



Legislation Text

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*Department of Finance*

Reference: Food Sales Tax Rebate Account

**To: Mayor Richard N. McLean and Members of City Council**

**Through: Philip Rodriguez, City Manager**

**Prepared By: Jean Starr, Finance Director**

**Date Prepared: December 6, 2017**

**PURPOSE**

Pursuant to Brighton Municipal Code Section 3-28-15 (d), to adopt by resolution that no additional amount be added to the Food Tax Rebate Account for the fiscal year, ending December 31, 2017.

**BACKGROUND**

In 2001, the City Council approved, by Ordinance number 1764, an amendment to the Brighton Municipal Code Section 3-28-15(d), providing that all or a portion of the Food Sales Tax Revenue collected in the previous year may be placed in the Food Sales Tax Rebate Account and may be rebated back to the eligible tax-paying residents of Brighton. This rebate is not mandatory, and City Council may determine that insufficient revenues are available for rebate. The General Fund sales tax collected on food for home consumption is not placed in the Food Sales Tax Rebate Account until City Council approves the dollar amount. Once approved, determination of usage is made by City Council.

As of 12/31/15, \$264,728 had been placed in the Food Sales Tax Rebate Account. On 4/30/16, the City Council approved a \$39.00 Food Sales Tax Rebate, which was paid to 6,463 Brighton households a total of \$252,057. After direct expenses of processing the rebate, the Food Sales Tax Rebate Account had a zero balance. On December 20, 2016 by resolution, \$134,000 was approved to be redistributed from the General Fund Unassigned Balance to the Food Tax Rebated Committed Account. The current balance of the Food Tax Rebate Account is \$134,000.

In prior years, the amount of rebate placed in the Food Sales Tax Rebate Account has been determined by the following formula:

1. List all the sales tax collected from businesses located in Brighton that sell food (not fast food or restaurants) and identify the General Fund portion (2%).
2. For each business identified in step 1, determine:
  - a. The percentage of the sales tax collected that is attributable to food for home consumption.
  - b. The percentage of the sales tax collected that is paid by Brighton residents.
3. Determine the proportionate amount of the unencumbered 2016 General Fund "excess of revenues over expenditures" that is attributable to sales tax collections on food for home consumption.

At the December 12, 2017 study session, staff presented financial information and received policy direction for preparation of the 2017 resolution. Below is a brief summary of information presented:

The adopted 2016 fiscal year budget for the General Fund planned for expenditures in excess of revenue by (\$343,738).

This projection came true, with the exception that one-time sales tax revenue related to non-food sources was received by the City. Therefore, unfortunately, there is insufficient revenue to add to the food sales tax rebate account from 2016. In addition, the adopted budgets for 2017 and 2018 appropriate expenditures in excess of revenues, which provides a financial constraint to designating an amount for food sales tax rebate.

**CRITERIA BY WHICH COUNCIL MUST CONSIDER THE ITEM FINANCIAL IMPACT**

Factors to be considered before determining how much, if any, food sales tax is to be set aside in the Food Tax Rebate Account include:

1. Are the City's Reserves fully funded?

As of 12/31/16, the General Fund Reserves are fully funded. The minimum amount required to be maintained in the reserve accounts are: TABOR 3% - \$912,054, City Council cashflow and emergencies 25% - \$10,077,272, and adopted for 2017 budget - \$2,335,510.

2. Will the City have to cut back on programs and services for its residents if food sales tax is set aside and rebated?

The budget process in recent years has identified that expenditures for City programs and services is trending at a higher rate than revenue growth. Sales tax collected on food for home consumption is helping to balance the budget and provide programs and services.

**MUNICIPAL CODE FOOD TAX REBATE PROVISIONS, Section 3-28-15 (d):**

Food tax rebate provisions. There is established a special account of the City to be known as the City of Brighton Food Tax Rebate Account. Moneys credited to such account shall be derived solely from City sales tax revenues attributable to sales of food for domestic home consumption as defined in Section 39-26-102(4.5), C.R.S., collected in accordance with [Section 3-28-40](#) of this Article, and credited to the City's General Fund in accordance with Subsection (c)(4) above. Food tax revenue thus collected and credited to the General Fund shall then become eligible for redistribution to the City of Brighton Food Tax Rebate Account in accordance with this Section.

(1)

Once collected and credited to the General Fund, food tax revenue may thereafter be returned to the eligible tax-paying residents of the City in the form of a rebate, as provided herein.

a.

The total amount of such rebate in any given year shall not exceed the total amount of food tax revenue actually collected for the previous year.

b.

In no event shall this Section be construed to create a mandatory or binding obligation of the City to rebate food tax revenue in any given year, or in years when the City Council determines that insufficient revenues are available for a rebate, and in no event shall any actionable claim or right of action against the City arise from or in connection with the provisions of this Section. (2)

a.

Beginning in fiscal year 2001, and continuing each fiscal year thereafter, all or a portion of the food tax revenue collected in the previous year may be redistributed from the General Fund and credited to the City of Brighton Food Tax Rebate Account. Thereafter, in the sole discretion of the City Council, all or a portion of such food tax revenue may be returned to the eligible tax-paying residents of the City in the form of a food tax rebate, payable during the last quarter of the year following the year in which such food

tax revenues are collected and credited to the food tax rebate account; provided that, in any given year, sufficient food tax revenue has first been properly collected and credited to the food tax rebate account and is, therefore, available for rebate at the discretion of the City Council.

b.

Upon a determination by the City Council that sufficient food tax revenue is available for rebate in a given year, the City Council shall establish the amount of said rebate for that year by resolution. In determining the amount of the food tax rebate, if any, the City Council may take into consideration the amount of the food tax revenue for the subject year and all previous years, other uses for the sales tax revenues credited to the General Fund under Subsection (c)(4) above, the Consumer Price Index (CPI) for the subject year, and any other information, studies or data deemed important and pertinent to the City Council in its deliberations.

(3)

If, in any given year, it is determined by the City Council that insufficient food tax revenue exists after the City's revenue calculations are conducted pursuant to Article X, Section 20 of the Colorado Constitution, then no rebate shall be payable for that year. In those years when there is sufficient food tax revenue and a rebate is paid, the amount of such rebate shall be credited toward the City's revenue calculations under Article X, Section 20 of the Colorado Constitution, and shall accrue to the benefit of the City in consideration thereof.

(4)

If the City sales tax on food for home consumption is repealed, the rebate provisions of this Section shall terminate. Otherwise, this Section may be repealed by the City Council during its operative term for good cause reasonably related to the health, safety, welfare and continued prosperity of the citizens of the City.

In implementing the provisions of this Section and in determining the eligibility of persons who may lawfully receive a rebate hereunder, the City Council shall by separate resolution adopt appropriate policies and procedures to set forth the criteria to be used by the City Council to determine whether sufficient food tax revenue exists for a rebate and to ensure that the rebates, if any, are properly, fairly and equitably distributed between and among eligible tax-paying residents of the City. At a minimum, persons eligible to receive a rebate under this Section must be tax-paying residents of the City who actually reside within the corporate boundaries of the City during the twelve-month period prior to the year in which a rebate is paid.

(Ord. 907 §6, 1976; Ord. 914 §2, 1976; Ord. 1379 §3, 1991; Ord. 1594 §1, 1999; Ord. 1717 §1, 2001; Ord. 1764 §1, 2002)

## **ATTACHMENTS**

2016 Resolution Passed