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## CHAPTER 4.01

### Annual Appropriation

#### **4.01.010 Budget contains appropriations.**

The Town Council shall annually adopt a budget in a manner consistent with the provisions of Article IX of the Town Charter. Upon the annual adoption by the Town Council of each fiscal year's budget, levels of authorized expenditures from the funds indicated within the annual budget shall constitute the appropriation of the amounts specified therein for the purposes specified therein. During the course of each fiscal year, approval by the Town Council of contracts for goods or services, and/or approval of bids for the provision of specified goods or services, shall likewise constitute appropriations of the amounts specified therein for the purposes specified therein. (Ord. 1.40 §1(a), 1990)

#### **4.01.020 No contract to exceed appropriation.**

During each and any fiscal year, no contract entered into by or on behalf of the Town shall expend or contract to expend any money, or incur any liability, nor shall any contract be entered into nor any bid be awarded by or on behalf of the Town which, by its terms, involves the expenditure of money for any of the purposes for which provision is made either in the adopted budget, including any legally authorized amendments thereto, in excess of the amount appropriated in the budget or the approved contract or bid award. Any contract or bid award, either verbal or written, made in violation of the provisions of this Section shall be void as to the Town and no Town moneys from any source whatsoever shall be paid thereon. (Ord. 1.40 §1(b), 1990)

#### **4.01.030 Amendments and authorized expenditures.**

Nothing contained in this Chapter shall preclude the Town Council from adopting a supplemental appropriation in a manner consistent with the provisions of Section 9.12 of the Town Charter. Further, nothing contained in this Chapter shall prevent the making of contracts for governmental services or for capital outlay for a period exceeding one (1) year if such contracts are otherwise allowed by the Town Charter; provided, however, that any contract so made shall be executory only for the amounts agreed to be paid for such services to be rendered in succeeding fiscal years. (Ord. 1.40 §1(c), 1990)

#### **4.01.040 Notice to parties contracting with the Town.**

All persons contracting with, or selling goods or services to, the Town are placed upon notice of the provisions of this Chapter. The provisions of this Chapter shall be referred to specifically in all public works bid documents and contracts; and shall be incorporated into, and specifically noted within, all other contracts entered into by or on behalf of the Town wherein Town funds are used to pay for such contract. (Ord. 1.40 §1(d), 1990)

## CHAPTER 4.02

### Tax and Fee Assistance Program

#### 4.02.010 Established.

There is established within the Town a Tax and Fee Assistance Program ("TAP"). (Ord. 8.27 §1, 2009)

#### 4.02.020 Purpose.

The purpose of the TAP created by this Chapter is to encourage the recruitment, retention, establishment and/or expansion of retail sales tax-generating businesses and employers within the Town, thereby stimulating the economy of and within the Town, providing employment for residents of the Town and others, further expanding the goods and services available for purchase and consumption by businesses and residents of the Town, and further increasing the sales taxes and fees collected by the Town, which increased sales tax and fee collections will enable the Town to provide expanded and improved municipal services to and for the benefit of the businesses and residents of the Town, while at the same time providing public or public-related improvements at no cost, or at deferred cost, to the Town and its taxpayers and residents. (Ord. 8.27 §1, 2009)

#### 4.02.030 Definitions.

As used in this Chapter and all Sections thereof, the following phrases shall have the following meanings:

*Applicant* means the Owner of real property upon which a business is operated or proposed, or the Operator of a business located or proposed to be located within the Town.

*Enhanced sales tax* means the amount of sales tax collected by the Town over and above an annual base amount ("Base Amount") negotiated by, and agreed upon by, the Applicant and the Town, and which amount is approved by the Town Council, which amount shall never be lower than the amount of sales taxes collected by the Town at the property in question in the previous twelve (12) months, or, in the case of a vacancy, the last twelve (12) months of operation, plus a reasonable and agreed-upon percentage of anticipated increase in sales taxes, or, in the case of a newly established business, an amount which represents the good-faith determination by the Applicant and the Town as to the amount of sales taxes which could be generated from the new business without the participation by the Applicant in the TAP created under this Chapter. The Base Amount shall also include those sales that would have occurred in the Town and would be impacted by the establishment of the new retail sales tax-generating business. The Base Amount shall be divided into twelve (12) monthly increments, which increments are subject to agreement between the parties and approval by the Town Council, and which increments shall be reasonably related to the average monthly performance of the business or property in question, or similar businesses in the area (i.e., adjust for seasonal variations). If in any month the agreed-upon base figure is not met by the Applicant and, thus, no enhanced sales taxes are generated for that month, then no funds shall be shared with the Applicant for such month and no increment shall be shared until that deficit, and any other cumulative deficit, have been met, so that at the end of any twelve-

month cycle, funds in excess of those enhanced sales taxes agreed to be shared shall not have been shared with any Applicant.

*Fees* mean the amount of building permit fees and construction use taxes collected by the Town, excluding the Douglas County use tax and that portion of the Town use tax subject to Subsection 4.02.080(b) below, during the construction permitting process for initial construction of a project participating in the TAP created under this Chapter.

*Operator* means the owner or potential owner of a business that is seeking assistance from the TAP created by this Chapter.

*Owner* means the record owner or potential record owner of the real property upon which one (1) or more business is operated. (Ord. 8.27 §1, 2009)

#### **4.02.040 Basis for participation.**

Participation in the TAP shall be based upon approval by a majority of the entire Town Council, exercising its legislative discretion in good faith. Any Owner or Operator of a proposed business or real property, or the Owner or Operator of an existing business or real property, who proposes to expand or locate a business to Parker, may apply to the Town for inclusion within the TAP, provided that the proposed new or expanded business is reasonably likely to generate enhanced sales taxes, permit fees and/or construction use taxes within the Town in the first year of operation. Application for inclusion in the TAP must be made prior to the proposed opening, acquisition or expansion. (Ord. 8.27 §1, 2009)

#### **4.02.050 Approval of agreement; conditions; effect.**

Approval by the Town Council of an agreement implementing this TAP shall entitle the successful Applicant to share in enhanced sales taxes and fees derived from the Applicant's property or business in an amount which shall not exceed the amount specified in the agreement required by Section 4.02.070 below (the "TAP Agreement" or "Agreement"); provided, however, that the Applicant may use said amounts only for public or public-related improvements such as those specified in Subsection 4.02.060(b) below and which are expressly recommended by the Town Administrator for approval by the Town Council at the time of consideration of the application. The time period in which said enhanced sales taxes or fees may be shared shall not commence until all public or public-related improvements are completed and meet all Town standards and Code requirements, and shall be limited by the Town Council, in its discretion, to a specified time, which shall not exceed ten (10) years, or until a specified amount is reached, whichever occurs first. (Ord. 8.27 §1, 2009)

#### **4.02.060 Permitted uses of funds.**

(a) The uses to which said shared enhanced sales taxes or fees may be put by an Applicant shall be limited to obligations and/or improvements which are public or public-related in nature, and which are specifically identified as eligible for TAP funding as part of the TAP Agreement required by Section 4.02.100 below and which, if required by the Town, are subject to a subdivision agreement or development agreement.

(b) By way of example, and not limitation, eligible obligations and improvements which are public or public-related in nature include streets, sidewalks, curbs, gutters, pedestrian malls, streetlights, drainage facilities, landscaping, decorative structures, redevelopment of existing properties, occupancy of existing vacant space, expansion or creation of jobs in the Town, public art, fountains, identification signs, traffic safety devices, bicycle paths, off-street parking facilities, benches, restrooms, information booths, public meeting facilities and all necessary, incidental building facades, architectural enhancements, and appurtenant structures and improvements, together with the relocation, extension, undergrounding or improvement of existing utility lines and any other improvements of a similar nature which are specifically approved by the Town Council.

(c) Nothing in this Chapter shall limit the Town Council from appropriating additional capital improvement funds for capital improvements directly or indirectly affecting the property in question as a part of the Town's regular appropriation, capital improvement or budget process. (Ord. 8.27 §1, 2009)

**4.02.070 TAP payments.**

(a) For TAP Agreements utilizing enhanced sales tax incentives, payments shall be made no less than annually and no more than quarterly, as the Town and Applicant shall agree.

(b) For TAP utilizing fees, payments shall be made in either incremental payments or a lump-sum payment as provided in the TAP Agreement approved by the Town Council. Such payments shall commence no earlier than issuance of a certificate of completion or certificate of occupancy for the subject location and satisfaction of the requirements of this Chapter and of the TAP Agreement.

(c) No interest shall be paid on any amounts shared pursuant to any TAP Agreement. (Ord. 8.27 §1, 2009)

**4.02.080 Existing tax revenue sources unaffected.**

(a) It is an overriding consideration and determination of the Town Council that existing sources of Town sales tax and fee revenues shall not be used, impaired or otherwise affected by the TAP. Therefore, it is conclusively determined that only enhanced sales taxes and fees generated by the properties or businesses described in an approved TAP application shall be subject to division under the TAP. It shall be the affirmative duty of the Finance Director of the Town to collect and hold all such enhanced sales taxes and fees to be shared in a separate account apart from the sales taxes and fees generated by and collected from other sources in the Town and to provide an accounting system which accomplishes the overriding purpose of this Chapter. It is conclusively stated by the Town Council that this Chapter would not be adopted or implemented but for the provision of this Section.

(b) Without limiting the foregoing Subsection (a) of this Section, it is conclusively stated that there shall be excluded from the TAP and any TAP Agreement the one-half-percent sales and use taxes for parks and recreation and related purposes as authorized by the registered electors of the Town and set forth in Chapter 4.04 of this Code. Such revenues shall not be used, impaired or otherwise affected by the TAP Agreement. (Ord. 8.27 §1, 2009)

#### **4.02.090 Criteria for approval.**

Approval of an application for inclusion in the TAP shall require the affirmative vote of two-thirds ( $\frac{2}{3}$ ) of the total Town Council, at a public hearing held as a portion of a regularly scheduled Town Council meeting, based upon Town Council consideration of the following criteria:

(1) The amount of enhanced sales taxes which are reasonably to be anticipated to be derived by the Town through the retained, expanded or new retail sales tax-generating business.

(2) The public benefits which are provided by the Applicant through public works, public or public-related improvements, additional and/or retained jobs and employment opportunities for Town residents and others, to include:

- a. The quality of the proposed development.
- b. Utilization of an existing building(s).
- c. Promotion of higher education.
- d. The complementing of existing Parker businesses (i.e., a buyer or supplier that serves an existing business in the Town).
- e. The representation of redevelopment to an area or building in the Town.
- f. The representation of job diversity in industry sectors and is part of a growing industry.
- g. The creation or enhancement of a vibrant and unique downtown.
- h. The representation of an emerging industry sector.
- i. The contribution to the diversity of retail or to the diversity of jobs or employment opportunities within the Town.
- j. Bringing a value-added result to the Town or a development within the Town (e.g., by moving the company's corporate headquarters to the Town).
- k. The growth and expansion of an existing business in Parker.
- l. The representation of expenditures which may be deferred by the Town, based upon public or public-related improvements to be completed by the Applicant.

(3) The amount of expenditures which may be deferred by the Town based upon public or public-related improvements to be completed by the Applicant.

(4) The conformance of the Applicant's property or project with the comprehensive plan and zoning ordinances of the Town.

(5) Whether a proposed TAP Agreement required by Section 4.02.100 below has been reached, which TAP Agreement shall contain and conform to all requirements of said Section 4.02.100. (Ord. 8.27 §1, 2009)

**4.02.100 Agreement with Town; required; contents.**

Each application for approval submitted to the Town Council shall be subject to approval by the Town Council solely on its own merits. Approval of an application shall require that the TAP Agreement be executed by the Applicant and the Town, which Agreement shall, at a minimum, contain:

(1) A list of those public or public-related improvements which justify the Applicant's approval and the amount which shall be spent on such improvements;

(2) The maximum amount of enhanced sales taxes or fees to be shared, the timing of payment of any such shared taxes or fees and the maximum time during which the Agreement shall continue, it being expressly understood that any such Agreement shall expire and be of no further force and effect upon the occurrence of the earlier to be reached of the maximum time of the Agreement (whether or not the maximum amount to be shared has been reached) or the maximum amount to be shared (whether or not the maximum time set forth has expired);

(3) A statement that the Agreement is a personal agreement which does not run with the land and may be assigned, subject to approval of an assignment and assumption agreement by the Town;

(4) A statement that the Agreement shall never constitute a multi-year fiscal obligation, debt or other obligation of the Town within the meaning of any constitutional or statutory provision;

(5) The Base Amount which is agreed upon by month and the timing of periodic payments of enhanced sales taxes to be shared and the fact that if, in any month as specified, sales taxes received from the property do not at least equal said Base Amount, there shall be no sharing of sales taxes for said month, and that any deficit for any such period shall be carried over to succeeding periods until the difference between the Base Amount and the amount of sales tax actually paid is recovered by the Town;

(6) The Base Amount shall be agreed upon which shall consider the historic level of sales at the property in question, or a similar property within the area in the event of a new business, and a reasonable allowance for increased sales due to the improvements and upgrades completed as a result of inclusion within TAP;

(7) A provision that any enhanced sales taxes or fees subject to sharing shall be escrowed in the event there is a legal challenge to the TAP or the approval of any application therefor;

(8) An affirmative statement that the obligations, benefits and provisions of the Agreement may not be assigned in whole or in any part without the express written authorization of the Town Council, and further that no third party shall be entitled to rely upon or enforce any provision of the Agreement;

(9) A statement that the Agreement shall be subject to the annual appropriation of sufficient funds for payments as provided in this Chapter, pursuant to Section 20, Article X of the Colorado Constitution;

(10) A statement that the Applicant shall have no right, claim, lien or priority in or to the Town's sales or use tax revenue superior to or on parity with the rights, claims or liens of the holders as any sales or use tax revenue bonds, certificates of participation, notes, certificates or debentures payable from or secured by any sales or use taxes, existing or hereafter issued by the Town; and that all rights of the successful Applicant are, and at all times shall be, subordinate and inferior to the rights, claims and liens of the holders of any and all such existing or hereafter issued sales or use tax revenue bonds, certificates of participation, notes, certificates or debentures, payable from or secured by any sales or use taxes issued by the Town; and

(11) Any other provisions agreed upon by the parties and approved by the Town Council. (Ord. 8.27 §1, 2009)

#### **4.02.110 Findings.**

The Town Council has enacted this Chapter as a joint benefit to the public at large and to private Owners for the purposes of: providing the Town with increased sales tax and fee revenues generated upon and by properties improved as a result of the TAP program; providing incentives for businesses to expand or create additional jobs within the Town; providing for public and public-related improvements to be completed by the private Owners through no debt obligation being incurred on the part of the Town, and allowing Applicants an opportunity to improve properties which generate sales taxes, which improvements make those properties more competitive in the marketplace; and further providing to the Applicant additional contingent sources of revenues for upgrading such properties. The Town Council specifically finds and determines that creation of the TAP is consistent with the Town's powers as a home rule municipal corporation, and that exercise of said powers in the manner set forth in this Chapter is in furtherance of the public health, safety and welfare. Notwithstanding any provision of this Chapter, the Town shall never be a joint venturer in any private entity or activity which participates in the TAP, and the Town shall never be liable or responsible for any debt or obligation of any participant in the TAP. (Ord. 8.27 §1, 2009)

#### **4.02.120 Electric Power Consumer's Excise Tax Rebate Program.**

(a) Notwithstanding anything to the contrary stated elsewhere in this Municipal Code, the Town Council hereby authorizes and establishes the "Electric Power Consumer's Excise Tax Rebate Program" as an economic development incentive program designed for the purpose of encouraging the establishment and expansion of businesses with the Town, which businesses will provide additional employment within the Town and which will generate additional sales, use and property taxes for use by the Town in providing needed public services.

(b) Participation in this excise tax rebate program shall be limited to those businesses which meet each of the following criteria:

(1) Either establish or expand the operation of the business by at least twenty percent (20%) within the Town;

(2) Employ not less than two hundred fifty (250) average annual full-time equivalent employees;

(3) Have a gross payroll equal to or in excess of four million dollars (\$4,000,000.00) per year within the Town;

(4) Incur electric power bills and costs of at least two hundred fifty thousand dollars (\$250,000.00) per year at the facility or building's site in the Town; and

(5) Have made, or be contractually obligated to make, all public improvements required in either the Town's zoning or subdivision ordinances.

(c) Every business established or expanded within the Town which meets or exceeds each of the criteria set forth in Subsection (b) above shall be entitled to request from the Town a rebate of up to four percent (4%) excise tax charged to and paid by that business on electric power remitted to the Town pursuant to the provisions of Chapter 4.06 of this Municipal Code for a period not to exceed three (3) years. Forms for such rebate request shall be prepared by the Town Finance Director, who shall administer this rebate program. The Finance Director shall prepare a contract for signature by the business requesting the excise tax rebate, which contract shall provide, at a minimum, that the business shall meet all of the criteria set forth in Subsection (b) above at all times during the term of the contract, and that the contract, and the Town's obligation to rebate any portion of the power excise tax to the business, shall terminate immediately if at any time during the term of the contract the business fails to meet or exceed any of the provisions of Subsection (b) above or the electric provider reduces its power charges by fifteen percent (15%). The Finance Director is hereby further specifically delegated the authority by the Town Council to promulgate rules and regulations for administration of this Section; provided, however, that once any business is approved for participation in this excise tax rebate program, the Finance Director shall separate and segregate all monies to be so rebated from all other monies received by the Town from the electric power providers who remit the excise taxes to the Town pursuant to Chapter 4.06 of this Municipal Code, so as to ensure that no monies earmarked for rebate pursuant to this Section shall ever become part of, nor shall they be paid from, the Town's General Fund.

(d) The Town Council specifically finds and declares that the creation of this excise tax rebate is necessary and in the public interest, and fulfills the public purposes of encouraging businesses to locate and relocate into, and to expand within, the Town, thereby increasing the sales, use and property taxes generated with the Town, and further encouraging employment prospects with the Town for Town residents. (Ord. 8.16 §1, 1994)

## **CHAPTER 4.03**

### **Sales and Use Tax**

#### **4.03.010 Title.**

The provisions of this Chapter shall be known and cited as the Sales and Use Tax Code. (Ord. 8.24 §1, 2003)

#### **4.03.020 Code purpose and composition.**

(a) The provisions of this Chapter shall apply to the imposition as well as administration, enforcement and collection of sales and use taxes by the Town, and shall apply to the administration of the Town license as described in this Code.

(b) As used in this Chapter, unless the context otherwise provides, the term *Code* means and includes the provisions of this Chapter and the provisions of each and every ordinance or code administered under the provisions of this Chapter.

(c) The provisions of this Chapter shall be construed to effect uniformity of administration, enforcement and collection of taxes and to establish uniform procedures, but shall not be construed to extend or increase the application, rate or amount of any tax levied or imposed herein; provided, however, that the imposition of a penalty, interest or both penalty and interest shall be lawful and shall not be construed as an extension or increase of the application, rate or amount of tax. In the event that there is a conflict between this Code and state law in effect as of July 1, 2003, concerning the levy or imposition of any tax levied or imposed as provided in Sections 4.03.280, 4.03.290, 4.03.340 or 4.03.350 of this Chapter, state law shall control. Notwithstanding anything to the contrary herein, changes in state law after July 1, 2003, may be added to this Chapter by subsequent amendment to this Chapter.

(d) The purpose of this Code is to provide the power necessary to exercise effectively the right to raise revenue that is essential to home rule and self-government. Any similarities to state law herein are adopted for the purpose of promoting efficiency in the collection of revenue. Regardless of any such similarities, the provisions contained herein are matters of solely local concern, except as provided in Subsection (c) above. (Ord. 8.24 §1, 2003)

#### **4.03.030 Definitions.**

For the purpose of this Chapter, the definitions of words contained in this Chapter shall be defined in Title 39, Article 26, Section 39-26-102, C.R.S., and said definitions are incorporated herein by this reference. Additionally, as used in this Chapter, unless the context clearly indicates otherwise, certain other words, terms and phrases are defined as follows:

*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 an entity organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to

influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office, or any veterans' organization registered under Section 501(c)(19) of the Internal Revenue Code of 1986, as amended, for the purpose of sponsoring a special event, meeting, or other function in the State, so long as such event, meeting or function is not part of such organization's regular activities in the State.

*Claim for recovery* means a claim for reimbursement of sales and use taxes paid to the wrong taxing jurisdiction.

*Collection costs* shall include all costs of audit, assessment, bank fees, hearings, execution, lien filing, distraints, litigation, prosecution and attorney fees.

*Collection proceedings* shall include the mailing of a notice of audit, an audit and all remedies exercised by the Director pursuant to this Code to collect any unpaid taxes, penalties and interest.

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

*Director* means the Finance Director of the Town or such person's designee.

*Engaged in business in this Town* means performing or providing services, or selling, leasing, renting, delivering, installing or any activity in connection with the selling, leasing, renting, delivering or installing in the Town of tangible personal property by a retail sale as defined in this Section, for use, storage, distribution or consumption within this Town. This term includes, but shall not be limited to, the following acts or methods of transacting business:

- a. Maintaining within the Town, directly or indirectly or by a subsidiary, of an office, building, structure, store, distributing house, salesroom or house, warehouse, mobile vendor or other place of business;
- b. Maintaining within the Town an office for employees, agents or commissioned sales persons to solicit business or to install, assemble, repair, service or assist in the use of its products, or for demonstration or other reasons; and
- c. Owning, leasing, renting or otherwise exercising control over real or personal property within the Town.

*Food* means food for domestic home consumption as defined in 7 U.S.C. § 2012(g), as amended, for purposes of the federal food stamp program as defined in 7 U.S.C. § 2012(h), as amended; except that *food* does not include carbonated water marketed in containers, chewing gum, seeds and plants to grow foods, prepared salads and salad bars, packaged and unpacked cold sandwiches, deli trays, and hot or cold beverages served in unsealed containers or cups that are vended by or through machines or non-coin-operated coin collecting food and snack devices on behalf of a vendor.

*License* means a Town business/tax license.

*Manufacturing* means the operation of producing a new product, article, substance, or commodity different from and having a distinctive name, character or use from raw or prepared materials. *Manufacturing machinery* means any apparatus consisting of interrelated parts used to produce an article of tangible personal property. The term includes both the basic unit and any adjunct or attachment necessary for the basic unit to accomplish its intended function.

*Occasional sales* means retail sales of tangible personal property, including concessions, for fund-raising purposes, if the funds raised by the charitable organization through these sales are retained by the organization to be used in the course of the organization's charitable service.

*Person* includes any individual, firm, limited liability company, partnership, joint adventure, corporation, estate or trust or any group or combination acting as a unit, and the plural as well as the singular number.

*Point of sale.* For the purpose of this Chapter, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his or her agent to a destination outside the limits of the Town or to a common carrier for delivery to a destination outside the Town. The gross receipts from such sales shall include delivery charges when such charges are subject to the State sales and use tax imposed by Article 26 of Title 39, C.R.S., regardless of the place to which delivery is made. If a retailer has no permanent place of business in the Town or has more than one (1) place of business, the place at which the retail sales are consummated for the purpose of this Chapter shall be determined by the provisions of Article 26 of Title 39, C.R.S., and by rules and regulations promulgated by the Department of Revenue. Notwithstanding any other provision of this Chapter, the value of construction and building materials on which a use tax has previously been collected by an incorporated town, city or county shall be exempt from this sales tax if the materials are delivered by the retailer or his or her agent to a site within the limits of the Town.

*Retail sale* means all sales made within the Town except wholesale sales.

*Retailer* or *vendor* means a person doing a retail business, known to the trade and public as such, and selling to the user or consumer, and not for resale.

*School* means an educational institution having a curriculum comparable to grade, grammar, junior high, high school or college, or any combination thereof, requiring daily attendance, having an enrollment of at least forty (40) students, and charging a tuition fee.

*Special event* means any sales event, taking place at a single location for a limited period of time not to exceed seven (7) consecutive days, which includes three (3) or more vendors.

*Tangible personal property* means corporeal personal property. The term shall not be construed to include newspapers, as legally defined by § 24-70-102, C.R.S., preprinted newspaper supplements which become attached to or inserted in and distributed with such newspapers, or direct mail advertising materials which are distributed in the State by any person engaged solely and exclusively in the business of providing cooperative direct mail advertising.

*Tax* means either the tax payable by the purchaser of a commodity or service subject to tax, or the aggregate amount of taxes due from the vendor of such commodities or services during the period for which he or she is required to report his or her collections, as the context may require.

*Taxpayer* means any person obligated to account to the Director for taxes collected or to be collected under the terms of this Chapter.

*Vendor fee* means a credit, as designated by the Director, to be allowed against the tax due on timely filed sales tax returns. The amount of the credit, and any limitation per return, will be stated on the sales tax return as approved by the Director.

*Wholesale sale* means a sale by wholesalers to retail merchants, jobbers, dealers or other wholesalers for resale and does not include a sale by wholesalers to users or consumers not for resale; and the latter sales shall be deemed retail sales and subject to the provisions of this Chapter. This term includes sales of all pre-press preparation printing materials, as defined by Section of 39-26-102 (6.7), C.R.S., which are used by a printer for a specific printing contract where the printed product is sold at retail to a customer accepting delivery within the Town. Documentation of a wholesale sale shall include a valid resale certificate from the customer, and the customer's state and local resale license number prominently located on the invoice.

*Wholesaler* means a person doing a regularly organized wholesale or jobbing business, and known to the trade as such and selling to retail merchants, jobbers, dealers or other wholesalers, for the purpose of resale. (Ord. 8.24 §1, 2003)

#### **4.03.040 Duties and powers of the Director.**

The administration of the licensing provisions of this Code is hereby vested in the Director subject to the duties of the Town Clerk; and the administration of all other provisions of the Code and of the Town sales and use tax is hereby vested in and shall be exercised by the Director, who shall prescribe forms and formulate and promulgate, with the approval of the Town Administrator, appropriate rules and regulations to effectuate the purpose of this Code, in conformity with this Code and subject to other provisions of law relating thereto, for the making of returns, for the ascertainment, assessment and collection of the taxes imposed and for the proper administration and enforcement thereof, and to provide uniform methods of adding the tax, or the average equivalent thereof, to the purchase price. The Director shall have power and authority to add, enact, promulgate, amend and rescind rules and regulations to this Chapter that are inconsistent with the provisions of this Code. Regulations adopted, amended or rescinded by the Director shall be effective in the manner and at the time prescribed by the Director, subject to the provisions of the Code. The Director is authorized to delegate any duty or power to a subordinate unless otherwise provided herein. (Ord. 8.24 §1, 2003)

#### **4.03.050 Director to examine returns.**

For the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of the tax due from any taxpayer, the Director shall have power to examine or cause to be examined by an employee, agent or representative designated by him or her for that purpose, any books, papers, records or memoranda bearing upon the matters required to be included in the return. Subject to the provisions of the Code, the Director is authorized to prescribe the duties and powers of such officers, accountants, experts and other persons as may be necessary in the performance of his or her duty. The Director may delegate to any employee of the Town such power and authority as deemed reasonable and proper for the effective administration of this Code. (Ord. 8.24 §1, 2003)

#### **4.03.060 Retention of records for audits.**

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

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

(1) Gross receipts from sales or rental payments from leases of tangible personal property (including any services that are part of the sale or lease) made in the Town, irrespective of whether the seller or lessor regards the receipts to be taxable or nontaxable.

(2) All deductions allowed by law and claimed in filing returns.

(3) Total purchase price of all tangible personal property purchased for sale, consumption or lease in the Town.

(c) Travel required to perform audit. In the case of a person, firm or corporation which does not keep the necessary books, accounts and records within the Town, it shall be sufficient if such person, firm or corporation produces within this Town such books, accounts and records or such information as shall be reasonably required by the Director for examination by the Director; or in lieu thereof, said person, firm or corporation shall pay in advance, or as approved by the Director, such travel, lodging, meal and related expenses as shall reasonably be incurred by the Director or his/her duly authorized agent in examination of said books, accounts and records at such place where said books, accounts and records are kept.

(d) Coordinated audit.

(1) Any taxpayer licensed in this Town 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.

(2) Within fourteen (14) days of receipt of notice of an intended audit by any municipality that administers its own sales tax collection, the taxpayer may provide to the Director of this Town, 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 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-based limitation upon this Town's right to recover tax owed by the vendor for the audit period.

(3) Except as provided in Paragraph (6) below, any taxpayer that submits a complete request for a coordinated audit and promptly signs a waiver of limitation, if required, may be audited by this Town during the twelve (12) months after request is submitted only through a coordinated audit involving all municipalities electing to participate in such an audit.

(4) If this Town desires to participate in the audit of a taxpayer that submits a complete request for a coordinated audit pursuant to Paragraph (3) above, the 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 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.

(5) If the taxpayer's request for a coordinated audit was in response to a notice of audit issued by this Town, this Town's Director shall facilitate arrangements between this Town and other municipalities participating in the coordinated audit unless and until an official from some other participating municipality agrees to assume this responsibility. The 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.

(6) If the taxpayer's request for a coordinated audit was in response to a notice of audit issued by this Town, this Town's Director shall, once arrangements for the coordinated audit between this Town 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 Director shall also propose a schedule for the coordinated audit.

(7) The Town may conduct an audit in conjunction with another municipality.

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

- a. When the proposed audit is a jeopardy audit;
- b. To audits for which a notice of audit was given prior to the effective date of this Section;
- c. When a taxpayer refuses to promptly sign a waiver of limitation; or

d. When a taxpayer fails to provide a timely and complete request for a coordinated audit as provided in Paragraph (2) above. (Ord. 8.24§1, 2003)

**4.03.070 Tax reports and returns.**

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

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

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

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

(e) Records available to authorized jurisdictions. Notwithstanding the provisions of this Section, the Director in his or her discretion may furnish to the Douglas County Finance Director and his or her authorized personnel, to the State of Colorado Department of Revenue Executive Director and his or her authorized personnel, to the taxing officials of the State political subdivisions, to the taxing officials of any other state and its political subdivisions and to the United States, any information contained in tax returns and related schedules and documents filed pursuant to this Code, or in the report of an audit or investigation made with respect thereto, provided that such information is to be used only for tax purposes. (Ord. 8.24 §1, 2003)

**4.03.080 Assessment; penalties and interest.**

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

- (1) To collect all taxes due;
- (2) To make a return and pay all taxes due;
- (3) To remit the proper amount of tax due;

- (4) To pay in full all taxes due because of negligence, fraud or on a regular basis; or
- (5) To remit taxes due pursuant to an audit, special assessment or special audit assessment.

(b) Assessment notice and due date. Penalties and interest shall be assessed and the Director shall give to the delinquent person, taxpayer or vendor a written Notice of Final Determination-Assessment and Demand for Payment, which notice shall state the full amount of taxes, penalties and interest due and shall be served personally, by mail or by email, which assessment of deficiency amount will be due and payable within fifteen (15) days of the date that such notice is sent by Director.

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

(d) Failure to file penalty. If a person, taxpayer or vendor neglects or refuses to make a return as required in this Code, a minimum penalty equal to the sum of ten dollars (\$10.00) shall be paid for every return not filed that is required to be filed by this Code. If the penalty mentioned in Subsection (e) below is more than this ten dollar (\$10.00) amount, only the Subsection (e) penalty will apply. This penalty does not apply to returns filed prior to the issuance of a Notice of Final Determination-Assessment and Demand for Payment. Interest does not accrue on this minimum penalty.

(e) Mathematical error on tax returns. In the event that the amount of tax is understated on the taxpayer's return due to a mathematical error, the Director shall notify the taxpayer by written Notice of Final Determination—Assessment and Demand for Payment of the amount of tax in excess of that shown in the return which is due and has been assessed. The taxpayer shall have no right of protest or appeal as in the matter of other assessments but shall pay the tax due and assessed or file an amended return to show the true amount of tax due within fifteen (15) days of the date that such assessment is sent by the Director.

(f) Penalty and interest. Unless the taxpayer shows that its failure to comply fully with this Code is due to reasonable cause, which the taxpayer may prove in a hearing requested pursuant to this Code, there shall be added to all assessments a penalty of fifteen percent (15%) of the deficiency. Interest in such case shall accrue and be collected at a rate of one and one-half percent (1½%) per month on the amount of such deficiency from the time the return was due.

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

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

(1) issuance of a distraint warrant;

(2) filing of a lawsuit in the district or county court; or

(3) three (3) occurrences of the revocation of the person's, vendor's or taxpayer's license by the Town Clerk or issuance of a summons to Municipal Court for the nonpayment of taxes or a combination of revocations and summonses.

(i) Director may waive penalty. The Director is hereby authorized to waive, for good cause shown, any penalty assessed as provided in this Code. Interest imposed in excess of nine percent (9%) per annum shall be deemed a penalty. If the Director finds that a taxpayer has, in good faith, paid tax to a vendor then the Director is hereby authorized to abate the interest and penalty in its entirety.

(j) Interest and penalty assessment. Interest and penalties prescribed under this Chapter shall be paid upon notice and demand, and shall be assessed, collected and paid in the same manner as the tax to which it is applicable. If any portion of a tax is satisfied by credit of an overpayment, then no interest or penalty shall be imposed under this Section on the portion of the tax so satisfied. (Ord. 8.24 §1, 2003)

#### **4.03.090 Jeopardy assessment.**

(a) Jeopardy enforcement. If the Director finds that collection of the tax will be jeopardized by delay, in his or her discretion, he or she may declare the taxable period immediately terminated, determine the tax and issue notice and demand for payment thereof; and, having done so, the tax shall be due and payable forthwith, and the Director may proceed immediately to collect such tax as provided in Section 4.03.170 of this Chapter.

(b) Immediate enforcement action. In any other case wherein it appears that the revenue is in jeopardy, the Director may immediately issue demand for payment; and, regardless of the provisions of Sections 4.03.110 and 4.03.120 of this Code, the tax shall be due and payable forthwith and, in his or her discretion, the Director may proceed immediately to collect said tax as provided in Section 4.03.170.

(c) Security for payment. Collection under either Subsection (a) or (b) above may be stayed if the taxpayer gives such security for payment as shall be satisfactory to the Director. (Ord. 8.24 §1, 2003)

#### **4.03.100 Notice by mail.**

The taxpayer shall at all times have the burden of ensuring that his or her correct mailing address, email address and fax number is on file with the Director. In the event that a notice is sent to the

taxpayer pursuant to this Code, and said notice is not received by the taxpayer through no fault of the Town, or the notice is returned by the post office as undeliverable or rejected by the taxpayer, such notice shall be deemed given on the date mailed and the Town shall have no further obligation to complete service of the notice. (Ord. 8.24 §1, 2003)

#### **4.03.110 Hearings.**

(a) Request for hearing. Any taxpayer may request a formal or informal hearing on any proposed tax by reason of Notice of Final Determination—Assessment and Demand for Payment or by reason of denial of his or her claim for refund by application to the Director within fifteen (15) days of the date that a notice of deficiency, assessment or denial of refund is sent by the Director. The request for hearing shall set forth the taxpayer's reasons for and the amount of the requested changes in the deficiency, assessment or denial of refund.

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

(c) Informal hearing. If the taxpayer elects to participate in an informal hearing, which hearing must be held within thirty (30) days of the Director's receipt of the taxpayer's request for a hearing, additional informal hearings shall not be permitted except at the discretion of the Director. Informal hearings shall be conducted in any manner acceptable to the taxpayer and the Director with the purpose of settling the outstanding issues between the parties. If no settlement is reached, the taxpayer must request, in writing, a formal hearing on the record within fifteen (15) days after the informal hearing and the Director shall give notice of the formal hearing pursuant to Subsection (b) above. If the taxpayer fails to request a formal hearing, all further rights to a hearing and appeal are waived and the taxpayer shall be bound by the Notice of Final Determination—Assessment and Demand for Payment or final Denial of Refund.

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

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

(f) Time limitation on a request for hearing. After the expiration of fifteen (15) days from the date that the Notice of Final Determination—Assessment and Demand for Payment or Denial of Refund is sent, if the tax has not been paid, if no request for hearing has been requested, or no written brief has been filed by the taxpayer, then the Notice of Final Determination—Assessment and Demand for Payment previously mailed, faxed or emailed shall constitute a final assessment of the amount of the tax specified, together with interest and penalty, or shall constitute a final Denial of Refund, as the case may be. The Director may promptly take necessary steps to collect all amounts owed. The taxpayer shall have no further right to a hearing, trial or appeal on the facts of its case.

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

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

(i) Tax due date after hearing. Unless an appeal is taken as provided in Section 4.03.120 below, the tax and fee, together with interest thereon and penalties, if any, shall be paid within thirty (30) days after the Hearing Determination Notice is sent by the Director to the taxpayer. (Ord. 8.24 §1, 2003)

#### **4.03.120 Appeals.**

The taxpayer may appeal the Hearing Determination Notice of the Director issued pursuant to Section 4.03.110 above within thirty (30) days of the date that such determination is sent by the Director. Any such appeal shall be conducted in accordance with the provisions of Section 29-2-106.1, C.R.S., as amended, and shall be conducted *de novo*. (Ord. 8.24.1 §1, 2008; Ord. 8.24 §1, 2003)

#### **4.03.130 Refunds.**

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

(b) Refund allowed if exempt. A refund shall be made, or a credit allowed, for the sales tax so paid under dispute by any purchaser who has an exemption under this Code, provided that such refund shall be made by the Director 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 Director, which forms shall contain such information as the Director shall prescribe.

(c) Refund disallowed. Upon receipt of such application, the Director shall examine same with all due speed and shall give notice to the applicant by order in writing of his or her decision thereon. Aggrieved applicants, within fifteen (15) days after such decision is sent, may petition the Director for a hearing on the claim in the manner provided in Section 4.03.110 above.

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

(e) Taxpayer's discovery of overpayment of use tax. A taxpayer may apply for a refund of payment of excess use taxes within sixty (60) days after discovery of the overpayment. The Director may deny such refund if he or she finds that the taxpayer discovered or reasonably should have discovered the overpayment more than sixty (60) days prior to the date of the application for a refund. The taxpayer may petition the Director for a hearing on the claim in the manner provided in Section 4.03.110 above within fifteen (15) days after the Director's Denial of Refund is sent to the taxpayer.

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

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

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

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

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

(k) 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 Town.

(1) As used herein, *claim for recovery* means a claim for reimbursement paid to the wrong taxing jurisdiction.

(2) When it is determined by the Director that sales and use tax owed to the Town has been reported and paid to another municipality, the Town shall promptly notify the vendor that taxes are being improperly collected and remitted and that, as of the date of the notice, the vendor must cease improper tax collections and remittances.

(3) The Town may make a written claim for recovery directly to the municipality that received tax and/or penalty and interest owed to the Town or, in the alternative, may institute procedures for collection of the tax from the taxpayer or vendor. The decision to make a claim for recovery lies in the sole discretion of the Town. 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 Town 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 Town shall not be unreasonably withheld.

(4) Within ninety (90) days after receipt of a claim for recovery, the Town 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 Town shall remit the undisputed amount to the municipality submitting the claim within thirty (30) days of approval. If a claim is submitted jointly by a municipality and a vendor or taxpayer, the check shall be made to the parties jointly. Denial of a claim of recovery may only be made for good cause.

(5) The Town 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 of recovery shall be limited to the thirty-six month period prior to the date the municipality that was wrongly paid the tax receives the claim for recovery. This period may be extended only if a written document was approved by the Director and taxpayer to toll the running of this thirty-six month period. (Ord. 8.24 §1, 2003)

**4.03.140 Interest on overpayments and refunds.**

(a) Interest allowance basis. No interest shall be paid upon any overpayment of sales or use tax unless:

- (1) Such overpayment was made under protest; and
- (2) The taxpayer has requested a refund in writing within sixty (60) days after the tax was paid.

(b) Payment of interest:

(1) Interest owed by the taxpayer on an audit may be applied against calculated interest that would be credited if allowed.

(2) Interest paid on an eligible overpayment of taxes pursuant to Subsection (a) above under protest shall be allowed at the rate of nine percent (9%) per annum.

(3) Interest shall accrue only from the date of the taxpayer's application for a refund. If the refund is to be applied against other taxes owed by the taxpayer, interest shall not be paid on the refund for the period after the due date of the amount against which the credit is taken.

(c) Refund erroneously made to bear interest. Any portion of a sales or use tax, or any interest, assessable penalty, additional amount or additional tax, which has been erroneously refunded, shall bear interest at the rate of nine percent (9%) per annum from the date of the payment of the refund. (Ord. 8.24 §1, 2003)

**4.03.150 False or fraudulent refund claim.**

(a) Violation of Code. Any applicant for refund under the provisions of this Chapter, or any other person who shall make any false statement in connection with an application for a refund of any taxes, shall be deemed guilty of a violation of this Chapter.

(b) Action to recover fraudulent claims. If any person be convicted of violation of Subsection (a) above, such conviction shall be prima facie evidence that all refunds received by such person during the current year were obtained unlawfully and the Director is hereby empowered and directed to bring appropriate collection proceedings for recovery of such refunds. (Ord. 8.24 §1, 2003)

**4.03.160 Director's remedies in case of nonpayment.**

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

- (1) Request the Town Clerk to revoke the taxpayer's business/tax license.
- (2) Issue a summons to the person, vendor or taxpayer to appear in the Municipal Court on charges of violating this Code.
- (3) Issue a distraint warrant pursuant to this Code.

(4) File a complaint in county or district court to collect all amounts owed.

(b) Regardless of the collection or enforcement procedures invoked by the Director, all unpaid taxes, penalties and interest shall be secured by a lien arising by operation of law as provided by this Code. (Ord. 8.24 §1, 2003)

**4.03.170 Enforcing collection by distraint.**

(a) Warrant. The Director may issue a warrant under his or her own hand directed to any representative of the Department of Finance, including the sheriff of any county of the State, commanding him to distraint, seize and sell the personal property of the taxpayer, except such personal property as is exempt from execution and sale by any provision of this Code, for the payment of the tax due together with penalties and interest accrued thereon and collection costs:

(1) When any deficiency in tax is not paid within fifteen (15) days from the date of Notice of Final Determination—Assessment and Demand for Payment therefor and no hearing has been requested and no appeal from such deficiency assessment has been docketed with any district court of this State within said period;

(2) When any other amount of tax, penalty or interest is not paid within fifteen (15) days from the date of the assessment and demand for payment thereof; or

(3) Immediately upon making of a jeopardy assessment or of the issuance of a demand for payment, as provided in Section 4.03.090 of this Chapter.

(b) Distraint seizure:

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

(2) The agent shall forthwith cause to be published a notice of the time and place of sale, together with a description of the property to be sold, in some newspaper within the county wherein distraint is made, or, in lieu thereof and in the discretion of the Director, the agent or sheriff shall cause such notice to be publicly posted at the courthouse of the county wherein such distraint is made, and copies thereof to be posted in at least two (2) other public places within said county.

(3) The time fixed for the sale shall not be less than ten (10) days nor more than sixty (60) days from the date of such notification to the owner or possessor of the property and the publication or posting of such notices. Said sale may be adjourned from time to time by said agent or sheriff if he or she deems it advisable, but not for a time to exceed in all ninety (90) days from the date first fixed for the sale. When any personal property is advertised for sale under distraint

as aforesaid, the agent or sheriff making the seizure shall proceed to sell such property at public auction, offering the same at not less a fair minimum price, including the expenses of making the seizure and of advertising the sale; and if the amount bid for the property at the sale is not equal to the fair minimum price so fixed, the agent or sheriff conducting the sale may declare the same to be purchased by him or her for the Town. The property so purchased may be sold by the agent or sheriff under such regulations as may be prescribed by the Director.

(4) In any case of distraint for the payment of taxes, the real property, goods, chattels, or effects so distrained shall be restored to the owner or possessor, if, prior to the sale, the amount due is paid, together with the fees and other charges or may be redeemed by any person holding a chattel mortgage or other evidence of right of possession.

(c) Certificate of sale and evidence of purchase. In all cases of sale, the agent or sheriff making the sale shall issue a certificate of sale to each purchaser, and such certificate shall be prima facie evidence of the right of the agent or sheriff to make such sale and the conclusive evidence of the regularity of his or her proceedings in making the sale; and shall transfer to the purchaser all right, title and interest of such delinquent in and to the property sold; and where such property consists of certificates of stock in the possession of the agent or sheriff, the certificate of sale shall be notice, when received, to any corporation, company or association of said transfer, and said certificate of such sale shall be authority for such corporation, company or association to record the transfer on its books and records; and where the subject of sale is securities or other evidences of debt, in the possession of the agent or sheriff, the certificate of sale shall be good and valid evidence of title in the person holding the same, as against any other person. Any surplus remaining above the taxes, penalties, interest, all costs and all expenses of making the seizure and of advertising the sale, shall be returned to the owner or such other person having a legal right thereto, and, on demand, the Director shall render an account in writing of the sale. Expenses of a seizure include all reasonable costs and expenses incurred by the Town in enforcing collection by distraint, including, but not limited to, all personnel costs of the Town. (Ord. 8.24 §1, 2003)

#### **4.03.180 Recovery of unpaid tax by action of law.**

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

(b) Writs of attachment. Such actions may be actions in attachment, and writs of attachment may be issued to the sheriff. In any such proceedings, no bond shall be required of the Director nor shall any sheriff require of the Director an indemnifying bond for executing the writ of attachment or writ of execution upon any judgment entered in such proceedings; and the Director may prosecute appeals or writs of error, in such cases without the necessity of providing a bond therefor. The Town Attorney, when requested by the Director, may commence action for the recovery of taxes due under this Code, and this remedy shall be in addition to all other existing remedies or remedies provided in this Code.

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

(d) Exhaustion of administrative remedies. No lawsuit may be filed by the Town until the time for the taxpayer to exercise his or her administrative remedies or to file an appeal has expired. This remedy shall be in addition to all other existing remedies available to the Town. No de novo trial of the facts shall be permitted if the taxpayer has had a hearing before the Director or has had the opportunity for such a hearing, but failed to exhaust his or her administrative remedies. (Ord. 8.24 §1, 2003)

#### **4.03.190 Sales and use tax constitutes lien.**

(a) Any sales or use tax imposed by this Code, together with the interest and penalties herein provided and the cost of collection, shall be a first and prior lien upon:

(1) The goods, stock-in-trade and business fixtures of or used by any taxpayer under lease, title-retaining contract or other contractual arrangement; and

(2) The real and personal property owned or leased by any such taxpayer, including personal property affixed to real property, and shall take precedence on all such property over other claims and mortgages.

(b) This lien shall arise upon the day the tax becomes due and payable and shall be extinguished by operation of law when the tax is paid in full, including any interest, penalty and collection costs.

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

(d) At any time a tax has accrued but is unpaid, the Director may issue a notice of tax lien, setting forth the name of the taxpayer, the amount of the tax, penalties and interest, the date of the accrual

thereof and that the Town claims a first and prior lien therefor on the real and tangible personal property of the taxpayer. Said notice may be filed in the office of the clerk and recorder of any county in the State in which the taxpayer owns real or tangible personal property. Issuance of such notice and filing thereof shall be at the discretion of the Director and shall not affect the priority or validity of the lien provided by this Code, which arises by operation of law when the tax accrues and is payable.

(e) Any representative of the Director to whom a distraint warrant has been issued may file a notice of lien in such forms as the Director may prescribe with the person in possession of any personal property or rights to property belonging to the taxpayer if not previously recorded with the County Clerk and Recorder. The Director may release said lien as to any part or all of the property or rights to property covered by such lien upon such terms as he or she may deem proper.

(f) Any lien for taxes as shown on the records of the county clerks and recorders as herein provided, upon payment of all taxes, penalties and interest covered thereby, shall be released by the Director in the same manner as mortgages and judgments are released. (Ord. 8.24 §1, 2003)

#### **4.03.200 Compromise.**

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

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

- (1) The amount of tax assessed;
- (2) The amount of interest, additional amount, additional to the tax, or assessable penalty, imposed by law on the person, vendor or taxpayer against whom the tax is assessed; and
- (3) The amount paid in accordance with the terms of the compromise. (Ord. 8.24 §1, 2003)

#### **4.03.210 Sale or purchase of business or property.**

(a) New license required. Any sale, transfer or purchase of an interest in a business enterprise by any persons, as defined, where the respective interest of the person purchasing or selling as a result of the transaction has changed in any degree, requires, in the case of a retailer or other person required to be licensed under the Code, the issuance of a new license.

(b) Must file final return. Any person, vendor or taxpayer who shall sell out his or her business or stock of goods or all the assets of a business to another person, or any person or taxpayer who quits business, shall make out the return as required by this Code and remit all taxes due within fifteen (15) days after the business or stock of goods is sold or the taxpayer quits business.

(c) Tax due on business property. The Town tax shall be remitted on the purchase price paid for tangible personal property that is acquired with the purchase, transfer of title or transfer of possession of a business, with the exception of items to be resold in the ordinary course of business operations of the new business. The tax shall be based on the price paid for such chattels as recorded in the bill of sale or agreement and constituting a part of the total transaction at the time of the sale or transfer, provided that the valuation is as great as or greater than the fair market value of such merchandise or chattels. Where the transfer of ownership is a package deal made by a lump-sum transaction, the tax shall be paid on the book value if no determination has been made. When a business is taken over in return for the assumption of outstanding indebtedness owed by former owners, the tax shall be paid on the fair market value of all taxable tangible personal property acquired by the purchaser. The "sale" or "sale and purchase" of a business does not include the items under Section 39-26-102(10), C.R.S. A bona fide gift of tangible personal property is not a "sale."

(d) All prior taxes are due. Taxes due upon the sale of a business or stock of goods include all sales taxes which were collected or should have been collected prior to the sale, and all use taxes accruing or payable prior to the sale.

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

(f) Purchaser liable for prior owner's unpaid tax. Purchasers of a business are liable for any unpaid tax of a predecessor. Vendors or consumers having outstanding accounts on which sales or use tax has not been remitted must compute and pay the tax at the time of sale.

(g) Seller and sellers agent liable for tax. The seller or his or her agent will be held liable for tax remittance on the sale of business in the event the purchaser fails to remit the tax due on the purchase.

(h) Seller and purchaser both liable. Until all taxes due under this Section are paid in full, both the former owner and the purchaser shall remain personally liable thereon and subject to all collection proceedings available under this Code. Action by the Town against the former owner shall not prevent the exercise by the Town of all remedies provided herein against the successor owner.

(i) Delinquent taxes are a lien on the property. Any person who takes or purchases personal or real property under lease, title-retaining contract or other contract arrangement, by purchase, foreclosure, sale or otherwise, takes the same subject to the lien for any delinquent taxes owed by the original owner and shall be liable for the payment of all delinquent taxes, interest, penalty and collection costs of such prior owner, not however, exceeding the value of the property so taken or acquired. Any person who takes title to or possession of any real property upon which a tax is owed takes said property subject to the lien for said delinquent tax and shall be liable for the payment thereof to the extent of the tax, interest, penalties and collection costs. (Ord. 8.24 §1, 2003)

#### **4.03.220 No final inspection unless tax paid.**

No final inspection shall be made by the Town Building Inspector, and no certificate of occupancy, temporary or otherwise, shall be issued unless all taxes due as provided in this Chapter have been paid or arrangements therefor made with the Director. (Ord. 8.24 §1, 2003)

#### **4.03.230 Certificate of discharge.**

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

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

(c) How values determined. In determining such values, the Director shall give consideration to the fair market value of the part to be so discharged and to such lien thereon as have priority to the lien of the Town.

(d) Certificate of release conclusive. A certificate of release or of partial discharge issued under Subsection (a) above shall be held conclusive that the lien of the Town upon the property released therein is extinguished, but shall not extinguish or release any portion of the lien or property not specified in the release. (Ord. 8.24 §1, 2003)

#### **4.03.240 Closing agreements.**

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

(b) Personal liability. Except as provided in Subsection (d) below, any personal representative of a decedent or of the estate of a decedent, or any trustee, receiver or other person acting in a fiduciary capacity, or any director of a corporation in the process of dissolution or which has been dissolved, who distributes the estate or fund in his or her control without having first paid any taxes covered by this Code due from such decedent, decedent's estate, trust estate, receivership or corporation, covered by this Code and which may be assessed within the time limited by this Code, shall be personally liable to the extent of the property so distributed, for any unpaid taxes of the decedent, decedent's estate, trust estate, receivership or corporation, covered by this Code and which may be assessed within the time limited by this Code.

(c) Notification of liability. The distributee of a decedent's estate, or a trust estate or fund or the stockholder of any dissolved corporation who receives any of the property of such decedent's estate, trust estate, fund or corporation, shall be liable to the extent of the decedent, trust estate, fund or

corporation, covered by this Code and which may be assessed within the time limited by this Code. Notice to such distributee or stockholder shall be given in the same manner and within the time limit which would have been applicable had there been no distribution.

(d) Limitation of liability.

(1) In case tax covered by this Chapter is due from a decedent or his or her estate, or by a corporation, in order for personal liability under Subsection (b) above to remain in effect, determination of the tax due shall be made and notice and demand therefor shall issue within three (3) years after written request for such determination, filed after the filing of the decedent's final return or filed after the filing of the return of the decedent's estate with respect to which such request is applicable, by any personal representative of such decedent or by the corporation, filed after the filing of its return; however a request under this provision shall not extend the period of limitation otherwise applicable.

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

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

b. The dissolution is begun in good faith before the expiration of such three-year period; and

c. The dissolution is completed.

(3) Upon the expiration of said three-year period, without determination being made and notice and demand being issued, the personal representative or representative of the decedent and the directors of the corporation no longer will be liable under the provisions of Subsection (b) above. (Ord. 8.24 §1, 2003)

**4.03.250 Limitations.**

(a) General limitations.

(1) Statute of limitations. Except as provided in this Section, the taxes for any period, together with the interest thereon and penalties with respect thereto, imposed by this Code shall not be assessed or credit taken, nor shall any notice of lien be filed, distraint warrant issued or suit for collection be instituted, or 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; nor shall any lien 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 the case of a failure to make a return or 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. The commencement of collection proceedings, including the mailing of a notice of audit, shall toll the running of the statute of limitations. For purposes of the application of the statute of limitation to use tax paid on a building permit, tax shall not be assessed or credit taken, nor shall any notice of lien be filed, distraint warrant issued, suit for

collection be instituted, or any other action to collect the same be commenced, more than three (3) years after the date of the certificate of occupancy.

(2) Date fixed. For purposes of this Section, a tax return filed before the last day prescribed by law or by regulation promulgated pursuant to law for the filing thereof shall be considered as filed on such last day.

(3) Payment arrangement. Where, before the expiration of the time prescribed in this Section for the assessment of tax, both the Director and the taxpayer have consented in writing to any assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon or by the commencement of collection proceedings made before the expiration of the period previously agreed upon. Additional interest must be paid on payments at a rate of nine percent (9%) annum.

(4) Revision qualification. Nothing in this Section shall be construed to limit any right accrued or to revive any liability barred by any statute at the date this Code becomes effective.

(b) Taxes held in trust. All sums of money paid by the purchaser to the retailer as taxes imposed by this Code shall be and remain public money, the property of the Town, in the hands of such retailer and he or she shall hold the same in trust for the sole use and benefit of the Town, until paid to the Director, and for failure to so pay to the Director, such retailer shall be punished as provided by law. Thus, the statute of limitation provided herein does not apply to collections of public money in the possession of the retailer and such moneys are collectable at any time after their due date upon demand of the Director. Bankruptcy will not excuse unremitted taxes collected in trust. (Ord. 8.24 §1, 2003)

#### **4.03.260 Notice of sales and use tax ordinance amendment.**

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

(b) In order to keep current the central register of sales and use tax ordinances for municipalities that administer local sales tax collection, the Director shall file with the Colorado Municipal League prior to the effective date of any amendment a copy of each sales and use tax ordinance amendment enacted by the Town.

(c) Failure of the Town 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. (Ord. 8.24 §1, 2003)

#### **4.03.270 Participation in simplification meetings.**

The 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 and business officials. Said committee will meet

for the purpose of discussing and seeking resolution to sales and use tax problems which may arise. (Ord. 8.24 §1, 2003)

**4.03.280 Imposition of sales tax.**

There is imposed a sales tax of three percent (3%) on sale of tangible personal property at retail or the furnishing of taxable services, as provided at Section 4.03.340 of this Chapter and Paragraph (d) of Section 29-2-105(1), C.R.S., (the "Statute"). In the event there is a conflict between the Statute and Section 4.03.340, the Statute shall control. (Ord. 8.24 §1, 2003)

**4.03.290 Imposition of use tax.**

There is imposed a tax of three percent (3%) as a use tax to be imposed only for the privilege of storing, using or consuming within the Town of any construction and building materials, construction equipment located within the boundaries of the Town for a period of more than thirty (30) consecutive days, and on motor and other vehicles on which registration is required which are purchased at retail, as provided at Section 4.03.360 of this Chapter. (Ord. 8.24 §1, 2003)

**4.03.300 Sales—where consummated.**

For the purpose of this Chapter, all retail sales are consummated at the place of business of the retailer, unless tangible personal property sold is delivered by the retailer or his or her agent to a destination outside the limits of the Town, or to a common carrier for delivery to a destination outside the limits of the Town. The gross receipts from such sales shall include delivery charges. If legal title to the property sold is transferred to the purchaser or his or her agent, prior to delivery to a destination outside the limits of the Town, the place of taxation is deemed within the Town. (Ord. 8.24 §1, 2003)

**4.03.310 Credit for tax previously paid to another municipality.**

The Town sales tax shall not apply to the sale of tangible personal property at retail or the furnishing of services if the transaction was previously subjected to a sales or use tax lawfully imposed on the purchaser or user by another municipality equal to or in excess of the rate imposed under this Chapter. A credit shall be granted against the Town's sales tax with respect to such transaction equal in amount to the lawfully imposed local sales or use tax previously paid by the purchaser or user to the previous municipality. The amount of the credit shall not exceed the rate currently imposed. (Ord. 8.24 §1, 2003)

**4.03.320 Tax included in selling price.**

Except as provided in Section 4.03.330 below, retailers shall add the tax imposed hereby, or the average equivalent thereof, to the purchase price or charge of the item or service, and provide the customer with a receipt that shows the tax charged as a separate and distinct charge; and, 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 retailer until paid and shall be recoverable at law in the same manner as other debts. (Ord. 8.24 §1, 2003)

**4.03.330 Tax included in selling price.**

Only retailers selling malt, vinous or spirituous liquors by the drink, vending machine sales and special event vendor sales may include the tax levied by this Section in the sales price or charge. No retailer shall advertise or hold out to the public in any manner, directly or indirectly, that tax is not included as a part of the sales price to the consumer. No retailer shall gain any benefit from the collection or payment of such tax, nor shall the use of rates set forth in Sections 4.03.280 and 4.03.290 of this Chapter release such retailer from liability for payment of the full amount of the tax levied by this Chapter. (Ord. 8.24 §1, 2003)

**4.03.340 Sales tax—taxable property and services.**

(a) There is hereby levied and there shall be collected and paid a sales tax in the amount stated in Section 4.03.280 of this Chapter, upon the sale at retail of such tangible personal property and the furnishing of such certain services as are set forth in Article 26 of Title 39, C.R.S., which provisions are incorporated herein by this reference, and upon the sale at retail of tangible personal property, on sales of food and purchases of machinery or machine tools, and the furnishing of services on sales and purchases of electricity, coal, gas, fuel oil and coke for domestic and commercial consumption.

(b) It shall be a violation of this Code for any seller not to collect the sales tax levied by this Code. It shall also be a violation of this Code for any purchaser not to pay the sales tax levied by this Code or to pay the tax levied upon a sale where the status of exemption is disputed. (Ord. 8.24 §1, 2003)

**4.03.350 Sales tax—exempt property and services.**

(a) There shall be exempt from sales taxation under the provisions of this Chapter all of the tangible personal property and services which are exempt under the provisions of Article 26, Title 39, C.R.S., which exemptions are incorporated herein by this reference, except the exemption allowed by Section 39-26-114(11), C.R.S., for purchases of machinery or machine tools, and except the exemption of sales and purchases of electricity, coal, gas, fuel oil and coke as provided in Section 39-26-114(1)(a)(XXI), C.R.S., and except the exemption for sales of food specified in Section 39-26-114(1)(a)(XX), C.R.S.

(b) The amount subject to this sales tax shall not include the amount of any sales or use tax imposed by Article 26 of Title 39, C.R.S., Sales tax; exemptions.

(c) All sales of personal property on which a specific ownership tax has been paid or is payable shall be exempt from the tax imposed by this Chapter when such sales meet both of the following conditions:

- (1) The purchaser is a nonresident of or has his or her principal place of business outside of the Town; and
- (2) Such personal property is registered or required to be registered outside the limits of the Town under the laws of this State.

(d) All "occasional sales" by charitable organizations of tangible personal property shall be exempt from the tax imposed by this Chapter. (Ord. 8.24 §1, 2003)

**4.03.360 Use tax—taxable property and services.**

(a) Construction and building materials. All sales of construction and building materials except for sales of construction and building materials to contractors and subcontractors for use in the building, erection, alteration or repair of structures, highways, roads, streets and other public works owned and used by:

(1) The United States government, the State, its departments and institutions and the political subdivisions thereof in their governmental capacities only;

(2) Charitable organizations in the conduct of their regular charitable functions and activities;  
or

(3) Schools, other than schools held or conducted for private or corporate profit;

shall be subjected to the full applicable tax of the Town.

(b) Construction equipment. Construction equipment which is located within the boundaries of the Town for a period of more than thirty (30) consecutive days shall be subjected to the full applicable use tax of the Town.

(1) With respect to transactions consummated on or after January 1, 1986, construction equipment which is located within the boundaries of the Town for a period of thirty (30) consecutive days or less shall be subjected to the Town's use tax in an amount calculated as follows: the purchase price of the equipment shall be multiplied by a fraction, the numerator of which is one (1) and the denominator of which is twelve (12), and the result shall be multiplied by three percent (3%).

(2) Where the provisions of this Subsection are utilized, the credit provisions of Section 4.03.310 of this Chapter shall apply at such time as the aggregate sales and use taxes legally imposed by and paid to other statutory and home rule municipalities on any such equipment equal three percent (3%).

(3) In order to avail himself or herself of the provisions of this Subsection, the taxpayer shall comply with the following procedure:

a. Prior to or on the date the equipment is located within the boundaries of the Town, the taxpayer shall file with the Town Building Department an equipment declaration on a form provided by the Town. Such declaration shall state the dates on which the taxpayer anticipates the equipment will be located within and removed from the boundaries of the Town, shall include a description of each such anticipated piece of equipment, and shall include such other information as reasonably deemed necessary by the Town.

b. The taxpayer shall file with the Town an amended equipment declaration reflecting any changes in the information contained in any previous equipment declaration no less than once

every ninety (90) days after the equipment is brought into the boundaries of the Town or, for equipment which is brought into the boundaries of the Town for a project of less than ten (10) days, after substantial completion of the project.

c. The taxpayer need not report on any equipment declaration any equipment for which the purchase price was under two thousand five hundred dollars (\$2,500.00).

(4) If the equipment declaration is given as provided in Paragraph (3) above, then as to any item of construction equipment for which the customary purchase price is under two thousand five hundred dollars (\$2,500.00) which was brought into the boundaries of the Town temporarily for use on a construction project, it shall be presumed that the item was purchased in a jurisdiction having a local sales or use tax as high as two and one-half percent (2½%) and that such local sales or use tax was previously paid. In such case, the burden of proof in any proceeding before the Town, the Executive Director of the Department of Revenue or the district court shall be on the Town to prove that such local sales or use tax was not paid.

(5) If the taxpayer fails to comply with the provisions of Paragraph (3) above, the taxpayer may not avail himself or herself of the provisions of this Subsection and shall be subject to the provisions of Subsection (a) above. However, substantial compliance with the provisions of Paragraph (3) above shall allow the taxpayer to avail himself or herself of the provisions of this Subsection.

(c) Vehicles. Motor and other vehicles on which registration is required sold or leased to a resident or business of the Town, except any vehicle on which use tax has been paid, is a taxable transaction. Any resident of the Town who purchases a motor vehicle, trailer, semi-trailer, etc., whether new or used, outside of the Town, for use within the Town must pay the Town use tax on the purchase price of any vehicle upon registration of the said vehicle in Douglas County. Any resident who registers a vehicle at an address other than his or her principal residence or place of business within the Town for the purpose of evading the sales or use tax shall be considered in violation of the Code and subject to the penalties set forth herein. (Ord. 8.24 §1, 2003)

#### **4.03.365 Use tax—exemptions.**

The use tax shall not apply to:

(1) Storage, use or consumption. The storage, use or consumption of any tangible personal property, the sale of which is subject to a retail sales tax imposed by the Town.

(2) Resale items. The storage, use or consumption of any tangible personal property purchased for resale in the Town either in its original form or as an ingredient of a manufactured or compounded product, in the regular course of a business.

(3) Nonresident temporary use. The storage, use or consumption of tangible personal property brought into the Town by a nonresident thereof for his or her own storage, use or consumption while temporarily within the Town; however, this exemption does not apply to the storage, use or consumption of tangible personal property brought into this State by a nonresident to be used in the conduct of a business in this State.

(4) Exempt organization use. The storage, use or consumption of tangible personal property by the United States government or the government of the State, or its institutions or political subdivisions, in their governmental capacities only, or by religious or charitable corporations in the conduct of their regular religious or charitable functions.

(5) Manufacturing products. The storage, use or consumption of tangible personal property by a person engaged in the business of manufacturing or compounding for sale, profit or use any article, substance or commodity, which tangible personal property enters into the processing of or becomes an ingredient or component part of the product or service which is manufactured, compounded or furnished and the container, label or the furnished shipping case thereof.

(6) Credit for other tax. The storage, use or consumption of any article of tangible personal property, the sale or use of which has already been subjected to a sales or use tax of another town, city or county equal to or in excess of that imposed by this Chapter. A credit shall be granted against the use tax imposed by this Chapter with respect to a person's storage, use or consumption in the Town of tangible personal property purchased by him or her elsewhere. The amount of the credit shall be equal to the tax paid by him or her by reason of the imposition of a sales or use tax of another town, city or county on his or her purchase or use of the property. The amount of the credit shall not exceed the tax imposed by this Chapter.

(7) Previously purchased household items. The storage, use or consumption of tangible personal property and household effects acquired outside of the Town and brought into it by a nonresident acquiring residency;

(8) Nonresident vehicle purchases. The storage or use of a motor vehicle if the owner is or was, at the time of purchase, a nonresident of the Town and he or she purchased the vehicle outside of the Town for use outside of the Town and actually so used it for a substantial and primary purpose for which it was acquired, and he or she registered, titled and licensed the motor vehicle outside of the Town.

(9) Pre-1983 purchases. The storage, use or consumption of any construction and building materials and motor and other vehicles on which registration is required if a written contract for the purchase thereof was entered into prior to January 1, 1983.

(10) Pre-1983 building materials. The storage, use or consumption of any construction and building materials required or made necessary in the performance of any construction contract bid, let or entered into at any time prior to January 1, 1983.

(11) Storage of building materials. The storage of construction and building materials, for transactions consummated on or after January 1, 1986. (Ord. 8.24 §1, 2003)

#### **4.03.370 Taxpayer (vendor and consumer) liability.**

(a) Burden of proof of exemption. The burden of proving that any vendor, retailer, consumer or purchaser is exempt from collecting or paying the tax upon any goods sold or purchased shall be on the vendor, retailer, consumer or purchaser under such reasonable requirements of proof as the Director may prescribe.

(b) Director may require reports and records. The Director may require any person, by regulation or notice served on such person, to make such return, render such statement, keep and furnish such records, or make such information reports as the Director may deem sufficient to show whether or not such person is liable under this Code for payment or collection of the tax imposed herein.

(c) Vendor responsibility for collection of tax. Every retailer or vendor engaged in business and selling at retail shall be liable and responsible for the payment of an amount equivalent to the amount of the tax imposed by this Code computed on the total of all sales made by him or her of commodities or services as specified in Section 4.03.340 above.

(d) Vendor responsibility for remittance of tax. The retailer shall add the tax as a separate and distinct item, and such tax shall be a debt from the consumer to the retailer and shall be recoverable at law in the same manner as other debt.

(e) Due date of returns. Every retailer or vendor engaged in business and selling at retail shall file a return as prescribed herein with the Director on or before the twentieth day of the month for the preceding month or months under report and remit the amount of tax imposed by this Code computed on the total of such sales and also the amount of any excess tax collections, less three and one-third percent (3.33%) of the amount of taxes to be paid by him or her under this Code or two hundred dollars (\$200.00), whichever is less, to cover the retailer's expense of collection and remittance of the tax for the reporting period; however, if any vendor is delinquent in remitting said tax other than in unusual circumstances shown to the satisfaction of the Director, the vendor shall not be allowed to retain any amounts to cover his or her expense in collecting and remitting said tax, and an amount equivalent to the full tax shall be remitted to the Director by any such delinquent vendor. Vendors not selling at retail may be required by the Director to file a return as prescribed herein.

(f) Timely payment evidence; computation of dates.

(1) Timely payment may be evidenced by the postmark date if mailed; otherwise, timely payment may be evidenced by the Finance Department validation date.

(2) Any due date, payment date or deadline for paying tax due, paying the license renewal fee, providing information or taking other action, which falls on a Saturday, Sunday or legal holiday, recognized by either the federal government or the State, shall be extended to the first business day following such weekend or holiday. (Ord. 8.24 §1, 2003)

#### **4.03.380 Licensing.**

(a) It shall be unlawful for any person to engage in the business of selling at retail tangible personal property and services subject to the tax imposed by this Code without first having obtained a license.

(b) Every person who comes within the definition of *engaged in business in this Town*, as defined in Section 4.03.030 of this Chapter, shall obtain a license in order to do business in the Town.

(c) Application contents. The Town business or tax license shall be granted only upon application stating the name, address and date of birth of the person desiring such license, the name of

such business and the character thereof, the applicable Federal Identification Number and state license number of the business, the physical location of the business, the physical location phone number, and the applicable contact phone number, fax and email address. Other facts may be required by the Director such as, but not limited to, the date of birth, driver's license number and social security number of an officer or owner of the business. The application must be signed and dated under penalty of perjury by an owner or officer of the business. A valid digital signature, or the equivalent thereof, on a license application transmitted electronically over the internet or transmitted via other similar means is accepted and held as a written signature. A signature on a license application sent via facsimile is accepted and held as a written signature. Any person doing business as a wholesaler shall obtain a retailer's license if any sales are made at retail as defined herein. Applications for such licenses shall be made to the Director. The Town Clerk shall issue and renew such licenses. The license application by itself is not public record; however, the nonconfidential items on the application are public record. Confidential items on the application must be noted as confidential items.

(d) Each retail establishment to be licensed. In case business is transacted at two (2) or more separate places by one (1) person, a separate license for each place of business shall be required. Consolidated tax returns may be filed for those various locations as set forth in Subsection 4.03.470(b) of this Chapter. Each owner of a different business located at the same location must obtain a separate license for each business.

(e) License form. Each license shall be numbered and shall show the licensee name, physical location address, mailing address and expiration date of the license.

(f) License carrying or posting required. No licensee shall fail to carry any license issued in accordance with the provisions of this Chapter upon his or her person at all times when engaged in the operation, conduct or carrying on of any retail trade, profession or business for which the license was granted; except that, where such trade or business is operated, conducted or carried on at a fixed place or establishment, such license shall be exhibited at all times in some conspicuous place in the place of business. Every licensee shall produce his or her license for examination when requested to do so by any Town police officer or by any person representing the Town.

(g) Nontransferable. No license shall be transferable.

(h) License fee. Each application for and renewal of a license shall be accompanied by payment of an annual fee in the amount of ten dollars (\$10.00). An exempt institution shall be exempt from this license fee.

(i) Expiration, renewal and renewal fees. All licenses issued shall expire on December 31 of each calendar year. On or before December 31 of each calendar year, the holder of a license may apply for a renewal license to the Department of Finance for the next ensuing calendar year. A license for a new business or for a transfer of ownership issued on or after November 15 of each calendar year shall be valid for the next complete calendar year subject to the renewal provisions of this Section and subject further to the licensee's compliance with this Article. All applications for renewal licenses shall be made on forms prescribed and furnished by the Department of Finance. Failure to obtain a renewal license by the December 31 expiration date of the original license shall result in payment of an increased renewal fee according to the following schedule:

Renewal after January 1    \$5.00 penalty    Total Due \$15.00

|                          |                 |                   |
|--------------------------|-----------------|-------------------|
| Renewal after February 1 | \$10.00 penalty | Total Due \$20.00 |
| Renewal after March 1    | \$15.00 penalty | Total Due \$25.00 |

(Ord. 8.24 §1, 2003)

**4.03.390 Engaged in business without license.**

Any person engaged in business in the Town as defined in Section 4.03.030 of this Chapter, without having secured a license thereof, except as specifically provided herein, shall be guilty of a violation of this Code. (Ord. 8.24 §1, 2003)

**4.03.400 Revocation of license by Town Clerk.**

(a) The Town Clerk may, on reasonable notice and after full hearing, revoke the license of any person found to have violated any provisions of this Code. The Director shall promptly notify the Town Clerk of any violations of the provisions of this Code of which he or she becomes aware.

(b) Any findings and order of the Town Clerk revoking the license of any person shall be subject to review by the District Court upon application of the aggrieved party, in accordance with Rule 106(a)(4) of the Colorado Rules of Civil Procedure. (Ord. 8.24 §1, 2003)

**4.03.410 Special events.**

(a) No special event shall occur without the issuance of a special events license to the organizer of the event, which license shall cost ten dollars (\$10.00). The vendors of a special event need not individually obtain a license if a special events license has been issued to the organizer of the special event. If there is no special events organizer, the vendors at the special event must obtain their own sales tax license and collect and remit the tax to the Town pursuant to this Code. The organizer shall remit all taxes collected by the vendors who do not have a sales tax license for the event and for all vendors who have a license but who elect to have the organizer remit the tax.

(b) No later than two (2) days before the start of the special event, the special events organizer shall provide the Director with a list of the names and addresses of all vendors of the special event, and a list of all tax license numbers of vendors who have obtained their own licenses for the event and are remitting the tax to the Town themselves.

(c) Vendors or organizers of a special event must remit the sales tax they collect and complete a tax schedule on a form provided by the Director. The tax schedule and tax remittance is due fifteen (15) days after the special event ends. Only the organizer will be permitted to take the deduction for the three and one-third percent (3.33%) of taxes remitted. This deduction is limited to two hundred dollars (\$200.00). This deduction is not allowed if the schedule and tax remittance is not received by the Finance Department by the due date.

(d) Chapter 10.08 of this Code may include additional requirements for a special events vendor and promoter. (Ord. 8.24 §1, 2003)

#### **4.03.420 Contractors.**

Every contractor, owner of realty or lessee of realty who shall build, construct, reconstruct, alter, expand, modify or improve any building, dwelling or other structure, or improvement to real property, not including work performed on federal, State, county, Town and exempt institution job sites in the Town, and who shall purchase lumber, fixtures or any other building materials, supplies and other tangible personal property used, consumed or stored therefor on realty, improvements and/or attached or affixed structures situated in the Town, from sources within or without the Town, shall pay the Town sales and use tax by paying the tax on the estimated percentage basis based on a percentage of the total valuation of the construction contract and paid, either through the owner, lessee or general contractor, or separately, if he or she is a subcontractor electing to do so, at the time a building permit is issued. The minimum valuation of material is established at fifty percent (50%) of the job valuation, which valuation is determined by Section 11.01.040(j) of this Code entitled "304.1 PERMIT FEES". The use tax collected totals four percent (4%), three percent (3%) use tax for the Town, and one percent (1%) for Douglas County of the material valuation percentage. The contractor, property owner lessor and property lessee are held liable for any tax due in this Code, and all applicable parties may be required to provide adequate records as requested to the Director for the Director to ascertain that taxes were paid in full. Contractors are considered to be the end users of building materials in the Town. Owners, lessors, contractors and their subcontractors must not pay municipal sales tax to a vendor in another jurisdiction for building materials to be used, consumed or stored at a location in the Town, as it is the intent of this Code for all Town taxes to be paid at the time a building permit is issued. No refund of another municipality's tax will be paid if a contractor or subcontractor pays another municipality's tax. The Director may enter into a payment agreement for the tax referenced in this Subsection to be paid in installments that includes an interest rate of nine percent (9%) per annum. (Ord. 8.24 §1, 2003)

#### **4.03.430 Automotive vehicle purchases.**

(a) Purchasers of automotive vehicles. Any person residing in the Town, as specified by Section 42-6-137 C.R.S., who shall purchase any automotive vehicle as defined in this Code, whether new or used, from sources within or without the Town, for use within the Town and who has not paid the tax imposed thereon by this Code to a vendor required or authorized to collect such tax, shall immediately, and prior to registering the vehicle pursuant to Section 42-6-137 C.R.S., and obtaining the license therefor, shall make a return showing such transaction to the Director and thereupon pay to him or her the tax applicable thereto as provided in this Code, and failure to do so shall constitute a violation of this Code.

(b) Incorrect registration of automotive vehicles.

(1) As used in this Section:

a. *Penalty assessment* means a written notice of the Director's determination that a violation of Section 42-6-137(2), C.R.S, has occurred and assessment and demand for the payment of the civil penalty provided for in Paragraph (3) below.

b. *Notice of deficiency* means the notice issued by the Director of failure, neglect or refusal to pay any sales or use tax due or any penalties or interest thereon.

(2) It is unlawful to register a motor vehicle in violation of the provisions of Section 42-6-137(2), C.R.S.

(3) Any person who causes a motor vehicle to be registered in violation of the provisions of Section 42-6-137(2), C.R.S., shall be assessed a five-hundred-dollar civil penalty pursuant to the authority granted in Section 42-6-137(4), C.R.S. The procedure for the assessment of such civil penalty shall be as follows:

a. When the Director determines on such information as is available that a person has caused a motor vehicle to be registered in violation of the provisions of Section 42-6-137(2), C.R.S., the Director shall provide to such person a penalty assessment. If the Director also has determined that sales or use taxes are due to the Town on the purchase of such motor vehicle, such penalty assessment may be included in a notice of deficiency.

b. Such person shall pay such penalty assessment within the same time period provided pursuant to Section 4.03.080 of this Chapter for payment of any amount due pursuant to a notice of deficiency, unless such person requests a hearing in the manner provided in Subparagraph c. below.

c. If such person desires to protest such penalty assessment, such person shall request in writing a hearing from the Director for requesting a hearing on a notice of deficiency. The request for hearing shall also set forth the facts which show that a violation of Section 42-6-137(2), C.R.S., did not occur. The Director shall issue a written decision affirming or withdrawing such penalty assessment within the same time period and in the same manner as provided pursuant to Subsection 4.03.110(h) of this Chapter after a hearing on a notice of deficiency. If the decision affirms the penalty assessment, such person shall pay such civil penalty within the same time period as provided pursuant to Subsection 4.03.110(i) of this Chapter for payment of any amount due pursuant to a notice of deficiency.

d. Such person may seek judicial review of the Director's decision pursuant to Section 106(a)(4), Colorado Rules of Civil Procedure. No such judicial review shall be available if a request for hearing was not timely made in the manner provided for in Subparagraph c. above.

e. The Director may enforce collection of such penalty assessment in the same manner as provided pursuant to Sections 4.03.170 and 4.03.180 of this Chapter for the collection of unpaid sales or use taxes, penalties or interest.

f. Nothing in this Section shall preclude the collection of any tax or fee provided by law, the collection of any penalties or interest thereon provided by law, or the imposition of any other civil or criminal penalty provided by law. (Ord. 8.24 §1, 2003)

#### **4.03.440 Tax on credit sales.**

Whenever tangible personal property is sold, including that sold in conjunction with the sale of a business, which is taxable hereunder, under a conditional sales contract or rental purchase contract whereby the seller retains title as security for all or part of the purchase price, or whenever the seller takes a chattel mortgage on such tangible personal property to secure all or part of the purchase price, the total tax based on the total selling price shall become immediately due and payable. The tax shall

be charged or collected and remitted by the vendor. No refund or credit shall be allowed to either party to the transaction in case of repossession. (Ord. 8.24 §1, 2003)

**4.03.450 Excess collections.**

If any vendor, during any reporting period, collect as a tax an amount in excess of three percent (3%) of his or her total taxable sales, he or she shall remit to the Director the full net amount of the tax herein imposed and also such excess. If record of Town and state tax collections are kept separately, the vendor will remit excess of Town tax collected over and above Town net taxable sales and service. If there is no separate record kept of Town and state tax collections and it is not possible to determine the excess to be remitted to each, the vendor shall remit forty-nine percent (49%) of such excess to the Town. The retention by the vendor of any excess collections or the intentional failure to remit punctually to the Director the full amount required to be remitted by the provisions of this Code is hereby declared to be a violation of this Code. (Ord. 8.24 §1, 2003)

**4.03.460 Unlawful to advertise absorption of tax.**

It shall be unlawful for any taxpayer or vendor to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof imposed by this Code will be assumed or absorbed by the vendor or taxpayer 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. Any person violating this provision of this Code shall be subject to the penalties herein provided. (Ord. 8.24 §1, 2003)

**4.03.470 Tax returns—content, consolidation and reporting periods.**

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

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

(c) Reporting periods. Vendors must report and remit the tax on a monthly basis if the tax due per month, on average, is three hundred dollars (\$300.00) or greater. The Director may permit a vendor or licensed consumer whose monthly tax collected is less than three hundred dollars (\$300.00) to make returns and remit taxes at three-month intervals (i.e., quarterly basis). Nonretail businesses and home-based businesses that are required to file a return may be permitted by the Director to file yearly (annual basis). If any taxpayer who has been granted permission to file returns and pay tax on other than a monthly basis becomes delinquent, authorization for such alternate method of reporting

may be revoked by the Director. Thereafter, following notice of such revocation, the taxpayer shall file returns and pay tax on a monthly basis. If the accounting methods regularly employed by the vendor or licensed consumer in the transaction of his or her business, or other conditions, are such that the returns aforesaid made on a calendar month basis will impose unnecessary hardship, the Director may upon request of the vendor, or licensed consumer, accept returns at such intervals as will, in his or her opinion, better suit the convenience of the taxpayer and will not jeopardize the collection of the tax. (Ord. 8.24 §1, 2003)

#### **4.03.480 Evasion or avoidance of tax.**

(a) Any retailer, vendor, consumer, purchaser or other person subject to the tax levied by this Code to refuse to make any return provided to be made by this Code, or to make any false or fraudulent return or any false statements in any return, to fail or refuse to make payment to the Director of any taxes collected or due the Town, or in any manner to evade the collection and payment of the tax, or any part thereof, imposed by this Chapter; 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 imposed, by making a false return or a return containing a false statement shall have violated this Code and shall be subject to prosecution and the imposition of penalties as provided by law. Any person in violation of any section shall be subject to these same penalties.

(b) Separate violations. Each and every twenty-four (24) hours' continuation of any violation shall constitute a distinct and separate offense.

(c) Personal liability. Any taxpayer or person who executes any form or report required by this Chapter to be submitted to the Town shall be personally responsible for the payment of any taxes required under this Chapter. Additionally, any officer, director, partner, managing partner or manager of a taxpayer shall be personally liable for any violations under this Chapter.

(d) Summons to court for violations of code. The Town Administrator, including personnel of the Department of Finance, have the authority of peace officers, as that term is defined under the Colorado Municipal Court Rules, to summons into the Municipal Court any person who may be in violation of this Chapter as set forth under Subsection (a) above. (Ord. 8.24 §1, 2003)

#### **4.03.490 Violations.**

It shall be unlawful for any person to violate any of the provisions of the Chapter. Any violation of this Chapter shall be punishable by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment for not more than one (1) year, or by both such fine and imprisonment. (Ord. 8.24 §1, 2003)

#### **4.03.500 Joint sales and use tax collection, administration and enforcement.**

The Town may enter into an intergovernmental agreement with the Town of Castle Rock for the joint collection, administration and enforcement of sales tax, use tax or both sales and use taxes. (Ord. 8.24 §1, 2003)

**4.03.510 Severability—saving clause.**

(a) As used in this Section, the term *provision* means and includes any part, division, subdivision, section, subsection, sentence, clause or phrase; the term *application* means and includes an application of an ordinance or any part thereof, whether considered or construed alone or together with another ordinance or ordinances, or part thereof, of the Town; and the term *this Chapter* means and includes the ordinance enacting this Section, together with any and all exhibits and schedules therein incorporated, and each Title, Chapter and Section of the Municipal Code in which such ordinance is codified.

(b) If any provision of this Chapter, or the application of such provision to any person or circumstance, is for any reason held to be invalid, such invalidity shall not affect other provisions or applications of this Chapter which can be given effect without the invalid provision or application; and, to this end, the provisions of this Chapter are declared to be severable. The Town Council hereby declares that it would have passed this Chapter and each provision thereof, even though any one (1) of the provisions might be declared unconstitutional or invalid.

(c) The amendment, repeal or supersession of any ordinance or provision of any ordinance by this Chapter shall not release, extinguish, alter, modify or change in whole or in part any penalty, liability or right which may have been incurred or obtained under such Chapter or provision thereof; and such Chapter or provision thereof so amended, repealed or superseded shall be treated and held as remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions, for the enforcement of such penalty, liability or right and for the enforcement of such penalty, liability or right and for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered or made in such actions, suits or proceedings, or prosecutions imposing, inflicting or declaring such penalty or liability or enforcing such right, and shall be treated and held as remaining in force for the purpose of sustaining any and all proceedings, actions, hearings and appeals pending before any court or administrative tribunal. (Ord. 8.24 §1, 2003)

**4.03.520 Effective date.**

The ordinance codified in this Chapter shall take effect July 1, 2003, and shall apply to transactions consummated after that date. (Ord. 8.24 §1, 2003)

**CHAPTER 4.04**

**Sales and Use Tax for Park and Recreation Purposes**

**4.04.010 Purpose.**

The purpose of the initiative ordinance codified in this Chapter is to increase the sales tax on the sale of tangible personal property at retail and the furnishing of certain services upon every retailer in the Town, and increase the use tax on building and construction materials which are purchased outside the Town for use, storage or consumption within the Town and any motor vehicles and other vehicles for which registration is required which are purchased at retail outside the Town for use, storage or consumption within the Town and for setting aside the funds generated by such sales and

use tax increase into a separate fund to be expended for park and recreation purposes. (Ord. 8.09 §1, 1990)

**4.04.020 Sales tax; imposed; amount.**

This Chapter imposes a tax of one-half percent (0.5%) on the sale of tangible personal property at retail or the furnishing of taxable services. The tax imposed by this Chapter shall be included in the tax imposed by Section 4.03.280 of this Title. (Ord. 8.24 §2, 2003; Ord. 8.09 §2, 1990)

**4.04.030 Use tax imposed; amount.**

This Chapter imposes a tax of one-half (0.5%) percent as a use tax to be imposed only for the privilege of storing, using or consuming within the Town any construction and building materials, construction machinery, and on motor and other vehicles on which registration is required and which are purchased at retail. The tax imposed by this Chapter shall be included in the tax imposed by Section 4.03.290 of this Title. (Ord. 8.24 §3, 2003; Ord. 8.09 §1, 1990)

**4.04.040 Administration.**

The sales and use taxes imposed by this Chapter will be collected and administered and are subject to the same exemptions as all other sales and use taxes collected and administered pursuant to applicable ordinances of the Town. (Ord. 8.24 §4, 2003; Ord. 8.09 §3, 1990). (Ord. 8.24 §4, 2003; Ord. 8.18 §2, 1996; Ord. 8.09 §4, 1990)

**4.04.050 Permanent park and recreation fund.**

The revenue collected from the one-half-percent sales and use increase shall be set aside in the Town permanent park and recreation fund (the "fund") to be established within thirty (30) days of the effective date of the ordinance codified in this Chapter. The Town Council may impose an administrative fee for legal, accounting, engineering, personnel and other administrative costs. The Fund shall not be used for any purpose other than the acquisition of park land or the permanent improvement of park and recreation programs and facilities, operation and maintenance of park and recreation programs and facilities, debt service on bonds or other debt obligations issued to acquire land, open space or construct park and recreation facilities, and loans to the Town's General Fund for the purpose of acquiring land for public purposes other than Park and Recreation programs (the "acquired land"), provided that the proceeds of any loan shall be repaid to the fund prior to or contemporaneously with:

- (1) Any sale, exchange or other disposition of the acquired land;
  - (2) The issuance of a building permit to construct a permanent structure on the acquired land;
- or
- (3) The passage of twenty (20) years from the date of the loan, whichever occurs first. (Ord. 8.09.1 §1, 2006; Ord. 8.09 §5, 1990)

**4.04.060 Effective date.**

The ordinance codified in this Chapter shall take effect July 1, 1990, and shall apply to transactions consummated on or after said date. (Ord. 8.09 §8, 1990)

**CHAPTER 4.05**

**Unclaimed Property**

**4.05.010 Purpose.**

The purpose of this Chapter is to provide for the administration and disposition of unclaimed property which is in the possession of or under the control of the Town. (Ord. 5.37 §1, 1992)

**4.05.020 Definitions.**

Unless otherwise required by context or use, words and terms shall be defined as follows:

*Owner* means a person or entity, including a corporation, partnership, association, governmental entity other than this Town, or a duly authorized legal representative or successor in interest of same, which owns unclaimed property held by the Town.

*Unclaimed property* means any tangible or intangible property, including any income or increment derived therefrom, less any lawful charges, that is held by or under the control of the Town and which has not been claimed by its owner for a period of more than two (2) years after it became payable or distributable. For the purposes of this Chapter, *unclaimed property* shall not include lost, abandoned or recovered stolen personal property, as provided in Chapter 8.14 of this Code. The disposition of lost, abandoned or recovered stolen personal property shall be governed by the provision contained in Chapter 8.14, notwithstanding any provision of this Chapter. (Ord. 5.37 §2, 1992)

**4.05.030 Procedure for disposition of property.**

(a) Prior to disposition of any unclaimed property having an estimated value of fifty dollars (\$50.00) or more, the Town Clerk shall send a written notice by certified mail, return receipt requested, to the last known address, if any, of any owner of unclaimed property. The last known address of the owner shall be the last address of the owner as shown by the records of the municipal department or agency holding the property. The notice shall include a description of the property, the amount or estimated value of the property and, when available, the purpose for which the property was deposited or otherwise held. The notice shall state where the owner may make inquiry of or claim the property. The notice shall also state that if the owner fails to provide the Town Clerk with a written claim for the return of the property within sixty (60) days of the date of the notice, the property shall become the sole property of the Town and any claim of the owner to such property shall be deemed forfeited.

(b) Prior to disposition of any unclaimed property having an estimated value of less than fifty dollars (\$50.00) or having no last known address of the owner, the Town Clerk shall cause a notice to be published in a newspaper of general circulation in the Town. The notice shall include a

description of the property, the owner of the property, the amount or estimated value of the property and, when available, the purpose for which the property was deposited or otherwise held. The notice shall state where the owner may make inquiry of or claim the property. The notice shall also state that if the owner fails to provide the Town Clerk with a written claim for the return of the property within sixty (60) days of the date of the publication of the notice, the property shall become the sole property of the Town and any claim of the owner to such property shall be deemed forfeited.

(c) If the Town Clerk receives no written claim within the above sixty-day claim period, the property shall become the sole property of the Town and any claim of the owner to such property shall be deemed forfeited.

(d) If the Town Clerk receives a written claim within the sixty-day claim period, the Town Clerk shall evaluate the claim and give written notice to the claimant within ninety (90) days thereof that the claim has been accepted or denied in whole or in part. The Town Clerk may investigate the validity of a claim and may request further supporting documentation from the claimant prior to disbursing or refusing to disburse the property.

(e) In the event that there is more than one (1) claimant for the same property the Town Clerk may, in the Town Clerk's sole discretion, resolve said claims, or may resolve such claims by depositing the disputed property with the registry of the district court in an interpleader action.

(f) In the event that all claims filed are denied, the property shall become the sole property of the Town and any claim of the owner of such property shall be deemed forfeited.

(g) Any legal action filed challenging a decision of the Town Clerk shall be filed pursuant to Rule 106 of the Colorado Rules of Civil Procedure within thirty (30) days of such decision or shall be forever barred. If any legal action is timely filed, the property shall be disbursed by the Town Clerk pursuant to the order of the court having jurisdiction over such claim.

(h) The Town Clerk is authorized to establish and administer procedures for the administration and disposition of unclaimed property consistent with this Chapter, including compliance requirements for other municipal officers and employees in the identification and disposition of such property. (Ord. 5.37 §3, 1992)

## **CHAPTER 4.06**

### **Excise Tax on Electric Power Providers**

#### **4.06.010 Legislative intent.**

The Town Council finds, determines and declares that after considering the businesses and occupations in the Town and the relation of such businesses and occupations to the municipal welfare, the relation thereof to the use and occupation of public places and public rights-of-way, and the relation thereof to the expenditures required by the Town, and considering the proper, just and equitable distribution of the tax burden within the Town in all matters proper to be considered in relation thereto, the excise tax imposed on the business of providing electric power to customers within the Town, with exemptions thereto, is reasonable, proper, uniform and nondiscriminatory.

Any person as herein defined, who engages in the conduct of providing electric power to customers within the Town, is the taxpayer liable for payment of such excise tax to the Town in accord with the terms and provisions of this Chapter, and further, in the sole discretion of the taxpayer, the excise tax, or any portion thereof, imposed pursuant to this Chapter may be passed on to the customer of the taxpayer in the Town and collected from the customer by the taxpayer as reimbursement to the taxpayer. (Ord. 8.12 §1, 1991)

#### **4.06.020 Administration of Chapter.**

The administration of the provisions of this Chapter is hereby vested in the Director, who shall prescribe forms and reasonable rules and regulations in conformity with this Chapter for the making of returns, for the ascertainment, assessment and collection of the tax imposed under this Chapter, and for the proper administration and enforcement hereof. The Director shall have the sole discretion to determine whether to enforce the provisions of this Chapter in the Municipal Court, any other court of competent jurisdiction, or through the administrative review process set forth in this Chapter. (Ord. 8.12 §1, 1991)

#### **4.06.030 Definitions.**

The following words and phrases, when used in this Chapter, shall have the meanings respectively ascribed to them:

*Customer* shall mean a person within the Town who uses or consumes electricity and who pays compensation to an electric power provider for such usage or consumption.

*Director* shall mean the Finance Director of the Town, or the duly authorized representatives or designees of such Finance Director.

*Electric power provider* shall mean any person transmitting electricity via wires or cables or other equipment and apparatus to customers within the Town.

*Person* shall mean and include an individual, a business entity, firm, sole proprietorship and corporation.

*Taxpayer* shall mean any person engaged in the conduct of business in the Town which involves providing electric power to customers within the Town. (Ord. 8.12 §1, 1991)

#### **4.06.040 Tax levy.**

Commencing the first day of January, 1992, there is hereby levied by the Town, pursuant to Article XI, Section 11.1 of the Town Charter, and Section 31-15-501(1)(c), C.R.S., an excise tax in the amount of four percent (4%) of all accounts billed by an electric power provider to each customer for the customer's usage or consumption of electricity transmitted by the electric power provider within the Town unless otherwise exempted as provided in this Chapter. (Ord. 8.12 §1, 1991)

#### **4.06.050 Payment of tax.**

Each taxpayer, as defined in this Chapter, shall on or before the twentieth day of each month prepare and file a tax return for such preceding taxable calendar month and at the same time pay to

the Town the excise tax herein imposed for such preceding calendar month. In the event the projected total tax liability pursuant to this Chapter for a six-month period does not exceed six hundred dollars (\$600.00), the taxpayer may elect to file the required tax return and pay the excise tax obligation herein imposed each January 20 and July 20 of each year for the immediately preceding period ending each January 1 and July 1 respectively. The taxpayer, as defined in this Chapter, is primarily liable for payment of the excise tax hereby imposed. (Ord. 8.12 §1, 1991)

#### **4.06.060 Purpose for tax revenues.**

(a) The excise tax levied pursuant to Section 4.06.040 is imposed for two (2) purposes. Three-quarters ( $\frac{3}{4}$ ) of the revenues raised by such tax shall constitute general revenue for the support of the government of the Town and shall be deposited into the general fund of the Town. One-quarter ( $\frac{1}{4}$ ) of the revenues raised by such tax shall be deposited into a special fund to be used by the Town to further the burial of existing overhead utility lines, and the removal of existing utility poles, pursuant to Section 10.04.060 of this Code. The levy of this excise tax for general revenue and other purposes shall be in addition to all other taxes, excises and licenses levied and imposed by the Town under any other ordinances or by any other governmental entity.

(b) The unexpended portion of the special fund created by Subsection (a) above may be carried over to succeeding years and the Town shall anticipate amounts to be available for up to three (3) years in advance. The Town shall not acquire vested rights to the monies in the special fund, and the fund may not be converted to cash or used for any purposes other than the relocation and burial of overhead utility lines and removal of utility poles. Monies in the special fund may be used as "matching funds" for any federal or state program designed to further the undergrounding of overhead utility lines. (Ord. 8.12.1 §1, 1994)

#### **4.06.070 Exemptions.**

The tax imposed by this Chapter shall not apply to the United States Government, the State, its departments or institutions and the political subdivisions thereof, including municipalities and special districts, and any other governmental or quasi-governmental entity organized as such pursuant to the laws of the State. An electric power provider shall not pass on such tax or any cost associated with such tax to any governmental entity exempted by this Section. (Ord. 8.12 §1, 1991)

#### **4.06.080 Duty to keep books and records.**

It shall be the duty of every electric power provider obligated to pay taxes pursuant to this Chapter (hereinafter the *taxpayer*) to keep and preserve suitable records and other such books or accounts as may be necessary to determine the amount of tax for the collection of which the taxpayer is liable under this Chapter. It shall be the duty of every such taxpayer to keep and preserve for a period of three (3) years all such books, invoices and other records, which shall be open for examination at any time by the Director. If such taxpayer keeps or maintains books, invoices, accounts and other records outside of the State, upon demand by the Director, the taxpayer shall make them available at a suitable place within the Town to be designated by the Director for examination, inspection and audit by the Director. The taxpayer may elect to pay the expenses involved with an auditor conducting the audit at a location outside the Town, if it is not reasonably possible for the taxpayer to provide the necessary records within the Town. (Ord. 8.12 §1, 1991)

#### **4.06.090 Examination of returns.**

(a) As soon as practicable after a tax return is filed under this Chapter, the Director shall examine it and shall determine the correct amount of tax. If the tax found due shall be greater than the amount theretofore assessed, a notice of deficiency shall be mailed to the taxpayer.

(b) The taxpayer may request a hearing on the proposed tax by application to the Director within thirty (30) days of the mailing of a notice of deficiency. The request for hearing shall set forth the taxpayer's reasons for, and the amount of, the requested changes in the deficiency. (Ord. 8.12 §1, 1991)

#### **4.06.100 Charge for deficiencies.**

If any part of a deficiency under this Chapter is due to negligence or intentional disregard of authorized rules and regulations with knowledge thereof, but without intent to defraud, there shall be added ten percent (10%) of the total amount of the deficiency, and in such case interest shall be collected at the rate of one percent (1%) per month, or fraction thereof, on the amount of the deficiency from the time the return was due from the taxpayer, which interest and addition shall become due and payable within ten (10) days after written notice and demand by the Director. An electric power provider shall not pass on such ten-percent deficiency charge to its customers because such customers were not a party to the electric power provider's negligent or intentional disregard of the obligations imposed by this Chapter. (Ord. 8.12 §1, 1991)

#### **4.06.110 Charge for deficiency caused by fraud.**

If any part of the deficiency is due to fraud with the intent to evade the tax, then there shall be added fifty percent (50%) of the total amount of the deficiency, and 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 Director and an additional one percent (1%) per month, or fraction thereof, on such amounts shall be added from the date the return was due until paid. An electric power provider shall not pass on such fifty-percent deficiency charge to its customers because such customers were not a party to the electric power provider's fraudulent conduct in attempting to avoid the obligations imposed by this Chapter. (Ord. 8.12 §1, 1991)

#### **4.06.120 Investigation and hearing.**

For the purpose of ascertaining the correctness of a return, or for the purpose of determining the amount of tax due from any person, the Director may hold investigations and hearings concerning any matters covered by this Chapter, and may examine any relevant books, papers, records or memoranda of any such person and may require the attendance of such person, or any officer or employee of such person, or of any person having knowledge thereof, and may take testimony and require proof for such purposes. The Director shall have power to administer oaths to such persons. (Ord. 8.12 §1, 1991)

#### **4.06.130 Refusal to make return; estimate of tax; late charge; notice; assessment.**

(a) If any person neglects or refuses to make a return for payment of the taxes as required by this Chapter, the Director shall make an estimate, based upon such information as may be available, of the

amount of the taxes due for the period for which the taxpayer is delinquent; and upon the basis of such estimated amount, compute and assess in addition thereto a late charge equal to ten percent (10%) thereof, together with interest on such delinquent taxes at the rate of one percent (1%) per month, or fraction thereof, from the date when due.

(b) After the Director has estimated the delinquent taxes and assessed the late charge and interest, the Director shall give to the delinquent taxpayer written notice of such estimated taxes, late charges and interest, which notice must be served personally or by registered mail, return receipt requested.

(c) Such estimate shall thereupon become an assessment, and such assessment shall be final and due and payable from the taxpayer to the Director ten (10) days from the date of personal service of the notice or the date of mailing, as applicable; provided, however, that within the ten-day period, such delinquent taxpayer may petition the Director for a revision or modification of such assessment and shall, within such ten-day period, furnish the Director the facts and correct figures showing the correct amount of such taxes.

(d) Such petition shall be in writing and the facts and figures submitted shall be submitted either in writing or orally, and shall be given under oath of the taxpayer.

(e) Thereupon, the Director may modify such assessment in accordance with the facts as determined by the Director. Such assessment shall be considered the final order of the Director, and such final order may be reviewed under Rule 106(a)(4) of the Colorado Rules of Civil Procedure. (Ord. 8.12 §1, 1991)

#### **4.06.140 Hearing generally.**

(a) The Director shall notify the taxpayer in writing of the time and place for a hearing at least thirty (30) days prior thereto.

(b) At the hearing, the taxpayer must assert any facts, make any arguments and file any briefs and affidavits the taxpayer believes pertinent to the taxpayer's cause.

(c) In lieu of the request for a hearing within the time provided by this Section, the taxpayer may, at the taxpayer's election, file a written brief and such other written materials or documents as the taxpayer shall deem appropriate and request that the Director reconsider the issues without a hearing. The Director shall proceed to consider the issues in the same manner as if the written material submitted had been presented at a hearing pursuant to this Section. The submission of written material shall be considered for all purposes the same as submission of the material at a hearing.

(d) Based on the evidence presented at such hearing or filed in support of the taxpayer's contentions, or after the expiration of thirty (30) days from the mailing of the notice of deficiency, if no request for hearing or brief has been filed by the taxpayer, the Director shall make a final determination within a reasonable time and shall send the taxpayer a notice of final determination by mail accompanied by notice and demand for payment. The Director may modify the tax, charges and interest questioned at the hearing and may approve a refund. Unless an appeal be taken as provided in this Chapter, the tax, together with interest thereon and charges if any, shall be paid within thirty (30) days after mailing of the notice and demand for payment by the Director.

(e) The burden of proof at the hearing shall be on the person making the claim and shall be based upon a preponderance of the evidence. (Ord. 8.12 §1, 1991)

**4.06.150 Hearings, subpoenas and witness fees.**

(a) Every hearing before the Director under this Chapter shall be held in the Town.

(b) All subpoenas issued under the terms of this Chapter may be served by any person over twenty-one (21) years of age. The fees of witnesses for attendance at a hearing shall be the same as the fees for witnesses before the Municipal Court, such fees to be paid when the witness is excused from further attendance. When the witness is subpoenaed at the instance of the Director, such fees shall be paid in the same manner as other expenses under the terms of this Chapter. When a witness is subpoenaed at the instance of any party to any such proceeding, the Director may require that the cost of service of the subpoena and the fee of the witness be borne by the party at whose instance the witness is summoned. In such case, the Director, in the Director's discretion, may require a deposit to cover the cost of such service and witness fees. A subpoena issued as aforesaid shall be served in the same manner as a subpoena issued out of the Municipal Court. (Ord. 8.12 §1, 1991)

**4.06.160 Judge compels attendance.**

The Judge of the Municipal Court, upon the application of the Director or a party to a proceeding under this Chapter, may compel the attendance of witnesses, the production of books, papers, records or memoranda, and the giving of testimony before the Director in the same manner as production of evidence may be compelled before the Court. (Ord. 8.12 §1, 1991)

**4.06.170 Decisions of Director; notice; when final.**

Every decision of the Director shall be in writing, and notice thereof shall be mailed to the taxpayer, and all such decisions shall become final upon the expiration of thirty (30) days after notice of such decision shall have been mailed to the taxpayer, unless proceedings are begun within the time for review thereof as provided in this Chapter. (Ord. 8.12 §1, 1991)

**4.06.180 Jeopardy assessment and demands.**

(a) If the Director finds that collection of the tax will be jeopardized by delay, in the Director's discretion, the Director may declare the taxable period immediately terminated, determine the tax and issue notice and demand for payment thereof and, having done so, the tax shall be due and payable forthwith, and the Director may proceed to collect such tax as provided in this Chapter.

(b) Collection may be stayed if the taxpayer gives such security for payment as shall be satisfactory to the Director. (Ord. 8.12 §1, 1991)

**4.06.190 Methods of enforcing collections.**

(a) The Director may issue a warrant directed to any employee, agent or representative of the Town, (sometimes in this Section referred to as agent), commanding such person to distrain, seize and sell the personal property of the taxpayer, except such personal property as is exempted from

execution and sale by any statute of the State, for the payment of the tax due together with charges and interest accrued thereon and cost of execution, under the following conditions:

(1) When any tax deficiency is not paid within thirty (30) days from the mailing of notice and final determination therefor and no appeal from such deficiency has been docketed with the District Court of Douglas County within said period;

(2) When any other amount of tax charge or interest is not paid within ten (10) days from the mailing of demand for payment thereof; or

(3) Immediately upon making of a jeopardy assessment or of the issuance of a demand for payment as provided by law.

(b) Whenever any personal property shall be distrained and seized, the agent shall make a list of such property and deliver a copy thereof to the owner of such property, or to a representative of the owner, together with a statement of the amount demanded and notice of the time and place fixed for the sale of such property.

(c) Such agent shall publish a notice containing a description of the seized property, and the reason for its being offered for the sale, in a newspaper of general circulation within the Town.

(d) The time fixed for the sale shall be not more than ten (10) days from the date of the notice, but the sale may be adjourned from time to time if there be no bidders, or if the agent shall deem such adjournment advisable for any reason, but in no event shall the sale be postponed for more than sixty (60) days from the date of the first notice.

(e) In all cases of sale, such agent shall issue a certificate of sale to each purchaser, and such certificate shall be prima facie evidence of the right of the agent to make such sale and conclusive evidence of the regularity of the proceedings in conducting and making such sale. The agent's certificate shall transfer to the purchaser all right, title and interest of the owner in and to the property sold.

(f) Any surplus of the sale proceeds remaining over and above the taxes, late charges, penalty, interest, costs and legal fees for making the seizure and advertising the sale shall be paid over to the owner and a written account of the sale shall be furnished to the owner.

(g) If, prior to the time fixed for the sale, the amount demanded be paid to the Director, plus the Town's costs of collection, the property distrained upon and seized shall be restored to the owner thereof. (Ord. 8.12 §1, 1991)

#### **4.06.200 Tax lien.**

(a) The excise tax imposed by this Chapter, together with the interest, late charges and penalties herein provided and the costs of collection, including legal fees, which may be incurred, shall be, and until paid, shall remain a perpetual lien on the property of the taxpayer within the Town subordinate to prior existing liens and mortgages validly perfected as required by law.

(b) Such lien may be foreclosed by seizing under distraint warrant and selling so much of the property as is in the possession of the taxpayer and which is subject to the lien as may be necessary to discharge the lien. (Ord. 8.12 §1, 1991)

**4.06.210 Recovery of unpaid tax by action at law.**

(a) The Director may also treat any such taxes, charges, penalties or interest due and unpaid as a debt of the taxpayer due the Town.

(b) In case of failure to pay the taxes or any portion thereof, or any penalty, charge or interest thereon when due, the Director may recover at law from the taxpayer the amount of such taxes, penalties, charges, interest and reasonable attorneys' fees in any court of competent jurisdiction.

(c) The return of the taxpayer or the assessment made by the Director, as herein provided, shall be prima facie proof of the amount of taxes and interest due. (Ord. 8.12 §1, 1991)

**4.06.220 Director may waive charge.**

The Director is hereby authorized to waive, for good cause shown, any charge assessed except that the Director may only waive any interest imposed in excess of six percent (6%) per annum. (Ord. 8.12 §1, 1991)

**4.06.230 Statute of limitations.**

(a) Except as provided in Subsections (b) and (c) below, the taxes for any period, together with interest thereon and charges with respect thereto, imposed by this Chapter shall not be assessed, nor shall any notice of lien be filed, nor criminal action commenced, nor distraint warrant issued, 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. Nor shall any lien 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 cases such lien shall continue only for one (1) year after the filing of notice thereof.

(b) In case of a false or fraudulent return with intent to evade tax, the tax, together with interest and charges thereon, may be assessed, or proceedings for the collection of such taxes may begin, at any time.

(c) Before the expiration of any period of limitation, the taxpayer and the Director may agree, in writing, to an extension thereof, and the period so agreed on may be extended by subsequent agreements, in writing. (Ord. 8.12 §1, 1991)

**4.06.240 Prohibitions.**

(a) It shall be unlawful for any person to engage in business involving providing electric power to customers within the Town for any period of time in a calendar month, without having filed the tax returns required in this Chapter or without having paid the tax herein imposed in the manner and within the time specified in this Chapter.

(b) It shall be unlawful and a violation of the Chapter for any person to fail to comply with any provision of this Chapter.

(c) It shall be unlawful and a violation of this Chapter for any person to make any false or fraudulent return, or any false statement in any return, or in any manner to evade the collection and payment of the tax, or any part thereof, imposed by this Chapter. (Ord. 8.12 §1, 1991)

#### **4.06.250 Jurisdiction of Municipal Court.**

The Municipal Court shall have the original jurisdiction of all cases arising under the provisions of this Chapter with full power to carry the same into effect and punish violations thereof by the imposition of such fines and penalties as may be provided. The Municipal Court shall have the power to compel the attendance of witnesses and to punish for contempt of such court. Any and all process issued out of such court may be served by any police officer of the Town or by any person specifically designated by the Municipal Court for that purpose. (Ord. 8.12 §1, 1991)

#### **4.06.260 Penalty.**

Whenever the doing of any act is required, prohibited or declared to be unlawful under the provisions of this Chapter, any person who is convicted of, or who pleads guilty or no contest to, a violation of any such section within this Chapter, shall be fined in a sum not more than four hundred ninety-nine dollars (\$499.00). Each day an offense continues shall constitute a separate offense. (Ord. 8.12 §1, 1991)

### **CHAPTER 4.07**

#### **Development Excise Tax**

##### **4.07.010 Purpose and intent.**

(a) This Chapter is adopted pursuant to the approval of the registered electors of the Town at the general municipal election held November 2, 1999, at which the question of whether the Town should impose the development excise tax contained in this Chapter was submitted to the registered electors of the Town.

(b) The Town is experiencing rapid growth which increases the cost to the Town of providing facilities necessitated by such growth. The Town Council has determined, and a majority of the registered electors of the Town have agreed, that a tax upon new development which is causing said increased costs is a proper method of paying for such costs. The tax imposed by this Chapter bears a reasonable relationship to the need for additional improvements created by the development which will pay the tax.

(c) The purpose of the development excise tax is to impose an excise tax on new development within the Town as set forth in this Chapter. The intent of this Chapter is to impose a greater excise tax on new residential development than on new nonresidential development, because of the greater impact on the provision of Town services caused by new residential development.

(d) The development excise tax is not an *ad valorem* tax on real property.

(e) The development excise tax shall apply regardless of the value of the property developed. (Ord. 8.20.2 §§1, 2, 1999)

**4.07.020 Definitions.**

As used in this Chapter, the following words shall be construed to have the meanings defined below:

*Apartment building* means a structure that contains three (3) or more dwelling units, excluding attached dwellings.

*Attached dwelling* means attached houses including duplexes, townhomes, patio homes and condominiums.

*Building permit* means an official document or certification which is issued by the Building Official and which authorizes the construction, alteration, enlargement, conversion, reconstruction, remodeling, rehabilitation, erection, demolition, moving or repair of a building or structure and will require the issuance of a certificate of occupancy.

*Certificate of occupancy* means an official document or certification which is issued by the Building Official and which authorizes the occupancy, temporary or otherwise, of a building or structure.

*Development and developed property* mean the new construction of any structure on real property.

*Nonresidential* means any use other than residential use, such as, but not limited to, commercial or industrial.

*Single-family dwelling* means a detached house.

*Usable space* means the floor area within a building. The floor area shall be determined from the plans and specifications submitted to the Building Official as a part of the application for a building permit, and shall include storage, restrooms, hallways and similar spaces, as measured from the outside dimensions. (Ord. 8.20.2 §§1, 2, 1999)

**4.07.030 Residential development excise tax.**

There is hereby levied and imposed on all residential development within the Town a residential development excise tax, in the following amount:

|  |            |
|--|------------|
| For each single-family dwelling:                     | \$3,500.00 |
| For each attached dwelling:                          | 2,700.00   |
| For each dwelling unit within an apartment building: | 2,400.00   |

(Ord. 8.20.2 §§1, 2, 1999)

**4.07.040 Nonresidential development excise tax.**

There is hereby levied and imposed on all nonresidential development within the Town a nonresidential development excise tax in the amount of twenty-five cents (\$0.25) per square foot of usable space. (Ord. 8.20.2 §§1, 2, 1999)

**4.07.050 Procedure.**

(a) Any person who applies for a building permit for any development within the Town shall pay the applicable development excise tax.

(b) The development excise tax shall be due and collectable on one (1) occasion only.

(c) The Building Official shall not issue a building permit unless and until the applicable development excise tax has been paid in full to the Town. (Ord. 8.20.2 §§1, 2, 1999)

**4.07.060 Development Excise Tax Fund.**

(a) There is hereby established a Development Excise Tax Fund into which shall be deposited all revenue collected by the Town from payments of the development excise tax set forth in this Chapter.

(b) Revenue from the Development Excise Tax Fund may be expended for the following purposes only:

(1) Capital improvements for major streets necessary to meet the health, safety and welfare of the Town, which includes, but is not limited to, expansion of the Town's street network and capital equipment;

(2) Parks and recreation purposes necessary to meet the health, safety and welfare of the Town, which includes, but is not limited to, the expansion of regional parks and associated infrastructure and capital equipment;

(3) Expansion of administrative facilities;

(4) The provision of law enforcement services, including facilities;

(5) Cost accounting, management and government of the Development Excise Tax Fund; and

(6) Payment of obligations issued for major street purposes, parks and recreational facilities, administrative facilities or law enforcement facilities. (Ord. 8.20.2 §§1, 2, 1999)

**4.07.070 Annual tax adjustment.**

In 2000 and every year thereafter, the tax described in this Chapter shall be recomputed by raising the tax in an amount equal to the percentage of change for the preceding year in the U.S. Bureau of Labor Statistics Consumer Price Index for Denver-Boulder, All Items, All Consumers or its successor index. The Town Council may waive an annual increase for any particular year or years. This adjustment shall not be considered a new tax or tax increase, but a method of accounting to ensure

that the value of the revenue collected pursuant to this Chapter is maintained. (Ord. 8.20.2 §§1, 2, 1999)

## **CHAPTER 4.08**

### **Stormwater Management Program**

#### **4.08.010 Authority and applicability.**

(a) The Town of Parker, as a home rule municipality organized under Article XX of the Colorado Constitution, has the authority under the Colorado Constitution, Section 31-35-402(1)(f), C.R.S., as amended, and Zelinger v. Denver, 724 P.2d 1356 (Colo. 1986), Bloom v. City of Fort Collins, 784 P.2d 304 (Colo. 1989) and Littleton v. State, 855 P.2d 448 (Colo. 1993) to adopt this Chapter.

(b) This Chapter shall apply to all real property in the Town. (Ord. 8.22 §2, 1999)

#### **4.08.020 Intent and purpose.**

(a) The purpose of this Chapter is to promote the protection of the public health, safety and welfare from damage from stormwater runoff by requiring that property owners in the Town pay for a share of the cost of the facilities reasonably necessary to manage such stormwater. Water from stormwater runoff may occur which exceeds the capacity of public facilities constructed and maintained by funds made available under this Chapter. This Chapter does not imply that real property liable for the stormwater utility fee established herein will always be free from stormwater flooding or flood damage. This Chapter does not purport to reduce the need or the necessity for any property owner to obtain flood insurance.

(b) It is the intent of the Town Council in enacting this Chapter:

(1) To establish a stormwater management utility to finance, coordinate, design, construct, manage, operate and maintain the public facilities described herein; and

(2) To establish a reasonable stormwater management fee based on the use of the land located within the Town.

(c) The Town Council further finds, determines and declares that the owners of real property within the Town are the ultimate beneficiaries and users of the public facilities contemplated by this Chapter and should fund and thereby provide the facilities and maintenance capability necessary for the reasonable control of stormwater and management of stormwater and also fund and thereby provide the public facilities required to convey such stormwater from the various drainage basins to the Town's major drainageways. (Ord. 8.22 §3, 1999)

#### **4.08.030 Definitions.**

The following words used in this Chapter have the following meanings, unless the context clearly indicates otherwise:

*Apartment* means a structure that contains three (3) or more dwelling units, excluding attached dwellings as defined herein.

*Attached dwelling* means attached houses including duplexes, townhomes, patio homes and condominiums.

*Dwelling unit* means single-family and multiple-family dwellings.

*Facilities* means all structures, equipment and all uses of land that are made in conjunction with or that are related or incidental to the construction, installation or use of the structures and equipment necessary to contain and control stormwater including, but not limited to, curbs and gutters, cross pans, pipes, inlets, conduits, channels, bridges and detention/retention ponds.

*Finance Director* means the Finance Director of the Town of Parker or designee (the "Finance Director").

*Impervious areas* are those areas with impervious surfaces which prevent or impede the infiltration of stormwater into the soil as it entered in natural conditions prior to development. Common impervious surfaces include, but are not limited to, roof tops, sidewalks, walkways, patio areas, driveways, parking lots, storage areas, compacted gravel and soil surfaces, awnings and other fabric or plastic coverings, and other surfaces that prevent or impede the natural infiltration of the stormwater runoff which existed prior to development.

*Multiple-family dwelling* means attached dwellings, townhomes, apartments, duplexes and condominiums.

*Nonresidential property* means any other real property in the Town that is used for uses other than residential, which includes, but is not limited to, commercial, industrial, public, church and school uses.

*Public facilities* means stormwater infrastructure accepted by the Town as provided in Section 4.08.090 of this Chapter.

*Public Works Director* means the Public Works Director of the Town of Parker or designee (the "Director").

*Residential property* means any real property that is used for residential uses including, but not limited to single-family and multiple-family dwellings and accessory uses that are customary to residential uses.

*Single-family dwelling* means detached houses.

*Stormwater utility fee* means the fee created in this Chapter for the funding of the Utility.

*Town* means the Town of Parker, Colorado.

*Town Administrator* means the Administrator for the Town of Parker or designee (the "Town Administrator").

*Utility* means the Stormwater Management Utility that is created in this Chapter. (Ord. 8.22 §4, 1999)

**4.08.040 Stormwater Management Utility.**

(a) There is hereby created a Stormwater Management Utility in the Department of Public Works under the control of the Director, who is authorized to implement the provisions of this Chapter.

(b) The owner of each parcel of real property in the Town shall pay the stormwater utility fee prescribed in Section 4.08.070 below for the coordination, management, design, construction, management, operation, maintenance and replacement of the Stormwater Management Utility and its facilities. (Ord. 8.22 §5, 1999)

**4.08.050 Use of fee.**

(a) The Utility shall hold all funds received by the Town under this Section in a separate account to be established as the Stormwater Utility Fund and make expenditures thereof only for the purpose of:

(1) Administration, coordination, engineering, planning, professional services, design, construction, installation, repair, maintenance, operation, management, improvement, replacement and reconstruction of facilities in the Town necessary for the Utility to reasonably handle stormwaters in the Town; and

(2) The purchase of interests in real property including without limitation fee simple ownership and easements that may be necessary for the Utility to construct and maintain facilities and otherwise implement the purposes of this Section.

(b) The Town may pledge stormwater utility fees collected under this Section and those anticipated to be collected to the retirement of the principal and interest of revenue or general obligation bonds issued by the Town for financing any of the activities and improvements set forth in Subsection (a) above.

(c) The Town may pledge stormwater utility fees collected under this Section and those anticipated to be collected to participate with the Urban Drainage and Flood Control District or other public entity or private party having a common interest in storm drainage projects or facilities that benefit the Utility. (Ord. 8.22 §6, 1999)

**4.08.060 Billing and payment of fees.**

(a) The Town shall cause billings for the stormwater utility fee to be rendered periodically at the rates established in Section 4.08.070 below.

(b) The stormwater utility fee charged in each billing period and any notices relating to the Utility shall be effective upon mailing said billing or notice to the address of the property that is being served by the Utility or to the last known address of the property owner of the property being served by the Utility as shown in the records of the County Assessor. Failure to receive a bill is not a defense to nonpayment. Regardless of the person to whom the bill is initially directed, the owner of

the property is ultimately responsible for the payment of such bill. The Town, without penalty, may correct any mistakes in a bill, including sending bills that the Town failed to send, so long as the corrected bill is sent within one (1) year of the date that the bill or the corrected bill should have been sent.

(c) All charges for the use of the Utility prescribed by this Section are due upon receipt of the bill and in no case later than the last day of the month of receipt of the bill. (Ord. 8.22 §7, 1999)

**4.08.070 Stormwater utility fee schedule.**

(a) The stormwater utility fee shall be paid by the property owner as follows:

(1) The amount of the fee for each single-family dwelling shall be five dollars (\$5.00) a month.

a. On January 1, 2008, the fee for each single-family dwelling shall be five dollars and fifty cents (\$5.50) a month.

b. On January 1, 2009, the fee for each single-family dwelling shall be six dollars (\$6.00) a month.

(2) The amount of the fee for each multiple-family dwelling, apartment and nonresidential property (collectively referred to as "nonresidential property") shall be calculated as follows:

Monthly fee = \$5.00 x (the total impervious area of the property in square feet) / (3,738 square feet).

a. On January 1, 2008, the amount of the fee for nonresidential property shall be calculated as follows:

Monthly fee = \$5.50 x (the total impervious area of the property in square feet) / (4,000 square feet)

b. On January 1, 2009, the amount of the fee for nonresidential property shall be calculated as follows:

Monthly fee = \$6.00 x (the total impervious area of the property in square feet) / (4,000 square feet)

(b) It shall be unlawful for any owner of any nonresidential real property, including, but not limited to, commercial, industrial, public, church or school property to fail to notify the Director when any undeveloped, grassed landscaped or cultivated portion of his or her property has been modified in any manner so as to create additional impervious area of ten percent (10%) of the total impervious area or one thousand (1,000) square feet of impervious area, whichever is less. (Ord. 8.22.1 §1, 2007; Ord. 8.22 §8, 1999)

**4.08.080 Certain properties exempt from fee.**

The following land uses are exempt from the stormwater utility fee:

(1) All public park land and open space;

(2) All public or private ponds, lakes, reservoirs, rivers, creeks, natural water courses or irrigation ditch/canal rights-of-way;

(3) All public or private streets, highways, rights-of-way and alleys;

(4) All railroad rights-of-way;

(5) All cemeteries;

(6) Golf courses; and

(7) All real property located within the A-Agricultural District as described in Section 13-04-050 of this Code. (Ord. 8.22 §9, 1999)

#### **4.08.090 Responsibility for accepted public facilities.**

(a) All public facilities constructed, installed or provided hereunder shall, upon acceptance of the same by the Town in writing, become the property of the Town, and the Town thereafter shall be responsible for the operation and maintenance of the same.

(b) The Town shall maintain all accepted public facilities located within public lands, rights-of-way and easements and may maintain other accepted public facilities located within or adjacent to the Town. Such public facilities do not include facilities not accepted by the Town in writing for maintenance, or privately owned and/or maintained drainage facilities. (Ord. 8.22 §10, 1999)

#### **4.08.100 Delinquency and collection.**

(a) The stormwater utility fee levied in accordance with this Chapter shall be paid upon receipt of the bill and in no case later than the last day of the month of receipt of the bill. If the bill is not paid within thirty-five (35) days after billing, and all appeals are exhausted under Section 4.08.110 below, it shall be deemed delinquent whereupon a twenty-five-dollar surcharge shall be imposed for collection services. In case the tenant in possession of any premises pays the fee, it shall relieve the property owner from such obligation. The owner of every structure or premises shall also be liable for the fee, which liability may be enforced, but the Town shall not be required to seek payment from any person whomsoever other than the property owner. No change of ownership shall affect the application of this Section, and the failure of any owner to discover that he or she purchased property against which a fee or surcharge exists shall in no way affect his or her liability for such payment in full.

(b) Nonpayment. All delinquent stormwater utility fees and any accrued surcharges shall be certified by the Finance Director to the County Treasurer, pursuant to Section 31-20-105, C.R.S., as amended, and collected and paid over to the County Treasurer in the same manner as taxes. (Ord. 8.22 §11, 1999)

#### **4.08.110 Administrative review; appeals.**

Any property owner desiring to dispute the amount of any fee may appeal the assessment of said fee to the Town Administrator by submitting a written notice of appeal, within thirty (30) days of the billing date. If a notice of appeal of the fee payment is received by the Town within thirty (30) days

of the billing date, then the Town Administrator shall schedule a hearing on said appeal to take place within forty-five (45) days of receipt of the notice of appeal. Notice of the time and place of the appeal hearing shall be mailed to the property owner by certified mail, return receipt requested. The Town Administrator, as a result of evidence produced at said hearing, after considering the facts submitted by the property owner, may deny the appeal or adjust the fee to be assessed to conform with the requirements of this Chapter. (Ord. 8.22 §12, 1999)

**4.08.120 Review by Town Council.**

The Town Council shall review the amount of the fees described in this Chapter at least every three (3) years. (Ord. 8.22 §13, 1999)

**4.08.130 Annual fee adjustment.**

In 2010 and every year thereafter, the fees described in this Chapter shall be recomputed by raising the fees in an amount equal to the percentage of change for the preceding year in the U.S. Bureau of Labor Statistics Consumer Price Index for Denver-Boulder, All Items, All Consumers or its successor index. The Town Council may waive an annual increase for any particular year or years. This adjustment shall not be considered a fee increase, but a method of accounting to ensure that the value of the revenue collected pursuant to this Chapter is maintained. (Ord. 8.22.1 §2, 2007)

**CHAPTER 4.09**

**Lodging Tax**

**4.09.010 Title.**

This Chapter shall be known and may be cited as the "Parker Lodging Tax." (Ord. 8.25 §1, 2003)

**4.09.020 Legislative intent.**

It is the legislative intent of the Town Council that every person who purchases lodging in the Town is exercising a taxable privilege and every person who furnishes lodging shall collect the tax imposed by this Chapter. (Ord. 8.25 §1, 2003)

**4.09.030 Definitions.**

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

*Gross taxable sales* shall mean the total amount received in money, credits, property or other valuable consideration from sales and purchases of lodging that shall be subject to the tax imposed by this Chapter;

*Lodging* shall mean the transaction of furnishing rooms or accommodations by any person, partnership, association, corporation, estate, receiver, trustee, assignee, lessee or any person acting in a representative capacity or any other combination of individuals by whatever name known to a person, who for a consideration uses, possesses, or has the right to use or possess any room, in a

hotel, apartment hotel, lodging house, motor hotel, guest house, guest ranch, mobile home, auto camps, trailer courts and parks, under any concession or franchise, permit, right of access, license to use or other agreement, or otherwise;

*Person* shall mean an individual, partnership, society, club, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any other group or combination of individuals acting as a unit, including the United States of America, the State and any political subdivision thereof;

*Purchase* or *sale* shall mean the acquisition for a price by any person of the taxable services of lodging within the Town;

*Purchaser* shall mean any person to whom the taxable service of lodging has been rendered;

*Tax* shall mean either the tax payable by the purchaser or the aggregate amount of taxes due from a vendor during the period for which the vendor is required to report collections under this Chapter;

*Taxpayer* shall mean any person obligated to account to the Finance Director for taxes collected or to be collected under the provisions of this Chapter; and

*Vendor* shall mean a person making sales to a purchaser in the Town of the taxable service of lodging. (Ord. 8.25 §1, 2003)

#### **4.09.040 Imposition of the tax.**

(a) There is hereby imposed a tax in the amount of three percent (3%) of the purchase price paid or charged for lodging within the Town.

(b) The tax imposed by this Chapter shall be in addition to the tax on sales and services as provided in Section 4.03.280 of this Title. (Ord. 8.25 §1, 2003)

#### **4.09.050 Exemptions.**

There shall be exempt from the provisions of this Chapter the following:

(1) All sales and purchases by any purchaser or vendor where the purchaser is a permanent resident who has entered into a written agreement with a vendor for the occupancy or use of lodging for a period of at least thirty (30) consecutive days during the calendar year.

(2) All sales to the United States of America, to the State, its departments or institutions and political subdivisions thereof, which are acting in their governmental capacities, and to all sales to the Town or any department thereof. (Ord. 8.25 §1, 2003)

**4.09.060 Collection of tax.**

(a) Every vendor making sales to a purchaser in the Town that are taxable under the provisions of this Chapter is required to collect the tax imposed by Subsection 4.09.040(a) of this Chapter from the purchaser at the time of making such sales.

(b) The tax to be collected as provided in Subsection (a) herein above shall be stated and charged separately from the sale price on any record thereof at the time when the sale is made or at the time when evidence of the sale is issued or employed by the vendor; provided, however, that when added, such tax shall constitute a part of such sale price or charge and shall be a debt from the purchaser to the vendor until paid and shall be recoverable at law in the same manner as other debts. The tax shall be paid by the purchaser to the vendor, who shall act as trustee for and on account of the Town, and the vendor shall be liable for the collection therefor and on account of the Town.

(c) Taxes paid on the amount of gross sales that are represented by accounts that are found to be worthless and are actually and properly charged off as bad debts for the purpose of the income tax imposed by the laws of the State of Colorado may be credited upon a subsequent payment of the tax as herein provided. Should, however, any such amounts be thereafter collected by the vendor, the tax shall be paid to the Town upon the amount so collected. (Ord. 8.25 §1, 2003)

**4.09.070 Vendor responsible for payment of tax.**

(a) Every vendor shall add the tax imposed by Subsection 4.09.040(a) of this Chapter to the purchase price or charge of all lodging within the Town; provided, however, that the vendor shall be liable and responsible to the Town for the payment on a monthly basis of an amount equal to three percent (3%) of all gross taxable sales of the vendor and any collection in excess of the percentage, less that percentage amount prescribed in Subsection 4.03.370(e) of this Title to cover the vendor's expense in the collection and remittance of the tax.

(b) Every vendor shall, before the twentieth day of each month, make a return to the Finance Director for the preceding calendar month, and remit to the Finance Director, simultaneously therewith the total amount due to the Town, as provided in Subsection (a) above. The monthly returns of the vendor as required hereunder shall be made in such manner and upon such forms as the Finance Director may prescribe.

(c) If the accounting methods regularly employed by the vendor in the transaction of business, or other conditions, are such that the returns aforesaid made on a calendar month basis will impose an unnecessary hardship, the Finance Director may, upon request of the vendor, accept returns at such intervals as will, in the opinion of the Finance Director, better suit the convenience of the vendor and will not jeopardize collection of the tax; provided, however, the Finance Director may permit a vendor whose monthly tax collected is less than sixty dollars (\$60.00) to make returns and pay taxes at intervals not greater than three (3) months. (Ord. 8.25 §1, 2003)

**4.09.080 Applicability of other provisions.**

The procedures established in Chapter 3.03 of this Title relating to the collection of sales and use tax, including any provisions for penalty, shall be applicable to the lodging tax unless such provisions conflict with the provisions of this Chapter. (Ord. 8.25 §1, 2003)

**4.09.090 Duty to keep books and records; audit.**

(a) It shall be the duty of every person subject to the provisions of this Chapter to keep and preserve suitable records of all sums of money paid for lodging in order to determine the amount of lodging tax that is due and owing to the Town by any person subject to the provisions of this Chapter.

(b) The Finance Director, or a designee thereof, may make, permit, or cause to be made the examination, inspection or audit of books, invoices, accounts and other records so kept or maintained by any person subject to the provisions of this Chapter. (Ord. 8.25 §1, 2003)

**4.09.100 Unlawful assumption of tax.**

It shall be unlawful for any person subject to the provisions of this Chapter to advertise or hold out or state to the public or any person, directly or indirectly, that the lodging tax or any part thereof imposed by this Chapter, will be assumed or absorbed by such person, or that it will not be added to the price charged for lodging, or, if added, that it or any part thereof will be refunded. (Ord. 8.25 §1, 2003)

**4.09.110 Interest on deficiency.**

Any interest on deficiency, including computation, penalty or jeopardy enforcement, shall be enforced in the amount prescribed in Sections 4.03.080 and 4.03.090 of this Title. (Ord. 8.25 §1, 2003)

**4.09.120 Disputes; refunds.**

Any dispute or claim for refund arising under any provision of this Chapter shall be resolved in a manner prescribed in Section 4.03.110 of this Title. (Ord. 8.25 §1, 2003)

**4.09.130 Tax information to be confidential.**

Subject to any limitation of a judicial order, the Finance Director or any other officer or employee of the Town shall not divulge any information regarding any lodging tax report or return filed with the Town as required by any provision of this Chapter. (Ord. 8.25 §1, 2003)

**4.09.140 Administrative hearings.**

Any person subject to the provisions of this Chapter may request a hearing on the imposition of the lodging tax after receiving a notice of final determination, assessment, demand for payment or denial of claim for refund as set forth in Section 4.03.110 of this Title. (Ord. 8.25 §1, 2003)

**4.09.150 Enforcement of tax liability.**

The lodging tax imposed pursuant to this Chapter, together with all interest and penalties pertaining thereto, shall be a first and prior lien on tangible personal property in which the person responsible to collect and remit the lodging tax has an ownership interest, subject only to a perfected security interest. The Finance Director may also treat lodging taxes and penalties or interest due thereon and then paid as a debt due to the Town from any person subject to the provisions of this Chapter, which shall be recoverable by the Town in an action at law. (Ord. 8.25 §1, 2003)

**4.09.160 Administration of the lodging tax.**

The Finance Director shall administer the provisions of this Chapter. (Ord. 8.25 §1, 2003)

**4.09.170 Use of tax revenue.**

The proceeds of the tax shall be used for general expenses, which includes, but is not limited to, expenditures for parks, recreation and open space, economic development, roadway improvements and public safety. (Ord. 8.25 §1, 2003)

**4.09.180 Severability provision.**

If any provision of this Chapter or application thereof to any person or circumstance is adjudged invalid by a court of competent jurisdiction, such invalidity shall not affect the remaining provisions of this Chapter that can be effective without the invalid provision, and to this end this Chapter is declared to be severable. (Ord. 8.25 §1, 2003)