

Title 3

FINANCE

Chapters:

- 3.10 City Sales and Use Tax Code**
- 3.20 Telephone Utility Tax**
- 3.30 (Reserved)**
- 3.40 Industrial Revenue Bonds**

Chapter 3.10**CITY SALES AND USE TAX CODE**

Sections:

- 3.10.010 Short title.
- 3.10.020 Definitions.
- 3.10.030 Licenses – Fee – Revocation.
- 3.10.040 Property and services taxed.
- 3.10.050 Vendor liable for tax.
- 3.10.060 Schedule of sales tax and distribution of receipts.
- 3.10.070 Rules and regulations.
- 3.10.080 Tax cannot be absorbed.
- 3.10.090 Reports of vendor.
- 3.10.100 Retailer – Multiple locations.
- 3.10.110 Credit sales.
- 3.10.120 Excess tax – Remittance.
- 3.10.130 Exemptions – Disputes.
- 3.10.140 Refunds.
- 3.10.150 Returns confidential.
- 3.10.160 Interest on deficiency.
- 3.10.170 Deficiency.
- 3.10.180 Deficiency notice and dispute resolution.
- 3.10.190 Location guides.
- 3.10.200 Court to order attendance.
- 3.10.210 Depositions.
- 3.10.220 Record of sales.
- 3.10.230 Tax lien.
- 3.10.240 Taxpayer’s petition for hearing.
- 3.10.250 Decisions of director.
- 3.10.260 Notices sent by certified mail.
- 3.10.270 License and tax additional.
- 3.10.280 Violations.
- 3.10.290 Authorization of use tax.
- 3.10.300 Exemptions.
- 3.10.310 Monthly return – Collection.
- 3.10.320 Tax constitutes lien.
- 3.10.330 Failure to make return.
- 3.10.340 Definitions – Additional.
- 3.10.350 Tax on motor vehicles.
- 3.10.360 Limitations.
- 3.10.370 Administration.
- 3.10.380 Purpose of tax.
- 3.10.390 Collection and enforcement.
- 3.10.400 Severability.

3.10.010 Short title.

This chapter shall be known and may be cited as the “city sales and use tax increase ordinance, 1979.”
(Code 1997 § 3-1-1).

3.10.020 Definitions.

In this chapter, the following terms shall have the meanings ascribed to them in this section:

- A. "Business" means all activities engaged in or caused to be engaged in with the object of gain, benefit, or advantage, direct or indirect.
- B. "Director of finance" means the director of finance of the city, who is ex officio the city treasurer.
- C. "Farm auction close out sale" means a regularly advertised and conducted sale at public auction of all tangible personal property of a farmer or rancher previously used by him in carrying on his farming or ranching operations. Unless said farmer or rancher is making or attempting to make full and final disposition at the auction sale of all property used in his farming or ranching operations and is abandoning the said operation on the premises whereon they were previously conducted, such sale shall not be deemed a "farm auction close out sale" within the meaning of this chapter.

The sales tax is imposed on the full purchase price of articles sold after manufacture or after having been made to order and includes the full purchase price for material used and the service performed in connection therewith, excluding, however, such articles as are otherwise exempted in this chapter. The sale price is the gross value of all materials, labor, service, and the profit thereon, included in the price charged to the user or consumer.

- D. "Gross taxable sales" means the total amount received in money, credits or property, excluding the fair market value of exchanged property which is to be sold, thereafter in the usual course of the retailer's business, or other consideration valued in money from sales and purchases at retail within the city, and embraced within the provisions of this chapter. The taxpayer may take credit in his report of gross sales for an amount equal to the sale price of property returned by gross, the purchaser when the full sale price thereof is refunded, whether in cash or by credit. The fair market value of any exchanged property which is to be sold thereafter in the usual course of the retailer's business, if included in the full price of a new article, shall be excluded from the gross sales. On all sales at retail, valued in money, when such sales are made under conditional sales contracts, or under other forms of sale where the payment of the principal sum thereunder be extended over a period longer than 60 days from the date of sale thereof, only such portion of the sale amount thereof may be counted for the purpose of imposition of the tax imposed by this chapter as has actually been received in cash by the taxpayer during the period for which the tax imposed by this chapter is due and payable.

Taxes paid on gross sales represented by accounts found to be worthless and actually charged off for income purposes may be credited upon a subsequent payment of the tax herein provided, but if any such accounts are thereafter collected by the taxpayer, a tax shall be paid upon the amounts so collected.

Sales to and purchases of tangible personal property by a person engaged in the business of manufacturing, compounding for sale, profit or use, any article, substance or commodity, which tangible personal property enters into the processing of or becomes an ingredient or component part of the product or service which is manufactured, compounded or furnished and the container, label or the furnished shipping case thereof, shall be deemed to be wholesale sales and shall be exempt from taxation under GMC 3.10.300.

Sales and purchases of electricity, coal, gas, fuel oil, or coke, for use in processing, manufacturing, mining, refining, irrigation, building construction, telegraph, telephone, and radio communication, street and railroad transportation services and all industrial uses, and newsprint and printers ink for use by publishers of newspapers and commercial printers shall be deemed to be wholesale sales and shall be exempt from taxation under GMC 3.10.300.

Should a dispute arise between the purchaser and seller as to whether or not any such sale is exempt from taxation hereunder, nevertheless the seller shall collect and the purchaser shall pay such tax and the seller shall thereupon issue to the purchaser a receipt or certificate, on forms prescribed by the director of finance, showing the names of the seller and purchaser, the items purchased, the date, price, amount of tax paid and a brief statement of the claim of exemption. The purchaser may thereafter apply to the director of finance for a refund of such taxes, and it shall then be the duty of the director of finance to determine the question of exemption subject to the review by the courts, as hereinafter provided. It shall be a violation of this chapter for any seller to fail to collect, or purchaser to fail to pay, the tax levied by this chapter, and on sales on which exemption is disputed. When right to continuous possession of use of any article of tangible personal property is granted under a lease or contract and such transfer of possession would be taxable if outright sale were made, such lease or contract shall be considered the sale of such article and the tax shall be computed and paid by the vendor upon the rentals paid.

Gross receipts from retail sales shall include delivery charges when such charges are subject to the state sales and use tax imposed by article 26 of title 39, C.R.S. 1973, regardless of the place to which delivery is made.

- E. "Person" includes any individual, firm, partnership, joint venture, corporation, estate or trust, or any group or combination acting as a unit, and the plural as well as singular number.
- F. "Purchase price" means the price to the consumer exclusive of any direct tax imposed by the federal government, the state of Colorado, or by this chapter, and, in the case of all retail sales involving the exchange of property also exclusive of the fair market value of the property exchanged at the time and place of the exchange, provided such exchange of property is to be sold thereafter in the usual course of the retailer's business.
- G. "Retailer" means a person doing a retail business, known to the trade and public as such, and selling to the user or consumer, and not for resale.
- H. "Retail sale" includes all sales within the city except wholesale sales. For purposes of this chapter, all retail sales are deemed consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to a destination outside the limits of the city or to a common carrier for delivery to a destination outside the limits of the city. If a retailer has no permanent place of business in the city, or has more than one place of business, the place at which the retail sales are deemed consummated for the purpose of this chapter shall be determined by the provisions of article 26 of title 39, C.R.S., and by rules and regulations promulgated by the Colorado Department of Revenue. Notwithstanding any other provisions of this chapter, the value of construction and building materials shall be exempt from the city's sales tax if such materials are picked up by the purchaser and if the purchaser of such materials presents to the retailer a building permit or other documentation acceptable to the director of finance evidencing that local use tax has been paid or is required to be paid.
- I. "Sale" includes installment and credit sales, and the exchange of property as well as the sale thereof for money, every such transaction, conditional or otherwise for a consideration, constituting a sale; the transaction of furnishing rooms or accommodations by any person, partnership association, corporation, estate, receiver, trustee, assignee, lessee, or any person acting in a representative capacity or any other combination of individuals by whatever name known to a person, or persons who for a consideration use, possess, or have the right to use or possess any room or rooms in a hotel, apartment hotel, lodging house, motor hotel, guest house, guest ranch, mobile homes, auto camps, trailer courts and parks, under any concession, permit, right to access, license to use or other agreement, or otherwise, and also includes the sale or furnishing of electrical energy, gas, telephone, or telegraph services taxable under the terms of this chapter.

- J. "Tangible personal property" means corporeal personal property, but shall not be construed to include newspapers.
- K. "Tax" means either the tax payable by the purchaser of a commodity or service subject to tax, or the aggregate amount of taxes due from the vendor of such commodities or services during the period for which he is required to report his collections, as the context may require.
- L. "Taxpayer" means any person obligated to account to the director of finance for taxes collected or to be collected under the terms of this chapter.
- M. "Wholesale" means a person doing a regularly organized wholesale or jobbing business, and known to the trade as such and selling to retail merchants, jobbers, dealers, or other wholesalers, for the purpose of resale.
- N. "Wholesale sale" means a sale by wholesalers to retail merchants, jobbers, dealers, or other wholesalers for resale and does not include a sale by wholesalers to users or consumers, not for resale; and latter sales shall be deemed retail sales, and subject to the provisions of this chapter. (Code 1997 § 3-1-2).

3.10.030 Licenses – Fee – Revocation.

- A. It shall be unlawful for any person to engage in the business of selling at retail, as the same is defined in this chapter, without first having obtained a license therefor, which license shall be granted and issued by the director of finance and shall be in force and effect until the thirty-first day of December of the year in which it is issued, unless sooner revoked. Such license shall be granted or renewed only upon application stating the name and address of the person desiring such a license, the name of such business and the location, including the street number of such business, and such other facts as the director of finance may require. It shall be the duty of each licensee on or before January 1st of each year during which this chapter remains in effect, to obtain a renewal thereof if the licensee remains in the retail business or liable to account for the tax herein provided, but nothing herein contained shall be construed to empower the director of finance to refuse such renewal except revocation for cause of licensee's prior license. For each license issued a fee of \$10.00 shall be paid for each year or fraction thereof for which said license is renewed, together with an additional fee of \$0.50 for filing fee; provided, that only one-half of said \$10.00 fee shall be charged on licenses issued after July 1st of any year.
- B. In case business is transacted at two or more separate places by one person, a separate license for each place of business shall be required.
- C. Each license shall be numbered and shall show the name, residence, place, and character of business of the licensee and shall be posted in a conspicuous place in the place of business for which it is issued. No license shall be transferable.
- D. The director of finance, on reasonable notice and after full hearing, may revoke the license of any person found by the director to have violated any provision of this chapter.
- E. Any finding and order of the director of finance revoking the license of any person shall be subject to review by the district court of the district where the business of the licensee is conducted, upon application of the aggrieved party. The procedure for review shall be, as nearly as possible, the same as now provided for the review of findings by certiorari.
- F. No license shall be required for any person engaged exclusively in the business of selling commodities which are exempt from taxation under this chapter. (Code 1997 § 3-1-3).

3.10.040 Property and services taxed.

There is hereby levied and there shall be collected and paid a tax in the amount stated in GMC 3.10.060 as follows:

- A. On the purchase price paid or charged upon all sales and purchases of tangible personal property at retail.
- B. In the case of retail sales involving the exchange of property, on the purchase price paid or charged, including the fair market value of the property exchanged at the time and place of the exchange, excluding however, from the consideration or purchase price, the fair market value of the exchanged property, provided such exchanged property is to be sold thereafter in the usual course of the retailer's business.
- C. Upon telephone and telegraph services, whether furnished by public or private corporations or enterprises for all intrastate telephone and telegraph service.
- D. For gas and electric service, whether furnished by municipal, public or private corporations or enterprises, for gas and electricity furnished and sold for domestic and commercial consumption and not for sale.
- E. Upon the amount paid for all meals and cover charges, if any, furnished in any restaurant, eating house, hotel, drug store, club, resort, or other such place at which meals or food are regularly sold to the public.
- F. On the entire amount charged to any person or persons for rooms or accommodations as defined in GMC 3.10.020. (Code 1997 § 3-1-4).

3.10.050 Vendor liable for tax.

Every retailer, also herein called "vendor," shall, irrespective of the provisions of GMC 3.10.130, be liable and responsible for the payment of an amount equivalent to the rate of tax provided in GMC 3.10.060 multiplied by all sales made by him of commodities or services as specified in GMC 3.10.040, and shall before the twentieth day of each month make a return to the director of finance for the preceding calendar month and remit an amount equivalent to said tax on such sales to said director, less five percent of the sum so remitted to cover the vendor's expense in the collection and remittance of said tax. Such returns of the taxpayer or duly authorized agent shall contain such information and may be made in such manner and upon such forms as the director of finance may prescribe. The director may extend the time of making returns and paying the taxes due under such reasonable rules and regulations as he may prescribe, but no such extension shall be for a greater period than is provided for in GMC 3.10.090. The burden of proving and paying the same to the director of finance, or for making such returns, shall be on the retailer or vendor under such reasonable requirements of proof as the director may prescribe. In any event, the amount subject to tax imposed by this chapter shall not include the amount of any sales or use tax imposed by article 26 of title 39, C.R.S. (Ord. 7-2010 § 1; Ord. 7-2007 § 1; Ord. 5-2007 § 1; Ord. 4-1999 § 1; Code 1997 § 3-1-5).

3.10.060 Schedule of sales tax and distribution of receipts.

- A. There is imposed hereby a tax in an amount equivalent to three percent of all sales of commodities and services specified in GMC 3.10.040. The receipts of the tax shall be deposited in the general fund of the city and shall be applied as specified in GMC 3.10.380.
- B. Commencing July 1, 2007, through and including June 30, 2032, there is imposed hereby a tax, in addition to the tax set forth in subsection (A) of this section, in an amount equivalent to one percent of all sales of commodities and services specified in GMC 3.10.040. Commencing July 1, 2032, the tax specified in the preceding sentence shall be reduced to a tax, in addition to the tax set forth in subsection (A) of this section, in an amount equivalent to one-quarter of one percent of all sales of com-

modities and services specified in GMC 3.10.040. The receipts of the tax shall be deposited in the city park and recreation fund and shall be applied as specified in GMC 3.10.380.

- C. Retailers shall add to the sale price or charge the tax imposed in subsections (A) and (B) of this section, or the average equivalent thereof, insofar as such average equivalent is expressed in combined form with that of the tax imposed by operation of part 1 of article 26 of title 39, C.R.S., as amended, in accordance with schedules of said combined average equivalents duly adopted and promulgated by the Executive Director of the Colorado Department of Revenue. The retailer shall show such tax as a separate and distinct item, and when added, such tax shall constitute a part of such price or charge and shall be a debt from the consumer or user to the retailer until paid and shall be recoverable at law in the same manner as other debts. The retailer shall be entitled as collecting agent of the city to apply and credit the amount of his collections against the rate to be paid by him under the provisions of GMC 3.10.050, remitting any excess of collections over said rate, less the five percent collection expense allowance, to the director of finance in the retailer's next monthly sales tax return. (Ord. 7-2007 § 2; Ord. 5-2007 § 2; Ord. 4-1999 § 2; Code 1997 § 3-1-6).

3.10.070 Rules and regulations.

To provide uniform methods of adding the tax, or the average equivalent thereof, to the selling price, it shall be the duty of the director of finance to formulate and promulgate, after hearing, appropriate rules and regulations to effectuate the purpose of GMC 3.10.050 through 3.10.120. (Code 1997 § 3-1-7).

3.10.080 Tax cannot be absorbed.

It shall be unlawful for any retailer to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof imposed by GMC 3.10.010 through 3.10.280 will be assumed or absorbed by the retailer or that it will not be added to the selling price of the property sold, or if added that it or any part thereof will be refunded. Any person violating any of the provisions of GMC 3.10.050 through 3.10.120 shall be subject to the penalties herein provided. (Code 1997 § 3-1-8).

3.10.090 Reports of vendor.

If the accounting methods regularly employed by the vendor in the transaction of his business, or other conditions, are such that reports of sales made on a calendar month basis will impose unnecessary hardship, the director of finance, upon written request of the vendor, may accept reports at such intervals as will in his opinion better suit the convenience of the taxpayer and will not jeopardize the collection of the tax; provided, however, the director of finance may, by rule, permit taxpayers whose monthly tax collected is less than \$10.00 to make returns and pay taxes at intervals not greater than every three months. (Code 1997 § 3-1-9).

3.10.100 Retailer – Multiple locations.

A retailer doing business in two or more places or locations, taxable hereunder, may file one return covering all such business activities engaged in within the city. (Code 1997 § 3-1-10).

3.10.110 Credit sales.

In case of a sale upon credit, a contract for sale wherein it is provided that the price shall be paid in installments, and title does not pass until a future date, chattel mortgage or a conditional sale, there shall be paid upon each payment upon the account of purchase price, that portion of the total tax which the amount paid bears to the total purchase price. The director of finance may authorize a retailer doing business, wholly or partly on a credit basis, to make returns on the basis of cash actually received. Thereafter the retailer shall make returns and pay taxes on that basis until further order of the director of finance. GMC 3.10.050 through 3.10.120 shall not operate to relieve from the tax, installment or credit business done during the operations of GMC 3.10.010 through 3.10.280, but realized upon thereafter. (Code 1997 § 3-1-11).

3.10.120 Excess tax – Remittance.

If any vendor, during any reporting period, shall collect as a tax an amount in excess of one percent of his total taxable sales, he shall remit to the director of finance the full net amount of the tax herein imposed and also such excess. The retention by the retailer or vendor of any excess of tax collections over the one percent of the total taxable sales of such retailer or vendor or the intentional failure to remit punctually to the director of finance the full amount required to be remitted by the provisions of GMC 3.10.010 through 3.10.280 is declared to be unlawful and a violation of this chapter. (Code 1997 § 3-1-12).

3.10.130 Exemptions – Disputes.

There shall be exempt from taxation under the provisions of this chapter the following:

- A. All sales to the United States government, to the state of Colorado, its departments and institutions, and the political subdivisions thereof in their governmental capacities only, and to the city.
- B. All sales made to religious or charitable corporations in the conduct of their regular religious or charitable functions and activities.
- C. All sales which the city is prohibited from taxing under the Constitution or laws of the United States or the state of Colorado or the Charter or code of the city.
- D. All sales of cigarettes.
- E. All sales and purchases of commodities and services under the provisions of GMC 3.10.020 to any occupant who is a permanent resident of any hotel, apartment hotel, lodging house, motor hotel, guest house, guest ranch, mobile home, auto camp, trailer court or park, and who enters into or has entered into a written agreement for occupancy of a room or rooms or accommodations for a period of at least 30 consecutive days during the calendar year or preceding year.
- F. All commodities on which there has been paid a Colorado motor fuel tax or special fuel tax.
- G. Should disputes arise between the purchaser and seller as to whether or not any sale, service or commodity is exempt from taxation under this section, nevertheless the seller shall collect and the purchaser shall pay such tax, and the seller shall thereupon issue to the purchaser a receipt or certificate, on forms prescribed by the director of finance, showing the names of the seller and purchaser, the items purchased, the date, price, amount of tax paid, and a brief statement of the claim of exemption. The purchaser thereafter may apply to the director of finance for a refund of such taxes, and it shall then be the duty of the director of finance to determine the question of exemption, subject to review by the courts as provided in GMC 3.10.250.
- H. All sales of drugs dispensed in accordance with a prescription and all sales of prosthetic devices.
- I. All sales of personal property on which a specific ownership tax has been paid or is payable, when such sales meet both of the following conditions:
 - 1. The purchaser is a nonresident of or has his principal place of business outside of the city; and
 - 2. Such personal property is registered or required to be registered outside the limits of the city, pursuant to the laws of the state.
- J. All sales of tangible personal property at retail or the furnishing of services if the transaction was previously subjected to a sales or use tax lawfully imposed on the purchaser or user by a statutory or home rule city, town, or city and county equal to or in excess of the tax which would be imposed under this chapter. A credit (not to exceed the tax which would be imposed under this chapter) is

hereby granted to the purchaser or user of such transaction against the tax imposed hereunder equal to the tax lawfully imposed and previously paid by the purchaser or user to another home rule or statutory city, town, or city and county. (Code 1997 § 3-1-13).

3.10.140 Refunds.

- A. A refund shall be made, or a credit allowed, for the tax so paid under dispute by any purchaser who has an exemption as in this chapter provided. Such refund shall be made by the director of finance after compliance with the following conditions precedent. Applications for refund must be made within 60 days after the purchase of the goods whereon an exemption is claimed and must be supported by the affidavit of the purchaser accompanied by the original paid invoice or sales receipt and certificate issued by the seller and be made upon such forms as shall be prescribed and furnished by the director of finance, which forms shall contain such information as said director shall prescribe. Upon receipt of such application the director shall examine the same with all due speed and shall give notice to the applicant by order in writing of his decision thereon. Aggrieved applicants, within 10 days after such decision is mailed to them, may petition the director for a hearing on the claim in the manner provided in GMC 3.10.240 and 3.10.250. The right of any person to a refund under this chapter shall not be assignable and except as provided in subsection (B) of this section, such application for refund must be made by the same person who purchased the goods and paid the tax thereon as shown in the invoice of the sale thereof. Any applicant for refund under the provisions of this section, or any other person who shall make any false statement in connection with an application for a refund of any taxes, shall be deemed guilty of a violation of this chapter.
- B. A refund shall be made or credit allowed by the director of finance to any person entitled to an exemption where such person establishes that a tax was paid by another on a purchase made on behalf of such person and that refund has not been granted to the person making the purchase and that the person entitled to exemption paid or reimbursed the purchaser to such tax.
- C. Such application for refund under subsection (B) of this section shall be made within three years after the date of purchase and shall be made on forms prescribed and furnished by the director of finance, which forms shall contain, in addition to the foregoing information, such pertinent data as the director shall prescribe. Upon receipt of such application and proof of the matters therein contained the director shall give notice to the applicant by order in writing of his decision thereon. Aggrieved applicants, within 10 days after such decision is mailed to them, may petition the director for a hearing on the claim in the manner provided in GMC 3.10.160 and 3.10.240. Any applicant for refund under the provisions of this subsection, or any other person who shall make any false statement in connection with an application for a refund of any taxes, shall be deemed guilty of a violation of this chapter.
- D. The burden of proving that sales, services, and commodities, on which tax refunds are claimed, are exempt from taxation under GMC 3.10.010 through 3.10.280, or were not at retail, shall be on the one making such claim under such reasonable requirements of proof as the director of finance may prescribe. Should the applicant for refund be aggrieved at the final decision of the director, he may proceed to have the same reviewed by the courts in the manner provided for review of other decisions of the director as provided in GMC 3.10.250; except that such reviews shall be in the district court for Gunnison County.
- E. All sales and purchases of meat cattle, sheep, lambs, swine, and goats, all sales and purchases of mares and stallions for breeding purposes, and all farm auction close-out sales shall be exempt from taxation under GMC 3.10.010 through 3.10.280, and the storage, use or consumption of such property shall be exempt from taxation under GMC 3.10.290 to 3.10.360.
- F. All sales and purchases of feed for livestock or poultry and all sales and purchases of orchard trees shall be exempt from taxation under GMC 3.10.010 through 3.10.280.

- G. Every vendor vending individual items of personal property through coin-operated vending machines at a price below the minimum taxable sale prescribed by GMC 3.10.060 shall be exempt from the provisions of GMC 3.10.050, but nevertheless such vendor shall pay the sales or use tax on the purchase of the personal property so vended in the coin-operated machine unless the purchase or sale shall be otherwise exempt under the provisions of this chapter.
- H. All sales and purchases of straw and other bedding for use in the care of livestock shall be exempt from taxation under GMC 3.10.010 through 3.10.280. (Code 1997 § 3-1-14).

3.10.150 Returns confidential.

Except in accordance with judicial order or as otherwise herein provided, the director of finance, his agents, clerks, and employees shall not divulge any information gained by them from any return filed under the provisions of GMC 3.10.010 through 3.10.280. The officials charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the director of finance in an action or proceeding under the provisions of GMC 3.10.010 through 3.10.280 to which he is a party, or on behalf of any action or proceeding under the provisions of GMC 3.10.010 through 3.10.280 when the report of facts shown thereby is directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit in evidence, so much of said reports or of the facts shown thereby as are pertinent to the action or proceeding, and no more. Nothing herein contained shall be construed to prohibit the delivery to a person, or his duly authorized representative, of a copy of any return or report filed in connection with his tax, nor to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, or the inspection by the city attorney or other legal representatives of the city of the report or return of any person who shall bring an action to set aside or review the tax based thereon, or against whom an action or proceeding is contemplated or has been instituted under GMC 3.10.010 through 3.10.280. Reports and returns shall be preserved for three years and thereafter until the director of finance orders them destroyed. (Code 1997 § 3-1-15).

3.10.160 Interest on deficiency.

As soon as practicable after the return is filed, the director of finance shall examine it, and if it then appears that the correct amount of tax to be remitted is greater or less than shown in the return to be due, the tax shall be recomputed. If the amount paid exceeds that which is due, the excess shall be refunded or credited against any subsequent remittance from the same person. If the amount paid is less than the amount due, the difference, together with interest thereof at the rate imposed under Section 39-21-110.5, C.R.S., in accordance with Section 39-21-109, C.R.S., per month from the time the return was due, shall be paid by the vendor 10 days after written notice and demand to him from the director of finance. (Code 1997 § 3-1-16).

3.10.170 Deficiency.

If any part of the deficiency is due to negligence or intentional disregard of authorized rules and regulations with knowledge thereof, but without intent to defraud, there shall be added 10 percent to the total amount of the deficiency, and interest in such case shall be collected at the rate imposed under Section 39-21-110.5, C.R.S., in accordance with Section 39-21-109, C.R.S., on the amount of such deficiency from the time the return was due, from the person required to file the return, which interest and addition shall become due and payable 10 days after written notice and demand to him by the director of finance. If any part of the deficiency is due to fraud with the intent to evade the tax, then there shall be added 100 percent of the total amount to the deficiency and in such case, the whole amount of the tax unpaid, including the additions, shall become due and payable 10 days after written notice and demand by the director of finance and an additional three percent per month on said amount shall be added from the date the return was due until paid. (Code 1997 § 3-1-17).

3.10.180 Deficiency notice and dispute resolution.

The city shall adhere to and follow the procedures for enforcement of this chapter and for dispute resolution as set forth in Section 29-2-106.1, C.R.S., and such procedures are herein incorporated by reference. (Code 1997 § 3-1-18).

3.10.190 Location guides.

The city shall make available to any requesting retailer a map or other location guide showing the boundaries of the city. (Code 1997 § 3-1-19).

3.10.200 Court to order attendance.

The municipal court of the city of Gunnison, Colorado, or any judge thereof, either in term time or vacation, upon the application of the director of finance, may compel the attendance of witnesses, the production of books, papers, records, or memoranda and the giving of testimony before the director of finance, by an attachment for contempt, or otherwise, in the same manner as production of evidence may be compelled before said court. (Ord. 7-2010 § 2; Code 1997 § 3-1-20).

3.10.210 Depositions.

The director of finance, or any party in an investigation or hearing before the director of finance, may cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in courts in this state, and to that end compel the attendance of witnesses and the production of books, papers, records, or memoranda. (Code 1997 § 3-1-21).

3.10.220 Record of sales.

It shall be the duty of every person engaging or continuing in business in the city, for the transaction of which a license is required under GMC 3.10.030, to keep and preserve suitable records of all sales made by him, and such other books or accounts as may be necessary to determine the amount of tax for the collection of which he is liable under GMC 3.10.050. It shall be the duty of every such person to keep and preserve, for a period of three years, all invoices of goods and merchandise purchased for resale, and all such books, invoices, and other records shall be open for examination at any time by the director of finance or his duly authorized agents. (Code 1997 § 3-1-22).

3.10.230 Tax lien.

The tax imposed by GMC 3.10.050 shall be a first and prior lien upon the goods and business fixtures of or used by a retailer under lease, title retaining contract or other contract arrangement, excepting stock of goods sold or for sale in the ordinary course of business, and shall take precedence on all such property over other liens or claims of whatsoever kind or nature, excepting any lien for the nonpayment of the state of Colorado sales or use tax. Any retailer who shall sell out his business or stock of goods, or shall quit business, shall be required to make out the return as provided in GMC 3.10.090 within 10 days after the date he sold his business or stock of goods or quit business, and his successor in business shall be required to withhold sufficient of the purchase money to cover the amount of said taxes due and unpaid until such time as the former owner shall produce a receipt from the director of finance showing that the taxes have been paid, or a certificate that no taxes are due. If the purchaser of a business or stock of goods shall fail to withhold the purchase money as above provided and the taxes shall be due and unpaid after the 10-day period allowed, he, as well as the vendor, shall be personally liable for the payment of the taxes unpaid by the former owner. Likewise, anyone who takes any stock of goods or business fixtures of or used by any retailer under lease, title retaining contract or other contract arrangement by purchase, foreclosure sale, or otherwise, takes the same subject to the lien for any delinquent tax owned by such merchant, and shall be liable for the payment of all delinquent sales taxes of such prior owner, not, however, exceeding the value of the property so taken or acquired.

Wherever the business or property of any taxpayer subject to this chapter shall be placed in receivership, bankruptcy, or assignment for the benefit of creditors, or seized under distraint for property taxes, all taxes, penalties, and interest imposed by this chapter and for which said retailer is in any way liable under the terms of this chapter shall be a prior and preferred claim against all the property of said taxpayer,

except as to preexisting claims or liens of a bona fide mortgagee, pledgee, judgment creditor, or purchaser whose rights shall have attached prior to the filing of the notice as provided in this section on the property of the taxpayer, other than the goods, stock in trade and business fixtures of such taxpayer, and no sheriff, receiver, assignee or other officer shall sell the property to any person subject to this chapter under process or order of any court, without first ascertaining from the director of finance the amount of any taxes due and payable under this chapter, and if there be any such taxes due, owing or unpaid, it shall be the duty of such officer to first pay the amount of said taxes out of the proceeds of said sale before making payment of any monies to any judgement creditor or other claims of whatsoever kind or nature, except the cost of the proceedings and other preexisting claims or liens as above provided. For the purposes of this chapter, the term "taxpayer" shall include "retailer."

- A. All sums or money paid by the purchaser to the retailer as taxes imposed by this chapter shall be and remain public money, the property of the city, in the hands of such retailer and he shall hold the same in trust for the sole use and benefit of the city until paid to the director of finance, and for failure to so pay the director of finance, such retailer shall be punished as provided by law.
- B. If a person neglects or refuses to make a return in payment of the tax as required by this chapter, the director of finance shall make an estimate, based upon such information as may be available, of the amount of taxes due for the period of which the taxpayer is delinquent and, upon the basis of such estimated amount, compute and assess in addition thereto a penalty equal to the sum of \$15.00 for such failure or 10 percent thereof, whichever is greater, together with interest on such delinquent taxes at the rate imposed under Section 39-21-110.5, C.R.S., plus one-half percent per month from the date when due, not exceeding 18 percent in the aggregate. Promptly thereafter, the director of finance shall give to the delinquent taxpayer written notice of such estimated taxes, penalty, and interest, which notice must be served personally or by certified mail. Such estimate shall thereupon become an assessment and such assessment shall be final and due and payable from the taxpayer to the director of finance 10 days from the date of service of the notice or the date of mailing by certified mail; provided, however, that within said 10-day period, such delinquent taxpayer may petition the director of finance for a revision or modification of such assessment, and within such 10-day period, shall furnish the director the facts and correct figures showing the correct amount of such taxes. Such petition shall be in writing or orally, and shall be given under the oath of said taxpayer. Thereupon, the director shall modify such assessment in accordance with the facts submitted, which facts he deems correct. Such assessment shall be considered the final order of the director of finance, and may be reviewed by writ of certiorari as provided in this chapter; provided, that the taxpayer gives written notice to the director of finance of such intention within five days after receipt of the final order of assessment.
- C. If any taxes, penalty, or interest imposed by this chapter and shown due by returns filed by taxpayer, or as shown by assessments duly made as provided herein, are not paid within five days after the same are due, the director of finance shall issue a notice, setting forth the name of the taxpayer, the amount of the tax, penalties, and interest, and date of the accrual thereof, and that the City claims a first and prior lien therefor on the real and tangible personal property of the taxpayer except as to any lien for the nonpayment of the state sales or use tax, preexisting claims or liens of a bona fide mortgagee, pledgee, judgment creditor, or purchaser whose rights shall have attached prior to the filing of the notice as herein provided, on property of the taxpayer, other than the goods, stock in trade, and business fixtures of such taxpayer. Said notice shall be on forms prepared by the director of finance and shall be verified by him or his duly qualified deputy, and may be filed in the office of the clerk and recorder of any county in the state in which the taxpayer owns real or tangible personal property, and the filing of such notice shall create such lien on such property in that county and constitute notice thereof. After said notice has been filed, or concurrently therewith, or at any time when taxes are due and unpaid, whether such notice be filed or not, the director of finance may issue a warrant directed to the Gunnison chief of police or the sheriff of any county of the state, commanding him to levy upon, seize, and sell sufficient of the real and personal property of the taxpayer found within his city

or county for the payment of the amount due, together with interest, penalties, and costs as may be provided by law, subject to valid preexisting claims or liens.

- D. The chief of police or sheriff shall forthwith levy upon sufficient of the property of the taxpayer, or any property used by such taxpayer in conducting his retail business, and said property so levied upon shall be sold in all respects with like effect and in the same manner as is prescribed by law in respect to executions against property upon judgment of a court of record, and the remedies of garnishment shall apply. The chief of police or sheriff shall be entitled to such fees in executing such warrant as are now allowed by law for similar services.
- E. Any lien for taxes as shown on the records of the county clerk and recorder as herein provided, upon payment of all taxes, penalties, and interest covered thereby, shall be released by the director of finance in the same manner as mortgages and judgements are released.
- F. The director of finance may also treat any such taxes, penalties, or interest due and unpaid as a debt due the city from the vendor. In case of failure to pay the tax, or any portion thereof, or any penalty or interest thereon when due, the director of finance may recover at law the amount of such taxes, penalties, and interest in such justice, county or district court of the county wherein the taxpayer resides, or has his principal place of business, having jurisdiction of the amounts sought to be collected. The return of the taxpayer or the assessment made by the director of finance, as herein provided, shall be prima facie proof of the amount due. Such action may be actions in attachment, and writs of attachment may be issued to the constable or sheriff as the case may be, and in such proceeding no bond shall be required of the director of finance, nor shall any constable or sheriff require of the director of finance an indemnifying bond for executing the writ of attachment, or writ of execution upon any judgement entered in such proceedings, and the director of finance may prosecute appeals or writs of error in such cases without the necessity of providing bond therefor. It shall be the duty of the city attorney, when requested by the director of finance, to commence action for the recovery of taxes due under this chapter, and this remedy shall be in addition to all other existing remedies provided in this chapter.
- G. In any action affecting the title to real estate or the ownership or rights to possession of personal property, the city may be made a party defendant for the purpose of obtaining an adjudication or determination of its lien upon the property involved therein and in any such action service of summons upon the director of finance shall be sufficient service and binding upon the city.
- H. The director of finance is hereby authorized to waive, for good cause shown, any penalty assessed as in this chapter provided, and interest imposed in excess of the rate imposed under Section 39-21-110.5, C.R.S., shall be deemed a penalty. (Ord. 7-2010 § 3; Code 1997 § 3-1-23).

3.10.240 Taxpayer's petition for hearing.

If any person having made a return and paid the tax provided by GMC 3.10.010 through 3.10.280 feels aggrieved by the assessment made upon him by the director of finance, he may apply to the director of finance by petition in writing within 10 days after the notice is mailed to him for a hearing and a correction of the amount of the tax so assessed, in which petition he shall set forth the reasons why such hearing should be granted and the amount by which such tax should be reduced. The director of finance shall notify the petitioner in writing of the time and place fixed by him of such hearing. After such hearing, the director of finance shall make such order in the matter as is just and lawful and shall furnish a copy of such order to the petitioner. (Code 1997 § 3-1-25).

3.10.250 Decisions of director.

- A. Every decision of the director of finance shall be in writing, and notice thereof shall be mailed to the vendor within 10 days, and all such decisions shall become final upon the expiration of 30 days after notice of such decision shall have been mailed to the vendor, unless proceedings are taken within said time for review thereof as provided in this section.

- B. The district court in and for Gunnison County, Colorado, shall have original jurisdiction in proceedings to review all questions of law and fact determined by the director of finance in administering the provisions of GMC 3.10.010 through 3.10.280 by writ of certiorari to the director of finance.
- C. Within 15 days after making application of the district court for a writ of certiorari, the party making such application shall file with the district court a surety bond in twice the amount of the taxes, interests and other charges stated in the determination and decision of the director of finance. At his option, the taxpayer may satisfy the surety bond requirement by a savings account deposit in a certificate of deposit issued by a state or national bank or by a state or federal savings and loan association, in accordance with Section 11-35-101(1), C.R.S., equal to twice the amount of taxes. The taxpayer also, at his option, may deposit with the director of finance the disputed amount in lieu of posting bond. If such amount is so deposited, no further interest shall accrue on the deficiency contested during the pendency of the action. (Code 1997 § 3-1-26).

3.10.260 Notices sent by certified mail.

- A. All notices required to be given to the retailer or vendor under the provisions of GMC 3.10.010 through 3.10.280 shall be in writing and, if mailed, postpaid by certified mail, return receipt requested, to him at his last known address shall be sufficient for the purpose of GMC 3.10.010 through 3.10.280.
- B. Every hearing before the director of finance shall be held in Gunnison, Colorado. (Ord. 7-2010 § 4; Code 1997 § 3-1-27).

3.10.270 License and tax additional.

The license and tax imposed by this chapter shall be in addition to all other licenses and taxes imposed by law, except as herein otherwise provided. (Code 1997 § 3-1-28).

3.10.280 Violations.

It shall be unlawful for any retailer or vendor to refuse to make any return provided to be made in GMC 3.10.010 through 3.10.280, or to make any false or fraudulent return or false statement on any return, or fail and refuse to make payment to the director of finance of any taxes collected or due the city, or in any manner evade the collection and payment of the tax, or any part thereof, or for any person or purchaser to fail or refuse to pay any such tax, or evade the payment thereof, or to aid or abet another in any attempt to evade the payment of the tax.

In addition to the foregoing, any person who shall knowingly and willfully swear to or verify any false statement shall be guilty of the offense of perjury and on conviction thereof shall be punished in the manner provided by law. (Code 1997 § 3-1-29).

3.10.290 Authorization of use tax.

- A. There is levied hereby and there shall be collected from every person in the city a tax or excise for the privilege of storing, using or consuming in this city any articles of tangible personal property purchased at retail, except that no use tax shall be collected for the privilege of storing any construction or building materials. Said tax shall be added to such storage or acquisition charges or costs, or the average equivalent thereof, insofar as such average equivalent is expressed in combined form with that of the tax imposed by operation of part 1 of article 26 of title 39, C.R.S., in accordance with schedules of said combined average equivalents duly adopted and promulgated by the Executive Director of the Colorado Department of Revenue. Said tax shall be payable to and shall be collected by the director of finance.
- B. There is imposed hereby a tax in an amount equivalent to three percent on such storage or acquisition charges or costs specified in subsection (A) of this section. The receipts of the tax shall be deposited in the general fund of the city and shall be applied as specified in GMC 3.10.380.

- C. Commencing July 1, 2007, through and including June 30, 2032, there is imposed hereby a tax, in addition to the tax set forth in subsection (B) of this section, in an amount equivalent to one percent on such storage or acquisition charges or costs specified in subsection (A) of this section. Commencing July 1, 2032, the tax specified in the preceding sentence shall be reduced to a tax, in addition to the tax set forth in subsection (B) of this section, in an amount equivalent to one-quarter of one percent on such storage or acquisition charges or costs specified in subsection (A) of this section. The receipts of the tax shall be deposited in the city park and recreation fund and shall be applied as specified in GMC 3.10.380. (Ord. 7-2007 § 3; Code 1997 § 3-1-30).

3.10.300 Exemptions.

The use tax imposed by GMC 3.10.290 through 3.10.360 shall not apply:

- A. To the storage, use or consumption of any tangible personal property, the sale of which is subject to the retail sales tax imposed by other sections of this chapter and on which a retail sales tax has been paid.
- B. To the storage, use or consumption of any tangible personal property purchased for resale in the city, either in its original form or as an ingredient of a manufactured or compounded product, in the regular course of business.
- C. To the storage, use or consumption of motor fuel upon which there has accrued or has been paid a Colorado motor fuel tax or special fuel tax.
- D. To the storage, use or consumption of tangible personal property brought into the city by a nonresident for his own storage, use or consumption while temporarily within the city.
- E. To the storage, use or consumption of tangible personal property by the United States government or by the state, or its institutions, or its political subdivisions in their governmental capacities only or by the city, or by religious or charitable corporations in the conduct of their regular religious or charitable functions.
- F. To the storage, use or consumption of tangible personal property by a person engaged in the business of manufacturing, compounding for sale, profit or use, any article, substance or commodity, which tangible personal property enters into the processing of or becomes an ingredient or component part of the product or service which is manufactured, compounded or furnished, and the container, label, or the furnished shipping case thereof.
- G. To the storage, use, or consumption of electricity, coal, coke, fuel oil, or gas for use in processing, manufacturing, mining, refining, irrigation, building construction, telegraph, telephone and radio communication, street and railroad transportation services, and all industrial uses.
- H. To the storage, use, or consumption of straw and other bedding for use in the care of livestock.
- I. To the storage, use, or consumption of printers ink and newsprint.
- J. To the storage, use, or consumption of cigarettes.
- K. To the storage, use, or consumption of any article of tangible personal property the sales or use tax of which has already been subjected to a sales or use tax of another home rule or statutory city, town, or city and county legally imposed on the purchaser or user equal to or in excess of the use tax which would be imposed under this chapter. A credit (not to exceed the tax which would be imposed under this chapter) is hereby granted to the purchaser or user of such transaction against the tax imposed hereunder equal to the use tax lawfully imposed and previously paid by the purchaser or user to another home rule or statutory city, town, or city and county.

- L. To the use or consumption of property which occurred more than three times after the most recent sale of the property if, within the three years following the sale, the property has been used within the state of Colorado for the principal purpose for which it is purchased. (Code 1997 § 3-1-31).

3.10.310 Monthly return – Collection.

- A. Every person subject to the provisions of GMC 3.10.290 through 3.10.360 and who has not paid the tax imposed hereby to a retailer, on or before the twentieth day of each month, shall make to the director of finance on forms prescribed by him a return showing in detail the tangible personal property stored, used, or consumed by him within the city in the preceding calendar month which is subject to the tax herein imposed, and on which the tax has not been paid to a retailer. Such return shall be verified by oath or affirmation of the taxpayer or his agent and shall be accompanied by a remittance of the tax shown thereon to be due.
- B. Every retailer maintaining an office or place of business in the city, and every agent, within the city, of any retailer not maintaining an office or place of business in the city, making sales of tangible personal property for storage, use or consumption in the city, and not exempted as provided in GMC 3.10.300 at the time of making such sales or taking the orders therefor, or if the storage, use or consumption of such tangible personal property is not then taxable hereunder, shall collect the tax imposed by GMC 3.10.290 from the purchaser and give to the purchaser a receipt therefor, which receipt shall identify the property, the date sold or the date ordered, and the tax collected and paid. The tax required to be collected by such retailer or agent from such purchaser shall be displayed separately from the advertised price listed on the forms or advertising matter on all sales checks, order, sales slips or other proof of sales. It shall be unlawful for such retailer or agent to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by such retailer or agent, or that it will not be added to the selling price of the property sold, or if added, that it or any part thereof will be refunded. The tax required to be collected by such retailer or agent shall be remitted to the city in like manner as otherwise provided in this chapter for the remittance of sales taxes collected by retailers, and all such retailers or agents collecting the tax imposed by GMC 3.10.290 shall make returns on forms provided by the director of finance at such times and in such manner as is provided for the making of returns in the payment of the sales taxes. The procedure for assessing and collecting said taxes from such retailers or agents, or from the user when not paid to a retailer or agent, shall be the same as provided in this chapter for the collection of sales taxes, including collection by distraint warrant, and said taxes due and owing from any retailer or agent for the storage, use or consumption of tangible personal property shall bear interest and be subject to the same penalties as is provided in this chapter for nonpayment or delinquencies of sales taxes. (Ord. 7-2010 § 5; Code 1997 § 3-1-32).

3.10.320 Tax constitutes lien.

Said tax shall be a first and prior lien on the tangible personal property stored, used, or consumed, subject only to valid mortgages or other liens of record on and prior to the recording of notice as required by GMC 3.10.230(C), and when such tax is collected by retailers or agents, shall be a first and prior lien on all the stock of goods or business fixtures of or used by such retailer, excepting goods sold in the ordinary course of business, which lien shall have precedence over all other liens of whatsoever kind or nature except as to any lien for the nonpayment of the state of Colorado sales or use tax, preexisting claims or liens of a bona fide mortgagee, judgment creditor, or purchaser whose rights have attached prior to the filing of the notice on property of the taxpayer, other than the goods, stock in trade, and business fixtures of such taxpayer. Upon default of payment thereof, the director of finance, after demand upon the person owing such tax, may bring an action in his name as director of finance in attachment, and seize any property to secure the payment of said tax, interest, and penalties. In any such proceeding, no bond shall be required of the director of finance, nor shall any chief of police or sheriff require from the director of finance an indemnifying bond for executing the writ of attachment or writ of levy, and no chief of police or sheriff shall be liable in damages when acting in accordance with such writs. The remedies provided in this section shall be in addition to all other remedies. (Ord. 7-2010 § 6; Code 1997 § 3-1-33).

3.10.330 Failure to make return.

Any person who shall willfully fail or refuse to make the return required in GMC 3.10.310, or who shall make a false or fraudulent return, or who shall willfully fail to pay any tax owing by him, and any person who shall aid or abet another in an attempt to evade such tax, shall be guilty of a violation of this chapter, and subject to a fine not exceeding \$1,000 for each such offense. (Ord. 19-1997 § 1; Code 1997 § 3-1-34).

3.10.340 Definitions – Additional.

- A. Person. The term “person” as used in GMC 3.10.290 through 3.10.360 means an individual, corporation, partnership, firm, joint venture, association, estate, trust, receiver, or any other group acting as a unit, and the plural as well as the singular number.
- B. Storage or Storing. The terms “storage” or “storing” means any keeping or retention of, exercise of dominion or control over tangible personal property in the city. (Code 1997 § 3-1-36).

3.10.350 Tax on motor vehicles.

Any resident of the city who shall purchase any motor vehicle, trailer, or semitrailer outside the corporate limits of the city for use, consumption, or storage of such vehicle within the city shall immediately make a return, disclosing the terms of such transaction, to the director of finance, and thereupon pay the tax thereon as provided in this chapter. (Code 1997 § 3-1-37).

3.10.360 Limitations.

The taxes for any period, together with the interest thereon and penalties with respect thereto, imposed by this chapter shall not be assessed, nor shall any notice of lien be filed, or distraint warrant issued, or suit for collection be instituted, or any other action to collect the same be commenced, more than three years after the date on which the tax was or is payable; nor shall any lien continue after such period, except for taxes assessed before the expiration of such period, notice of lien with respect to which has been filed prior to the expiration of such period, in which cases such lien shall continue only for one year after the filing of notice thereof. In the case of a false or fraudulent return with intent to evade, tax, together with interest and penalties thereon, may be assessed, or proceedings for the collection of such taxes may be begun at any time. Before the expiration of such period of limitation, the taxpayer and the director of finance may agree in writing to an extension thereof, and the period so agreed on may be extended by subsequent agreements in writing. (Code 1997 § 3-1-38).

3.10.370 Administration.

The administration of this chapter is vested in and shall be exercised by the director of finance, who shall prescribe forms and reasonable rules and regulations in conformity with said sections for the making of returns, for the ascertainment, assessment, and collection of the taxes imposed hereunder, and for the proper administration and enforcement of said sections. (Code 1997 § 3-1-39).

3.10.380 Purpose of tax.

- A. The funds derived from the tax imposed in GMC 3.10.060(A) and 3.10.290(B), after deducting so much thereof as may be necessary for the administrative expenses in administering this chapter, shall be devoted to the following purposes: No less than 30 percent for streets and related purposes, including, without limitation, the paying of principal of, premium, if any, and interest on any securities issued pursuant to Section 8.5 of the Charter of the city for the purpose of providing such improvements; no less than 10 percent for other capital improvements including, without limitation, the paying of principal of, premium, if any, and interest on any securities issued pursuant to Section 8.5 of the Charter of the city for the purpose of providing such improvements; and the remainder for general government expenses.
- B. There is hereby created a special fund of the city titled the “city park and recreation fund.” The funds derived from the taxes imposed in GMC 3.10.060(B) and 3.10.290(C), after deducting so much thereof as may be necessary for the administrative expenses in administering this chapter, shall be deposited to the city park and recreation fund. Moneys on deposit in the city park and recreation fund

shall be used solely for park and recreation purposes including but not limited to (1) constructing, acquiring and improving capital improvements, (2) acquiring and improving real property interests and equipment, (3) operating and maintaining capital improvements, real property interests and equipment and (4) providing for the payment of revenue bonds issued for such purposes. (Ord. 2-2009 § 4; Ord. 7-2007 § 4; Ord. 5-2007 § 3; Ord. 4-1999 § 3; Code 1997 § 3-1-40).

3.10.390 Collection and enforcement.

The director of finance is hereby authorized to contract with the Colorado Department of Revenue for the collection and enforcement of the sales and use tax levied under the provisions of this chapter and shall have the authority to pay out from the funds derived from said sales and use tax the necessary costs and expenses of the Department in collecting and enforcing the same. (Code 1997 § 3-1-41).

3.10.400 Severability.

If any section, subsection, paragraph, sentence, or clause of this chapter is for any reason held to be invalid, illegal, or unconstitutional, such holding shall not affect the validity of the remaining portions of this chapter. The city council hereby declares that it would have passed this chapter with each section, subsection, paragraph, sentence, or clause regardless of the fact that any one or more of such sections, subsections, paragraphs, sentences, or clauses might be held invalid. (Code 1997 § 3-1-42).

Chapter 3.20**TELEPHONE UTILITY TAX**

Sections:

- 3.20.010 Levy of tax.
- 3.20.020 Effective date.
- 3.20.030 Filing statement.
- 3.20.040 Failure to pay.
- 3.20.050 Penalty clause.
- 3.20.060 Inspection of records.
- 3.20.070 Local purpose.
- 3.20.080 Tax in lieu of other taxes, etc.

3.20.010 Levy of tax.

There is hereby levied on and against each telephone utility company operating within the city a tax on the occupation and business of maintaining a telephone exchange and lines connected therewith in the city and of supplying local exchange telephone service to the inhabitants of the city. The annual amount of tax levied hereby shall be equal to \$4.00 per telephone account for which local exchange telephone service is provided within the corporate limits of the city on the effective date as provided in GMC 3.20.020 and upon each anniversary of the effective date. (Code 1997 § 3-2-1).

3.20.020 Effective date.

The tax levied by this chapter shall commence on January 1, 1979, and shall be due and payable in four equal installments with the first such installment due three months after the effective date. (Code 1997 § 3-2-2).

3.20.030 Filing statement.

Within 30 days after the effective date as provided in GMC 3.20.020, each telephone utility company subject to this chapter shall file with the city clerk, in such form as the clerk may require, a statement showing the total accounts for which local exchange telephone service was provided within the corporate limits of the city on the effective date. Such statement shall be filed within 30 days after each anniversary of the effective date showing such accounts on the anniversary date. (Code 1997 § 3-2-3).

3.20.040 Failure to pay.

If any telephone utility company subject to the provisions of this chapter shall fail to pay the taxes as herein provided, the full amount thereof shall be due and collected from such company, and the same together with an addition of 10 percent of the amount of taxes due shall be and hereby is declared to be a debt due and owing from such company to the city. The city attorney of the city upon direction of the city council shall commence and prosecute to final judgement and determination in any court of competent jurisdiction an action at law to collect the said debt in the name of the city of Gunnison, Colorado, by and on behalf of the people of the state of Colorado. (Code 1997 § 3-2-4).

3.20.050 Penalty clause.

If any officer, agent, or manager of a telephone utility company which is subject to the provisions of this chapter shall fail, neglect, or refuse to make or file the annual statement of accounts provided in GMC 3.20.030, the said officer, agent, manager, or person shall, on conviction thereof, be punished by a fine of not less than \$25.00 nor more than \$1,000; provided, that each day after said statement shall become delinquent during which the said officer, agent, manager, or person shall so fail, neglect, or refuse to make and file such statement shall be considered a separate and distinct offense. (Ord. 19-1997 § 2; Code 1997 § 3-2-5).

3.20.060 Inspection of records.

The city, its officers, agents, or representatives shall have the right at all reasonable hours and times to examine the books and records of the telephone utility company which are subject to the provisions of this chapter and to make copies of the entries or contents thereof. (Code 1997 § 3-2-6).

3.20.070 Local purpose.

The tax herein provided is upon occupations and businesses in the performance of local functions and is not a tax upon those functions relating to interstate commerce. It is expressly understood that none of the terms of this chapter is construed to mean that any telephone utility company is issued a franchise by the city. (Code 1997 § 3-2-7).

3.20.080 Tax in lieu of other taxes, etc.

The tax herein provided shall be in lieu of all other payments by or fees and taxes on any telephone utility subject to the provisions of this chapter, other than ad valorem taxes, and in addition shall be in lieu of any free service furnished by the city and said telephone utility. (Code 1997 § 3-2-8).

Chapter 3.30

(Reserved)

Chapter 3.40**INDUSTRIAL REVENUE BONDS**

Sections:

- 3.40.010 Short title.
- 3.40.020 General.
- 3.40.030 Application requirement.
- 3.40.040 Analysis criteria.
- 3.40.050 Fee.

3.40.010 Short title.

This chapter may be referred to as the “industrial revenue bond ordinance 1981.” (Code 1997 § 3-4-1).

3.40.020 General.

- A. It is the duty of the city manager to give prompt and energetic attention to all applications made pursuant to this chapter. The city manager or his designee shall report to the city council of the city within 30 days of the date of receipt of a completed application.
- B. The city council will make all necessary determinations of the desirability of projects and will not delegate this authority to any agent, contractor, or employee of the city.
- C. The city council will not employ the provisions of the County and Municipality Development Revenue Bond Act to industries presently located in other parts of the state if the result of such act is to induce removal of these industries from their present locations.
- D. The city council declares its intention to require the payment of ad valorem real estate taxes on any project held in the name of the city or on any other governmental entity in the same amount and manner as if the ownership of the real estate remained in private hands rather than in the ownership of the city or other entity.
- E. The city will require information and proof of such matters necessary to establish the bona fide purposes of the applicant while not unnecessarily divulging information to the competitive disadvantage of the applicant.
- F. The city will, in performing its duties, seek to protect and enlarge the good fiscal reputation of the city.
- G. Materials supplied under the following sections of this chapter shall not be made public unless and until the city council at a public meeting agrees to issue the revenue bonds provided for hereunder, but this shall not preclude the city council from giving such public notice of its consideration of the application as necessary to attract comments and suggestions of members of the community. (Code 1997 § 3-4-2).

3.40.030 Application requirement.

In order to properly process and consider applications to issue bonds for projects set forth herein, certain information shall be required to be submitted by any applicant, which information is detailed as follows:

- A. A legal opinion from an attorney who is a qualified municipal bond counsel acceptable to the city council stating that the applicant’s proposal falls within the intent and meaning of the County and Municipality Development Revenue Bond Act.

- B. Evidence that the proposed bond issue can be sold to an acceptable underwriter or to an experienced investor or group of investors, and that the issue has met satisfactorily all requirements of such underwriter or investor group.
- C. A history of the applicant, including a description of its operations.
- D. The historical financial statistics of the applicant for the last two years, including but not limited to, the following:
 - 1. Net sales;
 - 2. Gross profits;
 - 3. Net income;
 - 4. Cash flow;
 - 5. Net worth;
 - 6. Earnings available for debt service;
 - 7. Net fixed assets;
 - 8. Working capital.
- E. A financial position statement from Dun and Bradstreet, or a comparable firm, on the applicant, or a statement that the financial status of the applicant has not been reviewed by a firm.
- F. A list of the major customers of the applicant, and the annual sales to each of said major customers for the preceding five years, if applicable.
- G. A resume of the principals and key employees of the applicant, including directors and officers, if the applicant is a corporation.
- H. The applicant's pro forma balance sheets, income statements, and cash flow projections for the next five years reflecting the proposed revenue bond issue.
- I. The applicant's prepared financial statements dated within 120 days of the application date.
- J. Copies of the applicant's certified financial statements for the preceding two years.
- K. A complete list or description of the assets to be purchased or constructed, and expenses incidental to the acquisition of said assets, including costs of sale of the revenue bond.
- L. A bond redemption and interest payment schedule using estimated interest rates upon his application.
- M. A lease payment schedule, loan payment schedule, or formula for retirement of the bonds and payment of taxes and costs of maintaining the project in good repair and properly insured.
- N. Any other matters specifically required by the city council in light of the specific project, which may not be set forth above.
- O. The city council may waive any of the foregoing requirements set forth herein if, in the judgement of the city council, they are not applicable to the specific project. (Code 1997 § 3-4-3).

3.40.040 Analysis criteria.

At such time as the applicant has satisfied all of the above application requirements, as well as paid the fee set forth below, the city council will review the material and evidence submitted and make its final decision either approving or disapproving the issuance of revenue bonds for the proposed project. Such decision shall be at the full and complete discretion of the city council. In analyzing the application, the city shall reply on the following criteria:

- A. Whether or not the proposed project is in accordance with the goals, concepts, and objectives for development as set forth by the city master plan.
- B. The property on which any project will be located must be within the corporate boundaries of the city and such property must have affixed thereto a zoning district classification which permits the proposed project use.
- C. Whether or not the proposed project has availability of adequate water and sewer services or includes providing for new development of such services. The cost of necessary off-site capital improvements, including, but not limited to, streets, curbs, gutters, sidewalks, utility easements, water and sewer lines, and traffic control devices.
- D. The ratio of net worth of the applicant to the total project value.
- E. The coverage factor for debt service of the applicant from its earnings.
- F. The prior financial success of the applicant in the same or similar endeavors for a period of five years prior to the date of application.
- G. The projected life of the facility or equipment purchased.
- H. The presence or lack thereof of any litigation pending or threatened in any manner against the applicant. (Code 1997 § 3-4-4).

3.40.050 Fee.

At the time the application for funding under the County and Municipality Development Revenue Bond Act is submitted to the city, it shall be accompanied by a nonrefundable fee to cover cost of analysis in the amount of \$1,000. At the time the city issues its industrial revenue bonds in support of the project, the applicant shall pay a fee equal to one-quarter of one percent of the total amount of the bond issue to cover all administration of the bond issue. Applicant shall be credited with the amount of \$500.00 against the fee. (Code 1997 § 3-4-5).

