

CHAPTER 4

Revenue and Finance

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ARTICLE I

Fiscal Year

Sec. 4-1-10. Fiscal year established.

The fiscal year of the Town shall commence on the first day of January and end on the last day of December each year. (Prior code 3-1-1)

ARTICLE II

Financial Management

Sec. 4-2-10. Annual budget.

Not later than October 15 of each year, the Town Treasurer shall submit to the Board of Trustees the itemized annual budget for the ensuing fiscal year. The budget, as approved by the Board of Trustees, shall be adopted and administered in accordance with the provisions of the Local Government Budget Law of Colorado. (Prior code 3-1-2; Ord. 526 §1, 2005)

Sec. 4-2-20. Tax levy.

The Board of Trustees shall, by ordinance or resolution, fix the rate of tax to be levied upon all the taxable property within the Town for municipal purposes and, through the Town Clerk, shall officially certify said levy to the Board of County Commissioners prior to the first day of November of each year. (Prior code 3-1-3; Ord. 526 §1, 2005)

Sec. 4-2-30. Annual appropriations.

The Board of Trustees shall pass an ordinance or resolution within the last quarter of each fiscal year, to be termed the Annual Appropriation Ordinance or resolution, for the next fiscal year. In such ordinance or resolution, the Board of Trustees shall appropriate such sums of money as are necessary to cover the items in its budget and to defray all necessary expenses and liabilities of the Town, specifying the objects and purposes for which such appropriations are made and the amount appropriated for each object or purpose. The total amount appropriated shall not exceed the probable amount of revenue that will be collected during the fiscal year. (Prior code 3-1-4)

Sec. 4-2-40. Deposits.

The Town Treasurer shall deposit all of the funds and monies which come into his or her possession by virtue of his or her office as Town Treasurer in a bank or savings institution approved by the Board of Trustees. (Prior code 3-1-5)

Sec. 4-2-50. Annual audit.

The Board of Trustees shall select a qualified person or firm as auditor and cause to be made an annual audit of the financial affairs and transactions of the Town in accordance with the requirements of state law. (Prior code 3-1-6)

Sec. 4-2-60. Fee schedule.

From time to time, the Board of Trustees shall adopt, by resolution or ordinance, a Town of Bennett Schedule of Fees establishing the amounts for certain fees, charges and deposits provided for in this Code. (Ord. 610-10 §1)

ARTICLE III

General and Special Funds

Sec. 4-3-10. Custody and management of funds.

Moneys in the funds created in this Chapter shall be in the custody of and managed by the Town Treasurer. The Town Treasurer shall maintain accounting records and account for all of said moneys as provided by law. Moneys in the funds of the Town shall be invested or deposited by the Town Treasurer in accordance with the provisions of law. All income from the assets of any fund shall become a part of the fund from which derived and shall be used for the purpose for which such fund was created; provided that, except as otherwise provided in this Code or by other ordinances or laws, the Board of Trustees may transfer out of any fund any amount at any time to be used for such purpose as the Board of Trustees may direct. (Ord. 526 §1, 2005)

Sec. 4-3-20. General Fund created.

There is hereby created a fund, to be known as the General Fund, which shall consist of the following:

- (1) All cash balances of the Town not specifically belonging to any existing special fund of the Town.
- (2) All fixed assets of the Town (to be separately designated in an account known as the General Fund Fixed Assets) not specifically belonging to any existing special fund of the Town. (Ord. 526 §1, 2005)

Sec. 4-3-30. Capital Improvement Fund created.

There is hereby created a special fund, to be known as the Capital Improvement Fund, and the funds therein shall be used only for the purposes allowed by law. (Ord. 526 §1, 2005)

Sec. 4-3-40. Conservation Trust Fund created.

There is hereby created a special fund, to be known as the Conservation Trust Fund, and the funds therein shall be used only for the purposes allowed by law. (Ord. 526 §1, 2005)

Sec. 4-3-50. Road and Bridge Fund created.

There is hereby created a special fund, to be known as the Road and Bridge Fund, and all funds shall be used for purposes related to roads and bridges and as allowed by law. (Ord. 611-10 §1)

Sec. 4-3-60. Restricted Street Fund created.

There is hereby created a special fund, to be known as the Restricted Street Fund, and all funds shall be used only for the purposes as allowed by law. (Ord. 611-10 §1)

Sec. 4-3-70. Adams County Open Space Fund created.

There is hereby created a special fund, to be known as the Adams County Open Space Fund, and all funds shall be used only for purposes related to open space in the Adams County area of the Town limits and as allowed by law. (Ord. 611-10 §1)

Sec. 4-3-80. Arapahoe County Open Space Fund created.

There is hereby created a special fund, to be known as the Arapahoe County Open Space Fund, and all funds shall be used only for purposes related to open space in the Arapahoe County area of the Town limits and as allowed by law. (Ord. 611-10 §1)

Sec. 4-3-90. Mount View Cemetery Fund created.

There is hereby created a special fund, to be known as the Mount View Cemetery Fund, and all funds shall be used only for the purposes of the Cemetery and as allowed by law. (Ord. 611-10 §1)

Sec. 4-3-100. Reserve Fund created.

There is hereby created a special fund, to be known as the Reserve Fund, and all funds shall be used only for the purposes allowed by law. (Ord. 611-10 §1)

Sec. 4-3-110. Grants Fund created.

There is hereby created a special fund, to be known as the Grants Fund, and all funds shall be used only for the purposes in accordance with grant agreements and as allowed by law. (Ord. 611-10 §1)

Sec. 4-3-120. Water Capital Fund created.

There is hereby created a capital fund, to be known as the Water Capital Fund, and all funds collected pursuant to Section 13-1-10 of this Code shall be deposited in the Water Capital Fund and shall be used only for purposes related to water capital projects. (Ord. 611-10 §1)

Sec. 4-3-130. Renewable Water Fund created.

There is hereby created a capital fund, to be known as the Renewable Water Fund, and all funds collected shall be used only for the purposes of obtaining a renewable water source for the Town. (Ord. 611-10 §1)

Sec. 4-3-140. Wastewater Capital Fund created.

There is hereby created a capital fund, to be known as the Wastewater Capital Fund, and all funds collected pursuant to Section 13-1-20 of this Code shall be deposited in the Wastewater Capital Fund and shall be used only for the purposes of wastewater capital projects. (Ord. 611-10 §1)

Sec. 4-3-150. Debt Service Fund created.

There is hereby created a special fund, to be known as the Debt Service Fund, and all funds collected shall be used only for the purposes of paying debt service. (Ord. 611-10 §1)

Sec. 4-3-160. Water Fund created.

There is hereby created an enterprise fund, to be known as the Water Fund, and all funds collected shall be used only for the purposes as allowed by law. (Ord. 611-10 §1)

Sec. 4-3-170. Wastewater Fund created.

There is hereby created an enterprise fund, to be known as the Wastewater Fund, and all funds collected shall be used only for the purposes as allowed by law. (Ord. 611-10 §1)

ARTICLE IV

Municipal Contracts

Sec. 4-4-10. Purchase authorization.

No purchase shall be made without first securing a purchase order authorization from the Town Clerk, Director of Public Works or Mayor. (Prior code 3-5-1; Ord. 526 §1, 2005)

Sec. 4-4-20. Office supplies.

The Town Clerk shall have the authority to purchase all necessary supplies and stationery required for the normal operation of Town business. No formal bidding shall be required; however, every effort shall be made to purchase supplies at the best value available. (Prior code 3-5-2)

Sec. 4-4-30. Maintenance supplies.

It shall be the duty of the Director of Public Works to purchase and maintain a reasonable stock of meters, meter pits and covers and various pipe fittings needed to properly maintain the water system. (Prior code 3-5-3; Ord. 526 §1, 2005)

Sec. 4-4-40. Equipment repair.

(a) It shall be the duty of the Director of Public Works to purchase and install, or arrange to have repaired, any item of a minor nature on all Town equipment in order to maintain this equipment in a serviceable condition. A minor item shall be any item less than five hundred dollars (\$500.00) and necessary for the safe and proper operation of the equipment.

(b) Any item of a major nature shall be reported to the proper department head or the Mayor, who may arrange for the approval of the Board of Trustees for such purchase or repairs. A major item shall be any item over five hundred dollars (\$500.00) or any item that is not necessary for the safe and proper operation of the equipment.

(c) In all cases, all items shall be procured in conformation with the Town's purchasing policy. (Prior code 3-5-4; Ord. 526 §1, 2005)

Sec. 4-4-50. Capital investment.

All items of a capital investment nature shall have the approval of the Board of Trustees before any of these purchases are made. This shall include all purchases of new equipment of a permanent nature and items that must be shown on tool inventories. These items are normally not required immediately and shall be planned far enough in advance to be included in the annual budget. (Prior code 3-5-5)

Sec. 4-4-60. Building and plant repair.

It shall be the duty of the Director of Public Works to report any need for repair to the proper department head or to the Mayor, who may either authorize the repair or arrange for the approval of the Board of Trustees to authorize such repair. When making this decision, consideration shall be given to the urgency, price of repairs and whether such item is specifically included in the annual budget. (Prior code 3-5-6; Ord. 526 §1, 2005)

Sec. 4-4-70. Local purchases.

It shall be the intent of the Board of Trustees to purchase as many supplies as possible locally, provided that the price for such supplies is competitive. (Prior code 3-5-7)

Sec. 4-4-80. Informal bidding.

It shall be the obligation of any person purchasing any item for the Town to ensure the item is purchased at the best value. When like items are available from several suppliers, consideration shall be given to any delivery charges, availability and reliability of the supplier. (Prior code 3-5-8)

Sec. 4-4-90. Formal bidding.

It shall be the responsibility of the Board of Trustees to arrange for the formal bidding of any items of a large value where competitive bidding would, at the discretion of the Board of Trustees, be advantageous to the Town. The Board of Trustees may, through written purchase policies, require or arrange for formal bidding. The Board of Trustees may, however, delegate this authority to some other officer or the Director of Public Works. (Prior code 3-5-9; Ord. 526 §1, 2005)

Sec. 4-4-100. Contractor bond.

Any person entering into a contract with the Town for the construction of any public building, or the prosecution or completion of any public work or building, shall be required before commencing work to execute, in addition to all bonds that may now or hereafter be required of such person, a penal bond with good and sufficient surety or sureties, to be approved by the Board of Trustees. Such bond shall be conditioned that such contractor shall promptly make payments of all amounts lawfully due to all persons supplying or furnishing the contractor, or his or her subcontractor, with labor or materials used or performed in the prosecution of the work provided for in such contract, and shall indemnify the Town to the extent of any and all payments in connection with the carrying out of such contracts which the Town may be required to make under the law. (Prior code 3-5-10; Ord. 526 §1, 2005)

Sec. 4-4-110. Financial interest.

It shall not be the intention of the Board of Trustees to exclude any elected official of the Town from bidding or entering into a contract with the Town or having any financial dealings with the Town; however, no elected official shall have a vote on any matter wherein he or she has a financial interest and shall abstain from such vote. In the case of identical bids, the bid shall not be awarded to such elected official, but shall be awarded to the disinterested party. (Prior code 3-5-11)

ARTICLE V

Sales Tax

Sec. 4-5-10. Declaration of purpose.

The Board of Trustees declares that its intent in the enactment of this Article is to levy within the Town a retail sales tax authorized by state statutes. This Article shall be so construed and interpreted as to effectuate the general purpose of making it uniform with the State's sales tax. (Ord. 89 §1-1, 1973; Ord. 526 §1, 2005)

Sec. 4-5-20. Definitions.

For the purposes of this Article, the definitions of words herein contained shall be as defined in Sections 39-26-102 and 39-26-201, C.R.S., and said definitions are incorporated herein by this reference. (Ord. 89 §1-2, 1973; Ord. 526 §1, 2005)

Sec. 4-5-30. Property and services taxed.

There is hereby imposed on all sales of tangible personal property at retail or the furnishing of services, as provided in Section 29-2-105(1)(d), C.R.S., a tax equal to three percent (3%) of the gross receipts. The tangible personal property and services taxable by this Article shall be the same as the tangible personal property and services taxable pursuant to Section 39-26-104, C.R.S. The imposition of the tax on individual sales shall be in accordance with schedules promulgated by the Colorado Department of Revenue. If any vendor, during any reporting period, shall 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 Executive Director of the Colorado Department of Revenue, hereinafter referred to in this Article as "Executive Director," the full amount of the tax herein imposed, together with such excess. (Ord. 89 §1-3, 1973; Ord. 526 §1, 2005; Ord. 544 §1, 2006)

Sec. 4-5-40. Vendor liable for tax.

(a) Every retailer, also herein called *vendor*, shall be liable and responsible for the payment of an amount equivalent to three percent (3%) of all sales made by him or her of commodities or services as specified in Section 4-5-30 above, and shall, before the twentieth day of each month, make a return to the Executive Director for the preceding calendar month and remit an amount equivalent to said three percent (3%) on such sales to the Executive Director. Such returns of the taxpayer or his or her duly authorized agent shall contain such information and be made in such manner and upon such forms that the Executive Director may prescribe.

(b) The Executive Director may extend the time for making a return and paying the taxes due under such reasonable rules and regulations as he or she may prescribe, but no such extension shall be for a greater period than three (3) months.

(c) The burden of proving that any retailer is exempt from collecting the tax on any goods and paying the same to the Executive Director, or from making such returns, shall be on the retailer or vendor under such reasonable requirements or proof as the Executive Director may prescribe. (Ord. 89 §1-4, 1973; Ord. 544 §2, 2006)

Sec. 4-5-50. Collection of tax.

(a) The collection, administration and enforcement of this sales tax shall be performed by the Executive Director in the same manner as the collection, administration and enforcement of the state sales tax. The provisions of Article 26 of Title 39, C.R.S., and all rules and regulations promulgated by the Executive Director shall govern the collection, administration and enforcement of the sales tax imposed by this Article.

(b) For the purpose of collection, administration and enforcement of this Article by the Executive Director, the provisions of Article 26 of Title 39, C.R.S., shall be deemed applicable and incorporated into this Article. (Ord. 89 §1-5, 1973; Ord. 526 §1, 2005)

Sec. 4-5-60. General provisions.

(a) The amount subject to tax under this Article shall not include the state sales and use tax imposed by Article 26 of Title 39, C.R.S.

(b) For the purpose of this Article, all retail sales shall be considered 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.

(c) The gross receipts from 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 places to which delivery is made.

(d) In the event a retailer has no permanent place of business in the Town, or more than one (1) place of business, the place or places at which the retail sales are consummated for the purpose of this sales tax shall be determined by the provisions of Article 26 of Title 39, C.R.S., and by the rules and regulations promulgated by the Department of Revenue.

(e) All sales of personal property on which a specific ownership tax has been paid or is payable shall be exempt from the Town's sales tax 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 state law.

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

(g) For transactions consummated on or after January 1, 1986, the Town's 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 statutory or home rule municipality equal to or in excess of the rate imposed pursuant to Section 4-5-30 above. 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 statutory or home rule municipality. The amount of the credit shall not exceed the rate imposed pursuant to Section 4-5-30 above. (Ord. 89 §1-6, 1973; Ord. 226 §3, 1986; Ord. 544 §3, 2006)

Sec. 4-5-70. Reserved.

Sec. 4-5-80. Violation.

(a) It is unlawful for any retailer or vendor to refuse to make any return provided to be made in this Article; to make any false or fraudulent return or false statement on any return; to fail or refuse to make payment to the Executive 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; or for any person or purchaser to fail or refuse to pay such tax, to evade the payment thereof or to aid or abet another in any attempt to evade the payment of the tax.

(b) Any person violating any of the provisions of this Article shall be guilty of a misdemeanor and, upon conviction shall be punished in accordance with the provisions of Section 1-4-20 of this Code. (Ord. 89 §1-8, 1973; Ord. 526 §1, 2005)

Sec. 4-5-90. Administration.

The administration of this Article is vested in and shall be exercised by the Town Clerk and the Executive Director, and the Executive Director shall prescribe forms and reasonable rules and regulations in conformity with this Article for the making of returns, for the ascertainment, assessment and collection of taxes imposed hereunder, and for the proper administration and enforcement of this Article. (Ord. 89 §1-9, 1973)

Sec. 4-5-100. Amendments.

The Board of Trustees shall not increase the retail sales tax imposed by this Article except by submission of such proposed increase to an election by the registered electors of the Town for their approval or rejection in accordance with state law. However, subject to state law, the Board of Trustees reserves the power to make any other amendments of this Article or to repeal this Article in its entirety without submission of such amendment or such repeal to an election by the qualified electors of the Town for their approval or rejection. (Ord. 89 §1-11, 1973; Ord. 526 §1, 2005)

ARTICLE VI

Use Tax

Sec. 4-6-10. Definitions.

Except as set forth below, or unless the context clearly indicates otherwise, the definitions of the words contained in this Article shall be as defined in Sections 39-26-102 and 39-26-201, C.R.S:

Building and construction materials means any materials, goods or commodities which are used or consumed in connection with the building, construction, reconstruction, alteration, expansion, modification or improvement of any dwelling, building, structure or private improvement. It specifically includes any item, materials, goods or commodities which become a part of the dwelling, building, structure or improvement, or which are affixed to or provided with the dwelling, building, structure or improvement, or the lot or parcel of ground on which the dwelling, building, structure or improvement is located. (Ord. 326 §I, 1995)

Sec. 4-6-20. Imposition of tax; rate.

(a) Imposition. There is hereby levied and imposed, and there shall be collected by the Town and paid by the taxpayer, a use tax on the full purchase price paid or charged on the sale or purchase of building and construction materials, when purchased or sold at retail, and used or consumed in the Town.

(b) Rate. The amount of the tax hereby levied is two percent (2%) of the full purchase price of building and construction materials. (Ord. 326 §II, 1995; Ord. 526 §1, 2005)

Sec. 4-6-30. Exemptions.

The following list of exemptions cannot be increased by implication or similarity. In all cases, the burden of proof is upon the taxpayer to establish an exemption. The following are exempt from the use tax imposed by this Article:

(1) 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) 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) 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 the State by a nonresident to be used in the conduct of a business in this State.

(4) The storage, use or consumption of tangible personal property by the United States government, the State, or its institutions or political subdivision in their governmental capacities

only, or religious or charitable corporations in the conduct of their regular religious or charitable functions.

(5) 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 of 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 furnished shipping case thereof.

(6) The storage, use or consumption of any article of tangible personal property the sale or use of which has already been subjected to a legally imposed sales or use tax of another municipality equal to or in excess of two percent (2%). A credit shall be granted against the Town's use tax with respect to a person's storage, use or consumption in the Town of tangible personal property, the amount of the credit to equal the tax paid by him or her by reason of the imposition of a sales or use tax of the previous municipality on the purchase or use of the property. The amount of credit shall not exceed two percent (2%).

(7) 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) 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 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 said motor vehicle outside of the Town.

(9) The storage, use or consumption of any construction and building materials and vehicles on which registration is required if a written contract for the purchase thereof was entered into prior to the effective date of the initial ordinance codified herein.

(10) 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 the effective date of the initial ordinance codified herein.

(11) Any transaction which the Town is prohibited from taxing under the Constitution and laws of the United States of America, or under the Constitution and laws of the State. (Ord. 326 §III, 1995; Ord. 526 §1, 2005)

Sec. 4-6-40. Construction and building materials; method of payment.

Every contractor, subcontractor or other person who shall build, construct, reconstruct, alter, expand, modify or improve any building, dwelling or other structure or improvement to real property, including all work performed on federal, state, county, municipality, exempt institution or private construction job sites in this Town, and who purchases building and construction materials shall pay the use tax imposed by Section 4-6-20 of this Article in one (1) of the following ways:

(1) Payment at the time of issuance of a building permit, based on the estimated cost of building and construction materials, calculated by multiplying the use tax of two percent (2%) by

fifty percent (50%) of the total valuation of the construction project as entered on the building permit by the Town building division.

(2) Filing a use tax return on a monthly or other basis approved by the Town Clerk, attaching such statements and invoices for building and construction materials purchased and payment of the tax by the twentieth day of each reporting period for the previous reporting period.

(3) If the estimated method is used, within sixty (60) days from the issuance of a certificate of occupancy for the improvement on which the use tax was paid, the Town may audit the taxpayer or the taxpayer may request an audit to recompute the use tax by comparing the estimated cost of building and construction materials. If the recomputed use tax is less than the amount of use tax paid by the taxpayer, the difference shall be refunded to the taxpayer. If the recomputed use tax is more than the amount of use tax paid by the taxpayer, the difference shall be paid by the taxpayer to the Town. (Ord. 326 §IV, 1995)

Sec. 4-6-50. Duties and powers of Town Clerk.

(a) The administration of the provisions of this Article is hereby vested in and shall be exercised by the Town Clerk, who shall prescribe forms and formulate and promulgate appropriate rules and regulations to effectuate the purpose of this Article, for the ascertainment, assessment and collection of the tax imposed and for the proper administration and enforcement thereof. Regulations adopted, amended or rescinded by the Town Clerk shall be effective in the manner and at the time prescribed by the Town Clerk, subject to the provisions of this Article.

(b) The Town Clerk may appoint such persons to make such expenditures, require such reports, make such investigations and take such other action as he or she deems necessary or suitable to that end. The Town Clerk shall determine his or her own organization and methods of procedure in accordance with provisions of this Article. 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 Town Clerk shall have the power to examine or cause to be examined by any 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 this Article, the Town Clerk is authorized to appoint and 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 Town Clerk may delegate to any such person so appointed such power and authority as he or she deems reasonable and proper for the effective administration of this Article and shall bond, in a sufficient amount, any person handling money under this Article. (Ord. 326 §V, 1995)

Sec. 4-6-60. Maintenance of books and records.

(a) The Town Clerk 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 Town Clerk may deem sufficient to demonstrate whether or not such person is liable for payment or collection of tax imposed by this Article.

(b) Taxpayers who have prepaid an estimate of taxes on construction projects under Subsection 4-6-40(1) shall, upon completion of each such project, report the actual costs of construction and building materials used therein.

(c) It shall be the duty of every person liable to the Town for any tax imposed in this Article to keep and preserve for a period of three (3) years such books, accounts and sales and purchase records as may be necessary to determine the amount of such tax liability.

(d) All such books, accounts and records shall be open for examination at any time by the Town Clerk or his or her duly authorized agents. In the case of a person who does not keep the necessary books, accounts and records within the Town, it shall be sufficient if such person produces within this Town such books, accounts and records, or such information as shall be reasonably required by the Town Clerk, for examination by the Town Clerk. (Ord. 326 §VI, 1995; Ord. 526 §1, 2005)

Sec. 4-6-70. Preservation of tax reports and returns; confidentiality.

(a) All reports and returns of taxes received by the Town Clerk covered by this Article shall be preserved for three (3) years and thereafter until the Town Clerk orders them to be destroyed.

(b) Except in accordance with judicial order or as otherwise provided by law, the Town Clerk or his or her agents, clerks or employees shall not divulge or make known in any way any information disclosed in any document, report or return filed in connection with this Article.

(c) 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 Town Clerk, or his or her deputy or agent, and when so certified shall be evidence equally with and in like manner as the originals and may be received by the courts of this State as evidence of the contents.

(d) 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, or the inspection of returns by the Town Attorney or other legal representatives of the Town.

(e) Notwithstanding the provisions of this Section, the Town Clerk in his or her discretion may furnish to the taxing officials of any other state and its political subdivisions, to the 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 Article, or in the report of an audit or investigation made with respect thereto, provided that said jurisdiction enters into an agreement with the Town Clerk to grant similar privileges to the Town, and provided further that such information is to be used only for tax purposes. (Ord. 326 §VII, 1995; Ord. 526 §1, 2005)

Sec. 4-6-80. Collection, administration, interest and penalties.

Except as set forth in this Article, the collection, administration and enforcement of the use tax imposed by Section 4-6-20 shall be performed by the Town Clerk in substantially the same manner as the collection, administration and enforcement of the Colorado Sales and Use Tax as provided in Article 2, Title 29, C.R.S., and Article 26, Title 39, C.R.S. Interest and penalties shall also be assessed and collected in accordance with Article 2, Title 29, C.R.S. (Ord. 326 §VIII, 1995)

Sec. 4-6-90. Violations; evasion of tax; penalty.

It is a violation of this Article for any person subject to the tax levied by this Article to refuse to make any return provided to be made; to make any false or fraudulent return or any false statements in any return; to fail or refuse to make payment to the Town Clerk of any taxes due the Town; or in any manner to evade the payment of the tax, or any part thereof imposed by this Article; or for any person to aid or abet another in any attempt to evade the payment of the tax imposed by this Article. Any person violating any provision of this Article shall be subject to prosecution and the imposition of penalties as provided by law. (Ord. 326 §IX, 1995)

Sec. 4-6-100. Amendments.

Except as provided by Colorado law, the rate of use tax and the items taxed and exempted from the use tax hereunder shall not be amended, altered, deleted or changed without being submitted to the electors of the Town. Other provisions of this Article may be amended, altered, deleted or changed by the adoption of an amending ordinance in accordance with law and without being submitted to the electors of the Town for their approval. (Ord. 326 §XI, 1995)

ARTICLE VII

Lodging Occupation Tax

Sec. 4-7-10. Declaration of purpose.

The Board of Trustees hereby finds, determines and declares:

(1) For the purposes of this Article, every person who furnishes lodging for consideration in the Town is exercising a taxable privilege. The purpose of this Article is to impose a tax which will be paid by every vendor providing such lodging in the Town, which tax will provide revenues to be collected, retained and spent for any lawful municipal purpose;

(2) Pursuant to authority found in the laws of the State, the following lodging occupancy tax is adopted for the purpose of promoting the health, safety, morals and general welfare of the Town;

(3) The provision of lodging to the traveling public results in the increased use of Town streets and rights-of-way, increased traffic, increased demands upon municipal services and utilities and has substantial effect upon the health, safety, and welfare of the citizens of the Town and upon expenditures budgeted by the Town, which is a matter of local concern; and

(4) The classification of the provision of lodging as separate businesses and occupations is reasonable, proper, uniform, nondiscriminatory and necessary. (Ord. 545 §1, 2006)

Sec. 4-7-20. Definitions.

For purposes of this Article, the following words shall have following meanings:

Lodging shall mean hotel rooms, motel rooms, lodging rooms, motor hotel rooms, bed and breakfast rooms, guesthouse rooms, guest ranch rooms, mobile homes, cabins or other similar

accommodations that are rented to persons for a period of less than one (1) month or thirty (30) consecutive days, but shall not include rentals under a written agreement for occupancy for a period of at least one (1) month or thirty (30) days.

Person means an individual, partnership, firm, joint enterprise, limited liability company, corporation, estate or trust, or any group or combination acting as a unit, but shall not include the United States of America, the State and any political subdivision thereof.

Sale means the furnishing for consideration by any person of lodging within the Town.

Tax means the tax payable by the vendor or the aggregate amount of taxes due from vendor during the period for which the vendor is required to pay the occupation tax on the provision of lodging under this Article.

Taxpayer means the vendor obligated to pay the tax under the terms of this Article.

Vendor means a person furnishing lodging for consideration within the Town. (Ord. 545 §1, 2006)

Sec. 4-7-30. Imposition of tax.

Effective July 1, 2006, there is hereby levied by the Town an occupation tax on the provision of lodging upon every person or business that furnishes any hotel room, motel room, lodging room, motor hotel room, bed and breakfast room, guesthouse room, guest ranch room, mobile home, cabin or other similar accommodation for consideration for less than one (1) month or thirty (30) consecutive days within the Town in the amount of four dollars (\$4.00) per day, per occupied lodging room or accommodation. (Ord. 545 §1, 2006)

Sec. 4-7-40. Exemptions.

The following transactions shall be exempt from the tax imposed by this Article:

(1) Lodging provided by the United States, the State of Colorado, its departments and institutions, and the political subdivisions of the State;

(2) Lodging provided by those charitable, religious and eleemosynary organizations that have received and hold from the Internal Revenue Service status under Section 501(c)(3) of the Internal Revenue Code as a tax-exempt organization, while in the conduct of their regular charitable, religious or eleemosynary functions and activities; and

(3) Lodging provided to a person who is a permanent resident of a hotel, motel, apartment hotel, lodging house, motor hotel, bed and breakfast, guesthouse, guest ranch, mobile home, cabin or other similar business pursuant to a written agreement for a period of at least one (1) month or thirty (30) consecutive days. (Ord. 545 §1, 2006)

Sec. 4-7-50. Collection of tax.

(a) Every vendor providing lodging taxable under this Article shall remit such tax on or before the tenth day of each month on account of lodging provided in the preceding month. Said payment shall

be accompanied by a return which shall contain such information and be in such form as the Town Clerk may prescribe.

(b) The burden of proving that any transaction is exempt from the tax shall be upon the vendor.

(c) It shall be the duty of every vendor to maintain, keep and preserve suitable records of all sales made by the vendor and such other books or accounts as may be required by the Town Clerk in order to determine the amount of the tax for which the vendor is liable under this Article. It shall be the duty of every such vendor to keep and preserve for a period of three (3) years all such books, invoices and other records, and the same shall be open for examination by the Town Clerk or the Clerk's designee.

(d) The tax to be paid by a vendor shall not be stated and charged separately from the sales price of lodging on any record thereof at the time when the sale is made or at the time when evidence of the sale is issued; however, the vendor may indicate the sales price "includes four dollars (\$4.00) Town Lodging Occupation Tax." (Ord. 545 §1, 2006)

Sec. 4-7-60. Audit of records.

(a) For the purpose of ascertaining the correct amount of the occupation tax on the provision of the lodging due from any person engaged in such business in the Town under this Article, the Town Clerk or an authorized agent may conduct an audit by examining any relevant books, accounts and records of such person.

(b) All books, invoices, accounts and other records shall be made available within the Town limits and be open at any time during regular business hours for examination by the Town Clerk or an authorized agent. If any taxpayer refuses to voluntarily furnish any of the foregoing information when requested, the Town Clerk may issue a subpoena to require that the taxpayer or its representative attend a hearing or produce any such books, accounts and records for examination.

(c) Any exempt organization claiming exemption under the provisions of this Article is subject to audit in the same manner as any other person engaged in the lodging business in the Town. (Ord. 545 §1, 2006)

Sec. 4-7-70. Tax overpayments and deficiencies.

An application for refund of tax monies paid in error or by mistake shall be made within three (3) years after the date of payment for which the refund is claimed. If the Town Clerk determines that, within three (3) years of the due date, a vendor overpaid the occupation tax due under this Article, the Town Clerk shall process a refund or allow a credit against a future remittance from the same taxpayer. If at any time the Town Clerk determines the amount paid is less than the amount due under this Article, the difference, together with interest at the rate of one and one-half percent (1.5%), assessed from the date such amount was first due, shall be paid by the vendor within ten (10) days after receiving written notice and demand from the Town Clerk. The Town Clerk may extend that time for good cause. (Ord. 545 §1, 2006)

Sec. 4-7-80. Tax information confidential.

(a) All specific information gained under the provisions of this Article which is used to determine the tax due from a taxpayer, whether furnished by the taxpayer or obtained through audit, shall be treated by the Town and its officers, employees or legal representatives as confidential. Except as directed by judicial order or as provided in this Article, no Town officer, employee or legal representative shall divulge any confidential information. If directed by judicial order, the officials charged with the custody of such information shall be required to provide only such information as is directly involved in the action or proceeding. Any Town officer or employee who shall knowingly divulge any information classified herein as confidential, in any manner, except in accordance with proper judicial order or as otherwise provided in this Article or by law, shall be guilty of a violation hereof punishable by a fine but not imprisonment.

(b) The Town Clerk may furnish to officials of any other governmental entity who may be owed sales tax any confidential information, provided that such jurisdiction enters into an agreement with the Town to grant reciprocal privileges to the Town.

(c) Nothing contained in this Section shall be construed to prohibit the delivery to the taxpayer or his or her duly authorized representative a copy of such confidential information relating to such taxpayer, the publication of statistics so classified as to prevent the identification of particular taxpayers, the publication of the aggregate revenues generated by the tax or the inspection of such confidential information by an officer, employee or legal representative of the Town. (Ord. 545 §1, 2006)

Sec. 4-7-90. Forms and regulations.

The Town Clerk is hereby authorized to prescribe forms and promulgate rules and regulations to aid in the making of returns, the ascertainment, assessment and collection of said occupation tax on the provision of lodging and in particular and without limiting the general language of this Article, to provide for:

- (1) A form of report on the provision of lodging to be supplied to all vendors;
- (2) The records which vendors providing lodging are to keep concerning the tax imposed by this Article. (Ord. 545 §1, 2006)

Sec. 4-7-100. Enforcement and penalties.

(a) It shall be unlawful for any person to intentionally, knowingly or recklessly fail to pay the tax imposed by this Article or to make any false or fraudulent return, or for any person to otherwise violate any provisions of this Article. Any person convicted of a violation of this Article shall be deemed guilty of a misdemeanor and, upon conviction shall be punished in accordance with the provisions of Section 1-4-20 of this Code. Each day, or portion thereof, that any violation of this Article continues shall constitute a separate offense.

(b) A penalty in the amount of ten percent (10%) of the tax due or the sum of ten dollars (\$10.00), whichever is greater, shall be imposed upon the vendor and become due in the event the tax is not remitted by the tenth day of the month as required by this Article, or such other date as prescribed in

writing by the Town Clerk, and one and one-half percent(1.5%) interest shall accrue each month on the unpaid balance. The Town Clerk is hereby authorized to waive, for good cause shown, any penalty assessed.

(c) If any part of a deficiency is due to negligence or intentional disregard of the provisions of this Article or rules and regulations concerning the same, but without intent to defraud, then there shall be added ten percent (10%) of the total amount of the deficiency. 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. The penalty under this Subsection shall be in addition to the penalty under Subsection (b) above and, and in all cases, the whole amount of the unpaid tax, together with all penalties and interest, shall become due and payable ten (10) days after written notice and demand by the Town Clerk.

(d) If any vendor fails to make a return and pay the tax imposed by this Article, the Town may make an estimate, based upon available information, of the amount of tax due and add the penalties and interest provided above. The Town shall mail notice of such estimate, by certified mail, to the vendor at his or her address as indicated in the Town records. Such estimate shall thereupon become an assessment, and such assessment shall be final and due and payable from the taxpayer to the Town Clerk ten (10) days from the date of service of the notice or the date of mailing by certified mail; provided, however, that within the ten-day period, such delinquent taxpayer may petition the Town Clerk for a modification of such assessment and shall, within such ten-day period, furnish the Town Clerk the documents, facts and figures showing the correct amount of the taxes due and owing.

(e) Such petition shall be in writing, and the facts and figures submitted shall be submitted either in writing or orally and shall be given by the taxpayer under penalty of perjury. Thereupon, the Town Clerk may modify such assessment in accordance with the facts submitted in order to effectuate the provisions of this Article. Such assessment shall be considered the final order of the Town Clerk and may be reviewed under the Rule 106(a)(4) of the Colorado Rules of Civil Procedure, provided that the taxpayer gives written notice to the Town Clerk of his or her intention to seek review within ten (10) days after receipt of the final order of assessment. (Ord. 545 §1, 2006)

Sec. 4-7-110. Tax lien.

(a) The tax imposed by this Article, together with the interest and penalties herein provided and the costs of collection which may be incurred, shall be and, until paid, remain a first and prior lien superior to all other liens on all the tangible personal property of a taxpayer within the Town and may be foreclosed by seizing under distraint warrant and selling so much thereof as may be necessary to discharge the lien. Such distraint warrant may be issued by the Town Clerk whenever the taxpayer is in default in the payment of the tax, interest, penalty or costs. Such warrant may be served and the goods subject to such lien seized by any Town police officer, the county sheriff of the county wherein the property may be located or any duly authorized employee of the Town. The property so seized may be sold by the agency seizing the same or by the Town Clerk at public auction after ten (10) days have passed following an advertised notice in a newspaper published in the Town, in the same manner as is prescribed by law in respect to executions against property upon judgment of a court of record, and the remedies of garnishment shall apply.

(b) The tax imposed by this Article shall be, and remain, a first and prior lien, except as otherwise provided by law, superior to all other liens on the real property and appurtenant premises at which the taxable transactions occurred. (Ord. 545 §1, 2006)

Sec. 4-7-120. Recovery of unpaid tax.

(a) The Town Clerk may also treat any such taxes, penalties, costs or interest due and unpaid as a debt due the Town from the taxpayer.

(b) In case of failure to pay the taxes or any portion thereof, or any penalty, costs or interest thereon, when due, the Town Clerk may recover at law the amount of such taxes, penalties, costs, the reasonable value of any attorney's time or the reasonable attorney's fees charged, plus interest, in any county or district court of the county wherein the taxpayer resides or had a principal place of business (at the time the tax became due), having jurisdiction of the amount sought to be collected.

(c) The return of the taxpayer or the assessment made the Town Clerk shall be prima facie proof of the amount due.

(d) Such actions may be actions in attachment, and writs of attachment may be issued to the Town police or the county sheriff of the county wherein the property may be located, as the case may be, and in any such proceeding no bond shall be required of the Town Clerk, nor shall any police officer or sheriff require of the Town Clerk an indemnifying bond for executing the writ of attachment or writ of execution upon any judgment entered in such proceedings. The Town Clerk may prosecute appeals in such cases without the necessity of providing bond therefor.

(e) It shall be the duty of the Town Attorney, when requested by the Board of Trustees, to commence action for the recovery of taxes due under this Article, and this remedy shall be in addition to all other existing remedies or remedies provided in this Article.

(f) The Town may certify the amount of any delinquent tax, plus interest, penalties and the costs of collection, as a charge against the property at which the taxable transaction occurred, to the County Treasurer for collection in the same manner as delinquent ad valorem taxes. (Ord. 545 §1, 2006)

Sec. 4-7-130. Status of unpaid tax in bankruptcy and receivership.

Whenever the business or property of a taxpayer subject to this Article shall be placed in receivership, bankruptcy or assignment for the benefit of creditors, or seized under distraint for taxes, all taxes, penalties and interest imposed by this Article and for which the taxpayer is in any way liable under the terms of this Article shall be a prior and preferred lien against all the property of the taxpayer, except as to other tax liens which have attached prior to the filing of the notice, and no sheriff, receiver, assignee or other officer shall sell the property of any person subject to this Article under process or order of any court, without first ascertaining from the Town Clerk the amount of any taxes due and payable under this Article; and if there are any such taxes due, owing and unpaid, it shall be the duty of such officer to first pay the amount of the taxes out of the proceeds of such sale before making payment of any monies to any judgment creditor or other claimants of whatsoever kind or nature, except the costs of the proceedings and other preexisting tax liens as above provided. (Ord. 545 §1, 2006)

Sec. 4-7-140. Hearings, subpoenas and witness fees.

(a) Hearings before the Town Clerk pursuant to provisions in this Article shall be held pursuant to this Article and rules and regulations promulgated by the Town Clerk. Any subpoena issued pursuant to this Article may be enforced by the Municipal Judge pursuant to Section 13-10-112(2), C.R.S. The fees of witnesses for attendance at hearings shall be the same as the fees of witnesses before the district court, such fees to be paid when the witness is excused from further attendance. When the witness is subpoenaed at the instance of the Town Clerk, such fees shall be paid by the Town. When a witness is subpoenaed at the instance of any party to any such proceeding, the Town Clerk 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 and, in such case, the Town Clerk 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 a court of record.

(b) The Municipal Judge, upon the application of the Town Clerk, may compel the attendance of witnesses, the production of books, papers, records or memoranda, and the giving of testimony before the Town Clerk or duly authorized hearing officers, by an action for contempt, or otherwise, in the same manner as production of evidence may be compelled before the Court. (Ord. 545 §1, 2006)

Sec. 4-7-150. Depositions.

The Town Clerk or any party in an investigation or hearing before the Town Clerk may cause the deposition of witnesses residing within or without the State to be taken in the manner prescribed by law for like depositions in civil actions in courts of this State and, to that end, compel the attendance of witnesses and the production of books, papers, records or memoranda. (Ord. 545 §1, 2006)

Sec. 4-7-160. Statute of limitations.

(a) Except as otherwise provided in this Section, the taxes for any period, together with interest thereon and penalties with respect thereto, imposed by this Article shall not be assessed, nor shall notice of lien be filed, distraint warrant be 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 three-year period, notice of lien with respect to which has been filed prior to the expiration of such period.

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

(c) Before the expiration of such period of limitation, the taxpayer and the Town Clerk may agree in writing to an extension thereof, and the period so agreed on may be extended by subsequent agreements in writing. (Ord. 545 §1, 2006)