

## **ORDINANCE NUMBER 247**

AN ORDINANCE OF THE CITY OF DONNELLY, VALLEY COUNTY, IDAHO FINDING THAT SAID CITY HAS SIGNIFICANT ECONOMIC DEPENDENCE ON VISITORS AND TRAVELERS; PROVIDING FOR DEFINITIONS; PROVIDING FOR THE IMPOSITION OF CERTAIN NON-PROPERTY TAXES, TO-WIT: A ONE PERCENT (1%) SALES TAX ON THE SALES PRICE OF ALL PROPERTY SUBJECT TO TAXATION UNDER IDAHO CODE 63-33601, ET SEQ., IDAHO SALES TAX ACT AND AN ADDITIONAL THREE PERCENT (3%) OCCUPANCY RENTALS ON HOTEL, MOTEL AND SHORT TERM RENTALS; PROVIDING FOR A TEN (10) YEAR DURATION OF SAID NON-PROPERTY TAXES; ESTABLISHING THE PURPOSES FOR WHICH THE REVENUES DERIVED FROM SAID NON-PROPERTY TAXES SHALL BE USED; PROVIDING FOR THE CITY COUNCIL TO HOLD AN ANNUAL HEARING; AUTHORIZING THE CITY CLERK TO ADMINISTER, REGULATE AND COLLECT SAID NON-PROPERTY TAXES; CREATING FUNDS FOR PROPERTY TAX RELIEF AND GENERAL CAPITAL IMPROVEMENT; PROVIDING FOR PERMITS AND ISSUANCE; PROVIDING METHOD FOR PAYMENT OF TAXES, AUDITS, DEFICIENCY DETERMINATIONS; RE-DETERMINATIONS OF DEFICIENCY, APPEALS, INTEREST ON DEFICIENCY, COLLECTIONS AND ENFORCEMENT; REFUNDS, LIMITATIONS AND INTEREST; PROVIDING FOR RESPONSIBILITY FOR PAYMENT OF TAXES; PROVIDING PERIOD OF LIMITATION ON ASSESSMENT AND COLLECTION; ESTABLISHING SUCCESSOR'S LIABILITY; PROVIDING FOR GENERAL ADMINISTRATION BY CITY CLERK; PROVIDING PENALTIES AND PENALTY CHARGES; PROVIDING EXEMPTIONS; PROVIDING CONFIDENTIALITY OF INFORMATION; PROVIDING FOR COMBINED ADMINISTRATION, SEVERABILITY, REPEALER CLAUSE AND AN EFFECTIVE DATE OF THIS ORDINANCE.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DONNELLY, IDAHO:

**SECTION 1. FINDINGS:** The City Council of the City of Donnelly hereby finds that said City has a population not in excess of 10,000 according to the most recent census and is a City that derives the major portion of its economic well-being from people catering to recreational needs and meeting needs of people traveling to said destination City for an extended period of time; that said City has a significant economic dependence upon visitors and travelers passing through or staying in the community and said City; and, that said visitors and travelers require services of said City which place an undue burden upon the taxpayers of said City.

**SECTION 2. DEFINITIONS:** For the purposes of this Ordinance, the following terms, phrases, words and derivations shall have the meaning given herein, the terms used in this chapter shall have the same definitions as such terms have been defined in the Idaho Sales Tax Act, found at Idaho Code 63, chapter 36, as legislation may from time to time be amended; and the Idaho Sales and Use Tax Regulations as adopted by the Department of Revenue and Taxation, State Tax Commission, as those regulations may from time to time be amended; and the retail sale of liquor by the drink act as the legislation and regulation may from time to time be amended. Whenever in the definitions contained in the Idaho Sales Tax Act or the Idaho Sales and Use Tax Regulations, reference is made to the "State of Idaho", "tax collector", "Idaho Sales Tax Act" or "Act" or "Tax Commission", such reference shall be deemed to be to the City of Donnelly, City Clerk, this chapter, City of Donnelly of Donnelly respectively, unless the context of the reference clearly demonstrates that such interpretation is unreasonable.

**IN THE CITY OF DONNELLY:** Means within the municipal boundaries of the City of Donnelly, Valley County, Idaho.

OUUCPANCY RENTAL: Means and includes the rental or leasing of lodging and sleeping accommodations to members of the public for a fee of any hotel room, motel room, condominium, vacation rental, home, room, recreational vehicle park (RV Park) space, camping space or any other sleeping accommodations, except where a residence is maintained continuously under terms of a lease or similar agreement for a period in excess of thirty (30) days.

OCCUPANCY RENTAL TAX CHARGE: Means and includes the total sales price from the rental use or temporary occupancy of an Occupancy Rental.

PERSON: Means and includes any individual, firm, co-partnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, cooperative, assignee, or any other group or combination acting as a unit.

PURCHASE: Means any transfer, rental, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration. A transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price is a purchase. A transfer for a consideration of any publication or of tangible personal property which has been produced, fabricated, or printed to the special order of the customer is also a purchase.

RETAIL SALES – SALES AT RETAIL: Means a sale for any purpose other than resale in the regular course of business or lease or rental of property in the regular course of business where such rental or lease is taxable under Idaho Code section 63-3612(h).

1. All persons engaged in constructing, altering, repairing or improving real estate, are consumers of the material used by them; all sales to or use by such persons of tangible personal property are taxable whether such persons intend resale of the improved property.
2. For the purpose of this chapter, the sale or purchase of personal property incidental to the sale of real property or used mobile homes is deemed a sale of real property.

RETAILER: Mean and includes:

1. Every seller who makes any retail sale or sales of tangible personal property and every person engaged in the business of making retail sales at auction of tangible personal property owned by the person or others.
2. Every person engaged in the business of making sales for storage, use or other consumption or in the business of making sales at auction of tangible personal property owned by the person or others for storage, use, or other consumption.
3. Every person making more than two (2) retail sales of tangible personal property during any twelve (12) month period, including sales made in the capacity of assignee for the benefit of creditors, or receiver or trustee in bankruptcy, or every person making fewer sales who holds himself out as engaging in the business of selling such tangible personal property at retail or who sells a motor vehicle.
4. When the City Clerk determines that it is necessary for the efficient administration of this act to regard any salesmen, representatives, peddlers, or canvassers as agents of the dealers, distributors, supervisors, or employers under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on the behalf of such dealers, distributors, supervisors, or employers,

the City Clerk may so regard them and may regard the dealers, distributors, supervisors, or employers as retailers for the purpose of this act.

5. Persons conducting both contracting and retailing activities. Such persons must keep separate accounts for the retail portion of their business and pay tax in the usual fashion on this portion.

**SALE:** Means any transfer of title, exchange or barter, conditional or otherwise, of tangible personal property for a consideration and shall include any similar transfer of possession found by the City Clerk to be in lieu of, or equivalent to, a transfer of title, exchange or barter. The following transactions shall be considered a sale when a consideration is transferred, exchanged or bartered:

1. Producing, fabricating, processing, printing, or imprinting of tangible personal property for consumers who furnish, either directly or indirectly, the tangible personal property used in the producing, fabricating, processing, printing, or imprinting.
2. Furnishing, preparing, or serving food, meals or drinks and non-depreciable goods and services directly consumed by customers included in the charge thereof.
3. A transfer of the title or possession of tangible personal property which has been produced, fabricated, or printed to the special order of the customer, or of any publication.
4. Admission to a place or for an event in Idaho, provided that an organization conducting an exempt function as defined in Section 527 or exempted by section 501©3 of the Internal Revenue Code, as incorporated in Idaho Code, Section 63-3004 and collecting any charges for attendance at the aforementioned event, shall not have those admission charges be defined as a sale if the event:
  - a. Are not predominately recreations or commercial; and
  - b. Any included entertainment value is minimal when compared to the charge for attendance; and
  - c. Such entity has paid sales and use tax on taxable property or services used during the event.
5. The use of or the privilege of using tangible personal property or facilities for recreation.
6. Providing hotel, motel and/or short-term rental accommodations, non-depreciable goods, directly consumed by customers and included services, except where residence is maintained continuously under the terms of a lease or similar agreement for a period in excess of thirty (30) days.
7. The lease or rental of tangible personal property.

**SALES PRICE:** Means the total amount for which tangible personal property, including services agreed to be rendered as a part of the sale, is sold, rented or leased, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:

1. The cost of the property sold. However, in accordance with such rules as the City Clerk may prescribe, a deduction may be taken if the retailer has purchased property from some purpose other than resale or rental, has reimbursed his vendor for tax which the vendor is required to pay to the City or has paid use tax with respect to the property, and has resold or rented the property prior to making any use of the property other than retention, demonstration or display while holding it for sale in the regular course of business. If such a

deduction is taken by the retailer, no refund or credit will be allowed to his vendor with respect to the sale of the property.

2. The cost of materials used, labor or service cost, losses, or any other expense.
3. The cost of transportation of the property prior to its sale.
4. The face value of manufacturer's product, the face value of which may only be reimbursed by the manufacturer to the retailer.

Sales price shall not include a gratuity or tip receive when paid to the service provider of a meal. The gratuity or tip can be either voluntary or mandatory but must be given for the service provided and as a supplement to the service provider's income.

The term "sales price" does not include any of the following:

- a) Retailer discounts allowed and taken on sales, but only to the extent that such retailer discounts represent price adjustments as opposed to cash discounts offered only as an inducement form prompt payment.
- b) Any sums allowed on merchandise accepted in payment of other merchandise, provided that this allowance shall not apply to the sale of a "new manufactured home" or a "modular building" as defined herein.
- c) The amount charged for property returned by customers when the amount charged therefore is refunded either in cash or credit; but this exclusion shall not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned.
- d) The amount charged for labor or services rendered in installing or applying the property sold, provided that said amount is stated separately and such separate statement is not used as a means of avoiding imposition of this tax upon the actual sales price of the tangible personal property; except that charges by a manufactured homes dealer for set up of a manufactured home shall be included in the "sales price" of such manufactured home.
- e) The amount of any tax (not including, however, any manufacturers' or importers' excise tax) imposed by the United States upon or with respect to retail sales whether imposed upon her retailer or the consumer.
- f) The amount charged for finance charges, carrying charges, service charges, time-price differential, or interest on deferred payment sales, provided such charges are not used as a means of avoiding imposition of this tax upon the actual sales price of the tangible personal property.
- g) Delivery and handling charges for transportation of tangible personal property to the consumer, provided that the transportation is stated separately and the separate statement is not used as a means of avoiding imposition of the tax upon the actual sales price of the tangible personal property; except that charges by a manufactured homes dealer for transportation of a manufactured home shall be included in the "sales price" of such manufactured home.
- h) Manufacturers' rebates when used at the time of a retail sale as a down payment on or reduction to the retail sales price of a motor vehicle to which the rebate applies. A manufacturer's rebate is cash payment made by a manufacturer to a consumer who has purchased or is purchasing the manufacturer's product from the retailer.



- i) The amount of any fee imposed upon an outfitter as defined in Idaho Code section 36-2102, by a governmental entity pursuant to statute for the purpose of conducting outfitting activities on land or water subject to the jurisdiction of the governmental entity, provided that the fee is stated separately and is presented as a use fee paid by the outfitted public to be passed through to the governmental entity.
  - j) The amount of any discount or other price reduction on telecommunications equipment when offered as an inducement to the consumer to commence or continue telecommunications service, or the amount of any commission or other indirect compensation received by a retailer or seller as a result of the consumer commencing or continuing telecommunications service.
- 5. The sales price of a "New Manufactured Home" or a "Modular Building" as defined in this act shall be limited to and include only fifty-five percent (55%) of the sales price as otherwise defined herein.
  - 6. Taxes previously paid on amounts represented by accounts found to be worthless may be credited upon subsequent payment of the tax provided in this chapter or, if no such tax is due, refunded. If such accounts are thereafter collected, a tax shall be paid upon the amount so collected.
  - 7. Tangible personal property when sold at retail for more than eleven cents (\$.11) but less than one dollar and one cent (\$1.01) through a vending machine shall be deemed to have sold at a sales price equal to one hundred seventeen percent (117%) of the price which is paid for such tangible personal property and/or its component parts including packaging by the owner or operator of the vending machines.

**SALES TAX ACT:** Means the Idaho State Tax Act, Idaho Code 63-3601, et seq., including subsequent amendments thereto, which is hereby adopted by reference. The definitions provided herein may be amended from time to time in accordance with a corresponding amendment that may be made to the Sales Tax Act.

**SELLER:** Means every person making sales at retail or retail sales to a buyer or consumer, whether as agent, broker or principal.

**SHORT-TERM OCCUPANCY CHARGE:** Means and includes the total sales price for the rental use or temporary occupancy of a short-term rental.

**TANGIBLE PERSONAL PROPERTY:** Means personal property which may be seen, weighed, measured, felt or touched, or which is in any other manner perceptible to the senses. The term "tangible personal property" includes any computer software except the following: custom computer programs; computer software that is delivered electronically; remotely accessed computer software; and computer software that is delivered by the load and leave method where the vendor or its agent loads the software at the user's location but does not transfer any tangible personal property containing the software to the user.

- 1. **REMOTELY ACCESSED COMPUTER SOFTWARE:** Means computer software that a user accesses over the internet, over private or public networks, or through wireless media, where the user has only the right to use or access the software by means of a license, lease, subscription, service or other agreement. Notwithstanding the foregoing exclusions or certain types of computer software that constitutes digital music, digital books, digital videos and digital games when the purchaser has a permanent right to use such software and, regardless of the

method of delivery or access. If the right to use digital music, digital books, digital videos or digital games is conditioned upon continued payment from the purchaser it is not a permanent right of use.

2. **COMPUTER SOFTWARE:** Means any computer program, part of a program or any sequence of instructions for automatic data processing equipment or information stored in an electronic medium. Computer software is deemed to be tangible personal property for purposes of this chapter regardless of the method by which the title, possession or right to use the software is transferred to the user.
3. **CUSTOM COMPUTER PROGRAM:** Means any computer software (as defined in this subsection) which is written or prepared exclusively for a customer and includes those services represented by separately stated charges for the modification of existing prewritten programs when the modifications are written or prepared exclusively for a customer. The term does not include a "canned" or prewritten program which is held or existing for general or repeated sale, lease or license, even if the program was initially developed on a custom basis or for in-house use. Modification to an existing prewritten program to meet the customer's needs is custom computer programming only to the extent of the modification, and only to the extent that the actual amount charged for the modification is separately stated on invoices, statements and other billing documents supplied to the purchaser.
4. The term "tangible personal property" does not include advertising space when sold to an advertiser or its agent by the publisher of the newspaper or the magazine in which the advertisement is displayed or circulated.

**TAX:** Means any non-property tax imposed by this Ordinance.

**TAXPAYER:** Means any person subject to or liable for any taxes imposed by this Ordinance.

**SECTION 3. IMPOSITION AND RATE OF CERTAIN NON-PROPERTY TAXES:** The City of Donnelly hereby imposes and shall collect certain local-option non-property taxes, as follows:

1. A municipal sales tax is hereby imposed upon each sale at retail within the City of Donnelly, Idaho, at the rate of one percent (1%) of the sales price of all property subject to taxation under Idaho Code 63-3601, et seq., Idaho Sales Tax Act, including subsequent amendments thereto;
2. An additional three percent (3%) hotel, motel, and short-term occupancy sales tax received from all short-term rental charges for hotel rooms, motel rooms, condominium units, tourist homes, campgrounds, and the like within the city. The Hotel, Motel, short-term rental occupancy tax shall apply to and be computed on the rental of all Hotel, Motel, short-term rental including all credit, installment, conditional or similar rental or lease fees at the time the room occupancy charge is charged. The hotel, motel, short-term rental occupancy tax shall be collected by the owner of the hotel, motel, short-term rental or the authorized agent from the renter or lessee.
3. When the sales price involves a fraction of a dollar, said local-option non-property taxes shall be collected on that fractional portion of the price by adding thereto the tax based upon a bracket system. The bracket system for the collection of the one percent (1%) sales tax shall be as set forth in Exhibit A. The bracket system for the collection of the three percent (3%) non-property tax shall be as set forth in Exhibit B, attached hereto and made a part hereof by

reference. The retailer shall calculate the tax upon the entire amount of purchases of the consumer made at a particular time subject to this Ordinance, and not separately upon each item purchased. The retailer may retain any amount collected under said bracket system which is in excess of the amount of tax for which they are liable to the City during the period as compensation for the work of collecting said tax.

4. All monies collected and/or retained under the provisions of this Ordinance shall be held in trust for the City of Donnelly and for payment thereof to the City Clerk in the manner and at the times provided in this Ordinance.
5. This Ordinance, as well as Idaho State Law, provides that when there is a retail sales transaction within the City of Donnelly, a local-option sales tax is imposed. For a sale of goods, a sale is made in the City when title passes to the buyer in the City. When delivery of good occurs in the City title passes at the time of delivery. If goods are shipped from outside the City into the City, the Seller must obtain a City of Donnelly local-option non-property tax permit pursuant to the terms of Section 9, and the sale is subject to the local-option sales tax. Alternatively, when goods are delivered by a seller within the City to a location outside the City, then title generally passes outside the City, and no sales tax is owed to the City.

SECTION 4. DURATION OF TAXES: The non-property taxes authorized and collected under this Ordinance are hereby imposed for a duration of TEN (10) years from the effective date of this Ordinance.

SECTION 5. PURPOSES OF TAX REVENUES: The local option non-property tax revenue derived from and collected under this Ordinance shall be used only for the following purposes:

- A. New paving, parking, bike paths, public transit, and transportation;
- B. Matching funds to leverage grant funding;
- C. Public Safety;
- D. Parks and land acquisition for new parks facilities;
- E. City beautification including, but not limited to, open space acquisition, streetscapes, burial of overhead utility lines;
- F. Recreational and cultural activities and facilities including, but not limited to, library, community art and cultural events;
- G. Animal shelter support (currently McPaws)
- H. Economic growth, marketing, advertising, promotion and development;
- I. A General Capital Improvement Fund; and
- J. Direct costs to collect and enforce the tax.

SECTION 6. HEARING AND REVIEW BY CITY COUNCIL: The city council shall have the responsibility to develop annual budgets and make specific recommendations for the use of the local option non-property tax revenues derived from the taxes assessed pursuant to this Ordinance.

1. The City Council will appoint a local option non-property tax commission consisting of five (5) business and/or property owners within the City. This commission will hold one meeting to hear all request which have been made for the use of the non-property tax revenues. Following this meeting the commission will present to the City Council the funding recommendations in order to develop a proposed budget for the use of the said revenues to be included in the overall City budget.

SECTION 7. AUTHORIZATION FOR CITY CLERK TO ADMINISTER, REGULATE AND COLLECT SAID NON-PROPERTY TAXES: The City Clerk of the City of Donnelly is hereby authorized and empowered to administer, regulate and collect payment of all non-property taxes adopted and imposed by this Ordinance. Said Clerk shall have all the powers set forth in this Ordinance together with those additional powers necessary and proper to carry out the provisions of this Ordinance.

SECTION 8. CREATION OF PROPERTY TAX RELIEF FUNDS: Pursuant to Idaho Code 50-1045, there is hereby created in the office of the City Clerk a fund to be designated as the "Municipal Property Tax Relief Fund." Any revenues collected under this Ordinance in excess of the amount budgeted by the City Council for the use of said revenues, shall be placed by the City Clerk into the Municipal Property Tax Relief Fund. Such excess revenues shall be used to replace City property taxes in the ensuing fiscal year by the amount of all excess revenues placed in said Municipal Property Tax Relief Fund.

SECTION 9. PERMITS REQUIRED AND ISSUANCE OF PERMITS:

1. Every person desiring to engage in or conduct business of retail sales within this City shall file with the City Clerk an application for a City of Donnelly local option non-property tax permit for each place of business. A separate permit is required for each place of business within the City. Every application for said permit shall be made upon a form prescribed by the City Clerk and shall set forth the name under which the applicant transacts or intends to transact business, the location of the business or places of businesses, and such other information as the City may require. The application shall be signed by the owner, if they are a natural person; or in the case of an association or partnership, by a member or partner, in the case of a corporation by an executive officer or other person authorized by the corporation to sign the application.
2. Upon filing an applicant meeting the requirements set out above, the City Clerk shall issue to each applicant a permit for each place of business. A permit shall not be assignable and shall be valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. It shall at all times be conspicuously displayed at the location for which it was issued. Issuance of a permit may be subject to additional requirements as set forth in this Ordinance.
3. On the face of the permit shall be fixed a municipal non-property tax number which shall be used by the applicant as an identifying number on all filing, payment and correspondence with regard to the non-property tax imposed under this Ordinance.

SECTION 10. METHOD FOR PAYMENT OF TAXES:

1. The taxes imposed by this Ordinance shall be computed and paid for each calendar month. Said taxes are due and payable to the City Clerk on or before the 20<sup>th</sup> day of the succeeding month. The amount of tax paid shall be computed on all sales subject to taxation under this Ordinance. Each person required to hold a City of Donnelly local option non-property tax permit and number shall file a City of Donnelly local option non-property tax return and a copy of their Idaho State Sales Tax return for the month at the same time said taxes are paid to the City Clerk, unless said person has been permitted in writing by the Idaho State Tax Commission to file quarterly sales or use tax returns. Persons who have been permitted to file other than monthly returns shall notify the City Clerk in writing and the City Clerk there

upon may require reporting of the State Tax returns over some other period but shall require payment of taxes on a monthly basis.

2. The first payment of taxes under this Ordinance shall be due and payable together on the 20<sup>th</sup> day of February 2020, for that period beginning January 1, 2020 and ending January 31, 2020. Thereafter all payments shall be made monthly.
3. A City of Donnelly local option non-property tax return shall be filed each and every month by every person engaging in sales subject to taxation under this Ordinance regardless of whether or not any tax is due. Returns shall be signed by the person required to file the return or by a duly authorized agent, OR
4. Unless a said persona has been permitted in writing by the Idaho State Tax Commission to file quarterly sales or use tax returns. Persons who have been permitted to file other than monthly returns shall notify the City Clerk in writing and the City Clerk thereupon may require reporting of State Tax Returns over some other period, a quarterly payment option.
5. A valid sales tax exemption certificate issued by the Idaho State Tax Commission upon filing a copy thereof with the City Clerk shall have the same effect to exempt the sale from the taxes imposed hereunder as in the Idaho Sales Tax Act.

#### SECTION 11. AUDITS – DEFICIENCY DETERMINATIONS:

1. The City Clerk may order an audit of any taxpayer under this Ordinance for the purpose of ascertaining the correctness or completeness of any return or payment.
2. If any error or omission is discovered in such audits or in any other way, the City Clerk may compute and determine the amount of tax due upon the basis of facts obtained from such information within its possession and assert a deficiency. One or more deficiency determinations may be made for the amount due for one or for more than one period. In making such a determination, the City Clerk may offset over payments against amounts due. Further, said determinations shall be made for the period or periods in respect to which the person fails to make a return and shall be based upon any information which is in the City Clerk's possession.
3. The City Clerk shall give written notice of its determination and the amount of its deficiency, including interest, at the rate of twelve percent (12%) per annum from the date due, to the person from whom such deficiency amount is due. Such notice may be given personally or mailed to the person at the address furnished to the City Clerk in the non-property tax permit application.

#### SECTION 12. RE-DETERMINATION OF DEFICIENCY:

1. Any person against whom a deficiency determination is made under this Ordinance, or any person directly interested, may petition in writing for a re-determination within thirty (30) days after service upon the person of notice thereof. If the petition for re-determination is not filed within the thirty (30) day period, the determination becomes final at the expiration of the period.
2. If a petition for re-determination is filed with the thirty (30) day period the City Clerk shall reconsider the determination and, if the person so requests in the petition, grant the person an oral hearing and give said person ten (10) days' notice of the time and place of the hearing

personally or by mail addressed to the person at the address furnished to the City Clerk in said person's application for a non-property tax permit.

SECTION 13. APPEALS, INTEREST ON DEFICIENCY:

1. When a re-determination is made, the City Clerk shall give notice to the taxpayer against whom the re-determination is made. Within thirty (30) days of the date upon which such notice of re-determination is mailed or served, the taxpayer may file an appeal with the City Council or may file a complaint with the District Court for review of the City Clerk's re-determination. There shall be no right of review to the City Council nor to the District Court on the determination of taxes due made by the City Clerk unless a re-determination has been timely filed. No assessment of a deficiency in respect to the tax imposed by this Ordinance or proceeding to collect for its collection shall be made, begun or prosecuted until such notice has been mailed to the taxpayer and expiration of such thirty (30) day period after notice of re-determination, nor if a protest is filed until a decision on the protest becomes final. IF the taxpayer does not protest to the City Council or file an action in District Court within the time prescribed in this section, the deficiency shall be assessed and shall become due and payable upon notice and demand from the City Clerk.
2. Interest upon any deficiency shall be assessed at the same time as the deficiency and shall become due and payable upon notice and demand from the City Clerk and shall be collected as part of the tax at the rate of twelve percent (12%) per annum from the date prescribed for payment of the tax.

SECTION 14. COLLECTIONS AND ENFORCEMENT: As soon as practical after monthly City of Donnelly local option non-property tax return and payment is filed, the City Clerk shall examine the same and determine the correct amount of the tax. For the purpose of ascertaining the correctness of any payment determining the amount of tax due where none has been made, determining liability of any person for any tax payable under this Ordinance, or the liability at law or in equity of any person in respect to any tax provided by this Ordinance or collecting any such liability, the City Clerk, or duly authorized deputy, is authorized to:

1. Examine the books, papers, records, or other data which may be relevant or material to the inquiry;
2. To summon the person liable for the tax or any officer, agent or employee of such person, or any persons having possession, custody or care of books of accounting containing entries relating to the business of the person liable for the tax, to appear before the City Clerk, or deputy, at a time and place named in its summons to produce such books, papers, records or other data and/or give such testimony under oath as may be relevant or material to such inquiry.

SECTION 15. REFUNDS, LIMITATIONS AND INTEREST:

1. If the City Clerk determines that any amount due under this Ordinance has been paid more than once or has been erroneously or illegally collected or computed, the City Clerk shall set forth that fact in its records and the excess amount paid or collected may be credited on any amount due or payable to the City Clerk for non-property taxes from that person, and any



balance refunded to the person by whom it was paid or to his successors, administrators or executors.

2. No such credit or refund shall be allowed or made after one (1) year from the time the payment was made unless before the expiration of such period a claim therefore is filed by the taxpayer.
3. Interest shall be allowed on the amount of such credits or refunds at the rate of twelve percent (12%) per annum from the date which such tax was paid.
4. Appeal from the City Clerk's decision denying in part or in whole a claim for refund shall be made in accordance with the laws of the State of Idaho with regard to claims against municipalities.

SECTION 16. RESPONSIBILITY FOR PAYMENT OF TAXES: Every person with a duty to account for or pay over any tax imposed by this Ordinance on behalf of a corporation, as an officer employee of the corporation, or on behalf of a partnership, as a member employee of the partnership shall be personally liable for payment of such tax, plus penalties and interest.

SECTION 17. PERIOD OF LIMITATION UPON ASSESSMENT AND COLLECTION:

1. The amount of taxes imposed under this Ordinance shall be assessed within three (3) years of the time the return upon which the tax asserted to be due was or should have been filed, whichever is later; provided, however, if a deficiency determination or assessment has been made within the prescribed time, such tax may be collected within a period of six (6) years after assessment. The running of limitations provided by this section shall be suspended for the period during which the City Clerk is prohibited from making the assessment or from collecting or proceeding in Court due to a petition for re-determination or an appeal therefrom, and for thirty (30) days hereafter.
2. In the case of taxes due during the lifetime of a decedent, the tax shall be assessed, and any proceeding in court without assessment for the collection of such tax shall be begun, within six (6) months after written request therefore (filed after the return is made) by the executor, administrator, or other fiduciary representing the estate of such decedent unless the assessment is stayed by a petition for re-determination or any appeal therefrom.
3. In the case of a false or fraudulent return with intent to evade tax, or of a failure to file a return, the tax may be assessed, or a proceeding in Court for collection of such tax may be begun without assessment, at any time within three (3) years after the date of the discovery of the facts constating the fraud.

SECTION 18. SUCCESSORS' LIABILITY:

1. If a vendor liable for any amount of tax under this Ordinance sells out his business or stocks and goods, the vendee shall make an inquiry to the City Clerk and withhold from the purchase price any amount of tax that may be due under this Ordinance until such time as the vendor produces receipt stating that no amount is due.
2. If the purchaser of business or stock of goods fails to withhold from the purchase price as above required, they are personally liable for the payment of the amount required to be withheld by them.

SECTION 19. GENERAL ADMINISTRATION BY CITY CLERK:

1. The City Clerk shall enforce the provisions of this Ordinance and may prescribe, adopt and enforce rules and regulations relating to its administration and enforcement. The City Clerk may employ qualified auditors for examination of taxpayers' books and records, and shall also employ such accountants, investigators, assistants, clerks and other personnel as are necessary for the efficient administration of this Ordinance and may delegate authority to its representatives to conduct hearings, or perform other duties imposed by this Ordinance. If the Taxpayer is found to be in violation of this Ordinance, costs of the audit and administrative fees are hereby authorized and may be assessed by the City.
2. Taxpayers in the City of Donnelly shall keep such records, receipts, invoices, and the other pertinent papers as the City Clerk may require. Each such taxpayer who files tax payments required under this Ordinance shall keep all such records for not less than four (4) years after making such payments unless the City Clerk in writing authorizes their destruction.
3. The City Clerk, or any person authorized in writing by the Clerk, may examine the books, papers, records, and equipment of any taxpayer or any person liable for any tax, and may investigate the character of the business of the person in order to verify the accuracy of any return made, or if no return in made by the person, to ascertain and determine the amount required to be paid. Any taxpayer whose pertinent records are kept outside of the City must bring the recorders to the City for examination by the City Clerk upon request of the latter, or by agreement with the City Clerk permit an auditor designated by the City Clerk to visit the place where the records are kept, and there audit such records.

#### SECTION 20. PENALTIES:

1. Any person who violates any provision of this Ordinance shall be guilty of a misdemeanor, punishable by up to six (6) months in the county jail, and/or one thousand dollars (\$1,000) fine, or both. Furthermore, each month in which a person fails to report, or intentionally fails to accurately compute, or intentionally fails to accurately disclose the total amount of sales or rentals or the amount of tax to be paid, as imposed under this Ordinance, shall be considered a separate offense.
2. Any person who violates any provision of this Ordinance shall have his City of Donnelly local option non-property tax permit and tax number revoked. The City Clerk shall send written notice of revocation of said permit and tax number to the permit holder by mailing the same by certified mail to the address given on the permit application. The permit holder shall have ten (10) days from the date said notice is mailed to file a written request of appeal with the City Council, challenging said revocation. If no appeal is timely made said revocation becomes final. Whenever a person subject to this Ordinance has had said permit and tax number revoked, the City Clerk shall not reissue said permit nor issue a new permit to said person until said person placed with the City Clerk a bond or other sufficient security in the amount equal to three (3) times the actual, determined, or estimated average monthly amount of tax payable by such person pursuant to this Ordinance.
3. The City Clerk, whenever it is deemed necessary to insure compliance with this Ordinance, may require any person subject to this Ordinance to place with it such security as it may determine. The amount of said security shall not be greater than three (3) times the estimated average monthly amount payable by such persons pursuant to this Ordinance. The amount of the security may be increased or decreased by the City Clerk at any time, subject to the limitations set forth above.

4. Any person who violates any provision of this Ordinance shall have all City of Donnelly local option non-property tax permits revoked.
5. Any amount of tax due under this Ordinance for which a person fails to report or accurately compute, shall become a lien upon the property of said taxpayer on the date that the same becomes due, and the City may seek to enforce said lien and collect all taxes and interest due, together with the reasonable costs of collection, including attorney's fee, in a court of competent jurisdiction.
6. For the purposes of property administration of this Ordinance, and to prevent evasion of said local option non-property taxes, the burden of proving that a sale or rental is not a sale under this Ordinance is upon the person who makes the sale or rental in question.

#### SECTION 21. PENALTY CHARGES:

1. Any person who is required to collect and pay over any tax imposed by this Ordinance and fails or refuses to pay over to the City the same when due in accordance with Section 9, hereinabove, shall be liable and pay a penalty charge equal to five percent (5%) of the tax not paid, or a minimum of ten dollars (\$10) whichever is greater. The City Clerk shall assess and collect said fee at the time any delinquent tax payment is tendered. The permit holder shall have ten (10) days from the date payment is made to file a written appeal with the City Council challenging said penalty determination. If no appeal is timely made as herein provided, said penalty determination shall be final.
2. Any person who is required to collect, truthfully account for, and pay over any tax imposed by this Ordinance and who willfully fails to collect such a tax or truthfully account for or pay over such a tax, or willfully attempts in any manner to evade or defeat such a tax or payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the amount of the tax evaded, or not collected, or not accounted for or paid over. The City Clerk shall determine and assess such penalties, and the same shall become due and payable upon notice and demand from the City Clerk. The City Clerk shall send written notice of such penalty charge to permit holder by mailing the same by certified mail to the address given on the permit application. The permit holder shall have ten (10) days from the date said notice is mailed to file a written request of appeal with the City Council challenging said penalty charge determination. If no appeal is timely made as herein provided, said penalty charge determination shall be final.
3. Any person violating any of the provisions in this Ordinance, unless otherwise stated, shall receive a notice of violation and shall pay a fine of one hundred dollars (\$100), If the violation has not been paid within fourteen (14) days after service of the notice of violation the fine shall double to two hundred dollars (\$200). If the fine is not paid within thirty (30) days after service of the notice of violation, then such person or persons shall be guilty of an infraction punishable by the courts and a fine of up to one thousand dollars (\$1,000).

SECTION 22. EXEMPTIONS: Only those transactions which are exempted from the taxes imposed by the State of Idaho pursuant to the Sales Tax Act, as that Act may be amended, are also exempt from the provisions of this Ordinance.

#### SECTION 23. CONFIDENTIALITY OF INFORMATION:

1. No City Clerk of the City of Donnelly, Valley County, Idaho, nor any duly authorized Deputy City Clerk, agent or employee shall divulge or make known to any persons, in any manner, any information whatsoever submitted or obtained, directly or indirectly, pursuant to this

Ordinance, or to permit any non-property tax return or information supplied with regard thereto, or any copy thereof, or any paper or book so obtained, to be seen or examined by any person except as provided by law; provided that in any action or proceeding brought for the collection, remission, cancellation, or refund of the whole or any part of a tax imposed under this Ordinance, or for enforcing the penalties prescribed for making false or fraudulent returns, any and all information contained in or provided with said returns may be made accessible to the elected and appointed officials, officers, and representatives of said City charged with enforcing or defending the same, all such returns, information, statements and correspondence relating hereto may be produced into evidence in any action, civil or criminal, directly pertaining to such returns or the tax imposed on the basis of such returns.

2. The Donnelly City Council, under such rules and provisions as it may prescribe, may permit, notwithstanding the provisions of this Ordinance as to secrecy, the Commissioner of Internal Revenue of the United States or his delegate or the proper officer of any state imposing a tax to inspect the non-property tax returns or information provided or obtained in connection therewith, or may furnish to such officer, or his authorized agent, copies, or an abstract thereof.
3. Nothing in this Ordinance shall prohibit a taxpayer, or authorized representative upon proper identification, from inspecting and copying his own non-property tax returns and information supplied therewith.

SECTION 24. COMBINED ADMINISTRATION: In the event that any other form of a local option tax receives voter approval and becomes a City Ordinance, the City Council and the City Clerk are hereby authorized to combine administration and regulation of non-property taxes for efficiency purposed.

SECTION 25. SEVERABILITY: It is hereby declared to be the legislative intent that the provisions, and parts thereof, of this Ordinance, or any application thereof, be declared invalid or unconstitutional for any reason by a Court of competent jurisdiction, such decision shall not affect the remaining portions of said section, subsection, paragraph, clause or phrase of this Ordinance.

SECTION 26. REPEALER CLAUSE: All Ordinances and Resolutions or parts thereof in conflict with this Ordinance are hereby repealed.

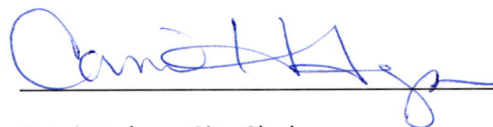
SECTION 27. EFFECTIVE DATE: This Ordinance shall be in full force and effect on October 1, 2019, subject to and after voter approval, passage by City Council and Mayor and publication according to law.

PASSED BY THE CITY COUNCIL and approved by the Mayor this 18, day of March, 2019.



Brian Koch, Mayor

ATTEST:



Cami Hedges, City Clerk