

ORDINANCE NO. 2251

AN ORDINANCE OF THE CITY OF GRAND JUNCTION, COLORADO, PROVIDING FOR THE CREATION OF A SALES AND USE TAX CAPITAL IMPROVEMENT FUND TO BE USED TO PROVIDE CAPITAL IMPROVEMENTS AND TO PAY DEBT SERVICE ON BONDS OR OTHER OBLIGATIONS OF THE CITY ISSUED TO PROVIDE CAPITAL IMPROVEMENTS; PLEDGING TO SUCH FUND CERTAIN PROCEEDS OF THE 2% SALES AND USE TAX IMPOSED BY THE CITY; PROVIDING FOR THE ISSUANCE OF BONDS; AND DECLARING AN EMERGENCY

WHEREAS, pursuant to Article XX, Section 6 of the Colorado Constitution, and Chapter 24 of the City of Grand Junction Code of Ordinances, the City of Grand Junction, Colorado (the "City") presently imposes a 2% sales tax on the sale or purchase of tangible personal property sold at retail or the furnishing of services within the City; and

WHEREAS, pursuant to the above authority, the City also imposes a 2% use tax on the privilege of storing, using, or consuming in the City articles of tangible personal property purchased at retail from sources outside the City; and

WHEREAS, the City Council (the "Council") has determined that, for purposes of constructing, acquiring, and installing capital improvements, there exists a need to create a sales and use tax capital improvement fund to be used to provide capital improvements and to pay debt service on bonds or other obligations of the City issued to provide capital improvements; and

WHEREAS, in order to provide a source of revenue for the sales and use tax capital improvement fund, the Council has determined to pledge thereto, by ordinance and without an election, certain proceeds of the City's 2% sales and use tax, as set forth hereafter; and

WHEREAS, moneys deposited in the sales and use tax capital improvement fund shall not be available for general municipal purposes, but shall be used solely to provide capital improvements or to pay debt service on bonds or other obligations of the City issued to provide capital improvements; and

WHEREAS, pursuant to Article XX, Section 6 of the Colorado Constitution, Section 2(e) of Article I of the Charter of the City of Grand Junction (the "Charter"), and Section 152 of Article XVII of the Charter, the provisions of this ordinance shall supersede the provisions of any state law to the contrary, including without limitation the provisions of Section 29-2-111 and -112, C.R.S.; and

WHEREAS, insofar as it is necessary to create the sales and use tax capital improvement fund and issue sales and use tax revenue bonds immediately in order to (i) pay the costs of providing certain capital improvements which have heretofore become due and payable, and (ii) avoid the January 1, 1986 effective date of

certain proposed federal legislation, which legislation may have a detrimental effect upon the City's ability to issue such bonds and invest the proceeds thereof, the provisions hereof are necessary to the preservation of the public peace, health, and safety;

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION:

Section 1. Definitions. As used herein, the following capitalized terms shall have the respective meanings set forth below, unless the context indicates otherwise:

Bonds: bonds, notes, certificates, contracts, or any other similar obligations, issued to construct, acquire, or install capital improvements or to pay the principal of, premium if any, and interest on such obligations, payable in whole or in part from, and secured by an irrevocable and first lien upon, the Pledged Revenue.

Bond Account: the account of the Fund established hereby for the purpose of paying the principal of, premium if any, and interest on any Bonds.

Charter: the home rule charter of the City adopted pursuant to Article XX of the Colorado Constitution.

City: the City of Grand Junction, Colorado.

Combined Maximum Annual Principal and Interest Requirements: with regard to any one or more issues, the maximum annual payments of principal of or interest on said issue or issues to become due during any calendar year; provided however, that if any issue has a single principal payment date and is issued as interim securities in anticipation of permanent financing, such principal amount shall be excluded from this computation.

Council: the City Council of the City.

Fund: the "City of Grand Junction Sales and Use Tax Capital Improvement Fund" established hereby, which includes the Bond Account, the Reserve Account, the Subordinate Bond Account, the Subordinate Reserve Account, and the Project Account.

Ordinance: this Ordinance, which creates the Fund.

Pledged Revenue: fifty percent (50%) of the proceeds of the 2% sales and use tax imposed by the City pursuant to Chapter 24 of the City Code of Ordinances.

Project Account: the account of the Fund established hereby for the purpose of paying the costs of providing capital improvements.

Reserve Account: the account of the Fund established hereby for the purpose of further securing the payment of the principal of, premium if any, and interest on any Bonds.

Subordinate Bond Account: the account of the Fund established hereby for the payment of the principal of, premium if any, and interest on any Subordinate Lien Bonds.

Subordinate Lien Bonds: bonds, notes, certificates, contracts, or any other similar obligations, issued to construct, acquire, or install capital improvements or to pay the principal of, premium if any, and interest on any such obligations, payable in whole or in part from the Pledged Revenue, and having a lien thereon subordinate to the first lien of the Bonds.

Subordinate Reserve Account: the account of the Fund established hereby for the purpose of further securing the payment of the principal of, premium if any, and interest on any Subordinate Lien Bonds.

Section 2. Creation of Fund and Accounts.

(a) There is hereby established the Fund as a special fund of the City. The Fund shall consist of the Bond Account, the Reserve Account, the Subordinate Bond Account, the Subordinate Reserve Account, and the Project Account. Moneys deposited thereto shall be used solely for the purposes provided herein and in the ordinance or ordinances authorizing the issuance of any Bonds or Subordinate Lien Bonds. Moneys deposited in the Fund shall not be available to be pledged or expended, by interfund transfer or otherwise, for any general purposes of the City.

(b) There is hereby established the Bond Account as an account of the Fund. The Bond Account may be used only to pay the principal of, premium if any, and interest on any Bonds when due in accordance with the ordinance or ordinances authorizing the issuance of such Bonds.

(c) There is hereby established the Reserve Account as an account of the Fund. The Reserve Account may be used only to pay the principal of, premium if any, and interest on any Bonds, if moneys in the Bond Account are insufficient for such purpose.

(d) There is hereby established the Subordinate Bond Account as an account of the Fund. The Subordinate Bond Account shall be used only to pay the principal of, premium if any, and interest on any Subordinate Lien Bonds when due in accordance with the ordinance or ordinances authorizing the issuance of such Subordinate Lien Bonds.

(e) There is hereby established the Subordinate Reserve Account as an account of the Fund. The Subordinate Reserve Account may be used only to pay the principal of, premium if any, and interest on any Subordinate Lien Bonds, if moneys in the Subordinate Bond Account are insufficient for such purpose.

(f) There is hereby established the Project Account as an account

of the Fund. The Project Account may be used only to pay the costs of providing capital improvements.

(g) Moneys in the Fund may be invested or deposited in accordance with the Charter and the laws of the State of Colorado; provided however, that such investments or deposits shall be limited as provided in the ordinance or ordinances authorizing the issuance of any Bonds or Subordinate Lien Bonds. Income derived from the Investment or reinvestment of moneys on deposit to any account of the Fund shall remain in and become a part of the account from which such moneys were originally derived.

Section 3. Deposit of Pledged Revenue. From and after the effective date of this Ordinance, the Pledged Revenue received by the City shall be applied only in the following order of priority:

FIRST: There shall be deposited to the Bond Account an amount of Pledged Revenue sufficient, when combined with other moneys in the Bond Account which are available, to pay the principal of, premium if any, and interest on each issue of Bonds coming due on the next ensuing principal or interest payment date for each such issue of Bonds. Such amount shall be determined in accordance with the ordinance or ordinances authorizing the issuance of such Bonds.

SECOND: After the above deposit has been made in full, there shall be deposited to the Reserve Account an amount of Pledged Revenue equal, when combined with other moneys in the Reserve Account which are available, to the Combined Maximum Annual Principal and Interest Requirements of any Bonds.

THIRD: After the above deposits have been made in full, there shall be deposited to the Subordinate Bond Account an amount of Pledged Revenue sufficient, when combined with other moneys in the Subordinate Bond Account which are available, to pay the principal of, premium if any, and interest on each issue of Subordinate Lien Bonds coming due on the next ensuing principal or interest payment date for each such issue of Subordinate Lien Bonds. Such amount shall be determined in accordance with the ordinance or ordinances authorizing the issuance of any Subordinate Lien Bonds.

FOURTH: After the above deposits have been made in full, there shall be deposited to the Subordinate Reserve Account an amount of Pledged Revenue equal, when combined with other moneys in the Subordinate Reserve Account which are available, to the Combined Maximum Annual Principal and Interest Requirements of any Subordinate Lien Bonds.

FIFTH: After the above deposits have been made in full, there shall be deposited to the Project Account an amount sufficient, when combined with other moneys in the Project Account which are available, to pay the costs of providing capital improvements.

SIXTH: After the above deposits have been made in full, any remaining Pledged Revenues shall be deposited to any other fund or

account of the City, as directed by the Council.

Section 4. Issuance of Bonds. From and after the effective date of this Ordinance, the Council may, by ordinance and without an election, issue Bonds and Subordinate Lien Bonds. Bonds and Subordinate Lien Bonds may be in such form, principal amount, and denomination, may be redeemable at such price or prices, and may mature and bear interest, all as determined by the ordinance or ordinances authorizing the issuance of such Bonds or Subordinate Lien Bonds. Such Bonds or Subordinate Lien Bonds may be sold at, above, or below the par value thereof, at a public or private sale, all as may be determined by the Council. To the extent such Bonds or Subordinate Lien Bonds are payable only from the moneys credited to the Fund or from the proceeds of such Bonds or Subordinate Lien Bonds, they shall not constitute a debt or an indebtedness of the City within the meaning of any Charter, constitutional, or statutory provision of limitation; nor shall they be considered or held to be general obligations of the City.

Section 5. Limitation of Actions. Any action or proceeding challenging or questioning the validity, enforceability, or legality of any Bonds or Subordinate Lien Bonds, whether at law or in equity, shall be brought within 30 days after final passage of the ordinance authorizing the issuance of such Bonds or Subordinate Lien Bonds, or else be forever barred.

Section 6. Irrepealability and Amendments. Upon the issuance of any Bonds or Subordinate Lien Bonds, the provisions of this Ordinance shall be and remain irrepealable until all such Bonds or Subordinate Lien Bonds are defeased in accordance with the ordinance or ordinances authorizing the issuance thereof; provided however, that the Council may amend or supplement the provisions of this Ordinance in order to clarify the provisions hereof, increase the amount of moneys to be deposited to the Fund, comply with the provisions of applicable law, or in order to make any other change which will not have a material adverse affect upon the owners of any Bonds or Subordinate Lien Bonds.

Section 7. Declaration of Emergency. Insofar as it is necessary to create the Fund and issue Bonds immediately in order to (i) pay the costs of providing certain capital improvements which have heretofore become due and payable and (ii) avoid the January 1, 1986 effective date of certain proposed federal legislation, which legislation may have a detrimental effect upon the City's ability to issue Bonds and invest the proceeds thereof, the provisions of this Ordinance are hereby declared necessary to the preservation of the public peace, health, and safety, and shall take effect upon passage in accordance with Article VI of the Charter.

Section 8. Repealer. All acts, orders, resolutions, ordinances, or parts thereof, of the City that are inconsistent or in conflict with this Ordinance are hereby repealed to the extent only of such inconsistency or conflict.

Section 9. Severability. If one or more sections or parts of this Ordinance shall be adjudged unenforceable or invalid, such judgement shall not affect, impair, or invalidate the remaining provisions of this Ordinance, it being the intention that the various provisions hereof are severable.

Section 10. Recording and Authentication. Immediately on its passage this Ordinance shall be recorded in the Ordinance Record of the City kept for that purpose, and authenticated by the affidavit of publication and by the signatures of the Mayor and President of the City Council, and the City Clerk.

INTRODUCED AND PASSED AS AN EMERGENCY ORDINANCE this 18th day of December, 1985.

Raymond G. Phipps

Mayor and President of the City Council

ATTESTED:

Neva B. Lockhart, CMC

City Clerk

I HEREBY CERTIFY that the foregoing emergency ordinance, entitled AN ORDINANCE OF THE CITY OF GRAND JUNCTION, COLORADO, PROVIDING FOR THE CREATION OF A SALES AND USE TAX CAPITAL IMPROVEMENT FUND TO BE USED TO PROVIDE CAPITAL IMPROVEMENTS AND TO PAY DEBT SERVICE ON BONDS OR OTHER OBLIGATIONS OF THE CITY ISSUED TO PROVIDE CAPITAL IMPROVEMENTS; PLEDGING TO SUCH FUND CERTAIN PROCEEDS OF THE 2% SALES AND USE TAX IMPOSED BY THE CITY; PROVIDING FOR THE ISSUANCE OF BONDS; AND DECLARING AN EMERGENCY was introduced, read, passed and adopted as an emergency ordinance, numbered 2251, and ordered published by the unanimous vote of the members of the City Council of the City of Grand Junction, Colorado, at a regular meeting of said Council held on the 18th day of December, 1985.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official Seal of said City this 19th day of December, 1985.

Neva B. Lockhart

Neva B. Lockhart, CMC
City Clerk

Published: December 20, 1985