

- ❖ City Council could amend the definition of medical supplies to clarify the exemption and limit the exemption to certain supplies purchased by patients. The amendment would remove the section of the definition “drugs or materials when furnished by a doctor as a part of professional services provided to a patient”. The amended definition is, as follows: (\$155,000)

“Medical Supplies for Humans” include:

1. prescription drugs;
2. items for treatment and testing relating to diabetic conditions;
 - a. insulin in all its forms dispensed pursuant to the direction of a licensed physician,
 - b. glucose to be used for treatment of insulin reactions
 - c. urine and blood testing kits and materials
 - d. insulin measuring and injecting devices, including hypodermic syringes and needles
3. prosthetic devices worn on the body;

4. wheelchairs and hospital beds, when sold for the direct, personal use of a specific individual in accordance with a prescription or other written directive issued by a licensed practitioner of medicine, dentistry, or podiatry;
 5. corrective eyeglass lenses including eyeglass frames, and corrective contact lenses, when sold for the direct, personal use of a specific individual in accordance with a prescription or other written directive issued by a licensed practitioner of medicine or optometry;
 6. hearing aids when sold for the direct, personal use of a specific individual in accordance with a prescription or other written directive issued by a licensed practitioner of medicine or audiologist, or a hearing instrument specialist.
- ❖ City Council could limit the exemption of wheelchairs and hospital beds to personal use by a specific individual. This would preclude hospitals, nursing homes, and other care centers from the exemption. (\$11,000)
 - ❖ City Council could remove the exemption for items purchased by a doctor to use when providing professional services, unless specifically exempted. (\$144,000)

2. Electric Vehicles

Simplifies taxation for businesses, increases compliance, and broadens the tax base.

Background

LMC§ 3.01.180(28) exempts the purchase price of electric-powered automotive vehicles, including both the original and all subsequent purchases of such vehicles, and the purchase of batteries and controls required for the operation and maintenance of such vehicles. This exemption was adopted in 1985 along with the entire code. The State has since removed their electric vehicle exemption, presumably when tax credits and incentives started.

Jefferson County assesses tax, on the City's behalf, when a vehicle is registered. After recent discussions with the County, it appears as though the County has not been exempting the sales of electric vehicles for Lakewood tax.

Sales of electric vehicles are anticipated to more than double in the next five years (Colorado Electric Vehicle Plan 2020).

Option

- ❖ City Council could remove the exemption from the code. (\$150,000 in 2020, growing to \$356,000 in 2025)

3. Cigarettes

Simplifies taxation for businesses, increases compliance, and broadens the tax base.

Background

LMC §3.01.180(4) began exempting cigarettes from sales and use tax in 1985 when the code was adopted.

Prior to March 2019, State statute (C.R.S. 39-28-112) prohibited Lakewood from imposing their own fees, licenses, or taxes on cigarette sales. Instead, the State apportioned an amount of State cigarette tax revenues to Lakewood in proportion to the amount of State sales tax revenues collected within Lakewood's boundaries. In the event that Lakewood had wished to impose their own taxes and fees on cigarettes, they would have had to forego the apportionment. The City receives roughly \$300,000 per year from the State's apportionment.

In March 2019, HB19-1033, Section 5 was passed, which removed this prohibition, thus allowing local governments to impose their own fees and licenses on any person as a condition for engaging in the business of selling cigarettes. It is yet to be determined if the municipality would lose the apportioned state cigarette tax revenues if a City pursued its own sales and use tax. Aurora is currently challenging the State on this matter.

In addition, HB19-1033, Section 6 was passed, which authorizes a home rule city, if approved by a vote of the people within their jurisdiction, to levy, collect, enforce and administer a municipal special sales tax on the sale of cigarettes, tobacco products, or nicotine products.

Actions taken by other jurisdictions:

- Removal of cigarette exemption – State of Colorado, Aurora, Aspen, Avon, Basalt, Crested Butte
- Special sales tax on cigarettes (i.e. \$0.15 per cigarette or \$3.00 per pack of 20) – Aspen, Avon, Basalt, Boulder, Crested Butte, Glenwood Springs, New Castle and Vail
- Special sales tax rate on the retail price of tobacco products (i.e. electronic smoking devices, vape pens, and any refill, cartridge or component of such product) – Aspen, Avon, Basalt, Boulder, Crested Butte, Glenwood Springs, New Castle and Vail
- Annual licenses for tobacco retailers to sell products containing tobacco, nicotine or synthetic nicotine, tobacco-related paraphernalia, and electronic smoking devices (\$200 for new license & \$175 for renewal) – Edgewater
- Implementation of retail tobacco store license (\$250 application fee and \$500 license fee) - Denver
- Increase in minimum age from 18 to 21 to purchase all tobacco products, including smoking devices – Aspen, Avon, Denver, Edgewater, Basalt, Boulder, Glenwood Springs, Eagle County, Minturn, Carbondale and Snowmass Village

Options

- ❖ City Council could remove exemption 3.01.180(4) and collect sales tax on cigarettes sales; potentially forgoing the state's apportionment. The estimated additional net revenue, after removing the apportionment, is \$450,000 tax annually.
- ❖ City Council could impose fees or licenses on any person as a condition for engaging in the business of selling cigarettes. (\$TBD)
- ❖ City Council could determine if the minimum age should be raised for buying tobacco and nicotine products. (\$TBD)
- ❖ City Council could conduct a vote to levy a municipal special sales tax on cigarettes, tobacco products, or nicotine products. (\$TBD)

4. Non-essentials (carryout food/drink)

Simplifies taxation for businesses, increases compliance, and broadens the tax base.

Background

Lakewood currently exempts certain items that are furnished by food vendors with the sale of taxable carryout food, meals, or beverages. Examples include plastic utensils, straws, ketchup, bags and containers.

LMC 3.01.180 (16) exempts “Any sale of any article to a retailer or vendor of food, meals, or beverages, which article is to be furnished to a consumer or user, together with the food, meals, or beverages purchased, and if a tax is paid on the retail sale as required by Section 3.01.120(A) or (E).”

LMC 3.01.180 (17) exempts “Any sale of any container or bag to a retailer or vendor of food, meals, or beverages which container or bag is to be furnished to a consumer or user for the purpose of packaging or bagging articles of tangible personal property purchased at retail, if a separate charge is not made for the container or bag to the consumer or user, if such container or bag becomes the property of the consumer or user, together with the food, meals, or beverages purchased, and if a tax is paid on the retail sale as required by Section 3.01.120(I) or (5).”

Lakewood’s exemptions were in line with those of the State until March 2010, when the State narrowed their language to only exempt essential articles or containers.

- Exempt - “Disposable containers or packaging materials (used in an essential manner) on, or in which, food is transferred to the consumer, including pizza delivery box, sleeve for French fries, buckets, clamshells or other containers if the retailer cannot transfer the food to the consumer without such article or container.”
- Nonexempt – “An article or container is nonessential if it is primarily used for the convenience of the consumer and is not necessary to effectuate the sale of food.” Examples include, but are not limited to, utensils, napkins, cup sleeves, straws, and grocery bags.

With the State’s narrowing of the exemption, retailers selling these types of items now have different tax rates to impose when purchases are made by food vendors.

Option

- ❖ City Council could amend Lakewood’s exemptions to apply to essential articles or containers only. (\$13,000)

5. Pass-through exemption from exempt entities to contractors

Broadens the tax base.

Background

In 1985, Lakewood exempted construction materials purchased by contractors for use on projects for government and charitable organizations.

LMC §3.01.180(19)

a. All sales of construction materials to contractors and subcontractors for use in the building, erection, alteration, or repair of structures, highways, roads, streets, and other public works owned or used by:

- i. The United States Government, the state, its departments and institutions, and the political subdivisions thereof in their governmental capacities only,
- ii. Charitable organizations in the conduct of their regular charitable functions and activities, or
- iii. Schools, other than schools held or conducted for private or corporate profit.

Cities of Aurora, Boulder, Colorado Springs, Denver, Englewood, Lone Tree, Ft. Collins, Greenwood Village, Thornton, Westminster and Wheat Ridge do not have an exemption for sales of construction materials for use by contractors on projects for charitable organizations.

Option

- ❖ City Council could eliminate section (a)(ii) of the exemption which allows contractors to use an exempt entity's certificate of exemption to claim a tax exemption. (\$260,000)

Taxation of Specific Services

Background

Sales tax is intended to be a tax on consumption. The economy has seen a significant shift from the consumption of goods to the consumption of services. However, taxation has not kept up with this change in purchasing habits. The taxation of services is essential, if revenue levels are to be maintained without an increase in the sales tax rate.

According to Avalara, a professional tax compliance company, “Delaware, Hawaii, New Mexico, and South Dakota tax most services. Still others, like Texas and Minnesota, are actively expanding service taxability.”

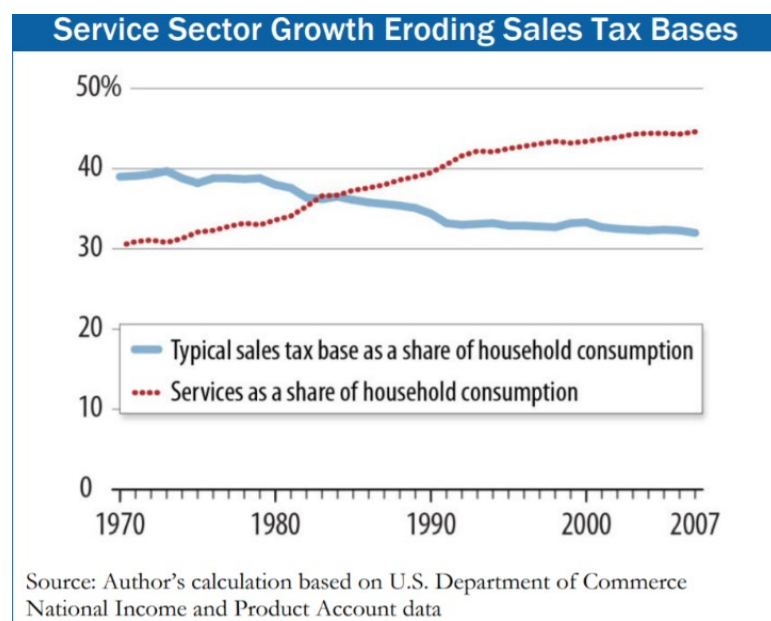
Lakewood’s Municipal Code imposes sales and use tax on retail sales of tangible personal property. In general, the tax does not apply to sales of services, except for those services specifically enumerated in the code. Taxation of additional services would require a vote of the people to avoid a TABOR violation.

1. All Services

Broadens the tax base.

The taxation of services would broaden Lakewood’s tax base and help stabilize the tax revenue stream for the City, especially in times of economic downturn. Services would be taxable, unless clearly exempted from the Lakewood code. The City could consider exempting such services where taxation could burden low-income households, such as child care and health care.

While dated, the following graph from the publication “Expanding Sales Taxation of Services: Options and Issues,” written by Michael Mazerov in July 2009, shows the shift in the economy toward consumption of services.



Option

- ❖ City Council could conduct a vote to tax services, unless specifically exempted.

2. Storage Facilities

Broadens the tax base.

The number of storage facilities nationwide grew to more than 60,000 in 2020 from around 47,000 in 2008, according to the research firm IBISWorld. Revenue increased 2.6% annually to \$38.6 billion in 2019 from 2014. Storage facilities are currently not an enumerated service in LMC.

Option

- ❖ City council could conduct a vote to levy sales tax on storage facilities. (\$250,000)

3. Luxury services

Broadens the tax base.

The taxation of services considered to be “luxury” by nature would provide additional revenue without overburdening lower-income populations. Such luxury items could include health club memberships, private club memberships, massages, nail care, pet grooming, landscaping/lawn care, and dry cleaning/laundry.

Option

- ❖ City Council could have staff compile a comprehensive list of luxury services that could be taxed. City Council could then ask Lakewood voters to approve the taxation of those services.

4. Software as a Service (SaaS)

Broadens the tax base.

Software as a service (SaaS) is a software licensing and delivery model in which software is licensed on a subscription basis and is centrally hosted. It is sometimes referred to as cloud software, on-demand software or web-based software and is typically accessed by users through a web browser. SaaS has become very common for many business applications including office software, payroll processing software, management software, gamification, accounting, collaboration, customer relationship management, management information systems.

Prior to SaaS, software was purchased on a disk and/or downloaded. The City has always considered these transactions to be sales of tangible personal property and subject to Lakewood’s tax. Since SaaS is not distributed physically, staff has conservatively chosen to not tax SaaS, unless the software is hosted on a computer, device or server located in Lakewood; although SaaS is actually the same product as the software contained on a disk or software that is “downloaded”.

Option

- ❖ City Council could ask Lakewood voters to levy a sales tax on software as a service (SaaS). (\$1,000,000)

5. Informational Services

Broadens the tax base.

The sale or purchase of informational services involves the relay or transmission of electromagnetic waves in order for the informational service to be received. Informational services include, but are not limited to, the right to access databases and electronic or internet purchases of data, data research, data analysis, data filtering, or record compiling. Informational services include the furnishing of information of any kind, which has been generated, collected, compiled, or analyzed by the seller and which is made available through electromagnetic waves.

Examples include:

- On-line credit reports and on-line subscriptions, including, newsletters, magazines, and reports;
- On-line libraries, including Lexis and Westlaw; and
- Financial data retrieval and research, including stock, bond, and mutual fund quotes.

The tax is imposed on the purchase price for the right to access, use, or receive such informational services. The sale of personal services would not be subject to Lakewood's sales or use taxes. A distinction exists between the retail sale of informational services and the sale of personal services. A sale of personal services exists when the service provider performs custom research for a single client and the results are proprietary to that client.

The City of Denver currently taxes information services.

Option

- ❖ City Council could ask Lakewood voters to levy a sales tax on information services. (\$TBD)

Legalization of Specific Business Activities

1. Recreational Marijuana

Broadens the tax base.

Background

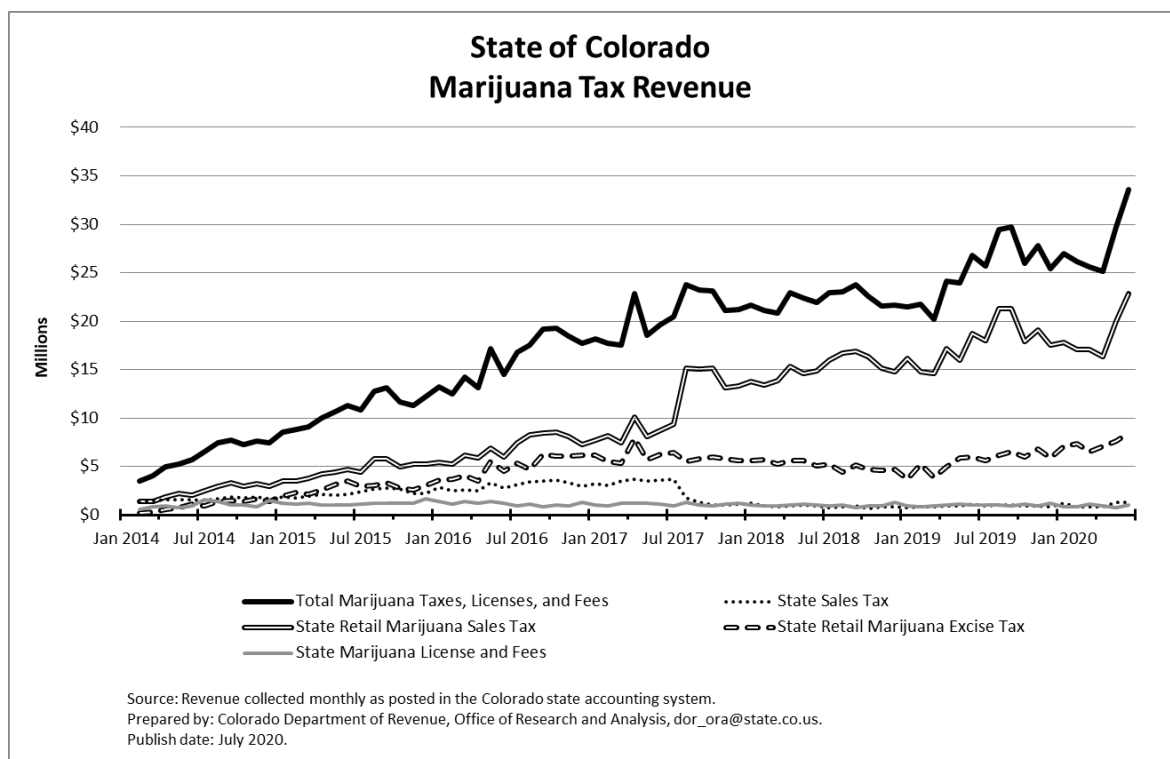
Lakewood began collecting sales tax revenue on medical marijuana in 2009. To date, more than \$3.7 million of tax revenue has been generated in Lakewood. Medical marijuana revenue has declined over the past 5 years, as more surrounding municipalities have legalized recreational marijuana.

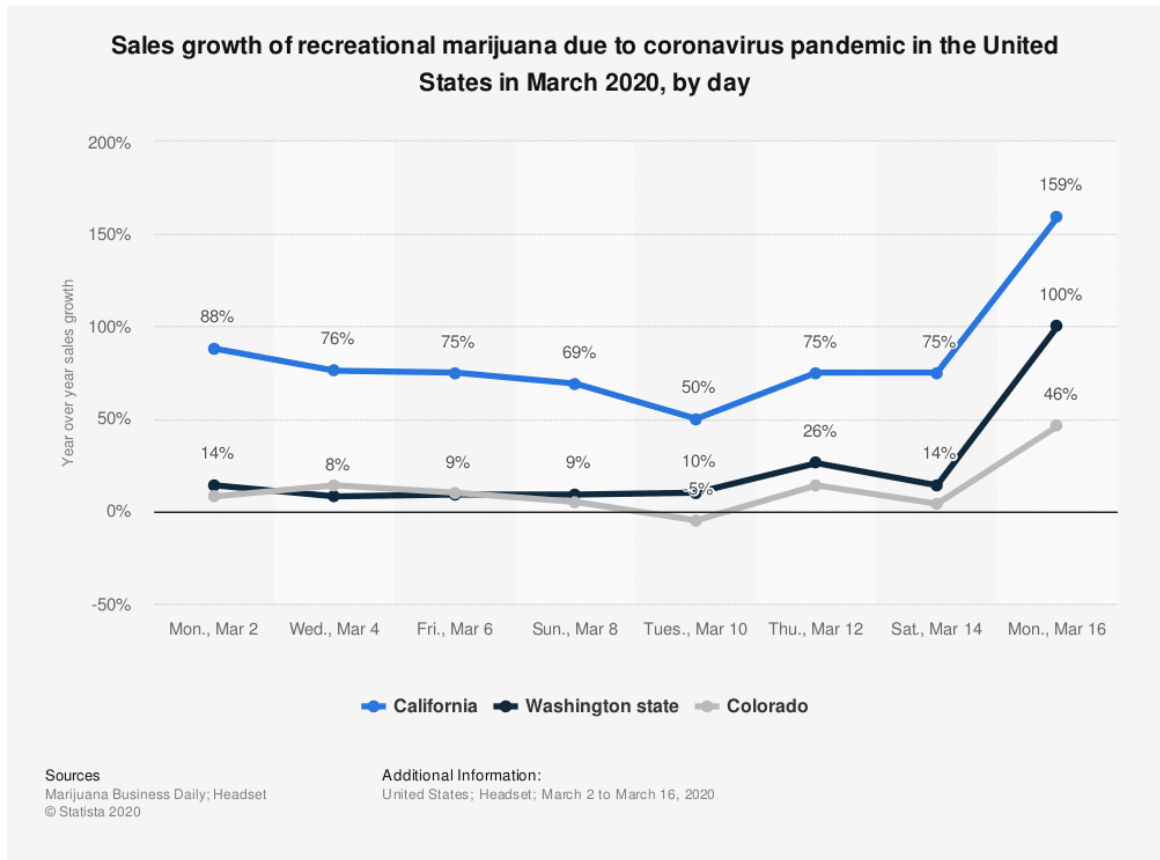
Other Municipalities

Staff has begun preliminary research of recreational marijuana sales of the State and other Denver metro municipalities.

- **State of Colorado Findings**

- Retail marijuana and retail marijuana-infused products = 15% sales tax rate (exempt from standard rate)
- Medical marijuana and medical marijuana-infused products = 2.9% sales tax rate
- Excise tax (15%) – applies to distributors of retail marijuana only





- **Denver Metro Findings**

- Retail marijuana revenues have started to plateau in some cities.
- Some cities have seen a shift to medical marijuana during the pandemic months.
- Some cities have chosen to tax recreational marijuana at a different tax rate than their standard sales tax rate – i.e. State (15%), Boulder (3.86% standard + 3.5%), and Aurora (3.75% standard + 5%).

A petition is currently being circulated (citizen driven) to get recreational marijuana on the ballot in November. Language in their drafted ordinance does not address the taxation of marijuana.

Options (can choose multiple)

- ❖ City Council can ask Lakewood voters to legalize recreational marijuana (3% standard tax rate).
- ❖ City Council can ask voters to legalize recreational marijuana at a higher rate (set % specific to recreational marijuana or an incremental special tax on top of the standard rate).
- ❖ City Council can implement a special licensing fee for recreational marijuana businesses.
- ❖ City Council can authorize grow operations with an excise tax.

2. Marijuana Delivery

Broadens the tax base.

Background

HB19-1234 allows for the creation of marijuana delivery permits for licensed medical and recreational marijuana centers and transporters for the delivery of medical and recreational marijuana and infused products to customers.

A one-dollar surcharge is assessed on each delivery, and that money is remitted to the municipality where the center or store is located, or to the county if the center or store is in an unincorporated area, to help cover local law enforcement costs related to marijuana enforcement.

Deliveries are limited to private residences, and cannot be made to any school, institution of higher education, or public property. The act provides protection against criminal prosecution for those making the deliveries.

Delivery is only allowed in a jurisdiction if that jurisdiction has voted to allow delivery either by referendum or by the governing board of the jurisdiction.

Denver has authorized an additional sales tax rate that can increase or decrease without further voter approval so long as the rate of taxation does not exceed 15%.

Options

- ❖ City Council could ask Lakewood voters to approve the delivery of marijuana at the standard 3% tax rate.
- ❖ City Council could ask Lakewood voters to approve the delivery of marijuana with an additional sales tax on the sale and delivery of marijuana into Lakewood's boundaries, perhaps with a "not to exceed" clause.
- ❖ City Council could implement a medical and/or recreational marijuana delivery permit.

3. Short-term Rentals

Broadens the tax base.

Background

Short-term rentals are furnished homes that are rented for short periods of time, they are typically classified as a stay under thirty-days but most often stays are between 2 and 7 days. They are seen as an alternative to hotels. Some examples of short-term rental companies are Airbnb and HomeAway (aka VRBO). Currently, Lakewood's zoning ordinance does not allow short-term rentals in residential zone districts.

If short-term rentals were allowed in the city, with restrictions similar to the City of Denver, it is estimated that \$138,000 in sales tax and \$138,000 in accommodations tax would be collected and remitted to the city annually.

Option

- ❖ City Council could amend the zoning code to allow for short-term rentals. (\$138,000 sales tax + \$138,000 accommodations tax)

Adoption of Occupational Privilege Tax

Broadens the tax base.

Background

Occupational Privilege Taxes (OPT), also known as “head taxes” are imposed on employees that perform work within the City boundaries and meet a certain income threshold per month. The tax is sometimes considered a “match” by the employer.

Five cities in Colorado have an OPT: Aurora, Denver, Glendale, Greenwood Village, and Sheridan.

	<u>Aurora</u>	<u>Denver</u>	<u>Glendale</u>	<u>Greenwood Village</u>	<u>Sheridan</u>
Gross Wages Threshold	\$250	\$500	\$750	\$250	N/A
Employee rate	\$2	\$5.75	\$5	\$2	\$3
Employer rate	\$2	\$4	\$5	\$2	\$3

Option

- ❖ City Council could request that additional research be performed and consider conducting a vote to adopt an Occupational Privilege Tax. (\$TBD)

Modification of TABOR

Offers additional flexibility to how the current revenue funds can be used.

Background

In 1992, Colorado voters approved an amendment to Article X of the State constitution that added a new Section 20, known as the Taxpayer's Bill of Rights or "TABOR." TABOR's Section 7 (Spending limits) contains the following provisions affecting the City of Lakewood's finances:

- (b) The maximum annual percentage change in each local district's fiscal year spending equals inflation in the prior calendar year plus annual local growth, adjusted for revenue changes approved by voters after 1991 and (8)(b) and (9) reductions.
- (c) The maximum annual percentage change in each district's property tax revenue equals inflation in the prior calendar year plus annual local growth, adjusted for property tax revenue changes approved by voters after 1991 and (8)(b) and (9) reductions.
- (d) If revenue from sources not excluded from fiscal year spending exceeds these limits in dollars for that fiscal year, the excess [referred to hereinafter as "excess TABOR revenue"] shall be refunded in the next fiscal year [referred to hereinafter as a "TABOR refund"] unless voters approve a revenue change as an offset.

On November 6, 2018, Lakewood voters authorized the City to retain its excess TABOR revenue for the years 2017 through and including 2025. These excess TABOR revenue amounts were to be expended equally on:

- Parks and open space acquisition, improvements and maintenance (one-third)
- Police Department safety-related equipment, assets, and/or personnel (one-third)
- Certain infrastructure needs (one-third)
 - Infrastructure in areas with high-priority public safety concerns
 - Installation, repair and/or upgrading of sidewalks
 - Installation, repair and/or upgrading of street and path lighting for public safety purposes

To date (2017-2019), \$29,901,492 has been retained by the City to be used for the purposes specified above. Projects have been identified to utilize all available funding.

TABOR is a formula that restricts the amount of revenue growth each year. When City revenues decrease, the base used in the TABOR calculation resets to that lower level. This "ratchet effect" makes the recovery from an economic downturn more difficult. The impact of COVID-19 on City finances has been significant, resulting in significant budget cuts and an impact to community service levels. It is projected that it will take the City five years to get back to the 2019 TABOR base for revenue/expense.

"Of the state's 272 municipalities, 230 municipalities have obtained voter approval to retain and spend all or a portion of excess revenue collected. Of the state's 64 counties, 51 counties have obtained voter approval to retain and spend all excess revenue. All but four of the 178 school districts in Colorado have obtained voter approval to retain and spend excess revenue." – *Westword March 25, 2019*

Option

- ❖ City Council could ask Lakewood voters to establish the City's base for revenue/expenses for the years 2021-2023 at the 2019 level, thus protecting the General Fund from diverting an estimated \$11.5M during that time period.

Annexation of Certain Commercial Areas

Broadens the tax base.

Background

Annexing certain areas into the City could bring in additional revenue. Per State statute, annexations are limited to no more than three miles beyond City borders.

Option

- ❖ City Council to provide guidance if annexation should be explored.

Chapter 3.01 – Sales and Use Tax Code

PART 1. SALES AND USE TAX

3.01.430 Exemptions.

This section sets forth the only exemptions from the City Sales and Use Tax. The exemptions set forth in this section shall not be expanded by implication or similarity. In all cases, the burden of proof shall be on the Taxpayer to establish the applicability of an exemption by the presentation of clear and convincing evidence. The following are exempt from imposition of City Sales and Use Tax, unless stated otherwise:

K. Medical.

4. Oxygen. Oxygen concentrators, oxygen, and ~~with~~-related accessories.

I. Lodging Services. Lodging Services provided to a natural Person, pursuant to a written agreement, for a period of thirty (30) consecutive days or more;

PART 3. SALES AND USE TAX LICENSE

3.01.310 License Required; Exceptions; Renewal

A. Subject to the provisions of this Tax Code, a Sales and Use Tax License is required for the following:

1. When a Person is Engaged in Business in the City and selling Tangible Personal Property or services that are:

a. Purchased within or delivered into the City; and

b. Subject to Sales Tax pursuant to this Tax Code; or

2. Tangible Personal Property that is stored, Used or consumed in the City and subject to Use Tax pursuant to this Tax Code.

B. Every Person required to obtain a License hereunder shall make application to the City via the City's online tax filing system or, at the discretion of the Finance Department, on forms supplied by the Finance Department. Such application shall state the following:

1. The legal name and mailing address of the Person applying for the License;

2. The trade name of the Business, if any, for which the License is sought;

3. The physical location, including the street number, of the place of Business, if different from the mailing address stated on the application; and

4. Such other information as the City might require on the application.

The Taxpayer shall notify the City of any changes to the information stated on the application.

C. Approval of a License shall be conditioned upon the proposed Business and the location thereof meeting all applicable provisions of the Lakewood Municipal Code.

D. No License is required for any Person engaged exclusively in the Business of selling, or who stores, Uses or consumes, Tangible Personal Property that is exempt from taxation under this Tax Code.

E. A License issued by the City shall be in force and effect until the earlier of:

1. ~~The revocation of such License~~ Two (2) years from the date of issuance; or

2. The sale or termination of the Business, if any, relating to such License ~~;~~ or

3. The revocation of the License

F. Renewal. Not less than sixty (60) days prior to the expiration of a License, the Taxpayer shall apply for renewal of the License in the manner set forth in subsection B above.

3.01.320 License Fee

A nonrefundable fee, in an amount set by the ~~City Council~~Chief Financial Officer, shall accompany each new and renewal License application.

Chapter 3.02 - ~~INCORRECT~~ REGISTRATION OF A MOTOR VEHICLE

Sections:

3.02.010 Definitions

3.02.020 Registration of motor vehicle

3.02.030 Penalty for incorrect registration of motor vehicle

3.02.010 Definitions

As used in this chapter, the following terms shall have the following meanings:

"Chief Financial Officer/~~City Treasurer~~" means the Chief Financial Officer/City Treasurer of the ~~city~~ City.

"Motor vehicle" has the meaning set forth in Section 42-6-102(~~710~~) of the Colorado Revised Statutes.

"Notice of deficiency" means the notice issued by the Chief Financial Officer/~~City Treasurer~~ pursuant to ~~Section 3.01.260~~ Section 3.01.510 of this Code for failure, neglect or refusal to pay any sales or use tax due or any penalties or interest thereon.

"Penalty assessment notice" means the written notice of the Chief Financial Officer/~~City Treasurer~~'s determination that a violation of Section 42-6-137(~~9~~) of the Colorado Revised Statutes has occurred and assessment and demand for the payment of the civil penalty provided for in Section 3.02.030 hereof.

"Person" shall have the meaning set forth in section 3.01.230 of this code.

(Ord. O-2019-24 § 4, 2019; Ord. O-86-105 § 1 (part), 1986).

3.02.020 - Registration of motor vehicle.

No person shall register a motor vehicle in violation of the provisions of Section 42-6-137(2) of the Colorado Revised Statutes.

(Ord. O-86-105 § 1 (part), 1986).

3.02.030 - Penalty for incorrect registration of motor vehicle.

A person ~~who-that~~ registers a motor vehicle in violation of the provisions of Section 42-6-137(~~9~~) of the Colorado Revised Statutes shall be subject to a \$500.00 civil penalty pursuant to the authority granted in Section 42-6-137(~~9~~) of the Colorado Revised Statutes. The procedure for the assessment of such civil penalty shall be as follows:

A. When the Chief Financial Officer/~~City Treasurer~~ determines on such information as is available that a person has registered a motor vehicle in violation of the provisions of Section 42-6-137(~~9~~) of the Colorado Revised Statutes, ~~then~~ the Chief Financial Officer/~~City Treasurer~~ shall provide to such person a penalty assessment notice. If the Chief Financial Officer/~~City Treasurer~~ also has determined pursuant to ~~section 3.01.260~~ section 3.01.510 of this Code that sales or use taxes are due to the City on such motor vehicle, then such penalty assessment notice shall be included in the notice of deficiency.

B. Such person shall pay such civil penalty within the same time period provided pursuant to ~~Section 3.01.260~~ Section 3.01.510 of this Code for payment of any amounts due pursuant to the notice of deficiency, unless such person files a written protest pursuant to subsection ~~(C)~~ of this section.

C. If such person desires to protest the penalty assessment notice, such person shall file a written protest with the Chief Financial Officer/~~City Treasurer~~ within the time period provided pursuant to ~~Section 3.01.330~~ Section 3.01.710(A)(1) of this Code for protesting a notice of deficiency. The protest shall set forth the facts which show that a violation of Section 42-6-139 of the Colorado Revised Statutes, as amended, did not occur. The Chief Financial Officer/~~City Treasurer~~ shall issue a written decision affirming or withdrawing such penalty assessment notice within the same time period and in the same manner as provided pursuant to ~~Section 3.01.330~~ Section 3.01.710(BC) of this Code on a protest on a notice of deficiency. If the decision affirms the penalty assessment notice, then such person shall pay such civil penalty within the time period provided for payment of a final assessment pursuant to ~~Section 3.01.330~~ Section 3.01.710(BC) of this Code.

D. Such person may seek judicial review of the Chief Financial Officer/~~City Treasurer~~'s decision pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure. No such judicial review shall be available if a written protest was not timely filed in the manner provided for in subsection (C) of this section.

E. The Chief Financial Officer/~~City Treasurer~~ may enforce collection of the civil penalty provided for in this section in the same manner provided in ~~Section 3.01.260~~ Section 3.01.510 of this Code for the collection of unpaid sales or use taxes, penalties, or interest.

F. Nothing in this section shall be deemed to preclude the collection of any tax, fee, penalty, or interest thereon provided by law or the imposition of any other civil or criminal penalty provided by law.

(Ord. O-2019-24 § 4, 2019; Ord. O-97-1 §§ 1, 2, 1997; Ord. O-86-105 § 1 (part), 1986).

Chapter 3.03 - HOTEL/MOTEL ACCOMMODATIONS TAX

3.03.010 - Title.

~~The ordinance codified in this chapter shall be known as the hotel/motel accommodations tax Code ordinance.~~

(Ord. O-86-89 § 1 (part), 1987).

3.03.020 - Legislative intent.

The City Council intends to levy upon ~~any Person that~~ the purchasers, consumers, or users of hotel/motel facilities Lodging Services the tax imposed by this ~~chapter Accommodations Tax Code upon such purchasers, consumers, or users~~ for the privilege of ~~renting or leasing a lodging room making use of~~ Lodging Services in the ~~city~~. This tax is in addition to and does not replace or repeal the sales tax on ~~hotel/motel rooms~~ Lodging Services imposed by ~~Chapter 3.01 the City of Lakewood Sales and Use Tax of this Code.~~

(Ord. O-87-89 § 1 (part), 1987).

3.03.030 - Purpose.

The purpose of this tax imposed by this Accommodations Tax Code shall be to raise revenues to be used by the ~~city~~ to promote economic development within the ~~city~~.

(Ord. O-87-89 § 1 (part), 1987).

3.03.040 - Incorporation of certain Sales and Use Tax Code provisions; Definitions.

As used in this chapter, unless the context otherwise requires, the following terms shall have the following meanings:

A. Unless the context otherwise requires, the following provisions of the city sales and use tax ordinance set forth in Chapter 3.01 of this Sales and Use Tax Code, including all amendments thereto, are hereby incorporated by reference into this Accommodations Tax Code chapter with the following modifications as is fully set forth herein:

Sections 3.01.230020, 3.01.030, 3.01.060, 3.01.065, 3.01.100, 3.01.130 through 3.01.190280, 3.01.370, 3.01.410(E) & (F), 3.01.430(D); Part 5, except section 3.01.520; and all of Parts 6 & 7. 3.01.210 through 3.01.350, inclusive;

B. As used in this Accommodations Tax Code, Any reference therein the foregoing incorporated Sales and Use Tax provisions to:

1. "Chapter 3.01," the "Tax Code," or "shall be deemed to refer to" this chapter" shall be deemed to refer to this Accommodations Tax Code;

2. Any reference therein to "Sales tax," "Use tax," or "tax" shall be deemed to refer to the tax imposed pursuant to this chapter Accommodations Tax Code; and

3. Any reference therein to "Taxpayer" or "Retailer" shall be deemed to refer to an owner of a hotel/motel facility any Provider of Lodging Services;

C. "Provider of Lodging Services," as used in this Accommodations Tax Code, shall mean and include any Person that furnishes, provides, supplies or makes sales of Lodging Services.

~~Any reference therein to "retailer" or "vendor" shall be deemed to refer to an owner of a hotel/motel facility.~~

D. In the event of a conflict between this chapter and Chapter 3.01 Accommodations Tax Code and Sales and Use Tax Code, the provisions of this chapter Accommodations Tax Code shall control.

(Ord. O-93-26 § 21, 1993; Ord. O-87-89 § 1 (part), 1987).

~~City Manager means the manager of the city.~~

~~Finance Department means the Finance Department of the city.~~

~~Chief Financial Officer/City Treasurer means the Chief Financial Officer/City Treasurer of the city.~~

~~Hotel/motel facility means a hotel, motel, or other similar facility which: (i) has lodging rooms; (ii) is located within the city; and (iii) the rental period is less than 30 consecutive days.~~

~~Lodging room is a regular sleeping room or unit which is part of a hotel or motel, or similar facility for which a charge is made for its use.~~

~~Purchaser, consumer, or user is that person who for a consideration uses, possesses, or has the right to use or possess any room in a hotel, motel, or similar facility for a period less than 30 consecutive days.~~

~~(Ord. O-2019-24 § 4, 2019; Ord. O-87-89 § 1 (part), 1987).~~

3.03.050 - Levy of tax.

On and after January 1, 1988, there is levied an excise tax of three percent (3%) upon the entire amount charged to any ~~p~~Person for a Lodging room Services, and ~~such said~~ tax shall be collected and paid ~~by each to the City by each Provider of Lodging Services. owner of a hotel/motel facility to the city.~~

(Ord. O-87-89 § 1 (part), 1987).

3.03.060 - Payment of tax.

Before the twentieth day of ~~each April, July, October, and January~~month, commencing January 1, ~~1988~~2014, every Provider owner of a hotel/motel facility of Lodging Services shall make a return to the Chief Financial Officer/~~City Treasurer~~ for the preceding calendar ~~quarter-month~~ and remit to the Chief Financial Officer/~~City Treasurer~~ an amount equal to three percent (3%) of the entire amount charged to all persons for Lodging Services room(s) during the preceding calendar ~~quarter-month~~. Such returns shall be furnished electronically through the City's online tax portal ~~by the Finance Department.~~

(Ord. 2019-24 § 4, 2019; Ord. O-87-89 § 1 (part), 1987).

3.03.070 - Administration.

The City Council may adopt rules and regulations in conformity with this ~~chapter~~ Accommodations Tax Code for the proper administration and enforcement of this ~~chapter~~ Accommodations Tax Code. The administration of this ~~chapter~~ Accommodations Tax Code is vested in and shall be exercised by the City Manager. The Chief Financial Officer/~~City Treasurer~~ shall assist the City Manager in the administration of

this chapter Accommodations Tax Code to the extent provided herein and in the rules and regulations Sales and Use Tax Code promulgated hereunder.

(Ord. 2019-24 § 4, 2019; Ord. O-87-89 § 1 (part), 1987).

~~3.03.080 Incorporation by reference of certain provisions of city's sales and use tax ordinance.~~

~~Unless the context otherwise requires, the following provisions of the city sales and use tax ordinance set forth in Chapter 3.01 of this Code, including all amendments thereto, are incorporated by reference into this chapter with the following modifications as if fully set forth herein:~~

~~A.2. Sections 3.01.020, 3.01.030, 3.01.060, 3.01.065, 3.01.100, 3.01.130 through 3.01.190, and 3.01.210 through 3.01.350, inclusive;~~

~~B.2. Any reference therein to "Chapter 3.01" shall be deemed to refer to this chapter;~~

~~C.2. Any reference therein to "sales tax," "use tax," or "tax" shall be deemed to refer to the tax imposed pursuant to this chapter~~

~~D.2. Any reference therein to "taxpayer" shall be deemed to refer to an owner of a hotel/motel facility;~~

~~E.2. Any reference therein to "retailer" or "vendor" shall be deemed to refer to an owner of a hotel/motel facility.~~

~~In the event of a conflict between this chapter and Chapter 3.01, the provisions of this chapter shall control.~~

~~(Ord. O-93-26 § 21, 1993; Ord. O-87-89 § 1 (part), 1987).~~

3.03.080 Exemptions

A. Lodging Services provided, furnished or supplied to a natural Person, through a written agreement, for thirty (30) consecutive days or more are exempt from the tax imposed under this Accommodations Tax Code.

B. The burden of proving that any Provider of Lodging Services is exempt from collecting the tax imposed under this Accommodations Tax Code and paying the same to the City shall be on the Provider of Lodging Services as set forth in Regulation 3.01.250(F) of the Sales and Use Tax Regulations.

C. If a dispute arises as to whether or not the provision of Lodging Services is exempt from taxation hereunder, the Provider of Lodging Services shall collect, and the purchaser shall pay, the tax, and the Provider of Lodging Services shall thereupon issue to the purchaser a receipt or certification showing the names of the Provider of Lodging Services and the purchaser, the lodging purchased, the date, price, amount of tax paid, and a brief statement of the claim of exemption, as set forth in Regulation 3.01.250(D) of the Sales and Use Tax Regulations. The purchaser may apply to the Chief Financial Officer for a refund of such taxes pursuant to Sales and Use Tax Code section 03.01.540.

(Ord. O-93-26 § 21, 1993; Ord. O-87-89 § 1 (part), 1987).