GRAND JUNCTION CITY COUNCIL
ADDITIONAL WORKSHOP AGENDA

MONDAY, OCTOBER 13, 2003, 11:30 A.M.
ADMINISTRATION CONFERENCE ROOM
2ND FLOOR, CITY HALL, 250 N. 5TH STREET

11:30 am **Discussion of City Policy on Sales Tax Delinquencies:** A report on the sales tax delinquency process, including enforcement procedures and estimate of current outstanding tax liabilities. ***Attach 1***

12:00 pm **Discussion of Public Improvements for Developments:** The report presents a list of policies and administrative interpretations concerning public improvements requirements within the development review process. ***Attach 2***

1:00 pm **Adjourn**

This agenda is intended as a guideline for the City Council. Items on the agenda are subject to change as is the order of the agenda.

Revised December 16, 2011

Attach 1
Sales Tax Delinquencies

CITY OF GRAND JUNCTION

CITY COUNCIL AGENDA										
Subject:	**Sales Tax Delinquency Process**									
Meeting Date:	**October 13th, 2003**									
Date Prepared:	**October 8th, 2003**					**File #**				
Author:	**Ron Lappi**				**Administrative Services Director**					
Presenter Name:	**Ron Lappi**				**Administrative Services Director**					
Report results back to Council:	x	No		Yes	When					
Citizen Presentation		**Yes**	**x**	**No**	**Name**					
x	**Workshop**		**Formal Agenda**			**Consent**		**Individual Consideration**		

Summary: Report to City Council on the Sales Tax Delinquency Process, including enforcement procedures and estimate of current outstanding tax liabilities.

Budget: Costs of process, procedures and enforcement are accounted for in the Customer Service Divisions overall operational budget. Estimate that we spend 10-15% of 1 full time employee (Senior Service Representative in charge of sales tax) on standard delinquencies.

Action Requested/Recommendation: n/a

Attachments:
1. Memorandum on Sales Tax Delinquency Process

Background Information: Sales tax delinquencies occur when a vendor, who is licensed to collect the City of Grand Junction sales tax, underpays their sales tax liability or fails to file their sales tax return and remit taxes collected when due.

The City's ultimate enforcement tool can be to seize, lien, and sell the assets of a business, however, there are several steps that are taken to compel the vendor to comply prior to that point.

A detail description of our Sales Tax Delinquency process is attached. In general there are monthly notifications to vendors who have failed to file and who are *assumed to* have a tax liability to the City. Until the actual return is filed, the City can only estimate

that a liability exists and what that liability may be. If the delinquency remains and is estimated to be significant, the account is referred to the Customer Service Manager, the City Auditor, and/or the Assistant City Attorney for individual contact of the vendor.

On some occasions an agreement is reached where the vendor can file delinquent returns without full payment and a payment arrangement is made. This option is exercised when the business is experiencing temporary financial difficulty or some other extenuating circumstance. Often extending the payment of the tax liability is a much more efficient and effective method to collect the delinquency especially if the business is a going concern.

The following data points will provide a picture of the current status of the City's sales tax delinquencies and estimated liabilities. The following data is typical of the status throughout the year.

- The City has 3,435 vendor sales tax accounts.

- An average of $2.5 million in sales tax revenues are filed and remitted each month for a total of $30.5 million annually.

- Actual sales tax due the City because of underpayment of filed returns is currently $52,000 (.001 of total tax revenues collected). Approximately $5,000 to $7,500 of this balance is written off each year as uncollectible due to business closure, which is negligible.

- 145 or 4% of total accounts have failed to file more than one tax return. Estimated tax liability from these accounts is $40,000 or again less than 1/10th of a percent of total annual tax revenues.

CITY OF GRAND JUNCTION
ADMINISTRATIVE SERVICES-CUSTOMER SERVICE DIVISION
M E M O R A N D U M

DATE: October 6, 2003
TO: City Council
FROM: Jodi Romero, Customer Service Manager
RE: Sales Tax Delinquency Process
CC: Kelly Arnold, City Manager
Ron Lappi, Administrative Services and Finance Director

The City of Grand Junction is responsible for licensing and maintaining sales tax accounts for vendors who collect our City sales tax. The City also has the authority to ensure compliance with the City's sales and use tax ordinance by enforcing the rules and regulations. Currently we collect and process over $30 million in tax revenues each year from approximately 3,400 licensed vendors.

The enforcement process for sales tax delinquencies is intended to collect outstanding balances from vendors who have underpaid their tax liability as well as compel vendors to file the required returns and remit tax collected.

UNDERPAYMENT OF TAXES

As a general rule, returns are not accepted unless accompanied by full payment. If a return is underpaid by a minimal amount due to late fees or simply a math error, the return and payment are processed. When this occurs a copy of the return is sent back to the vendor indicating the underpayment amount and reason.

In some situations the vendor is allowed to file a return without full payment and a payment arrangement is agreed upon in order to pay back the resulting liability.

- Underpayment notices are mailed once a month in the form of a tax assessment.

FAILURE TO FILE

Sales tax accounts are classified and required to file returns and remit tax collections either on a monthly, quarterly, or annual basis depending on the amount of sales tax the business collects from its customers. The returns and payment are due on the 20th of the month following the month of collections unless the 20th falls on a weekend or Federal holiday.

- Monthly delinquency notices are mailed to a vendor when they fail to file a sales tax return when due. The notice is in the form of a tax assessment and estimates the tax liability as well as calculates applicable penalty and interest. Penalty is 10% of the tax due with a minimum of $15.00. Monthly interest is 1 ½% of the tax due.

  Delinquency notices go out each month to all vendors who have failed to file regardless of whether they are a monthly, quarterly, or annual filer. The notices accumulate all delinquent returns and any underpayments.

  Approximately 385 notices are generated each month or 11% of the total accounts. Of these notices 240 or 7% of total accounts are for the accounts with only 1 period

delinquent. Filing response for the 1-period-delinquent accounts can range from 60-75%. With the majority of the remainder not filing probably because they are out of business and have not properly notified the City or had no tax liability and do not understand that they must still file a report. So the estimated liability associated with these accounts is typically negligible.

Of the 385 notices generated 145 or 4% of total accounts are for the accounts with more than 1 period delinquent. The filing response rate for these delinquents is much lower than above, because when the account becomes several periods delinquent it is more than likely that the business is closed. Eventually we review and contact these accounts for closure and/or revocation of their license. If the phone is disconnected or mail is returned the account is closed.

Special Procedure: For those accounts that are identified as business with liquor licenses, the City Clerk's office is informed of the delinquency so that the issue is addressed at any liquor license hearing for that particular business. It is a requirement of the liquor license to be in good standing and compliance with all City ordinances, therefore non-compliance with the sales and use tax laws can jeopardize that business owner's possibility of liquor license renewal.

- The delinquency list is reviewed each month and vendors who have a significant estimated liability and/or who are repeat offenders are referred to the Customer Service Manager, the City Auditor, and/or the Assistant City Attorney for specific follow up on these accounts. Follow up includes written correspondence and phone contact. Typically 25 accounts or only .5% of total accounts would be identified for follow up. And finally only 1/3 of these 25 accounts would compile any noticeable estimated liability.

- If the sales tax account remains delinquent the City may then choose to serve a jeopardy assessment in preparation for seizure of the assets of the business. The jeopardy assessment indicates that the estimated tax liability is due and payable immediately. Usually jeopardy assessments are used when the seizure of assets is imminent, and the City proceeds to this enforcement level and that described below very few times during the year (less than 5).

- The next step in the enforcement process would be to execute and serve a distraint warrant on the assets used in the conduct of business. This results in a filing of a first and prior lien on those assets to satisfy the tax liability. The premise/place of business and assets are secured by changing the locks and closing the business. Notification postings are made at the premise and the distraint warrant is filed with the City Clerk's office for public posting.

  The assets are inventoried and scheduled for sale by public auction. The City has a shared information agreement with the State of Colorado, and often when this point in the enforcement process is reached, the City and State will coordinate the distraint, seizure, and sale of the business assets. If the City takes possession of the assets prior to the State, the State will serve the City with a distraint warrant for their respective liability. Then proceeds from the auction will go first towards the expenses of the seizure and sale and the City tax liability. Any excess proceeds would then be turned over to the State. If there are excess proceeds after the City and State are satisfied, the vendor receives the remaining funds. If the State takes possession of the assets prior to the City, the reverse order would occur.

  The vendor may satisfy the City and State liability anytime prior to the auction and regain possession of the assets. The seizure of assets occurs rarely more than 5 times

a year and of those seizures normally only 2 would proceed through the sale because the vendor did not satisfy the liability.

The City's policy is to exhaust other collection and enforcement efforts prior to actually seizing assets and closing a business. Often extending the payment of the tax liability is a much more reasonable, efficient, and effective way to collect the delinquency especially if the business is a going concern.

Attach 2
Public Improvements with Development

CITY OF GRAND JUNCTION

CITY COUNCIL AGENDA											
Subject	Issues and Options Related to Public Improvements for Developments										
Meeting Date	October 13, 2003										
Date Prepared	October 8, 2003					File #					
Author	Mike McDill				**City Engineer**						
Presenter Name	Mark Relph				**Public Works and Utilities Director**						
Report results back to Council	X	No		Yes	When						
Citizen Presentation		Yes	X	**No**	Name						
X	Workshop		**Formal Agenda**			Consent		**Individual Consideration**			

Summary: This report presents a list of policies and administrative interpretations concerning public improvements requirements within the development review process.

Budget: Each policy could result in a different affect on the City's revenue stream. Currently any funds collected are allocated to either the TCP (#2071 Account) or the "Other Improvements" (#207 Account) funds specifically reserved for capacity improvements to the major streets system either alone or in conjunction with other projects.

Action Requested/Recommendation: Direct staff to revise the Zoning and Development Code to implement any changes before the beginning of 2004. Staff's recommended alternative is indicated within each discussion area of each issue.

Attachments:
1. See attached list of issues.

Background Information: The City's development review process has consistently required new subdivision and site plan applicants to be responsible for public improvements (curb, gutter, sidewalk, paving and drainage) necessary to serve the proposed development.

Requiring the construction of these public improvements for smaller developments and re-developments has been frequently questioned due mostly to the high cost of providing these improvements for relatively small projects. Larger projects have always been required to either build, or pay for, these adjacent improvements as a part of their development. However, small one to two lot developments and Minor Site Plan approvals have not.

The City's Zoning and Development Code (Z&D Code) requires half street improvements to occur as part of any development approval. Section 6.2 (A)(1) states that "The improvements described in this section must be built be the applicant and constructed in accordance with adopted standards. The applicant/developer shall either complete construction of all such improvements prior to final City approval or shall execute a development Improvements Agreement."

The development review staff is frequently placed in the position of deciding which projects are large enough to justify these public improvements and which ones are too small. There have been times when the answer has been some negotiated portion of the full requirement. None of these variations are currently in compliance with the regulations.

ISSUES

1. **Minor Site Plan reviews should not be responsible for public improvements.**

   Many municipalities provide a simplified review process for projects that make minor improvements to a property that already meets all of the local development standards. The justification is that it is a waste of the city's and the property owner's time to perform a full review on a property that already obviously meets all of the development standards.

   The City's Z&D Code requires Minor Site Plans to comply with the adopted major street plan; meet parking, access and drainage requirements; and be served by public facilities. These broad terms could, but do not necessarily have to, be construed to establish the expectation for complete adjacent public improvements. Nowhere in the Z&D Code is there any explicit exception of public improvements for Minor Site Plans. The list of projects that qualify for Minor Site Plan Review is very short and very specific.

   Staff recommends that Section 2.2, D. 5. be changed to clearly state that projects which are eligible for the Minor Site Plan review process will not be required to construct adjacent public improvements to current standards, but will execute a commitment to support and participate in any future improvement district related to deficient improvements. All review processes, other than Minor Site Plans, will require the development to be responsible for public improvements along their side of any adjacent major streets, unless specifically stated otherwise.

2. **Public improvements should be required for Simple Subdivisions only when one or more new lots are created.**

   Simple Subdivisions are only to be used for:

   1. Consolidating one or more existing lots
   2. Adjusting a boundary line between two adjacent lots
   3. Correcting plats in a number of ways, and
   4. Creating one additional lot.

   The first three of these functions have no negative affects on the public infrastructure. However, every new lot does create an incremental additional load on every aspect of the City's infrastructure. As such, Simple Subdivisions that create new lots should be responsible for public improvements.

   Staff recommends that every subdivision that creates one or more new lots shall be responsible for all public improvements adjacent to all lots. This requirement may be satisfied by construction, payment of cash-in-lieu-of-construction, an adequate Traffic Capacity Payments (TCP), commitments to future districts, or some acceptable combination of these options. Simple Subdivisions that do not create new lots would not be responsible for adjacent public improvements.

3. **The City should participate with some developments to construct improvements.**

The City has negotiated agreements with a few developments to include improvements that were not the developments responsibility. Examples are the curb & gutter along the north side of Power Road at the Albertson's Store and the intersection improvements at Patterson & 28 ¼ Road.

Section 6.2,B.1.d. states that developments "shall provide off-site infrastructure" if "needed to provide safe and adequate access and circulation." The City cannot approve a development that will cause a problem or aggravate an existing problem for the community. The City has a Capital Improvements Program (CIP) that applies available funds to projects based on a set on priorities. No funds are available to respond to problems created or aggravated by individual developments (without throwing the CIP into chaos).

Based on the above interpretation, there have been circumstances where the City staff has declined proposals to participate with developments. A couple of examples include the North Crest Subdivision, west of 3D Systems along H Road (paving all the way across the road because their half-street improvements, with a smooth grade line, could not blend with the undulating existing roadway centerline), and intersection widening at 24 2/4 & G Roads (to meet left turn warrants for a large multi-family development 1,000 feet to the north). The City's proposed In-Fill policy might address some level of City assistance in this area.

The current policy is that the City should have the option of participating. If certain improvements beyond the normal minimum are necessary to make the development's design function, then those improvements are still the development's responsibility. If the City desires to make other improvements in the area that are not necessary to make the development's minimum required improvements function, then the City may choose to have the development include those improvements in their project at an agreed upon price. Likewise, the development should have the option of declining to include those improvements.

4. **"Half-street" means half of the actual street section required at the development location.**

City staff currently requires new development to be responsible for half of the actual street section specified by the Grand Valley Circulation Plan. For example, along 24 Road this means expanding the existing roadway to a five-lane street with a center landscaped median and a separated sidewalk.

There is a local philosophy, shared by some in the development community, that "half-street' responsibility is limited to the equivalent of half of a residential street and that the City's CIP is intended to cover all of the deficiencies beyond that level. Staff recommends the City Council confirm the practice that half of the cross section currently specified by the Grand Valley Circulation Plan for the specific stretch of that specific street, including any necessary turn lanes is required.

5. **Improvement Districts and Reimbursement Agreements are viable development tools.**

Circumstances arise from time to time when a particular improvement (usually at an adjacent or nearby intersection) would be justified by any of two or more developments. The current City policy is that whichever development first exceeds

the warrant for the improvements is responsible to construct the improvements. Any following developments may take advantage of it at no cost. Because these types of improvements are generally safety related, the option of accepting TCP or CILOC is not generally available.

Similarly, developments are not charged for any existing improvements on adjacent major streets. For example, if the City constructed new curb and gutter in front of an undeveloped property a year earlier, the development of that property has no obligation to contribute toward those improvements.

In the rare instance that multiple developments occur coincidentally, the ability to broker an Improvement District or a Reimbursement Agreement between the benefited properties is a useful tool, however, in the past the City has only allowed these arrangements where there was a recognizable benefit to the City. The City has tended to avoid these arrangements because there almost always is at least one property owner who claims to have no intent in any future development. These arrangements could, in effect, force property owners to participate in work for which the proposed development would otherwise be responsible.

6. **Second Accesses into residential developments must be legal and useable.**
Section 5.1.3 of the City's TEDS manual indicates that cul-de-sacs shall not be more than 750 feet in length with no more than 30 lots. Section 5.1.1 also limits block lengths to 1,200 between intersections. Many communities rely on these or similar standards to establish an expectation that developments beyond these limits will provide a legal and useable second access point and cul-de-sacs are used only for very short pocket development sites with no other potential options. Valid reasons why most communities have connectivity and second access standards, over and above any emergency access issues, are:
   - Convenience to the traveling public - shorter trip length
   - Reduced costs to provide municipal services (street sweeping, trash collection, road maintenance), as documented in a number of studies
   - Makes communities more walkable and/or bikable.
   - Reduce problems associated with road closure due to construction/ maintenance/repair activities within the single access corridor.
   - Reduce problems associated with accidents or emergencies within the single access corridor.
   - Reduces traffic impact and preserve capacity by eliminating neighborhood trips on adjacent major streets

   In Grand Junction substantial multi-block developments exist without a second access other than a short stub street into an adjacent agricultural field. Unless or until that adjacent property chooses to develop, all of the properties within these developments must depend on a single street connection for all access.
   Staff recommends that both TEDS and the Z&D Code clearly state that any development proposing to create more than 30 lots on a single point of access to the larger street system must provide a second legal and useable access. TEDS provides a technical review process to consider deviations from this standard for truly unique situations.

7. **Construction of public improvements should continue to be required whenever possible.**

The current policy for adjacent major street improvements is to have all developments construct their half of any adjacent major streets as a first option. If the street is planned to be constructed under the City CIP within the next five years, then the City accepts "cash-in-lieu-of-construction" (CILOC). In the rare case where neither actual construction nor CILOC are appropriate, the city requires only TCP payment. Whenever construction or CILOC occur, the development is eligible for credit toward any related TCP for those activities.

The primary reason for constructing adjacent improvements is to improve the safety of access and circulation in the immediate vicinity of and into the new development. As a secondary consideration, if a development is going to invest in the transportation system, it seems reasonable that the property should see the benefit of that investment sooner rather than later. This necessitates the project to operate without the benefit of this investment until the CIP can accomplish the work. Finally, the current TCP level only provides about one-quarter of the developments' correct contribution to the overall transportation system, based on the well established formulas in the City's TCP Ordinance.

8. **City Council may consider adjusting the TCP in advance of the proposed Regional Fee.**

Our current TCP fee is equivalent to $500 per single family residence (/sfr). This rate was established by the original TCP Ordinance in 1994. The ordinance included a detailed process for updating the fee based on the City's costs to construct a "lane-mile" of street. Although the intent of the ordinance was to regularly adjust the fee to provide funds for the CIP to construct larger sections of the major street system, the rates has remained at the 1994 level to this day.

Two years ago staff re-calculated the formula in the TCP Ordinance and justified a TCP level of about $1,500/sfr. The City's most recent project costs will probably support a fee of about $2,000/sfr. If the TCP were set at a functional level all projects could be charged a uniform fee for major street improvements and larger more economical improvements could be constructed by the City. Establishing the TCP at a level consistent with current construction cost would eliminate many of the problems associated with public improvements for developments.

As written, the City's TCP Ordinance does not address issues related to constructing improvements along local streets. The City's CIP does not currently envision constructing projects along any local streets because those improvements do not enhance the capacity of the major street system. Unless there is a significant change to the CIP philosophy, small developments along local streets should still be held responsible for the same improvements that larger subdivisions provide in front of each new lot in addition to any required contribution to the major transportation system.