

**Agenda Item #: V-B**  
**Meeting Date: April 13, 2020**

**Subject:** Second Reading of Ordinance No. 883 amending the City's Sales and Use Tax Code concerning enforcement and hearing procedures and titles of the City Manager and Director of Finance.

**Presenter:** Jordan Eichen, Assistant City Manager

**Background:** Recently, for the first time since the City began self-collection of sales and use tax, a local business had cause to move through the entirety of the enforcement process. Having now had experience utilizing those sections of the sales tax code, there are some minor details that staff would like to fine-tune in order to make the Code more practically effective.

The proposed changes are as follows:

1. The designated hearing officer for revocation of a sales tax license will be changed from the City Clerk to either the Finance Director or the Administrative Hearing Officer, at the Finance Director's discretion. This change is intended to make the Administrative Hearing Officer the likely hearing officer but to also maintain flexibility.
2. "Issuance of written notice of final determination, and assessment and demand for payment" is added to the list of enforcement actions that count toward triggering the repeated enforcement penalty. The existing standards for assessing the repeated enforcement penalty are very stringent and adding an action that is more likely to be taken would give the penalty more "teeth."
3. The option for the City to suspend a sales tax license is added to the City's existing ability to revoke the license.

4. There is also additional detail added to the enforcement processes described in Sections 4-49, Collection by Distrain, and 4-50, Recovery of Unpaid Tax by Action at Law.
5. The outdated titles "Finance Officer" and "City Administrator" have been updated to "Finance Director" and "City Manager."
6. A scrivener's error that was made when the tax code was updated to allow for self-collection has been corrected. City Attorney Kathleen Kelly has provided a memorandum and will explain this process.

**Recommended Action:** Approval of Ordinance 883 on Second Reading. No changes have been made since First Reading.

**ORDINANCE NO. 883**

**AN ORDINANCE AMENDING THE CITY'S SALES AND USE TAX CODE CONCERNING ENFORCEMENT AND HEARING PROCEDURES AND TITLES OF THE CITY MANAGER AND DIRECTOR OF FINANCE**

**WHEREAS**, Section 3-14 of the Dacono City Charter directs the City Council to review ordinances for possible amendment or repeal; and

**WHEREAS**, clear procedures for the enforcement of sales and use taxes promotes fairness in the administration of such taxes and serves the public interest in proper remittance and correct payment of taxes; and

**WHEREAS**, at the City's regular election held on November 7, 2017, the City's voters approved amendments to Article VII of the City Charter to change the titles of the City Administrator and Treasurer to City Manager and Director of Finance, in order to more accurately reflect their day-to-day duties and responsibilities; and

**WHEREAS**, the City Council finds that amendments to the City's ordinances to reflect these title changes and clarify other procedures as set forth herein are reasonable and necessary.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DACONO, COLORADO:**

**Section 1.** The definition of "Finance Officer" in Section 4-3 of the Dacono Municipal Code is hereby amended to read as follows (words to be added underlined; words to be deleted ~~stricken~~):

**Sec. 4-3. - Definitions.**

~~Finance Officer~~ Director of Finance or Director means the ~~Finance Officer~~ Director of Finance of the City of Dacono or such other person designated by the City; ~~Finance Officer~~ Director of Finance shall also include such person's designee.

**Section 2.** Subsections 4-13(b) and (e) of the Dacono Municipal Code are hereby amended to read as follows (words to be added underlined; words to be deleted ~~stricken~~):

**Sec. 4-13. - Taxpayer (vendor and consumer) liability.**

(b) ~~Finance Officer~~ The Director of Finance may require reports and records. The ~~Finance Officer~~ Director of Finance may require any person, by regulation or notice served on such person, to make such return, render such statement, keep and furnish such records or make such information reports as the

~~Finance Officer~~ Director of Finance may deem sufficient to show whether or not such person is liable under this Article for payment or collection of the tax imposed herein.

(e) Due date of returns. Every retailer or vendor engaged in business and selling at retail shall file a return as prescribed herein with the ~~Finance Officer~~ Director of Finance on or before the twentieth day of the month for the preceding month or months under report and remit the amount of tax imposed by this Article computed on the total of such sales, and also the amount of any excess tax collections, less three and one-third percent (3- 1/3; %) of the amount of taxes to be paid by him or her under this Article or one hundred dollars (\$100.00), whichever is less, to cover the retailer's expense of collection and remittance of the tax for the reporting period; however, if any vendor is delinquent in remitting said tax other than in unusual circumstances shown to the satisfaction of the ~~Finance Officer~~ Director of Finance, the vendor shall not be allowed to retain any amounts to cover his or her expense in collecting and remitting said tax, and an amount equivalent to the full tax shall be remitted to the ~~Finance Officer~~ Director by any such delinquent vendor. Vendors not selling at retail may be required by the ~~Finance Officer~~ Director of Finance to file a return as prescribed herein.

**Section 3.** Section 4-16 of the Dacono Municipal Code is hereby amended to read as follows (words to be added underlined; words to be deleted ~~stricken~~):

**Sec. 4-16. - Construction materials tax - Amount - Payment.**

The tax imposed on the privilege of ~~storing~~, using or consuming in the City any construction materials, purchased at retail, shall be paid to the City ~~Clerk~~ at the time building permits are issued for the construction. The payment of the tax shall be the responsibility of the person applying for the building permit. For the purposes of this Section, the retail purchase price of the construction materials to be stored, used or consumed as part of any project shall be deemed to be an amount equal to fifty percent (50%) of the total valuation of the construction project as approved by the Building Official and ~~State~~ stated on the building permit issued. Accordingly, the calculation of said use tax shall be as follows: Three percent (3%) (use tax) of fifty percent (50%) of the total valuation of the construction project as approved by the Building Official and stated on the building permits equals the amount of tax to be paid. The City's use tax shall not apply to the storage of construction materials.

**Section 4.** Section 4-24 of the Dacono Municipal Code is hereby amended to read as follows (words to be added underlined; words to be deleted ~~stricken~~):

**Sec. 4-24. – Suspension or Revocation of license.**

(a) The Director of Finance, or hearing officer designated by the Director of Finance, shall hear and decide actions relating to the suspension or revocation of a sales tax license pursuant to this Article.

~~(a b)~~ The ~~City Clerk~~ Director of Finance, or designated hearing officer, may, on reasonable notice and after a hearing, suspend with or without remedial conditions, or revoke the sales tax license of any person found to have violated any provisions of this Article.

~~(b c)~~ Any findings and order of the ~~City Clerk~~ Director of Finance, or designated hearing officer, suspending or revoking the license of any person shall be subject to review by the district court upon application of the aggrieved party, in accordance with Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

**Section 5.** Section 4-25 of the Dacono Municipal Code is hereby amended to read as follows (words to be added underlined; words to be deleted ~~stricken~~):

**Sec. 4-25. – Refunds.**

(a) Disputed tax. Should a dispute arise between the purchaser and seller as to whether or not any sale, service or commodity is exempt from taxation under this Article, nevertheless the seller shall collect and the purchaser shall pay the tax and the seller shall issue to the purchaser a receipt or certificate, on forms prescribed by the ~~Finance Officer~~ Director of Finance, showing the names of the seller and the purchaser, the items purchased, the date, price, amount of tax paid and a brief statement of the claim of exemption.

(b) Refund allowed if exempt. A refund shall be made, or a credit allowed, for the tax so paid under dispute by any purchaser who has an exemption under this code; provided that such refund shall be made by the ~~Finance Officer~~ Director of Finance after compliance with the following conditions precedent: Applications for refund must be made within sixty (60) days after the purchase of the goods whereon an exemption is claimed and must be supported by the affidavit of the purchaser accompanied by the original paid invoice or sales receipt and certificate issued by the seller; and be made upon such forms as shall be prescribed and furnished by the ~~Finance Officer~~ Director of Finance, which forms shall contain such information as the ~~Finance Officer~~ Director shall prescribe.

(c) Refund disallowed. Upon receipt of such application, the ~~Finance Officer~~ Director of Finance shall examine the same with all due speed and shall give notice to the applicant by order in writing of his or her decision thereon. Aggrieved applicants, within fifteen (15) days after such decision is sent, may

petition the ~~Finance Officer~~ Director of Finance for a hearing on the claim in the manner provided in Section 4-41.

(d) Refund of excess taxes. Whenever the ~~Finance Officer~~ Director of Finance discovers from the examination of a return or pursuant to an audit of a taxpayer's records that the taxpayer has overpaid taxes due the City, the ~~Finance Officer~~ Director shall issue a warrant for payment of the excess taxes to the taxpayer, unless the overpayment is applied to offset other tax due. The ~~Finance Officer~~ Director of Finance shall keep a duplicate of said warrant and also a statement which sets forth the reason why such refund was ordered. If the refund totals less than fifteen dollars (\$15.00), the refund amount shall be credited to the taxpayer's tax account, unless the taxpayer requests payment of the refund.

(e) Taxpayer's discovery of overpayment of tax. A taxpayer may apply for a refund of payment of excess taxes within sixty (60) days after discovery of the overpayment. The ~~Finance Officer~~ Director of Finance may deny such refund if he or she finds the taxpayer did or reasonably should have discovered the overpayment more than sixty (60) days prior to the date of the application for a refund. The taxpayer may petition the ~~Finance Officer~~ Director of Finance for a hearing on the claim in the manner provided in Section 4-41 within fifteen (15) days after the ~~Finance Officer's~~ Director's denial of refund is sent to the taxpayer.

(f) Statute of limitations. With the exception of a written document that tolls the running of the statute of limitations, no refund shall be allowed or paid under any circumstances more than three (3) years after the City's receipt of sales or use taxes in question.

(g) Refund to offset previous tax due. Whenever it is established that any taxpayer has, for any period, overpaid a tax imposed by this code, and there is also an unpaid balance of tax and interest accrued according to the records of the ~~Finance Officer~~ Director of Finance and owing by such taxpayer for any other period, so much of the overpayment of tax plus interest allowable thereon as does not exceed the amount of such unpaid balance shall be credited thereto and any excess of the overpayment shall be refunded.

(h) Refund of overpayment of taxes paid by the estimated payment basis. Application for refund by contractors prepaying on an estimated percentage payment basis, or actual tax basis, shall be made within three (3) years after the date of the certificate of occupancy or date of purchase, whichever is sooner. The ~~Finance Officer~~ Director of Finance may require data to accompany the application and may require an audit to be done before the refund is paid.

(i) Refunds not assignable. The right of any person to a refund under this code shall not be assignable, and such application for refund must be made by the same person who purchased the goods and paid the tax thereon as shown in the invoice of the sale thereof, except as provided in Subsection (j) below. The ~~Finance Officer~~ Director of Finance may, upon receiving a properly executed release of claim from the taxpayer and evidence to substantiate that the tax was remitted in error to another municipality, issue a joint refund check in the name of the taxpayer and the municipality, provided that the municipality has entered into an agreement to grant similar privileges to the City.

(j) Burden of proof of exemption. The burden of proving that sales, services and commodities on which tax refunds are claimed are exempt from taxation or were not at retail, shall be on the one making such claim under such reasonable requirements of proof as the ~~Finance Officer~~ Director of Finance may prescribe.

(k) Interjurisdictional claims for recovery. The intent of this Section is to streamline and standardize procedures related to situations where tax has been remitted to the incorrect municipality. It is not intended to reduce or eliminate the responsibilities of the taxpayer or vendor to correctly pay, collect and remit sales and use taxes to the City.

- (1) As used herein, claim for recovery means a claim for reimbursement of sales and use taxes paid to the wrong taxing jurisdiction.
- (2) When it is determined by the ~~Finance Officer~~ Director of Finance that sales or use tax owed to the City has been reported and paid to another municipality, the City shall promptly notify the vendor that taxes are being improperly collected and remitted and that, as of the date of the notice, the vendor must cease improper tax collections and remittances.
- (3) The City may make a written claim for recovery directly to the municipality that received tax and/or penalty and interest owed to the City or, in the alternative, may institute procedures for collection of the tax from the taxpayer or vendor. The decision to make a claim for recovery lies in the sole discretion of the City. Any claim for recovery shall include a properly executed release of claim from the taxpayer and/or vendor releasing his or her claim to the taxes

paid to the wrong municipality, evidence to substantiate the claim, and a request that the municipality approve or deny, in whole or in part, the claim within ninety (90) days of its receipt. The municipality to which the City submits a claim for recovery may, for good cause, request an extension of time to investigate the claim, and approval of such extension by the City shall not be unreasonably withheld.

- (4) Within ninety (90) days after receipt of a claim for recovery, the City shall verify to its satisfaction whether or not all or a portion of the tax claimed was improperly received, and shall notify the municipality submitting the claim in writing that the claim is either approved or denied in whole or in part, including the reasons for the decision. If the claim is approved in whole or in part, the City shall remit the undisputed amount to the municipality submitting the claim within thirty (30) days of approval. If a claim is submitted jointly by a municipality and a vendor or taxpayer, the check shall be made to the parties jointly. Denial of a claim of recovery may only be made for good cause.
- (5) The City may deny a claim on the grounds that it has previously paid a claim for recovery arising out of an audit of the same taxpayer.
- (6) The period subject to a claim for recovery shall be limited to the thirty-six-month period prior to the date the municipality that was wrongly paid the tax receives the claim for recovery. This period may be extended only if a written document was approved by the ~~Finance Officer~~ Director of Finance and taxpayer to toll the running of this thirty-six-month period.

**Section 6.** Subsection 4-27(e) of the Dacono Municipal Code is hereby amended to read as follows (words to be added underlined; words to be deleted ~~stricken~~):

**Sec. 4-27. - Sale or purchase of business or property.**

(e) Purchaser to withhold payment until tax paid. The purchaser or successor to the business, stock of goods or assets shall withhold sufficient [payment] of the purchase money to cover all of said taxes until such time as the former owner produces a receipt from the ~~Finance Officer~~ Director of Finance showing that all taxes have been paid in full.

**Section 7.** Section 4-28 of the Dacono Municipal Code is hereby amended to read as follows (words to be added underlined; words to be deleted ~~stricken~~):

**Sec. 4-28. - ~~Finance Officer's~~ Remedies in case of nonpayment.**

No final inspection shall be made by the Building Inspector, and no certificate of occupancy, temporary or otherwise, shall be issued unless all taxes due as provided in this Article have been paid or arrangements therefor made with the ~~Finance Officer~~ Director of Finance.

**Section 8.** Section 4-29 of the Dacono Municipal Code is hereby amended to read as follows (words to be added underlined; words to be deleted ~~stricken~~):

**Sec. 4-29. - Certificate of discharge.**

(a) Certificate of discharge subject to lien. If any property, real or personal, under the law, shall be subject to a lien for the payment of any tax due the City, the ~~Finance Officer~~ Director of Finance may issue a certificate of discharge of any part of the property subject to the lien if he or she finds that the fair market value of that part of such property remaining subject to the lien is at least double the amount of the liability remaining unsatisfied in respect to such tax and the amount of all prior liens upon such property.

(b) Certificate of discharge to part of property. If any property, real or personal, under the law, shall be subject to a lien for the payment of any tax due the City, the ~~Finance Officer~~ Director of Finance may issue a certificate of discharge of any part of the property subject to the lien if there is paid over to the ~~Finance Officer~~ Director in part satisfaction of the liability in respect to such tax an amount determined by the ~~Finance Officer~~ Director, which shall not be less than the value, as determined by him or her, of the interest of the City in the part to be so discharged.

(c) How values determined. In determining such values, the ~~Finance Officer~~ Director of Finance shall give consideration to the fair market value of the

part to be so discharged and to such liens thereon as have priority to the lien of the City.

(d) Certificate of release conclusive. A certificate of release or of partial discharge issued under Subsection (a) above shall be held conclusive that the lien of the City upon the property released therein is extinguished, but shall not extinguish, nor release, any portion of the lien or property not specified in the release.

**Section 9.** Sections 4-30(a) and (d)(2)a of the Dacono Municipal Code are hereby amended to read as follows (words to be added underlined; words to be deleted ~~stricken~~):

**Sec. 4-30. - Closing agreements.**

(a) Satisfaction of liability. For the purpose of facilitating the settlement and distribution of estates, trusts, receiverships, other fiduciary relationships and corporations in the process of dissolution or which have been dissolved, the ~~Finance Officer~~ Director of Finance may agree with the fiduciary or surviving directors upon the amount of taxes due from the decedent, or from the decedent's estate, trust, receivership or other fiduciary relationship, or corporation, for any of his, her or its taxable periods, under the provisions of the taxes covered by this Article and except upon a showing of fraud, malfeasance or misrepresentation of a material fact, payment in accordance with such agreement shall be full satisfaction of the taxes for the taxable periods to which the agreement related.

(d) Limitation of liability.

(2) This Subsection will not apply in the case of a corporation unless:

a. Such request notifies the ~~Finance Officer~~ Director of Finance that the corporation contemplates dissolution at or before the expiration of such three-year period;

**Section 10.** Sections 4-31(a)(3) and (b) of the Dacono Municipal Code are hereby amended to read as follows (words to be added underlined; words to be deleted ~~stricken~~):

**Sec. 4-31. - Limitations.**

(a) General limitations.

- (3) Payment arrangement. Where, before the expiration of the time prescribed in this Section for the assessment of tax, both the ~~Finance Officer~~ Director of Finance and the taxpayer have consented in writing to any assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon or by the commencement of collection proceedings made before the expiration of the period previously agreed upon. Additional interest must be paid on payments at a rate set by the Dacono City Council by resolution each year.

(b) Taxes held in trust. All sums of money paid by the purchaser to the retailer as taxes imposed by this Article shall be and remain public money, the property of the City, in the hands of such retailer. The retailer shall hold the same in trust for the sole use and benefit of the City, until paid to the ~~Finance Officer~~ Director of Finance; and, for failure to so pay to the ~~Finance Officer~~ Director of Finance, such retailer shall be punished as provided by law. Thus, the statute of limitation provided herein does not apply to collections of public money in the possession of the retailer, and such monies are collectable at any time after their due date upon demand of the ~~Finance Officer~~ Director of Finance. Bankruptcy will not excuse unremitted taxes collected in trust.

**Section 11.** Section 4-33 of the Dacono Municipal Code is hereby amended to read as follows (words to be added underlined; words to be deleted ~~stricken~~):

**Sec. 4-33. - Excess collections.**

If any vendor shall, during any reporting period, collect as a tax an amount in excess of three percent (3%) of his or her total taxable sales; he or she shall remit to the ~~Finance Officer~~ Director of Finance the full net amount of the tax herein imposed and also such excess. If records of City and State tax collections are kept separately, the vendor will remit the excess of the City tax collected over and above City net taxable sales and service. If there is no separate record kept of City and State tax collections and it is not possible to determine the excess to be remitted to each, the vendor shall remit forty-nine percent (49%) of such excess to the City. The retention by the vendor of any excess collections, or the intentional failure to remit punctually to the ~~Finance Officer~~ Director of Finance the full amount required to be remitted by the provisions of this Article, is hereby declared to be a violation of this Article.

**Section 12.** Section 4-35 of the Dacono Municipal Code is hereby amended to read as follows (words to be added underlined; words to be deleted ~~stricken~~):

**Sec. 4-35. - Tax returns; content, consolidation and reporting periods.**

(a) Tax return: content, form. The returns to be filed by the taxpayer, or the taxpayer's trustee, manager, officer or director, shall contain such information and be completed in such manner and upon such forms as the ~~Finance Officer~~ Director of Finance may prescribe. When a return filed by a taxpayer does not include a signature, a correct City account number or any other information required by the ~~Finance Officer~~ Director of Finance, the ~~Finance Officer~~ Director of Finance has the right to send back to the taxpayer the return and payment. The ~~Finance Officer~~ Director of Finance may consider an improperly filed return to be not filed with the City. A valid digital signature, or the equivalent thereof, on a filed return transmitted electronically over the Internet or transmitted by other similar means shall be accepted and held as a written signature. Signing a return over the Internet can be done by any means acceptable to the ~~Finance Officer~~ Director of Finance. A signature on a return sent via fax is accepted and held as a written signature.

(b) Consolidation of returns. Upon prior approval of the ~~Finance Officer~~ Director of Finance, A vendor doing business in two (2) or more places or locations, whether in or without the City, and collecting taxes hereunder, may file one (1) return covering all such places or locations, when accompanied by a supplemental report showing the gross sales and service and net taxable sales and service and taxes collected thereon for each such place or location.

(c) Reporting periods. Vendors must report and remit the tax on a monthly basis if the tax due per month, on average, is three hundred dollars (\$300.00) or greater and on a quarterly basis if the average monthly tax due is less than three hundred dollars (\$300.00). The ~~Finance Officer~~ Director of Finance may permit a vendor or licensed consumer whose monthly tax collected is less than fifteen dollars (\$15.00) to make returns and remit taxes annually. Nonretail businesses and home-based businesses that are required to file a return may be permitted by the ~~Finance Officer~~ Director of Finance to file yearly (on an annual basis). If any taxpayer who has been granted permission to file returns and pay tax on other than a monthly basis becomes delinquent, authorization for such alternate method of reporting may be revoked by the ~~Finance Officer~~ Director of Finance. Thereafter, following notice of such revocation, the taxpayer shall file returns and pay tax on a monthly basis. If the accounting methods regularly employed by the vendor or licensed consumer in the transaction of his or her business, or other conditions, are such that the returns aforesaid made on a calendar-month basis will

impose unnecessary hardship, the ~~Finance Officer~~ Director of Finance may, upon request of the vendor or licensed consumer, accept returns at such intervals as will, in his or her opinion, better suit the convenience of the taxpayer and will not jeopardize the collection of the tax.

**Section 13.** Section 4-36 of the Dacono Municipal Code is hereby amended to read as follows (words to be added underlined; words to be deleted ~~stricken~~):

**Sec. 4-36. - Duties and powers of ~~Finance Officer~~ Director of Finance.**

The administration of the licensing provisions of this code is hereby vested in the City Clerk; and the administration of all other provisions of the code and of the City sales and use tax is hereby vested in and shall be exercised by the ~~Finance Officer~~ Director of Finance, who shall prescribe forms and formulate and promulgate, with the approval of the City ~~Administrator~~ Manager, appropriate rules and regulations to effectuate the purpose of this code, in conformity with this code and subject to other provisions of law relating thereto, for the making of returns, for the ascertainment, assessment and collection of the taxes imposed and for the proper administration and enforcement thereof, and to provide uniform methods of adding the tax, or the average equivalent thereof, to the purchase price. The ~~Finance Officer~~ Director of Finance is authorized to delegate any duty or power to a subordinate unless otherwise provided herein.

**Section 14.** Section 4-37 of the Dacono Municipal Code is hereby amended to read as follows (words to be added underlined; words to be deleted ~~stricken~~):

**Sec. 4-37. - ~~Finance Officer~~ Director of Finance to examine returns.**

For the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of the tax due from any taxpayer, the ~~Finance Officer~~ Director of Finance shall have power to examine or cause to be examined by an employee, agent or representative designated by him or her for that purpose, any books, papers, records or memoranda bearing upon the matters required to be included in the return. Subject to the provisions of the code, the ~~Finance Officer~~ Director of Finance is authorized to prescribe the duties and powers of such officers, accountants, experts and other persons as may be necessary in the performance of his or her duty.

**Section 15.** Section 4-38 of the Dacono Municipal Code is hereby amended to read as follows (words to be added underlined; words to be deleted ~~stricken~~):

**Sec. 4-38. - Audits.**

(a) Taxpayer's retention of records. It shall be the duty of every person liable to the City for any tax to keep and preserve for a period of at least three (3) years such books, accounts and records as may be necessary to determine the amount of such tax liability.

(b) Records to be made available for audit. All such books, accounts and records, together with all bills, receipts, invoices, cash register tapes or other documents of original entry supporting the entries in the books, shall be maintained and shall be open for examination at any reasonable time by the ~~Finance Officer~~ Director of Finance. The records should show:

- (1) Gross receipts from sales or rental payments from leases of tangible personal property (including any services that are part of the sale or lease) made in the City, irrespective of whether the seller or lessor regards the receipts to be taxable or nontaxable.
- (2) All deductions allowed by law and claimed in filing returns.
- (3) Total purchase price of all tangible personal property purchased for sale, consumption or lease in the City.

(c) Travel required to perform an audit. In the case of a person who does not keep the necessary books, accounts and records within the City, it shall be sufficient if such person produces within the City such books, accounts and records or such information as shall be reasonably required by the ~~Finance Officer~~ Director of Finance for examination by the ~~Finance Officer~~ Director, or, in lieu thereof, said person shall pay in advance, or as approved by the ~~Finance Officer~~ Director, such travel, lodging, meal and related expenses as shall reasonably be incurred by the ~~Finance Officer~~ Director in examination of said books, accounts and records at such place where said books, accounts and records are kept.

(d) Coordinated audit.

- (1) Any taxpayer licensed in the City and holding a similar sales tax license in at least four (4) municipalities that administer their own sales tax collection may request a coordinated audit as provided herein.
- (2) Within fourteen (14) days of receipt of notice of an intended audit by any municipality that administers its own sales tax

collection, the taxpayer may provide to the ~~Finance Officer of the City~~ Director of Finance, by certified mail, return receipt requested, a written request for a coordinated audit indicating the municipality from which the notice of intended audit was received and the name of the official who issued such notice. Such request shall include a list of those Colorado municipalities utilizing local collection of their sales tax in which the taxpayer holds a current sales tax license and a declaration that the taxpayer will sign a waiver of any passage-of-time-based limitation upon the City's right to recover tax owed by the vendor for the audit period.

- (3) Except as provided in Subsection (7) below, any taxpayer who submits a complete request for a coordinated audit and promptly signs a waiver of limitation, if required, may be audited by the City during the twelve (12) months after request is submitted only through a coordinated audit involving all municipalities electing to participate in such an audit.
- (4) If the City desires to participate in the audit of a taxpayer who submits a complete request for a coordinated audit pursuant to Subsection (3) above, the ~~Finance Officer~~ Director of Finance shall so notify the finance director of the municipality whose notice of audit prompted the taxpayer's request within ten (10) days after receipt of the taxpayer's request for a coordinated audit. The ~~Finance Officer~~ Director of Finance shall then cooperate with other participating municipalities in the development of arrangements for the coordinated audit, including arrangement of the time during which the coordinated audit will be conducted, the period of time to be covered by the audit, and a coordinated notice to the taxpayer of those records most likely to be required for completion of the coordinated audit.
- (5) If the taxpayer's request for a coordinated audit was in response to a notice of audit issued by the City, the ~~City's Finance Officer~~ Director of Finance shall facilitate arrangements between this City and other municipalities participating in the coordinated audit unless and until an official from some other participating municipality agrees to assume this responsibility. The ~~Finance Officer~~ Director of

Finance shall cooperate with other participating municipalities to, whenever practicable, minimize the number of auditors that will be present on the taxpayer's premises to conduct the coordinated audit on behalf of the participating municipalities. Information obtained by or on behalf of those municipalities participating in the coordinated audit may be shared only among such participating municipalities.

- (6) If the taxpayer's request for a coordinated audit was in response to a notice of audit issued by the City, the City's ~~Finance Officer~~ Director of Finance shall, once arrangements for the coordinated audit between this City and other participating municipalities are completed, provide written notice to the taxpayer of which municipalities will be participating, the period to be audited and the records most likely to be required by participating municipalities for completion of the coordinated audit. The ~~Finance Officer~~ Director of Finance shall also propose a schedule for the coordinated audit.
- (7) The City may conduct an audit in conjunction with another municipality at its own discretion.
- (8) The coordinated audit procedure set forth in this Section shall not apply:
  - a. When the proposed audit is a jeopardy audit;
  - b. To audits for which a notice of audit was given prior to the effective date of this Article;
  - c. When a taxpayer refuses to promptly sign a waiver of limitation; or
  - d. When a taxpayer fails to provide a timely and complete request for a coordinated audit as provided in Paragraph (2) above.

**Section 16.** Section 4-39 of the Dacono Municipal Code is hereby amended to read as follows (words to be added underlined; words to be deleted ~~stricken~~):

**Sec. 4-39. - Tax reports and returns.**

(a) City's preservation of records. All reports and returns of taxes received by the Department of Finance covered by this code shall be preserved until the City Clerk orders them destroyed.

(b) Confidential nature of returns. Except in accordance with judicial order, consent of the taxpayer or as otherwise provided by law, the ~~Finance Officer~~ Director of Finance, the City ~~Administrator~~ Manager and the City Attorney shall not divulge or make known in any way financial information disclosed in any document, report or return filed in connection with any of the taxes covered by this code. The officials charged with the custody of such documents, reports and returns shall not be required to produce them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the City, at the direction of the ~~Finance Officer~~ Director of Finance or City ~~Administrator~~ Manager, in an action or proceeding under the provisions of any such taxing or open record statutes when the report of facts shown thereby are directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit into evidence, so much of said reports, or of the facts shown thereby, as are pertinent to the action or proceeding, and no more.

(c) Taxpayer request for records. Nothing contained in this Section shall be construed to prohibit the delivery to a person or his or her duly authorized representative of a copy of any return or report filed in connection with his or her tax. Such copies may be certified by the ~~Finance Officer~~ Director of Finance and, when so certified, shall be evidence equally with and in like manner as the originals and may be received by the courts of this State as evidence of the contents.

(d) Publication of statistics. Nothing in this Section shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof.

(e) Records available to authorized jurisdictions. Notwithstanding the provisions of this Section, the ~~Finance Officer~~ Director of Finance in his or her discretion may furnish to the County Finance Director or Treasurer and his or her authorized personnel, to the Colorado Department of Revenue Executive Director and his or her authorized personnel, to the taxing officials of any State political subdivisions, to the taxing officials of any other state and its political subdivisions, and to the United States, any financial information contained in tax returns and related schedules and documents filed pursuant to this code, or in the report of an audit or investigation made with respect thereto provided; provided that such financial information is to be used only for tax purposes.

**Section 17.** Section 4-40 of the Dacono Municipal Code is hereby amended to read as follows (words to be added underlined; words to be deleted ~~stricken~~):

**Sec. 4-40. - Notice by mail.**

The taxpayer shall at all times have the burden of ensuring that his or her correct mailing address, e-mail address and fax number are on file with the ~~Finance Officer~~ Director of Finance. In the event that a notice is sent to the taxpayer pursuant to this code and said notice is not received by the taxpayer through no fault of the City, or the notice is returned by the post office as undeliverable or rejected by the taxpayer, such notice shall be deemed given on the date mailed, and the City shall have no further obligation to complete service of the notice.

**Section 18.** Section 4-41 of the Dacono Municipal Code is hereby amended to read as follows (words to be added underlined; words to be deleted ~~stricken~~):

**Sec. 4-41. - Hearings.**

(a) Request for hearing. Any taxpayer may request a formal or informal hearing on any proposed tax by reason of notice of final determination; assessment and demand for payment, or by reason of denial of his or her claim for refund, by application to the ~~Finance Officer~~ Director of Finance within fifteen (15) days of the date that a notice of deficiency, assessment or denial of refund is sent by the ~~Finance Officer~~ Director of Finance. The request for hearing shall set forth the taxpayer's reasons for and the amount of the requested changes in the deficiency, assessment or denial of refund.

(b) Hearing time and place. The ~~Finance Officer~~ Director of Finance shall notify the taxpayer in writing of the time and place for such hearing thirty (30) days prior thereto, unless the taxpayer requests shorter notice or an extension of time. In no event shall the hearing be held more than sixty (60) days after the ~~Finance Officer's~~ Finance Director's receipt of request for a hearing. The ~~Finance Officer~~ Director of Finance shall notify the taxpayer in writing of the time and place of such hearing.

(c) Informal hearing. If the taxpayer elects to participate in an informal hearing, which hearing must be held within thirty (30) days of the ~~Finance Officer's~~ Finance Director's receipt of the taxpayer's request for a hearing, additional informal hearings shall not be permitted except at the discretion of the ~~Finance Officer~~ Director. Informal hearings shall be conducted in any manner acceptable to the taxpayer and the ~~Finance Officer~~ Director of Finance with the purpose of

settling the outstanding issues between the parties. If no settlement is reached, the taxpayer must request, in writing, a formal hearing on the record within fifteen (15) days after the informal hearing, and the ~~Finance Officer~~ Director of Finance shall give notice of the formal hearing pursuant to Subsection (b), above. If the taxpayer fails to request a formal hearing, all further rights to a hearing and appeal are waived and the taxpayer shall be bound by the notice of final determination; assessment and demand for payment or final denial of refund.

(d) ~~Finance Officer~~ Director of Finance to conduct formal hearing. The hearing shall be held before the ~~Finance Officer~~ Director of Finance or a hearing officer designated by the ~~Finance Officer~~ Director. At the hearing, the taxpayer may assert any facts, make any arguments and file any briefs and affidavits he or she believes are pertinent to his or her case. The taxpayer shall be notified of the name of the hearing officer fifteen (15) days before the hearing date, and any objection by the taxpayer to the hearing officer shall be filed in writing at least forty-eight (48) hours prior to the hearing. All reasonable costs to the City for a hearing officer must be paid by the taxpayer requesting the formal hearing when the hearing officer determines no change in the tax due.

(e) Hearing based on written brief. The taxpayer may also file a written brief and such other written materials or documents as he or she shall deem appropriate, and request that the ~~Finance Officer~~ Director of Finance reconsider the deficiency without a hearing. The ~~Finance Officer~~ Director of Finance shall proceed to reconsider the deficiency in the same manner as if the written material submitted had been presented at a hearing pursuant to this Section. The submission of written material shall be considered for all purposes the same as a request for and submission of the material at a hearing. The City staff and/or agents shall be permitted to respond in writing to the submittals of the taxpayer. Rebuttal submissions may be permitted at the discretion of the ~~Finance Officer~~ Director of Finance.

(f) Time limitation on request for hearing. After the expiration of fifteen (15) days from the date that the notice of final determination; assessment and demand for payment or denial of refund is sent, if the tax has not been paid, or if no request for hearing has been requested or no written brief has been filed by the taxpayer, then the notice of final determination; assessment and demand for payment previously mailed, faxed or e-mailed shall constitute a final assessment of the amount of the tax specified, together with interest and penalty, or shall constitute a final denial of refund, as the case may be. The ~~Finance Officer~~ Director of Finance may promptly take necessary steps to collect all amounts owed. The taxpayer shall have no further right to a hearing, trial or appeal on the facts of the case.

(g) ~~Finance Officer~~ Director of Finance adjust tax under question. Based on the evidence presented at any hearing or filed in support of the taxpayer's contentions, the ~~Finance Officer~~ Director of Finance may modify or abate in part or in full the tax and the interest and penalty related to such tax questioned at the hearing, or may approve a refund.

(h) Formal hearing determination notices. After a formal hearing, upon rejection, in whole or in part, of the claim for refund or upon the finding by the ~~Finance Officer~~ Director of Finance that, on hearing the evidence, an assessment in whole or in part has been made against the taxpayer validly, the ~~Finance Officer~~ Director shall send a hearing determination notice to the taxpayer, setting forth the amount of claim for refund denied or the amount of deficiency assessment of taxes found due, stating therein the grounds for allowance or rejection in whole or in part.

(i) Tax due date after hearing. Unless an appeal is taken as provided in Section 4-42 of this Article, the tax, together with interest thereon and penalties, if any, shall be paid within thirty (30) days after the hearing determination notice is sent by the ~~Finance Officer~~ Director of Finance to the taxpayer.

**Section 19.** Section 4-42 of the Dacono Municipal Code is hereby amended to read as follows (words to be added underlined; words to be deleted ~~stricken~~):

**Sec. 4-42. - Appeals.**

The taxpayer may appeal the hearing determination notice of the ~~Finance Officer~~ Director of Finance issued pursuant to Section 4-41 within thirty (30) days of the date that such determination is sent by the ~~Finance Officer~~ Director. Such appeal shall be conducted pursuant to the terms of Rule 106(a)(4) of the Colorado Rules of Civil Procedure or by the method of appeals set forth in Section 29-2-106, C.R.S.

**Section 20.** Section 4-45 of the Dacono Municipal Code is hereby amended to read as follows (words to be added underlined; words to be deleted ~~stricken~~):

**Sec. 4-45. - Assessment, penalties and interest.**

(a) Assessment. Subsection (b) below shall apply if the ~~Finance Officer~~ Director of Finance determines that any person, taxpayer or vendor has failed, neglected or refused:

- (1) To collect all taxes due;

- (2) To make a return and pay all taxes due;
- (3) To remit the proper amount of tax due;
- (4) To pay in full all taxes due because of negligence, fraud or on a regular basis; or
- (5) To remit taxes due pursuant to an audit, special assessment or special audit assessment.

(b) Assessment notice and due date. Penalties and interest shall be assessed and the ~~Finance Officer~~ Director of Finance shall give to the delinquent person, taxpayer or vendor a written notice of final determination; assessment and demand for payment, which notice shall state the full amount of taxes, penalties and interest due and shall be served personally, by mail or e-mail, which assessment of deficiency amount will be due and payable within fifteen (15) days of the date that such notice is sent by the ~~Finance Officer~~ Director.

(c) Estimated assessment. If the ~~Finance Officer~~ Director of Finance is unable to audit the records of a taxpayer, either due to the taxpayer's refusal or lack of cooperation, due to time constraints or due to other reasons which the ~~Finance Officer~~ Director may reasonably determine, the ~~Finance Officer~~ Director shall make an estimate based upon such information as may be available and shall issue an assessment as provided herein. If a person, taxpayer or vendor neglects or refuses to make a return, the ~~Finance Officer~~ Director of Finance shall make an estimate, based upon such information as may be available, of the taxes due for the period for which such person is delinquent.

(d) Failure to file penalty. If a person, taxpayer or vendor neglects or refuses to make a return as required in this code or fails to pay any sales or use tax as required by this code, and/or unless the taxpayer shows that his or her failure to comply fully with this code is due to reasonable cause, which the taxpayer may prove in a hearing requested pursuant to this code, the ~~Finance Officer~~ Director of Finance 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 set annually by resolution of the Dacono City Council.

(e) Mathematical error on tax returns. In the event that the amount of tax is understated on the taxpayer's return due to a mathematical error, the ~~Finance Officer~~ Director of Finance shall notify the taxpayer by written notice of final determination; assessment and demand for payment of the amount of tax in excess

of that shown in the return which is due and has been assessed. The taxpayer shall have no right of protest or appeal as in the matter of other assessments but shall pay the tax due and assessed or file an amended return to show the true amount of tax due within fifteen (15) days of the date that such assessment is sent by the ~~Finance Officer~~ Director of Finance.

(f) Penalty for fraud. If any deficiency in taxes paid is due to fraud with the intent to evade the tax, there shall be added, instead of the penalty prescribed in Subsection (d) above, a penalty of one hundred percent (100%) of the total amount of the deficiency to the assessment required by Subsection (a) above. Interest on such deficiency shall accrue and be collected at a rate of one and one-half percent (1½%) per month on the amount of such deficiency from the time the return was due.

(g) Special penalty for repeated enforcement. In any assessment issued to a person, vendor or taxpayer against whom enforcement actions or proceedings have been commenced in the past, a special penalty, in addition to all others provided in this code, shall also be assessed. This special penalty shall be equal to the greater of two hundred fifty dollars (\$250.00) or twenty-five percent (25%) of the tax deficiency. For purposes of this Subsection, *enforcement actions or proceedings* shall mean:

- (1) Issuance of a distraint warrant;
- (2) Filing of a lawsuit in the district or county court; or
- (3) Three (3) occurrences of the following in any combination:
  - a. Suspension or revocation of the person's, vendor's or taxpayer's license by the Finance Officer or under Section 4-24;
  - b. Issuance of a summons to Municipal Court for the nonpayment of taxes; or a combination of revocations and summonses.
  - c. Issuance of written notice of final determination, assessment and demand for payment.

(h) ~~Finance Officer~~ Director of Finance may waive penalty. The ~~Finance Officer~~ Director of Finance is hereby authorized to waive, for good cause shown, any penalty assessed as provided in this code. Interest imposed in excess of an amount set by resolution of the City Council shall be deemed a penalty. If the ~~Finance Officer~~ Director of Finance finds that a taxpayer has, in good faith, paid

tax to a vendor, the ~~Finance Officer~~ Director is hereby authorized to abate the interest and penalty in its entirety.

(i) Interest and penalty assessment. Interest and penalties prescribed under this Article 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. If any portion of a tax is satisfied by credit of an overpayment, no interest or penalty shall be imposed under this Section on the portion of the tax so satisfied.

**Section 21.** Section 4-46 of the Dacono Municipal Code is hereby amended to read as follows (words to be added underlined; words to be deleted ~~stricken~~):

**Sec. 4-46. - Jeopardy assessment.**

(a) Jeopardy enforcement. If the ~~Finance Officer~~ Director of Finance finds that collection of the tax will be jeopardized by delay, in his or her discretion, he or she may declare the taxable period immediately terminated, determine the tax and issue notice and demand for payment thereof; and, having done so, the tax shall be due and payable forthwith, and the ~~Finance Officer~~ Director may proceed immediately to collect such tax as provided in Section 4-49.

(b) Immediate enforcement action. In any other case wherein it appears that the revenue is in jeopardy, the ~~Finance Officer~~ Director of Finance may immediately issue demand for payment; and, regardless of the provisions of Sections 4-41 and 4-42 of this Article, the tax shall be due and payable forthwith and, in his or her discretion, the ~~Finance Officer~~ Director may proceed immediately to collect said tax as provided in Section 4-49.

(c) Security for payment. Collection under either Subsection (a) or (b) above may be stayed if the taxpayer gives such security for payment as shall be satisfactory to the ~~Finance Officer~~ Director of Finance.

**Section 22.** Section 4-47(b) of the Dacono Municipal Code is hereby amended to read as follows (words to be added underlined; words to be deleted ~~stricken~~):

**Sec. 4-47. - False or fraudulent refund claim.**

(b) Action to recover fraudulent claims. If any person is convicted of a violation of Subsection (a) above, such conviction shall be prima facie evidence that all refunds received by such person during the current year were obtained unlawfully, and the ~~Finance Officer~~ Director of Finance is hereby empowered and directed to bring appropriate collection proceedings for recovery of such refunds.

**Section 23.** Section 4-48(a) of the Dacono Municipal Code is hereby amended to read as follows (words to be added underlined; words to be deleted ~~stricken~~):

**Sec. 4-48. - ~~Finance Officer's r~~Remedies in case of nonpayment.**

(a) So long as a final assessment remains unpaid, the ~~Finance Officer~~ Director of Finance may take any of the following enforcement procedures against the defaulting taxpayer:

- (1) Take such action as deemed necessary to suspend or revoke the taxpayer's sales tax license.
- (2) Issue a summons to the person, vendor or taxpayer to appear in Municipal Court on charges of violating this code.
- (3) Issue a distraint warrant pursuant to this code.
- (4) File a complaint in County or district court to collect all amounts owed.

(b) Regardless of the collection or enforcement procedures invoked by the ~~Finance Officer~~ Director of Finance, all unpaid taxes, penalties and interest shall be secured by a lien arising by operation of law as provided by this code.

**Section 24.** Section 4-49 of the Dacono Municipal Code is hereby amended to read as follows (words to be added underlined; words to be deleted ~~stricken~~):

**Sec. 4-49. - Enforcing collection by distraint.**

(a) Warrant by Director of Finance. The ~~Finance Officer~~ Director of Finance may issue a warrant under his or her own hand directed to any ~~representative of the Department of Finance, including~~ City agent or the sheriff of any county of the State, commanding him or her to distraint, seize and sell the personal property of the taxpayer, except such personal property as is exempt from execution and sale by any provision of this Article, for the payment of the tax due, together with penalties and interest accrued thereon and collection costs. For purposes of this Section, agent means a representative of the City or an employee of the City, including an employee of the Dacono Police Department, acting at the direction of the Director of Finance. The following constitute grounds for the issuance of a warrant:

- (1) When any deficiency in tax is not paid within fifteen (15) days from the date of notice of final determination; assessment and demand for payment therefor and no hearing has been requested and no appeal from such deficiency assessment has been docketed with any district court of this State within said period;
- (2) When any other amount of tax, penalty or interest is not paid within fifteen (15) days from the date of the assessment and demand for payment thereof; or
- (3) Immediately upon making of a jeopardy assessment or of the issuance of a demand for payment, as provided in Section 4-46.

(b) Warrant by the Court. If the taxpayer does not comply with a warrant issued under subsection (a) of this Section by allowing entry to the premises, the Director of Finance may apply to the municipal court of the City for a warrant authorizing any employee or agent of the City to search for and distrain property located inside the City to enforce the collection of tax liability, pursuant to Rule 241 of the Colorado Municipal Court Rules of Procedure.

~~(b c)~~ Distraint seizure.

- (1) The agent charged with the collection shall make or cause to be made an account of the goods or effects distrained, a copy of which, signed by the agent making such distraint, shall be left with the owner or possessor, or at his or her usual place of abode with some member of his or her family over the age of eighteen (18) years, or at his or her usual place of business with his or her stenographer, bookkeeper or chief clerk; or, if the taxpayer is a corporation, shall be left with any officer, manager, general agent or agent for process, with a note of the sum demanded and the time and place of sale. If said notice cannot be served on the taxpayer within thirty (30) miles of the City, it shall be mailed to the taxpayer's last known address, return receipt requested.
- (2) The agent shall forthwith cause to be published a notice of the time and place of sale, together with a description of the property to be sold, in some newspaper within the county wherein distraint is made or, in lieu thereof and in the

discretion of the ~~Finance Officer~~ Director of Finance, the agent or sheriff shall cause such notice to be publicly posted at the courthouse of the county wherein such distraint is made, and copies thereof to be posted in at least two (2) other public places within said county.

- (3) The time fixed for the sale shall not be less than ten (10) days nor more than sixty (60) days from the date of such notification to the owner or possessor of the property and the publication or posting of such notices. Said sale may be adjourned from time to time by said agent or sheriff if he or she deems it advisable, but not for a time to exceed in all ninety (90) days from the date first fixed for the sale. When any personal property is advertised for sale under distraint as aforesaid, the agent or sheriff making the seizure shall proceed to sell such property at public auction, offering the same at not less than a fair minimum price, including the expenses of making the seizure and of advertising the sale. If the amount bid for the property at the sale is not equal to the fair minimum price so fixed, the agent or sheriff conducting the sale may declare the same to be purchased by him or her for the City. The property so purchased may be sold by the agent or sheriff under such regulations as may be prescribed by the ~~Finance Officer~~ Director of Finance.
- (4) In any case of distraint for the payment of taxes, the real property, goods, chattels or effects so distrained shall be restored to the owner or possessor if, prior to the sale, the amount due is paid, together with the fees and other charges, or may be redeemed by any person holding a chattel mortgage or other evidence of right of possession.

(e d) Certificate of sale and evidence of purchase. In all cases of sale, the agent or sheriff making the sale shall issue a certificate of sale to each purchaser, and such certificate shall be prima facie evidence of the right of the agent or sheriff to make such sale and the conclusive evidence of the regularity of his or her proceedings in making the sale; and shall transfer to the purchaser all right, title and interest of such delinquent taxpayer in and to the property sold. Where such property consists of certificates of stock in the possession of the agent or sheriff, the certificate of sale shall be notice, when received, to any corporation, company or association of said transfer, and said certificate of such sale shall be authority for such corporation, company or association to record the transfer on its books and

records. Where the subject of sale is securities or other evidences of debt in the possession of the agent or sheriff, the certificate of sale shall be good and valid evidence of title in the person holding the same, as against any other person. Any surplus remaining above the taxes, penalties, interest, all costs and all expenses of making the seizure and of advertising the sale shall be returned to the owner or such other person having a legal right thereto; and, on demand, the ~~Finance Officer~~ Director of Finance shall render an account in writing of the sale. Expenses of a seizure include all reasonable costs and expenses incurred by the City in enforcing collection by distraint, including but not limited to attorney's fees and all personnel costs of the City.

**Section 25.** Section 4-50 of the Dacono Municipal Code is hereby amended to read as follows (words to be added underlined; words to be deleted ~~stricken~~):

**Sec. 4-50. - Recovery of unpaid tax by action at law.**

(a) Action at law. The ~~Finance Officer~~ Director of Finance may also treat any such taxes, penalties or interest due and unpaid as a debt due the City from the taxpayer personally. In case of failure to pay the tax or any portion thereof, or any penalty or interest thereon when due, the ~~Finance Officer~~ Director of Finance may receive at law the amount of such taxes, penalties, interest and collection costs in such county or district court of the county wherein venue may be proper under the applicable rule of civil procedure. The return of the taxpayer or the assessment made by the ~~Finance Officer~~ Director of Finance as herein provided shall be prima facie proof of the amount due.

(b) Writs of attachment. ~~Such actions may be actions in attachment, and writs of attachment may be issued to the sheriff. To recover such taxes, penalties or interest due, the Director of Finance may bring an action in attachment, and a writ of attachment may be issued to the sheriff or City agent. For purposes of this Section, agent has the same meaning as in Section 4-49.~~ In any such proceedings, no bond shall be required of the ~~Finance Officer~~ Director of Finance nor shall any sheriff require of the ~~Finance Officer~~ Director of Finance an indemnifying bond for executing the writ of attachment or writ of execution upon any judgment entered in such proceedings. The ~~Finance Officer~~ Director of Finance may ~~prosecute~~ pursue appeals or writs of error in such cases without the necessity of providing a bond therefor. The City Attorney, when requested by the ~~Finance Officer~~ Director of Finance, may commence action for the recovery of taxes due under this Article, and this remedy shall be in addition to all other existing remedies or remedies provided in this Article.

(c) Civil action to enforce lien against real property. In any case where there has been a refusal or neglect to pay any tax due the City, the ~~Finance Officer~~ Director of Finance may cause a civil action to be filed in the district court of the county in which is situated any real property which is subject to said tax, to enforce the lien of the City for such tax upon the real property situated in that county or in any other county in the State which may be subject to such lien or to subject any real property or any right, title or interest in real property to the payment of such tax. The court shall decree a sale of such real property and distribute the proceeds of such sale, according to the findings of such court in respect to the interest of the parties and of the City. The proceedings in such action and the manner of sale, the period for and manner of redemption from such sale and the execution of deed of conveyance shall be in accordance with the law and practice relating to foreclosures of mortgages upon real property. In any such action, the court may appoint a receiver of the real property involved in such action if equity so requires.

(d) Exhaustion of administrative remedies. No lawsuit may be filed by the City until the time for the taxpayer to exercise his or her administrative remedies or to file an appeal has expired. This remedy shall be in addition to all other existing remedies available to the City. No de novo trial of the facts shall be permitted if the taxpayer has had a hearing before the ~~Finance Officer~~ Director of Finance or has had the opportunity for such a hearing, but failed to exhaust his or her administrative remedies.

**Section 26.** Sections 4-51(c), (d) and (e) of the Dacono Municipal Code are hereby amended to read as follows (words to be added underlined; words to be deleted ~~stricken~~):

**Sec. 4-51. - Sales and use tax constitutes lien.**

(c) Whenever the business or property of any taxpayer subject to this code shall be placed in receivership, bankruptcy or assignment for the benefit of creditors, or seized under distraint for property or other taxes, all taxes, penalties and interest imposed by this code, and for which said person is in any way liable under the terms of this code, shall be a prior and preferred lien against all the property of said taxpayer. No sheriff, receiver, assignee or other officer shall sell the property of any person subject to this code under process or order of any court, without first ascertaining from the ~~Finance Officer~~ Director of Finance the amount of any taxes due and payable under this code. If there are any such taxes due, owing or unpaid, it shall be the duty of such officer to first pay the amount of said taxes out of the proceeds of said sale before making payment of any moneys to judgment creditors or other claims of whatsoever nature.

(d) At any time a tax has accrued but is unpaid, the ~~Finance Officer~~ Director of Finance may issue a notice of tax lien, setting forth the name of the taxpayer, the amount of the tax, penalties and interest, the date of the accrual thereof, and that the City claims a first and prior lien therefor on the real and tangible personal property of the taxpayer. Said notice may be filed in the office of the clerk and recorder of any county in the state in which the taxpayer owns real or tangible personal property. Issuance of such notice and filing thereof shall be at the discretion of the ~~Finance Officer~~ Director of Finance and shall not affect the priority or validity of the lien provided by this code, which arises by operation of law when the tax accrues and is payable.

(e) Any lien for taxes as shown on the records of the county clerk and recorder as herein provided, upon payment of all taxes, penalties and interest covered thereby, shall be released by the ~~Finance Officer~~ Director of Finance in the same manner as mortgages and judgments are released.

**Section 27.** Section 4-52 of the Dacono Municipal Code is hereby amended to read as follows (words to be added underlined; words to be deleted ~~stricken~~):

**Sec. 4-52. - Compromise.**

(a) Compromise limitation. After an assessment has become final because the taxpayer has waived his or her right to a hearing or because the hearing officer has issued his or her final decision, the ~~Finance Officer~~ Director of Finance may compromise to the extent of one thousand dollars (\$1,000.00) any collection proceeding arising under this code.

(b) Compromise record. Whenever a compromise, in value or valuation, of one thousand dollars (\$1,000.00) or less is made by the ~~Finance Officer~~ Director of Finance in any case, there shall be placed on file in the office of the ~~Finance Officer~~ Director the opinion of the ~~Finance Officer~~ Director with his or her reasons therefor, which may include financial inability of the taxpayer to pay a greater amount, with a statement of:

- (1) The amount of tax assessed;
- (2) The amount of interest, additional amount, additional to the tax or assessable penalty, imposed by law on the person, vendor or taxpayer against whom the tax is assessed; and
- (3) The amount paid in accordance with the terms of the compromise.

**Section 28.** Section 4-53(a) and (d) of the Dacono Municipal Code are hereby amended to read as follows (words to be added underlined; words to be deleted ~~stricken~~):

**Sec. 4-53. - Evasion or avoidance of tax.**

(a) It shall be a violation of this Article for any retailer, vendor, consumer, purchaser or any other person subject to the tax levied by this Article to refuse to make any return provided to be made by this Article; to make any false or fraudulent return or any false statements in any return; to fail or refuse to make payment to the ~~Finance Officer~~ Director of Finance of any taxes collected or due the City; in any manner to evade the collection and payment of the tax or any part thereof imposed by this Article; or for any person or purchaser to fail or refuse to pay such tax, evade the payment thereof or aid or abet another in any attempt to evade the payment of the tax imposed by making a false return or a return containing a false statement. Such person shall be subject to prosecution and the imposition of penalties as provided by law. Any person in violation of any Section of this Article shall be subject to these same penalties.

(d) Summons to court for violations of code. The City ~~Administrator~~ Manager or his or her duly authorized agents, including personnel of the Department of Finance, have the authority of peace officers, as that term is defined under the Colorado Municipal Court Rules, to summon into Municipal Court any person who may be in violation of this Article as set forth under Subsection (a) above.

**Section 29.** If an article, section, paragraph, sentence, clause or phrase of this Ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each part or parts thereof, irrespective of the fact that any one part or parts may be declared invalid or unconstitutional.

**Section 30.** Any person charged with a violation of this ordinance, upon conviction thereof, shall be subject to the General Penalty in Section 1-70 of the Dacono Municipal Code, which provides for incarceration for a period not to three hundred sixty-four (364) days, a fine not to exceed one thousand dollars (\$1,000.00), or both such fine and imprisonment. As provided in Section 1-70(b), each and every day during any portion of which any violation is committed, continued or permitted shall be a separate violation, and the violator shall be punished accordingly.

**Section 31.** The repeal or modification of any provision of any prior ordinance by this ordinance shall not release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture or liability, either civil or criminal, which shall have been incurred under such provision,

and each provision shall be treated and held as still remaining in force for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions.

**INTRODUCED, READ, ADOPTED ON FIRST READING, AND ORDERED PUBLISHED AND POSTED BY TITLE this 23rd day of March, 2020.**

**PUBLIC HEARING AND SECOND READING WILL BE THE 13th day of April, 2020, AT 6:00 P.M. AT DACONO CITY HALL, 512 CHERRY STREET, DACONO, CO.**

**READ, ADOPTED ON SECOND READING, APPROVED, SIGNED, AND ORDERED PUBLISHED BY TITLE this 13th day of April, 2020.**

CITY OF DACONO, COLORADO

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Joe Baker, Mayor

ATTEST:

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Valerie Taylor, City Clerk

Summary of Ordinance No. 883 **“AN ORDINANCE AMENDING THE CITY’S SALES AND USE TAX CODE CONCERNING ENFORCEMENT AND HEARING PROCEDURES AND TITLES OF THE CITY MANAGER AND DIRECTOR OF FINANCE”** Amends the City’s Sales and Use Tax Code to revise enforcement and hearing procedures and to update the titles of the City Manager and Director of Finance throughout the Sales and Use Tax Code.



**Kathleen M. Kelly**  
(303) 298-1601 tel  
(303) 298-1627 fax  
*kathleen@kellypc.com*

**MEMORANDUM**

TO: Mayor and City Councilmembers  
City of Dacono

FROM: Kathleen M. Kelly /s/

DATE: March 11, 2020

RE: Ordinance No. 795, An Ordinance Amending Chapter 4 of the Dacono Municipal Code to Provide for Collection, Audit and Enforcement by the City of the City's Sales and Use Tax – Correction of Scrivener's Error

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While working with City staff to draft the proposed Ordinance Amending the City's Sales and Use Tax Code concerning Enforcement and Hearing Procedures and Titles of the City Manager and Director of Finance, a conflict was identified between Sections 4-14 (Imposition of Use Tax) and 4-18 (Taxable Property) of the City's use tax ordinances. Research into the history of the use tax code revealed there is an error in the current Code.

The City's use tax was first imposed in 1978 by Ordinance No. 201, and it applied only to construction and building materials and motor vehicles. As a statutory municipality at the time, that was the extent of the City's authority with regard to use taxes. Subsequent ordinances were adopted amending the sales and use tax code, but none expanded the scope of the use tax.

The City's Home Rule Charter was approved by the voters in 1994. Once it became a home rule municipality, the City had the authority to impose a use tax beyond building materials and motor vehicles; however, since adoption of TABOR in 1992, expanding the use tax base would have required voter approval.

In 2015, the City Council adopted Ordinance No. 795 to provide for self-collection of the City's sales tax. Ordinance No. 795 repealed and re-enacted the entire sales and use tax code in Chapter 4, Article 1 of the Dacono Municipal Code.

Prior to adoption of Ordinance No. 795, Section 4-18 (Taxable Property) read as follows:

“The tangible personal property taxable by this Chapter shall be the same as the tangible property taxable pursuant to Part 109, Article 2, Title 29, C.R.S.” That section of the state statutes is the authority for statutory municipalities to impose a use tax, but only on construction and building materials and motor vehicles.”

Ordinance No. 795 repealed and re-enacted Section 4-18, along with the rest of the sales and use tax code, and it currently reads as follows:

“The tangible personal property subject to the City’s use tax shall be the same as the tangible property subject to the City’s sales tax, except as otherwise provided in this Article.”

The result of this change was the use tax base was inadvertently expanded. This change in the use tax base would have required voter approval at a TABOR election, and such an election was not held.

The City Council’s stated intent for the adoption of Ordinance No. 795 was only to provide for self-collection, and was not an attempt to expand the scope of the use tax. In fact, the last recital of Ordinance No. 795 states “the provisions of this ordinance are not intended, and shall not be construed to, extend or increase the application, rate or amount of tax or constitute a tax policy change directly causing a net tax revenue gain or decrease from the sales and use tax currently imposed by the City.” Therefore, it appears this change to Section 4-18 was a drafting error.

The attached ordinance has been prepared with this scrivener’s error in Section 4-18 corrected. Once signed by the Mayor, it will be sent to the City’s codifier so the correction can be made in the Code. Also, City staff has been working with those who have paid use taxes to the City since adoption of Ordinance No. 795 to identify whether any overpayments have been made as a result of this error.

Please let me know if you have any questions.

cc: AJ Euckert, City Manager  
Jordan Eichen, Assistant City Manger  
Kelly Stroh, Director of Finance  
Valerie Taylor, City Clerk