

ORDINANCE NO. 2401

AN ORDINANCE IMPOSING A LODGERS' TAX FOR THE CITY OF GRAND JUNCTION, COLORADO, SETTING FORTH PURPOSES, DEFINITIONS, PROVIDING FOR EXEMPTIONS AND ENFORCEMENT PROCEDURES, ESTABLISHING ADMINISTRATIVE PROCEDURES AND PROVIDING FOR AN EFFECTIVE DATE.

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

Section 1:

TITLE

This ordinance shall be known and may be cited as "The Lodgers' Tax Ordinance."

Section 2:

PURPOSE

For the purposes of this ordinance, every person who purchases in the City any lodging is exercising a taxable privilege. The purpose of this ordinance is to impose a tax which will be collected by every vendor from persons using lodging accommodations in the City of Grand Junction, which tax will provide revenues for advertising the community, promoting tourism and visitors, attracting conferences, conventions, and meetings to the City of Grand Junction, and to allocate a portion of the revenue derived therefrom for administrative and clerical expenses, as set forth.

Section 3:

DEFINITIONS

For the purpose of this Ordinance the following words and phrases shall have the following meanings, unless the context requires otherwise:

(a) Finance Director means that person appointed by the City Manager of the City of Grand Junction as the Director of the Finance Department or his designee.

(b) Gross taxable sale means the total amount received in money, credits, property or other consideration valued in money from sales and purchases of lodging that is subject to the tax imposed in this article, but excluding the amounts received pursuant to any other state, county or municipal tax.

(c) Lodging shall mean the providing of the right to use or possess, for consideration, any room or rooms for temporary occupancy, such as, but not limited to: a room in a hotel, guest house, hotel apartment and lodging houses, motel, ranch, resort,

mobile home, mobile home park, and "bed and breakfast" establishment, movable structure, auto camp, trailer court, inn, hostel or park under any concession, permit, right of access, lease, contract, license to use or other arrangement or otherwise, but shall not include rentals under a written agreement for occupancy for a period of thirty (30) consecutive days or more.

(d) Person shall include any individual, firm, partnership, joint enterprise, corporation, estate or trust, or any group or combination acting as a unit, in the plural as well as in the singular number.

(e) Purchase or sale means the acquisition or furnishing for consideration by any person of lodging within the city.

(f) Purchaser means any person exercising the taxable privilege of purchasing lodging.

(g) Purchasing lodging means the buying of lodging by a purchaser as herein defined.

(h) Tax means either the tax payable by the purchaser or the aggregate amount of taxes due from a vendor during the period for which the vendor is required to report collections under this article.

(i) Taxpayer shall mean any person obligated to account to the Finance Director for taxes collected or to be collected, or from whom a tax is due, under the terms of this article.

(j) Vendor means a person making sales of or furnishing lodging to a purchaser in the city.

Section 4:

VENDORS' DUTIES

4-I

AMOUNT OF TAX

(a) There is hereby levied and shall be collected and paid a tax by every person exercising the taxable privilege of purchasing lodging as in this ordinance defined.

(b) The amount of the tax levied hereby is three (3) percent of the gross taxable sale paid or charged for purchasing such lodging.

(c) Any person providing lodging within the City of Grand Junction shall collect a tax from all those to whom lodging is provided amounting to three (3) percent of the total rental revenue received by such vendor. Such tax shall be in addition to any other tax or levy for providing such service.

4-II

PAYMENT OF TAX AND FILING OF REPORTS

Every vendor making a sale to a purchaser in the city which sale is taxable under the provisions of this ordinance shall, at the time of the sale, collect and pay to the Finance Director all tax funds collected by him during each calendar month not later than twenty (20) days after the last day of said month and each payment shall be accompanied by a report for said month.

4-III

EXCLUSIONS

Purchases shall include all revenues earned and received for the purchase or sale of lodging excluding the following:

(a) Charges for other services, such as food and/or telephone charges, furnished by a person providing lodging;

(b) Deposits placed by any purchaser with a request to hold a room for such purchaser for a future date until such time as said deposit has been credited against the purchase or sale;

(c) All sales to the United States government, the State of Colorado, its departments and institutions, the political subdivisions of the State, and the City of Grand Junction in their governmental capacities only;

(d) All sales to those charitable, religious and eleemosynary organizations which have received from the federal Internal Revenue Service status under Section 501(c)(3) of the Internal Revenue code as a tax exempt organization, while in the conduct of their regular charitable, religious or eleemosynary functions and activities.

4-IV

DEDUCTIONS

The following deductions shall be allowed against sales received by the vendor providing lodging:

(a) Refunds of sales actually returned to any purchaser;

(b) Any adjustments in sales which amount to a refund to a purchaser, providing such adjustment pertains to the actual sale for lodging and does not include any adjustments for other services furnished by a vendor.

4-V

COLLECTION REQUIREMENT

It shall be unlawful for a person providing lodging to rent lodging without collecting, in addition to the rental thereof, the tax as provided for in this ordinance.

4-VI

UNLAWFUL FOR PERSON PROVIDING LODGING TO ASSUME TAX

It shall be unlawful for the person providing lodging to assume or absorb the payment of the tax provided for in this ordinance.

4-VII

UNLAWFUL FOR PERSON PROVIDING LODGING TO REFUSE PAYMENT

It shall be unlawful for the person providing lodging:

(a) to fail or refuse to pay to the City Finance Director the tax collected by such vendor; or

(b) to fail to file reports required of such vendor under the terms of this ordinance.

4-VIII

COMPLIANCE REQUIRED OF AGENTS AND EMPLOYEES

It shall be unlawful for any person, whether as principal, agent or employee of any vendor, to fail to comply with the several provisions of this ordinance.

4-IX

USE AND DISPOSITION OF FUNDS

All funds collected pursuant to this Ordinance, less any authorized Lodgers' collection fee (pursuant to Section 5-XI), and less five percent (5%) for city administrative costs, shall be used as outlined in Section 2: PURPOSE, and shall be expended as directed by the City Council or its designee.

4-X

VIOLATIONS, EVASION OF COLLECTION OR PAYMENT OF TAX

In addition to the other violations set forth elsewhere in this ordinance, it shall be a violation of this ordinance for any vendor to refuse to make any return provided to be made in this ordinance, or to make any false or fraudulent return, or any false statement in any return, or to fail or refuse to make payment to the Finance Director of any tax collected or due the city, or in any manner to evade the payment thereof, or to aid or abet another

in any attempt to evade the payment of the tax imposed by this ordinance. Any corporation, or any other entity, making a false return or a return containing a false statement shall be guilty of a violation of this ordinance as shall every person preparing or assisting in preparing such false return or return containing a false statement.

Section 5:

5-I

FORMS/REGULATIONS

The Finance Director is hereby authorized to prescribe forms and promulgate rules and regulations to aid in the making of returns, the ascertainment, assessment and collection of said lodging tax and in particular and without limiting the general language of this section, to provide for:

(a) A form of report on sales and purchases to be supplied to all vendors;

(b) The records which vendors providing lodging are to keep concerning the tax imposed by this ordinance.

5-II

DUTY TO KEEP BOOKS AND RECORDS

It shall be the duty of every vendor to keep and preserve suitable records of all sales made by the vendor and such other books or accounts as may be required by the Finance Director in order to determine the amount of the tax for the collection or payment of which the vendor is liable under this ordinance. It shall be the duty of every such vendor to keep and preserve for a period of three (3) years all such books, invoices and other records and the same shall be open for examination by the Finance Director. If such vendor keeps or maintains books, invoices and other records, or any thereof, outside of Mesa County, upon demand by the Finance Director, the vendor shall make the same available at a suitable place within Mesa County, to be designated by the Finance Director, for examination, inspection and audit by the Finance Director. The Finance Director, in the Finance Director's discretion, may make, permit or cause to be made, the examination, inspection or audit of books, invoices, accounts and other records so kept and maintained by such vendor or such person outside of Mesa County, Colorado, where the same will be made available, provided such vendor or such person shall have entered into a binding and enforceable agreement with the city to reimburse it for all costs and expenses incurred by it in order to have such examination, inspection or audit made in such place.

5-III

KEEPING OF REPORTS; INSPECTION

All reports and information received pursuant hereto shall be retained by the Finance Director and shall not be open to the inspection of the general public. However, any officer or employee of the City of Grand Junction who may be charged with the duty of enforcement of this ordinance shall be entitled to inspect said reports and any information supplemental thereto. Any City officer or employee or any member of the office of, or officer, or employee of the Finance Director who shall divulge any information classified herein as confidential, in any manner, except in accordance with proper judicial order, or as otherwise provided by law, shall be guilty of a violation hereof.

5-IV

ENFORCEMENT; INSPECTION

Any police officer of the City of Grand Junction or any person designated by the Finance Director to enforce this ordinance shall have the right at any reasonable time to enter upon the premises of any vendor providing lodging and to request to see the register of guests of rate schedule maintained by any vendor for the purpose of attending to the enforcement of this ordinance.

5-V

SPECIAL ACCOUNTING BASIS FOR REMITTANCE OF TAX

If the accounting methods regularly employed by the vendor in the transaction of business, or other conditions, as determined by the Finance Director, are such that the returns aforesaid made on a calendar month basis, will impose unnecessary hardship, the Finance Director may, upon request of the vendor, or at the election of the Finance Director, accept returns at such intervals as will, in the Finance Director's opinion, better suit the convenience of the vendor and the City and will not jeopardize the collection of the tax; provided, however, the Finance Director may by rule permit a vendor to make returns and pay taxes at intervals not greater than annually.

5-VI

CONSOLIDATION OF RETURNS

A vendor doing business in two (2) or more places or locations, whether within or without the city, and collecting taxes under this ordinance, may file one return covering all such places or locations, when accompanied by a supplemental report showing the gross and net taxable sales and taxes collected thereon for each such place or location.

5-VII

INVESTIGATION OF VENDOR'S BOOKS

For the purpose of ascertaining the correctness of a return, or for the purpose of determining the amount of tax due from any person, the Finance Director may hold investigations and hearings concerning any matters covered by this ordinance, and may examine any relevant books, papers, records or memoranda, of any such person and may require the attendance of such person, or any officer or employee of such person, or of any person having knowledge of such sales, and may take testimony and require proof for their information. The Finance Director shall have power to administer oaths to such persons.

5-VIII

REFUSAL TO MAKE RETURN; ESTIMATE OF TAX; PENALTY; NOTICE; ASSESSMENT

(a) If any person neglects or refuses to make a return in payment of the taxes as required by this ordinance, the Finance Director shall make an estimate, based upon such information as may be available, of the amount of the taxes due for the period for which the taxpayer is delinquent; and upon the basis of such estimated amount, compute and assess in addition thereto a penalty equal to ten (10) percent thereof, together with interest on such delinquent taxes at the rate of one and one-half percent per month from the date when due.

(b) Promptly thereafter, the Finance Director shall give to the delinquent taxpayer write notice of such estimated taxes, penalty and interest, which notice must be served personally on the vendor or on an agent or employee at the vendor's place of business or by registered or certified mail.

(c) Such estimate shall thereupon become an assessment, and such assessment shall be final and due and payable from the taxpayer to the Finance Director ten (10) days from the date of service of the notice or the date of mailing by certified or registered mail; provided, however, that within the ten (10) day period such delinquent taxpayer may petition the Finance Director for a revision or modification of such assessment and shall, within such ten (10) day period, furnish the Finance Director the documents, facts and figures showing the correct amount of such taxes.

(d) Such petition shall be in writing and the facts and figures submitted shall be submitted either in writing or orally, and shall be given by the taxpayer under penalty of perjury.

(e) Thereupon the Finance Director may modify such assessment in accordance with the facts submitted in order to effectuate the provisions of this ordinance. Such assessment shall be considered the final order of the Finance Director, and may be reviewed under Rule 106(a)(4) of the Colorado Rules of Civil Procedure, provided, that the taxpayer gives written notice to the Finance Director of

such intention within ten (10) days after receipt of the final order of assessment.

5-IX

FAILURE TO REPORT/PENALTIES AND INTEREST

Any vendor who fails to make said payment or fails to file said report within the period of time as herein provided shall pay a penalty of ten percent (10%) of the total amount collected by such vendor for each month or fraction thereof, together with interest at the rate of one and one-half percent (1-1/2%) per month of said total amount collected, until said payment and report shall be properly filed with the Finance Director and such vendor shall not be entitled to deduct any amounts collected as a collection fee.

5-X

FINANCE DIRECTOR MAY WAIVE PENALTY

The Finance Director is hereby authorized to waive, for good cause shown, any penalty assessed as in this ordinance provided. Any interest imposed in excess of twelve (12) percent per annum shall be deemed a penalty for the purposes of this section only.

5-XI

VENDORS' COLLECTION FEE

Vendors collecting and remitting the tax can, if such vendor is in compliance with the several provisions of this Ordinance, deduct three and one-third percent (3-1/3%) of the amount remitted as a collection fee.

Section 6:

6-I

COLLECTION AND REFUND OF DISPUTED TAX

Should a dispute arise between the purchaser and vendor as to whether or not the sale of lodging is exempt from taxation under this article, nevertheless, the vendor shall collect and the purchaser shall pay such tax, and the vendor shall thereupon issue to the purchaser and vendor, the date, price, amount of tax paid, and a brief statement of the claim of exemption. The purchaser thereafter may apply to the Finance Director for a refund of such taxes, and it shall be the duty of the Finance Director to determine the question of exemption, subject to review by the courts.

6-II

REFUND PROCEDURE

(a) Generally. A refund shall be made, or credit allowed, for the tax paid under dispute by any purchaser who has an exemption as in this ordinance set out. Such refund shall be made by the Finance Director after compliance with the conditions of this section.

(b) Application. Applications for a refund must be made within sixty (60) days after the purchase of the lodging on which the exemption is claimed and must be supported by the affidavit of the purchaser accompanied by the original paid invoice or sales receipt and a certificate issued by the vendor, and be made upon such forms as shall be prescribed and furnished by the Finance Director, which forms shall contain such information as the Finance Director shall prescribe.

(c) Decisions. Upon receipt of such application, the Finance Director shall examine the same as soon as is practicable and shall give notice to the applicant by an order in writing of the decision thereon.

(d) Hearing. An aggrieved applicant may, within ten (10) days after such decision is mailed to him, petition the Finance Director for a hearing on the claim in the manner provided in this ordinance.

(e) Refunds not assignable. The right of any person to a refund under this article shall not be assignable, and application for refund must be made by the same person who purchased the lodging and paid the tax thereon as shown in the invoice of the sale thereof.

(f) Penalty for violating refund provisions. Any applicant for refund under the provisions hereinabove, or any other person, who shall make any false statement in connection with an application for a refund of any tax shall be deemed guilty of a violation of this ordinance.

(g) Violations of refund provisions to be used as evidence of fraudulent intent. If any person be convicted under the provisions of subsection (f) such conviction shall be prima facie evidence that all refunds received by such person during the current year were obtained unlawfully, and the Finance Director is hereby empowered and directed to bring appropriate action for recovery of such refund. A brief summary of the above mentioned penalties shall be printed on each form application for refund.

(h) Burden of proof. The burden of proof that sales of lodging on which tax refunds are claimed, are exempt from taxation under this ordinance, shall be the one making such claim under such reasonable requirements of proof as the Finance Director may prescribe.

Section 7:

STATUS OF UNPAID TAX IN BANKRUPTCY AND RECEIVERSHIP

Whenever the business or property of any taxpayer subject to this ordinance shall be placed in receivership, bankruptcy or assignment for the benefit of creditors, or seized under distraint for taxes, all taxes, penalties and interest imposed by this ordinance and for which the taxpayer is in any way liable under the terms of this ordinance shall be a prior and preferred lien against all the property of the taxpayer, except as to other tax liens which have attached prior to the filing of the notice, other than the goods and stock in trade of such taxpayer, and no sheriff, receiver, assignee or other officer shall sell the property of any person subject to this ordinance under process or order of any court, without first ascertaining from the Finance Director the amount of any taxes due and payable under this ordinance, and if there be any such taxes due, owing and unpaid, it shall be the duty of such officer to first pay the amount of the taxes out of the proceeds of such sale before making payment of any moneys to any judgment creditor or other claimants of whatsoever kind or nature, except the cost of the proceedings and other preexisting tax liens as above provided.

Section 8:

TRUST STATUS OF TAX IN POSSESSION OF VENDOR

All sums of money paid by the purchaser to the vendor as taxes imposed by this article shall be and remain public money, the property of the city, in the hands of such vendor, and the vendor shall hold the same in trust for the sole use and benefit of the city until paid to the Finance Director as herein provided, and for failure so to pay to the Finance Director, such vendor shall be punished for a violation hereof.

Section 9:

HEARINGS, SUBPOENAS AND WITNESS FEES

All subpoenas issued under the terms of this ordinance may be served by any person of full age. The fees of witnesses for attendance and trial shall be the same as the fees of witnesses before the district court, such fees to be paid when the witness is excused from further attendance. When the witness is subpoenaed at the instance of the Finance Director, such fees shall be paid in the same manner as other expenses under the terms of this ordinance, and when a witness is subpoenaed at the instance of any party to any such proceeding, the Finance Director may require that the cost of service of the subpoena and the fee of the witness is borne by the party at whose instance the witness is summoned. In such case, the Finance Director, in the Finance Director's discretion, may require a deposit to cover the cost of such service and witness fees. A subpoena issued as aforesaid shall be served in the same manner as a subpoena issued out of a court of record.

Section 10:

JUDGE COMPELS ATTENDANCE

Any judge of the district court of Mesa County, upon the application of the Finance Director, may compel the attendance of witnesses, the production of books, papers, records or memoranda, and the giving of testimony before the Finance Director or any duly authorized deputies, by an attachment for contempt, or otherwise, in the same manner as production of evidence may be compelled before the court.

Section 11:

DEPOSITIONS

The Finance Director or any party in an investigation or hearing before the Finance Director 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 of this state and to that end compel the attendance of witnesses and the production of books, papers, records or memoranda.

Section 12:

TAX LIEN/ENFORCEMENT

(a) The tax imposed by this ordinance together with the interest and penalties herein provided and the costs of collection which may be incurred, shall be and, until paid, remain a first and prior lien superior to all other liens on all the tangible personal property of a taxpayer within the city and may be foreclosed by seizing under distraint warrant and selling so much thereof as may be necessary to discharge the lien. Such distraint warrant may be issued by the Finance Director whenever the taxpayer is in default in the payment of the tax, interest, penalty, or costs. Such warrant may be served and the goods subject to such lien seized by any deputy or employee of the city thereunto duly authorized. The property so seized may be sold by the agency seizing the same or by the Finance Director at public auction after ten (10) days have passed after an advertisement in a newspaper published in the city.

(b) The Finance Director or the sheriff of Mesa County shall forthwith levy upon sufficient of the property of the taxpayer, and the 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 sheriff shall be entitled to such fees in executing such warrant, as are allowed by law for similar services.

(c) The tax imposed by this ordinance shall be, and remain, a

first and prior lien superior to all other liens on the real property and appurtenant premises at which the taxable transactions occurred.

Section 13:

RECOVERY OF UNPAID TAX

(a) The Finance Director may also treat any such taxes, penalties, costs or interest due and unpaid, as a debt due the city from the taxpayer.

(b) In case of failure to pay the taxes, or any portion thereof, or any penalty, costs, or interest thereon, when due, the Finance Director may recover at law the amount of such taxes, penalties, costs, the reasonable value of an attorney's time or the reasonable attorney's fees charged, plus interest in any municipal, county or district court of the county wherein the taxpayer resides or had a principal place of business (at the time the tax became due) having jurisdiction of the amounts sought to be collected.

(c) The return of the taxpayer or the assessment made by the Finance Director shall be prima facie proof of the amount due.

(d) Such actions may be actions in attachment, and writs of attachment may be issued to the police or sheriff, as the case may be, and in any such proceeding no bond shall be required of the Finance Director, nor shall any policeman or sheriff require of the Finance Director an indemnifying bond for executing the writ of attachment, or writ of execution upon any judgment entered in such proceedings. The Finance Director may prosecute appeals in such cases without the necessity of providing bond therefor.

(e) It shall be the duty of the City Attorney, when requested by the Finance Director, to commence action for the recovery of taxes due under this ordinance and this remedy shall be in addition to all other existing remedies, or remedies provided in this ordinance.

(f) The City may certify the amount of any delinquent tax, plus interest, penalties and the costs of collection, as a charge against the property at which the taxable transaction occurred to the County Treasurer for collection in the same manner as delinquent ad valorem taxes.

Section 14:

"STATUTE OF LIMITATION"

(a) The taxes for any period, together with interest thereon and penalties with respect thereto, imposed by this ordinance shall not be assessed, nor shall any notice of lien be filed, or distraint warrant be issued, or suit for collection be instituted,

or any other action to collect the same be commenced, more than three (3) 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 three year period, notice of lien with respect to which has been filed prior to the expiration of such period.

(b) In 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.

(c) Before the expiration of such period of limitation, the taxpayer and the Finance Director may agree in writing to an extension hereof, and the period so agreed on may be extended by subsequent agreements in writing.

Section 15:

PENALTY

It shall be unlawful for any person to violate, omit or refuse or fail to comply with the several provisions of this ordinance, or to commit any act or omission declared to be a violation of this ordinance. A violation of any provision of this ordinance shall be punished by a fine not exceeding three hundred dollars (\$300.00) or imprisonment for not more than ninety (90) days, or both. Each day, or portion thereof, any violation of this ordinance shall continue, shall constitute a separate offense.

Section 16:

SEVERABILITY

The several sections, sentences, clauses and provisions of this ordinance are intended to be severable; if any such section, sentence, clause or provision is declared unconstitutional, invalid or unenforceable by the valid judgment of a court of competent jurisdiction, such unconstitutionality, invalidity or unenforceability shall not effect the remaining portions of this ordinance.

Section 17:

RULES OF CONSTRUCTION

The construction of terms and the rules set forth in Section 2-1 of the Code of Ordinances of the City of Grand Junction are incorporated herein by this reference as though fully set forth here.

Section 18:

This ordinance shall be and become Chapter 24.1 of the Code of

Ordinances of the City of Grand Junction and become effective on the 1st day of January, 1989.

PASSED and ADOPTED this 5th day of October, 1988.

John W. Bennett

President of the Council

Attest:

Neva B. Lockhart, CMC

City Clerk

I HEREBY CERTIFY that the foregoing ordinance, being Ordinance No. 2401, 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 21st day of September, 1988, 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 5th day of October, 1988.

Neva B. Lockhart, CMC

Neva B. Lockhart, CMC
City Clerk

First Publication: September 23, 1988

Corrected Publication: September 30, 1988

Final Publication: October 7, 1988

Effective: January 1, 1989