

## CHAPTER 4

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## **ARTICLE 1**

### **Fiscal Year**

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

The fiscal year of the City shall commence on January 1 of each year and shall extend through December 31 of the same year. (Ord. 2007-04 §1)

## **ARTICLE 2**

### **General and Special Funds**

#### **Sec. 4-2-10. Custody and management of funds.**

Moneys in the funds created in this Chapter shall be in the custody of and managed by the City Treasurer. The City Treasurer shall maintain accounting records and account for all of said moneys as provided by law. Moneys in the funds of the City shall be invested or deposited by the City Treasurer in accordance with the provisions of law. All income from the assets of any fund shall become a part of the fund from which derived and shall be used for the purpose for which such fund was created; provided that, except as otherwise provided in this Code or by other ordinances or laws, the City Council may transfer out of any fund any amount at any time to be used for such purpose as the City Council may direct. (Ord. 2007-04 §1)

#### **Sec. 4-2-20. General Fund created.**

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

- (1) All cash balances of the City not specifically belonging to any existing special fund of the City.
- (2) All fixed assets of the City (to be separately designated in an account known as the General Fund Fixed Assets) not specifically belonging to any existing special fund of the City. (Ord. 2007-04 §1)

#### **Sec. 4-2-30. Capital Improvement Fund created.**

There is hereby created a special fund, to be known as the Capital Improvement Fund, and the funds therein shall be used only for the purposes allowed by law. (Ord. 2007-04 §1)

#### **Sec. 4-2-40. Community of Caring Foundation, Inc., Fund created.**

(a) The Community of Caring Foundation, Inc., Fund is hereby created to hold the proceeds generated by the additional sales tax of three-tenths of one percent (.3%) approved at the November 4, 2003 election, in an amount up to fifty thousand dollars (\$50,000.00) annually.

(b) Any revenue raised by the additional sales tax in excess of fifty thousand dollars (\$50,000.00) annually is hereby assigned to the General Fund for budgeting and appropriation as with any other City monies, without limitation or condition as a voter-approved revenue change not subject to the limits that would otherwise apply under Article X, Section 20 of the Colorado Constitution. (Ord. 2003-25 §§2, 3; Ord. 2007-04 §1)

**Sec. 4-2-50. Conservation Trust Fund created.**

There is hereby created a special fund, to be known as the Conservation Trust Fund, and the funds therein shall be used only for the purposes allowed by law. (Ord. 2007-04 §1)

**Sec. 4-2-60. Historic Preservation Fund created.**

There is hereby created a special fund, to be known as the Historic Preservation Fund, and the funds therein shall be used only for the purposes allowed by law. (Ord. 2007-04 §1)

**Sec. 4-2-70. Water and Sewer Fund created.**

There is hereby created a special fund, to be known as the Water and Sewer Fund, and the funds therein shall be used only for the purposes allowed by law. (Ord. 2007-04 §1)

**ARTICLE 3**

**Purchase of Supplies**

**Sec. 4-3-10. Purchasing Agent.**

The City Administrator shall be the Purchasing Agent for and on behalf of the City of all books, furniture, stationery, tools, printing, materials, supplies and all things whatsoever necessary for the departments, officers and employees of the City. (Prior code 2.60.010)

**Sec. 4-3-20. Purchasing procedures.**

The Purchasing Agent may promulgate purchasing policies and procedures, consistent with applicable state law, governing competitive bids and purchasing by the City. (Ord. 2007-04 §1)

**ARTICLE 4**

**Sales and Use Tax**

**Sec. 4-4-10. Purpose.**

The purpose of this Article is to impose a tax on the sale of tangible personal property at retail or the furnishing of services within the City. (Prior code 3.08.010)

**Sec. 4-4-20. Definitions.**

For the purposes of this Article, the definitions and words contained herein shall be as defined in Section 39-26-102, C.R.S., and said definitions are incorporated herein by this reference. (Prior code 3.08.020; Ord. 1983-1 §2; Ord. 2007-04 §1)

**Sec. 4-4-30. General provisions and exemptions.**

(a) There shall be exempt from taxation under the provisions of this Article all the tangible, personal property and services which are exempt under the provisions of "The Emergency Retail Sales Tax Act of 1935" set forth in Article 26, Title 39, C.R.S., which exemptions are incorporated herein by this reference.

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

(c) For the purposes of this Article, all retail sales shall be considered consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his or her agent to a destination outside the City limits or to a common carrier for delivery to a destination outside the City limits.

(d) The gross receipt from sales shall include delivery charges, and such charges are subject to the state sales and use tax imposed by Article 26 of Title 39, C.R.S., regardless of the place to which delivery is made.

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

(f) All sales of personal property on which a specific ownership tax has been paid or is payable shall be exempt from the tax imposed by this Article, but only if such sales meet both of the following conditions:

(1) The purchaser is a nonresident of, or has his or her principal place of business outside of, the City; and

(2) Such personal property is registered or required to be registered at a place outside of the City under state law.

(g) There is hereby levied and shall be collected and paid a sales tax as provided in this Article, on the retail sale of all tangible personal property, purchase of machinery and tools, furnishing of services, sale or purchase of electricity, coal, gas, fuel and oil for commercial and domestic consumption, and sale of food and beverages for consumption on the premises.

(h) All sales and purchases by religious, charitable, governmental and quasi-governmental organizations in the conduct of their business shall be exempt. (Prior code 3.08.040; Ord. 1983-1 §4; Ord. 1983-2; Ord. 2003-9 §1; Ord. 2007-04 §1)

**Sec. 4-4-40. Schedule of tax.**

(a) There is hereby imposed on all sales of tangible personal property at retail and services furnished in the City a sales tax of two percent (2%) upon the sale at retail of tangible personal property and the furnishing of certain services as provided herein. One-half (½) of the net revenues derived or received by virtue of the sales tax imposed by this Subsection shall be placed and kept in the Capital Improvements Fund of the City. The remaining one-half (½) of the net revenue shall be placed and kept in the General Fund of the City.

(b) In addition to the sales tax imposed in Subsection (a) above, there is hereby imposed an additional sales tax of three-tenths of one percent (.3%), to be placed in the Community of Caring Foundation, Inc., Fund until January 1, 2009, as established in Article 2 of this Chapter. On January 1, 2009, the revenues generated from said sales tax shall be spent by the City without limitation or condition as a voter-approved revenue change. This additional sales tax shall terminate on January 1, 2019, unless extended before that time by a vote of the City's electors.

(c) The imposition of the tax on individual sales shall be in accordance with schedules set forth in the rules and regulations promulgated by the Colorado Department of Revenue or by separate ordinance of the City.

(d) The collection, administration and enforcement of this sales tax shall be performed by the Director of the Colorado Department of Revenue in the same manner as the collection, administration and enforcement of the state sales tax. The provisions of Article 26 of Title 39, C.R.S., and all rules and regulations promulgated by the Director of the Colorado Department of Revenue and the City shall govern the collection, administration and enforcement of the sales tax imposed by this Article. (Prior code 3.08.050; Ord. 1983-1 §§5, 10; Ord. 1983-2; Ord. 2003-25 §§1, 4; Ord. 2007-04 §1; Ord. 2007-15 §§1, 2)

**Sec. 4-4-50. Penalty for violation.**

In addition to other penalties provided by any law, persons violating any provisions of this Article shall be guilty of a misdemeanor, enforceable by the Municipal Court, and punished in accordance with the provisions of Section 1-4-20 of this Code. (Prior code 3.08.060; Ord. 2007-04 §1)

**Sec. 4-4-60. Election and amendment.**

The City Council may amend, alter or change this Article, except as to the rate of tax imposed in this Article, subsequent to adoption by a majority vote of the City Council. Such amendment, alteration or change need not be submitted to the electors of the City for their approval. (Prior code 3.08.070; Ord. 1983-1 §7; Ord. 2007-04 §1)

**ARTICLE 5**

**Gaming Device Fees**

**Sec. 4-5-10. Definitions.**

The following definitions shall apply to the terms of this Article:

*Blackjack* means a card game played by a maximum of seven (7) players in which each player bets against the dealer. The object is to draw cards equal to or approaching twenty-one (21) without exceeding that amount, and when amounts bet, payable by the dealer, if the player holds cards more valuable than the dealer's cards.

*City* means the City of Cripple Creek, Colorado.

*Gaming device* means any slot machine, poker table and/or blackjack table. The term *gaming device* shall include each table manned by a single dealer for the games of blackjack and/or poker and shall include each slot machine.

*Gaming device fee* means the fee, as set by the City Council from time to time, for the use and operation of a gaming device within the City limits.

*Gaming licensee* means that individual, partnership and/or corporation licensed to operate a gaming establishment pursuant to the rules and regulations of the Colorado Gaming Commission, and pursuant to the Ordinances of the City.

*Poker* means a card game played by players who are dealt cards by a nonplayer dealer. The object of the game is for each player to bet the superiority of his or her own hand and win the other players' bets by either making a bet so that other players are willing to match or proving to hold the most valuable cards when all betting is over. *Poker* includes, but is not limited to, draw, stud, lowball or any combination thereof.

*Quarter*, as used in this Article, shall mean calendar quarters: January 1, April 1, July 1 and October 1 of each year. For the purposes of this Article, the *quarter* shall commence at 8:00 a.m. on the first day of said calendar quarter.

*Slot machine* means any mechanical, electrical, video, electronic or other device, contrivance or machine which, after insertion of a coin, token or similar object, or upon payment of a required consideration whatsoever by a player, is available to be played or operated and which, whether by reason of the skill of the player application of the element of chance or both, may deliver or entitle the player operating the machine to receive cash premiums, merchandise, tokens, redeemable game credits or any other thing of value other than unredeemable free games, whether the payoff is made automatically from the machine or in any other manner. Ord. 1991-32 §I; Ord. 1994-16 §2; Ord. 2007-04 §1)

#### **Sec. 4-5-20. Establishment and payment of gaming device fee.**

(a) For each and every gaming device located within the City, the gaming licensee of the establishment in which the gaming device is located shall pay a gaming device fee calculated as follows:

(1) The gaming device fee for the first fifty (50) gaming devices maintained in operation by each gaming licensee shall be fifty dollars (\$50.00) per device for the first quarter; one hundred dollars (\$100.00) per device for the second quarter; two hundred twenty-five dollars (\$225.00) per device for the third quarter; and two hundred twenty-five dollars (\$225.00) for the fourth quarter.

The gaming device fee for gaming devices greater than fifty (50) for each gaming licensee shall be three hundred dollars (\$300.00) per device per quarter.

(2) Each and every gaming licensee shall pay three hundred dollars (\$300.00) per gaming device for its first three (3) months of operation, and each new gaming device added shall have a gaming device fee of three hundred dollars (\$300.00), regardless of what date during the quarter the new gaming device is placed in service. The gaming device fee due for such gaming devices shall be credited in the next succeeding quarter based on a monthly prorated amount for the months in the prior quarter that the new gaming devices were not in service. For example, any gaming devices placed in service in the second month of any quarter would receive a credit in the next succeeding quarter of one hundred dollars (\$100.00); and gaming devices placed in service during the third month of any quarter would receive a credit in the next succeeding quarter of two hundred dollars (\$200.00). Subsequent quarterly payments of the gaming device fee will be at the then-effective gaming device fee, as provided for in this Article.

(b) The total gaming device fee owed by each gaming licensee shall be paid quarterly in advance on the first day of the month for each quarter, beginning with the first quarter, October 1, 1991. The total gaming device fee shall be calculated by the City Clerk using the information provided in accordance with Section 4-5-40 below. Notice of the newly established gaming device fee shall be mailed to the gaming licensee, at the address provided pursuant to Subsection 4-5-40(b) below, by regular first-class mail, mailed not less than five (5) calendar days prior to the end of each quarter. The amount of the total gaming device fee due from each gaming licensee shall be adjusted to take into account the number of gaming devices declared by each gaming licensee.

(c) In the event that any due date for the gaming device fee falls on a Saturday, Sunday or legal holiday, the due date shall be extended to the next following business day.

(d) In the case of new gaming devices placed in service during any quarter, the gaming device fee for such new gaming devices shall be paid no less than forty-eight (48) hours prior to said gaming devices being placed in service.

(e) The gaming device fees shall be divided in such a manner that sixty percent (60%) of each such fee shall be allocated to the General Fund; and forty percent (40%) of such fee shall be allocated to the Water and Sewer Fund. Each gaming licensee who is obligated to pay any gaming device fee pursuant to this Article shall pay said fee by way of two (2) checks, one (1) made payable to the "City of Cripple Creek General Fund," and one (1) made payable to the "City of Cripple Creek Water and Sewer Fund." The City Clerk shall, in his or her notice of payment to each gaming licensee, specify the amount due to each fund pursuant to the percentage allocation set forth herein.

(f) Any future increases of gaming device fees provided for in this Article shall be in accordance with the implementation of the amendments to Article X, Section 20 of the Colorado Constitution, enacted by voters approval on November 3, 1992, and commonly known as the "Taxpayer's Bill of Rights." The Water and Sewer Fund is declared to be an enterprise fund as set forth in the Taxpayer's Bill of Rights.

(g) The provisions of this Section notwithstanding, a gaming licensee may, but is not required to, pay the gaming device fee in three (3) equal monthly installments during each quarter by filing an election to pay the gaming device fee on a monthly basis with the City Clerk. Each monthly

installment shall be paid no later than the first day of each month or, if the first day falls on a Saturday, Sunday or recognized City holiday, on the next regular business day thereafter. An election to pay gaming device fees in monthly installments shall not relieve the gaming licensee of the obligation to report the number of devices on a quarterly basis as required by Subsection 4-5-40(b) hereof. In accordance with Subsection 4-5-40(c), the amount of gaming device fees owing for the quarter, shall be determined at the beginning of the quarter and the monthly installments shall not be reduced in the event that the number of devices is reduced during that quarter (Ord. 1991-32 §II; Ord. 1992-22; Ord. 1994-16 §2; Ord. 1995-18 §§2, 3; Ord. 2002-26 §§2, 3; Ord. 2003-26 §§2, 3; Ord. 2007-04 §1; Ord. 2009-07 §1)

**Sec. 4-5-30. Fee-setting procedure.**

The City Council shall have the authority to amend the gaming device fee at any time, in accordance with the following procedures:

(1) Notice of a public hearing on any amendments to the amount of the gaming device fees shall be given by publication in a newspaper of general circulation within the City, which notice shall state the time, location and date of the public hearing and the proposed amendment to the budgeted revenue from gaming device fees. Such notice shall be published not less than fifteen (15) days prior to the public hearing.

(2) At the public hearing, any and all interested parties shall be given an opportunity to be heard.

(3) The City Council shall then vote on any amendment, which may be done as an ordinance or as a resolution. Passage of the amendment shall be by a majority vote of the City Council.

(4) The City Clerk shall then notify, within ten (10) days, each gaming licensee of the amended gaming device fee, by way of a written notification, sent via regular, first class mail, to the address of the gaming licensee's place of gaming operation as set forth on his or her gaming license. Such notification shall be deemed complete three (3) days after mailing.

(5) Any such amendment shall apply only to the next succeeding quarter after the amendment is complete and shall continue in effect from quarter to quarter until a subsequent amendment to the amount of the gaming device fees is completed. This amendment, when fully enacted and effective pursuant to law, shall be effective for the quarter January 1, 1995, to March 31, 1995, only. (Ord. 1991-32 §III; Ord. 1994-16 §2; Ord. 2007-04 §1)

**Sec. 4-5-40. Enforcement and administration.**

(a) The City Clerk shall have authority to enforce the provisions of this Article.

(b) On or before the first business day of each quarter, or in the case of new gaming establishments, not less than fifteen (15) days prior to the opening of the business, each and every gaming licensee within the City limits shall provide a list of the serial numbers and locations of each gaming device owned or operated by such licensee located within the City limits. This information shall be used to make adjustments to the total gaming device fee due from each gaming licensee as set forth in Section 4-5-20 above. Further, each year beginning October 1, 1991, and on October 1 of

each year thereafter, each gaming licensee shall provide the name and address of the party to be contacted concerning all gaming device fee matters.

(c) In the event the number of gaming devices is reduced during any quarter, no refund of the gaming device fee shall be given. Any new gaming devices which are added during any quarter must be declared and the gaming device fee paid by the gaming licensee forty-eight (48) hours before said gaming devices are placed in service.

(d) In the event that the City Clerk determines that the number of gaming devices has been misstated by any gaming licensee, the penalty provisions of this Article shall be invoked.

(e) Any gaming licensee suspected of falsely supplying information to the City Clerk shall be afforded a public hearing before the City Council, at which time such gaming licensee may submit such evidence and/or testimony as the gaming licensee deems appropriate to explain and/or justify the information supplied to the City Clerk.

(f) In the event that any gaming device is merely exchanged for another gaming device (i.e., the aggregate number of machines for the gaming licensee is unchanged), the exchanges shall be reported to the City Clerk. For purposes of this Article, the term *exchanged* shall mean the replacement of a gaming device with a new or different gaming device within seven (7) consecutive days following removal of the first gaming device. The serial numbers of the gaming devices that are to be removed and the serial numbers of the replacement gaming devices shall be given to the City Clerk, and an administrative fee of fifty dollars (\$50.00) for each exchange, shall be paid to the City Clerk. The City Clerk shall in turn modify his or her records to reflect the exchange of the gaming devices. (Ord. 1991-32 §IV; Ord. 1992-4 §1; Ord. 2007-04 §1; Ord. 2007-01 §1)

(g) The provisions of this Article notwithstanding, the City Administrator or his or her designee may, upon written request by a gaming licensee, temporarily suspend the payment of gaming device fees for a period not to exceed sixty (60) days as to gaming devices which are placed out of service due to remodeling or other construction occurring at the gaming establishment. Any gaming device for which such temporary suspension of device fees is received shall be clearly marked as out of service in a manner satisfactory to the City Administrator or his or her designee during the entire time that the payment of gaming device fees is suspended, but shall not be required to be removed from the gaming area. Any use of such gaming device during the period that the payment of gaming device fees is suspended shall be deemed a violation of this Article. Reactivation of a gaming device following the completion of remodeling or construction shall not require payment of a new gaming device fee pursuant to Section 4-5-20 above or a gaming device exchange fee pursuant to Subsection (f) above. (Ord. 2011-04 §1; Ord. 2011-13)

#### **Sec. 4-5-50. Waiver of fees.**

(a) Gaming device fees for poker tables for "free-roll" tournaments shall be waived, provided that the following requirements are met:

(1) The waiver is only for new poker tables that are brought into service for a "free-roll" tournament, and shall not be deemed a waiver, either partial or whole, for gaming device fees previously paid for poker tables already in service.

- (2) The poker tables will be used for one (1) forty-eight-hour period only.
- (3) The tournament must be in fact a "free-roll" tournament such that there are no entry fees charged and the initial buy-in is free of charge to the tournament players.
- (4) The casino must take no fee, cut or take from the poker tables used for "free-roll" tournament purposes.
- (5) The gaming licensee shall sign an affidavit, as part of the permit application, stating that the casino will take no fee, cut or take from the tournament tables.
- (b) A permit for a "free-roll" poker tournament must be applied for from the City Clerk at least seven (7) days prior to the tournament taking place.
- (c) The permit fee shall be fifty dollars (\$50.00) per tournament.
- (d) The applicant shall include the following information:
  - (1) The name of the gaming licensee and the address of the premises.
  - (2) The times during which the tournament will take place.
  - (3) The number of new tables that will be placed in service as a result of the tournament.
  - (4) The number of tables for which a gaming device fee has been paid but which will be placed into the tournament and will be taken out of regular play service.
  - (5) An affidavit stating as follows:

"The undersigned Gaming Licensee, Applicant, hereby swears under the penalty of perjury, that the poker tables set forth above which will be used in the "free-roll" poker tournament to be held on \_\_\_\_\_, 20\_\_\_\_, will result in no fee, cut, take or profit to the Gaming Licensee, its agents, employees or lessees."
- (e) Immediately upon completion of the tournament, the additional tables put in service for tournament purposes shall immediately cease to be used for any purposes and shall be removed from the gaming floor. (Ord. 1993-11 §1)

**Sec. 4-5-60. Late charges.**

- (a) In the event that any gaming licensee fails to pay the gaming device fee in a timely fashion, a late charge will be assessed against the gaming licensee in accordance with the following schedule:
  - (1) Payments received on the 11th through 15th day after the due date provided herein shall be assessed a late fee of five dollars (\$5.00) per day per device.
  - (2) Gaming device fees paid on the 16th through 20th day after the due date provided for herein shall be assessed a late charge of ten dollars (\$10.00) per day per device.

(3) Payments made on the 21st day after the due date provided for herein, or thereafter, shall be assessed a late charge of twenty dollars (\$20.00) per day, per device.

(b) Any partial payments shall be applied as full payment for the number of devices determined by dividing the partial payment by the then-existing gaming device fee and rounded to the nearest whole number that are covered. The late charge will be assessed on the remaining devices for which a gaming device fee has not been paid.

(c) The late charge shall be submitted with the payment of the gaming device fee.

(d) In addition to the other penalties set forth herein, in the event that any gaming licensee fails to pay the gaming device fee within thirty (30) days from its due date, the City Council may, in its sole and subjective discretion, institute procedures for the revocation of the business license for the gaming licensee. Notice of the revocation proceedings will be sent to the gaming licensee and a hearing will be held not less than ten (10) nor more than thirty (30) days from the date of the notice of hearing sent to the gaming licensee. The notice shall be sent to the gaming licensee at the premises as set forth herein.

(e) In the event that the late charges and any delinquent gaming device fees are not paid on or before the date of the hearing, the City Council may hold said hearing and may elect to terminate the business license.

(f) Nothing contained herein shall be deemed a limitation of the remedies available to the City; and, in addition to the late charges, a summons may issue to enforce the misdemeanor provisions of this Article. (Ord. 1993-9 §1; Ord. 2007-04 §1)

#### **Sec. 4-5-70. Penalties.**

(a) In the event that any gaming licensee fails to make the gaming device fee payment in a timely fashion, or is suspected of providing false or misleading information to the City Clerk concerning the gaming device fee, notice thereof shall be sent by certified mail, return receipt requested, to the address supplied by the gaming licensee and by posting the notice on the premises in a conspicuous location. Service of the notice shall be deemed complete three (3) days after mailing and posting in the prescribed manner.

(b) In the event that the payment is not received within ten (10) business days from the date of the notice, in the event of nonpayment of the fee, or if the gaming licensee does not schedule a hearing before City Council in the event of false or misleading information within ten (10) business days from the date of the notice, then the gaming license and business license issued by the City shall immediately cease and terminate and the premises shall no longer be allowed to be used for gaming purposes; the premises shall not be considered for a new gaming license for a period of twelve (12) months from the end of said ten-day period, unless operated under a new gaming licensee unrelated, either directly or indirectly, to the gaming licensee failing to make the payments; and the gaming devices located upon the premises shall immediately, and forthwith, cease being used for any purposes.

(c) If the defaulting gaming licensee desires to continue operating the gaming establishment, all gaming device fees in arrears and all current gaming device fees, plus interest at the statutory rate,

shall be paid prior to such gaming licensee recommencing operations. In addition, any past due amount for gaming device fees shall be deemed to be a first and prior lien against the real and personal property located at the premises, which lien may be foreclosed as provided for by statute, and which amount shall bear interest at the statutory rate.

(d) The failure to pay the gaming device fee in a timely fashion or supplying materially false or misleading information concerning this Article to the City Clerk shall also be deemed to be a misdemeanor. The owner of the premises may be punished in accordance with the provisions of Section 1-4-20 of this Code. Each day that such violation exists after the ten-business-day notice period shall be deemed a separate offense. (Ord. 1991-32 §V; Ord. 2007-04 §1)

## **ARTICLE 6**

### **Telephone Occupation Tax**

#### **Sec. 4-6-10. Levy of tax.**

There is hereby levied on and against telephone utility companies operating within the City a tax on the occupation and business of maintaining a telephone exchange and lines connected therewith in the City and of supplying local exchange telephone service to the inhabitants of the City. The annual amount of tax levied hereby shall be three dollars (\$3.00) per telephone account, as determined by the number of telephone accounts within the City limits on December 31 of each and every year. (Ord. 1978-6 §1; Ord. 2007-04 §1)

#### **Sec. 4-6-20. Filing statement.**

Within thirty (30) days after the close of the fourth quarter of each year, each telephone utility company subject to this Article shall file with the City Clerk, in such form as the City Clerk may require, a statement showing the total telephone accounts for which local exchange telephone service was provided within the corporate limits of the City at the close of said fourth quarter. (Ord. 1978-6 §3; Ord. 2007-04 §1)

#### **Sec. 4-6-30. Failure to pay.**

If any telephone utility company subject to the provisions of this Article shall fail to pay the taxes as herein provided, the full amount thereof shall be due and collected from such company; and the same, together with an additional ten percent (10%) of the amount of taxes due, shall be and hereby is declared to be a debt due and owing from such company to the City. The City Attorney, upon direction of the City Council, shall commence and prosecute to final judgment and determination of any court of competent jurisdiction an action at law to collect said debt in the name of the People of the State of Colorado. (Ord. 1978-6 §4; Ord. 2007-04 §1)

#### **Sec. 4-6-40. Inspection of records.**

The City, its officers, agents or representatives shall have the right at all reasonable hours and times to examine the books and records of the telephone utility company which are subject to the provisions of this Article, and to make copies of the entries or contents thereof. (Ord. 1978-6 §6)

**Sec. 4-6-50. Local purpose.**

The tax herein provided is upon occupations and businesses in the performance of local functions and is not a tax upon those functions relating to interstate commerce. It is expressly understood that none of the terms of this Article are construed to mean that any telephone utility company is issued a franchise by the City. (Ord. 1978-6 §7)

**Sec. 4-6-60. Tax in lieu of other taxes.**

The tax provided herein shall be in lieu of all other payments by or fees and taxes on any telephone utility company subject to the provisions of this Article, other than ad valorem taxes, and in addition shall be in lieu of any free service furnished to the City by any said telephone utility company. (Ord. 1978-6 §8; Ord. 2007-04 §1)

**Sec. 4-6-70. Penalty.**

If any officer, agent or manager of a telephone utility company which is subject to the provisions of this Article shall fail, neglect or refuse to make or file the annual statement of accounts as required in Section 4-6-20 above, said officer, agent, manager or person shall, on conviction thereof, be punished in accordance with the provisions of Section 1-4-20 of this Code; provided that each day after said statement becomes delinquent during which said officer, agent, manager or person fails, neglects or refuses to make and file such statement shall be considered a separate and distinct offense. (Ord. 1978-6 §5; Ord. 2007-04 §1)

**ARTICLE 7**

**Enhanced Sales Tax Incentive Program**

**Sec. 4-7-10. ESTIP established.**

There is hereby established within the City of Cripple Creek an Enhanced Sales Tax Incentive Program ("ESTIP"). (Ord. 2011-02 §1)

**Sec. 4-7-20. Purpose.**

The purpose of the Enhanced Sales Tax Incentive Program created hereby is to encourage the establishment and/or substantial expansion of retail sales tax generating businesses within the City, thereby stimulating the economy of and within the City, thereby providing employment for residents of the City and others, thereby further expanding the goods available for purchase and consumption by residents of the City, and further increasing the sales taxes collected by the City, which increased sales tax collections will enable the City to provide expanded and improved municipal services to and for the benefit of the residents of the City, while at the same time providing public or public-related improvements at no cost, or at deferred cost, to the City and its taxpayers and residents. (Ord. 2011-02 §1)

**Sec. 4-7-30. Definitions.**

As used in this Article and all sections thereof, the following phrases shall have the following meanings:

*Enhanced sales tax* means the amount of sales tax collected by the City over and above a base amount negotiated by, and agreed upon by, the applicant and the City, and which amount is approved by the City Council, which base amount shall never be lower than the amount of sales tax collected by the City at the property in question in the previous twelve (12) months plus a reasonable and agreed upon percentage of anticipated increase in sales tax or, in the case of a newly established business, an amount which represents the good faith determination by the applicant and the City as to the amount of sales tax which could be generated from the new business without the participation by the applicant in the ESTIP created hereunder.

*Owner or proprietor* means the record owner or operator of an individual business or, in the case of a shopping center, the owner of the real property upon which more than one (1) business is operated, provided that said owner (whether an individual, corporation, partnership or other entity) is the owner or lessor of the individual businesses operated thereon. (Ord. 2011-02 §1)

**Sec. 4-7-40. Participation in ESTIP.**

Participation in ESTIP shall be based upon approval by the City Council, exercising its legislative discretion in good faith. Any owner or proprietor of a newly established or proposed retail sales tax generating business or location, or the owner or proprietor of an existing retail sales tax generating business or location which wishes to expand substantially, may apply to the City for inclusion within the ESTIP, provided that the new or expanded business is reasonably likely to generate enhanced sales taxes of at least ten thousand dollars (\$10,000.00) in the first year of operation. (Ord. 2011-02 §1)

**Sec. 4-7-50. Agreement.**

Approval by the City Council of an agreement implementing this ESTIP shall entitle the successful applicant to share in enhanced sales taxes derived from applicant's property or business in an amount which shall not in any event exceed fifty percent (50%) of the enhanced sales taxes; provided, however, that applicant may use said amounts only for public and/or public-related purposes, such as those specified herein and which are expressly approved by the City Council at the time of consideration of the application. The time period in which said enhanced sales taxes may be shared shall not commence until all public or public-related improvements are completed, and shall be limited by the City Council, in its discretion, to a specified time, or until a specified amount is reached. (Ord. 2011-02 §1)

**Sec. 4-7-60. Uses.**

The uses to which said shared enhanced sales taxes may be put by an applicant shall be strictly limited to those which are public or public-related in nature. For the purposes of this Article, *public or public-related purposes* shall mean public improvements, including but not limited to streets, sidewalks, curbs, gutters, pedestrian malls, street lights, drainage facilities, landscaping, decorative structures, statuary, fountains, identification signs, traffic safety devices, bicycle paths, off-street

parking facilities, benches, restrooms, information booths, public meeting facilities, building upgrades, historical restoration, construction or other activities that will generate additional employment opportunities and/or sales tax revenues, and all necessary, incidental and appurtenant structures and improvements, together with the relocation and improvement of existing utility lines, and any other improvements of a similar nature which are specifically approved by the City Council upon the City Council's finding that said improvement are public or public-related improvements or will serve the purposes set forth in Section 4-7-20 of this Article. (Ord. 2011-02 §1)

**Sec. 4-7-70. Increment.**

The base figure for sales taxes shall be divided into four (4) quarterly increments, which increments are subject to agreement between the parties and approval by the City Council, and which increments shall be reasonably related to the average quarterly performance of the business or property in question, or similar businesses in the area (i.e., adjust for seasonal variations). If in any quarter the agreed-upon base figure is not met by the applicant so as to create enhanced sales tax for that quarter, no funds shall be shared with the applicant for said quarter and no increment shall be shared until that deficit, and any other cumulative deficit, has been met, so that at the end of any twelve-month cycle, funds in excess of those enhanced sales taxes agreed to be shared shall not have been shared with any applicant. (Ord. 2011-02 §1)

**Sec. 4-7-80. Existing sales tax not impaired.**

It is an overriding consideration and determination of the City Council that existing sources of City sales tax revenues shall not be used, impaired or otherwise affected by this ESTIP. Therefore, it is hereby conclusively determined that only enhanced sales taxes generated by the properties described in an application shall be subject to division under this ESTIP. It shall be the affirmative duty of the Finance Director to collect and hold all such enhanced sales taxes and to provide an accounting system which distinguishes enhanced sales tax funds from sales taxes generated by and collected from the other sales tax generating uses and businesses within the City and which accomplishes the overriding purpose of this Article. It is conclusively stated by the City Council that this Article would not be adopted or implemented but for the provisions of this Section. (Ord. 2011-02 §1)

**Sec. 4-7-90. Criteria for approval.**

Approval of an application for inclusion in this ESTIP shall be given by the City Council, at a public hearing held as a portion of a regularly scheduled City Council meeting, based upon the following criteria:

- (1) The amount of enhanced sales taxes which are reasonably to be anticipated to be derived by the City through the expanded or new retail sales tax generating business;
- (2) The public benefits which are provided by the applicant through public works, public improvements, additional employment for the City residents, etc;
- (3) The amount of expenditures which may be deferred by the City based upon public improvements to be completed by the applicant;

(4) The conformance of the applicant's property or project with the comprehensive plan and zoning ordinances of the City;

(5) The need for the proposed business; and

(6) The agreement required by Section 4-7-100 below having been reached, which agreement shall contain and conform to all requirements of said Section.

Approval shall be by motion adopted by a majority of the entire City Council. (Ord. 2011-02 §1)

**Sec. 4-7-100. Terms of agreement.**

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

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

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

(3) A statement that this is a personal agreement which is not transferable and which does not run with the land;

(4) That this agreement shall never constitute a debt or obligation of the City within any constitutional or statutory provision;

(5) The base amount which is agreed upon by quarter, and the fact that if, in any quarter as specified, sales taxes received from the property do not at least equal said amount, that there shall be no sharing of funds for said quarter;

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

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

(8) An affirmative statement that the obligations, benefits, and/or provisions of this agreement may not be assigned in whole or in any part without the expressed authorization of the City Council, and further that no third party shall be entitled to rely upon or enforce any provision hereof; and

(9) Any other provisions agreed upon by the parties and approved by the City Council. (Ord. 2011-02 §1)

**Sec. 4-7-110. Public purpose.**

The City Council has enacted this ESTIP as a joint benefit to the public at large and to private owners for the purpose of: providing the City with increased sales tax revenues generated upon and by properties improved as a result of this Program; increased employment opportunities in the City; public improvements being completed by private owners through no debt obligation being incurred on the part of the City; and allowing applicants an opportunity to improve properties which generate sales activities, which improvements make those properties more competitive in the marketplace and further provide to the applicant additional contingent sources of revenues for upgrading said properties. The City Council specifically finds and determines that creation of this ESTIP is consistent with the City's powers as a statutory municipal corporation, and that exercise of said powers in the manner set forth herein is in furtherance of public health, safety and welfare. Notwithstanding any provision hereof, the City shall never be a joint venture in any private entity or activity which participates in this ESTIP, and the City shall never be liable or responsible for any debt or obligation of any participant in this ESTIP. (Ord. 2011-02 §1)