

**ORDINANCE NO. 7  
SERIES 2010**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GUNNISON AMENDING CHAPTER 3.10 OF THE GUNNISON MUNICIPAL CODE, THE "CITY SALES AND USE TAX CODE", WITH RESPECT TO CERTAIN SALES AND USE TAX COLLECTION PROCEDURES.**

**WHEREAS**, the Director of Finance has recommended certain changes to the collection procedures contained within Chapter 3.10 of the Gunnison Municipal Code; and

**WHEREAS**, the City Council of the City of Gunnison has considered the requested changes and wishes to enact the same;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GUNNISON, COLORADO, ORDAINS THAT:**

Section 1. Section 3.10.050 of the Gunnison Municipal Code is hereby amended to read as follows:

**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 per cent 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.

Section 2. Section 3.10.200 of the Gunnison Municipal Code is hereby amended to read as follows:

**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.

Section 3. Section 3.10.230 of the Gunnison Municipal Code, entitled "Tax Lien", Subsections B, C, and D, are hereby amended to read as follows:

**3.10.230 Tax Lien.**

- 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 per cent 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 per cent per month from the date when due, not exceeding 18 per cent 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.

Section 4. Section 3.10.260 of the Gunnison Municipal Code is hereby amended to read as follows:

**3.10.260 Notice 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.

Section 5. Section 3.10.310 of the Gunnison Municipal Code, Subsection A, is hereby amended to read as follows:

**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.

Section 6. Section 3.10.320 of the Gunnison Municipal Code is hereby amended to read as follows:

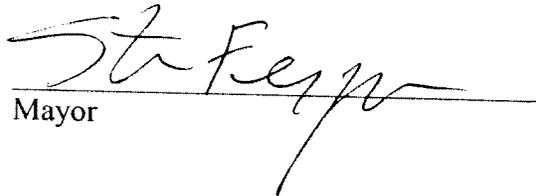
**3.10.320 Tax constitutes lien.**

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.

Section 7. If any section of this ordinance is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or the constitutionality of the remaining portions of the ordinance. The City Council of the City of Gunnison hereby declares that it would have passed this ordinance, and each section thereof, irrespective of the fact that any one or more sections be declared unconstitutional.

**INTRODUCED, READ, PASSED, AND ORDERED PUBLISHED** this 26<sup>th</sup> day of October, 2010, on first reading, and introduced, read, and adopted on second and final reading this 9<sup>th</sup> day of November, 2010.

  
Mayor

(SEAL)

ATTEST:

  
City Clerk

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