

ORDINANCE NO. 2012- 20

A BILL

FOR AN ORDINANCE AMENDING SECTIONS 130-31, 130-156, 130-157 AND 130-198 OF THE CITY CODE OF THE CITY OF AURORA, COLORADO, REGARDING THE TAXATION OF CANDY AND SOFT DRINKS

WHEREAS, for 25 years, Paragraph 1.c. of the City of Aurora Regulation Concerning Taxation of Food, has provided that sales of “food marketed for immediate consumption” are subject to City sales tax; and

WHEREAS, throughout the years, the City has consistently sought to enforce this regulation with varying degrees of success; and

WHEREAS, grocery store and convenience store retailers within the City have raised concerns regarding the difficulty of applying the City’s definition of “food marketed for immediate consumption” in the course of their day-to-day operations; and

WHEREAS, the City acknowledges that local retailers have a legitimate business interest in the enactment of laws that clearly define which sales are subject to taxation in the City and in the consistent enforcement of such laws among the entire retail community; and

WHEREAS, in turn, grocery store and convenience store retailers acknowledge that the City has a legitimate governmental interest in reducing the negative impacts associated with the loss of a significant source of revenue upon the City’s ability to provide important municipal services to its citizens; and

WHEREAS, to this end, a number of retailers have expressed an interest in replacing the City’s regulation with the policy employed by the State of Colorado with respect to the tax treatment of food which, as an alternative, authorizes the taxation of candy and soft drinks; and

WHEREAS, such a change would ease the burden on local retailers associated with the implementation and administration of two substantially different systems of taxation, while allowing the City to maintain a vital source of revenue; and

WHEREAS, the City Council finds and determines that redefining which food items are and are not subject to application of the City sales and use tax is in the best interests of both its citizens and its retail community.

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

Section 1. That Subsection 130-31 of the City Code of the City of Aurora, Colorado, is hereby amended by the addition of definitions of “candy” and “soft drinks,” which definitions read as follows:

Sec. 130-31. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*CANDY* MEANS A PREPARATION OF SUGAR, HONEY, OR OTHER NATURAL OR ARTIFICIAL SWEETENERS IN COMBINATION WITH CHOCOLATE, FRUIT, NUTS, OR OTHER INGREDIENTS OR FLAVORINGS IN THE FORM OF BARS, DROPS, OR PIECES. "CANDY" SHALL NOT INCLUDE ANY PREPARATION CONTAINING FLOUR AND SHALL REQUIRE NO REFRIGERATION.

*SOFT DRINKS* MEANS NONALCOHOLIC BEVERAGES THAT CONTAIN NATURAL OR ARTIFICIAL SWEETENERS. "SOFT DRINKS" DO NOT INCLUDE BEVERAGES THAT CONTAIN MILK OR MILK PRODUCTS, SOY, RICE, OR SIMILAR MILK SUBSTITUTES, OR GREATER THAN FIFTY PERCENT OF VEGETABLE OR FRUIT JUICE BY VOLUME.

Section 2. That Section 130-156 of the City Code of the City of Aurora, Colorado, is hereby amended by the addition of a subsection (12), which subsection reads as follows:

Sec. 130-156. Taxable items.

There is levied and there shall be collected and paid a tax in the amount stated in section 130-161, as follows:

- (12) UPON THE SALE OF CANDY AND SOFT DRINKS.

Section 3. That Subsection 130-157(7) of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Sec. 130-157. - Items exempt from taxation.

The following sales of tangible personal property and taxable services are exempt from taxation under this division:

- (7) All sales of food, except such food as is expressly subject to taxation under subsectionS 130-156(4) AND 130-156(12).

Section 4. That Subsection 130-198(16) of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Sec. 130-198. - Exemptions.

The tax on the storage, consumption and use of tangible personal property and taxable services is declared to be supplementary to the city sales tax as provided in this article and shall not apply to the following:

(16) The storage, use or consumption of food, except such food as is expressly subject to taxation under subsections 130-156(4) AND 130-156(12).

Section 5. The Interim Finance Director is hereby directed to prepare a revised City of Aurora Regulation Concerning Taxation of Food for the purpose of conforming said regulation to the policy of the Colorado Department of Revenue with respect to the taxation of "food marketed for immediate consumption," "candy," and "soft drinks" by grocery store and convenience store retailers and other similar retail establishments as is generally expressed in FYI Sales 4, "Taxable and Tax Exempt Sales of Food and Related Items," Colorado General Information Letter No. GIL-07-2, Taxability of Energy Drinks, Carbonated and Non-Carbonated," and Colorado Revenue Bulletin No. 99-20, "Sales Tax – Soda Pop Sold in Stores and Vending Machines."

Section 6. All ordinances or parts of ordinances of the City Code of the City of Aurora, Colorado, in conflict herewith are expressly repealed.

Section 7. Pursuant to Section 5-5 of the Charter of the City of Aurora, Colorado, the second publication of this ordinance shall be by reference, utilizing the ordinance title. Copies of this ordinance are available at the office of the City Clerk.

Section 8. This ordinance shall take effect on June 1, 2012.

INTRODUCED, READ AND ORDERED PUBLISHED this 2nd day of April, 2012.

PASSED AND ORDERED PUBLISHED BY REFERENCE this 7th day of May, 2012.

  
STEPHEN D. HOGAN, Mayor

ATTEST:

  
JANICE NAPPER, City Clerk

APPROVED AS TO FORM:

  
MICHAEL HYMAN, Assistant City Attorney