

Cherry Hills Village Municipal Code

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ARTICLE I

General and Special Funds

Sec. 4-1-10. Custody and management of funds.

Monies in the funds created in this Chapter shall be in the custody of and managed by the City Treasurer. The City Treasurer shall maintain accounting records and account for all of said monies as provided by law. All funds or monies belonging to or in custody of the City shall be invested or deposited by the City Treasurer in such manner and in such places as the City Council may determine from time to time, by motion or resolution. All income from the assets of any fund shall become a part of the fund from which derived and shall be used for the purpose for which such fund was created; provided that, except as otherwise provided in this Code or by other ordinances or laws, the City Council may transfer out of any fund any amount at any time to be used for such purpose as the City Council may direct. (Ord. 15, 1968; prior code 1-10-1; Ord. 9 §1, 2003)

Sec. 4-1-20. General Fund.

The General Fund, created under the City Charter, shall consist of the following:

- (1) All cash balances of the City not specifically belonging to any existing special fund of the City.
- (2) All fixed assets of the City (to be separately designated in an account known as the General Fund Fixed Assets) not specifically belonging to any existing special fund of the City. (Ord. 9 §1, 2003)

Sec. 4-1-30. Conservation Trust Fund created.

There is hereby created a special fund, to be known as the Conservation Trust Fund, and the funds therein shall be used only for the purposes allowed by law. (Ord. 9 §1, 2003)

Sec. 4-1-40. Parks and Recreation Fund.

A fund is hereby created for the purpose of accounting for parks and recreation activities and shall be called the Parks and Recreation Fund. (Ord. 2 §1, 2003)

Sec. 4-1-50. Public Improvements Fund.

(a) Revenues for the Public Improvements Fund shall be derived from the General Fund and other resources which may from time to time be determined by the City Council.

(b) Expenditures from the Public Improvements Fund shall be for the purpose of paying the cost of capital improvements to City facilities, including buildings, grounds, roads and bridges, and for the purchasing of equipment and vehicles costing in excess of one hundred dollars (\$100.00). (Ord. 15, 1978; prior code 1-10-2; Ord. 9 §1, 2003)

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ARTICLE II

Delinquent Taxes, Fees, Assessments or Fines

Sec. 4-2-10. Delinquent taxes, notice, interest, penalty, lien.

If any tax, fee, fine, penalty or assessment imposed or assessed pursuant to a provision of this Code has not been paid in full within thirty (30) days after written notice was sent to the obligor of such imposition or assessment, the City Clerk shall issue a notice, setting forth the name of the obligor, the amount of the tax, fee, assessment, fine or penalty and the date of the accrual thereof, and that such tax, fee, assessment, fine or penalty shall be deemed to bear interest at the rate of eighteen percent (18%) from the date of accrual, and that the City claims a first and prior lien therefor on any real or tangible personal property of the obligor situated within the boundaries of the City, except as to preexisting claims or liens of a bona fide mortgagee, pledgee, judgment creditor or purchaser whose rights shall have attached prior to the filing of the notice as herein provided on property of the obligor, other than on the goods, stocks in trade and business fixtures of such obligor. Said notice shall be on forms prescribed by the City Clerk and may be filed in the office of the County Clerk and Recorder, and the filing of such notice shall create such lien on such property and constitute notice thereof. Any such lien as shown on the records of the County Clerk and Recorder, upon payment of all of the tax, fee, assessment, fine or penalty covered thereby, shall be released by the City Clerk in the same manner as mortgages and judgments are released. (Prior code 1-13-1; Ord. 9 §1, 2003)

Sec. 4-2-20. Debt to City, action taken.

The City Clerk may also treat any tax, fee, assessment, fine or penalty due and unpaid as a debt due the City from the obligor. In case of failure to pay such monies, or any portion thereof, and any interest thereon, when due, the City Clerk may direct the City Attorney to bring an action at law to recover the amount of such tax, fee, assessment, fine or penalty, and interest thereon, in the county or district court having jurisdiction. (Prior code 1-13-2)

Sec. 4-2-30. Writs of action, bond.

Such actions may be brought in attachment and writs of action may be issued by the sheriff. In any such proceeding, no bond shall be required of the City, nor shall any sheriff require of the City an indemnifying bond for executing the writ of attachment or writ of execution upon any judgment entered in such proceedings; and the City may prosecute appeals or writs of error in such cases without providing bond therefor. It shall be the duty of the City Attorney, when instructed by the City Clerk, to commence action for the recovery of any tax, fee, assessment, fine or penalty, or interest thereon, and reasonable attorneys' fees and costs incurred in such action, under this Article, and this remedy shall be in addition to all other existing remedies or remedies provided by law. (Prior code 1-13-3)

Sec. 4-2-40. Nonpayment, sale of property.

In any case where there has been a refusal or a neglect to pay any tax, fee, assessment, fine or penalty, or interest thereon, due to the City, and notice has been filed which, under law, creates a lien upon any real property for such monies, the City Clerk may cause a civil action to be filed in the District Court of Arapahoe County to enforce the lien of the City. 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 the City. The proceedings of such action and the manner of sale, the period for and manner of redemption from such sale and the execution of deeds of conveyance shall be in

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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. (Prior code 1-13-4)

Sec. 4-2-50. Court summons.

The City may, at its discretion, summon to court any person who may be in violation of this Article. (Prior code 1-13-5; Ord. 9 §1, 2003)

Sec. 4-2-60. Violations, false statements.

It shall be a violation of this Article for any person subject to a tax, fee, assessment, fine or penalty, or interest thereon, to refuse to make any return provided to be made, to make any false or fraudulent return or false statements in any return, to fail or refuse to make payment to the City of any tax, fee, assessment, fine or penalty, or interest thereon, due to the City, in any manner to evade the payment of such monies, or any part thereof; or for any person to fail or refuse to pay such monies or evade the payment thereof or to aid or abate another in any attempt to evade the payment thereof. Any person making a false return or a return containing a false statement shall have violated this Chapter and shall be subject to prosecution and the imposition of penalties as provided by law. Any person in violation of any section of this Chapter shall be subject to these same penalties. (Prior code 1-13-6; Ord. 9 §1, 2003)

Sec. 4-2-70. Penalties.

Any person who violates any of the provisions of this Article shall be guilty of a violation hereof and shall be punished in accordance with Section 1-4-20 of this Code. (Prior code 1-13-7; Ord. 17, 1985; Ord. 9 §1, 2003)

ARTICLE III

Public Works Contracting

Sec. 4-3-10. Definitions.

When not clearly otherwise indicated by the context, the following words and phrases used in this Article shall have the following meanings:

Competitive bid or *bidding* means and includes any process or system requiring the submission of an offer, bid, proposal, statement of qualification or other information specified by the City to permit a comparative evaluation of goods or services offered to the City.

Construction means the process of building, altering, repairing, improving, remodeling, replacing or demolishing any land, structure or building, or other physical improvement to real property.

Public works or *public work* means any construction activity directed, undertaken or otherwise carried out by the City designed to serve some purpose of public necessity, use, convenience, health, safety or welfare, such as, but not limited to, the grading of public land or the construction of a building, structure, facility, street, trail or other public real property improvement. *Public works* or *public work* does not include maintenance, operation or repair of a public property or

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public improvement that is not definable by a stop or start time or by geographical limits. (Prior code 1-15-1; Ord. 10, 2001)

Sec. 4-3-20. Competitive bidding required; exceptions.

(a) Except as otherwise provided by this Article, all contracts for the construction of public works shall be subject to a competitive bid process in accordance with this Article.

(b) The following contracts are exempted from competitive bidding:

(1) Contracts for public work in an amount of less than twenty-five thousand dollars (\$25,000.00).

(2) Contracts for public work made available through or in cooperation with the State, its agencies and departments, or other governmental or quasi-governmental agencies, which contracts permit the City to obtain goods or services at reasonable cost or under advantageous terms and conditions.

(3) Contracts related to public work for services of individuals or entities possessing a high degree of professional skill, including, but not limited to, architects, engineers and attorneys.

(4) Contracts related to public work for goods or services that are reasonably obtainable, in the opinion of the City Manager or the City Council, only from a single or sole source due to one (1) or more factors such as, but not limited to, specialized skills, unique and relevant experience or exceptional qualifications.

(5) Contracts available to the City by operation of a provision of an existing contract that authorizes one (1) or more terms of renewal or extension, whether such renewal or extension includes the modification, amendment or renegotiation of price, terms or conditions.

(c) Notwithstanding any exemption from competitive bidding stated in Subsection (b) above, the City Council may at its discretion establish and impose a process for the submission of bids where the City Council determines that the public work is reasonably capable of satisfactory and timely completion by several prospective contractors and a competitive selection process will best serve the interests of the City. (Prior code 1-15-2; Ord. 10, 2001)

Sec. 4-3-30. Competitive bidding procedures.

(a) Any competitive bid process required by this Article shall include, at a minimum, a procedure for the notification or advertisement of the City's request for bids; a detailed description of the public works project subject to competitive bid; the designation of one (1) or more consultants, officials or employees responsible for coordinating the competitive bid process; procedures to be employed in the submission and the evaluation of bids; deadlines for the submission of bids; and criteria to evaluate the submitted bids. The City Manager is authorized to prepare administrative procedures consistent with this Article to implement a standardized competitive bidding procedure.

(b) Competitive bidding may include prequalification of a product, service, contractor or bidder based upon stated specifications or experience prior to the submission of a competitive bid. After prequalification, only bids offering the prequalified product, service or contractor or submitted by the prequalified bidder will be accepted by the City in response to a request for competitive bidding.

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(c) Unless a different standard for the evaluation of competitive bids is expressly stated in the request for bids, the applicable standard for the evaluation for all competitive bids shall be the lowest responsive, responsible and qualified bidder. Such standard may include, but not be limited to, a comparative evaluation of the completeness and sufficiency of the bid; the qualifications and experience of the bidder and any subcontractors; quality, availability, delivery, warranty or guarantee of work; and the reasonableness of the price or cost of the offered goods and services. Price or cost alone shall not be the sole criteria for any evaluation of any competitive bid unless specifically stated in the request for bids.

(d) Notwithstanding the provisions of any competitive bid or competitive proposal process, the City may reject any one (1) or more bids as nonresponsive; reject all bids for any reason; modify or extend any deadline; revoke, rescind, amend or modify a request for bids; or terminate the bid process at any time. (Prior code 1-15-3; Ord. 10, 2001)

Sec. 4-3-40. Emergency contracting.

Notwithstanding any other provision of this Article to the contrary, when by reason of emergency or immediate public necessity it is not feasible or practicable to follow the procedures set forth in this Article or to obtain City Council approval, the City Manager is authorized on behalf of the City Council to grant authority or contract for the performance of public work made necessary by an emergency or immediate public necessity as declared by the City Manager. As soon as practical after authorizing the performance of such public work, the City Manager shall notify each member of the City Council of the emergency or immediate public necessity and of the public work authorized by the City Manager. The City Manager shall cause any authorization issued or contract made in accordance with this Section to be presented to the City Council for ratification at the City Council's next available meeting. Wherever possible, the City Manager shall solicit informal bids for public work required by emergency or immediate public necessity and shall endeavor to select the lowest responsive, responsible and qualified bidder for such public work. (Prior code 1-15-4; Ord. 10, 2001)

Sec. 4-3-50. Bonding requirements.

(a) When a contract for public work is awarded in excess of twenty-five thousand dollars (\$25,000.00) pursuant to the competitive bidding requirements of this Article, the following bonds or security shall be delivered to the City and shall become binding on the parties upon execution of the contract:

(1) A performance bond satisfactory to the City, executed by a surety company authorized to do business in the State or otherwise secured in a manner satisfactory to the City, in an amount not less than one hundred percent (100%) of the price specified in the contract; and

(2) A payment bond satisfactory to the City, executed by a surety company authorized to do business in the State or otherwise secured in a manner satisfactory to the City, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount not less than one hundred percent (100%) of the price specified in the contract.

(b) Nothing in this Section shall be construed to limit the authority of the City to require a performance bond or other security in addition to those bonds or in circumstances other than those specified in Subsection (a) above. (Prior code 1-15-5; Ord. 10, 2001)

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Sec. 4-3-60. Construction management – general contractor contracts.

Notwithstanding anything in this Article to the contrary, the City may negotiate construction management-general contractor (CMGC) contracts and design, build and construction, management contracts through the following procedure:

- (1) The City shall informally contact and seek, at a minimum, two (2) requests for proposal to complete the contract project from individuals or firms with experience in the construction of public works; and
- (2) The contract is awarded to the most qualified, responsible and responsive contractor, considering the purpose and nature of the contract. (Prior code 1-15-6; Ord. 10, 2001)

Sec. 4-3-70. Applicability.

This Article shall not apply where federal or state law requires a different or specific competitive selection process or procedure prior to the awarding of a contract for public works. (Prior code 1-15-7; Ord. 10, 2001)

ARTICLE IV

Retail Sales Tax

Division 1 General Provisions

Sec. 4-4-10. Definitions.

The following words and phrases as used in this Article shall have the following meanings:

Automotive vehicle means any vehicle or device in, upon or by which any person or property is or may be transported or drawn upon a public highway, or any device used or designed for aviation or flight in the air. *Automotive vehicle* includes, but is not limited to, motor vehicles, trailers, semi-trailers or mobile homes. *Automotive vehicle* shall not include devices moved by human power or used exclusively upon stationary rails or tracks.

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

Charitable organization means any entity which: a) has been certified as a not-for-profit organization under Section 501(c)(3) of the Internal Revenue Code; and b) is a religious or charitable organization. As used in this definition, a *charitable organization* is an organization which exclusively, and in a manner consistent with existing laws and for the benefit of any indefinite number of persons, freely and voluntarily ministers to the physical, mental or spiritual needs of persons, and which thereby lessens the burden of government.

Consumer means any individual person engaged in business in the City who uses, stores, distributes or otherwise consumes in the City tangible personal property or taxable services purchased from sources inside or outside the City.

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Drugs dispensed in accordance with a prescription means drugs dispensed in accordance with any order, in writing, dated and signed by a licensed practitioner of the healing arts, or given orally by a practitioner, and immediately reduced to writing by the pharmacist, assistant pharmacist or pharmacy intern, specifying the name and address of the person for whom the medicine or drug is offered, and directions, if any, to be placed on the label.

Engaged in business in the City means performing or providing services or selling, leasing, renting, delivering or installing tangible personal property for storage, use or consumption within the City. *Engaged in business in the City* includes, but is not limited to, any one (1) of the following activities by a person:

- a. Directly, indirectly or by a subsidiary maintains a building, store, office, salesroom, warehouse or other place of business within the taxing jurisdiction;
- b. Sends one (1) or more employees, agents or commissioned sales persons into the taxing jurisdiction to solicit business or to install, assemble, repair, service or assist in the use of its products, or for demonstration or other reasons;
- c. Maintains one (1) or more employees, agents or commissioned sales persons on duty at a location within the taxing jurisdiction;
- d. Owns, leases, rents or otherwise exercises control over real or personal property within the taxing jurisdiction; or
- e. Makes more than one (1) delivery into the taxing jurisdiction within a twelve-month period.

Finance Director means the Finance Director of the City or such other person designated by the City.

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

License means a City sales and use tax license.

Lodging services means the furnishing of rooms or accommodations by any person, partnership, association, corporation, estate, representative capacity or any other combination of individuals by whatever name known to a person who, for a consideration, uses, possesses or has the right to use or possess any room in a hotel, inn, bed and breakfast residence, apartment, hotel, lodging house, motor hotel, guest house, guest ranch, trailer coach, mobile home, auto camp or trailer court and park, or similar establishment, for a period of less than thirty (30) days under any concession, permit, right of access, license to use or other agreement, or otherwise.

Medical supplies means drugs dispensed in accordance with a prescription; insulin in all its forms dispensed pursuant to the direction of a licensed physician; glucose usable for treatment of insulin reactions; urine- and blood-testing kits and materials, insulin measuring and injecting devices, including hypodermic syringes and needles; prosthetic devices; wheelchairs and hospital beds; drugs or materials when furnished by a doctor as part of professional services provided to a patient; and corrective eyeglasses, contact lenses or hearing aids.

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

Purchase price means the price to the consumer, exclusive of any direct tax imposed by the federal government or by this Article, and, in the case of all retail sales involving the exchange of property, also exclusive of the fair market value of the property exchanged at the same time and place of the exchange, if:

a. Such exchanged property is to be sold thereafter in the usual course of the vendor's business.

b. Such exchanged property is a vehicle and is exchanged for another vehicle and both vehicles are subject to licensing, registration or certification under the laws of this State, including, but not limited to, vehicles operating upon public highways, off-highway recreation vehicles, watercraft and aircraft. Any money or other consideration paid over and above the value of the exchanged property is subject to tax.

c. Any consideration valued in money, such as trading stamps or coupons whereby the manufacturer or someone else reimburses the vendor for part of the purchase price and other medium of exchange.

d. The total price charged on credit sales, including finance charges which are not separately stated. An amount charged as interest on the unpaid balance of the purchase price is not part of the purchase price unless the amount added to the purchase price is included in the principal amount of a promissory note; except the interest or carrying charge set out separately from the unpaid balance of the purchase price on the face of the note is not part of the *purchase price*. An amount charged for insurance on the property sold and separately stated is not part of the *purchase price*.

e. Installation, delivery and wheeling-in charges included in the purchase price and not separately stated.

f. Transportation and other charges to effect delivery of tangible personal property to the purchaser.

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

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

Purchase price shall not include:

a. Any sales or use tax imposed by the State or by any political subdivision thereof.

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

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

Retail sales means all sales except wholesale sales.

Return means the sales and use tax reporting form used to report sales and use tax.

Sale means the acquisition for any consideration by any person of tangible personal property or taxable services that are purchased, leased, rented, sold, used, stored, distributed or consumed, but excludes a bona fide gift of property or services. These terms include capital leases, installment and credit sales, and property and services acquired by:

a. Transfer, either conditionally or absolutely, of title or possession or both to tangible personal property.

b. A lease, lease-purchase agreement rental or grant of a license, including royalty agreements, to use tangible personal property or taxable services.

The term *sale* does not include:

a. A division of partnership assets among the partners according to their interests in the partnership;

b. The formation of a corporation by the owners of a business and the transfer of their business assets to the corporation in exchange for all the corporation's outstanding stock, except qualifying shares, in proportion to the assets contributed;

c. The transfer of assets of shareholders in the formation or dissolution of professional corporations;

d. The dissolution and the pro rata distribution of the corporation's assets to its stockholders;

e. A transfer of a partnership interest;

f. The transfer in a reorganization qualifying under Section 368(a)(1) of the Internal Revenue Code;

g. The formation of a partnership by the transfer of assets to the partnership or transfers to a partnership in exchange for proportionate interests in the partnership; or

h. The repossession of personal property by a chattel mortgage holder or foreclosure by a lienholder.

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Sales tax means the tax to be collected and remitted by a vendor on sales taxed under this Code.

Tangible personal property means corporeal personal property.

Tax means the use tax due from a consumer or the sales tax due from a vendor or the sum of both due from a vendor who also consumes.

Tax deficiency means any amount of tax that is not reported or not paid on or before the due date.

Taxable sales means gross sales less any exemptions and deductions specified in this Code.

Taxable services means services subject to tax pursuant to this Code.

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

Therapeutic device means devices, appliances or related accessories that are sold to correct or treat a human physical disability or surgically created abnormality; if such device, appliance or related accessory has a retail value of more than one hundred dollars (\$100.00), it must be sold in accordance with a written recommendation from a licensed doctor to qualify as a therapeutic device for purposes of this Code.

Vendor means any person selling, leasing or renting tangible personal property or services at retail. *Vendor* shall include any:

- a. Auctioneer;
- b. Salesperson, representative, peddler or canvasser, who makes sales as a direct, or indirect, agent of or obtains such property or services sold from a dealer, distributor, supervisor or employer;
- c. Charitable organization or governmental entity which makes sales of tangible personal property to the public, notwithstanding the fact that the merchandise sold may have been acquired by gift or donation or that the proceeds are to be used for charitable or governmental purposes.

Wholesale sales means sales to licensed vendors, jobbers, dealers or wholesalers for resale. Sales by wholesalers to consumers are not wholesale sales. Sales by wholesalers to unlicensed vendors are not wholesale sales.

Wholesaler means any person selling to vendors, jobbers, dealers or other wholesalers for resale, and not for storage, use, consumption or distribution. (Prior code 3-1-1; Ord. 9 §1, 2003)

Sec. 4-4-20. Administration; duties and powers of Finance Director.

The administration of the provisions of this Article is vested in the Finance Director, who shall prescribe forms and reasonable rules and regulations for the making of returns, for the ascertainment, assessment and collection of the taxes imposed hereunder, and for the proper administration and enforcement hereof. (Prior code 3-1-2)

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Sec. 4-4-30. License required.

(a) It is unlawful for any person to engage in the business of selling tangible personal property at retail without first having obtained a license therefor. There shall be no fee or charge for licenses issued pursuant to this Article. Such license shall be granted and issued by the City and shall be in force and effect until December 31 of the year for which it is issued, unless sooner revoked.

(b) Such license shall be granted and renewed only upon application stating the name and address of the person desiring such a license, the name and location of such business, and such other facts as the City may require.

(c) It shall be the duty of each licensee, before January 1 of each year during which this Article remains in effect, to obtain a renewal thereof if the licensee remains in the retail business or liable to account for the tax herein provided, but nothing herein contained shall be construed to empower the Finance Director to refuse such renewal except revocation for cause of the licensee's prior license, or except for failure to provide the necessary information.

(d) In case business is transacted at one (1) or more separate premises by one (1) person, a single license setting forth the licensee's places of business within the City shall be sufficient.

(e) The license imposed by this Section shall be required of every vendor having a place of business within the City, unless the vendor is engaged exclusively in the business of selling commodities which are exempt from taxation under this Chapter.

(f) Any person engaged in the business of selling tangible personal property at retail in the City, without having secured a license therefor, except as specifically provided herein, shall be guilty of an offense.

(g) Each license shall be numbered and shall show the name, residence, place and character of business of the licensee and shall be posted in a conspicuous place in the place of business for which it is issued. No license shall be transferable.

(h) The City may, after giving reasonable notice and after hearing, revoke the license of any person found by the City to have violated any provisions of this Article. (Prior code 3-1-3; Ord. 9 §1, 2003)

Sec. 4-4-40. Map of municipal boundaries.

The City shall make available to any requesting vendor a map showing the boundaries of the City. For transactions consummated on or after January 1, 1986, the requesting taxpayer may rely on such map and any update available to determine whether to collect a sales tax. No penalty shall be imposed or action for deficiency maintained against such a vendor who complies in good faith with the most recent map available. (Prior code 3-1-4)

Sec. 4-4-50. Place of consummation of sale.

For the purpose of this Article, all retail sales are consummated at the place of business of the vendor unless the tangible personal property sold was delivered by the vendor or his agent to a destination outside the limits of the City or to a common carrier for delivery to a destination outside the limits of the City. The gross receipts from such sales shall include delivery charges, regardless of the place to which delivery is made. (Prior code 3-1-5)

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*Division 2
Tax Imposed*

Sec. 4-4-110. Imposition of tax.

A tax is hereby imposed for the privilege of selling tangible personal property at retail upon every vendor having a place of business within the City and who sells such property within the City. (Prior code 3-1-6-1)

Sec. 4-4-120. Property and services taxed.

There is hereby levied and there shall be collected and paid a tax in the amount stated in Section 4-4-130 on property and services as follows:

(1) On the purchase price paid or charged upon all sales and purchases of tangible personal property at retail.

(2) In the case of retail sales involving the exchange of property, on the purchase price paid or charged, including the fair market value of the property exchanged at the time and place of the exchange, excluding, however, from the consideration or purchase price the fair market value of the exchanged property, provided that such exchanged property is to be sold thereafter in the usual course of the vendor's business.

(3) Upon the amount paid for all meals and beverages and cover charges, if any, furnished in any restaurant, eating house, hotel, drugstore, club, resort or other place at which meals or food are regularly sold to the public. (Prior code 3-1-6-2)

Sec. 4-4-130. Schedule of sales tax.

(a) There is hereby imposed upon sale of commodities and services specified in Section 4-4-120 above a tax in accordance with the following schedule:

<i>Amount of Sale</i>	<i>Tax</i>
\$.01 including \$.14	no tax
.15 including .42	\$.01
.43 including .71	.02
.72 including .99	.03
1.00 including 1.28	.04
1.29 including 1.57	.05
1.58 including 1.85	.06
1.86 including 2.00	.07

On sales in excess of two dollars (\$2.00), the tax shall be seven cents (\$0.07) on each full two-dollar increment of the sale price; plus the tax shown in the above schedule for the applicable fractional part of a two-dollar increment of each such sales price.

(b) Restrictions.

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(1) Except as provided in Paragraph (2) below, vendors shall add the tax imposed hereby, or the average equivalent thereof, to the sale price or charge, showing such tax as a separate and distinct item. When added, such tax shall constitute a part of such price or charge and shall be a debt from the consumer or user to the vendor until paid and shall be recoverable at law in the same manner as other debts. The vendor shall be entitled, as collecting agent of the City, to apply and credit the amount of his collections against the three and one-half percent (3½%) rate to be paid by him under the provisions of Section 4-4-310, remitting any excess of collections over said three and one-half percent (3½%) less the five percent (5%) collection expense allowance, to the City in the vendor's next monthly sales tax return.

(2) Any vendor selling malt, vinous or spirituous liquors by the drink may include in his sales price the tax levied under this Chapter; provided, however, that no such vendor shall advertise or hold out to the public in any manner, directly or indirectly, that such tax is not included as a part of the sales price to the consumer. The schedule set forth in Subsection (a) above shall be used by such vendor in determining amounts to be included in such sales price. No such vendor shall gain any benefit from the collection or payment of such tax, except as permitted in Section 4-4-310, nor shall the use of the schedule set forth in Paragraph (1) above relieve such vendor from liability for payment of the full amount of the tax levied by this Article. (Prior code 3-1-6-3; Ord. 9 §1, 2003)

Division 3 Exemptions From Taxation

Sec. 4-4-210. Exemptions.

(a) There shall be exempt from taxation under the provisions of this Article the following:

(1) All sales to the United States government, to the State, its departments and institutions, and the political subdivisions thereof in their governmental capacities only.

(2) All sales made to religious, charitable and eleemosynary corporations, in the conduct of the regular religious, charitable or eleemosynary functions and activities.

(3) All sales which the City is prohibited from taxing under the Constitution or laws of the United States or the State.

(4) All sales of cigarettes.

(5) All sales of drugs disbursed in accordance with a prescription and all sales of prosthetic and therapeutic devices.

(6) All commodities which are taxed under the provisions of Sections 39-27-101 to 39-27-121, C.R.S., relating to motor fuels.

(b) All sales and purchases of neat cattle, sheep, lamb, swine and goats; all sales and purchases of mares and stallions for breeding purposes; and all farm close-out sales shall be exempt from taxation.

(c) All sales and purchases of feed for livestock or poultry, all sales and purchases of seeds, and all sales and purchases of orchard trees shall be exempt from taxation.

(d) All sales and purchases of straw and other bedding for use in the care of livestock shall be exempt from taxation.

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(e) For transactions consummated on or after January 1, 1986, the City's sales tax shall not apply to the sale of construction and building materials, as the term is used in Section 29-2-109, C.R.S., if such materials are picked up by the purchaser and the purchaser presents to the vendor a building permit or other documentation acceptable to the City evidencing that a local use tax has been paid or is required to be paid. (Prior code 3-1-7-1)

Sec. 4-4-220. Burden of proof.

The burden of proving that sales, services and commodities, on which tax refunds are claimed, are exempt from taxation under this Chapter, or were not at retail, shall be on the one making such claim under such reasonable requirements of proof as the City may prescribe. (Prior code 3-1-7-2)

Sec. 4-4-230. Disputes.

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 Section, the seller shall, nevertheless, collect and the purchaser shall pay the tax and the seller shall thereupon issue to the purchaser a receipt or certificate, on forms prescribed by the City, 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. The purchaser thereafter may apply to the City for a refund of such taxes, and it shall then be the duty of the Finance Director to determine the question of exemption. (Prior code 3-1-7-3)

Sec. 4-4-240. Refunds.

A refund shall be made, or a credit allowed, for the tax so paid under dispute by any purchaser who has an exemption as provided in this Article. Such refund shall be made by the City 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 City, which forms shall contain such information as the City shall prescribe. Any person who makes any false statement in connection with an application for refund shall be guilty of an offense. The right to a refund is not assignable. (Prior code 3-1-7-4)

Sec. 4-4-250. Appeal of denial of refund.

An appeal of a denial of a refund shall be submitted in writing to the City within twenty (20) calendar days from the date of the denial of the refund and shall identify the amount of the refund requested and the basis for the appeal. The time period set forth in this Section may, in the absolute discretion of the City, be waived for good cause on written application of a vendor or taxpayer. (Prior code 3-1-7-5)

Sec. 4-4-260. Claims for taxes erroneously paid.

Claims for tax monies paid in error or by mistake may be processed for refund; provided that the proceeds of any such claim for refund shall first be applied by the City to any tax deficiencies or liabilities existing against the claimant before allowance of such claim by the City; and provided further that if such excess payment of tax monies in any period is discovered as a result of audit by the City and deficiencies are discovered and assessed against the taxpayer as a result of such audit, such excess monies shall be first applied against any deficiencies outstanding to the date of the assessment, but shall not be applied to

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any future tax liabilities. For transactions consummated on or after January 1, 1986, an application for refund of tax monies paid in error or by mistake shall be made within three (3) years after the date of purchase, storage, use or consumption of the goods for which the refund is claimed. (Prior code 3-1-7-6)

Division 4 Collection, Payment of Tax

Sec. 4-4-310. Vendor liable for tax.

(a) Every vendor shall, irrespective of the provisions of Division 2 above, be liable and responsible for the payment of an amount equivalent to three and one-half percent (3½%) of all sales made by him of commodities or services as specified in Section 4-4-130 above, and shall, before the twentieth day of each month, make a return to the City for the preceding calendar month and remit an amount equivalent to said three and one-half percent (3½%) on such sales to the City, less five percent (5%) of the sum so remitted to cover the vendor's expense in the collection and remittance of said tax. Such returns of the taxpayer shall contain such information and be made in such manner and upon such forms as the City may prescribe.

(b) The burden of proving that any vendor is exempt from collecting the tax on any goods sold and paying the same to the City, or from making such returns, shall be on the vendor or vendor under such reasonable requirements of proof as the City may prescribe.

(c) Every vendor conducting a business in which the transaction between the vendor and the consumer consists of the supplying of tangible personal property and services in connection with the maintenance or serving of same shall be required to pay the taxes levied under this Article upon the full contract price unless application is made to the City for permission to use a percentage basis of reporting the tangible personal property sold and the services supplied under such contract. The Finance Director is hereby authorized to determine the percentage based upon the ratio of the tangible personal property included in the consideration as it bears to the total of the consideration paid under said combination contract or sale which shall be subject to the sales tax levied pursuant to the provisions of this Article. This Section shall not be construed to include items upon which the sales tax is imposed on the full purchase price as defined in Section 4-4-10. (Prior code 3-1-8)

Sec. 4-4-320. Standard reporting form.

The City shall use the standard municipal sales and use tax reporting form and any subsequent revisions adopted by the Executive Director of the Department of Revenue. The use of such form shall commence by the first full month, one hundred twenty (120) days after the effective date of the regulation adopting or revising such standard form. (Prior code 3-1-9)

Sec. 4-4-330. Record of sales period.

It shall be the duty of every person engaging or continuing in business in the City, for the transaction of which a license is required under this Article, to keep and preserve suitable records of all sales made by him and such other books or accounts as may be necessary to determine the amount of tax for the collection of which he is liable under this Article. It shall be the duty of every such person to keep and preserve for a period of three (3) years all invoices of goods and merchandise purchased for resale and all such books, invoices and other records shall be open for examination at any time by the Finance Director or his duly authorized agent. (Prior code 3-1-10)

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Sec. 4-4-340. Tax not to be absorbed.

It is unlawful for any vendor to advertise, hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof imposed by this Article will be assumed or absorbed by the vendor or that it will not be added to the selling price of the property sold, or if added, that it or any part thereof will be refunded. (Prior code 3-1-11; Ord. 9 §1, 2003)

Sec. 4-4-350. Reporting periods other than monthly.

If the accounting methods regularly employed by the vendor in the transaction of his business, or other conditions, are such that reports of sales made on a calendar month basis will impose unnecessary hardship, the Finance Director, upon written request of the vendor, may accept reports at such intervals as will, in his opinion, better suit the convenience of the taxpayer and will not jeopardize the collection of the tax; provided that the Finance Director may by rule permit taxpayers whose monthly tax collected is less than sixty dollars (\$60.00) to make returns and pay taxes at intervals not greater than every three (3) months. (Prior code 3-1-12)

Sec. 4-4-360. Credit sales.

In case of a sale upon credit, a contract for sale wherein it is provided that the price shall be paid in installments and title does not pass until a future date, chattel mortgage or a conditional sale, there shall be paid upon each payment upon the account of purchase price that portion of the total tax which the amount paid bears to the total purchase price. The City may authorize a vendor doing business, wholly or partly on a credit basis, to make returns on the basis of cash actually received. Thereafter, the vendor shall make return and pay taxes on that basis until further order of the City Clerk. This Article shall not operate to relieve from the tax installment or credit business done during the operations of this Article, but realized upon thereafter. (Prior code 3-1-13)

Sec. 4-4-370. Excess tax; remittance required.

If any vendor, during any reporting period, shall collect as a tax an amount in excess of three and one-half percent (3½%) of his total taxable sales, he shall remit to the City the full net amount of the tax herein imposed and also such excess. The retention by the vendor of any excess of tax collections over the three and one-half percent (3½%) of the total taxable sales of such vendor, or the intentional failure to remit punctually to the City the full amount required to be remitted by the provisions of this Article, is declared to be unlawful. (Prior code 3-1-14)

Sec. 4-4-380. Intercity 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 City that sales and 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.

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(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 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 and/or vendor 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 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 for 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. (Prior code 3-1-15)

Sec. 4-4-390. Violation; penalty.

(a) Violation.

(1) It shall be an offense for any vendor to refuse to make any return provided to be made in this Article, to make any false or fraudulent return or false statement on any return, to fail or refuse to make payment to the City of any taxes collected or due the City, or in any manner to evade the collection and payment of the tax or any part thereof; or for any person or purchaser to fail or refuse to pay such tax or evade the payment thereof or to aid or abet another in any attempt to evade the payment of the tax.

(2) Any person violating any of the provisions of this Section or of any section of this Article shall be guilty of an offense. The Municipal Court shall have jurisdiction to enforce this Section.

(b) Penalty. Any person convicted of violating any of the provisions of this Chapter shall be punishable as set forth in Section 1-4-20 of this Code. This Section shall in no way be construed to limit or negate other provisions of this Chapter providing for any late payment penalty or interest on delinquent taxes. (Prior code 3-1-16)

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Sec. 4-4-400. Notice of deficiency, recovery, penalty, interest.

(a) All sums of money paid by the purchaser to the vendor as taxes imposed by this Article shall be and remain public money, the property of the City, in the hands of such vendor, and he shall hold the same in trust for the sole use and benefit of the City until paid to the City. For failure to so pay to the City, such vendor shall be punished as provided by Subsection 4-4-390(b).

(b) If a person neglects or refuses to make a return in payment of the tax as required by this Chapter, the City 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 equal to ten percent (10%) thereof and interest on such delinquent taxes at the rate of one percent (1%) per month from the date when due. Promptly thereafter, the City shall send to the delinquent taxpayer written notice of such estimated taxes, penalty and interest, which notice shall be served personally or by certified mail. Such estimate shall thereupon become a notice of deficiency.

(c) The City may treat any such taxes, penalties or interest due and unpaid as a debt due the City from the taxpayer. In case of failure to pay the tax or any portion thereof, or any penalty or interest thereon when due, the City may recover at law the amount of such taxes and interest, in such County or District Court of the County having jurisdiction of the amounts sought to be collected. The return of the taxpayer or the assessment made by the City, as herein provided, shall be prima facie proof of the amount due.

(d) The Finance Director is hereby authorized to waive, for good cause shown, any penalty assessed as provided in this Article, and, for this purpose only, interest imposed in excess of eight percent (8%) per annum shall be deemed a penalty. (Prior code 3-1-17)

Sec. 4-4-410. Interest on underpayment, nonpayment or extensions of time for payment of taxes.

(a) If any amount of sales tax is not paid on or before the last date prescribed for payment, interest on such amount at the rate imposed under Section 4-4-440 of this Article shall be paid for the period from such last date to the date paid. The last date prescribed for payment shall be determined without regard to any extension of time for payment and shall be determined without regard to any notice and demand for payment issued, by reason of jeopardy, prior to the last date otherwise prescribed for such payment. In the case of a tax in which the last date for payment is not otherwise prescribed, the last date for payment shall be deemed to be the date the liability for the tax arises, and in no event shall it be later than the date notice and demand for the tax is made by the City Treasurer.

(b) Interest prescribed in 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.

(c) If any portion of a tax is satisfied by credit of an overpayment, then no interest shall be imposed under this Section on the portion of the tax so satisfied for any period during which, if the credit had not been made, interest would have been allowed with respect to such overpayment.

(d) Interest prescribed in this Article on any sales tax may be assessed and collected at any time during the period within which the tax to which such interest relates may be assessed and collected. (Prior code 3-1-18)

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Sec. 4-4-420. Penalties for certain underpayment, nonpayment or extensions of time for payment of taxes.

If any part of the deficiency in payment of the sales tax is due to negligence or intentional disregard of this Code, or of authorized rules and regulations of the City with knowledge, but without intent to defraud, there shall be added ten percent (10%) of the total amount of the deficiency as a penalty; and interest on such penalty in such case shall be collected at the rate imposed under Section 4-4-410, in addition to the interest provided by Section 4-4-440 on the amount of such deficiency from the time the return was due from the person required to file the return, which interest and penalty shall become due and payable ten (10) days after written notice and demand by the City Treasurer. If any part of the deficiency is due to fraud with the intent to evade the tax, then there shall be added one hundred percent (100%) of the total amount of the deficiency as a penalty; and, in such case, the whole amount of the tax unpaid, including the penalty, shall become due and payable ten (10) days after written notice and demand by the City. (Prior code 3-1-19)

Sec. 4-4-430. Investigations and hearings.

For the purpose of ascertaining the correctness of any return, or for the purpose of determining the amount of tax due from any person, the City may hold investigations and hearings concerning any matters covered by this Article, may examine any relevant books, papers, records or memoranda of any such person, may require the attendance of such person or any officer or employee of such person or of any person having knowledge of such sales, and may take testimony and require proof for its information. The Finance Director and his authorized deputies shall have power to administer oath to such persons. (Prior code 3-1-20)

Sec. 4-4-440. Rate of interest.

When interest is required or permitted to be charged under any provision of this Article, the annual rate of interest shall be that established by the State Commissioner of Banking pursuant to Section 39-21-110.5, C.R.S. (Prior code 3-1-21)

Sec. 4-4-450. Appeal of notice or assessment.

An appeal of a notice of assessment issued to a vendor or taxpayer for failure to file a return, underpayment of tax owed or as a result of an audit, shall be submitted in writing to the City within twenty (20) calendar days from the date of the notice of assessment. Any such appeal shall identify the amount of tax disputed and the basis for the appeal. The time period set forth in this Section may, in the absolute discretion of the City, be waived for good cause on written application of a vendor or taxpayer. (Prior code 3-1-22; Ord. 9 §1, 2003)

Sec. 4-4-460. Appeal of hearing decision.

An appeal of a final decision of the City in a hearing held pursuant to Sections 4-4-250 and 4-4-450 shall be commenced within thirty (30) days of such decision. (Prior code 3-1-23)

Sec. 4-4-470. Alternative dispute resolution procedure.

For transactions consummated on or after January 1, 1986, the taxpayer may elect a state hearing on the City Council's final decision on a deficiency notice or claim for refund pursuant to the procedure set forth in this Section:

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(1) As used in this Section, *state hearing* means a hearing before the Executive Director of the Department of Revenue or delegate thereof as provided in Section 29-2-106.1(3), C.R.S.

(2) When the City asserts that sales 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 sales taxes due. The deficiency notice shall contain notification, in clear and conspicuous type, that the taxpayer has the right to elect a state hearing on the deficiency pursuant to Section 29-2-106(3), C.R.S. The taxpayer shall also have the right to elect a state hearing on the City's denial for a refund of sales tax paid.

(3) The taxpayer shall request the state hearing within thirty (30) days after the taxpayer's exhaustion of local remedies. The taxpayer shall have no right to such hearing if he has not exhausted local remedies or if he fails to request such hearing within the time period provided for in this Subsection. *Exhaustion of local remedies* means:

a. The taxpayer has timely requested in writing a hearing before the City Council and a hearing has been held and a final decision issued. A hearing shall be informal and no transcript, rules of evidence or filing of briefs shall be required. The taxpayer may, however, elect to submit a brief, in which case the City may submit a brief. The City Council shall hold a hearing and issue a final decision within ninety (90) days after receipt of a taxpayer's written request, except that the City Council may extend such period if the delay in holding a hearing or issuing a decision was occasioned by the taxpayer. In any event, the City Council shall hold a hearing and issue a decision within one hundred eighty (180) days of the taxpayer's written request; or

b. The taxpayer has timely requested in writing a hearing before the City Council and the City Council has failed to hold a hearing or has failed to issue a final decision within the time periods prescribed in Subparagraph a above.

(4) If a taxpayer has exhausted his local remedies as provided in Paragraph (3) above, the taxpayer may request a state hearing on such deficiency notice or claim for refund. Such request shall be made and such hearing shall be conducted in the same manner as set forth in Section 29-2-106.1(3) through (7), C.R.S.

(5) If the deficiency notice or claim for refund involves only the City, in lieu of requesting a state hearing, the taxpayer may appeal such deficiency notice or denial of a claim for refund to the District Court as provided in Section 29-2-106.1(8), C.R.S., provided that the taxpayer complies with the procedures set forth in Paragraph (3) above.

(6) Nothing in this Section shall prohibit the taxpayer from pursuing judicial review of a final decision of the City.

(7) If the City reasonably finds that the collection of sales or use tax will be jeopardized by delay, the City may utilize the procedures set forth in Section 39-21-111, C.R.S. (Prior code 3-1-24; Ord. 9 §1, 2003)

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Sec. 4-4-480. Coordinated audit procedure.

(a) Any taxpayer licensed in the City pursuant to Section 4-4-30, and holding a similar sales tax license in at least four (4) other Colorado municipalities that administer their own sales tax collection, may request a coordinated audit as provided herein.

(b) 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 Director of the City, 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.

(c) Except as provided in Subsection (g) below, any taxpayer who submits a complete request for a coordinated audit and promptly signs a waiver of Section 4-4-490 may be audited by the City during the twelve (12) months after such request is submitted only through a coordinated audit involving all municipalities electing to participate in such an audit.

(d) If the City desires to participate in the audit of a taxpayer who submits a complete request for a coordinated audit pursuant to Subsection (c), the Finance Director 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 Director 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.

(e) 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 Director shall facilitate arrangements between the 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 Director 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.

(f) 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 Director shall, once arrangements for the coordinated audit between the 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 Director shall also propose a schedule for the coordinated audit.

(g) The coordinated audit procedure set forth in this Section shall not apply:

(1) When the proposed audit is a jeopardy audit;

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(2) To audits for which a notice of audit was given prior to the effective date of this Section;

(3) When a taxpayer refuses to promptly sign a waiver of (cite ordinance that could limit, based upon passage of time, the City's right to recover for a portion of the audit period), or

(4) When a taxpayer fails to provide a timely and complete request for a coordinated audit as provided in Subsection (b) above. (Prior code 3-1-25)

Sec. 4-4-490. Limitation of actions on collection of sales tax.

For transactions consummated on or after January 1, 1986:

(1) No sales tax, or interest thereon or penalties with respect thereto, shall be assessed, nor shall any notice of lien be filed, distraint warrant issued or suit for collection be instituted, nor any other action to collect the same be commenced, more than three (3) years after the date on which the tax was or is payable. No lien shall continue after such period, except for taxes assessed before the expiration of such period, notice of lien with respect to which has been filed prior to the expiration of such period, in which case such lien shall continue only for one (1) year after the filing of notice thereof. In the case of a false or fraudulent return with intent to evade tax, the tax, together with interest and penalties thereon, may be assessed or proceedings for the collection of such taxes may be begun at any time. Before the expiration of such period of limitation, the taxpayer and the City Treasurer may agree in writing to an extension thereof, and the period so agreed on may be extended by subsequent agreements in writing.

(2) In the case of failure to file a return, the sales tax may be assessed and collected at any time. (Prior code 3-1-26)

Division 5 Miscellaneous Provisions

Sec. 4-4-610. Other remedies.

Nothing in this Article shall preclude the City from utilizing any other applicable penalties or remedies for the collection or enforcement of sales or use taxes. (Prior code 3-1-27)

Sec. 4-4-620. No implied authorization.

No reference in this Article to activities not specifically authorized in other articles or chapters of this Code shall be construed as authorizing such activities. (Prior code 3-1-28)

Sec. 4-4-630. Notice of sales tax amendment.

(a) In order to initiate a central register of sales and use tax ordinances for municipalities that administer local sales tax collection, the City shall file with the Colorado Municipal League, prior to the effective date of this Article, a copy of the City sales and use tax ordinance reflecting all provisions in effect on the effective date of the initial ordinance codified herein.

(b) In order to keep current the current register of sales and use tax ordinances for municipalities that administer local sales tax collection, the City shall file with the Colorado Municipal League, prior to

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the effective date of any amendment, a copy of each sales and use tax ordinance amendment enacted by the City.

(c) Failure of the City to file such ordinance or ordinance amendment pursuant to this Section shall not invalidate any provision of the sales and use tax ordinance or any amendment thereto. (Prior code 3-1-29; Ord. 9 §1, 2003)

Sec. 4-4-640. Participation in simplification meetings.

The Finance Director shall cooperate with and participate on an as-needed basis with a permanent statewide sales and use tax committee convened by the Colorado Municipal League which is composed of state and municipal sales and use tax officials and business officials. Said committee will meet for the purpose of discussing and seeking resolution to sales and use tax problems which may arise. (Prior code 3-1-30; Ord. 10, 1991)

ARTICLE V

Use Tax

Sec. 4-5-10. Definitions.

The following words and phrases as used in this Article shall have the following meanings:

City resident, for the purpose of establishing liability for use tax on motor vehicles, shall be made by considering any of the following factors:

- a. Voting registration;
- b. Address where vehicle is normally parked or stored as shown on the related automobile insurance policy or application for automobile insurance; or
- c. The location where the motor vehicle is customarily or usually parked, stored or garaged.

City Treasurer means the City Clerk/Treasurer of the City.

Monthly lease payment means that amount paid periodically by the lessee to the lessor for the use of its motor vehicle.

Motor vehicle means motor or other vehicles for which Colorado State registration or titling is required, including but not limited to, any motor vehicle, trailer, semi-trailer vehicle, trailer coach or mobile home which is primarily designed to be operated or drawn upon any road or highway. This definition shall not apply to vehicles owned and operated by any department of the federal government or state government or any other agency or political subdivision thereof, firefighting vehicles, City vehicles or farm equipment.

Person means any individual, firm, partnership, joint venture, corporation, estate, trust, receiver, trustee, assignee, lessee or any person acting in a fiduciary or representative capacity. The term *person* includes the plural as well as the singular number.

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Purchase price means the aggregate value in money of anything or things paid or delivered by a purchaser to a seller or any person in the consummation of a sale. *Purchase price* does not include any direct tax imposed by the federal government, by the State or by this Article.

Taxpayer means the person obligated to pay the use tax imposed by this Article. (Prior code 3-9-1; Ord. 17, 1989; Ord. 9 §1, 2003)

Sec. 4-5-20. Use tax on motor vehicles.

There is hereby levied and imposed and shall be collected from every person in the City a use tax on motor vehicles purchased outside the City by City residents for use or storage within the City. Said tax shall be payable to the City by any person who purchases a motor vehicle for use or storage in the City. Said tax shall be in the amount equal to three percent (3%) of the purchase price paid for the motor vehicle. (Prior code 3-9-2)

Sec. 4-5-30. Collection of use tax on motor vehicles.

(a) The use tax relating to motor vehicles shall be collected in the amount of three percent (3%) of the purchase price of said motor vehicle. Said tax shall be applicable to every motor vehicle for which registration is required by the laws of the State.

(b) No registration or titling shall be made of any motor or other vehicle for which registration is required, and no certificate of title shall be issued to such vehicle by the Department of Revenue or authorized agent, until the use tax imposed by Section 4-5-20 above has been paid.

(c) The use tax imposed by this Section shall be collected by the authorized agent of the County Clerk in Arapahoe County pursuant to an agreement between the City and the County Clerk. The proceeds of said use tax shall be paid to the City Treasurer periodically in accordance with said agreement. If the authorized agent of the County Clerk fails to collect any use tax imposed by Section 4-5-20 above, then the City Treasurer shall collect such use tax.

(d) The Mayor and City Treasurer are hereby authorized to enter into and execute on behalf of the City any agreement or agreements necessary for the administration and enforcement of this Section, and said agreement or agreements shall be in accordance with the provisions of Section 29-2-101 to 112, C.R.S., and the City Charter.

(e) When the right to possession or use of any motor vehicle is granted under a lease or contract, and such transfer of possession would be taxable under this Article if an outright sale or purchase were made, then such lease or contract shall be considered the sale or purchase of such motor vehicle for purposes of this Chapter, and the tax shall be computed and imposed on the total of all the monthly lease payments under the lease contract as if such total were the purchase price for the vehicle. (Prior code 3-9-3; Ord. 23, 1985; Ord. 17, 1989)

Sec. 4-5-40. Procedural rules and regulations.

The City Manager and City Treasurer may promulgate reasonable procedural rules and regulations for carrying out the provisions of this Article, provided that said rules and regulations are not in conflict with Section 24-35-110, C.R.S., or any other provisions of this Article. (Prior code 3-9-4)

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Sec. 4-5-50. Repeal and amendments.

(a) This Article may be repealed or amended at any time by the City Council through the adoption of any ordinance, except as provided in Subsection (b) below.

(b) This Article shall not be amended so as to impose a tax on anything other than motor vehicles purchased for use or storage by City residents. (Prior code 3-9-5)

Sec. 4-5-60. Credit for sales or use taxes previously paid to another municipality.

The City's use tax shall not apply to the storage, use or consumption of any article of tangible personal property whose sale or use has already been subjected to a legally imposed sales or use tax of another statutory or home rule municipality equal to or in excess of three percent (3%). A credit shall be granted against the City's use tax equal to the tax paid by a purchaser by reason of a prior sales or use tax imposed by a statutory or home rule municipality. The amount of the credit shall not exceed three percent (3%). (Prior code 3-9-6; Ord. 9 §1, 2003)

Sec. 4-5-70. Nonapplicability to use or consumption occurring more than three years after most recent sale.

The City's use tax shall not be imposed with respect to the use or consumption of tangible personal property within the City that occurs more than three (3) years after the most recent sale of the property if, within the three (3) years following such sale, the property has been significantly used within the State for the principal purpose for which it was purchased. (Prior code 3-9-7)

Sec. 4-5-80. Limitation of actions on collection of use tax.

(a) No use tax, interest or penalties shall be assessed, nor shall any notice of lien be filed, distraint warrant issued or suit for collection be instituted, nor shall any other action to collect the same be commenced, more than three (3) years after the date the tax is payable. No lien shall continue after such period, except for taxes assessed before the expiration of such period where a notice of lien has been filed prior to the expiration of such period, in which case such lien shall continue for one (1) year after the filing of notice. In the case of a false or fraudulent return with intent to evade tax, the tax, together with interest and penalties, may be assessed, or proceedings for the collection of such taxes may be begun at any time. Before the expiration of such period of limitation, the taxpayer and the City Treasurer may agree in writing to an extension, and the period so agreed on may be extended by subsequent agreements in writing.

(b) In the case of failure to file a return, the use tax may be assessed and collected at any time. (Prior code 3-9-8)

Sec. 4-5-90. Limitation of actions for refund of use tax.

(a) An application for refund of use tax paid under dispute by a user who claims to be exempt from this Article shall be made within sixty (60) days after the storage, use or consumption of the goods or services whereon an exemption is claimed.

(b) An application for refund of tax monies paid in error or by mistake shall be made within three (3) years after the date of storage, use or consumption of the goods for which the refund is claimed. (Prior code 3-9-9)

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Sec. 4-5-100. Interest on underpayment, nonpayment or extensions of time for payment.

(a) If any amount of use tax is not paid on or before the last date prescribed for payment, interest on such amount at the rate imposed under Section 4-5-140 below shall be paid for the period from the last date to the date paid. The last date prescribed for payment shall be determined without regard to any notice to extension of time for payment and shall be determined without regard to any notice and demand for payment issued, by reason of jeopardy, prior to the last date otherwise prescribed for such payment. In the case of a tax in which the last date for payment is not otherwise prescribed, the last date for payment shall be deemed to be the date the liability for the tax arises, and in no event shall it be later than the date notice and demand for the tax is made by the City Treasurer.

(b) Interest prescribed under Sections 4-5-100 through 4-5-130 of 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.

(c) If any portion of a tax is satisfied by credit of an overpayment, no interest shall be imposed under this Section on the portion of the tax so satisfied for any period during which, if the credit had not been made, interest would have been allowed with respect to such overpayment.

(d) Interest prescribed under Sections 4-5-100 through 4-5-130 of this Article on any use tax may be assessed and collected at any time during the period within which the tax to which such interest relates may be assessed and collected. (Prior code 3-9-10)

Sec. 4-5-110. Deficiency due to negligence.

If any part of the deficiency in payment of use tax is due to negligence or intentional disregard of this Code, the ordinances or authorized rules and regulations of the City with knowledge thereof, but without intent to defraud, there shall be added ten percent (10%) of the total amount of the deficiency, and interest in such case shall be collected at the rate imposed under Section 4-5-140 below, in addition to the interest provided by Section 4-5-100, on the amount of such deficiency from the time when due. Such interest and addition shall become due and payable ten (10) days after written notice and demand by the City Treasurer. If any part of the deficiency is due to fraud with the intent to evade the tax, there shall be added one hundred percent (100%) of the total amount of the deficiency. In such case, the whole amount of the tax unpaid, including the additions, shall become due and payable ten (10) days after written notice and demand by the City Treasurer and an additional three percent (3%) per month on said amount shall be added from the date payment was due until paid. (Prior code 3-9-11)

Sec. 4-5-120. Interest for neglect or refusal to pay.

If a person neglects or refuses to pay any use tax as required, the City Treasurer 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 equal to ten percent (10%) and interest on such delinquent taxes at the rate imposed under Section 4-5-140 below, plus one-half of one percent (.5%) per month from the date when due. (Prior code 3-9-12)

Sec. 4-5-130. Penalty interest on unpaid use tax.

Any use tax due and unpaid shall be a debt to the City and shall draw interest at the rate imposed under Section 4-5-140 below, in addition to the interest provided by Section 4-5-100 above, from the time when due until paid. (Prior code 3-9-13)

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Sec. 4-5-140. Rate of interest.

When interest is required or permitted to be charged under any provisions of Sections 4-5-100 through 4-5-130 above, the annual rate of interest shall be that established by the State Commissioner of Banking pursuant to Section 39-21-110.5, C.R.S. (Prior code 3-9-14)

Sec. 4-5-150. Other remedies.

Nothing in Sections 4-5-100 through 4-5-140 above shall preclude the City from utilizing any other applicable penalties or remedies for the collection or enforcement of use taxes. (Prior code 3-9-15)

Sec. 4-5-160. Posting bond to pursue appeal.

(a) Within fifteen (15) days after filing a notice of appeal as provided in Section 4-5-190 below, the taxpayer shall file with the District Court a surety bond in twice the amount of the taxes, interest and other charges stated in the final decision by the City Council that are contested on appeal. The taxpayer may, at his option, satisfy the surety bond requirement by a savings account or deposit in or a certificate of deposit issued by a state or national bank or by a state or federal savings and loan association, in accordance with the provisions of Section 11-35-101(1), C.R.S., equal to twice the amount of the taxes, interest and other charges stated in the final decision.

(b) The taxpayer may, at his option, deposit the disputed amount with the City Treasurer in lieu of posting a surety bond. If such amount is so deposited, no further interest shall accrue on the deficiency contested during the pendency of the action. At the conclusion of the action, after appeal to a Colorado appellate court or after the time for such appeal has expired, the funds deposited shall be, at the direction of the court, either retained by the City Treasurer and applied against the deficiency or returned in whole or in part to the taxpayer with interest at the rate imposed pursuant to Section 4-5-140 above. No claim for refund of amounts deposited with the City Treasurer need be made by the taxpayer in order for such amounts to be repaid in accordance with the direction of the court. (Prior code 3-9-16)

Sec. 4-5-170. Standard reporting form.

The City shall use the standard municipal sales and use tax reporting form and any subsequent revisions thereto adopted by the Executive Director of the Department of Revenue. The use of such form shall commence no later than the first full month one hundred twenty (120) days after the effective date of the regulation adopting or revising such standard form. (Prior code 3-9-17)

Sec. 4-5-180. Map of municipal boundaries.

The City Clerk shall make available to any requesting vendor a map showing the boundaries of the City. The requesting vendor may rely on such map and any update available to determine whether to collect a use tax. No penalty shall be imposed or action for deficiency maintained against a vendor who complies in good faith with the most recent map available. (Prior code 3-9-18)

Sec. 4-5-190. Dispute resolution procedure.

The taxpayer may elect a state hearing on the City Treasurer's final decision on a deficiency notice or claim for refund pursuant to the procedure set forth in this Section:

(1) As used in this Section, *state hearing* means a hearing before the Executive Director of the Department of Revenue or delegate thereof as provided in Section 29-2-106.1(3), C.R.S.

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(2) When the City asserts that use taxes are due in an amount greater than that paid by a taxpayer, the City shall mail a deficiency notice to the taxpayer by certified mail. The deficiency notice shall state the additional use taxes due. The deficiency notice shall contain notification, in clear and conspicuous type, that the taxpayer has the right to elect a state hearing on the deficiency pursuant to Section 29-2-106.1(3), C.R.S. The taxpayer shall also have the right to elect a state hearing on the City's denial of such taxpayer's claim for a refund of use tax paid.

(3) The taxpayer shall request the state hearing within thirty (30) days after the taxpayer's exhaustion of local remedies. The taxpayer shall have no right to such hearing if he has not exhausted local remedies or if he fails to request such hearing within the time period provided in this Subsection. For purposes of this Subsection, *exhaustion of local remedies* means:

a. The taxpayer has timely requested in writing a hearing before the City Council and such hearing has been held and a final decision issued. A hearing shall be informal and no transcript, rules of evidence or filing of briefs shall be required. The taxpayer may, however, elect to submit a brief, in which case the City may submit a brief. The City Council shall hold a hearing and issue a final decision within ninety (90) days after receipt of a taxpayer's written request, except that the City Council may extend such period if the delay in holding a hearing or issuing a decision was occasioned by the taxpayer. In any event, the City Council shall hold a hearing and issue a decision within one hundred eighty (180) days of the taxpayer's written request; or

b. The taxpayer has timely requested in writing a hearing before the City Council and the City Council has failed to hold such hearing or has failed to issue a final decision within the time periods prescribed in Subparagraph a above.

(4) If a taxpayer has exhausted his local remedies as provided in Paragraph (3) above, the taxpayer may request a state hearing on such deficiency notice or claim for refund. Such request shall be made and a hearing shall be conducted in the same manner as set forth in Section 29-2-106.1(3) through (7), C.R.S.

(5) If the deficiency notice or claim for refund involves only the City, in lieu of requesting a state hearing, the taxpayer may appeal such deficiency notice or denial of a claim for refund to the District Court as provided in Section 29-2-106.1(8), C.R.S., provided that the taxpayer complies with the procedures set forth in Paragraph (3) above.

(6) If the City reasonably finds that the collection of sales or use tax will be jeopardized by delay, the City may utilize the procedures set forth in Section 39-21-111, C.R.S. (Prior code 3-9-19; Ord. 23, 1985)

ARTICLE VI

Excise Tax on Professional Sports Events

Sec. 4-6-10. Imposition and rate of tax.

On and after July 21, 1986, there is levied, and shall be paid and collected, an excise tax of ten percent (10%) on the price paid to gain admission to any place or event in the City that is open to the public for a professional sports event. (Prior code 3-10-1)

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Sec. 4-6-20. Liability for tax.

(a) No person who pays to gain admission to any place or event in the City that is open to the public for a professional sports event shall fail to pay, and no person, whether owner, lessee or operator, who charges or causes to be charged admission to any place or event in the City that is open to the public for a professional sports event shall fail to collect, the tax levied by this Article. If an owner or operator of a facility leases or rents such facility to another party who conducts a professional sports event open to the public in such facility, such owner or operator is not liable for collecting and remitting the tax if the party to whom the facility is leased or rented is at the time of the leasing or rental licensed to collect and remit the tax.

(b) The burden of proving that any transaction is not subject to the tax imposed by this Article is upon the person upon whom the duty to collect the tax is imposed. (Prior code 3-10-2)

Sec. 4-6-30. Taxes collected held in trust.

All sums of money paid by a person to gain admission to any place or event in the City that is open to the public as the admissions tax imposed by this Article are public monies that are the property of the City. The person required to collect and remit the admissions tax shall hold such monies in trust for the sole use and benefit of the City until paying them to the City Treasurer. (Prior code 3-10-3)

Sec. 4-6-40. Exempt transactions.

The following entities and transactions are exempt from the duty to pay the tax imposed by this Article but not the duty to collect and remit the tax levied hereby:

(1) The United States government and the State of Colorado, their departments and institutions, and the political subdivisions thereof including the City, when acting in their governmental capacities and performing governmental functions and activities;

(2) Religious, charitable and quasi-governmental organizations, but only in the conduct of their regular religious, charitable and quasi-governmental capacities and only if such organizations have obtained an exempt institution license and furnish the exempt institution license to the person who charges or causes to be charged admission to any place or event in the City that is open to the public;

(3) Any person who refunds an admission price for any reason, either before or after an event has taken place, and refunds the admission tax along with the admission price;

(4) Any person who provides free "passes" or complimentary admission tickets or otherwise fails to charge an admission price for admission to a place or event open to the public, but if such person imposes a reduced admission charge for any such "pass," complimentary admission or otherwise, the tax imposed by this Chapter applies to the actual amount of such reduced admission charge; and

(5) Any admission fee paid or charged to gain entry into any place owned by the City or any event sponsored or conducted by the City. (Prior code 3-10-4)

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Sec. 4-6-50. Licensing and reporting procedure.

(a) Every owner, operator or person who has the duty to collect tax imposed by this Article shall obtain a license to collect the tax and shall report such taxes on forms prescribed by the City Clerk and remit such taxes to the City.

(b) The City shall issue an excise tax license to persons who complete an application therefor stating the name and address of the person and the business and such other information as the City may require. Admissions tax licenses are issued for a specific professional sports event and are not transferable.

(c) The City, after giving reasonable notice and after hearing, may revoke the license of any person, owner or operator found by the City to have violated any provisions of this Article.

(d) The City may require a deposit from persons applying for an admissions tax license for a single, noncontinuing or nonrecurring event. (Prior code 3-10-5)

Sec. 4-6-60. Maintenance and preservation of tax returns, reports and records.

(a) The City Clerk may require any person to make such return, render such statement or keep and furnish such records as the City Clerk may deem sufficient and reasonable to demonstrate whether or not such person is liable under this Article for the payment or collection of the tax imposed by this Article.

(b) Any person required to make a return or file a report under this Article shall preserve such reports for a period of two (2) years. (Prior code 3-10-6)

Sec. 4-6-70. Interest and penalties for failure to file tax return or pay tax.

(a) Penalties for failure of a person to collect the excise tax or to make a return and remit the correct amount of tax required by this Article and procedures for enforcing such penalties are as prescribed in Section 4-5-100 through 4-5-150 of this Chapter.

(b) Interest on overpayments and refunds is as prescribed in Section 4-5-100 of this Chapter. (Prior code 3-10-7)

Sec. 4-6-80. Refunds.

Refunds of taxes paid under this Article are as described in Section 4-5-90 of this Chapter. (Prior code 3-10-8)

Sec. 4-6-90. Dispute resolution procedure.

A taxpayer may request a hearing on any proposed tax after receiving notice of final determination, assessment and demand for payment or denial of a claim for refund as provided in Section 4-5-190 of this Chapter. (Prior code 3-10-9)

Sec. 4-6-100. Enforcement of tax liability.

The excise tax imposed by this Article, together with all interest and penalties pertaining thereto, is a first and prior lien on tangible personal property in which the person responsible to collect and remit the

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tax has an ownership interest, subject only to valid mortgages and other liens of record at the time of and prior to the recording of the notice of lien. (Prior code 3-10-10)

Sec. 4-6-110. Duties and powers of City Manager.

The City Manager, the City Clerk and the City Treasurer are authorized to administer the provisions of this Article and may promulgate reasonable procedural rules and regulations for carrying out the provisions of this Article. (Prior code 3-10-11; Ord. 14, 1986)