

ORDINANCE NO. 2256

AN ORDINANCE AMENDING THE SALES AND USE TAX ORDINANCE OF THE CITY OF GRAND JUNCTION TO COMPLY WITH THE REQUIREMENTS OF HOUSE BILL 1007, ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF COLORADO IN ITS 1985 SESSION.

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

That Chapter 24 of the Code of Ordinances of the City of Grand Junction, its Sales and Use Tax Ordinance, be amended in the following particulars:

1. That Section 24-53 of the Chapter be amended by the addition of a subsection 19 reading as follows:

"(19) For transactions consummated on or after January 1, 1986, the City's sales tax shall not apply to the sale of construction and building materials, as the term is used in Section 29-2-109, C.R.S., 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 City evidencing that a local use tax has been paid or is required to be paid."

2. That Section 24-64 of the Chapter be amended by the addition of a subsection 14 reading as follows:

"(14) For transactions consummated on or after January 1, 1986, the City's use tax shall not apply to the storage of construction and building materials."

3. That Section 24-53 of the Chapter be amended by the addition of a subsection 20 reading as follows:

"(20) For transactions consummated on or after January 1, 1986, the City's sales tax shall not apply to the sale 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 another statutory or home rule municipality equal to or in excess of two percent (2%). A credit shall be granted against the City's sales tax with respect to such transaction equal in amount to the lawfully imposed local sales or use tax previously paid by the purchaser or user to the previous statutory or home rule municipality. The amount of the credit shall not exceed two percent (2%)."

4. That Section 24-64 of the Chapter be amended by the addition of a subsection 15 reading as follows:

"(15) For transactions consummated on or after January 1, 1986, the City's use tax shall not apply to the storage, use or consumption of any article of tangible personal property the sale or use of which has already been subjected to a sales or use tax

of another statutory or home rule municipality legally imposed on the purchaser or user equal to or in excess of two percent (2%). A credit shall be granted against the City's use tax with respect to the person's storage, use or consumption in the City of tangible personal property, the amount of the credit to equal the tax paid by him by reason of the imposition of a sales or use tax of the previous statutory or home rule municipality on his purchase or use of the property."

5. That Section 24-46 of the Chapter be amended by the addition of a subsection 16 reading as follows:

"(16) For transactions consummated on or after January 1, 1986, the City's use tax shall not be imposed with respect to the use or consumption of tangible personal property within the City which occurs more than three years after the most recent sale of the property if, within the three years following such sale, the property has been significantly used within the state for the principal purpose for which it was purchased."

6. That Section 24-65 of the Chapter be amended by the addition of a subsection 2.1 reading as follows:

#### "2.1 Construction Equipment

(a) Construction equipment which is located within the boundaries of the City for a period of more than thirty consecutive days shall be subjected to the full applicable use tax of the City.

(b) With respect to transactions consummated on or after January 1, 1986, construction equipment which is located within the boundaries of the City for a period of thirty consecutive days or less shall be subjected to the City's use tax in an amount calculated as follows: the purchase price of the equipment shall be multiplied by a fraction, the numerator of which is one and the denominator of which is twelve, and the result shall be multiplied by two percent (2%).

(c) Where the provisions of subsection (b) of this section are utilized, the credit provisions of section (4) of this ordinance shall apply at such time as the aggregate sales and use taxes legally imposed by and paid to other statutory and home rule municipalities on any such equipment equal two percent (2%).

(d) In order to avail himself of the provisions of subsection (b) of this section, the taxpayer shall comply with the following procedure:

(1) Prior to or on the date the equipment is located within the boundaries of the City, the taxpayer shall file with the City Finance Director an equipment declaration on a form provided by the City. Such declaration shall state the dates on which the taxpayer anticipates the equipment will be located within and removed from the boundaries of the City, shall include a

description of each such anticipated piece of equipment, shall state the actual or anticipated purchase price of each such anticipated piece of equipment, and shall include such other information as reasonably deemed necessary by the City.

(2) The taxpayer shall file with the City an amended equipment declaration reflecting any changes in the information contained in any previous equipment declaration no less than once every ninety days after the equipment is brought into the boundaries of the City or, for equipment which is brought into the boundaries of the City for a project of less than ninety days duration, no later than ten days after substantial completion of the project.

(3) The taxpayer need not report on any equipment declaration any equipment for which the purchase price was under \$2,500.

(e) If the equipment declaration is given as provided in subsection (d) of this section, then as to any item of construction equipment for which the customary purchase price is under \$2,500 which was brought into the boundaries of the City temporarily for use on a construction project, it shall be presumed that the item was purchased in a jurisdiction having a local sales or use tax as high as two percent (2%) and that such local sales or use tax was previously paid. In such case the burden of proof in any proceeding before the City, the executive director of the department of revenue, or the district court, shall be on the City to prove such local sales or use tax was not paid.

(f) If the taxpayer fails to comply with the provisions of subsection (d) of this section, the taxpayer may not avail himself of the provisions of subsection (b) of this section and shall be subject to the provisions of subsection (a) of this section. However, substantial compliance with the provisions of subsection (d) of this section shall allow the taxpayer to avail himself of the provisions of subsection (b) of this section."

7. That Section 24-108 of the Chapter be repealed and reenacted to read as follows: "Section 24-108. Limitation of Actions.

1.(a) No sales or use tax, or interest thereon or penalties with respect thereto, shall be assessed, nor shall any notice of lien be filed, or distraint warrant issued, or suit for collection be instituted, nor 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 filled 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, the 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 Finance Director may agree in writing to an extension thereof, and the period so agreed on may be extended by subsequent agreements in writing.

(b) In the case of failure to file a return, the sales tax, use tax, or both may be assessed and collected at any time.

2.(a) An application for refund of sales or use tax paid under dispute by a purchaser or user who claims an exemption pursuant to this Chapter shall be made within sixty days after the purchase, storage, use or consumption of the goods or services whereon an exemption is claimed.

(b) An application for refund of tax moneys paid in error or by mistake shall be made within three years after the date of purchase, storage, use or consumption of the goods for which the refund is claimed.

3. Nothing herein shall be construed as affecting transactions consummated prior to January 1, 1986."

8. That Section 24-76(3) of the Chapter be amended to read as follows:

"(3) If the amount paid is less than the amount due, the difference, together with interest thereon at the rate PROVIDED IN SECTION 24-77 OF THIS CHAPTER from the time the return was due, shall be paid by the vendor within ten days after written notice and demanded to him from the Finance Director."

9. That Section 24-77 of that Chapter be repealed and reenacted to read as follows:

"Section 24-77. Sales or Use Tax - Interest on Underpayment, Nonpayment or Extensions of Time for Payment of Tax and Rate of Interest.

(1)(a) If any amount of sale or use tax is not paid on or before the last date prescribed for payment, interest on such amount at the rate imposed under subsection (3) of this section shall be paid for the period from such last date to the date paid. The last date prescribed for payment shall be determined without regard to any extension of time for payment and shall be determined without regard to any notice and demand for payment issued, by reason of jeopardy, prior to the last date otherwise prescribed for such payment. In the case of a tax in which the last date for payment is not otherwise prescribed, the last date for payment shall be deemed to be the date the liability for the tax arises, and in no event shall it be later than the date notice and demand for the tax is made by the Finance Director.

(b) Interest prescribed in this section shall be paid upon notice and demand and shall be assessed, collected and paid in the same manner as the tax to which it is applicable.

(c) If any portion of a tax is satisfied by credit of an overpayment, then no interest shall be imposed under this subsection on the portion of the tax so satisfied for any period during which, if the credit had not been made, interest would have been allowed with respect to such overpayment.

(d) Interest prescribed on any sales or use tax may be assessed and collected at any time during the period within which the tax to which such interest relates may be assessed and collected.

(2) Any use tax due and unpaid shall be a debt to the City and shall draw interest at the rate imposed under subsection (3) in addition to the interest provided by subsection (1) from the time when due until paid.

(3) When interest is required or permitted to be charged under any provisions of this section, the annual rate of interest shall be that established by the state commissioner of banking pursuant to Section 39-21-110.5, C.R.S.

(4) Nothing in this section shall preclude the City from utilizing any other applicable penalties or remedies for the collection or enforcement of sales or use taxes."

10. That Section 24-78 of that Chapter be repealed and reenacted to read as follows:

"Section 24-78. Sales or Use Tax-Deficiency Due to Negligence or Fraud.

If any part of the deficiency in payment of the sales or use tax is due to negligence or intentional disregard of the ordinances or of authorized rules and regulations of the City with knowledge thereof, but without intent to defraud, there shall be added ten percent of the total amount of the deficiency, and interest in such case shall be collected at the rate imposed under Section 24-77(4), in addition to the interest provided by Section 24-77(1), 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 ten days after written notice and demand to him by the Finance Director. If any part of the deficiency is due to fraud with the intent to evade the tax, then there shall be added one hundred percent of the total amount of the deficiency and in such case, the whole amount of the tax unpaid, including the additions, shall become due and payable ten days after written notice and demand by the Finance Director and an additional three percent per month on said amount shall be added from the date the return was due until paid."

11. That Section 24-88(1) of that Chapter be repealed and reenacted to read as follows:

"Section 24-88(1)

(a) If a person neglects or refuses to make a return in payment of the sales tax or to pay any sales tax as required, the Finance Director shall make an estimate, based upon such information as may be available, of the amount of taxes due for the period for which the taxpayer is delinquent and shall add thereto a penalty equal to the sum of fifteen dollars for such failure or ten percent thereof and interest on such delinquent taxes at the rate imposed under Section 24-77(4) plus one-half percent per month from the date when due, not exceeding eighteen percent in the aggregate.

(b) If a person neglects or refuses to make a return in payment of the use tax or to pay any use tax as required, the Finance Director shall make an estimate, based upon such information as may be available, of the amount of taxes due for the period for which the taxpayer is delinquent and shall add thereto a penalty equal to ten percent thereof and interest on such delinquent taxes at the rate imposed under Section 24-77(4), plus one-half of one percent per month from the date when due."

12. That Section 24-98 of that Chapter be repealed and reenacted to read as follows:

"Section 24-98. Sales or Use Tax - Appeals - Posting of Bonds.

(a) At the time of filing the action, the taxpayer shall file with the district court a surety bond in twice the amount of the taxes, interest and other charges stated in the final decision by the Finance Director which are contested on appeal. The taxpayer may, at his option, satisfy the surety bond requirement by a savings account or deposit in or a certificate of deposit issued by a state or national bank or by a state or federal savings and loan association, in accordance with the provisions of Section 11-35-101(1), C.R.S., equal to twice the amount of the taxes, interest and other charges stated in the final decision by the Finance Director.

(b) The taxpayer may, at his option, deposit the disputed amount with the Finance Director in lieu of posting a surety bond. If such amount is so deposited, no further interest shall accrue on the deficiency contested during the pendency of the action. At the conclusion of the action, after appeal to the supreme court or the court of appeals or after the time for such appeal has expired, the funds deposited shall be, at the direction of the court, either retained by the Finance Director and applied against the deficiency or returned in whole or in part to the taxpayer with interest at the rate imposed pursuant to Section 24-77(4). No claim for refund of amounts deposited with the Finance Director need be made by the taxpayer in order for such amounts to be repaid in accordance with the direction of the court."

13. That Section 24-54(1) of that Chapter be repealed and reenacted to read as follows:

"(1) Sales and Use Tax - Standard Reporting Form.

The City shall use the standard municipal sales and use tax reporting form and any subsequent revisions thereto adopted by the executive director of the department of revenue by the first full month commencing one hundred twenty days after the effective date of the regulation adopting or revising such standard form."

14. That Section 24-54 of that Chapter be amended by the addition of a subsection (3) reading as follows:

"(3) Sales and Use Tax - Collection - Map of Municipal Boundaries.

The City Finance Director shall make available to any requesting vendor a map showing the boundaries of the City. For transactions consummated on or after January 1, 1986, the requesting vendor may rely on such map and any update thereof available to such vendor in determining whether to collect a sales or use tax or both. No penalty shall be imposed or action for deficiency maintained against such a vendor who in good faith complies with the most recent map available to it."

15. That Section 24-100 of that Chapter be repealed and reenacted to read as follows:

"Section 24-100. Sales or Use Tax - Alternative Dispute - Resolution Procedure - Deficiency Notice or Claim for Refund.

For transactions consummated on or after January 1, 1986, in lieu of the procedure provided for in Sections 24-95 through 24-99, the taxpayer may elect a state hearing on the City Finance Director's final decision on a deficiency notice or claim for refund pursuant to the procedure set forth in this section.

(a) As used in this Section 24-100, 'state hearing' means a hearing before the executive director of the department of revenue or delegate thereof as provided in Section 29-2-106.1(3), C.R.S.

(b) When the City asserts that sales or use taxes are due in an amount greater than the amount paid by the taxpayer, the City shall mail a deficiency notice to the taxpayer by certified mail. The deficiency notice shall state the additional sales and use taxes due. The deficiency notice shall contain notification, in clear and conspicuous type, that the taxpayer has the right to elect a state hearing on the deficiency pursuant to Section 29-1-106.1(3), C.R.S. The taxpayer shall also have the right to elect a state hearing on the City's denial of such taxpayer's claim for a refund of sales or use tax paid.

(c) That taxpayer shall request the state hearing within thirty days after the taxpayer's exhaustion of local remedies. The taxpayer shall have no right to such hearing if he has not exhausted local remedies or if he fails to request such hearing

within the time period provided for in this subsection (c). For the purposes of this subsection (c), 'exhaustion of local remedies' means:

(1) The taxpayer has timely requested in writing a hearing before the City and such City has held such hearing and issued a final decision thereon. Such hearing shall be informal and no transcript, rules of evidence or filing of briefs shall be required; but the taxpayer may elect to submit a brief, in which case the City may submit a brief. The City shall hold such hearing and issue the final decision thereon within ninety days after the City's receipt of the taxpayer's written request therefor, except the City may extend such period if the delay in holding the hearing or issuing the decision thereon was occasioned by the taxpayer, but, in any such event, the City shall hold such hearing and issue the decision thereon within one hundred eighty days of the taxpayer's request in writing therefor; or

(2) The taxpayer has timely requested in writing a hearing before the City and the City has failed to hold such hearing or has failed to issue a final decision thereon within the time period prescribed in paragraph (1) above.

(d) If a taxpayer has exhausted his local remedies as provided in subsection (c) above, the taxpayer may request a state hearing on such deficiency notice or claim for refund, and such request shall be made and such hearing shall be conducted in the same manner as set forth in Section 29-2-106.1(3) through (7), C.R.S.

(e) If the deficiency notice or claim for refund involves only the City, in lieu of requesting a state hearing, the taxpayer may appeal such deficiency notice or denial of a claim for refund to the district court of the County of Mesa as provided in Section 29-2-106.1(8), C.R.S., provided the taxpayer complies with the procedures set forth in subsection (c) of this section.

(f) Nothing in this Section 24-100 shall prohibit the taxpayer from pursuing judicial review of a final decision of the City as otherwise provided in Section 24-97.

(g) If the City reasonably finds that the collection of sales or use tax will be jeopardized by delay, the City may utilize the procedures set forth in Section 39-21-111, C.R.S.

16. That nothing in this Ordinance shall be construed to affect any right, duty or liability under any ordinances in effect prior to the effective date of this ordinance, and the same shall be continued and concluded under such prior ordinance."

PASSED and ADOPTED this 18th day of December, 1985.

Raymond G. Phipps

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President of the Council

Attest:

Neva B. Lockhart, CMC

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City Clerk

I HEREBY CERTIFY that the foregoing ordinance, being Ordinance No. 2256, was introduced, read, and ordered published by the City Council of the City of Grand Junction, Colorado, at a regular meeting of said body held on the 4th day of December, 1985, and that the same was published in The Daily Sentinel, a newspaper published and in general circulation in said City, at least ten days before its final passage.

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

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Neva B. Lockhart, CMC  
City Clerk

Published: December 6, 1985

Final Publication: December 20, 1985

Effective: January 19, 1986