



Legislation Text

---

File #: ID-381-18, Version: 1

---

*Department of Finance*

Reference: Food Sales Tax Rebate

**To: Mayor Kenneth J. Kreutzer and Members of City Council**

**Through: Philip A. Rodriguez, City Manager**

**Prepared By: Jean B. Starr, Interim Assistant Finance Director**

**Date Prepared: November 29, 2018**

**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, 2018.

**STRATEGIC FOCUS AREA**

Financially Responsible

**BACKGROUND**

**Summary of Food Sales Tax Rebate Account Provisions**

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.

**Summary of Last Three Years Adopted Resolutions**

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 transferred from the "General Fund Unassigned Balance" to the "Food Sales Tax Rebate Committed Account." On December 19, 2017 by resolution, zero amount was placed in the "Food Sales Tax Rebate Committed Account." Therefore, the current balance of the Food Sales Tax Rebate Account remains at \$134,000.

**Summary of Food Sales Tax Rebate Calculation**

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 by estimation:
  - 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 2017 General Fund “excess of revenues over expenditures” that is attributable to sales tax collections on food for home consumption.

#### Summary of Background for Proposed 2018 Resolution

The December 31, 2017 Comprehensive Annual Report reported that 2017 General Fund “excess of revenues over expenditures” was \$910,284.

The portion of the \$910,284 that is available for rebate is reduced by:

- 1) 2017 purchase orders carried over into 2018 in the General Fund in the amount of (\$420,020.)
- 2) 2018 adopted budget “excess of revenues over expenditures” in the amount of (\$1,973,259).

Therefore, unfortunately, there is insufficient revenue to add to the food sales tax rebate account from 2017. In addition, the 2019 Adopted Budget contains planned expenditures in excess of projected revenues, which provides a financial constraint to designating an amount for food sales tax rebate this year.

#### **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**

2018 Proposed Resolution