

CITY OF GLENDALE, COLORADO

ORDINANCE NO. 5

SERIES OF 2005

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GLENDALE, COLORADO, AMENDING CHAPTER 3.21 OF THE CODE OF ORDINANCES OF THE CITY OF GLENDALE REGARDING THE ADMINISTRATION OF THE OCCUPATIONAL PRIVILEGE TAX

WHEREAS, in November 2003, the electorate of the City of Glendale approved the assessment of an occupational privilege tax to be collected from each employer and employee in the City of Glendale; and

WHEREAS, the City Council of the City of Glendale has a fiduciary responsibility to the residents of the City to insure that all municipal taxes properly and fairly assessed are collected.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Glendale, Colorado, that:

SECTION 1. Chapter 3.21 is hereby amended to read as follows (words to be deleted shown in ~~strikeout~~; words to be added underlined), except 3.21.090 through 3.21.130 are replaced in their entirety:

**3.21.010 Definitions.**

When not clearly otherwise indicated by the context, the following terms, words and phrases, as used in this chapter, shall have the following meaning:

A. "Business" means any lawful business, trade, occupation, profession, avocation, or calling of any kind having a fixed or transitory situs within the City of Glendale.

B. "City" means the City of Glendale, Colorado.

C. "City Manager" means the manager of the City or other person or agent designated by him.

~~D.~~ "Employee" means any natural person who:

1. Performs sufficient services for wages or other remuneration for any period of time in a calendar month to receive as compensation therefore no less than \$750 upon a salary, wage, commission, or other compensation basis, as long as any part of such services are performed within the City; and
2. Is considered an employee for purposes of withholding federal income tax under the provisions of the ~~Federal~~ Internal Revenue Code, as amended, and the regulations promulgated thereunder.

~~E.~~ "Employer" means any person, association, corporation (including a corporation not for profit), governmental administration, agency, arm, authority, board, body, branch, bureau, department, division, subdivision, section or unit, or any other entity who or that employs one (1) or more persons on a salary, wage,

commission, or other compensation basis who owns a business located within the City of Glendale as the term business is defined in this Code.

FE. "Finance Director" means the Finance Director of the City or such other person designated by the City. "Finance Director" shall also include such person's designee.

GF. "Tax" means the occupational privilege tax imposed by this Chapter.

H. "Tax Inspector" means the City Manager or other person or agent designated by him, and shall likewise refer to the Tax Administrator or Finance Director.

IG. "Taxpayer" means any person who is required to pay the tax imposed by this Chapter, including employees and employers.

### **3.21.020 Administration of Chapter; Rules and Regulations.**

The authority to administer the provisions of this Chapter is vested in the ~~Finance Director~~ City Manager, who shall prescribe forms and reasonable rules and regulations in conformity with this Chapter for the making of returns, the ascertainment, assessment and collection of the tax imposed under this Chapter, and the proper administration and enforcement of this Chapter. The ~~Finance Director~~ City Manager shall have the discretion to determine whether to enforce the provisions of this Chapter in the municipal court or through the administrative review process set forth in this Chapter.

### **3.21.030 Imposition of Tax.**

A. There is hereby levied upon all employees and employers within the City of Glendale an occupational privilege tax of \$5.00 per month. Each employee within the City of Glendale shall pay an Employee Occupational Privilege Tax of \$5.00 per month for each and every month in which such employee performs or offers work or services during a given calendar month for a business located within the City of Glendale and each employer shall pay an Employer Occupational Privilege Tax of \$5.00 per month for each and every employee for each and every month in which such employee performs or offers work or services during a given calendar month for a business located within the City of Glendale. This tax is in addition to all other taxes of any type or nature levied by the City.

B. Businesses with owners, partners or proprietors engaged in business located within the City of Glendale are subject to the Employer Occupational Privilege Tax of \$5.00 per month for each owner, partner, or proprietor, even if that person pays the employee tax through an employer at a different job. The \$750 earnings test does not apply to owners or partners since they are not employees.

### **3.21.040 Exemptions.**

The following entities are exempt from the tax imposed by this Chapter:

A4. An employee, otherwise subject to taxation under the provisions of this article, who performs services within the City and one (1) or more other municipalities for a single employer may be exempt from payment of the City's Employee Occupational Privilege Tax if both of the following conditions are met in each calendar month for which an exemption is claimed:

1. The number of hours of services such employee performs in another municipality exceeds the number of hours of services performed in the City; and
  2. Such employee has actually paid to the municipality in which the majority of hours or services were performed an employee occupational privilege tax substantially the same as the one that would have been imposed under this article.
- B. The burden of proving that any employee is exempt from payment of the Employee Occupational Privilege Tax under this section shall be on the employee claiming such exemption, and such proof shall be by a preponderance of evidence.
- C. Nothing contained in this ~~article~~ Chapter shall be construed to empower the City to levy and collect the tax hereby imposed upon any taxpayer not within the taxing power of the City under the Constitution of the United States and the Constitution of the State of Colorado.

**3.21.050 Responsibility to Pay Tax. Reporting Period – Collection Provisions – Report Forms.**

~~On or before the last day of each month, each employer within the City shall prepare and file a return for the preceding calendar month showing computation of the tax imposed by this Chapter upon such forms as the Finance Director may prescribe, whether or not such tax is due and owing to the City, and shall pay such tax to the Finance Director.~~

A. A reporting period shall be monthly for employers who exceed a \$60.00 tax liability per month; quarterly for an employer with less than \$100.00 in tax liability per quarter; and annually only upon approval of the Tax Inspector. A report shall be made and tax paid under the provisions of this chapter on or before the last day of the month following the reporting period. Timely filing shall be evidenced by the postmark date. A report shall be made for the reporting period previously established whether or not tax is due for that period. A taxpayer's failure to timely file a tax return when one is due as provided in this Chapter for the reporting period shall be assessed a penalty of \$100.00. A \$100.00 penalty shall be assessed for every month said tax return remains unfilled, to a maximum of \$500.00 for each return.

B. All moneys withheld from the employee by the employer as taxes imposed by this Chapter shall be and remain the property of the City while in the hands of the employer. Until paid to the Tax Inspector, the moneys shall be held in trust by the employer for the sole use and benefit of the City. Failure by the employer to pay the moneys to the City Manager shall be a violation of this Chapter.

C. The City shall use the standard occupational privilege tax reporting form and any subsequent revisions thereto adopted by the City Manager by the first full month commencing 120 days after the effective date of the regulation adopting or revising such standard form. The City shall furnish each employer collecting/remitting City occupational privilege taxes such tax return form, which form shall be filled out by the employer, or his duly authorized agents, and shall be submitted to the Tax Inspector along with the tax payment.

D. The Tax Inspector shall, as soon as practical after receipt of a taxpayer's report, recompute the tax by the use of known and visible factors, and if the resulting recomputed tax is less than that shown and paid by the taxpayer, the excess shall be

credited toward the taxpayer's obligation for the next reporting period. If the recomputed tax is more than that shown and paid by the taxpayer, the difference shall be recorded as a deficiency. The taxpayer shall be notified of the deficiency as provided in Section 3.21.110.

E. Willful disregard of the requirements for reporting and remittance of tax due, failure to pay the deficiency within 15 days of receipt of the Tax Inspector's notice of deficiency, unless appealed, shall, in addition to constituting a violation of this Chapter, subject the taxpayer to penalties and interest provided in Section 3.21.090.

### **3.21.060 Return Required Upon Sale of Business.**

Any taxpayer who sells a business or stock of goods or quits business shall be required to make out a return and pay all taxes due and owing to the City as provided in this Chapter within 10 days after the date the taxpayer sells out the business or stock of goods or quits business. The purchaser of any such business or stock of goods shall be required to withhold sufficient purchase money to cover the amount of taxes due and unpaid until such time as the taxpayer produces a receipt from the ~~Finance Director~~ Tax Inspector showing that the taxes have been paid or a certificate that no taxes are due. If the purchaser of a business or stock of goods fails to withhold the purchase money as provided herein and the tax remains due and unpaid after the 10-day period allowed, the purchaser, as well as the taxpayer, shall personally be liable for the payment of unpaid taxes.

### **3.21.070 Duty to Keep Books and Records.**

It shall be the duty of every taxpayer to keep and preserve suitable records and other such books or accounts as may be necessary to determine the amount of tax for which the taxpayer is liable under this Chapter. Further, it shall be the duty of every taxpayer to keep and preserve for a period of three years all such books, invoices, and other records, which shall be open for examination at any time by the ~~Finance Director~~ Tax Inspector. If a taxpayer keeps and maintains any books, invoices, accounts and other records outside of the City, upon demand by the ~~Finance Director~~ Tax Inspector, such taxpayer shall make the same available at a suitable place within the City to be designated by the ~~Finance Director~~ Tax Inspector for examination, inspection, and audit. Such taxpayer may elect to pay the expenses involved in conducting the audit at a location outside the City if it is not possible to provide the necessary records within the City.

### **3.21.080 Investigation of Taxpayer's Books.**

A. For the purposes of ascertaining the correctness of a return or determining the amount of tax due from any person, the ~~Finance Director~~ Tax Inspector may:

1(4). Conduct investigations and hearings concerning any matters covered by this Chapter.

2(2). Examine any relevant books, papers, records, or memoranda of any such person;

3(3). Require the attendance of such person, any officer, agent, or employee thereof, or any person having knowledge of such matter;

4(4). Take testimony, under oath administered by the ~~Finance Director~~ City Manager, and require proof of such person's information.

B. When the Tax Inspector has scheduled an audit or examination of the records not less than 14 days in advance, and has so notified the taxpayer, and the

taxpayer fails to make available the records required in Section 3.21.070 at the appointed time, the City Manager may apply to any judge of the District Court in the County of Arapahoe, Colorado, for a subpoena to require the taxpayer to appear before the City Manager, produce any of the foregoing information in the taxpayer's possession and testify under oath before the City Manager. if the City Manager is unable to secure from the taxpayer information relating to the correctness of the taxpayer's return, the City Manager may apply to any judge of the District Court in and for Arapahoe County for subpoenas to such other persons as the City Manager believes may have knowledge of the taxpayer's return. If any of the persons so served with subpoenas fail to respond thereto, the City may apply to the Court for such relief as provided by law.

C. If the City provides written notice to the taxpayer prior to the expiration of the audit period that the latter's records will be audited pursuant to this Chapter, such audit period shall be extended 90 days after the date of expiration of the audit period. "Audit period" is the 36-month period preceding the date of the notice of audit.

D. Performance of an audit does not constitute a statute of limitations or preclude additional audits of the same period within the parameters of this section.

E. Except in accordance with judicial order or as otherwise provided by law, the City Manager and agents, clerks, and employees thereof shall not divulge any information gained from any return filed under the provisions of this Chapter. The officials charged with the custody of returns filed shall not be required to produce such returns or evidence of any matters contained therein in any action or proceeding in any court, except on behalf of the City Manager in an action or proceeding under the provisions of this Chapter to which the City Manager is party or on behalf of any party to an action or proceeding under the provisions of this Chapter or to punish a violator thereof or pursuant to any judicial order in which event the court may require the production of and may admit in evidence so much of such returns or of the facts shown thereby as are pertinent to the action or proceeding and no more.

F. No provision in this section shall be construed to prohibit the delivery to a taxpayer or to his duly authorized representative of a copy of any return or report filed in connection with his tax, nor to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the information contained therein, nor to prohibit the inspection of the City Attorney or any other legal representative of the City of the report or return of any taxpayer who shall bring an action to set aside or review the tax based thereon or against whom an action or proceeding is contemplated or has been instituted under this Chapter.

G. The provisions of this section shall not preclude the City Manager, his agents, clerks, or employees from divulging any information gained from any return or audit to the federal government, the State, the Department of Revenue, the City, or any other municipality, the City Attorney, or the City Manager; nor shall the City Manager and his agents, clerks, or employees be liable to any person, firm or corporation for such disclosure made for the purpose of computing or collecting the tax due and owing from any person, firm or corporation, or for the purpose of verifying compliance with this Chapter or for the purpose of investigating any criminal or illegal activity.

H. If, as a result of any audit or investigation of any taxpayer's records, taxes are found to be due and owing under this Chapter, a Notice of Assessment shall be issued to such taxpayer by the ~~Finance Director~~ Tax Inspector. Such taxes, including penalty and interest thereon, shall become due and payable within 20 days after the date upon which the Notice of Assessment is issued; provided, however, that within such 20-day period, the taxpayer may petition the ~~Finance Director~~ City Manager for a hearing on such assessment as provided in this Chapter.

**3.21.090 Inability to Establish Exact Tax Due—Estimates—Penalties.**

A. The Tax Inspector may, in any reasonable manner possible, estimate the amount of tax due, to which penalties and interest will be added, in the event any taxpayer prohibits the establishment by the Tax Inspector of an accurate and exact amount of tax due by:

1. Refusing to report in accordance with the provisions of this chapter;
2. As the seller of the business, failing to file the report and remit the taxes required by this chapter;
3. Intending to leave the City without paying any taxes which are lawfully owed;
4. Engaging or intending to engage in any activity which the Tax Inspector believes will jeopardize collection of taxes authorized by this chapter.

B. When an estimate of taxes is made, the Tax Inspector shall serve notice thereof on the taxpayer by personal service, first class, certified or registered mail to the taxpayer's last known address, or by leaving a copy with the person in charge at the taxpayer's business establishment or last known address. In the event the taxpayer cannot be found at his last known address or notices sent by the City are returned by the post office, no further attempts at providing notice shall be required. The burden shall at all times be on the taxpayer to inform the City of the taxpayer's current address. Unless the taxpayer files a written demand for an administrative hearing and determination of tax liability, as provided in Section 3.21.110 of this chapter, within 10 days from the date of receipt of such notice, he shall conclusively be deemed to have accepted the estimate as a fair and accurate determination of his tax obligation and shall thereby waive the right to contest that determination.

C. In any case where it appears that collection of revenues from taxes lawfully imposed by this chapter is in jeopardy, the Tax Inspector may immediately issue demand for payment. Upon issuance of such demand for payment, the tax required therein shall be due and payable, and the Tax Inspector may proceed forthwith to collect the taxes by any lawful means, including, not by the way of limitation, filing of liens upon the property subject to tax, issuance and execution of distraint warrants, or filing of summons and complaint in any competent court; provided, however, that collection under this section may be stayed upon the provision by taxpayer to the Tax Inspector of such security as, in the opinion of the Tax Inspector, shall be satisfactory to insure payment to the City of all taxes lawfully owed by taxpayer.

D. Penalty for Negligence. When a sales tax deficiency exists from underreporting or failure to pay due to negligence or a knowing, intentional disregard

of the provisions of this chapter or rules and regulations promulgated in this chapter without the intent to defraud, penalty and interest shall be assessed as follows:

1. The penalty shall be 10% of the delinquent tax or deficiency or \$15.00, whichever is greater.

2. The annual rate of interest assessed pursuant to this section shall be the rate established by the City Manager and approved by the City Council. The Rate shall be set at 18% per year until such time it is changed in accordance with the provisions of this chapter.

E. Penalty for Fraud. If any part of delinquent tax or deficiency is due to fraud with the intent to evade the tax, the penalty shall be 100% of the total amount of the deficiency. The Tax Inspector shall mail a written notice of assessment to the taxpayer. The amount of the tax due, including the penalty and interest, shall become due and payable within 10 days after the notice of assessment is mailed by the Tax Inspector. Interest shall be assessed at the rate specified in subsection D, 2.

F. Special Penalty for Enforcement Proceedings. When any person liable for the payment of tax has repeatedly failed, neglected or refused to pay the tax within the time specified for such payments, and the Tax Inspector has been required to exercise enforcement proceedings against the taxpayer three or more times to collect such taxes due, the Tax Inspector is authorized to assess and collect the amount of such taxes due together with all the interest and penalties thereon provided by law and also an additional amount equal to 15% of the delinquent taxes or deficiency, interest and penalties due, or the sum of \$25.00, whichever amount is greater.

G. For good cause shown, the Tax Inspector is authorized to waive any penalty assessed under this chapter. For purposes of this chapter, interest shall never be deemed a penalty.

### **3.21.100 Limitation of Actions.**

A. No tax or interest thereon or penalties with respect thereto, shall be assessed, nor shall any notice of lien be filed, or distraint warrant issued, or suit for collection be instituted, nor any other action to collect the same be commenced, more than three years after the date on which the tax was or is payable, nor shall any lien continue after such period, except for actual or estimated taxes assessed before the expiration of such period, provided notice of lien has been filed prior to the expiration of such period.

B. In the case of a false or fraudulent return with intent to evade tax, or in the case of a failure to file a return, the tax together with interest and penalties thereon may be assessed, or proceedings for the collection of such taxes may be begun, at any time.

C. Before the expiration of such period of limitation, the taxpayer and the City Manager may agree in writing to an extension thereof and the period so agreed upon may be extended by subsequent agreements in writing.

D. The period of limitation provided in this section shall not run against the City for an audit period if written notice is given to the taxpayer prior to the expiration of the statute of limitations that the latter's records will be audited pursuant to this chapter.

### **3.21.110 Deficiency Notice—Taxpayer’s Remedies.**

A. When the City asserts that taxes are due in an amount greater than the amount paid by a taxpayer, the City shall mail a deficiency notice to the taxpayer by certified mail. The deficiency notice shall state the additional taxes due, and shall state, in clear and conspicuous type, that the taxpayer has the right to demand an administrative hearing to protest the deficiency.

B. In the event the taxpayer disputes the tax liability imposed by any deficiency notice, he shall file a written demand with the City Manager for an administrative hearing and determination of tax liability by the City Manager within 20 calendar days of receipt of the deficiency notice, which demand will stay the sale under any distraint warrant until the conclusion of the hearing. This demand shall include the name, business address and license number of the taxpayer, a copy of the notice sent by the City, the taxable periods and the amounts of tax which are being disputed, and a statement of the grounds upon which the taxpayer bases his claim. In the event it is determined at the hearing that the taxpayer's liability is less than the amount in the possession of the City Manager, such excess shall be paid to the taxpayer forthwith. Failure to demand an administrative hearing and determination of tax liability shall constitute a waiver of the right to contest such liability; however, when such determination is requested or when a request for a refund is timely made, the decision rendered therein shall be appealable as provided in this section.

C. The hearing provided in subsection B shall be informal and no transcript, rules of evidence, or filing of briefs shall be required, but the taxpayer may elect to submit a brief, in which case the City may submit a brief. The City Manager shall hold such hearing and issue the decision thereon within 90 days after receipt of the taxpayer's written demand therefore, except the City may extend such period if the delay in holding the hearing or issuing the decision thereon was occasioned by the taxpayer, but, in any such event, the City Manager shall hold such hearing and issue the decision thereon within 180 days of the taxpayer's demand in writing therefore.

D. If the dispute was not resolved by the informal hearing, within 30 days of the City Manager's decision the taxpayer may request in writing, a formal hearing on the record before the City Council or its appointed hearing officer, which shall be held within 60 days of the taxpayer's request. Any appeal from the decision rendered after such formal hearing shall be pursuant to Rule 106 of the Colorado Rules of Civil Procedure. City Council is aware that H.B. 1007 provides for an appeal to the state pursuant to C.R.S. 29-2-106.1 (3)(a). However, the City Council is satisfied that this chapter provides sufficient safeguards to afford a taxpayer substantive, as well as procedural, due process in appealing any disputed tax. Therefore, the City Council has elected to delete such state hearing from the taxpayer's administrative remedies as written and explained in this chapter.

E. The taxpayer shall have no right to any form of appeal if he has not exhausted his administrative remedies or if he fails to request a hearing within the time period provided in subsection B of this section. For purposes of this subsection, "exhaustion of administrative remedies" means:

1. The taxpayer has timely requested in writing a hearing before the City Manager and the City Manager has held such hearing and issued a decision thereon; or

2. The taxpayer has timely requested in writing a hearing before the City Manager and the City Manager failed to hold such hearing or issue a decision thereon within the time periods provided in subsection C of this section.

F. In the event of appeal under Rule 106, C.R.C.P., the taxpayer shall post a bond in twice the amount of the taxes, interest and other charges stated in the City Council's decision which are contested on appeal, or the taxpayer may, at his option, deposit the disputed amount with the City Manager in lieu of posting bond as a condition precedent to exercising his right to appeal.

**3.21.120 Unpaid Tax—Lien—Additional Remedies of City—Distribution of Estates.**

A. Any tax imposed by this chapter, together with the interest and penalties provided and the cost of collection which may be incurred by the City, shall be and, until paid, remain a first and prior lien upon:

1. The goods, stock-in-trade and business fixtures owned or used by the taxpayer, installment agreement, title-retaining contract or other contractual arrangement; and

2. The real and personal property owned or leased by taxpayer, and shall take precedence on all such property over other claims and mortgages.

B. A notice of lien shall be served on the taxpayer and a copy of such notice shall be filed in the real estate records of Arapahoe County prior to the issuance of a distraint warrant.

C. The lien provided in this section may be foreclosed by seizing under distraint warrant and selling at public auction so much of the property covered by the lien as may be necessary to discharge the lien. Such distraint warrant may be issued by the Tax Inspector whenever the taxpayer is in default on the payment of tax, interest and penalty, and may be served and the goods or property subject to such liens seized and sold by the Tax Inspector or any member of the City Police Department.

1. A signed inventory of the property distrained shall be made by the City or its agent. Prior to the sale, the owner or possessor shall be served with a copy of the inventory, a notice of the sum of the tax due and the related expenses incurred to date, and the time and place of sale.

2. A notice of the time and place of the sale, together with the description of the property seized and to be sold, shall be published not less than two times in a newspaper of general circulation within the county where distraint is made.

3. The time fixed for the sale shall not be less than 10 days nor more than 60 days from the date of distraint. The sale may be postponed by the City or agent for no more than 90 days from the date originally fixed for the sale.

4. The property shall be sold at public auction for not less than a fair minimum price, and if the amount bid for the property is less than the fair minimum price so fixed, the property may be declared to be purchased by the City and the City shall file a release of lien thereon. If the property is

purchased by the City, such property may be disposed of in the same manner as other City property.

5. The property may be offered first by bulk bid, then subsequently for bid singularly or by lots, and the City or its agent may accept the higher bid.

6. The property offered for sale may be redeemed if the owner or possessor or other person holding an unperfected chattel mortgage or other right of possession pays the tax due and all accrued collection costs no less than 24 hours before the sale.

7. The City or its agent shall issue to each purchaser a certificate of sale which shall be prima facie evidence of its right to make the sale and transfer to the purchaser all right, title, and interest of the taxpayer in and to the property sold.

a. When the property sold consists of certificates of stock, the certificate of sale shall be notice to any corporation, company, or association to record the transfer on its books and records.

b. When the property sold consists of securities or other evidences of debt, the certificate of sale shall be good and valid evidence of title.

8. Any surplus remaining after satisfaction of the tax due plus any costs of making the distraint and advertising the sale may be distributed by the City to the owner or such other person having a legal right thereto.

D. The taxpayer or any person who claims an ownership interest or right of possession in the distrained property may petition the City Manager, or the Municipal Court if the property was seized pursuant to a warrant used by the court, for the return of the property.

1. The grounds for return of the property shall be that the person has a perfected interest in such property which is superior to the City's interest or that the property is exempt from the City's lien.

2. The fact finder shall receive evidence on any issue of fact necessary to the decision of the petition. If the fact finder determines by a preponderance of the evidence in favor of the taxpayer or other petitioner, the property shall be returned.

E. In lieu of seizure of property pursuant to a distraint warrant, the Tax Inspector may cause a civil action to be filed in the District Court of Arapahoe County to enforce the City's lien for 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 the real property or any right, title, or interest therein to the payment of such tax. The court shall adjudicate all matters involved in such action and may decree a sale of the real property and distribute the proceeds of such sale according to the findings of the 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 a deed of conveyance shall be in accordance with the laws and practice regulations relevant to foreclosures of mortgages upon real property.

F. The Tax Inspector may also treat any such taxes, penalties or interest due and unpaid as a debt due the City from the taxpayer and may recover at law the amount of such taxes, penalties, interest, and costs of collection in any county or district court having jurisdiction of the amounts sought to be collected in the county wherein the taxpayer resides or has his principal place of business.

1. The return of the taxpayer or the assessment made by the City, as in this chapter, shall be prima facie proof of the amount due.

2. No such civil action may be filed by the City until the time for the taxpayer to exercise his administrative remedies or to file an appeal has expired.

3. This remedy shall be in addition to all other existing remedies available to the City.

G. Whenever the business or property of any taxpayer subject to this chapter is subject to receivership, bankruptcy or assignment for the benefit of creditors, or seized under distraint for property taxes, all taxes, penalties and interest imposed by this chapter and for which the taxpayer is in any way liable shall be a prior and preferred lien against all the property of the taxpayer. No sheriff, receiver, assignee, or other officer shall sell the property of any person subject to this chapter under process or order of any court without first ascertaining from the Tax Inspector the amount of any taxes due under this chapter. If any tax is due, the officer shall pay the amount of the taxes out of the proceeds less costs before making payment to any judgment creditor or other claimants.

H. In any action affecting the title to real estate or the ownership or rights to possession of personal property, the City may be made a party defendant for the purpose of obtaining an adjudication or determination of its lien upon the property involved therein, and in any such action, service of summons upon the City Manager or any person in charge of the City Manager's office is sufficient service upon the City.

I. For the purpose of facilitating settlement and distribution of estates, trusts, receivership, other fiduciary relationships and the assets of the corporations in the process of dissolution or that have been dissolved, the City Manager may agree with the fiduciary or surviving corporate directors upon an amount of taxes due from the decedent or from the decedent's estate, the trust, receivership or other fiduciary relationship, or corporation for any periods of tax liability under this chapter. Payment in accordance with such agreement fully satisfies the tax liability for the periods the agreement covers, unless the taxpayer has committed fraud or malfeasance or misrepresented a material fact regarding the tax or liability therefore.

1. Except as provided in paragraph 3 of this subsection, any personal representative of a decedent or the estate of a decedent, any trustee receiver, or other person acting in a fiduciary capacity, or any director of a corporation in the process of dissolution or that has been dissolved who distributes the estate or fund under such person's control without having first paid any taxes due from such decedent, decedent's estate, trust estate, receivership, or corporation and assessed within the periods authorized by this chapter, is personally liable to the extent of the property distributed by

such person for any unpaid taxes of the decedent, decedent's estates, trust estate, receivership, or corporation imposed by, due and assessed within the periods authorized by this chapter.

2. The distributee of a decedent's estate, a trust estate, or fund and the stockholder of any dissolved corporation who receives any of the property of such decedent's estate, trust estate, funds or corporation is liable under this chapter to the same extent that the decedent, trust estate, fund or corporation is liable under this chapter.

3. If a tax under this chapter is due from a decedent or the decedent's estate, personal liability of the persons set forth in this section remains in effect only if a determination of the tax due is made and notice and demand therefore issued within 18 months after the decedent's personal representative files with the City Manager a written request for such determination. A request for determination under this paragraph does not extend the otherwise applicable period of limitation.

4. If a tax under this chapter is due from a corporation that is in the process of dissolution or has been dissolved, personal liability of directors or stockholders as provided in this section remains in effect only if a determination of the tax due is made and notice and demand therefore issued within 18 months after the corporation files with the City Manager a written request for such determination, but only if the request states that the dissolution was begun in good faith before the expiration of the 18-month period and the dissolution is completed. A request for determination under this paragraph does not extend the otherwise applicable period of limitation.

### **3.21.130 Violation—Penalties—Period of Limitations.**

A. It is a violation of this chapter to refuse to make any return provided to be made in this chapter, or to make any false or fraudulent return, or any false statement in any return, or to fail or refuse to make timely payment to the City Manager or his authorized agent of any taxes collected or due to the City, or in any manner to evade the collection and timely payment of the tax, or any part thereof, imposed by this chapter, or for any person to fail or refuse to pay such tax or evade the timely payment thereof, or to aid or abet another in any attempt to evade the timely payment of such tax.

1. In his discretion, the City Manager may direct the issuance of a complaint and summons to appear before the Glendale Municipal Court to any person who may be in violation of any of the provisions of this chapter or the rules and regulations promulgated by the City Manager to enforce this chapter.

2. Any person, corporation, partnership, company, association, or other entity which violates Section 3.21.050 of this chapter shall be guilty of a misdemeanor and, upon conviction of such violation, shall be subject to a fine of not more than \$999.00, or imprisonment not to exceed 360 days, or both such fine and imprisonment; provided, however, that no person under the age of 18 years shall be subjected to such imprisonment; and provided further, that issuance of a summons and complaint by the City, and subsequent conviction of a violation of this chapter in the municipal court, shall not prohibit the court from requiring payment of all taxes, penalties and

interest found to be due under this chapter in addition to any fine imposed by the court. Each and every 24-hour period of violation shall constitute a separate violation of this chapter.

3. Nothing contained in this section shall preclude the City Manager from instituting a legal or equitable action in the Arapahoe County District Court for the purposes of enforcing the provisions of this chapter. In the event such an action is undertaken, the City shall be entitled to recover its attorney's fees and costs of litigation expended in the action as a portion of its judgment rendered therein.

B. Unless the limitation period has been extended as provided in this section, the statute of limitations for provisions contained in this chapter shall be as follows:

1. Refunds. Any claim for refund for disputed tax shall be submitted to the City on or before 60 days from the date such taxes were withheld from the employee or paid by the employer.

a. Any claim for refund resulting from a notice of overpayment shall be submitted to the City on or before 30 days after the date of such notice of overpayment.

b. Any other claim for refund shall be filed on or before three years after the date such overpayment was paid to the City.

2. Assessments. No notice of assessment shall be issued more than three years after the due date of the tax due.

3. No notice of lien shall be issued more than three years after the due date of the tax due. If the limitation period is extended, a notice of lien may be filed on or before 30 days from the date of the notice of assessment issued for such extended period.

4. Returns. When a taxpayer fails or refuses to file a return, the tax due may be assessed and collected at any time. In the case of a false or fraudulent return filed with the intent to evade tax, the tax due may be assessed, or proceedings for the collection of such tax due may be begun at any time.

5. The period of limitation may be extended before its expiration.

6. No protest of a notice of assessment or denial of a claim for refund shall be valid if submitted to the City Manager in other than written form or after the period allowed in this chapter.

#### 3.21.140 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 to correctly pay, collect, and remit taxes to the City.

A. As used herein, "claim for recovery" means a claim for reimbursement of Occupational Privilege Taxes paid to the wrong taxing jurisdiction.

B. When it is determined by the Tax Inspector of the City that tax owed to the City has been reported and paid to another municipality, the City shall promptly notify the taxpayer that taxes are being improperly collected and remitted, and that as of the date of the notice the taxpayer must cease improper tax collections and remittances.

C. 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. The decision to make a claim for a recovery lies in the sole discretion of the City. Any claim for recovery shall include a properly executed release of claim from the taxpayer releasing its 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 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.

D. 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.

E. The period subject to a claim for recovery shall be limited to the 36-month period prior to the date the municipality that was wrongly paid the tax receives the claim for recovery.

SECTION 2. Safety Clause. The Glendale City Council hereby finds, determines, and declares that this ordinance is promulgated under the power of the City of Glendale, that it is promulgated for the health, safety and welfare of the public, and that this ordinance is necessary for the preservation of health and safety and for the protection and welfare of the public. The Glendale City Council further determines that the ordinance bears a rational relation to the proper legislative object sought to be attained.

SECTION 3. Severability. If any section, subsection, clause or part of this ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such judgment shall not affect application to other persons or circumstances the validity of the remaining sections, subsections or clauses shall not be affected thereby, each provision, to the extent possible, being severable from the others.

SECTION 4. Effective date. This ordinance shall take effect 30 days after final publication; however, the provisions amended within the ordinance shall not become effective until July 1, 2005.

INTRODUCED BY COUNCIL MEMBER St. James, SECONDED BY COUNCIL MEMBER Davenport AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF GLENDALE, COLORADO, THIS 3<sup>d</sup> DAY OF May, 2005, ORDERED PUBLISHED AND SET FOR PUBLIC HEARING.

ADOPTED ON SECOND READING BY THE CITY COUNCIL OF THE CITY OF  
GLENDALE, COLORADO, THIS 3<sup>rd</sup> DAY OF May, 2005, AND ORDERED  
PUBLISHED.

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Larry Harte, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Anna S. Fine, City Clerk

\_\_\_\_\_  
Jeff Springer, City Attorney