

## TABLE OF CONTENTS

### TITLE 3

#### REVENUE AND FINANCE

Chapters:

#### **3-04 Sales Tax**

3-04-010	Purpose
3-04-020	Imposition of tax
3-04-030	Sales; where consummated
3-04-040	Sales tax; credit for sales or use taxes previously paid to another municipality
3-04-050	Collection, administration, and enforcement
3-04-060	Disposition of funds collected
3-04-070	Definitions
3-04-080	Licenses
3-04-090	Property and services taxed
3-04-100	Exemptions
3-04-110	Special event sales tax license and collections
3-04-120	Retailer liable for tax
<b>3-04-130</b>	<b>Credit sales and bad debts</b>
3-04-140	Accounts receivable
3-04-150	Sale of business
3-04-160	Filing returns; due date
3-04-170	Reporting periods
3-04-180	Timely payment; computation of dates
3-04-190	Examination of returns; recomputation, credits, deficiencies
3-04-200	False or fraudulent return or statement; penalty
3-04-210	Confidential nature of returns
3-04-220	Vendor or retailer responsibility to collect
3-04-230	Taxes held as trust
3-04-240	Duty to keep records
3-04-250	Notice of assessment
3-04-260	Protest of notice of assessment
3-04-270	Hearings
3-04-280	Appeal; review by district court
3-04-290	Refunds of disputed tax
3-04-300	Claim for refund
3-04-310	Action for recovery of refund
3-04-320	Audit
3-04-330	Failure to collect tax or make return; estimate of taxes; interest and penalty
3-04-340	Assessment and recurring assessment penalty
3-04-350	Jeopardy assessment
3-04-360	Rate of interest; method of calculation
3-04-370	Coordinated audit
3-04-380	Inter-city claims for recovery
3-04-390	City may be party in title actions
3-04-400	Injunctive relief
3-04-410	Waiver of penalties by finance director
3-04-420	Investigations, audits and hearings
3-04-430	Subpoenas and witness fees
3-04-440	Attendance of witnesses and production of evidence to be compelled by district judge
3-04-450	Depositions
3-04-460	Notices
3-04-470	Violations

- 3-04-480 Lien for taxes due
  - 3-04-490 Perpetual lien
  - 3-04-500 Release of lien
  - 3-04-510 Civil action to recover tax due
  - 3-04-520 Distraint and sale
  - 3-04-540 Obligations of fiduciaries and others
  - 3-04-550 Statute of limitations on actions to collect
- 3-08 Use Tax**
- 3-08-010 Purpose
  - 3-08-020 Legislative intent
  - 3-08-030 Imposition of tax; rate; bracket
  - 3-08-035 Nonapplicability of use tax to use or consumption occurring more than three years after most recent sale
  - 3-08-040 Definitions
  - 3-08-050 Exemptions; applicability
  - 3-08-060 Construction and building materials; method of payment
  - 3-08-070 Purchase of vehicles; method of payment
  - 3-08-090 Duties and powers of director
  - 3-08-100 Taxpayer must maintain books and records
  - 3-08-110 Tax reports and returns; preservation; confidentiality
  - 3-08-120 Employees; restrictions
  - 3-08-125 Use tax; collection; limitation of actions
  - 3-08-130 Addition to tax; penalties and interest
  - 3-08-140 Refunds
  - 3-08-150 Hearings
  - 3-08-155 Final decision of city; appeals; posting of bonds
  - 3-08-160 Enforcement
  - 3-08-170 Violations; evasion of tax; penalty
  - 3-08-180 Disposition of funds collected
- 3-10 Sales and Use Tax Capital Improvement Fund**
- 3-10-010 Created
  - 3-10-020 Restricted
  - 3-10-030 Capital improvements defined
- 3-12 Disposition of Surplus Property**
- 3-12-010 Sales agent
  - 3-12-020 Procedures
  - 3-12-030 Repair and reconditioning
  - 3-12-040 Manner of disposition
  - 3-12-050 Sales procedure
  - 3-12-060 City employees
  - 3-12-070 Proceeds of sale
- 3-16 Emergency Telephone Charge**
- 3-16-010 Authorization to impose fees
  - 3-16-020 Authorization to collect fees
- 3-18 Investment Policy**
- 3-18-010 Policy
  - 3-18-020 Scope
  - 3-18-030 Authority
  - 3-18-040 Prudence
  - 3-18-050 Internal controls
  - 3-18-060 Reporting

- 3-18-070 Depositories
- 3-18-080 Authorized investments
- 3-18-090 Authorized investments; City of Broomfield Employee's Pension Plan
- 3-18-100 Authorized investments; Deferred Compensation Pension Plan
- 3-18-110 Authorized investments; Policemen's Pension Plan for "Old Hire" Police Officers
- 3-18-120 Authorized investments; Money Purchase Plan for "New Hire" Police Officers
- 3-18-130 Selection of financial institutions
- 3-18-140 Pooling of fund balances
- 3-18-150 Safekeeping and custody

**3-20 Procurement of Supplies, Services, and Construction**

I. General Provisions

- 3-20-010 Purpose
- 3-20-020 Application
- 3-20-030 Definitions

II. Source Selection

- 3-20-040 Competitive sealed bidding
- 3-20-050 Contracting for professional services
- 3-20-060 Small purchases
- 3-20-070 Sole source and cooperative procurement
- 3-20-080 Prequalification of bidders
- 3-20-090 Emergency procurements
- 3-20-100 Other exceptions
- 3-20-110 Cancellation of invitations for bids or requests for quotations
- 3-20-120 Responsibility of bidders and offerors
- 3-20-130 Bid and performance bonds
- 3-20-140 Financial obligations of the city
- 3-20-150 Right to inspect plant
- 3-20-160 Right to audit records

III. Specifications

- 3-20-170 Brand name or equal specification
- 3-20-180 Brand name specification

IV. Suspension

- 3-20-190 Authority to suspend
- 3-20-200 Decision to suspend

V. Appeals and Remedies

- 3-20-210 Bid protests

VI. Ethics in Public Contracting

- 3-20-220 Kickbacks
- 3-20-230 Prohibition against contingent fees
- 3-20-240 Contemporaneous employment prohibited
- 3-20-250 Waiver for contemporaneous employment prohibition
- 3-20-260 Use of confidential information
- 3-20-270 Recovery of value transferred or received in breach of ethical standards

**3-22 Returned Check Charge**

- 3-22-010 Charge for returned check

**3-25 Disposition of Unclaimed Intangible Property**

- 3-25-010 Purpose

- 3-25-020 Definitions
- 3-25-030 Procedure for disposition of intangible property
- 3-28 Services Expansion Fee**
  - 3-28-010 Short title
  - 3-28-020 Purpose and intent
  - 3-28-030 Definitions
  - 3-28-040 Services expansion fee
  - 3-28-050 Exceptions
  - 3-28-060 Services expansion fee fund
- 3-30 Water Enterprise**
  - 3-30-010 Water activity enterprise created
  - 3-30-020 Issue bonds, notes, other obligations
  - 3-30-030 Water activities
  - 3-30-040 Government-owned business
  - 3-30-050 Finance, revenues, and fund
  - 3-30-060 No taxation
- 3-32 Sewer Enterprise**
  - 3-32-010 Sewer activity enterprise created
  - 3-32-020 Issue bonds, notes, other obligations
  - 3-32-030 Sewer activities
  - 3-32-040 Government-owned business
  - 3-32-050 Finance, revenues, and fund
  - 3-32-060 No taxation
- 3-34 Water Reclamation Enterprise**
  - 3-34-010 Water reclamation activity enterprise created
  - 3-34-020 Issue bonds, notes, other obligations
  - 3-34-030 Water reclamation activities
  - 3-34-040 Government-owned business
  - 3-34-050 Finance, revenues, and fund
  - 3-34-060 No taxation
- 3-38 Lodging Tax**
  - 3-38-010 Legislative intent
  - 3-38-020 Imposition and rate of tax
  - 3-38-030 Liability for tax
  - 3-38-040 Taxes collected are held in trust
  - 3-38-050 Exempt transactions
  - 3-38-060 Licensing and reporting procedure
  - 3-38-070 Maintenance and preservation of tax returns, reports, and records
  - 3-38-080 Interest and penalties for failure to file tax return or pay tax
  - 3-38-090 Enforcement of tax liability
  - 3-38-100 Duties and powers of city manager
  - 3-38-110 Lodging tax fund
- 3-40 Sales and Use Tax Reimbursement**
  - 3-40-010 Purpose
  - 3-40-020 Authority; limitations
- 3-42 Senior Citizen Property Tax Refund**
  - 3-42-010 Purpose
  - 3-42-020 Property tax refund
  - 3-42-030 Refund applications

## Chapter 3-04

### Sales Tax

#### **3-04-010 Purpose.**

It is the purpose of council, in exercising the home rule powers reserved by the state constitution, that, through this chapter, every person in the city who purchases at retail, leases, consumes, stores, or puts to any use any tangible personal property or taxable services is exercising a taxable privilege. All sales, leases, and purchases of tangible personal property and taxable services defined in this chapter are taxable unless specifically exempted by this chapter. The sales tax imposed upon tangible personal property by this chapter applies to each transfer of ownership, possession, and control of such property and may occur more than once during the life of the property. The sales tax is a transaction levied upon all sales, purchases, and leases of tangible personal property and taxable services sold or leased by persons engaged in business in the city and is collected by the vendor or lessor and remitted to the city. (Ord. 1656 §1, 2001)

#### **3-04-020 Imposition of tax.**

There is hereby levied and imposed a tax of four and fifteen one-hundredths percent of the amount of the sale, on the sale or lease of tangible personal property at retail or the furnishing of taxable services, as provided herein at section 3-04-090. (Ord. 1656 §1, 2001)

#### **3-04-030 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 city, or to a common carrier for delivery to a destination outside the limits of the city. The gross receipts from such sales shall include delivery charges. 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 city, the place of taxation is deemed within the city. (Ord. 1656 §1, 2001)

#### **3-04-040 Sales tax; credit for sales or use taxes previously paid to another municipality.**

The city 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 city'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. 1656 §1, 2001)

#### **3-04-050 Collection, administration, and enforcement.**

The administration of the provisions of this chapter is vested in the finance director, or designee thereof, who shall prescribe forms and reasonable rules and regulations for the making of returns, for the ascertainment, assessment, and collection of the taxes imposed in this chapter, and for the proper administration and enforcement of this chapter. (Ord. 1656 §1, 2001)

#### **3-04-060 Disposition of funds collected.**

Not less than one-third of the revenues collected based upon a 3.5% tax rate shall be deposited into the city's sales and use tax capital improvement fund. The balance of the funds received pursuant to this chapter shall be deposited into such fund or funds of the city as the council shall determine in the annual budget or in resolution or ordinance adopted by the council from time to time. (Ord. 1656 §1, 2001)

#### **3-04-070 Definitions.**

As used in this chapter, unless the context clearly indicates otherwise, certain words, terms, and phrases are defined as follows:

(A) *Access services* means the services furnished by a local exchange company to its customers who provide telecommunications services which allow them to provide such telecommunications services.

(B) *Agricultural compounds* means:

(1) Insecticides, fungicides, growth-regulating chemicals, enhancing compounds, vaccines, and hormones;

(2) Drugs, whether dispensed in accordance with a prescription or not, that are used for the prevention or treatment of disease or injury in livestock; and

(3) Animal pharmaceuticals that have been approved by the food and drug administration.

(C) *Attachments* means any equipment or machinery added to an exempt farm tractor or implement of husbandry that aids or enhances the performance of such tractor or implement.

(D) *Auction* means any sale where tangible personal property is sold by an auctioneer who is either the agent or the owner of such property or is in fact the owner thereof.

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

(F) *Charitable organization* means any entity which:

(1) Has been certified as a not-for-profit organization under 501(c)(3) of the Internal Revenue Code; and

(2) Is a religious or charitable organization, which is an organization which exclusively, and in a manner consistent with existing laws, and for the benefit of an indefinite number of persons, freely and voluntarily ministers to the physical, mental, or spiritual needs of persons, and which thereby lessens the burdens of government.

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

(H) *Coins* means monetized bullion or other forms of money manufactured from gold, silver, platinum, palladium, or other such metals now, in the future, and heretofore designated as a medium of exchange under the laws of this state, the United States, or any foreign nation.

(I) *Cooperative direct mail advertising* means advertising for one or more businesses, which is in the form of discount coupons, advertising leaflets, or other printed advertising, which is delivered by mail in a single package or bundle to potential customers of such businesses participating in such advertising.

(J) *Direct mail advertising materials* means discount coupons, advertising leaflets, and other printed advertising, including, but not limited to, accompanying envelopes and labels.

(K) *Doing business in this city* means the selling, leasing, renting, or any activity in connection with the selling, leasing, renting, or delivering in the city of tangible personal property by a retail sale as defined in this section, for use, storage, distribution, or consumption within this city. This term includes, but shall not be limited to, the following acts or methods of transacting business:

(1) Maintaining within the city, directly or indirectly or by a subsidiary, of an office, distributing house, salesroom or house, warehouse, mobile vendor, or other place of business;

(2) Having within the city, employees, agents, or commissioned sales persons solicit business, deliver and install or assemble, or repair, service, or assist in the use of its products, or for demonstration or other reasons; or

(3) Owning, leasing, renting, or otherwise exercising control over real or personal property within the taxing jurisdiction.

(L) *Farm closeout sale* means a sale by auction or private treaty of all tangible personal property of a farmer or rancher previously used by him or her in carrying on his or her farming or ranching operations. Unless said farmer or rancher is making or attempting to make full and final disposition of all property used in his or her farming or ranching operations and is abandoning the said operations on the premises whereon those were previously conducted, such sale shall not be deemed a farm close-out sale within the meaning of this chapter.

(M) *Farm equipment* means farm tractors, as defined in section 42-1-102(33), C.R.S., as amended, implements of husbandry, as defined in section 42-1-102(44), C.R.S., as amended, and irrigation equipment having a per-unit purchase price of at least \$1,000.00. *Farm equipment* also includes, regardless of the purchase price, attachments and bailing wire, binders, twine, and surface wrap used primarily and directly in any farm operation. *Farm equipment* does not include:

(1) Vehicles subject to the registration requirements of section 42-3-103, C.R.S., as amended, regardless of the purpose for which such vehicles are used;

(2) Machinery, equipment, materials, and supplies used in a manner that is incidental to a farm operation;

(3) Maintenance and janitorial equipment and supplies; or

(4) Tangible personal property used in any activity other than farming, such as office equipment and supplies used in the sale or distribution of farm products, research, or transportation.

(N) *Farm operation* means the production of any of the following products for profit, including, but not limited to, a business that hires out to produce or harvest such products:

(1) Agricultural, viticultural, fruit, and vegetable products;

(2) Livestock, as defined in section 39-26-102(5.5), C.R.S., as amended;

(3) Milk;

(4) Honey;

(5) Poultry; and

(6) Eggs.

(O) *Finance director* means the finance director of the city or such person's designee.

(P) *Food* means food for domestic home consumption as defined in 7 U.S.C. sec. 2012(g), as amended, for purposes of the federal food stamp program as defined in 7 U.S.C. sec. 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.

(Q) *Internet access* means the cost of internet connection services provided by an internet service provider (ISP). *Internet access* does not mean the price paid for goods or services obtained from internet sales companies.

(R) *Livestock* means cattle, horses, mules, burros, sheep, lambs, poultry, swine, ostrich, llama, alpaca, and goats, regardless of use, and any other animal which is raised primarily for food, fiber, or hide production. *Livestock* also means alternative livestock as defined under section 35-41.5-102(1), C.R.S., as amended. *Livestock* shall not mean a pet animal as defined under section 35-80-102(10), C.R.S., as amended.

(S) *Long-term lease and rental contracts* means the granting of a right to continuous possession or use for more than three years of any article of tangible personal property under a lease or contract.

(T) *Manufacturing equipment* means machinery or machine tools used directly in manufacturing by a person engaged in manufacturing, compounding for sale, profit or use, any article, substance, or commodity.

(U) *Manufacturing sales and purchases by manufacturers* means:

(1) Sales to and purchases of tangible personal property by a person engaged in the business of manufacturing, 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, shall be deemed to be wholesale sales and shall be exempt from taxation.

(2) As used in paragraph (1) above, with regard to food products, tangible personal property enters into the processing of such products and is therefore exempt from taxation when:

a. It is intended that such property become an integral or constituent part of a food product which is intended to be sold ultimately at retail for human consumption; or

b. Such property, whether or not it becomes an integral or constituent part of a food product, is a chemical, solvent, agent, mold, skin casing, or other material; is used for the purpose of producing or inducing a chemical or physical change in a food product or is used for the purpose of placing a food product in a more marketable condition; and is directly utilized and consumed, dissipated, or destroyed, to the extent it is rendered unfit for further use, in the processing of a food product which is intended to be sold ultimately at retail for human consumption.

(3) Sales to manufacturers shall be documented as wholesale sales and such documentation shall include a valid resale license from the manufacturer, and the customer's state and local resale license number prominently located on the invoice.

(V) *Medical supplies* means drugs dispensed in accordance with a prescription; insulin in all its forms dispensed pursuant to the direction of a licensed physician, glucose useable for treatment of insulin reactions; urine- and blood-testing kits and materials; insulin measuring and injecting devices, including hypodermic syringes and needles; prosthetic devices; wheelchairs and hospital beds; drugs or materials when furnished by a practitioner of the healing arts as part of professional services provided to an individual; and corrective eyeglasses, contact lenses, or hearing aids. *Medical supplies* shall not include items of tangible personal property used in the production, cultivation, consumption or other use of medical marijuana.

(W) *Mobile machinery and self-propelled construction equipment* means those vehicles, self-propelled or otherwise, which are not designed primarily for the transportation of persons or cargo over the public highways; and those motor vehicles which may have originally been designed for the transportation of persons or cargo over the public highways, and those motor vehicles which may have originally been designed for the transportation of persons or cargo, but which have been redesigned or modified by the mounting thereon of special equipment or machinery, and which may be only incidentally operated or moved over the public highways; and includes, but is not limited to, wheeled vehicles commonly used in the construction, maintenance, and repair of roadways, the drilling of wells, or the digging of ditches.

(X) *Motor vehicle* means the definition as set forth in section 39-22-516(2.5)(a)(III), C.R.S., as amended.

(Y) *Newspaper* means a publication, printed on newsprint, intended for general circulation, and published regularly at short intervals, containing information and editorials on current events and news of general interest. The term *newspaper* does not include magazines, trade publications or journals, credit bulletins, advertising inserts, circulars, directories, maps, racing programs, reprints, newspaper clipping and mailing services or listings, publications that include an updating or revision service, or books or pocket editions of books.

(Z) *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, and:

(1) The sale of tangible personal property or concessions by the charitable organization takes place no more than twelve days, whether consecutive or not, during any one calendar year; or

(2) The funds raised by the charitable organization through these sales do not exceed \$25,000.00 of gross profit during any one calendar year.

(AA) *Parts used for converting* means the wiring, fuel lines, engine coolant system, fuel storage containers, fuel control system, and other components associated with reducing the emissions characteristics of an engine or motor.

(BB) *Person* means any individual, firm, partnership, joint venture, corporation, limited liability company, estate or trust, receiver, trustee, assignee, lessee, or any person acting in a fiduciary or representative capacity, whether appointed by court or otherwise, or any group or combination acting as a unit.

(CC) *Precious metal bullion* means any precious metal, including, but not limited to, gold, silver, platinum, and palladium, that has been put through a process of refining and is in such a state or condition that its value depends upon its precious metal content and not its form.

(DD) *Pre-press preparation printing materials* means those tangible products converted to use for a specific print job that are subsequently saved but can only be reused for that same print client on rerun. Title to such pre-press preparation printing materials must pass to an independent customer with the sale of the printed materials, and they must be reusable for their original purpose or a similar purpose after the press run. Examples of pre-press preparation printing materials include, but are not limited to, photos, color keys, dies, engravings, light-sensitive film or paper, masking sheets of any material, plates, rotogravure cylinders, and proofing samples of any material. No disposable materials or materials consumed to a significant degree are pre-press preparation printing materials for the purposes of this article. Examples of disposable or consumable materials include, but are not limited to, tape, alcohol, glues, adhesives, washes, silicon solutions, pens, markers, and cleaners.

(EE) *Price or purchase price* includes:

(1) The price to the consumer, exclusive of any direct tax imposed by the federal government or by this article, and, in the case of all retail sales involving the exchange of property, also exclusive of the fair market value of the property exchanged at the time and place of the exchange, if:

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

b. Such exchanged property is a vehicle and is exchanged for another vehicle and both vehicles are subject to licensing, registration, or certification under the laws of this state, including, but not limited to, vehicles operating upon public highways, off-highway recreation vehicles, watercraft, and aircraft.

(2) In the case of the sale or transfer of wireless telecommunication equipment, as an inducement to a consumer to enter into or continue a contract for telecommunications services, that are taxable pursuant to section 3-04-020, *purchase price* means and shall be limited to the monetary amount paid by the consumer and shall not reflect any sales commission or other compensation received by the retailer as a result of the consumer entering into or continuing a contract for such telecommunication services. Nothing in this subparagraph (2) shall be construed to define purchase price as it applies to the amount a retailer collects from a consumer who defaults or terminates a contract for telecommunication services.

(3) *Price or purchase price* includes:

a. The amount of money received or due in cash and credits;

b. Property at fair market value taken in exchange but not for resale in the usual course of the retailer's business;

c. Any consideration valued in money, such as trading stamps or coupons whereby the manufacturer or any other person reimburses the retailer for part of the purchase price and other media of exchange;

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

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

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

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

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

(4) *Price or purchase price* shall not include:

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

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

c. Discounts from the original price if such discount and the corresponding decrease in sales tax due is actually passed on to the purchaser. An anticipated discount to be allowed for payment on or before a given date is included in the purchase price. This subparagraph does not include manufacturer coupons.

(FF) *Residential fuel* means all sales and purchases of electricity, coal, wood, gas, fuel, oil, or coke sold, but not for resale, to occupants of residences, whether owned, leased, or rented by said occupants, for the purpose of operating residential fixtures and appliances, which provide light, heat, and power for such residences. For purposes of this subsection, *gas* includes natural, manufactured, and liquefied petroleum gas.

(GG) *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.

(HH) *Retail sale* means all sales made within the city except wholesale sales.

(II) *Sale or purchase* means the acquisition, for any consideration by any person, of tangible personal property or taxable services that are sold, purchased, leased, rented, delivered, used, stored, distributed, or consumed, but excludes a bona fide gift of property or services.

(1) The term *purchase or sale* includes capital leases, installment and credit sales, and property and services acquired by:

a. A transfer, either conditionally or absolutely, of title or possession or both to tangible personal property;

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

c. Performance of taxable services; or

d. Barter or exchange for other property or services, including coupons.

(2) The terms *purchase* and *sale* do not include:

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

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

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

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

e. A transfer of a partnership interest;

f. The transfer in a reorganization qualifying under section 368(a)(1) of the Internal Revenue Code of 1954, as amended;

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

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

i. The transfer of assets from a parent corporation to a subsidiary corporation or corporations which is/are owned at least eighty percent by the parent corporation, which transfer is solely in exchange for stock or securities of the subsidiary corporation;

j. The transfer of assets from a subsidiary corporation or corporations, which are owned at least eighty percent by the parent corporation to a parent corporation or to another subsidiary which is owned at least eighty percent by the parent corporation, which transfer is solely in exchange for stock or securities of the parent corporation of the subsidiary which received the assets;

k. The transfer of assets between parent and closely held subsidiary corporations, or between subsidiary corporations closely held by the same parent corporation, or between corporations which are owned by the same shareholders with identical percentages of stock, computed on a share-by-share basis, when a tax imposed by this article was paid by the transfer corporation at the time it acquired such assets; however, any increase in the fair market value of such assets resulting from the manufacturing, fabricating, or physical changing of the assets by the transferor corporation is taxable. For the purposes of this subparagraph, a *closely held subsidiary corporation* is one in which the parent corporation owns stock possessing at least eighty percent of the total combined voting power of all classes of stock entitled to vote and owns at least eighty percent of the total number of shares of all other classes of stock.

(3) *Sale or sale and purchase* also includes the transaction of furnishing rooms or accommodations by any person, partnership, limited liability company, association, corporation, estate, receiver, trustee, assignee, lessee, or 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, guesthouse, guest ranch, trailer coach, mobile home, auto camp, or trailer court and park, under any concession, permit, right of access, license to use, or other agreement, or otherwise.

(4) Except as otherwise provided in this subsection (4), the sales tax is imposed on the full purchase price of articles sold after manufacture or after having been made to order and includes the full purchase price for

material used and the service performed in connection therewith, excluding, however, such articles as are otherwise exempted in this chapter. In connection with the transactions referred to in subparagraph (2)k. of this section, the sales tax is imposed only on the amount of any increase in the fair market value of such assets resulting from the manufacturing, fabricating, or physical changing of the assets by the transferor corporation. Except as otherwise provided in this subsection (4), the sales price is the gross value of all materials, labor, and service, and the profit thereon, included in the price charged to the user or consumer.

(JJ) *School* means a public educational institution having a curriculum comparable to grade, grammar, junior high, high school, or college, or any combination thereof, and having an enrollment of at least forty students.

(KK) *Short-term lease and rental contracts* means when right to continuous possession or use for three years or less of any article of tangible personal property is granted under a lease or contract.

(LL) *Software or computer software* means and includes any computer software in machine readable or human readable form, including, but not limited to, software contained on cards, tapes, discs, coding sheets, or other medium and including follow up maintenance provided with software purchase. *Software* includes downloaded software because such programs or data have a physical existence upon the device once downloaded, and software that has been modified, so long as the price of the modifications does not exceed fifty percent of the price of the unmodified software and excluding software created specifically for the user. For purposes of this definition, *modification* means actual programming specific to the customer, and the price of modifications shall not include training, installation or customer support but shall be limited to the actual programming or creation thereof specific to the customer.

(MM) *Tangible personal property* means corporeal personal property.

(NN) *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.

(OO) *Taxpayer* means any person obligated to collect and/or pay tax under the terms of this chapter.

(PP) *Telecommunication service* means the transmission of any two-way interactive electromagnetic communications, including but not limited to voice, image, data and any other information, by the use of any means but not limited to wire, cable, fiber optical cable, microwave, radio wave or any combinations of such media. *Telecommunication service* includes, but is not limited to, basic local exchange telephone service, toll telephone service and teletypewriter service, including but not limited to residential and business service, directory assistance, cellular mobile telephone or telecommunication service, specialized mobile radio and two-way pagers and paging service, including any form of mobile two-way communication. *Telecommunication service* does not include separately stated non-transmission services, which constitute computer-processing applications used to act on the information to be transmitted. If not separately stated, bundled services will be taxed with telecommunication service.

(QQ) *Therapeutic devices* mean devices, appliances, or related accessories that are sold to correct or treat a human physical disability or surgically created abnormality. If such a device, appliance or related accessory has a retail value of more than \$100.00, it must be sold in accordance with a written recommendation from a practitioner of the healing arts to qualify as a therapeutic device for purposes of this chapter. *Therapeutic devices* shall not include items of tangible personal property used in the production, cultivation, consumption or other use of medical marijuana.

(RR) *Vendor fee* means a credit, as designated by the finance 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 finance director.

(SS) *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.

(TT) *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 subsection (DD) of this section, 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 this city. 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. (Ord. 1656 §1, 2001; Ord. 1921 §1, 2010)

### **3-04-080 Licenses.**

(A) It shall be unlawful for any person to engage in the business of selling or leasing tangible personal property at retail, or wholesale, within the city without first having obtained a license therefor. Such license shall be granted at no charge and issued by the finance director upon filing of an application in the form prescribed by the finance director or designee. Such license shall not be issued for a business which engages or proposed to engage in transactions that are prohibited by local or state law. Once issued, such license shall be in force until revoked or until termination of the business. A separate license shall be applied for and issued in the name of the person and at the specific address of the applicant. A separate license shall be applied for and issued for each location if more than one location is used by the applicant in the conduct of business of sales at retail.

(B) There shall be no charge for the issuance of a sales tax license, provided that such license is applied for and approved prior to engaging in the business of taxable sales. If a person has been engaged in the business of selling or leasing tangible personal property or taxable services at retail, or wholesale, in the city, without having secured a valid license therefor, and repeated administrative efforts are required to achieve compliance, a fee of \$50.00 must be paid prior to the issuance of a valid license, in addition to any other penalties imposed under this chapter or chapter 1-12, B.M.C.

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

(D) At any time after a license is issued pursuant to this chapter, upon request of the city, the applicant shall supplement such information in writing to make any corrections or include any changes in information. (Ord. 1656 §1, 2001; Ord. 1921 §2, 2010)

### **3-04-090 Property and services taxed.**

There is levied and there shall be collected and paid a tax in the amount stated in section 3-04-020 as follows:

(A) On the purchase price paid or charged upon all sales, leases, and rentals of tangible personal property at retail, unless specifically exempted in section 3-04-100 of this chapter.

(B) In the case of retail sales involving the exchange of property, on the purchase price paid or charged, including the fair market value of the property exchanged at the time and place of the exchange, excluding, however, from the consideration or purchase price, the fair market value of the exchanged property if:

(1) Such exchanged property is to be sold thereafter in the usual course of the retailer's business; or

(2) Such exchanged property is a vehicle and is exchanged for another vehicle and both vehicles are subject to licensing, registration, or certification under the laws of this state, including, but not limited to, vehicles operating upon public highways, off-highway recreation vehicles, watercraft, and aircraft.

(3) The exchange of three or more vehicles of the same type by any person in any calendar year in transactions subject to the provisions of this article shall be prima facie evidence that such person is engaged in the business of selling vehicles of the type involved in such transactions and that he or she is thereby subject to any licensing requirements necessary to engage in such activity.

(C) Upon telecommunication services, whether furnished by public or private corporations or enterprises, for all intrastate telecommunications services as defined in subsection 3-04-070(PP) of this chapter.

(D) Upon the amount paid for food or drink served or furnished in or by restaurants, cafes, lunch counters, cafeterias, hotels, drugstores, social clubs, nightclubs, cabarets, resorts, snack bars, caterers, carryout shops, and other like places of business at which prepared food or drink is regularly sold, including sales from pushcarts, motor vehicles, and other mobile facilities. Cover charges shall be included as part of the amount paid for such food or drink.

(E) Upon the amount paid for food for home consumption unless specifically exempted in section 3-04-100.

(F) On the entire amount charged to any person for rooms or accommodations rented for a period of less than thirty days. Written documentation must be obtained to document the rental period. A check is not considered written documentation for purposes of this section.

(G) On leases, as follows:

(1) Long-term leases are taxable and such leases or contracts shall be considered the sale of such article, and the tax shall be computed and paid by the vendor upon the rental or lease payment; and

(2) Short-term leases are taxable and such leases or contracts shall be considered the sale of such article, and the tax shall be computed and paid either by the vendor, when purchasing items to be leased, or by collecting the tax from the customer through the lease payments.

(H) On gas and electric service, whether furnished by municipal, public, or private corporations or enterprises, for gas and electricity furnished and sold for commercial and residential consumption and not for resale, upon steam when consumed or used by the purchaser and not resold in original form whether furnished or sold by municipal, public, or private corporations or enterprises. (Ord. 1656 §1, 2001; Ord. 1921 §3, 2010)

### **3-04-100 Exemptions.**

There shall be exempt from taxation under the provisions of this chapter the following:

(A) All sales to the United States government and to the state, its departments and institutions, and the political subdivisions thereof in their governmental capacities only;

(B) All sales made to charitable organizations, in the conduct of their regular charitable functions and activities;

(C) All sales which the city is prohibited from taxing under the constitution or laws of the United States, the state, or the city's Charter;

(D) All sales of cigarettes;

(E) All sales made to schools, other than schools held or conducted for private or corporate profit;

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

(G) When sold in accordance with a written recommendation from a licensed doctor, all sales of therapeutic devices, appliances, or related accessories, with a retail value of more than \$100.00, which are sold to correct or treat a human physical disability or surgically created abnormality;

(H) All sales and purchases of commodities and services to any occupant who is a permanent resident of any hotel, apartment hotel, lodging house, motor hotel, guesthouse, guest ranch, trailer coach, mobile home, auto camp, or trailer court or park who enters into or has entered into a written agreement for occupancy of a room or accommodations for a period of at least thirty consecutive days during the calendar year or preceding year;

(I) The sale of special fuel, as defined in section 39-27-101(6.3), C.R.S., as amended, used for the operation of farm vehicles when such vehicles are being used on farms and ranches;

(J) Any sale of any article, container, or bag to a retailer or vendor of food, meals, or beverages, which article is to be furnished to a consumer or user for use with articles of tangible personal property purchased at retail, if a separate charge is not made for the article to the consumer or user, if such article becomes the property of the consumer or user, together with the food, meals, or beverages purchased, and if a tax is paid on the retail sale as required by section 3-04-090;

(K) All 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 of Colorado, 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;

(L) Sales and purchases of electricity, coal, gas, fuel oil, steam, coke, or nuclear fuel, for use in processing, manufacturing, mining, refining, irrigation, construction, telegraph, telephone, and radio communication, street and

railroad transportation services, and all industrial uses, and newsprint and printer's ink for use by publishers of newspapers and commercial printers shall be deemed to be wholesale sales and shall be exempt from taxation;

(M) All sales of aircraft used or purchased for use in interstate commerce by a commercial airline;

(N) The sale of tangible personal property that is to be permanently affixed or attached as a component part of an aircraft;

(O) The sale of tangible personal property that is to be affixed or attached as a component part of a locomotive, a freight car, railroad work equipment, or other railroad rolling stock;

(P) All sales of locomotives, freight cars, railroad work equipment, and other railroad rolling stock used or purchased for use in interstate commerce by a railroad company;

(Q) Internet access services;

(R) All sales and purchases of livestock; all sales and purchases of live fish for stocking purposes; and all farm close-out sales, and the storage, use, or consumption of such property;

(S) All sales and purchases of feed for livestock, all sales and purchases of seeds, and all sales and purchases of orchard trees shall be exempt from taxation, and the storage, use, or consumption of such property shall be exempt from taxation;

(T) All sales and purchases of straw and other bedding for use in the care of livestock or poultry; and the storage, use, or consumption of straw and other bedding for use in the care of livestock or poultry;

(U) Forty-eight percent of the purchase price of factory-built housing, as such housing is defined in section 24-32-703(3), C.R.S., as amended, except that the entire purchase price in any subsequent sale of a manufactured home, as such vehicle is defined in section 42-1-102(106)(b), C.R.S., as amended, after such manufactured home has been once subject to the payment of sales tax by virtue of section 39-26-113, C.R.S., as amended;

(V) All sales of food, as defined in 7 U.S.C. sec. 2012 (g), as amended, which is purchased with food stamps. Also see subsection 3-04-070(P) under definitions;

(W) All sales of food, as defined in 42 U.S.C. sec. 1786, as amended, when purchased with funds provided by the special supplemental food program for women, infants, and children, as provided for in 42 U.S.C. sec. 1786, as amended;

(X) All sales and purchases of food, as defined in section 3-04-070(P) by or through vending machines;

(Y) All sales of precious metal bullion and coins;

(Z) All occasional sales by a charitable organization;

(AA) All sales and purchases of tangible personal property by a manufacturer that used such property as a component part of goods that it manufactures, including, but not limited to, high technology goods, and that donates such goods to the United States government, the state, or any department, institution, or political subdivision thereof; of any organization exempt from federal income taxes pursuant to section 501(c)(3) of the Internal Revenue Code, as amended, to the extent that the aggregate value of the goods included in a single donation exceeds \$1,000.00;

(BB) All sales and purchases of farm equipment;

(CC) Any farm equipment under lease or contract, if the fair market value of such equipment is at least \$1,000.00 and the equipment is rented or leased for use primarily and directly in any farm operation, provided that the lessor shall obtain a signed affidavit from the lessee or renter affirming that the farm equipment will be used primarily and directly in a farm operation;

(DD) All sales and purchases of agricultural compounds to be consumed by, administered to, or otherwise used in caring for livestock and all sales and purchases of semen for agricultural or ranching purposes;

(EE) All sales of any motor vehicles, power source for any motor vehicles, or parts used for converting the power source for any motor vehicle if the gross vehicle weight rating of the motor vehicle is greater than 10,000 pounds and if the motor vehicle, power source, or parts used for converting the power source are certified by the federal environmental protection agency or any state as provided in the Federal Clean Air Act as meeting an emission standard equal to or more stringent than the low-emitting vehicle emission standard;

(FF) All sales and purchases of pesticides that are registered by the commissioner of agriculture for use in the production of agricultural and livestock products pursuant to the provisions of the Pesticide Act, article 9 of title 35,

C.R.S., as amended, and offered for sale by dealers licensed to sell such pesticides pursuant to section 35-9-115, C.R.S., as amended;

(GG) The taxable amount pursuant to this chapter shall not include the amount of any sales or use tax imposed by article 26 of title 39, C.R.S., as amended;

(HH) The city sales tax shall not apply to the sale of construction and building materials as the term is used in chapter 3-08, 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 city evidencing that a local use tax has been paid or is required to be paid.

(II) Meals provided to employees of the places mentioned in subsection 3-04-090(D) at no charge or at a reduced charge and which are considered as part of their salary, wages, or income.

(JJ) Sales that benefit a Colorado school if the sale is made by a school, an association or organization of parents and school teachers, a booster club or other club, group or organization whose primary purpose is to support a school activity, or a school class or student club, group or organization. For purposes of this section, *a sale that benefits a Colorado school* means a sale of tangible personal property from which all proceeds of the sale, less only the actual cost of the tangible personal property or service to the person or entity described herein are donated to a school or a school-approved organization. For purposes of this exemption only, *school* means a public or nonpublic school for students in kindergarten through twelfth grade or any portion thereof. (Ord. 1656 §1, 2001; Ord. 1921 §4, 2010)

### **3-04-110 Special event sales tax license and collections.**

(A) No special event, defined as any sales event taking place at a single location for a limited period of time not to exceed three days, which includes three or more vendors, shall occur without the issuance of a special event license to the organizer of the event. The vendors of a special event need not individually obtain a license if a special event license has been issued to the organizer of the special event.

(B) If there is no special event organizer, the vendors at the special event must obtain their own sales tax license and collect and remit the tax to the city pursuant to this chapter.

(C) 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.

(D) No later than one day prior to the beginning of the event, the special events organizer shall provide the finance director with a list of the names, addresses, and phone numbers of all vendors of the special event, and the same information pertaining to vendors who have obtained their own licenses for the event and are remitting the tax to the city themselves.

(E) Vendors or organizers of a special event must remit the sales tax they collect pursuant to this section and complete a tax return, to be filed on or before the 20th day of the month following the event, on a form provided by the finance director. Only the organizer will be permitted to take the deduction for the vendor fee. (Ord. 1656 §1, 2001)

### **3-04-120 Retailer liable for tax.**

(A) Retailers shall add the tax imposed, or the average equivalent thereof, to the price, showing such tax as a separate and distinct item. Except as provided in this section, no retailer shall advertise or hold out or state to the public or to any consumer, directly or indirectly, that the sales tax or any part thereof shall be assumed or absorbed by the retailer, or that it will not be added to the price, or if added, that it or any part thereof shall be refunded.

(B) Nothing herein contained shall be deemed to prohibit any retailer selling malt, vinous, or spirituous liquors by the drink from electing to include in his or her purchase price any tax levied under section 3-04-090(D). Once having made the election and having reported his or her decision to the city on such forms as are prescribed by the finance director, he or she must continue to impose and collect the tax in the manner elected unless granted authorization to change by the finance director. Any excess taxes collected are to be remitted to the city in accordance with subsection (D) of this section.

(C) Any tax added to the price by a retailer shall constitute a debt from the purchaser to the retailer until paid and shall be recoverable in the same manner as other debts.

(D) No retailer shall retain any sales tax collected in excess of the tax computed, but shall report such excess collections on the return for the period in which it was collected and include it in the calculation of tax due.

(E) Any retailer that collects and remits sales tax as provided in this chapter may use an electronic database of state addresses that is certified by the state department of revenue pursuant to section 39-26-105.3, C.R.S., to determine the jurisdiction to which tax is owed. Any retailer that uses the data contained in an electronic database certified by the state department of revenue pursuant to section 39-26-105.3, C.R.S., to determine the jurisdiction to which tax is owed shall be held harmless for any tax, penalty, or interest owed the city that otherwise would be due solely as a result of an error in the electronic database, provided that the retailer demonstrates that it used the most current information available in such electronic database on the date that the sale occurred. Each retailer shall keep and preserve such records as required by this chapter and as otherwise necessary to demonstrate that it used the most current information available in the electronic database on the date that the sale occurred. Notwithstanding the above, if the error in collecting and remitting is a result of a deceptive representation, a false representation, or fraud, the provisions of this section shall not apply. (Ord. 1656 §1, 2001; Ord. 1921 §5, 2010)

### **3-04-130 Credit sales and bad debts.**

(A) Whenever an article is sold to a person who thereby is obligated to the vendor on an account, chattel paper, contract right, general intangible, or a writing which supports a right to the payment of a purchase price, or any part thereof, the tax shall be based on the total purchase price and shall become immediately due and payable. No refund or credit shall be allowed to either party to a transaction in case of repossession by the vendor of collateral securing the purchase price or any part of the purchase price.

(B) Taxable sales in the city which are found worthless within the tax year and are actually and properly charged off as bona fide bad debts for federal income tax purposes may be credited upon a subsequent payment of the tax provided in this chapter, but if any such amounts are subsequently collected by the taxpayer, then tax shall be paid upon the amounts so collected. Credit for subsequent payment of tax is allowable solely as provided herein; no refund shall be permitted for taxes paid on bad debts. (Ord. 1656 §1, 2001; Ord. 1921 §6, 2010)

### **3-04-140 Accounts receivable.**

If a retailer transfers, sells, assigns, or otherwise disposes of an account receivable, he or she shall be deemed to have received the full balance of the consideration for the original sale and shall be liable for the remittance of the sales tax on the balance of the total sale price not previously reported; except that such transfer, sale, assignment, or other disposition of an account receivable by a retailer to a closely held subsidiary shall not be deemed to require the retailer to pay the sales tax on the credit sale represented by the account transferred prior to the time the customer makes payment on said account. (Ord. 1656 §1, 2001)

### **3-04-150 Sale of business.**

Any retailer who sells out his or her business or stock of goods, or quits business, shall be required to make out the return as provided herein, within ten days after the date he or she sold his or her business or stock of goods, or quit business, and his or her successor in business shall be required to withhold sufficient purchase money to cover the amount of said taxes due and unpaid until such time as the former owner produces a receipt from the finance director of the department of revenue showing that the taxes have been paid, or a certificate that no taxes are due. (Ord. 1656 §1, 2001)

### **3-04-160 Filing returns; due date.**

(A) Every taxpayer shall file a return, on a city form, whether or not tax is due, and remit any tax due the city on or before the 20th day of the month following the reporting period. All entries of taxes on the sales tax return must be rounded to the nearest dollar. Amounts under fifty cents shall be rounded down to zero cents, and amounts from fifty cents to ninety-nine cents shall be increased to the next dollar. Every taxpayer shall collect and keep track of exact amounts of sales tax and all books, records and statements or invoices to buyers must reflect actual tax amounts. It is only when a taxpayer submits a return that the numbers shall be rounded.

(B) A retailer engaged in business in the city at two or more locations, whether inside or outside the city, who is obligated to collect sales tax, may file one return for all such locations, when accompanied by a supplemental schedule showing the gross sales and net taxable sales for each location.

(C) For good cause shown and upon written request by the taxpayer, approval of which is granted by the finance director, the finance director may extend the time for making a return and paying tax due. (Ord. 1656 §1, 2001; Ord. 1921 §7, 2010)

**3-04-170 Reporting periods.**

(A) Unless otherwise approved, each taxpayer shall file a return and pay tax as follows:

(1) A taxpayer whose monthly tax due is \$15.00 per month or less may file a return and pay tax annually, quarterly or monthly;

(2) A taxpayer whose monthly tax due is less than \$300.00 per month may file returns and pay tax quarterly or monthly; and

(3) A taxpayer whose monthly tax due is \$300.00 per month or more shall file returns and pay tax monthly.

(B) The reporting period for a final return shall end on the date of the transfer of ownership of business.

(C) The reporting period for an initial use tax return shall be the calendar month of the date of sale if a business was purchased or the opening day of business if a business is new.

(D) The reporting period for a vendor selling tangible personal property at a special event inside the city, who is not required to obtain a license, shall end on the day the special event concludes.

(E) If the accounting methods employed by the taxpayer, or other conditions, are such that returns made on a calendar month basis will impose unnecessary hardship, the finance director may, upon written request of the taxpayer, accept returns at such intervals as will, in the opinion of the finance director, better suit the convenience of the taxpayer, but not jeopardize the collection of the tax.

(F) 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 finance director. Thereafter following notice of such revocation, the taxpayer shall file returns and pay tax on a monthly basis. (Ord. 1656 §1, 2001)

**3-04-180 Timely payment; computation of dates.**

(A) Timely payment shall be evidenced by the postmark date if mailed; otherwise timely payment shall be evidenced by the finance department validation date.

(B) Any due date, payment date, or deadline for paying tax due, 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. 1656 §1, 2001)

**3-04-190 Examination of returns; recomputation, credits, deficiencies.**

As soon as practicable after a return is filed, the finance director shall examine it. If it appears that the correct amount of tax to be remitted may be greater or less than that shown in the return, the tax shall be recomputed by the finance director. If the amount paid exceeds that which is due, the excess shall be refunded or credited against any subsequent remittance from the taxpayer. If the amount paid is less than the amount due and any part of the deficiency is due to negligence or intentional disregard of the provisions of this chapter or of authorized rules and regulations of the city with knowledge thereof but without intent to defraud, the amount of the deficiency, together with a penalty of ten percent of the amount of the deficiency plus interest on both the deficiency and the penalty at the rate imposed under section 3-04-330 from the date the return and the tax were due, shall be due and payable by the taxpayer within twenty days after written notice and demand is mailed to the taxpayer by the finance director. If any part of the deficiency is due to fraud with the intent to evade the tax, then there shall be added a penalty of one hundred percent of the deficiency and in such case, the amount of the deficiency, the penalty and interest calculated as stated above shall be due and payable by the taxpayer within twenty days after written notice and demand is mailed to the taxpayer by the finance director and an additional amount of three percent per month on such amount shall be added from the date the return and tax were due until paid. (Ord. 1656 §1, 2001)

**3-04-200 False or fraudulent return or statement; penalty.**

It is unlawful for any retailer or vendor to refuse to make any return required to be made in this chapter or to make any false or fraudulent return or false or fraudulent statement on any return, or fail and refuse to make payment to the finance director of any taxes collected or due the city, or in any manner evade the collection and payment of the tax, or any part thereof, or for any person or purchaser to fail or refuse to pay such tax, or evade the payment thereof, or to aid or abet another in any attempt to evade the payment of the tax. (Ord. 1656 §1, 2001)

### **3-04-210 Confidential nature of returns.**

(A) Except in accordance with judicial order or as otherwise provided by law, the finance director shall not divulge or make known in any way any financial information obtained from any investigation conducted by the finance director or the administrative services department of the city or disclosed in any document, report or return filed under the provisions of this chapter. Notwithstanding the foregoing, the city will not execute any confidentiality or non-disclosure agreement as it relates to tax returns or other records to which the city shall have access pursuant to this chapter.

(B) The persons charged with the custody of such documents, report, investigation, and returns filed pursuant to this chapter shall not be required to produce any of them or evidence of any matters contained therein in any action or proceeding in any court, except on behalf of the finance director in any action or proceeding under the provisions of this chapter to which the finance director or the city is a party, or on behalf of any party to an action or proceeding under the provisions of this chapter when the report of facts shown thereby is directly involved in such action or proceeding, or pursuant to any judicial order in which event the court may require the production of and may admit in evidence so much of such returns or of the facts shown thereby as are pertinent to the action or proceeding and no more.

(C) No provision of this section shall be construed to prohibit the delivery to a person or a duly authorized representative thereof a copy of any application, report, return, or any other document kept, filed, or maintained in connection with such person's tax liability. Copies of such documents may be certified by the finance director and when so certified shall be evidence equal with the originals and may be received as evidence of their 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 contents thereof, nor to prohibit the inspection of any documents by the city attorney or any other legal representatives of the city.

(E) Notwithstanding the provisions of this section, the finance director may furnish to the taxing officials of the state or its political subdivisions, or any other state or its political subdivisions, or the United States any information contained in any application, report, return, or any other document if the recipient jurisdiction agrees with the finance director to grant similar privileges to the city and if such information is to be used by the jurisdiction only for tax-related purposes. (Ord. 1656 §1, 2001; Ord. 1921 §8, 2010)

### **3-04-220 Vendor or retailer responsibility to collect.**

(A) Retailers engaged in business in the city shall collect and purchasers and consumers shall pay the taxes levied by this chapter, notwithstanding the fact that the retailer, purchaser, or consumer disputes the tax liability or claims an exemption.

(B) If the application of the tax to any transaction is disputed, the retailer shall collect and the purchaser or consumer shall pay the tax, and the taxpayer may thereafter apply to the finance director for a refund of such taxes paid, as provided in this chapter.

(C) For tax returns filed in a timely manner in accordance with this chapter, there shall be allowed in the discretion of the finance director a credit to the vendor in the amount of three percent of the amount due or \$200.00, whichever is less. (Ord. 1656 §1, 2001)

### **3-04-230 Taxes held as trust.**

All sums of money paid by the purchaser to the retailer as taxes imposed by this chapter shall be and remain public money, the property of the city, in the hands of such retailer, and the retailer shall hold the same in trust for the sole use and benefit of the city until paid to the finance director, and for failure to so pay to the finance director, such retailer shall be subject to such penalties as provided herein. (Ord. 1656 §1, 2001)

### **3-04-240 Duty to keep records.**

It is the duty of every person engaged in business in this city for the transaction of which a license is required by this chapter to keep and preserve suitable documentation, acceptable to the city, including, but not limited to, records of all sales, purchases and leases made by such person, and such other books or accounts as may be necessary to determine the amount of tax for the collection of which such person is liable under this chapter. It is the duty of every such person to keep and preserve for a period of three years all invoices of goods and merchandise purchased or sold. All such books, invoices, and other records shall be open for examination and audit at any time by the finance director or designee thereof within the city. If any person engaged in business in the city does not present such records locally for inspection as required by this section, said taxpayers shall be required to reimburse the city

for the travel expenses incurred by city staff or designee for inspection and review of such records outside the city. (Ord. 1656 §1, 2001; Ord. 1921 §9, 2010)

**3-04-250 Notice of assessment.**

The finance director shall issue a notice of assessment for any total tax liability. Notices of assessment shall be in writing and delivered in person or sent postpaid by first class mail, to the last known address of the taxpayer on file with the finance department. The payment due date for the tax due pursuant to a notice of assessment shall be as stated in the notice of assessment. (Ord. 1656 §1, 2001)

**3-04-260 Protest of notice of assessment.**

A protest of a notice of assessment and demand for payment issued to a taxpayer for failure to file a return, underpayment of tax owed, or as a result of an audit shall be submitted in writing to the finance director within thirty days from the date the notice of assessment is mailed. Any such protest shall identify the amount of tax disputed and the basis for the protest. Such protest may include a request for a hearing and shall be given under oath of the taxpayer. The protest shall constitute a petition of the taxpayer. (Ord. 1656 §1, 2001; Ord. 1921 §10, 2010)

**3-04-270 Hearings.**

(A) The finance director shall commence a hearing within ninety days after the city's receipt of the taxpayer's written protest; except the finance director may extend such period if the delay is requested by the taxpayer. The finance director shall notify the taxpayer in writing of the time and place of such hearing.

(B) At the hearing the taxpayer may assert any facts, make any arguments, and file any briefs and affidavits, which in the opinion of the taxpayer are pertinent to the protest. This filing of briefs shall not be required.

(C) Based on the evidence presented at the hearing, the finance director shall issue findings of fact, conclusions, and a decision which may modify or abate in full the tax, penalties and interest protested at the hearing, approve a refund, or uphold a notice of assessment.

(D) Unless the decision of the finance director is appealed as provided in this chapter, the remaining tax due, if any, shall be paid on or before thirty days after the date of the findings of fact, conclusions, and decision. (Ord. 1656 §1, 2001)

**3-04-280 Appeal; review by district court.**

(A) Subsequent to a hearing as set forth in section 3-04-270, the taxpayer may appeal the final decision of the finance director to the district court of the county. Said appeal shall be in accordance with section 29-2-106.1, C.R.S.

(B) Within fifteen days after filing a notice of appeal as provided in subsection (C) of this section, the taxpayer shall file with the district court a surety bond in twice the amount of the taxes, interest, and other charges stated in the final decision of the finance director that are being contested on appeal. The taxpayer may, at his or her option, satisfy the surety bond requirement by a savings account or deposit in or a certificate of deposit issued by a state or national bank or by a state or federal savings and loan association, in accordance with the provision of section 11-35-101(1), C.R.S., equal to twice the amount of the taxes, interest, and other charges stated in the final decision of the finance director. The taxpayer may, at his or her option, deposit the disputed amount with the finance director in lieu of posting a surety bond. If such amount is so deposited, no further interest shall accrue on the deficiency contested during the pendency of the action. At the conclusion of the action, after appeal to the supreme court of the court of appeals or after the time for such appeal has expired, the funds deposited shall be, at the direction of the district court, either retained by the finance director and applied against the deficiency or returned in whole or in part to the taxpayer. No claim for refund of amounts deposited with the finance director need be made by the taxpayer in order for such amounts to be repaid in accordance with the direction of the district court.

(C) Any appeal pursuant to section 29-2-106.1, C.R.S., shall, to the extent allowed by law, be filed on the district court of the county upon a verified petition of the taxpayer filed within thirty days after notice of the decision of the finance director in any such matter. (Ord. 1656 §1, 2001; Ord. 1921 §11, 2010)

**3-04-290 Refunds of disputed tax.**

Refunds of tax paid to a retailer by a purchaser, who claims that the sale is exempt from the tax, may be requested by such purchaser by signing and submitting a claim for refund on or before three years from the date of purchase. (Ord. 1656 §1, 2001)

**3-04-300 Claim for refund.**

(A) The burden of proving that any transaction or item is not taxable or is exempt from the tax shall be upon the person asserting such claim under such reasonable requirements of proof as the finance director may prescribe.

(B) An application for a claim of refund of tax shall:

- (1) Be made on a claim for refund form furnished by the finance director;
- (2) Be signed by the taxpayer; and
- (3) Include the original paid invoice or sales receipt or other adequate documentation of the claim.

(C) Upon receipt of an application, the finance director shall examine it and make a determination in writing to the applicant of his or her decision thereon.

(D) No person shall make any false statement in connection with a claim for refund.

(E) The right of any person to a refund under this chapter is not assignable.

(F) An application for a refund must be made by the individual who paid the tax, as shown on the sales receipt or invoice of the sale. (Ord. 1656 §1, 2001)

**3-04-310 Action for recovery of refund.**

If any such person obtains any refund unlawfully, the finance director is hereby empowered and directed to bring appropriate action for recovery of such refund. A conviction of a violation of section 3-04-200 shall constitute prima facie evidence that all refunds received by such person pursuant to the application, which contained the false statement, were obtained unlawfully. (Ord. 1656 §1, 2001)

**3-04-320 Audit.**

(A) The finance director, or a contract auditor as designated by the finance director, may, at any time within three years of the date the tax was due, for the purpose of ascertaining the correct amount of tax due from any person engaged in business in the city, conduct an audit by examining any relevant books, accounts, and records of such person and by interviewing the taxpayer and the taxpayer's officers, agents, and employees. Before the expiration of the time permitted for the audit under this subsection (A), the taxpayer and the finance director may agree in writing to an extension thereof, and the period so agreed on may be extended by subsequent agreements in writing made before the expiration of the previously agreed time.

(B) The finance director may make, permit, or cause to be made the examination, inspection, and audit of books, accounts, and records of any taxpayer, and the interviews as described in subsection (A) of this section, at a location inside the city limits during regular business hours. If any taxpayer refuses to provide any of the foregoing information when requested, the finance director may issue a subpoena to require that the taxpayer or an agent or employee of the taxpayer attend a hearing and produce any such books, accounts, and records for examination and copying.

(C) When the taxpayer does not make available suitable records, the finance director may determine total tax liability based upon generally accepted accounting principles, expert testimony or any other method deemed reasonable by the finance director.

(D) If a taxpayer provides books, accounts, or records which, in the judgment of the finance director, are so voluminous that excessive and undue time would be required to review and examine each and every record, the finance director may use a test-period or other appropriate sampling technique to determine and compute the total tax liability.

(E) Any charitable entity claiming exemption under the provisions of this chapter is subject to audit in the same manner as any other person engaged in business in the city.

(F) In the sole discretion of the finance director, the city may choose to engage a contract audit firm to perform sales or use tax audits. These audits may be performed for one city or multiple cities in order to create

efficiencies in costs to the city or cities. If the person or business fails to allow a single or multiple city audit, upon the initial request to perform such audit, the person or business will be required to pay all fees and expenses for that audit in addition to any audit assessment, penalty or interest due, or the credit due as the result of the audit will be reduced by the amount of the fees and expenses. (Ord. 1656 §1, 2001)

**3-04-330 Failure to collect tax or make return; estimate of taxes; interest and penalty.**

(A) If any person fails, neglects, or refuses to collect tax or to file a return and pay the tax as required by this chapter, the finance director shall make an estimate, based upon such information as may be available, of the amount of taxes due for the period for which the taxpayer is delinquent and shall add thereto a penalty equal to the sum of \$15.00 for such failure or ten percent thereof, whichever is greater, and interest on such delinquent taxes at the rate imposed under section 3-04-360, plus one-half percent per month from the date when due, not exceeding eighteen percent in the aggregate.

(B) The finance director shall serve upon the delinquent taxpayer written notice of such estimated taxes, penalty, and interest, which notice shall be personally delivered or sent by first-class mail directed to the last address of such person on file with the city. Such notice shall constitute a notice of determination, assessment, and demand for payment and shall be due and payable within thirty days from the date the notice is mailed. (Ord. 1656 §1, 2001; Ord. 1921 §12, 2010)

**3-04-340 Assessment and recurring assessment penalty.**

If any taxpayer has failed, neglected or refused to pay the tax imposed by this chapter within the time specified for payment, the finance director may assess the following penalties, in addition to the taxes, penalties, and interest provided for elsewhere in this chapter, the additional amount being imposed to compensate the city for administrative and collection costs incurred in collecting such delinquent taxes:

(A) Upon the first or second issuance of a notice of determination, assessment and demand for payment within twelve months, \$15.00 per notice;

(B) Upon the third, fourth, or fifth issuance of a notice of determination, assessment and demand for payment within twelve months, \$25.00 or fifteen percent of the delinquent taxes, penalties and interest, whichever is greater, per notice;

(C) Upon the sixth or more issuance of a notice of determination, assessment, and demand for payment within twelve months, \$50.00 or thirty percent of the delinquent taxes, penalties and interest, whichever is greater, per notice. (Ord. 1656 §1, 2001)

**3-04-350 Jeopardy assessment.**

(A) If the finance director finds that collection of the tax will be jeopardized for any reason, the finance director may declare the taxable period immediately terminated, determine the tax, and issue a notice of determination, assessment, and demand for payment. Notwithstanding the provisions of sections 3-04-160 and 3-04-170, the tax shall then be due and payable immediately, and the finance director may proceed to collect the tax as provided in this chapter.

(B) If the taxpayer subject to a jeopardy assessment provides security for payment of the tax satisfactory to the finance director, the finance director may forego the jeopardy assessment collection proceedings. (Ord. 1656 §1, 2001)

**3-04-360 Rate of interest; method of calculation.**

When interest is required or permitted to be charged under any provision of this chapter, the annual rate of interest shall be calculated as follows:

(A) Interest at a rate of one percent per month shall be calculated for each month or portion of a month from the due date that a tax deficiency remains unpaid.

(B) Interest at a rate of one percent per month shall be calculated for each month or portion of a month on the total tax liability from the first installment date when a payment schedule is arranged. (Ord. 1656 §1, 2001)

### **3-04-370 Coordinated audit.**

Taxpayers licensed with the city under this chapter, and holding a similar sales tax license in at least four other Colorado municipalities that administer their own sales tax collection, may request a coordinated audit as provided for herein.

(A) Within fourteen days of receipt of notice of an intended audit by any municipality that administers its own sales tax collection, the taxpayer may provide to the finance director, by certified mail, return receipt requested, a written request for a coordinated audit indicating the municipality from which the notice of intended audit was received and the name of the official who issued such notice. Such request shall include a list of those Colorado municipalities utilizing local collection of their sales tax in which the taxpayer holds a current sales tax license and a declaration that the taxpayer will sign a waiver of any passage-of-time based limitation upon the city's right to recover tax owed by the vendor for the audit period.

(B) Except as provided in subsection (F) of this section, any taxpayer that submits a complete request for a coordinated audit and promptly signs a waiver of thirty-six months may be audited by the city during the twelve months after such request is submitted only through a coordinated audit involving all municipalities electing to participate in such an audit.

(C) If the city desires to participate in the audit of a taxpayer that submits a complete request for a coordinated audit pursuant to subsection (B) of this section, the finance director shall so notify the finance officer of the municipality whose notice of audit prompted the taxpayer's request within ten days after receipt of the taxpayer's request for a coordinated audit. The finance director shall then cooperate with other participating municipalities in the development of arrangements for the coordinated audit, including arrangement of the time during which the coordinated audit will be conducted, the period of time to be covered by the audit, and a coordinated notice to the taxpayer of those records most likely to be required for completion of the coordinated audit.

(D) If the taxpayer's request for a coordinated audit was in response to a notice of audit issued by the city, the finance director shall facilitate arrangements between the city and other municipalities participating in the coordinated audit unless and until an official from some other participating municipality agrees to assume this responsibility. The finance director shall cooperate with other participating municipalities to minimize, whenever practicable, 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.

(E) If the taxpayer's request for a coordinated audit was in response to a notice of audit issued by the city, the finance director shall, once arrangements for the coordinated audit between the city and other participating municipalities are completed, provide written notice to the taxpayer of which municipalities will be participating, the period to be audited and the records most likely to be required by participating municipalities for completion of the coordinated audit. The finance director shall also propose a schedule for the coordinated audit.

(F) The coordinated audit procedure set forth in this section shall not apply:

- (1) When the proposed audit is a jeopardy audit;
- (2) To audits for which a notice of audit was given prior to the effective date of this section;
- (3) When a taxpayer refuses to promptly sign a waiver of thirty-six months. (Ord. 1656 §1, 2001)

### **3-04-380 Inter-city claims for recovery.**

(A) The intent of this section is to streamline and standardize procedures related to situations where tax has been remitted to another municipality in error. It is not intended to reduce or eliminate the responsibilities of the taxpayer or retailer to correctly pay, collect, and remit sales and use taxes to the city.

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

(C) The city may make a written claim for recovery directly to the municipality that received tax and/or penalty and/or interest owed to the city, or, in the alternative, may institute procedures for collection of the tax from the taxpayer or retailer. The decision to make a claim for a recovery lies in the sole discretion of the city. Any claim for recovery shall include a properly executed release of claim from the taxpayer and/or retailer 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 days of its receipt. The municipality to which the city submits a claim for recovery may, for good cause, request an extension of time to investigate the claim, and approval of such extension by the city shall not be unreasonably withheld.

(D) Within ninety days after receipt of a claim for recovery, the other municipality shall verify to its satisfaction whether or not all or a portion of the tax claimed was improperly received and shall notify the city 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 municipality shall remit the undisputed amount to the city submitting the claim within thirty days of approval. If a claim is submitted jointly by the city and a retailer or taxpayer, the check shall be made to the parties jointly. Denial of a claim of recovery may only be made for good cause.

(E) The other municipality may deny a claim on the grounds that it has previously paid a claim for recovery arising out of an audit of the taxpayer.

(F) The period subject to a claim for recovery shall be limited to the thirty-six-month period prior to the date the municipality that was wrongly paid the tax receives the claim for recovery. (Ord. 1656 §1, 2001)

### **3-04-390 City may be party in title actions.**

In any action affecting the title to real property or the ownership or right to possession of personal property, the city may be made a party defendant for the purpose of obtaining an adjudication or determination of its lien upon the property involved therein. (Ord. 1656 §1, 2001)

### **3-04-400 Injunctive relief.**

The finance director may seek injunctive or other equitable relief in any court of competent jurisdiction to enforce provisions of this chapter. (Ord. 1656 §1, 2001)

### **3-04-410 Waiver of penalties by finance director.**

The finance director is hereby authorized to waive, for good cause shown, any interest, penalty, or fee imposed under this chapter. (Ord. 1656 §1, 2001)

### **3-04-420 Investigations, audits, and hearings.**

For the purpose of ascertaining the correctness of a return, or for the purpose of determining the amount of tax due from any person, whether licensed under this chapter or not, the finance director may hold investigations, including audits 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 of transactions involved and may take testimony and proof of the information. Audits may be performed by the finance director or referred to a contracted auditor. The finance director shall have the power to administer oaths to such persons. Every hearing before the finance director shall be held in the city. (Ord. 1656 §1, 2001)

### **3-04-430 Subpoenas and witness fees.**

(A) The finance director may issue a subpoena to command a person to attend and give testimony and/or to produce books, accounts and records. Any subpoena issued under the terms of this chapter shall be served as set forth in the Colorado Municipal Court Rules of Procedure, including the payment of witness fees. When a witness is subpoenaed by the city, such fees shall be paid by the city. When a witness is subpoenaed at the request of a taxpayer, the finance director shall require that the cost of service of the subpoena and the fee be paid by the taxpayer. The finance director shall require a deposit to cover the costs of the service of subpoena and witness fees. If a subpoena issued by the finance director is duly served and the respondent fails to attend, give testimony or to produce books, accounts and records as commanded, the finance director may apply to, with the assistance of the city attorney, the municipal court of the city for an order enforcing the subpoena. The municipal court shall have jurisdiction to enforce such a subpoena through appropriate proceedings including contempt.

(B) All subpoenas issued under the terms of this chapter may be served by any person over the age of eighteen years. The fees of witnesses for attendance in response to a subpoena 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 finance director, such fees shall be paid by the city, but when a witness is subpoenaed at the instance of any other party to such proceeding, the finance 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 finance director, in his or her discretion, may require a deposit to cover the cost of such service and witness fees prior to issuing such subpoenas. A subpoena issued as aforesaid shall be served in the same manner as a subpoena issued out of a court of record. (Ord. 1656 §1, 2001)

**3-04-440 Attendance of witnesses and production of evidence to be compelled by district judge.**

Any judge of the district court, upon the application of the finance director, may compel the attendance of witnesses, the production of books, papers, records, or memoranda and the giving of testimony before the finance director, by an action for contempt or otherwise in the same manner as the production of evidence may be compelled before such court. (Ord. 1656 §1, 2001)

**3-04-450 Depositions.**

The finance director, or any party to an investigation or hearing before the finance director, may cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for 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. 1656 §1, 2001)

**3-04-460 Notices.**

Unless otherwise provided by the chapter, written notices required to be mailed, served, or given to any taxpayer under the provisions of this chapter shall be hand-delivered or mailed, postage prepaid, addressed to such taxpayer at the last known address of the taxpayer on file with the city and shall be deemed to have been received by the taxpayer when so mailed or delivered. (Ord. 1656 §1, 2001)

**3-04-470 Violations.**

(A) It shall be unlawful for any retailer to fail to collect or for any purchaser or consumer to fail to pay any tax, penalty, or interest levied by this chapter, regardless of whether the tax liability is disputed or an exemption is claimed.

(B) It shall be unlawful for any retailer to retain any tax collected in excess of the rate stated in section 3-04-020 or to fail to remit punctually to the finance director the full amount required by the provisions of this chapter, including taxes, penalties, and interest.

(C) It shall be unlawful for any person to fail or refuse to make or file any return required to be made or filed by this chapter or to make any false or fraudulent return or any false or fraudulent statement in any return.

(D) It shall be unlawful for any person to do business without the license required by this chapter or to continue to do business after such license is revoked.

(E) It shall be unlawful for any applicant for a tax refund to make a false statement in connection with such application.

(F) Except as may be otherwise provided for by rule or regulation of the finance director or the department of revenue for the state, it is unlawful for any person who is a resident of the city to register any motor vehicle owned by such person or to obtain a license or to procure a certificate of title at any address other than:

(1) For a motor vehicle which is owned by a business and operated primarily for business purposes, the address from which such vehicle is principally operated and maintained; or

(2) For any motor vehicle for which the provisions of subparagraph (1) above do not apply, the address of the owner's residence; except that, if a motor vehicle is permanently operated and maintained at an address other than the address of the owner's residence, such motor vehicle shall be registered at the address from which such motor vehicle is permanently operated and maintained.

(3) For purposes of this subsection, a person's residence shall be his or her principal or primary home or place of abode, to be determined in the same manner as residency for voter registration purposes as provided in sections 1-2-102 and 31-10-201, C.R.S., except that "voter registration" shall be substituted for "motor vehicle registration" as a circumstance to be taken into account in determining such principal or primary home or place of abode.

(G) It shall be unlawful for any person other than the city to become enriched or to gain any benefit from the collection or payment of the taxes levied by this chapter.

(H) It shall be unlawful for any person to aid or abet another in any attempt to evade the payment of the tax imposed by this chapter.

(I) It shall be unlawful for any person to interfere with the actions of any employee or agent of the city relating to the distraint warrant procedures, such interference to include but not be limited to the removal of signs or tags placed on the premises or items of property which are to be sold by the city pursuant to such procedure.

(J) It shall be unlawful for any person to violate any provisions of this chapter.

(K) Any person who shall violate any of the provisions of this chapter shall be subject to the penalties set forth in chapter 1-12, B.M.C. (Ord. 1656 §1, 2001)

**3-04-480 Lien for taxes due.**

(A) The sales tax imposed by this chapter, together with all penalties, and interest pertaining thereto and the costs of collection which may be incurred, shall remain until paid a first and prior lien superior to all other liens upon the goods, merchandise, furniture, stock-in-trade, business fixtures, tools, and equipment in which the taxpayer has an ownership interest, and shall take precedence on all such property over other liens or claims of whatsoever kind or nature and may be foreclosed by seizing under distraint warrant and selling so much of said goods, merchandise, furniture, stock-in-trade, business fixtures, tools, and equipment as may be necessary to discharge said lien.

(B) If any tax due is not paid by the payment date of a notice of assessment, the finance director may issue a notice of lien on the real and personal property of the taxpayer. Such lien shall specify the name of the taxpayer, the tax due, the date of the accrual thereof, and the location of the property if known, and shall be certified by the finance director.

(C) The notice of lien may be filed in the office of the clerk and recorder of any county in the state. Such filing shall provide additional notice of such a lien.

(D) The attachment and priority of such lien shall be as follows:

(1) Such lien shall be a first and prior lien upon the goods, merchandise, furniture, stock-in-trade, business fixtures, tools, and equipment owned or used by any taxpayer, including those used under lease, installment sale, or other contract agreement, and shall take precedence on all such property over all other liens or claims of whatsoever kind or nature.

(2) Such lien on the real and tangible personal property of the taxpayer that is not goods, merchandise, furniture, stock-in-trade, business fixtures, tools, and equipment goods shall be a first and prior lien except as to preexisting claims or liens of a bona fide mortgagee, pledgee, judgment creditor, or purchaser, whose rights have attached and been perfected prior to the filing of the notice of lien.

(3) The personal property of an owner who has made a bona fide lease to a taxpayer shall be exempt from the lien created in this subsection if such property can reasonably be identified from the lease description and if the lessee is given no right to become the owner of the property leased. This exemption shall be effective from the date of the execution of the lease if the lease is recorded with the county clerk and recorder of the county where the property is located or based.

(4) Motor vehicles which are properly registered in this state, showing the lessor as owner thereof, shall be exempt from such lien except that such lien shall apply to the extent that the lessee has an earned reserve, allowance for depreciation not to exceed fair market value, or similar interest which is or may be credited to the lessee.

(5) Where a lessor and lessee are blood relatives or relatives by law or have twenty-five percent or more common ownership, a lease between such lessee and such lessor shall not be considered as bona fide for purposes of this section.

(E) If a notice of lien is filed against real property, the finance director may request the city attorney to file a civil action to enforce such lien. The court may determine the interest in the property of each party, decree a sale of the real property, and distribute the proceeds according to such findings. Procedure for the action and the manner of sale, the period for and manner of redemption from the 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. (Ord. 1656 §1, 2001)

**3-04-490 Perpetual lien.**

(A) Any lien for tax due shall continue until a release of lien is filed by the finance director.

(B) Any person who purchases or repossesses real or personal property upon which tax is due shall be liable for the payment of such tax due up to the value of the property taken or acquired. Upon receipt of a written request from the city, the purchaser or reposessor shall promptly provide a description of any assets of the taxpayer subject to a tax lien which have been transferred and the address of the transferee of such assets and prior to a foreclosure sale or transfer of taxpayer assets which may be subject to a tax lien, the purchaser or reposessor shall request or

cause to be requested from the city a certificate of taxes due. Such request shall be accompanied by or include a statement of intent. Such certificate of taxes due shall have been issued no more than six months prior to the date of the foreclosure sale or transfer of assets. (Ord. 1656 §1, 2001; Ord. 1921 §13, 2010)

### **3-04-500 Release of lien.**

Upon payment of the tax, penalties, and interest due or enforcement of the lien, the finance director shall file a release of lien with the county clerk and recorder of the county in which the lien was filed. (Ord. 1656 §1, 2001)

### **3-04-510 Civil action to recover tax due.**

(A) Any unpaid tax, penalties, and interest due shall constitute a debt of the taxpayer to the city and the finance director may request the city attorney to file a civil action to collect such tax, penalty, and interest due.

(B) The return filed by a taxpayer or the notice of assessment issued by the finance director shall be prima facie proof of the tax due.

(C) If a judgment is obtained by the city, collection of the tax due may be made by attachment, garnishment, or other means established by law. When attachment is sought, no bond shall be required of the finance director, nor shall any sheriff require from the finance director an indemnity bond for executing the writ of attachment or writ of execution upon any judgment. (Ord. 1656 §1, 2001)

### **3-04-520 Distraint and sale.**

(A) Unless such property is exempt by city code and state statute from levy or distraint and sale, the finance director may sign and issue a warrant directed to any employee or agent of the city, or any sheriff of any county in the state, commanding the levy or distraint and sale of personal property of the taxpayer on which a lien has attached for a payment of tax due.

(1) Such warrant may be issued if the tax due is not paid on or before thirty-one days from the payment date of a notice of assessment and no protest of such assessment has been timely filed.

(2) Such warrant may be issued immediately if a jeopardy assessment and demand for payment has been issued.

(B) If the taxpayer does not volunteer entry to the premises, the finance director may apply to the municipal court or county court for a warrant authorizing any employee or agent of the city to search for and distraint property located inside the city to enforce the collection of tax due.

(1) The finance director shall demonstrate to the court that the premises to which entry is sought contains property that is subject to distraint and sale for tax due.

(2) If a jeopardy assessment and demand for payment has been issued, the finance director shall specify to the court why collection of the tax will be jeopardized.

(3) The procedures to be followed in issuing and executing a warrant pursuant to this subsection shall comply with rule 241 of the Colorado Municipal Court Rules of Procedure or the Colorado Rules of County Court Procedure, as applicable.

(C) Disposal of distrained property shall be in accordance with the following:

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

(2) A notice of the time and place of the sale, together with a description of the property to be sold, shall be published in a newspaper of general circulation within the county where distraint is made or, in lieu thereof and in the discretion of the finance director, notice shall be posted at the courthouse of the county where distraint is made, and in at least two other places within such county.

(3) The time fixed for the sale shall not be less than ten days or more than sixty days from the date of distraint. The sale may be postponed by the city or agent for not more than ninety days from the date originally fixed for the sale.

(4) If the property is not sold, such property may be disposed of in the same manner as other city property, such as an annual auction, and the lien thereon shall be reduced by the amount of the net proceeds received.

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

(6) The property offered for sale may be redeemed if the owner or possessor or other person holding a security interest pays the total tax liability and all collection costs not less than twenty-four hours before the sale.

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

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

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

(8) Any surplus remaining after satisfaction of the taxes, penalties, and interest due, plus any costs of making the distraint and advertising the sale, may be distributed by the city first to the jurisdictions which have filed liens or claims of sales and use or personal property ad valorem taxes, and second to the owner, or such other person having a legal right thereto.

(D) Property of the taxpayer subject to levy or distraint shall include the personal property of the taxpayer and the personal property of corporate officers deemed to be in a fiduciary position of such sales tax, and the goods, stock in trade, and business fixtures owned or used by any taxpayer, including those used under lease, installment sale, or other contract arrangement.

(E) The taxpayer or any person who claims an ownership interest or right of possession in the distrainted property may petition the finance director, or the municipal court if the property was seized pursuant to a warrant issued by the court, for the return of the property.

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

(2) The fact finder shall receive evidence on any issue of fact necessary to the decision of the petition. If the fact finder determines by a preponderance of the evidence in favor of the taxpayer or other petitioner, the property shall be returned. (Ord. 1656 §1, 2001; Ord. 1921 §14, 2010)

### **3-04-540 Obligations of fiduciaries and others.**

(A) The personal representative of a decedent or decedent's estate, or any trustee, receiver, or other person acting in a fiduciary capacity, or any director or officer of a corporation or any member of a partnership or limited liability company in the process of dissolution who receives or distributes any of the property of such decedent's estate, trust estate, fund, or corporation without having first paid any taxes due under this chapter is personally liable under this chapter to the same extent that the decedent, trust estate, fund, or corporation is or was liable under this chapter.

(B) If a tax under this chapter is due from a decedent or the decedent's estate, personal liability of the persons set forth in this section remains in effect only if a determination of the tax due is made and notice and demand therefor issues within eighteen months after the decedent's personal representative files with the finance director a written request for such determination, filed after he or she has filed the decedent's final return or the decedent's estate's return to which the request applies. A request for determination under this subsection does not extend the otherwise applicable period of limitation.

(C) If a tax under this chapter is due from a corporation that is in the process of dissolution or has been dissolved, personal liability of directors or stockholders as provided in this section remains in effect only if a determination of the tax due is made and notice and demand issues within eighteen months after the corporation files with the finance director a written request for such determination, filed after it has filed the corporation's return, but only if the request states that the dissolution was begun in good faith before the expiration of the eighteen-month period and the dissolution is completed. A request for determination under this subsection does not extend the otherwise applicable period of limitation.

(D) A third-party record keeper of a taxpayer shall not be personally responsible under this section, provided that such entity acts solely as a keeper of taxpayer records and not in a fiduciary capacity. (Ord. 1656 §1, 2001; Ord. 1921 §§16, 17, 2010)

**3-04-550 Statute of limitations on actions to collect.**

(A) Except as otherwise provided in this section or state statute, the taxes for any period together with interest thereon and penalties with respect thereto imposed by this chapter shall not be assessed, nor shall any notice of lien be filed, distraint warrant be issued, bond be collected upon, suit for collection be instituted, or any other action to collect the same be commenced, more than three years after the date on which the tax was or is payable. In addition, no lien shall continue after such period, except for taxes assessed before the expiration of such period, when a notice of lien regarding such taxes was filed prior to the expiration of such period, in which case the lien shall continue for only one year after the filing of notice thereof.

(B) Before the expiration of such period of limitation, the taxpayer and the finance director may agree in writing to an extension thereof, and the period so agreed on may be extended by subsequent agreements in writing.

(C) The commencement of collection proceedings shall be the date taxpayer is mailed written notice of collection proceedings, including the date that written notice of an audit is placed in the U.S. mail. The commencement of collection proceedings shall toll the running of the statute of limitations set forth in subsection (A) above. For purposes of this section, *toll* is defined as an interruption of the running of the statute of limitations set forth in subsection (A) of this section.

(D) The statute of limitations period as set forth in subsection (A) of this section shall not apply, and the tax, together with interest and penalties thereon, may be assessed or proceedings for the collection of such taxes may commence at any time if:

- (1) A taxpayer files a false return under circumstances that exhibit a careless disregard for the accuracy of the return;
- (2) A taxpayer files a false or fraudulent return with the intent to evade the tax imposed by this chapter; or
- (3) A taxpayer fails to file a return as required by this title.

(E) Nothing in this section shall be construed to limit any right accrued or to revive any liability barred by any statute in effect on the effective date of the ordinance from which this chapter was derived. (Ord. 1656 §1, 2001; Ord. 1921 §18, 2010)

**Chapter 3-08**

**Use Tax**

**3-08-010 Purpose.**

The purpose of this act is to raise revenue. The tax imposed herein is a use tax on the use or consumption in the city of any construction and building materials, and the use, storage, or consumption in the city of vehicles. (Ord. 667 §1, 1985)

**3-08-020 Legislative intent.**

It is hereby declared to be the legislative intent of the city council that, for the purposes of this chapter, every person who uses or consumes in Broomfield any building and construction materials, as herein defined, and every person who uses, stores, or consumes any vehicle, as herein defined, is exercising a taxable privilege. It is further declared to be the legislative intent of the city council that the use tax imposed by this chapter is done pursuant to the authority granted to the city by article XX of the Constitution of the State of Colorado. (Ord. 667 §2, 1985; Ord. 940 §1, 1992)

**3-08-030 Imposition of tax; rate; bracket.**

(A) *Imposition.* On and after January 1, 1990, there is hereby levied and imposed, and there shall be collected by the city and paid by the taxpayer, a tax on the following:

- (1) On the purchase price paid or charged on the sale or purchase of vehicles, when purchased or sold at retail, and used, stored, or consumed in the city; and
- (2) On the 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 city.

(B) *Rate*. The amount of the tax hereby levied is four and fifteen one-hundredths percent of the purchase price of building and construction materials and vehicles. (Ord. 550 §4, 1984; Ord. 667 §3, 1985; Ord. 858 §4, 1989; Ord. 1083 §2, 1994; Ord. 1656 §4, 2001; Ord. 1553 §1, 2002)

**3-08-035 Nonapplicability of use tax to use or consumption occurring more than three years after most recent sale.**

The city's use tax shall not be imposed with respect to the use or consumption of any vehicle or building and construction materials within the city which occurs more than three years after the most recent sale of the property if, within the three years following such sale, the property has been significantly used within the state for the principal purpose for which it was purchased. (Ord. 667 §4, 1985; Ord. 1921 §19, 2010)

**3-08-040 Definitions.**

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

(A) *Building and construction materials* means and includes 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.

(B) *City* means the City of Broomfield or its territorial limits, as the case may be.

(C) *City council* means the elected legislative body of the City of Broomfield.

(D) *City manager* means the city manager of the City of Broomfield.

(E) *Consumption* means the act or process of consuming; it includes waste, destruction, or use. Consumption is the normal use of property for the purpose for which it was intended.

(F) *Director of finance* or *director* means the director of finance of the City of Broomfield.

(G) *Person* means and includes any individual, firm, partnership, joint venture, corporation, society, club, association, joint stock company, estate, trust, receiver, trustee, assignee, lessee, or any person acting in a fiduciary or representative capacity, whether appointed by court or otherwise, or any group or combination acting as a unit, including the United States of America, the State of Colorado, and any political subdivision thereof; and the plural as well as the singular number.

(H) *Purchase or sale* means the acquisition for a price by any person of any vehicle or building and construction materials. The terms *sale or purchase* or *sale and purchase* mean and include installment and credit sales, the exchange of property, as well as the sale thereof for money, and every such transaction, conditional or otherwise, for a consideration constituting a sale.

(I) *Purchase price or sale price* means the aggregate value in money of any thing or things paid or delivered or promised to be paid or delivered by a purchaser to a retailer or any person in the consummation of a retail sale as defined herein, without any deduction therefrom on account of the cost of the property sold, cost of materials used, labor or service cost, or any other expense whatsoever, including rebates, and provided that when any vehicle or building and construction materials are sold after manufacture or after having been made to order, the gross value of all materials, labor, service, and profit thereon, shall be included in the said purchase price. However, the *purchase price or sale price* shall not include any direct tax imposed by the federal government or by the State of Colorado or by this chapter.

(J) *Resident* means, for the purposes of the taxation provisions herein, a person who resides or maintains his or her domicile within the city, or who maintains one or more places of business within the city. A person may have dual residence, or other places of residency or domicile, or place of business outside the city prior to, during, or after the occurrence of the taxable transaction and be a *resident* according to the terms of this definition.

(K) *Retail sale or purchased at retail* means any sale or purchase of any vehicle or building and construction materials, except a wholesale sale or purchase for taxable resale.

(L) *Storage* means any keeping or retention of, or exercise of dominion or control over, or possession for any length of time, of any vehicle or building and construction materials when purchased at retail from sources either within or without the city.

(M) *Taxpayer* means any person from whom a tax is due, or against whom a deficiency is being asserted.

(N) *Use* means the exercise, for any length of time, by any person within the city of any right, power, or dominion over any vehicle or building and construction materials when purchased at retail from sources either within or without the city from any person.

(O) *Use tax*. The Broomfield use tax is the tax provided herein and levied on the privilege of using or otherwise consuming building and construction materials and using, storing, or otherwise consuming vehicles in the city which are purchased or sold at retail and not subjected to the Broomfield sales tax, without regard to whether the property is purchased either from sources within or without the city.

(P) *Vehicles* means and includes the following two categories of vehicles:

(1) *Automotive vehicle* means any vehicle, including every device in, upon, or by which any person is or may be transported, or drawn upon a public highway; or any device used or designed for aviation or for flight in the air and upon which a specific ownership tax is imposed by the State of Colorado; including but not limited to, motor vehicles, trailers, mobile homes, semitrailers, and aircraft; but excepting movable structures, devices moved by human power, or devices used exclusively upon stationary rails or tracks.

(2) *Movable structure* means any wheeled vehicle exceeding either eight feet in width or thirty-two feet in length excluding towing gear and bumpers, without motive power, which is designed and commonly used for occupancy by persons for residential purposes, in either temporary or permanent locations, and which may be drawn over the public highways by a motor vehicle. (Ord. 374 §2, 1980; Ord. 667 §§5, 6, 1985; Ord. 940 §2, 1992; Ord. 1921 §20, 2010)

### **3-08-050 Exemptions; applicability.**

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 chapter:

(A) The storage, use, or consumption of any tangible personal property as defined in section 3-04-070 of this title, the sale of which is subject to a retail sales tax imposed by the city;

(B) The storage, use, or consumption of any vehicle or building and construction materials purchased for resale in the city, either in its original form or as an ingredient of a manufactured or compounded product, in the regular course of a business;

(C) The storage, use, or consumption of any vehicle or building and construction materials brought into the city by a nonresident thereof for his or her own storage, use, or consumption while temporarily within the city; however, this exemption does not apply to the storage, use, or consumption of any vehicle or building and construction materials brought into this state by a nonresident to be used in the conduct of a business in this state;

(D) The storage, use, or consumption of any vehicle or building and construction materials by the United States government, or the State of Colorado, or its institutions, or its political subdivision in their governmental capacities only or by religious or charitable corporations in the conduct of their regular religious or charitable functions;

(E) The storage, use, or consumption of any vehicle or building and construction materials by a person engaged in the business of manufacturing or compounding for sale, profit, or use of any article, substance, or commodity, which 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;

(F) The use, storage, or consumption of any article of property, the sale or use of which has already been subjected to a sales or use tax of another municipality legally imposed on the purchaser or user equal to or in excess of three and one-half percent. A credit shall be granted against the city's use tax with respect to the person's use, storage, or consumption in the city of such property, the amount of the credit to equal the tax paid by them 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 three and one-half percent;

(G) The storage, use, or consumption of building and construction materials and household effects acquired outside of the city and brought into it by a nonresident acquiring residency;

(H) The storage or use of an automotive vehicle if the owner is or was, at the time of purchase, a nonresident of the city and he or she purchased the vehicle outside of the city for use outside the city 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 automotive vehicle outside of the city;

(I) The storage, use, or consumption of any construction and building materials and vehicles if a written contract for the purchase thereof was entered into prior to January 17, 1980;

(J) 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 17, 1980;

(K) The use, storage, or consumption of a movable structure as defined in section 3-08-040 above, after such movable structure has been once subject to the payment of the city sales or use tax; and

(L) Any transaction which the city is prohibited from taxing under the Constitution and laws of the United States of America, or under the Constitution of the State of Colorado. (Ord. 667 §7, 1985; Ord. 858 §5, 1989; Ord. 1921 §21, 2010)

### **3-08-060 Construction and building materials; method of payment.**

(A) 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 private construction job sites in this city, and who purchases building and construction materials shall pay the use tax imposed by section 3-08-030 of this chapter at the time of issuance of a building permit on the estimated cost of building and construction materials.

(B) The estimated cost of building and construction materials is calculated by multiplying by fifty percent the total valuation of the construction project as entered on the building permit by the city building division.

(C) Within three years from the issuance of a certificate of occupancy or from the date of permit close for the improvement on which the use tax was paid, the city 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 to the actual purchase price 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 city.

(D) Interest on either a tax refund or on a tax deficiency shall be computed from the date of issuance of the certificate of occupancy. Interest shall be at the legal rate established by section 5-12-101, C.R.S. (Ord. 374 §2, 1980; Ord. 940 §3, 1992; Ord. 1326 §1, 1998; Ord. 1921 §22, 2010)

### **3-08-070 Purchase of vehicles; method of payment.**

(A) No registration shall be made of any automotive vehicle for which registration is required, and no certificate of title shall be issued for such vehicle by the Department of Revenue or its authorized agents, until any tax due upon the use, storage, or consumption thereof pursuant to this chapter has been made.

(B) The automotive vehicle use tax imposed by this chapter shall be collected by the authorized agent of the Department of Revenue in the county in which the purchaser resides.

(C) The proceeds of the automotive vehicle use tax shall be paid to the city periodically, in accordance with an agreement entered into between the city and the authorized county agent of the Department of Revenue.

(D) The city director of finance and the mayor are empowered to enter into and execute on behalf of the city any agreements necessary for the administration and enforcement of this chapter in accordance with the provisions of section 29-2-106(3)(b), C.R.S.

(E) Any resident of the city who shall purchase any vehicle as defined in section 3-08-040, whether new or used from sources within or without the city, for use, storage, or consumption within the city, and who does not pay the Broomfield sales or use tax to a vendor or other agent required or authorized to collect the same, shall immediately, and prior to registering and obtaining the title therefor, make a return showing such transaction to the director and thereupon pay the tax applicable thereto, and failure to do so shall constitute a violation of this chapter. (Ord. 374 §2, 1980)

### **3-08-090 Duties and powers of director.**

(A) The administration of the provisions of this chapter is hereby vested in and shall be exercised by the director of finance, who shall prescribe forms and formulate and promulgate, with the approval of the city manager, appropriate rules and regulations to effectuate the purpose of this chapter, 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 director shall be effective in the manner and at the time prescribed by the director, subject to the provisions of this chapter.

(B) The director shall 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 director shall determine his or her own organization and methods of procedure in accordance with provisions of this chapter. 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 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 chapter, the director of finance 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 director of finance 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 chapter and shall bond, in a sufficient amount, any person handling money under this chapter. (Ord. 374 §2, 1980)

### **3-08-100 Taxpayer must maintain books and records.**

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

(B) All such books, accounts, and records shall be open for examination at any time by the director of finance 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 city, it shall be sufficient if such person produces within this city such books, accounts, and records, or such information as shall be reasonably required by the director of finance, for examination by the director of finance or an agent duly authorized by him or her. (Ord. 374 §2, 1980)

### **3-08-110 Tax reports and returns; preservation; confidentiality.**

(A) All reports and returns of taxes received by the director of finance covered by this chapter shall be preserved for three years and thereafter until the director of finance orders them to be destroyed.

(B) Except in accordance with judicial order or as otherwise provided by law, the director of finance, his or her agents, clerks, and employees shall not divulge, or make known in any way any information disclosed in any document, report, or return filed in connection with this chapter.

(C) Nothing in this section contained 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, 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 city attorney or other legal representatives of the city.

(E) Notwithstanding the provisions of this section, the director of finance in his or her discretion may furnish to the taxing officials of any other state and its political subdivisions, to the State of Colorado 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 said jurisdiction enters into an agreement with the director to grant similar privileges to the city, and provided further that such information is to be used only for tax purposes. (Ord. 374 §2, 1980)

### **3-08-120 Employees; restrictions.**

(A) It shall be unlawful for any member of the city finance department, any deputy, agent, clerk, or other officer or employee engaged in any administration which is governed by this code, to engage in the business or profession of tax accounting or to accept employment, with or without consideration, from any person for the purpose, directly or indirectly, of preparing tax returns or reports required by the laws of the City of Broomfield, by the State of Colorado, by any other state, or by the United States government, or to accept any employment for the purpose of advising, preparing materials or data, or the auditing of books or records to be used in an effort to defeat

or cancel any tax, or part thereof that has been assessed by any city of the State of Colorado, any other state or its political subdivisions, or by the United States government.

(B) Any person who violates any provision of this section shall be guilty of a violation of this code, and upon conviction shall be punished as prescribed herein; and if the offender is an officer or employee of the city, he or she shall be dismissed from office. (Ord. 374 §2 1980)

### **3-08-125 Use tax; collection; limitation of actions.**

For transactions consummated on or after January 1, 1986:

(A) Use tax, interest thereon, and penalties with respect thereto shall be assessed, and any action to collect the same shall be commenced within the time limitations set forth in sections 39-21-107 and 39-26-210, C.R.S.

(B) Before the expiration of such period of limitation, the taxpayer and the director of finance may agree in writing to an extension thereof, and the period so agreed on may be extended by subsequent agreements in writing;

(C) In the case of failure to file a return, the use tax may be assessed and collected at any time. (Ord. 667 §9, 1985)

### **3-08-130 Addition to tax; penalties and interest.**

(A) *Imposition of penalties and interest; Notice.* If any person or taxpayer fails, neglects, or refuses to make a return and pay the tax as required by this chapter, or if any taxpayer fails to remit the proper amount of tax or underpays the tax because of negligence or fraud, penalties, and interest shall be added and imposed in accordance with the following provisions. In the event the person or taxpayer fails to pay the penalties and interest as required by this chapter, then the director, on such information as is available, shall make an estimate of the tax and additions thereto and shall give to the delinquent person or taxpayer written notice of final determination-assessment and demand for payment, which notice shall be personally served or by certified mail, which assessment of deficiency amount will be due and payable ten days after such notice. Such notice shall comply with the requirements set forth in section 29-2-106.1(2)(a), C.R.S.

(B) Interest on underpayment, nonpayment, or extensions of time for payment of tax. If any amount of use tax is not paid on or before the last date prescribed for payment, interest shall be imposed on from such last date to the date paid at the same rate and in the same manner as set forth in section 39-21-109, C.R.S.

(C) *Deficiency due to negligence.* If any part of the deficiency in payment of the use tax is due to negligence or intentional disregard of the ordinances or of authorized rules and regulations of the city with knowledge, but without intent to defraud, or if any part of the deficiency is due to fraud with intent to evade the tax, penalties and interest shall be imposed at the rate and in the same manner as set forth in section 39-26-115, C.R.S.

(D) *Neglect or refusal to make return or to pay.* If a person neglects or refuses to make a return in payment of the use tax or to pay any use tax as required, the director of finance shall make an estimate, based upon such information as may be available, of the amount of taxes due for the period for which the taxpayer is delinquent and shall add thereto penalties and interest at the rate set forth in section 39-26-118(2)(a), C.R.S.

(E) *Penalty interest on unpaid use tax.* Any use tax due and unpaid shall be a debt to the city, and shall draw interest at the rate imposed under subsection (F) of this section in addition to the interest provided by subsection (B) of this section, from the time when due until paid.

(F) *Rate of interest.* When interest is required or permitted to be charged under any provision of this section, the annual rate shall be that established by the State Commission of Banking pursuant to section 39-21-110.5, C.R.S.

(G) *Waiver for cause.* The director of finance is hereby authorized to waive, for good cause shown, any penalty or interest imposed in excess of the rate established in subsection (F) of this section.

(H) *Other remedies.* Nothing in this section shall preclude the city from utilizing any other applicable penalties or remedies for the collection and enforcement of use taxes. (Ord. 667 §10, 1985)

### **3-08-140 Refunds.**

(A) The right of any person to a refund under this chapter shall not be assignable and such application for refund must be made by the same person who paid the tax thereon.

(B) The burden of proving that uses on which tax refunds are claimed are exempt from taxation shall be on the one making such claim under such reasonable requirements of proof as the director of finance may prescribe.

(C) A refund shall be made, or a credit allowed, for the tax paid by any person who has an exemption as in this chapter provided. Such refund shall be made by the director of finance after compliance with the following precedent: Applications for refund must be made within sixty days after payment of the tax with respect to which an exemption is claimed; or for transactions consummated on or after January 1, 1986 within the time periods set forth in subsection (G) of this section. Applications for refund must be supported by the affidavit of the purchaser; and be made upon such forms as shall be prescribed and furnished by the director of finance, which forms shall contain such information as said director shall prescribe.

(D) Upon receipt of such application the director shall examine same with all due speed and shall give notice to the applicant in writing of his or her decision thereon. Aggrieved applicants, within ten days after such decision is mailed to them, may petition the director for a hearing on the claim in the manner provided in section 3-08-150 and may appeal to the city manager and district courts in the manner provided therein.

(E) If the director discovers from the examination of a return within the time periods provided for the filing of refunds, or upon claim duly filed by the taxpayer, or upon final judgment of a court, that the tax, penalty, or interest paid by any taxpayer is in excess of the amount due or has been illegally or erroneously collected, then the director shall rule in favor of the taxpayer for refund of such illegally collected tax, penalty, or interest, regardless of whether or not such sum was paid under protest. The director shall issue his or her warrant for the payment to the taxpayer, out of the reserve of the city general fund provided therefor; provided that the director shall keep in his or her files a duplicate of said voucher and also a statement which shall set forth the reason why such refund shall have been ordered. Interest shall be paid on refunded use tax collections at the rate of eight percent per annum from the time the tax became or would have become due and payable.

(F) Whenever it is established that any taxpayer has, for any period open under the statutes, overpaid a tax imposed by this code, and that there is an unpaid balance of tax, penalties, or interest accrued according to the records of the director, owing by such taxpayer for any other period, so much of the overpayment of tax as does not exceed the amount of such unpaid balance, shall be credited thereto and any excess of the overpayment shall be refunded.

(G) For transactions consummated on or after January 1, 1986:

(1) An application for use tax paid under dispute by a purchaser or user who claims an exemption pursuant to section 3-08-050 shall be made within sixty days after the storage, use, or consumption of the goods or services whereon an exemption is claimed.

(2) An application for refund of tax moneys paid in error or by mistake shall be made within three years after the date of storage, use, or consumption of the goods for which the refund is claimed. (Ord. 374 §2, 1980; Ord. 667 §§11, 12, 1985)

### **3-08-150 Hearings.**

(A) Director of finance.

(1) Any taxpayer may request a hearing on any tax assessed by reason of notice of final determination-assessment and demand for payment or by reason of a denial of his or her claim for refund by written application to the director of finance within ten days of the mailing of a notice of deficiency-assessment or denial of refund. 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.

(2) The director of finance shall notify the taxpayer in writing of the time and place for such hearing at least thirty days prior thereto. In all cases the hearing shall be held in Broomfield, Colorado, at the office of the director.

(3) After a hearing under this section the taxpayer shall not be entitled to a second hearing before the director on the matters set forth in his or her previous request for hearing.

(4) The hearing shall be held before the director of finance. The director is hereby authorized to administer oaths and take testimony. 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 cause.

(5) After expiration of ten days from the mailing of the notice of deficiency-assessment or final determination-assessment and demand for payment, or denial of refund, if the tax has not been paid or if no hearing has been requested, then the notice of deficiency-assessment and demand for payment or denial of refund, previously mailed, shall constitute a final assessment of the amount of the tax specified together with interest, additions to tax, and penalties, or shall constitute a final denial of refund, as the case may be.

(6) Based on the evidence presented at a hearing, or other information or argument filed in support of the taxpayer's contentions at a hearing, the director may modify or abate in full the tax, penalty, or interest questioned at the hearing, or may approve a refund.

(7) Upon rejection, in whole or in part of the claim for refund, or upon a 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 taxes found due, stating therein the grounds for allowance or rejection in whole or in part.

**(B) Appeal to city manager.**

(1) Any taxpayer may appeal from a decision of the director of finance made under subsection (A) above, by written application to the city manager within ten days of the mailing of a hearing determination notice. The request for a hearing on appeal shall set forth the taxpayer's reasons for and the amount of the requested changes in the hearing determination notice.

(2) The city manager shall notify the taxpayer in writing of the time and place for the hearing on appeal at least thirty days prior thereto. In all cases, the hearing on appeal shall be held in Broomfield, Colorado, at the office of the city manager.

(3) After a hearing under this section, the taxpayer shall not be entitled to a second hearing on appeal before the city manager on the matters set forth in his or her previous request for appeal.

(4) The hearing on appeal shall be held before the city manager. The city manager is hereby authorized to administer oaths and take testimony. 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 cause.

(5) After the expiration of ten days from the mailing by the director of the hearing determination notice, if the tax has not been paid or if no hearing on appeal has been requested, then the hearing determination notice mailed by the director shall constitute a final assessment of the amount of tax specified together with interest, additions to tax and penalties, or shall constitute a final denial of refund, as the case may be, and the tax, together with interest thereon, and penalties, if any, shall be paid within thirty days after mailing of the hearing determination notice to the taxpayer.

(6) Based on the evidence presented at a hearing on appeal, or other information or argument filed in support of the taxpayer's contentions at a hearing on appeal, the city manager may modify or abate in full the tax, penalty, or interest questioned at the hearing on appeal, or may approve a refund.

(7) Upon rejection, in whole or in part, of the claim for refund, or upon a finding by the city manager that, on hearing the evidence, an assessment in whole or in part has been made against the taxpayer validly, the city manager shall send a hearing determination notice to the taxpayer setting forth the amount of claim for refund denied or the amount of taxes found due, stating therein the grounds for allowance or rejection in whole or in part.

(8) Unless an appeal be taken from the city manager's decision to a district court of this state, the tax, together with interest thereon and penalties, if any, shall be paid within thirty days after mailing of the city manager's hearing determination notice to the taxpayer.

(C) For transactions consummated on or after January 1, 1986, in lieu of the procedure provided for in sections 3-08-140 and 3-08-150, the taxpayer may elect a state hearing on the director's final decision on a deficiency notice or claim for refund pursuant to the procedure set forth in section 29-2-106.1, C.R.S. (Ord. 374 §2, 1980; Ord. 667 §13, 1985)

**3-08-155 Final decision of city; appeals; posting of bonds.**

For transactions consummated on or after January 1, 1986, the taxpayer shall, within fifteen days after filing a notice of appeal, file a surety bond or deposit the disputed amount with the director of finance pursuant to the provisions of section 39-21-105(4), C.R.S. (Ord. 667 §14, 1985)

**3-08-160 Enforcement.**

(A) If any tax, penalty, or interest imposed by this chapter and shown due by returns filed by the taxpayer or as shown by assessments duly made as provided herein, are not paid within ten days after the same are due, the director of finance shall issue a notice, setting forth the name of the taxpayer, the amount of the tax, penalties, and interest, the date of the accrual thereof, and that the city claims a first and prior lien therefor on the real property and any

vehicle or building and construction materials of the taxpayer except as to preexisting claims or liens of a bona fide mortgagee, pledgee, judgment creditor, or purchaser whose rights shall have attached prior to the filing of the notice as herein provided on property of the taxpayer, other than on the goods, stock in trade, and business fixtures of such taxpayer. Said notice shall be on forms prescribed by the director of finance whose duties are the collection of such tax, and may be filed in the office of the clerk and recorder of any county in the state in which the taxpayer owns real property or any vehicle or building and construction materials, and the filing of such notice shall create such lien on such property in that county and constitute notice thereof. Any lien for taxes as shown on the records of the county clerk and recorder as herein provided, upon payment of all taxes, penalties, and interest covered hereby, shall be released by the director of finance in the same manner as mortgages and judgments are released. A copy of the notice shall be sent to the taxpayer pursuant to and in accordance with section 29-2-106.1(2)(a), C.R.S.

(1) The director of finance may also treat any tax, penalties, or interest due and unpaid as a debt due the city from the taxpayer. In case of failure to pay the tax, or any portion thereof, or any penalty or interest thereon when due, the director of finance may receive at law the amount of such taxes, penalties, and interest in the county or district court having jurisdiction. The return by the taxpayer of the assessment made by the director of finance as herein provided shall be prima facie proof of the amount due.

(2) Such actions may be actions in attachment, and writs of attachment may be issued to the sheriff, and in any such proceedings, no bond shall be required of the director of finance, nor shall any sheriff require of the director of finance an indemnifying bond for executing the writ of attachment, or writ of execution upon any judgment entered in such proceedings; and the director of finance may prosecute appeals or writs of error in such cases, without the necessity of providing bond therefor. It shall be the duty of the city attorney, when requested by the director of finance, to commence action for the recovery of taxes due under this chapter, and this remedy shall be in addition to all other existing remedy or remedies provided in this chapter.

(3) In any case where there has been a refusal or neglect to pay any tax due the city and a statement or notice shall have been filed which, under law, creates a lien upon any real property for such tax, the director of finance 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 lien to enforce the lien of the city. The court shall decree a sale of such real property and distribute the proceeds of such sale, according to the findings of such court in respect to the interest of the parties and of the city. The proceedings in such action and the manner of sale, the period for and manner of redemption from such sale, and the execution of deeds 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.

(B) The director of finance or his or her duly authorized agent may, at the discretion of the director, summon to court any person who may be in violation of this chapter. (Ord. 374 §2, 1980; Ord. 667 §15, 1985; Ord. 1921 §23, 2010)

### **3-08-170    Violations; evasion of tax; penalty.**

(A) It shall be a violation of this chapter for any person subject to the tax levied by this chapter to refuse to make any return provided to be made, or to make any false or fraudulent return, or any false statements in any return, or to fail or refuse to make payment to the director of finance of any taxes due the city, or in any manner to evade the payment of the tax, or any part thereof, imposed by this chapter, or for any person to fail or refuse to pay such tax or evade the payment thereof, or to aid or abet another in any attempt to evade the payment of the tax imposed by this chapter. Any person making a false return or a return containing a false statement shall have violated this chapter and shall be subject to prosecution and the imposition of penalties as provided by law. Any person in violation of any section shall be subject to these same penalties.

(B) Any person who shall violate any of the provisions of this chapter shall be guilty of a violation hereof and shall be punished as provided in chapter 1-12, B.M.C. (Ord. 374 §2, 1980; Ord. 1013 §1, 1993)

### **3-08-180    Disposition of funds collected.**

Not less than one-third of the revenues collected based upon a 3.5% tax rate shall be deposited into the city's sales and use tax capital improvement fund. The balance of the funds received pursuant to this chapter shall be deposited into such fund or funds of the city as the council shall determine in the annual budget or in a resolution or an ordinance adopted by the council from time to time. (Ord. 563 §3, 1984; Ord. 858 §6, 1989; Ord. 1656 §2, 2001)

## Chapter 3-10

### Sales and Use Tax Capital Improvement Fund

#### **3-10-010 Created.**

A sales and use tax capital improvement fund is hereby created. The fund shall consist of a portion of the revenues of the city's sales tax, as provided by section 3-04-060, a portion of the revenues of the city's use tax, as provided by section 3-08-180, and such other appropriations thereto as the city council may make. (Ord. 563 §1, 1984; Ord. 1656 §3, 2001)

#### **3-10-020 Restricted.**

Expenditures from the fund shall be restricted to capital improvements, and study, planning, consulting, engineering, legal, financing, and other costs related to capital improvements. (Ord. 563 §1, 1984)

#### **3-10-030 Capital improvements defined.**

For the purpose of this chapter, capital improvements shall include:

(A) Any acquisition of land, water, water rights, or interests therein;

(B) Any acquisition, construction, reconstruction, renovation, remodeling, alteration, or replacement of a municipal facility, including without limitation, streets, sidewalks, storm sewers and drainage facilities, sanitary sewers and treatment works, water mains and storage and treatment works, buildings, and parks; and

(C) Any purchase, lease, or other acquisition of machinery, equipment, furnishings, or other items of personal property. (Ord. 563 §1, 1984)

## Chapter 3-12

### Disposition of Surplus Property

#### **3-12-010 Sales agent.**

The city manager shall designate an employee to act as the sales agent for all surplus personal property belonging to the city. It shall be the duty of such sales agent to keep a record of all surplus property sold or otherwise disposed of. The sales agent shall cause all surplus property to be safely stored until sold or otherwise disposed of. The sales agent shall cause to be sold or otherwise disposed of personal property in accordance with the terms of this chapter and policies, standards, and procedures adopted pursuant to the authority contained herein. The sales agent shall dispose of surplus personal property in a manner reasonably calculated to be in the best financial interests of the city. (Ord. 475 §1, 1982)

#### **3-12-020 Procedures.**

The city manager shall establish policies, standards, and procedures consistent with this chapter to determine what personal property is surplus and to govern the disposal of surplus property. (Ord. 475 §1, 1982)

#### **3-12-030 Repair and reconditioning.**

The sales agent shall have the authority to expend funds to repair or recondition surplus property when there is a reasonable expectation that such expenditures will enhance the value above the amount of funds so expended. (Ord. 475 §1, 1982)

#### **3-12-040 Manner of disposition.**

In accordance with the provisions of this chapter and policies, standards, and procedures adopted pursuant to the authority contained herein, property may be transferred to other city departments, sold, transferred, or exchanged. Property having little or no value, or the sale or exchange of which is impractical, or for which no value exists, may be destroyed or donated to charity. (Ord. 475 §1, 1982)

**3-12-050 Sales procedure.**

Property to be sold will be sold at public sale, either by written and sealed bid or at public auction, as may be determined by the sales agent to be in the best interests of the city. The sales agent shall give such notice as he or she deems desirable, but at a minimum, a notice of the sale, describing the items to be sold, shall be published in at least one newspaper of general circulation in the city, at least twice, not less than seven days before the sale. The sales agent shall have the authority to pay for the conduct of the sale out of the proceeds of such sale. Surplus property shall be sold at least once every year. (Ord. 475 §1, 1982)

**3-12-060 City employees.**

No official or employee of the city or any member of their immediate family or anyone on their behalf shall purchase or otherwise receive surplus or excess property of the city except by public sale upon written sealed bids or by sale at public auction. (Ord. 475 §1, 1982)

**3-12-070 Proceeds of sale.**

All proceeds received from the sale of surplus property shall be deposited, to the extent feasible, in the same fund of the city from which the surplus property was originally purchased. If no such fund can be identified, proceeds shall be deposited to the general fund of the city. (Ord. 475 §1, 1982; Ord. 808 §1, 1989)

**Chapter 3-16**

**Emergency Telephone Charge**

**3-16-010 Authorization to impose fees.**

There is hereby imposed, pursuant to section 29-11-101, C.R.S., *et seq.*, upon all telephone exchange access facilities within the city an emergency telephone charge in the amount of \$0.17 per subscriber line per month for purposes of defraying the cost of the E-911 emergency telephone service. (Ord. 583 §1, 1984)

**3-16-020 Authorization to collect fees.**

Telephone service suppliers providing telephone service in the city are hereby authorized to collect the emergency telephone charge imposed by this chapter in accordance with section 29-11-101, C.R.S., *et seq.* (Ord. 583 §1, 1984)

**Chapter 3-18**

**Investment Policy**

**3-18-010 Policy.**

The city council hereby declares that the investment of municipal funds is a purely local and municipal matter. (Ord. 767 §1, 1988)

**3-18-020 Scope.**

This chapter applies to all transactions involving funds of the City of Broomfield and any authority, board, agency, or commission thereof. All financial assets of accounts and funds, including pension and other fiduciary funds and any other account or fund which may be created from time to time, shall be administered in accordance with the provisions of this chapter. (Ord. 767 §1, 1988)

**3-18-030 Authority.**

Except when specifically delegated to a board or committee by ordinance, management responsibility for this chapter is hereby delegated to the city manager, who may designate a city employee to act on his or her behalf. No person may engage in an investment transaction except as provided under the terms of this chapter and any procedures established by the city manager. (Ord. 767 §1, 1988)

**3-18-040 Prudence.**

In exercising discretionary authority with respect to the acquisition or disposition of any investments, the city manager, his or her designee, or the board or committee responsible for the investment of funds shall exercise the judgment and care, under the circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the management of the property of another, not in regard to speculation but in regard to the permanent disposition of funds, considering the probable income as well as the probable safety of capital. (Ord. 767 §1, 1988)

**3-18-050 Internal controls.**

The city manager shall establish a system of internal controls designed to prevent undue losses of public funds arising from fraud, employee error, misrepresentation by third parties, unanticipated changes in financial markets, or imprudent actions by employees, officers, and agents of the city. (Ord. 767 §1, 1988)

**3-18-060 Reporting.**

(A) The city manager shall prepare a regular investment report that describes the investment portfolio in terms of investment instruments, maturities, risk characteristics, and other portfolio considerations. The report shall provide details of the percentage investment return of the portfolio and compare the portfolio's performance to other benchmarks of performance. The report may indicate any areas of investment concern and planned or suggested revision of investment strategies.

(B) The city manager shall prepare an annual report on the investment program and investment activity. The annual investment report shall include twelve-month comparisons of investment returns and may suggest improvements that might be made in the investment program. The annual report may include other items of significance that might enhance the understanding of the investment program. (Ord. 767 §1, 1988)

**3-18-070 Depositaries.**

The city manager or his or her designee shall select a financial institution or institutions within the city to serve as depositaries and provide basic banking services for the city's funds. In selecting the institutions to serve as the city's central depositaries, the following factors will be considered:

- (A) Credit worthiness;
- (B) Services available;
- (C) Cost for each service;
- (D) Type of accounts available;
- (E) Interest rates paid on each type of account;
- (F) Financial history and strength of institution; and
- (G) Experience in providing depositary services to similar accounts. (Ord. 767 §1, 1988)

**3-18-080 Authorized investments.**

In addition to investments authorized by any statute or other ordinance, funds in the possession of the city and any authority, board, commission, committee, or agency thereof, may be invested in:

(A) Depositaries enumerated in section 24-75-603, C.R.S., and secured as provided in articles 10.5 and 47 of title 11, C.R.S.

(B) Certificates of deposit or similar instruments at any state or national bank or savings and loan association, provided that the entire amount of such a deposit is insured by the federal deposit insurance corporation or the federal savings and loan insurance company. All such deposits in out-of-state banks or savings and loans must have a rate of return which is at least seventy-five basis points greater than the best in-state quote received. For example, if the best in-state quote is a five-percent rate return, the out-of-state quote must be at least a five-and-three-quarters-percent return.

(C) Bonds or other interest-bearing obligations of the United States;

(D) Bonds or other interest-bearing obligations, the payment of which is unconditionally guaranteed by the United States;

(E) Bonds which are a direct obligation of the State of Colorado or of any county or school district therein;

(F) State of Colorado, state highway fund revenue anticipation warrants;

(G) Bonds which are direct general obligations of any incorporated city in the State of Colorado which has existed continuously for a period of ten years prior to the making of such investment;

(H) National Housing Act bonds and notes;

(I) Higher Education Act loans;

(J) Repurchase agreements of any marketable security otherwise authorized by law where the market value of such security is at all times at least equal to the moneys involved, and there is assignment of such security pursuant to a current depository regulations;

(K) Investment pools authorized by part 7 of article 75 of title 24, C.R.S. (Ord. 767 §1, 1988)

**3-18-090 Authorized investments; City of Broomfield Employee's Pension Plan.**

Funds of the City of Broomfield Employee's Pension Plan may be invested as specified in chapter 2-20 of this code. (Ord. 767 §1, 1988)

**3-18-100 Authorized investments; Deferred Compensation Pension Plan.**

Funds of the Deferred Compensation Pension Plan may be invested as specified in chapter 2-22 of this code. (Ord. 767 §1, 1988)

**3-18-110 Authorized investments; Policemen's Pension Plan for "Old Hire" Police Officers.**

Funds of the Policemen's Pension Plan for "Old Hire" Police Officers may be invested as specified in chapter 2-24 of this code. (Ord. 767 §1, 1988)

**3-18-120 Authorized investments; Money Purchase Plan for "New Hire" Police Officers.**

Funds of the Money Purchase Plan for "New Hire" Police Officers may be invested as specified in chapter 2-25 of this code. (Ord. 767 §1, 1988)

**3-18-130 Selection of financial institutions.**

(A) Before the city invests funds, a competitive informal quotation process shall be conducted by the city manager or his or her designee. Quotations will be received by telephone or mail and a summary analysis will be prepared documenting the results.

(B) For brokers and dealers of government securities, the city manager shall select only primary government securities dealers that report to the New York Federal Reserve. (Ord. 767 §1, 1988)

**3-18-140 Pooling of fund balances.**

Cash balances from different funds of the city and its authorities, boards, agencies, and commissions may be pooled for investment purposes. Each fund shall share in the interest income earned by such investments in the proportion that their respective balances bear to the total fund's balance. The method of calculating cash balances shall reflect an equitable averaging of the balances as determined by the city manager. (Ord. 767 §1, 1988)

**3-18-150 Safekeeping and custody.**

To protect against potential fraud and embezzlement, the assets of the city shall be secured through third-party custody and safekeeping procedures. Bearer instruments shall be held only through third-party institutions. (Ord. 767 §1, 1988)

## Chapter 3-20

### Procurement of Supplies, Services, and Construction

#### I. General Provisions

##### 3-20-010 Purpose.

The purpose of this chapter is to provide for the fair and equitable treatment of all persons involved in purchasing by the city, to maximize the purchasing value of public funds in procurement, and to provide safeguards for maintaining a procurement system of quality and integrity.

##### 3-20-020 Application.

This chapter applies to the procurement of supplies, services, and construction, entered into by the city after the effective date of the ordinance codified in this chapter. When the procurement involves the expenditure of federal funds, the procurement shall be conducted in accordance with any mandatory applicable federal law and regulations. Nothing in this chapter shall prevent the city from complying with the terms and conditions of any grant, gift, or bequest that is otherwise consistent with law.

##### 3-20-030 Definitions.

The following definitions apply to this chapter:

(A) *Brand name or equal specification* means a specification limited to one or more items by manufacturers' names or catalogue numbers to describe the standard of quality, performance, and other salient characteristics needed to meet city requirements, and which provides for the submission of equivalent products.

(B) *Brand name specification* means a specification limited to one or more items by manufacturers' names or catalogue numbers.

(C) *City manager* means the city manager or his or her designee.

(D) *Confidential information* means any information which is available to an employee only because of the employee's status as an employee of the city and is not a matter of public knowledge or available to the public on request.

(E) *Construction* means the process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvements of any kind to any public real property. It does not include the routine operation of existing structures, buildings, or real property.

(F) *Contractor* means any person having a contract with the city.

(G) *Department head* means the chief administrative official of each department of the city or his or her designee.

(H) *Employee* means an individual drawing a salary or wages from the city, whether elected or not; any noncompensated individual performing personal services for the city or any department, agency, commission, council, or board thereof.

(I) *Gratuity* means a payment, loan, subscription, advance, deposit of money, service, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.

(J) *Invitation for bids* means all documents, whether attached or incorporated by reference, utilized for soliciting sealed bids.

(K) *Procurement* means the buying, purchasing, renting, leasing, or otherwise acquiring of any supplies, services, or construction. It also includes all functions that pertain to the obtaining of any supply, service, or construction, including description of requirements, selection, and solicitation of sources, preparation, and award of contract, and all phases of contract administration. The term does not include buying, purchasing, renting, or otherwise obtaining any interest in real estate or of any water rights.

(L) *Qualified products list* means an approved list of supplies, services, or construction items described by model or catalogue numbers, which, prior to competitive solicitation, the city has determined will meet the applicable specification requirements.

(M) *Responsible bidder* means a person who has the capability in all respects to perform fully the contract requirements, and the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment, and credit which will assure good faith performance.

(N) *Responsive bidder* means a person who has submitted a bid which conforms in all material respects to the requirements set forth in the invitation for bids.

(O) *Services* means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term shall not include employment agreements or collective bargaining agreements.

(P) *Specification* means any description of the physical or functional characteristics or of the nature of a supply, service, or construction item. It may include a description of any requirement for inspection, testing, or preparing a supply, service, or construction item for delivery.

(Q) *Supplies* means all property, including but not limited to equipment, materials, printing, and insurance.

## II. Source Selection

### 3-20-040 Competitive sealed bidding.

(A) *Conditions for use.* All procurement shall be awarded by competitive sealed bidding except as otherwise provided in sections 3-20-050, 3-20-060, 3-20-070, 3-20-080, and 3-20-090 of this chapter.

(B) *Invitation for bids.* An invitation for bids shall be issued and shall include specifications and all contractual terms and conditions applicable to the procurement.

(C) *Public notice.* Adequate public notice of the invitation for bids shall be given a reasonable time, not less than fifteen calendar days prior to the date set forth therein for the opening of the bids. Such notice shall include publication in one newspaper of general circulation in the city. The public notice shall state the place, date, and time of bid opening.

(D) *Bid opening.* Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid, and such other relevant information as the city manager deems appropriate, together with the name of each bidder shall be recorded. For good cause, as determined by the city manager, bid opening may be extended for a reasonable time not to exceed thirty calendar days.

(E) *Bid acceptance and bid evaluation.* Bids shall be unconditionally accepted without alteration or correction, except as authorized in this chapter. Bids shall be evaluated based on the requirements set forth in this chapter and in the invitation for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Except for responsibility and responsiveness, those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The invitation for bids shall set forth the evaluation criteria to be used in addition to responsibility and responsiveness. No criteria may be used in bid evaluation that are not set forth in the invitation for bids except for responsibility and responsiveness.

(F) *Award.* The award shall be made by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids. If the low responsive and responsible bid for a construction project exceeds available funds as certified by the city manager and such bid does not exceed such funds by more than ten percent, the city manager is authorized, when time or economic considerations preclude resolicitation of work of a reduced scope, to negotiate an adjustment of the bid price with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds.

(G) *Multi-step sealed bidding.* When it is considered impractical to initially prepare a specification to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.

### 3-20-050 Contracting for professional services.

(A) *Authorization.* Professional services, such as architectural, engineering, legal, or other consulting services may be negotiated.

(B) *Amounts.* Such services shall be approved by a department head if the cost is \$10,000.00 or less, by the city manager if the cost is greater than \$10,000.00 but less than or equal to \$50,000.00, and by the city council if the

cost is greater than \$50,000.00. In the case of legal counsel, the city council shall establish compensation in the annual budget, and must specifically approve any expenditures in excess of such amount. (Ord. 1664 §1, 2002)

### **3-20-060 Small purchases.**

(A) Any procurement not exceeding \$50,000.00 may be made in accordance with the procedures set forth below. Procurements shall not be artificially divided so as to constitute a small purchase under this section.

(1) Petty cash. Small procurements up to and including \$50.00 may be paid out of a petty cash fund.

(2) Field orders. Procurements up to and including \$250.00 may be accomplished by field orders. Receipts for items purchased with field orders must list each item purchased.

(3) Up to \$1,000.00. Procurements up to and including \$1,000.00 may be approved by any department head, provided that he or she is satisfied that adequate and reasonable efforts have been made to obtain the most cost-effective result.

(4) Up to \$10,000.00. Procurements greater than \$1,000.00 and up to and including \$10,000.00 may be approved by any department head, provided that a reasonable number of vendors (ordinarily at least three) shall be solicited for quotations. Quotations may be oral or written, and the award shall be made to the vendor providing the lowest acceptable quotation. The names of the vendors and the date and amount of each quotation shall be recorded, and such record shall be maintained for one year from the date of purchase. Department heads are authorized to sign contracts for all such procurements in form approved by the city attorney and attested by the city clerk.

(5) Up to \$50,000.00. Procurements greater than \$10,000.00 and up to and including \$50,000.00 must be approved by the city manager. At a minimum, written quotations must be solicited from vendors on the city's bid list for such items and by one notice published in a newspaper of general circulation. The published notice must appear at least five days before written quotations are tabulated and compared. A record of the written quotations shall be maintained for one year from the date of purchase. No written quotations shall be made public until they are tabulated and compared. The city manager is authorized to sign contracts for all such procurements in form approved by the city attorney and attested by the city clerk.

(B) Contracts for more than \$50,000.00 must be approved by city council and signed by either the mayor or mayor pro tem in form approved by the city attorney and attested by the city clerk. (Ord. 1097 §1, 1994; Ord. 1530 §§1-3, 2001)

### **3-20-070 Sole source and cooperative procurement.**

(A) Procurement may be made without competition when the city manager determines, after conducting a good faith review of available sources, that there is only one source for the required supply, service, or construction item. The city manager shall conduct negotiations, as appropriate, as to price, quality, delivery, and terms. A record of sole source procurement shall be maintained for one year from the date of purchase.

(B) When the city manager determines it to be in the best interest of the city because of price and quality, supplies or services may be purchased from a vendor utilizing a contract or pricing agreement entered into with any other organization, if such organization used a procurement process for the vendor selection which meets or exceeds city policies. (Ord. 1320 §1, 1998; Ord. 1884, §1, 2008)

### **3-20-080 Prequalification of bidders.**

Competitive sealed bidding may be limited to prequalified bidders if the city manager determines, after conducting a good faith review of potential bidders, that it is in the best interests of the city to allow a limited number of persons to bid on a particular procurement, because special qualifications are needed, or because time or staff is not available to analyze a potentially large number of bids.

### **3-20-090 Emergency procurements.**

Notwithstanding any provisions of this chapter, the city manager may make or authorize others to make emergency procurements of supplies, service, or construction items when there exists a threat to public health, welfare, or safety; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. As soon as practicable, a record of each emergency procurement shall be made.

**3-20-100 Other exceptions.**

Additional exceptions to the requirements for competitive sealed bids may be made by resolution of the city council upon a finding that the requirements for competitive sealed bids are unnecessary to achieve a cost-effective result.

**3-20-110 Cancellation of invitations for bids or requests for quotations.**

An invitation for bids, a request for quotations, or other solicitation may be cancelled, and bids or quotations may be rejected in whole or in part, when the city manager determines it is in the best interest of the city. Notice of cancellation shall be sent to all businesses solicited.

**3-20-120 Responsibility of bidders and offerors.**

If a bidder or offeror who otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility, setting forth the basis of the finding, shall be prepared by the city manager. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such bidder or offeror.

**3-20-130 Bid and performance bonds.**

In addition to statutory requirements, bid and performance bonds or other security may be required for such contracts as the city manager deems advisable to protect the city's interests. Any such bonding requirement shall be set forth in the solicitation or invitation to bid. Bid or performance bonds shall not be used as a substitute for a determination of a bidder or offeror's responsibility.

**3-20-140 Financial obligations of the city.**

(A) A contract for supplies or services may be entered into for any period of time deemed to be in the best interest of the city, if funds are available for the current budget year at the time of contracting. The city's obligations for succeeding budget years shall be subject to the availability and appropriation of funds therefor.

(B) When funds are not appropriated or otherwise made available, a contract may be cancelled.

**3-20-150 Right to inspect plant.**

The city may, at reasonable times, inspect the part of the plant, place of business, or worksite of a contractor or subcontractor at any tier which is pertinent to the performance of any contract awarded or to be awarded by the city.

**3-20-160 Right to audit records.**

The city shall be entitled to audit the books and records of a contractor or a subcontractor at any tier, under any contract other than a firm fixed-price contract, to the extent that such books, documents, papers, and records are pertinent to the performance of such contract or subcontract. Books and records shall be maintained by the contractor for a period of three years from the date of final payment under the prime contract and by the subcontractor for a period of three years from the date of final payment under the subcontract.

**III. Specifications**

**3-20-170 Brand name or equal specification.**

(A) *Use.* Brand name or equal specifications may be used when the city manager determines that:

- (1) No other design or performance specification or qualified products list is available;
- (2) Time does not permit the preparation of another form of purchase description;
- (3) The nature of the product or the nature of the city's requirements makes use of a brand name or equal specification suitable; or
- (4) Use of a brand name or equal specification is in the city's best interest.

(B) *Designation of several brand names.* Brand name or equal specifications shall seek to designate three, or as many different brands as are practicable, as "or equal" references and shall further state that substantially equivalent products to those designated will be considered for award.

(C) *Nonrestrictive use of brand name or equal specifications.* Where a brand name or equal specification is used, such use is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

**3-20-180 Brand name specifications.**

(A) *Use.* Since use of a brand name specification is restrictive of product competition, it may be used only when the city manager determines that only the identified brand name item or items will satisfy the city's needs.

(B) *Competition.* The city manager shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirements, the procurement shall be made under section 3-20-070.

**IV. Suspension**

**3-20-190 Authority to suspend.**

After reasonable notice and opportunity to be heard, the city manager is authorized to suspend a person for cause from consideration for award of contracts. The suspension shall be for a period of not more than three years. The causes for suspension include:

(A) Conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

(B) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification, or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility;

(C) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;

(D) Violation of contract provisions, as set forth below, of a character which is regarded by the city manager to be so serious as to justify suspension:

(1) Failure to perform in accordance with a contract with the city, or

(2) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts with any party;

(E) Any other cause the city manager determines to be so serious and compelling as to affect responsibility, including suspension or debarment by another party for any cause listed in this section;

(F) For violation of the ethical standards set forth in section 3-20-220 through and including section 3-20-270 of this chapter; and

(G) For the purpose of this section, the conduct of an individual, a partner of a partnership, a joint venturer in a joint venture, an officer or director of a corporation, the entity itself, or any person acting on behalf of the entity, is attributable to the entity.

**3-20-200 Decision to suspend.**

(A) The city manager shall issue a written decision to suspend. The decision shall state the reasons for the action taken.

(B) A decision under this section shall be final and conclusive, unless the suspended person takes an appeal to the city council within thirty days of the date of the decision, or if a particular bid award would be affected, prior to award of the bid in question.

**V. Appeals and Remedies**

**3-20-210 Bid protests.**

(A) *Right to protest.* Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract or bid must protest in writing to the city manager as a prerequisite to seeking judicial relief. A protest shall be submitted within ten calendar days after such aggrieved person knows or should have known of the facts giving rise thereto. A protest with respect to an invitation for bids shall be submitted in writing prior to the opening of bids unless the aggrieved person did not know and should not have known of the

facts giving rise to such protests prior to bid opening. This protest procedure shall not apply to a suspension from consideration as set forth below.

(B) *Stay of procurements during protests.* In the event of a timely protest under subsection (A) of this section, the city shall not proceed further with the solicitation or award of the contract until all administrative remedies have been exhausted or until the city council makes a determination that the award of a contract without delay is necessary to protect substantial interests of the city.

(C) *Administrative remedies.* The city manager shall review the protest, conduct any investigation he or she deems necessary, and issue a written decision within twenty days. The city manager's decision shall be final if the procurement is for \$20,000.00 or less. The city manager's decision may be appealed to city council if the procurement is for more than \$20,000.00. Any such appeal must be made in writing, within seven calendar days of the city manager's written decision. The city council shall review the appeal, conduct any investigation it deems necessary, and issue a written decision within sixty days. The city council decision shall be final. (Ord. 780 §1, 1988)

## **Article VI. Ethics in Public Contracting**

### **3-20-220 Kickbacks.**

It shall be unlawful for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor for any person associated therewith, as an inducement for the award of a subcontract or order. (Ord. 780 §1, 1988)

### **3-20-230 Prohibition against contingent fees.**

It shall be unlawful for a person to be retained, or to retain a person, to solicit or secure a city contract or other procurement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. (Ord. 780 §1, 1988)

### **3-20-240 Contemporaneous employment prohibited.**

It shall be unlawful for any city employee who is participating directly or indirectly in the procurement process to become or to be, while such a city employee, the employee of any person contracting with the city. (Ord. 780 §1, 1988)

### **3-20-250 Waiver for contemporaneous employment prohibition.**

The city manager may grant a waiver from the contemporaneous employment provision in section 3-20-240 upon making a written determination that:

- (A) The contemporaneous employment of the city employee has been publicly disclosed;
- (B) The city employee will be able to perform procurement functions without actual or apparent bias or favoritism; and
- (C) The award will be in the best interest of the city.

### **3-20-260 Use of confidential information.**

It shall be unlawful for any employee or former employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person. (Ord. 780 §1, 1988)

### **3-20-270 Recovery of value transferred or received in breach of ethical standards.**

(A) *General provisions.* The value of anything transferred or received in breach of the provisions of sections 3-20-220 through 3-20-260 by a city employee or a nonemployee may be recovered from both city employee and nonemployee.

(B) *Recovery of kickbacks by city.* Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the city and will be recoverable hereunder from the recipient. In addition, that amount may also be

recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties. (Ord. 780 §1, 1988)

## Chapter 3-22

### Returned Check Charge

#### 3-22-010 Charge for returned check.

(A) The city manager or his or her designee shall assess a \$20.00 charge against any person who issues a check or draft to the city in payment of taxes, licenses, and permits, fines, court costs, water, and sewer services, recreational fee, or any other fees or charges collectible by the city and such check or draft is returned for insufficient funds or lack of an account or otherwise dishonored by the bank, savings and loan institution or credit union on which it is drawn.

(B) The city manager shall assess the charge prescribed by this section in addition to any other penalties or interest prescribed by any provision of this code or by state law. If the dishonored check was for payment of water and sewer charges, the penalty shall be charged against the account for which the check or draft was written, which charge shall be collected in the same manner as water and sewer service charges.

(C) No check or draft which has been dishonored shall constitute payment.

(D) For purposes of this section, the term *insufficient funds* means not having a sufficient balance in account with a bank or other drawee for the payment of a check when the check is presented by the city for payment within thirty days after its issue. (Ord. 898 §2, 1991; Ord. 1207 §1, 1996)

## Chapter 3-25

### Disposition of Unclaimed Intangible Property

#### 3-25-010 Purpose.

The purpose of this chapter is to provide for the administration and disposition of unclaimed intangible property that is in the possession of or under the control of the city. (Ord. 932 §1, 1992)

#### 3-25-020 Definitions.

Unless otherwise required by context or use, the words and terms used in this chapter are defined as follows:

(A) *Director* means the director of finance or designee thereof.

(B) *Intangible property* is that property described in section 38-13-102(7), C.R.S.

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

(D) *Unclaimed property* means any intangible property, including any income or increment derived therefrom, less any lawful charges, that is held by or under the control of the city and which has not been claimed by its owner for a period of more than five years after it became payable or distributable. (Ord. 932 §1, 1992)

#### 3-25-030 Procedure for disposition of intangible property.

(A) Prior to disposition of any unclaimed intangible property having an estimated value of \$50.00 or more, the director will send a written notice by first class mail properly addressed to the last known address, if any, of any owner of unclaimed intangible property. The last known address of the owner is the last address of the owner as shown by the records of the city. The notice will include a description of the intangible property, the amount or estimated value of the intangible property, and, when available, the purpose for which the property was deposited or otherwise held. The notice will state where the owner may make inquiry of or claim the property. The notice will also state that if the owner fails to provide the director with a written claim for the return of the property within sixty days of the date of the notice, the intangible property becomes the sole property of the city and any claim of the owner to such intangible property is forfeited.

(B) Prior to disposition of any unclaimed intangible property having an estimated value of less than \$50.00 or having no last known address of the owner, the director will publish a notice in a newspaper of general circulation in the city. The notice will include a description of the intangible property, the owner of the intangible property, the amount or estimated value of the intangible property and, when available, the purpose for which the intangible property was deposited or otherwise held. The notice will state where the owner may make inquiry of or claim the intangible property. The notice will also state that if the owner fails to provide the director with a written claim for the return of the intangible property within sixty days of the date of the publication of the notice, the intangible property becomes the sole property of the city and any claim of the owner to such intangible property is forfeited.

(C) If the director receives no written claim within the sixty-day claim period, the intangible property becomes the sole property of the city and any claim of the owner to such intangible property is forfeited.

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

(E) If there is more than one claimant for the same intangible property, the director may, in the director'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) If the director denies all claims filed, the intangible property becomes the sole property of the city and any claim of the owner of such property is forfeited.

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

(H) The director is authorized to establish and administer procedures for the administration and disposition of unclaimed intangible property consistent with this chapter, including compliance requirements for other city officers and employees in the identification and disposition of such intangible property. (Ord. 932 §1, 1992)

## Chapter 3-28

### Services Expansion Fee

#### 3-28-010 Short title.

This chapter is known and may be cited as the "Broomfield Services Expansion Fee Ordinance." (Ord. 1165 §1, 1995)

#### 3-28-020 Purpose and intent.

(A) This chapter is adopted pursuant to the approval of the registered electors of the City of Broomfield at the general municipal election held November 7, 1995, at which the question of whether, *inter alia*, the city should impose a services expansion fee tax on new residential construction. This chapter complies in all respects with the provisions of section 13.1 of the Charter for the City of Broomfield and with Section 20 of Article X of the Constitution of the State of Colorado.

(B) The purpose of the services expansion fee is to impose an excise tax on new residential construction within the city as hereinafter required. The services expansion fee is not an ad valorem tax on real property. (Ord. 1165 §1, 1995)

#### 3-28-030 Definitions.

As used in this chapter, unless the context requires otherwise:

(A) *Building official* means the officer of the city charged with the administration and enforcement of the Building Codes, as adopted in title 15, or the building official's authorized representative.

(B) *Building* means any structure used or intended for supporting or sheltering any use or occupancy.

(C) *New residential construction* means any new building that houses one or more dwelling units.

(D) *Senior housing facilities* means a residential facility of not more than ninety living units for persons sixty-two years of age or older that is funded with federal grant funds and is owned, operated, or managed by a nonprofit corporation.

(E) *Total residential floor area* is the area included within the surrounding exterior walls of a new residential dwelling unit. (Ord. 1165 §1, 1995; Ord. 1174 §1, 1996; Ord 1858 §2, 2008)

**3-28-040 Services expansion fee.**

(A) There is hereby levied and imposed on all new residential construction within the city an excise tax of \$1.00 on each square foot of total floor area for which a building permit has been issued by the city after the effective date of the initial ordinance codified herein. This excise tax shall be referred to as a *services expansion fee*.

(B) Any person who applies for a certificate of occupancy for any new residential construction shall pay to the city a services expansion fee of \$1.00 for each square foot of total floor area for any dwelling unit as defined in section 17-04-100, B.M.C., or in section 202; International Building Code, or section R202, International Residential Code; or for any one-family dwelling unit as defined in section 17-04-095, B.M.C.; or for any multiple-family dwelling unit as deemed in section 17-04-090, B.M.C.

(C) The building official shall not issue a certificate of occupancy unless the services expansion fee has been first paid to the city. (Ord. 1165 §1, 1995; Ord. 1858 §3, 2008)

**3-28-050 Exceptions.**

(A) Neither garages and unfinished basements on new residential construction nor garage conversions or additions to existing dwellings shall be subject to the services expansion fee.

(B) Assisted care facilities, nursing homes, senior housing facilities, and hospices shall not be subject to the services expansion fee. (Ord. 1165 §1, 1995; Ord. 1174 §2, 1996)

**3-28-060 Services expansion fee fund.**

(A) There is hereby established a services expansion fee fund into which shall be deposited all moneys collected by the city from payments for the services expansion fee.

(B) The following are the purposes for which monies from the services expansion fund may be expended:

- (1) Capital improvements within the subdivision paying the services expansion fee;
- (2) Capital improvements adjacent to the subdivision paying the services expansion fee;
- (3) Capital improvements in the area directly benefiting the subdivision, such as arterial roadways;
- (4) Community parks that serve the area within which the subdivision is located;
- (5) Community facilities that serve the area within which the subdivision is located;
- (6) Storm water facilities that serve the area within which the subdivision is located;
- (7) Street scapes in the area of the subdivision;
- (8) Traffic signals in the area of the subdivision;
- (9) Joint-use educational/municipal facilities in the area; and

(10) Payments of obligations issued to construct joint-use educational/municipal facilities, transportation improvements, or parks and recreation improvements.

(C) Should multiple-fiscal year obligations be issued, not less than one-half of the proceeds therefrom shall be expended for joint-use educational/municipal facilities. (Ord. 1165 §1, 1995; Ord. 1279 §1, 1997)

## Chapter 3-30

### Water Enterprise

#### **3-30-010 Water activity enterprise created.**

There is hereby created a water activity enterprise denominated the *City of Broomfield Colorado Water Activity Enterprise* (water enterprise). The city council shall be the governing body of the water enterprise. (Ord. 1178 §11, 1996)

#### **3-30-020 Issue bonds, notes, other obligations.**

The water enterprise is authorized to issue or reissue bonds, notes, or other obligations payable from the revenues derived or to be derived from the function, service, benefits, or facility, or from any other available funds of the water enterprise. (Ord. 1178 §11, 1996)

#### **3-30-030 Water activities.**

The water enterprise is authorized to conduct any water activity under section 37-45.1-102, *et seq.*, C.R.S., and any other powers under any other applicable law. (Ord. 1178 §11, 1996)

#### **3-30-040 Government-owned business.**

The water enterprise shall be a government-owned business. The water enterprise shall not receive any annual revenue in grants from any state and local governments. (Ord. 1178 §11, 1996)

#### **3-30-050 Finance, revenues, and fund.**

The water enterprise shall finance various water activities. The revenues from the water activities shall be deposited by the water enterprise into a fund designated as the *City of Broomfield Colorado Water Activity Enterprise Fund*. (Ord. 1178 §11, 1996)

#### **3-30-060 No taxation.**

The water enterprise shall not levy a tax which is subject to section 20(4) of Article X of the Colorado Constitution or any other general taxes. (Ord. 1178 §11, 1996)

## Chapter 3-32

### Sewer Enterprise

#### **3-32-010 Sewer activity enterprise created.**

There is hereby created a sewer activity enterprise denominated the *City of Broomfield Colorado Sewer Activity Enterprise* (sewer enterprise). The city council shall be the governing body of the sewer enterprise. (Ord. 1179 §11, 1996)

#### **3-32-020 Issue bonds, notes, other obligations.**

The sewer enterprise is authorized to issue or reissue bonds, notes, or other obligations payable from the revenues derived or to be derived from the function, service, benefits, or facility, or from any other available funds of the sewer enterprise. (Ord. 1179 §11, 1996)

#### **3-32-030 Sewer activities.**

The sewer enterprise is authorized to conduct any sewer activity under section 37-45.1-102, *et seq.*, C.R.S., and any other powers under any other applicable law. (Ord. 1179 §11, 1996)

#### **3-32-040 Government-owned business.**

The sewer enterprise shall be a government-owned business. The sewer enterprise shall not receive any annual revenue in grants from any state and local governments. (Ord. 1179 §11, 1996)

**3-32-050 Finance, revenues, and fund.**

The sewer enterprise shall finance various sewer activities. The revenues from the sewer activities shall be deposited by the enterprise into a fund designated as the *City of Broomfield Colorado Sewer Activity Enterprise Fund*. (Ord. 1179 §11, 1996)

**3-32-060 No taxation.**

The sewer enterprise shall not levy a tax which is subject to section 20(4) of Article X of the Colorado Constitution or any other general taxes. (Ord. 1179 §11, 1996)

**Chapter 3-34**

**Water Reclamation Enterprise**

**3-34-010 Water reclamation activity enterprise created.**

There is hereby created a water reclamation activity enterprise denominated the *City of Broomfield, Colorado, Water Reclamation Activity Enterprise* (water reclamation enterprise). The city council shall be the governing body of the water reclamation enterprise. (Ord. 1180 §11, 1996)

**3-34-020 Issue bonds, notes, other obligations.**

The water reclamation enterprise is authorized to issue or reissue bonds, notes, or other obligations payable from the revenues derived or to be derived from the function, service, benefits, or facility, or from any other available funds of the water reclamation enterprise. (Ord. 1180 §11, 1996)

**3-34-030 Water reclamation activities.**

The water reclamation enterprise is authorized to conduct any water reclamation activity under section 37-45.1-102 *et seq.*, C.R.S., and any other powers under any other applicable law. (Ord. 1180 §11, 1996)

**3-34-040 Government-owned business.**

The water reclamation enterprise shall be a government-owned business. The water reclamation enterprise shall not receive any annual revenue in grants from any state and local governments. (Ord. 1180 §11, 1996)

**3-34-050 Finance, revenues, and fund.**

The water reclamation enterprise shall finance various water reclamation activities. The revenues from the water reclamation activities shall be deposited by the water reclamation enterprise into a fund designated as the *City of Broomfield, Colorado, Water Reclamation Activity Enterprise Fund*. (Ord. 1180 §11, 1996)

**3-34-060 No taxation.**

The water reclamation enterprise shall not levy a tax which is subject to section 20(4) of Article X of the Colorado Constitution or any other general taxes. (Ord. 1180 §11, 1996)

**Chapter 3-38**

**Lodging Tax**

**3-38-010 Legislative intent.**

The city council intends that every person who, for consideration, leases or rents any hotel room, motel room, motor hotel, apartment hotel, lodging house, or other accommodation (collectively "lodging") located in the city shall pay and every person who furnishes for lease or rental any such accommodation shall collect the tax imposed by this chapter. (Ord. 1216 §1, 1997)

**3-38-020 Imposition and rate of tax.**

On and after July 1, 1997, there is and shall be paid and collected an excise tax of one and six-tenths percent on the price paid for the leasing or rental of any lodging located in the city. (Ord. 1216 §1, 1997)

**3-38-030 Liability for tax.**

(A) No lessee or renter of lodging located in the city shall fail to pay, and no lessor or renter of such lodging shall fail to collect, the tax levied by this chapter.

(B) The burden of proving that any transaction is not subject to the tax imposed by this chapter is upon the person upon whom the duty to collect the tax is imposed. (Ord. 1216 §1, 1997)

**3-38-040 Taxes collected are held in trust.**

All sums of money paid by a person who leases or rents lodging upon which the lodging tax is imposed by this chapter are public monies that are the property of the city. The person required to collect and remit the lodging tax shall hold such monies in trust for the sole use and benefit of the city until paying such monies to the city. (Ord. 1216 §1, 1997)

**3-38-050 Exempt transactions.**

The following entities and transactions are exempt from the duty to pay tax under this chapter but not the duty to collect and remit the tax levied hereby: The United States Government, the State of Colorado, its departments and institutions, and the political subdivisions thereof, including the city, when acting in their governmental capacities and performing governmental functions and activities. (Ord. 1216 §1, 1997)

**3-38-060 Licensing and reporting procedure.**

(A) Every person with a duty to collect the tax imposed by this chapter shall obtain a license to collect the tax and shall report such taxes collected on forms prescribed by the city manager or a designee thereof and remit such taxes to the city on or before the twentieth day of the month for the preceding month or months under report.

(B) The city manager or a designee thereof shall issue a lodging tax license to the person required to collect and remit the lodging tax, who shall complete an application therefor stating the name and address of the person and the business and such other information as the manager may require. The license shall be numbered, show the name, residence, place, and character of the business of the license of the licensee, and be conspicuously posted in the place of business for which it is issued. No lodging tax license is transferable. The manager or a designee thereof shall not issue a public lodging license until the planning director has verified that the location of the business complies with the provisions of title 17, B.M.C.

(C) The license is valid so long as the business remains in continuous operation or the license is abandoned by the licensee or revoked by the city.

(D) Whenever a business entity required to be licensed under this chapter is sold, purchased, or transferred, so that the ownership interest of the purchaser or seller changes in any respect, the purchaser shall obtain a new lodging tax license.

(E) The license may be revoked by the city manager or a designee thereof after notice and hearing for any violation of this chapter by a licensee. (Ord. 1216 §1, 1997)

**3-38-070 Maintenance and preservation of tax returns, reports, and records.**

(A) The city manager or a designee thereof may require any person to make such return, render such statement, or keep and furnish such records as the manager may deem sufficient and reasonable to demonstrate whether or not the person is liable under this chapter for payment or collection of the tax imposed hereby.

(B) Any person required to make a return or file a report under this chapter shall preserve such records.

(C) The city manager or a designee thereof shall maintain all reports and returns of taxes required under this chapter. (Ord. 1216 §1, 1997)

**3-38-080 Interest and penalties for failure to file tax return or pay tax.**

Penalties for failure of a person to collect the accommodations tax or to make a return and remit the correct amount of tax required by this chapter and procedures for enforcing such penalties are as prescribed in chapter 1-12, B.M.C. (Ord. 1216 §1, 1997)

**3-38-090 Enforcement of tax liability.**

The lodging tax imposed by this chapter is a first and prior lien on tangible personal property in which the person responsible to collect and remit the tax has an ownership interest, subject only to valid mortgages or other liens of record at the time of and prior to the recording of a notice of lien. (Ord. 1216 §1, 1997)

**3-38-100 Duties and powers of city manager.**

The city manager or a designee thereof is authorized to administer the provisions of this chapter. (Ord. 1216 §1, 1997)

**3-38-110 Lodging tax fund.**

(A) There is hereby established a lodging tax fund into which the revenues collected by the city shall be deposited.

(B) Monies from the fund shall be budgeted, appropriated, and expended only for the maintenance and improvement of city gateways or major roadway landscaping. (Ord. 1216 §1, 1997)

**Chapter 3-40**

**Sales and Use Tax Reimbursement**

**3-40-010 Purpose.**

The city council finds and declares that in connection with the development of property containing retail or commercial businesses which are expected to generate substantial new sales and use tax revenues or extraordinary public benefit for the city, the use of a portion of city sales and use tax revenues from such businesses to assist in financing public improvements or to attract such businesses to the city is a public purpose which promotes industry, trade, and economic activity necessary to the fiscal viability of the city and the health, safety, and welfare of its residents, which public purpose outweighs any individual interests incidentally served thereby. (Ord. 1344 §1, 1998; Ord. 1750 §1, 2003; Ord. 1863 §1, 2007)

**3-40-020 Authority; limitations.**

(A) The city council is authorized to enter into an agreement with a developer of a proposed or expanding retail or commercial project or a special district with a service plan approved by the city, which agreement or any amendment thereto may provide that all or a portion of the city's retail sales and use tax revenues generated by taxable activity on developed property be used to assist in financing public improvements to make development of the revenue-generating project feasible or to provide incentives to attract individual retail or commercial businesses to such project.

(B) Subject to the provisions of subsection 3-40-020(C), no use of city sales and use tax revenues authorized in this division hereby shall constitute a general obligation debt or a multiple-fiscal year direct or indirect debt or other financial obligation of the city within the meaning of the Charter or any constitutional or statutory provision.

(C) In the sole discretion of the city council, city sales and use tax revenues authorized in this division may constitute a multiple-fiscal year direct or indirect debt or other financial obligation of the city within the meaning of the Charter or any constitutional or statutory provision, subject to any limitations contained in the Charter and the provisions of Article XX, Section 10, 11, 12 and 13 of the Colorado Constitution.

(D) The terms and conditions of any sales and use tax reimbursement shall be set forth in a written agreement between the city and the developer or a special district with a service plan approved by the city. Each such agreement or any amendment thereto shall be approved by ordinance or resolution of the city council and executed by the mayor.

(E) There are hereby established special tax allocation funds to collect all project sales and use tax revenue that is to be used to provide sales and use tax reimbursements under this section. Upon the execution of any sales

and use tax reimbursement agreement, the city shall take all necessary steps to identify the portion of such revenue that will be used to provide incentives thereunder.

(F) The decision whether to enter into a sales and use tax reimbursement agreement shall be at the sole discretion of the city council. No such agreement shall be entered into prior to the approval of such agreement as to form by the city attorney. (Ord. 1344 §1, 1998; Ord. 1750 §1, 2003; Ord. 1863 §2, 2007)

## **Chapter 3-42**

### **Senior Citizen Property Tax Refund**

#### **3-42-010 Purpose.**

(A) Section 3.5 of Article X of the Colorado Constitution, which was approved by the registered electors of the state at the 2000 general election, provides a property tax exemption for qualifying . The Colorado General Assembly enacted legislation in 2001 implementing the property tax exemption for qualifying seniors. The General Assembly, however, eliminated the senior property tax exemption at its 2003 session because of a state revenue shortfall.

(B) The purpose of this chapter is to provide qualifying senior citizens with a property tax refund from property tax revenues collected by the city based on the levy of taxes by the city for the general fund of 11.457 mills, the county fund of 15.774 mills, and the social services fund of 1.737 mills imposed for tax year 2005 and collected by the city in 2006 to partially offset the elimination of the senior property tax exemption by the General Assembly. (Ord. 1773 §1, 2004; Ord. 1790 §1, 2005; Ord. 1843 §1, 2006)

#### **3-42-020 Property tax refund.**

(A) For the property tax year commencing January 1, 2005, 50% of the first \$200,000.00 of actual value as of the assessment date of residential real property of a senior citizen who qualifies as an owner-occupier, as "owner-occupier" is defined in section 39-3-201(2)(a), C.R.S., shall be refunded by the city from property tax revenues collected by the city based on the levy of taxes by the city for the general fund of 11.457 mills, the county fund of 15.774 mills and the social services fund of 1.737 mills imposed for tax year 2005 and collected by the city in 2006, provided the qualifying senior citizen complies in all respects with the provisions of section 39-3-203, C.R.S., and provided the qualifying senior citizen has paid the 2005 property taxes due and payable in 2006 on said residential real property, including all applicable penalties, costs, and interest, prior to the sale of the 2005 tax lien in accordance with sections 39-11-101, et seq., C.R.S.

(B) The property tax refund to qualifying senior citizens shall be implemented, administered, and interpreted in conformance with the provisions of Property Tax Exemption for Qualifying Seniors, part 2, article 3 of title 39, C.R.S., insofar as is practicable. (Ord. 1773 §1, 2004; Ord. 1790 §1, 2005; Ord. 1843 §1, 2006)

#### **3-42-030 Refund applications.**

The application for the refund provided qualifying senior citizens under this chapter shall be the form filed with the county assessor as provided for in section 39-3-205, C.R.S., except that a qualifying senior citizen shall file with the county assessor a completed exemption application no later than July 15, 2006, to be eligible for this property tax refund. (Ord. 1773 §1, 2004; Ord. 1790 §1, 2005; Ord. 1843 §1, 2006)