ORDINANCE NO. 10
SERIES 2017

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GUNNISON
AMENDING THE CITY OF GUNNISON MUNICIPAL CODE PERTAINING TO
SALES AND USE TAX DEFINITIONS AND EXEMPTIONS

WHEREAS, in SJR14-038 the General Assembly asked the Colorado Municipal League
to revive the tax simplification project from the 1990's to address current systemic problems
associated with local tax collection; and

WHEREAS, the City Council of the City of Gunnison has determined that the standard
tax definitions project is a major collaborative sales tax simplification initiative by Colorado's
home rule municipalities that locally collect their sales tax and the retail business community; and

WHEREAS, the City Council of the City of Gunnison has determined that the City will
cooperate in furtherance of a statewide goal to have all locally collecting municipalities agree to
use standard definitions in their sales and use tax codes; and

WHEREAS, the City Council of the City of Gunnison has determined that maintaining
the local collection of sales and use taxes for the City is of paramount importance to the continued
financial strength of the City; and

WHEREAS, the City Council of the City of Gunnison has determined that the retail
business community desires better uniformity and simplicity when operating in the City; and

WHEREAS, the City Council of the City of Gunnison has determined that sales tax
revenue is directly tied to how well the City's retail business community is faring. Council and
staff have generally supported the idea that the City should simplify the tax code, without
sacrificing revenue; and

WHEREAS, the City Council of the City of Gunnison has determined that revenue neutral
tax simplification is generally construed as good for business and good for the community as a
whole; and

WHEREAS, the City Council of the City of Gunnison has determined that modification
of the City's sales and use tax exemptions is required in an effort to comply with the Taxpayer Bill
of Rights by staying revenue neutral.

NOW, THEREFORE, IT IS ORDAINED BY THE CITY COUNCIL OF
GUNNISON, COLORADO:

Section 1. Chapter 3.10, City Sales and Use Tax, Section 3.10.020. of the City of
Gunnison Municipal Code is hereby amended to read as follows:

A. "Business" means all activities engaged in or caused to be engaged in with the
object of gain, benefit, or advantage, direct or indirect.

B. "City" means the municipality of City of Gunnison.

C. "Coin-Operated" means any device operated by coins or currency or any
substitute therefor.

D. "Construction or Building Materials" means tangible personal property which,
when combined with other tangible personal property, loses its identity to
become an integral and inseparable part of a structure or project including
public and private improvements. Construction Materials include, but are not
limited to, such things as: asphalt, bricks, builders' hardware, caulking material,
cement, concrete, conduit, electric wiring and connections, fireplace inserts,
electrical heating and cooling equipment, flooring, glass, gravel, insulation,
lath, lead, lime, lumber, macadam, millwork, mortar, oil, paint, piping, pipe
valves and pipe fittings, plaster, plumbing fixtures, putty, reinforcing mesh,
road base, roofing, sand, sanitary sewer pipe, sheet metal, site lighting, steel,
stone, stucco, tile, trees, shrubs and other landscaping materials, wall board, wall coping, wallpaper, weather stripping, wire netting and screen, water mains and meters, and wood preserver. The above materials, when used for forms, or other items which do not remain as an integral and inseparable part of completed structure or project are not construction materials.

E. “Consumer” means any person in the City who purchases, uses, stores, distributes or otherwise consumes tangible personal property or taxable services, purchased from sources inside or outside the City.

F. “Director of Finance” means the Finance Director of the City of Gunnison or such other person designated by the municipality; Director of Finance shall also include such person's designee.

G. “Engaged in” means performing or providing services or selling, leasing, renting, delivering or installing tangible personal property for storage, use or consumption, within the City. Engaged in Business in the City includes, but is not limited to, any one of the following activities by a person: (1) Directly, indirectly, or by a subsidiary maintains a building, store, office, salesroom, warehouse, or other place of business within the taxing jurisdiction; (2) Sends one or more employees, agents or commissioned sales persons into the taxing jurisdiction to solicit business or to install, assemble, repair, service, or assist in the use of its products, or for demonstration or other reasons; (3) Maintains one or more employees, agents or commissioned sales persons on duty at a location within the taxing jurisdiction; (4) Owns, leases, rents or otherwise exercises control over real or personal property within the taxing jurisdiction; or (5) Makes more than one delivery into the taxing jurisdiction within a twelve month period by any means other than a common carrier.

H. “Farm Auction Closeout Sale” means full and final disposition of all tangible personal property previously used by a farmer or rancher in farming or ranching operations which are being abandoned.

I. “Gross Sales” means the total amount received in money, credit, property or other consideration valued in money for all sales, leases, or rentals of tangible personal property or services.

J. “License” means the City of Gunnison sales and/or use tax license.

K. “Medical Marijuana” means marijuana acquired, possessed, cultivated, manufactured, delivered, transported, supplied, sold, or dispensed to a person who qualifies as a patient with a debilitating medical condition(s) under Article XVIII, Section 14, of the Colorado Constitution, and which person holds a valid “registry identification card” issued by the State of Colorado pursuant to Colorado Constitution, Article XVIII, Section 14.

L. “Mobile Home” means any preconstructed building unit or combination of preconstructed building units, without motive power, where such unit or units are manufactured in a factory or at a location other than the residential site of the completed home, which is designed and commonly used for occupancy by persons for residential purposes, in either temporary or permanent locations, and which unit or units are not licensed as a vehicle.

M. “Motor Fuel” means gasoline, casing head or natural gasoline, benzol, benzene and naphtha, gasohol and any other liquid prepared, advertised, offered for sale, sold for use or used or commercially usable in internal combustion engines for the generation of power for the propulsion of motor vehicles upon the public
highways. The term does not include fuel used for the propulsion or drawing of aircraft or railroad cars or railroad locomotives.

N. "Newspaper" means a publication, printed on newsprint, intended for general circulation, and published regularly at short intervals, containing information and editorials on current events and news of general interest. The term Newspaper does not include: magazines, trade publications or journals, credit bulletins, advertising inserts, circulars, directories, maps, racing programs, reprints, newspaper clipping and mailing services or listings, publications that include an updating or revision service, or books or pocket editions of books.

O. "Person" means any individual, firm, partnership, joint venture, corporation, limited liability company, estate or trust, receiver, trustee, assignee, lessee or any person acting in a fiduciary or representative capacity, whether appointed by court or otherwise, or any group or combination acting as a unit.

P. "Preprinted Newspaper Supplements" shall mean inserts, attachments or supplements circulated in newspapers that: (1) are primarily devoted to advertising; and (2) the distribution, insertion, or attachment of which is commonly paid for by the advertiser.

Q. "Prescription" means a drug which, prior to being dispensed or delivered, is required by the federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sect. 301, et. seq., as amended, to state at a minimum the symbol "Rx Only", and is dispensed in accordance with any order in writing, dated and signed by a licensed veterinarian specifying the animal for which the medicine or drug is offered and directions, if any, to be placed on the label, or is dispensed in accordance with any written or electronic order dated and signed by a licensed practitioner of the healing arts, or given orally by a practitioner and immediately reduced to writing by the pharmacist, assistant pharmacist, or pharmacy intern, specifying the name and any required information of the patient for whom the medicine, drug or poison is offered and directions, if any, to be placed on the label.

R. "Price" or "Purchase Price" means the aggregate value measured in currency paid or delivered or promised to be paid or delivered in consummation of a sale, without any discount from the price on account of the cost of materials used, labor or service cost, and exclusive of any direct tax imposed by the federal government or by this article, and, in the case of all retail sales involving the exchange of property, also exclusive of the fair market value of the property exchanged at the same time and place of the exchange, if: (1) Such exchanged property is to be sold thereafter in the usual course of the retailer's business, or (2) Such exchanged property is a vehicle and is exchanged for another vehicle and both vehicles are subject to licensing, registration, or certification under the laws of this state, including, but not limited to, vehicles operating upon public highways, off-highway recreation vehicles, watercraft, and aircraft. Any money or other consideration paid over and above the value of the exchanged property is subject to tax.

Price or Purchase Price includes:

(1) The amount of money received or due in cash and credits.

(2) Property at fair market value taken in exchange but not for resale in the usual course of the retailer's business.

(3) Any consideration valued in money, whereby the manufacturer or someone else reimburses the retailer for part of the purchase price and other media of exchange.
(4) The total price charged on credit sales including finance charges which are not separately stated at the time of sale. An amount charged as interest on the unpaid balance of the purchase price is not part of the purchase price unless the amount added to the purchase price is included in the principal amount of a promissory note; except the interest or carrying charge set out separately from the unpaid balance of the purchase price on the face of the note is not part of the purchase price. An amount charged for insurance on the property sold and separately stated at the time of sale is not part of the purchase price.

(5) Installation, applying, remodeling or repairing the property, delivery and wheeling-in charges included in the purchase price and not separately stated.

(6) Transportation and other charges to effect delivery of tangible personal property to the purchaser.

(7) Indirect federal manufacturers' excise taxes, such as taxes on automobiles, tires and floor stock.

(8) The gross purchase price of articles sold after manufacturing or after having been made to order, including the gross value of all the materials used, labor and service performed and the profit thereon.

Price or Purchase Price shall not include:

(1) Any sales or use tax imposed by the State of Colorado or by any political subdivision thereof.

(2) The fair market value of property exchanged if such property is to be sold thereafter in the retailers' usual course of business. This is not limited to exchanges in Colorado. Out of state trade-ins are an allowable adjustment to the purchase price.

(3) Discounts from the original price if such discount and the corresponding decrease in sales tax due is actually passed on to the purchaser, and the seller is not reimbursed for the discount by the manufacturer or someone else. An anticipated discount to be allowed for payment on or before a given date is not an allowable adjustment to the price in reporting gross sales.

S. "Prosthetic Devices" means any artificial limb, part, device or appliance for human use which replaces a body part or aids or replaces a bodily function; is designed, manufactured, altered or adjusted to fit a particular patient; and is prescribed by a licensed practitioner of the healing arts or a licensed veterinarian. Prosthetic devices include, but are not limited to, prescribed auditory, ophthalmic or ocular, cardiac, dental, or orthopedic devices or appliances, and oxygen concentrators with related accessories.

T. "Purchase" or "Sale" means the acquisition for any consideration by any person of tangible personal property, other taxable products or taxable services that are purchased, leased, rented, or sold. These terms include capital leases, installment and credit sales, and property and services acquired by:

(1) Transfer, either conditionally or absolutely, of title or possession or both to tangible personal property, other taxable products, or taxable services; or

(2) A lease, lease-purchase agreement, rental or grant of a license, including royalty agreements, to use tangible personal property, other taxable products, or taxable services, the utilization of coin operated devices, except coin-operated telephones, which do not vend articles of tangible personal
property shall be considered short term rentals of tangible personal property; or

(3) Performance of taxable services; or

(4) Barter or exchange for other tangible personal property, other taxable products, or services.

The terms Purchase and Sale do not include:

(1) A division of partnership assets among the partners according to their interests in the partnership;

(2) The transfer of assets of shareholders in the formation or dissolution of professional corporations, if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets;

(3) The dissolution and the pro rata distribution of the corporation's assets to its stockholders, if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets;

(4) A transfer of a partnership or limited liability company interest;

(5) The transfer of assets to a commencing or existing partnership or limited liability company, if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets;

(6) The repossession of personal property by a chattel mortgage holder or foreclosure by a lienholder;

(7) The transfer of assets from a parent company to a subsidiary company or companies which are owned at least eighty percent by the parent company, which transfer is solely in exchange for stock or securities of the subsidiary company;

(8) The transfer of assets from a subsidiary company or companies which are owned at least eighty percent by the parent company to a parent company or to another subsidiary which is owned at least eighty percent by the parent company, which transfer is solely in exchange for stock or securities of the parent corporation or the subsidiary which received the assets;

(9) The transfer of assets between parent and closely held subsidiary companies, or between subsidiary companies closely held by the same parent company, or between companies which are owned by the same shareholders in identical percentage of stock ownership amounts, computed on a share-by-share basis, when a tax imposed by this article was paid by the transferor company at the time it acquired such assets, except to the extent that there is an increase in the fair market value of such assets resulting from the manufacturing, fabricating, or physical changing of the assets by the transferor company. To such an extent any transfer referred to in this paragraph (11) shall constitute a sale. For the purposes of this paragraph (11), a closely held subsidiary corporation is one in which the parent company owns stock possessing or membership interest at least eighty percent of the total combined voting power of all classes of stock entitled to vote and owns at least eighty percent of the total number of shares of all other classes of stock.
U. “Resident” means a person who resides or maintains one or more places of business within the City, regardless of whether that person also resides or maintains a place of business outside of the City.

V. “Retail Sales” means all sales except wholesale sales. For purposes of this chapter, all retail sales are deemed consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to a destination outside the limits of the city or to a common carrier for delivery to a destination outside the limits of the city. If a retailer has no permanent place of business in the city, or has more than one place of business, the place at which the retail sales are deemed consummated for the purpose of this chapter shall be determined by the provisions of article 26 of title 39, C.R.S., and by rules and regulations promulgated by the Colorado Department of Revenue. Notwithstanding any other provisions of this chapter, the value of construction and building materials shall be exempt from the city’s sales tax 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 director of finance evidencing that local use tax has been paid or is required to be paid.

W. “Retailer” means any person selling, leasing, renting, or granting a license to use tangible personal property or services at retail. Retailer shall include, but is not limited to, any: (1) Auctioneer; (2) Salesperson, representative, peddler or canvasser, who makes sales as a direct or indirect agent of or obtains such property or services sold from a dealer, distributor, supervisor or employer; (3) Charitable organization or governmental entity which makes sales of tangible personal property to the public, notwithstanding the fact that the merchandise sold may have been acquired by gift or donation or that the proceeds are to be used for charitable or governmental purposes; (4) Retailer-Contractor, when acting in the capacity of a seller of building supplies, construction materials, and other tangible personal property.

X. “Return” means any form prescribed by the Director of Finance of the City of Gunnison for computing and reporting a total tax liability.

Y. “Sale” includes installment and credit sales, and the exchange of property as well as the sale thereof for money, every such transaction, conditional or otherwise for a consideration, constituting a sale; the transaction of furnishing rooms or accommodations by any person, partnership association, corporation, estate, receiver, trustee, assignee, lessee, or any person acting in a representative capacity or any other combination of individuals by whatever name known to a person, or persons who for a consideration use, possess, or have the right to use or possess any room or rooms in a hotel, apartment hotel, lodging house, motor hotel, guest house, guest ranch, mobile homes, auto camps, trailer courts and parks, under any concession, permit, right to access, license to use or other agreement, or otherwise, and also includes the sale or furnishing of electrical energy, gas, telephone, or telegraph services taxable under the terms of this chapter.

Z. “Sales Tax” means the tax that is collected or required to be collected and remitted by a retailer on sales taxed under this Code.

AA. “Special Fuel” means kerosene oil, kerosene distillate, diesel fuel, all liquefied petroleum gases, and all combustible gases and liquids for use in the generation of power for propulsion of motor vehicles upon the public highways. The term does not include fuel used for the propulsion or drawing of aircraft, railroad cars or railroad locomotives.
BB. “Storage” means any keeping or retention of, or exercise dominion or control over, or possession of, for any length of time, tangible personal property not while in transit but on a standstill basis for future use when leased, rented or purchased at retail from sources either within or without the City from any person or vendor.

CC. “Tangible Personal Property” means personal property that can be one or more of the following: seen, weighed, measured, felt, touched, stored, transported, exchanged, or that is in any other manner perceptible to the senses.

DD. “Tax” means the use tax due from a consumer or the sales tax due from a retailer or the sum of both due from a retailer who also consumes.

EE. “Tax Deficiency” or “Deficiency” means any amount of tax, penalty, interest, or other fee that is not reported and/or not paid on or before the date that any return or payment of the tax is required under the terms of this Code.

FF. “Taxable Sales” means gross sales less any exemptions and deductions specified in this Code.

GG. “Taxpayer” means any person obligated to collect and/or pay tax under the terms of this Code.

HH. “Use” means the exercise, for any length of time by any person within the City of any right, power or dominion over tangible personal property or services when rented, leased or purchased at retail from sources either within or without the City from any person or vendor or used in the performance of a contract in the City whether such tangible personal property is owned or not owned by the taxpayer. Use also includes the withdrawal of items from inventory for consumption.

II. “Use Tax” means the tax paid or required to be paid by a consumer for using, storing, distributing or otherwise consuming tangible personal property or taxable services inside the City.

JJ. “Wholesale Sales” or “Wholesale” means a sale by wholesalers to retailers, jobbers, dealers, or other wholesalers for resale and does not include a sale by Wholesalers to users or consumers not for resale; latter types of sales shall be deemed to be Retail Sales and shall be subject to the provisions of this chapter.

KK. “Wholesaler” means any person doing an organized wholesale or jobbing business and selling to Retailers, jobbers, dealers, or other Wholesalers, for the purpose of resale, and not for storage, use, consumption, or distribution.

Section 2. Should any section, clause, phrase, or provision of this ordinance be ruled invalid or unenforceable by any court of competent jurisdiction, it is hereby declared the intent of the City Council of the City of Gunnison, Colorado, that the remaining provisions of this ordinance shall be given full force and effect if it is possible to do so.

INTRODUCED, READ, PASSED AND ORDERED PUBLISHED this 14th day of November, 2017, on first reading, and introduced, read, and adopted on second and final reading this 28th day of November, 2017.

Jim Gelwicks, Mayor

ATTEST:

Sara Lindell
Deputy City Clerk