

CHAPTER 4

Revenue and Finance

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ARTICLE 1

Use Tax – Storing, Using, Consuming Building and Construction Materials – Registered Vehicles

Sec. 4-1. Purpose.

The purpose of this article is to impose a use tax for the privilege of storing, using or consuming in the city any construction and building materials, and motor or other vehicles on which registration is required, purchased at retail, and in accordance with Article 26, Title 39, C.R.S. (Prior code 3.04.010)

Sec. 4-2. Definitions.

Except as otherwise expressly provided, the definitions or words used in this chapter shall be the same as those definitions found in Sections 102 and 201, Article 26, Title 39, C.R.S., and said definitions are incorporated in this chapter by this reference; except that the references to the state, where such references are to the geographic extent of the taxing authority, mean the city. (Prior code 3.04.020)

Sec. 4-3. Imposition.

Any person who builds, constructs, reconstructs, alters, expands, modifies or improves any building, dwelling, or other structure or improvement to any real property located within the city and who purchases the lumber, fixtures or any other building materials and supplies used therefor from any source outside of the corporate limits of the city, or any resident of the city who purchases any motor vehicle or any other vehicle for which registration is required under the laws of the state, either new or used, outside the corporate limits of the city, shall be liable for the corporate limits of the city, shall be liable for the payment of a tax of three percent (3%) of the gross purchase price thereof. (Prior code 3.04.030; Ord. 313 §1, 1986)

Sec. 4-4. Motor vehicle taxes – Collection contracts authorized.

The city council is authorized to contract and enter into agreements with the executive director of the department of revenue and the Weld County clerk and recorder for the collection of the use tax imposed in this chapter upon motor vehicles, and pursuant to the provisions of Subpart (3) (6), Part 106, Article 26, Title 39, C.R.S. (Prior code 3.04.040)

Sec. 4-5. Building and construction materials tax – Amount – Payment.

The tax imposed on the privilege of storing, using or consuming in the city any construction and building materials, purchased at retail, shall be paid to the city clerk at the time building permits are issued for the building and construction. The payment of the tax shall be the responsibility of the person applying for the building permit. For the purposes of this section, the retail purchase price of the construction and building materials to be stored, used or consumed as part of any project shall be deemed to be an amount equal to fifty percent (50%) of the total valuation of the construction project as approved by the building official and state on the building permit issued. Accordingly, the calculation of said use tax shall be as follows: Three percent (3%) (use tax) of fifty percent (50%) of the total valuation of the construction project as approved by the building official and stated on the building

permits equals the amount of tax to be paid. For transactions consummated on or after January 1, 1986, the city's use tax shall not apply to the storage of construction and building materials. (Prior code 3.04.050; Ord. 313 §2, 1986)

Sec. 4-6. Accordance with Department of Revenue schedules required.

Imposition of the tax on such personal property subject to this use tax shall be in accordance with schedules as set forth in the rules and regulations of the Department of Revenue and in accordance with regulations enacted by separate ordinance of the city. (Prior code 3.04.060)

Sec. 4-7. Taxable property – Application of Colorado Revised Statutes.

The tangible personal property taxable by this chapter shall be the same as the tangible property taxable pursuant to Part 109, Article 2, Title 29, C.R.S. (Prior code 3.04.070)

Sec. 4-8. Exemptions.

For the purpose of this chapter, the use tax imposed under this chapter shall not apply:

(1) To the storage, use or consumption of any tangible personal property the sale of which is subject to the retail sales tax imposed by the city;

(2) To the storage, use or consumption of any tangible personal property 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;

(3) To the storage, use or consumption of any tangible personal property brought into the city by a nonresident thereof for his or her own storage, use or consumption while temporarily within the city;

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

(5) Use Tax-Credit for Sales of Use Taxes Previously Paid to Another Municipality. For transactions consummated on or after January 1, 1986, the city's use tax shall not apply to the storage, use or consumption of any article of tangible personal property the sale or use of which has already been subjected to a legally imposed sales or use tax of another statutory or home rule municipality equal to or in excess of three percent (3%). A credit shall be granted against the city's use tax with respect to a person's storage, use or consumption in the city of tangible personal property purchased by him in a previous statutory or home rule municipality. The amount of the credit shall be equal to the tax paid by him or her by reason of the imposition of a sales or use tax of the previous statutory or home rule municipality on his or her purchase or use of the property. The amount of the credit shall not exceed three percent (3%).

(6) To the storage, use or consumption of tangible personal property and household effects acquired outside the city and brought into it by a nonresident acquiring residency;

(7) To the storage, or use of a motor 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 motor vehicle outside the city.

(8) To the storage, use or consumption of any construction and building materials and motor and other vehicles on which registration is required, if a written contract for the purchase thereof was entered into prior to the effective date of this chapter.

(9) To 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 any time prior to the effective date of this chapter. (Prior code 3.04.080; Ord. 313 §3, 1986)

Sec. 4-9. Nonpayment – Property lien.

If any tax as determined under Section 4-5 is not paid within ten (10) days after it is due, the city clerk shall issue a notice, setting forth the name of the taxpayer, the amount of tax, the date of the accrual thereof, and that the city claims a first and prior lien therefor on the real and personal property of the taxpayer, except as to preexisting liens of a bona fide mortgage, pledgee, judgment creditor or purchaser whose right has attached prior to the filing of the notice as provided in this article. This notice shall be filed in the office of the clerk and recorder of any county in this state in which the taxpayer owns real or personal property, and such notice shall create a lien as set forth in this section on such property in that county and constitute a notice thereof. (Prior code 3.04.090)

Sec. 4-10. Amendment.

The city council may amend, alter or change the ordinance codified in this chapter, except as described in this chapter, 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 3.04.100)

Sec. 4-11. Appeal procedure.

For transactions consummated on or after January 1, 1986, the taxpayer may elect a state hearing on the city clerk's final decision on a deficiency notice or claim for refund within thirty (30) days after the mailing of such final decision pursuant to procedures set forth in Section 29-2-106.1, C.R.S. (Prior code 3.04.120; Ord. 313 §4, 1986)

Sec. 4-12. Use tax allocation.

The use tax generated by implementation of the provisions of this Article 1 shall be allocated as follows:

- (1) Forty-five percent (45%) to the general fund of the city;

(2) Forty-five percent (45%) to a capital improvement fund for streets, specifically for construction, repair and maintenance of streets together with equipment necessary for such construction, repair and maintenance;

(3) Ten percent (10%) to a capital equipment fund for equipment purchases necessary for the city to properly carry out its functions. (Prior code 3.04.130; Ord. 313 §5, 1986; Ord. 610 §1, 2003)

Secs. 4-13—4-24. Reserved.

ARTICLE 2

Sales Tax

Sec. 4-25. Purpose.

The purpose of this chapter is to impose a sales tax on the sale of the tangible personal property at retail, or the furnishing of services, as provided in Section 29-2-105, C.R.S., upon every retailer in the city. (Prior code 3.08.010; Ord. 374 §1, 1990)

Sec. 4-26. Definitions.

For the purposes of this chapter, the definitions of words contained in this chapter shall be as defined in Section 39-26-102, C.R.S., and said definitions are incorporated in this chapter by this reference. (Prior code 3.08.020)

Sec. 4-27. Licenses.

(a) It is unlawful for any person to engage in the business of selling tangible personal property at retail without first having obtained a license therefor. The license shall be granted and issued by the city clerk and shall be in force and effect until December 31 of the year in which it is issued, unless sooner revoked.

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

(c) It is the duty of each licensee on or before January 1 of each year during which this chapter remains in effect to obtain a renewal of the license if the licensee remains in the retail business or liable to account for the tax provided in this chapter, but nothing contained in this chapter shall be construed to empower the city clerk to refuse the renewal except revocation for cause of the licensee's prior license.

(d) In case business is transacted at one (1) or more separate premises by one (1) person, a separate license for each place of business is required.

(e) Any person engaged in the business of selling tangible personal property at retail in the city, without having secured a license therefor, except as specifically provided in this chapter, shall be guilty of a violation of this chapter.

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

(g) No license shall be required for any person engaged exclusively in the business of selling commodities which are exempt from taxation under this chapter.

(h) For each license issued or renewed under this chapter, a fee shall be paid in the amount established from time to time by resolution of the city council. (Prior codes 3.08.030 and 5.04.139; Ord. 319 §1, 1989; Ord. 409 §1, 1991)

Sec. 4-28. General provisions and exemptions.

(a) For the purpose of collection, administration and enforcement of this chapter by the Director of Revenue, the provisions of Section 39-26-114, C.R.S., shall be deemed applicable and incorporated into this chapter.

(b) The amount subject to tax under this chapter shall not include the State Sales and Use Tax imposed by Section 39-26-101, C.R.S.

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

(d) The gross receipts from sales shall include delivery charges, when such charges are subject to the State Sales and Use Tax imposed by Section 39-26-101, C.R.S., regardless of the places 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 this sales tax shall be determined by the provisions of Section 39-26-101, C.R.S., and by the rules and regulations promulgated by the 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 city sales tax when such sales meet both of the following conditions:

(1) The purchaser is a nonresident of, or has its principal place of business outside of the city; and

(2) The personal property is registered outside the limits of the city under laws of the state.

(g) The vendor (retailer) shall be entitled as collecting agent of the city to withhold a collection fee in the amount of three and one-third percent (3 $\frac{1}{3}$ %) from the total amount due by vendor to the city each month. In the event vendor is delinquent in remitting the tax for the city, such vendor shall not be entitled to a vendor's fee.

(h) For transactions consummated on or after January 1, 1986, the city's sales tax shall not apply to the sale of construction and building materials, as the term is used in Sec. 29-2-109, C.R.S., if such

materials are picked up by the purchaser and if the purchaser of such materials presents to the retailer a building permit or other documentation acceptable to the city evidencing that a local use tax has been paid or is required to be paid. (Prior code 3.08.040; Ord. 313 §6, 1986)

Sec. 4-29. Schedule.

(a) There is imposed on all sales of tangible personal property at retail or the furnishing of services as provided in Section 39-26-104, C.R.S., a tax equal to three percent (3%) of the gross receipt. The tangible personal property and services taxable by this chapter shall be the same as the tangible personal property and services taxable pursuant to Section 39-26-104, C.R.S. The imposition of the tax on individual sales shall be in accordance with schedules set forth in the rules and regulations promulgated by the Department of Revenue or by separate ordinance of the city. If any vendor, during any reporting period, collects as a tax an amount in excess of three percent (3%) of its total taxable sales, such vendor shall remit to the Director of Revenue the full amount of the tax imposed in this chapter and also the excess.

(b) The collection, administration and enforcement of this sales tax shall be performed by the Director of Revenue of the state in the same manner as the collection, administration and enforcement of the Colorado State Sales Tax. The provisions of Section 39-26-101, C.R.S., as amended hereafter, and all rules and regulations promulgated by the Director of Revenue shall govern the collection, administration and enforcement of the sales tax imposed by this chapter.

(c) The tax imposed by this chapter shall be in accordance with the following schedule:

(1) Amount of Sale – Tax

\$.01 including \$.18 – No Tax

\$.19 including \$1.18 – \$.03

(2) On sales in excess of one dollar eighteen cents (\$1.18) the tax shall be three cents (\$.03) on each full dollar of the sales price, plus the tax shown in the schedule set forth in this subsection, for the applicable fractional part of a dollar of each such sales price. (Prior code 3.08.050; Ord. 313 §7, 1986; Ord. 374 §1, 1990; Ord. 478 §1, 1996; Ord. 627 §1, 2003)

Sec. 4-30. Effective date.

The ordinance codified in this chapter took effect July 1, 1973 and applies to all retail sales, unless exempt, made on or after that date. (Prior code 3.08.080)

Sec. 4-31. Sales tax – Credit for sales or use taxes previously paid to another municipality.

For transactions consummated on or after January 1, 1986, the city's sales tax shall not apply to the sale of tangible personal property at retail or the furnishing of services if the transaction was previously subjected to a sales or use tax lawfully imposed on the purchaser or user by another statutory or home rule municipality equal to or in excess of three percent (3%). 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 statutory or home rule municipality. The amount of the credit shall not exceed three percent (3%). (Prior code 3.08.090; Ord. 313 §8, 1986)

Sec. 4-32. Sales tax allocation.

The sales tax generated by implementation of the provisions of this article shall be allocated as follows:

(1) Forty-five percent (45%) to the general fund of the city;

(2) Forty-five percent (45%) to a capital improvement fund for streets, specifically for construction, repair and maintenance of streets together with equipment necessary for such construction, repair and maintenance.

(3) Ten percent (10%) to a capital equipment fund for equipment purchases necessary for the city to properly carry out its functions. (Prior code 3.08.100; Ord. 313 §9, 1986; Ord. 610 §2, 2003)

Secs. 4-33—4-59. Reserved.

ARTICLE 3

Admissions Tax

Sec. 4-60. Legislative intent.

The city council intends that every person who pays to gain admission to any place or event in the city that is open to the public shall pay, and every person, whether owner, lessee or operator, who charges or causes to be charged admission to any such place or event shall collect, the tax imposed by this article. (Ord. 477 §1, 1996)

Sec. 4-61. Imposition and rate of tax.

On and after January 1, 1997, there is levied, and shall be paid and collected, an excise tax of three percent (3%) on the price paid to gain admission to any place or event in the city that is open to the public. (Ord. 477 §1, 1996)

Sec. 4-62. Liability for tax.

(a) It shall be unlawful for any person who pays to gain admission to any place or event in the city that is open to the public to fail to pay, and it shall be unlawful for any person, whether owner, lessee or operator, who charges or causes to be charged admission to any place or event in the city that is open to the public to fail to collect the tax levied by this article. If an owner or operator of a facility leases or rents such facility to another party who conducts an event open to the public in such facility, such owner or operator is not liable for collecting and remitting the tax if the party to whom the facility is leased or rented is, at the time of the leasing or rental, licensed to collect and remit the tax.

(b) The burden of proving that any transaction is not subject to the tax imposed by this article is upon the person upon whom the duty to collect the tax is imposed.

(c) Should a dispute arise between the purchaser and the person collecting the tax, as to whether any sale is exempt from taxation hereunder, such person shall collect and such purchaser shall pay such

tax; provided, however, that the purchaser thereafter may apply to the city clerk, pursuant to rules and regulations established by the city council, for a refund of such tax. Such application shall be made within sixty (60) days after the date of the sale on which the exemption is claimed. (Ord. 477 §1, 1996; Ord. 604 §1, 2002)

Sec. 4-63. Taxes collected are held in trust.

All sums of money paid by a person to gain admission to any place or event in the city that is open to the public as the admissions tax imposed by this article are public monies that are the property of the city. The person required to collect and remit the admissions tax shall hold such monies in trust for the sole use and benefit of the city until paying them to the city. (Ord. 477 §1, 1996)

Sec. 4-64. Exempt transactions.

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

(1) The United States Government and the state of Colorado, its departments and institutions, and the political subdivisions thereof including the city, when acting in their governmental capacities and performing governmental functions and activities;

(2) Religious, charitable and quasi-governmental organizations, but only in the conduct of their regular religious, charitable and quasi-governmental capacities, and only if such organizations have obtained an exempt institution license from the city, issued pursuant to rules and regulations established by the city council, and if such organizations furnish a copy of the exempt institution license to the person who charges or causes to be charged admission to any place or event in the city that is open to the public;

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

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

(5) Any admission fee paid or charged to gain entry into any event sponsored or conducted by the city. (Ord. 477 §1, 1996)

Sec. 4-65. Licensing and reporting procedure.

(a) It shall be unlawful for any owner, operator or person who has the duty to collect the tax imposed by this article to fail to obtain a license to collect the tax, to fail to report such taxes on forms prescribed by the city or to fail to remit such taxes to the city within the following time periods:

(1) For seasonal events or regularly continuing or recurring events including, without limitation, showing films in motion picture theaters, on or before the twentieth day of the month for the

preceding month or months under report, unless the city clerk, after a specific, advance request in writing, approves a different reporting period pursuant to rules and regulations of the city council.

(2) For single, noncontinuing or nonrecurring events, including, without limitation, a single performance of a concert, within five (5) calendar days of the performance or event, unless the city clerk, after specific, advance request in writing, allows a longer time pursuant to rules and regulations of the city council.

(b) The city clerk shall issue an admissions tax license to each person who pays the fee prescribed and completes an application therefor, stating the name and address of the person and the business and such other information as the city may require. The license shall be numbered, show the name, residence, place and character of the business of the licensee, and be conspicuously posted in the place of business for which it is issued. No admissions tax license is transferable. The license is effective until December 31 of the year of issue, unless sooner revoked.

(c) The fee for each license under this article shall be as established from time to time by resolution of the city council.

(d) The license is valid so long as the business remains in continuous operation, or unless the license is canceled by the licensee or revoked by the city.

(e) Whenever the business or the assets of a person required to be licensed under this article 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 admissions tax license.

(f) The license may be revoked by the city in the manner provided in Section 6-11.

(g) The city clerk may require a deposit, in an amount not to exceed the amount reasonably estimated by the city clerk to be the amount of taxes due under this article, from persons applying for an admissions tax license for a single, noncontinuing or nonrecurring event. (Ord. 477 §1, 1996; Ord. 604 §2, 2002)

Sec. 4-66. Maintenance and preservation of tax returns, reports and records.

(a) It is the duty of every person required to collect and remit the admissions tax to keep and preserve suitable records and such other books or accounts as may be necessary to determine the amount of tax for the collection of which he or she is liable under this article. It is the duty of every such person to keep and preserve for a period of three (3) years all such records, which shall be open for examination and audit at any time by the city treasurer or the treasurer's duly authorized agent, and such person shall produce such records at city hall upon request.

(b) It shall be unlawful for any person required to make a return or file a report under this article to fail to preserve such reports. It shall be unlawful for any person to neglect or fail to preserve such records required by this section, or to fail or refuse to produce such records for city inspection upon request. (Ord. 477 §1, 1996; Ord. 604 §3, 2002)

Sec. 4-67. Deficiencies.

(a) In any case in which a person required to make a return under this article fails to file a return or pay over the tax within the time required by this article, but without the intent to defraud, there shall be added as a penalty ten percent (10%) of the total amount of the deficiency, but not less than ten dollars (\$10.00), and interest in such cases shall be collected at the rate of one percent (1%) each month, or fraction thereof, on the amount due on the deficiency from the time the return was due to the date the tax is paid, which interest and addition shall become due and payable no later than twenty (20) days after written notice and demand by the city clerk, and such interest and addition shall be assessed, collected and paid in the same manner as the tax itself.

(b) If any part of a deficiency is due to fraud with the intent to evade the tax, there shall be added fifty percent (50%) of the total amount of the deficiency, and in such case the whole amount of the tax unpaid, including the additions, shall become due and payable no later than twenty (20) days after written notice and demand by the city clerk, and an additional one percent (1%) each month, or fraction thereof, on said amounts shall be added from the date the return was due until paid, and such interest and addition shall be assessed, collected and paid in the same manner as the tax itself. (Ord. 477 §1, 1996)

Sec. 4-68. Refusal to make return.

(a) It shall be unlawful for any person to neglect or refuse to make a return in payment of taxes as required by this article. If any person neglects or refuses to make a return in payment of taxes as required by this article, the city clerk shall make an estimate, based upon such information as may be available, of the amount of the taxes due for the period for which the taxpayer is delinquent; and upon the basis of such estimated amount, the city clerk shall compute and assess in addition thereto a penalty equal to ten percent (10%) thereof, together with interest on such delinquent taxes at the rate of one percent (1%) per month from the date when due.

(b) Promptly thereafter, the city clerk shall give to the delinquent taxpayer written notice of such estimated taxes, penalty and interest, which notice shall be served personally or by first class mail.

(c) Such estimated amounts shall thereupon become an assessment, and such assessment shall be final and due and payable from the taxpayer to the city twenty (20) days from either the date of personal service of the notice and demand or the date of mailing of the notice and demand; provided, however, that within said twenty-day period the delinquent taxpayer may petition the city clerk in writing for a revision, modification or cancellation of such assessment, and, further, said taxpayer shall, within such twenty-day period, furnish the clerk a written statement of the facts and reasons for the requested changes in the assessment and otherwise comply with any applicable rules and regulations promulgated by the city council relating to petitions and hearings. The filing of a petition shall not toll the accrual of interest on the amount of taxes due.

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

(e) Thereupon the city clerk shall modify such assessment in accordance with the facts submitted, which facts the city clerk deems correct. Such assessment shall be considered the final order of the city and may be reviewed under Rule 106(a)(4) of the Colorado Rules of Civil Procedure as provided in this

article, provided that the taxpayer shall give written notice to the city clerk of such intention within five (5) days after receipt of the final order or assessment. (Ord. 477 §1, 1996; Ord. 604 §4, 2002)

Sec. 4-69. Violations and penalties.

It shall be unlawful to violate any provision of this article. Any person, whether the owner, lessee or operator of a place or event subject to this article, who violates any provision of this article shall be subject to the penalty provisions set forth in section 1-70 of this code. In addition, when imposing a penalty for violation of the obligation to collect or remit taxes due pursuant to this article, the court may order restitution in favor of the city in the amount of unpaid taxes, which amount may be estimated by the city pursuant to section 4-68. (Ord. 477 §1, 1996; Ord. 604 §5, 2002)

Sec. 4-70. Amendments; rules and regulations.

(a) The city council may make such amendments to this article as it deems necessary without voter approval. However, no amendment increasing the rate of tax provided for herein shall be effective until approved by the registered voters of the city voting thereon at an election.

(b) The city council may adopt such rules and regulations as it deems necessary or desirable for the proper administration of this article. (Ord. 477 §1, 1996)

Secs. 4-71—4-99. Reserved.

ARTICLE 4

Development Impact Fees and Funds

Sec. 4-100. Short title, authority and applicability.

(a) Title. This article shall be known and may be cited as the *Dacono, Colorado Impact Fee Ordinance* or *Impact Fee Ordinance*.

(b) Authority. The city has the authority to adopt this article pursuant to the city's general police powers, Sections 29-20-101, 31-23-101 and 29-1-801 et seq., C.R.S., and other relevant laws of the state.

(c) Application. This article shall apply to the development of any new residential dwelling unit within the territorial limits of the city, except as exempted pursuant to the provisions hereof. This article shall not apply to any development for which the applicant has submitted a complete building permit application prior to the January 1, 2005, the effective date of the ordinance enacting this article. (Ord. 641 §2, 2004)

Sec. 4-102. Intent.

(a) Compliance with laws. The intent of this article is to comply with the provisions of applicable laws concerning the imposition of impact fees, including but not limited to Section 29-20-104.5, C.R.S., and the provisions of this article shall be construed and enforced in accordance with such laws.

(b) Development bears proportionate share of costs of capital facilities. The intent of this article is to ensure that new development bears a proportionate share of the cost of capital facilities, as defined herein. It is the further intent of this article that new development pay for its fair share of the costs of such capital facilities through the impact fees imposed in this article.

(c) Fee no more than proportionate cost. It is the intent of this article that the impact fees imposed on new development are no greater than necessary to defray the impacts directly related to proposed new development, such impact being the costs of capital facilities to accommodate new development.

(d) No intent to remedy existing deficiencies. It is not the intent of this article that impact fees be used to remedy any deficiency in city capital facilities existing on January 1, 2005, the effective date of the ordinance enacting this article.

(e) No intent to commingle funds. It is not the intent of this article that any monies collected from any impact fee deposited in an impact fee trust account ever be commingled with monies from a different trust account, ever be used for capital facilities that are different from those for which the fee was paid or ever be used to maintain, rehabilitate or operate existing capital facilities. (Ord. 641 §2, 2004)

Sec. 4-104. Definitions.

For the purposes of this article, unless the context clearly requires a different meaning, the following terms shall have the following meanings:

Building permit means a building permit issued by the chief building official permitting the construction of a building or structure within the city.

Capital facilities means any improvement or facility that (a) is directly related to any service that the city is authorized to provide; (b) has an estimated useful life of five (5) years or longer; and (c) is required by general policy of the city pursuant to a resolution or ordinance. The phrase *capital facilities*, as used in this article, is limited to the following categories, all of which are as further defined herein and in the *Impact Fee Analysis*: regional transportation capital facilities, regional storm drainage capital facilities, regional parks and trail and city hall capital facilities. No costs of vehicles or equipment are included within such capital facilities.

Commencement of impact-generating development means development that occurs upon the approval of a rezoning, a special review use permit, a preliminary subdivision plat, a final subdivision plat, a minor subdivision plat or the issuance of a building permit, whichever occurs first after January 1, 2005, the effective date of the ordinance enacting this article.

Complete application means an application that (a) has been submitted to and received by the planning department; (b) contains all information and submittal materials required by this code; and (c) has been determined in writing by city staff to be complete under the applicable provisions of this code.

Development means any construction of a new residential dwelling unit, any improvement or expansion of an existing structure which creates a new residential dwelling unit or any change in the use of land, which creates a new residential dwelling unit.

Development permit means any preliminary or final approval of an application for a rezoning, conditional or special use permit, subdivision, site plan or similar application for new construction.

Fee payer means a person commencing impact-generating development who is obligated to pay an impact fee in accordance with the terms of this article.

Fee schedule or impact fee schedule means the impact fees established by this article. The impact fee schedule is set forth as Appendix 4-A to this article and incorporated herein by reference.

Impact fees mean the fees established by this article for the following capital facilities: regional transportation (the transportation impact fee), regional storm drainage (the drainage impact fee), regional parks and trails (the regional parks and trails impact fee) and city hall capital facilities (new city hall impact fee).

Impact Fee Analysis means the *2004 Impact Fee Analysis* prepared by city staff and dated November 16, 2004 and all other additional materials prepared in connection with such analysis and this article.

Independent fee calculation study means a study prepared by a fee payer, calculating the cost of a capital facility for which an impact fee is imposed and which is required to serve the fee payer's proposed development, that is performed on an average cost (not marginal cost) methodology, uses the service units and unit construction costs stated in the impact fee analysis and is performed in compliance with the criteria established in this article.

Impact fee trust fund means the trust fund established by section 4-124 of this article, which includes individual accounts for the transportation impact fees, the drainage impact fees, the regional parks and trails impact fees and the new city hall impact fees. The impact fee trust fund is also called the *trust fund*.

Level of service (LOS) means a measure of the relationship between service capacity and service demand for capital facilities.

Regional transportation and regional transportation capital facilities means facilities that consist of all existing or planned arterial roads and related improvements as outlined in the city transportation master plan, including all engineering work, design studies, land surveys, alignment studies, permitting work, land costs and construction related to all necessary features for any road in the transportation master plan, undertaken to accommodate additional traffic resulting from new impact-generating development in the city. Such features that are part of the regional transportation capital facilities include but are not limited to: (a) new through lanes; (b) new bridges; (c) new drainage facilities in conjunction with new road construction; (d) traffic signals, including new and upgraded signalization; (e) curbs, gutters, sidewalks, medians and shoulders in conjunction with new road construction; (f) relocation of utilities to accommodate new road construction; (g) the construction and reconstruction of intersections; (h) the widening of existing roads; (i) bus turnouts; (j) acceleration and deceleration lanes; (k) interchanges; and (l) traffic control devices. For the purposes of this article, site-related improvements shall not constitute regional transportation capital facilities.

Site-related improvements means, except for arterial roads and interchanges that are regional transportation capital facilities, those transportation improvements that provide direct access to a development. Direct access improvements include but are not limited to the following: (a) driveways and streets leading to and from the development; (b) right-turn and left-turn lanes leading to those driveways and streets; (c) traffic control measures for those driveways; and (d) internal streets. Credit is not provided for site-related improvements under the terms of this article.

Successor-in-interest means a person who is conveyed a fee simple interest in land for which an impact fee is paid or a credit is approved pursuant to the terms of this article. (Ord. 641 §2, 2004)

Sec. 4-106. Development impact fees imposed.

(a) Obligation to pay and time of payment. After January 1, 2005, the effective date of the ordinance enacting this Article, any person who causes the commencement of impact-generating development shall be obligated to pay impact fees pursuant to the terms of this Article. The obligation to pay impact fees shall run with the land. The amount of the impact fees shall be determined in accordance with Section 4-110 below and paid to the City at the time and as a condition of issuance of a building permit for the new residential dwelling unit constituting development. If any credits are due pursuant to this Article, they shall be determined at that time.

(b) Fees promptly deposited into accounts in trust fund. All monies paid by a fee payer pursuant to this Article shall be identified as impact fees and shall be promptly deposited in the appropriate impact fee trust accounts established in Section 4-124 of this Article.

(c) Extension of previously issued development permit. If the fee payer is applying for an extension of a development permit issued previously, the impact fees required to be paid shall be the net increase between the impact fees applicable at the time of the current permit extension application and any impact fees previously paid pursuant to this Article.

(d) Permit for change in use, expansion, redevelopment, modification. If the fee payer is applying for a building permit to allow for a change of use or for the expansion, redevelopment or modification of an existing development, the impact fees required to be paid shall be based on the net increase in the impact fees for the new use as compared to the previous use. (Ord. 641 §2, 2004)

Sec. 4-108. Exemptions.

The following types of development shall be exempted from payment of the impact fees. Any claim for exemption shall be made no later than the time when the applicant applies for the first building permit. Any claim for exemption not made at, or before, that time shall be waived. The City Administrator or his or her designee shall determine the validity of any claim for exemption pursuant to the standards set forth below.

(1) Replacing existing residential unit with new unit. Reconstruction, expansion, alteration or replacement of a previously existing residential unit that does not create any additional residential dwelling units.

(2) Building after fire or catastrophe. Rebuilding the same number of dwelling units that were destroyed by fire or other catastrophe.

(3) Accessory structures. Construction of unoccupied accessory structures related to a residential dwelling unit.

(4) Previous payment of same amount of impact fees. Impact-generating development for which an impact fee was previously paid in an amount that equals or exceeds the impact fee that would be required by this Article.

(5) Government. Development by the federal, the state or the city government.

(6) Development for which complete application submitted prior to effective date. Development for which a complete application for a building permit was submitted prior to January 1, 2005, the effective date of the ordinance enacting this Article. The decision of the City with respect to completeness is final.

(7) Development without greater impact. Development for which the fee payer can demonstrate will create no greater impact over and above that existing prior to the proposed development. (Ord. 641 §2, 2004)

Sec. 4-110. Calculation of amount of impact fees.

(a) General. Except for those electing to pay impact fees pursuant to subsection 4-110(c) below, the impact fees applicable to and payable for the impact-generating development shall be as determined by the fee schedule set forth as Appendix 4-A of this Chapter. The impact fee schedule set forth in Appendix 4-A is based on the impact fee analysis. It applies to all residential land use development for new residential dwelling units and is intended to defray the projected impacts caused by proposed new development on capital facilities.

(b) Annual adjustment of fees to reflect effects of inflation. The impact fees shown in the impact fee schedule shall be adjusted annually to reflect the effects of inflation on those costs for capital facilities. Commencing on January 1, 2006 and on January 1 of each following year unless and until the fees in Appendix 4-A are revised or replaced, each impact fee amount set forth in Appendix 4-A shall be adjusted for inflation, based on the annual construction cost index published by *Engineering News Record*. Such adjustments in the impact fees shall become effective immediately upon calculation by the city, and shall not require additional action by the city council to be effective.

(c) Independent fee calculation study. In lieu of calculating the amounts of impact fees by reference to the impact fee schedule, a fee payer may request that the amount of the required impact fee be determined by reference to an independent fee calculation study.

(1) Preparation of independent fee calculation study. If a fee payer requests the use of an independent fee calculation study, the fee payer shall be responsible for retaining a qualified professional (as determined by the city administrator or his or her designee) to prepare the independent fee calculation study that complies with the requirements of this article, at the fee payer's expense.

(2) General parameters for independent fee calculation study. Each independent fee calculation study shall be based on the same standards and unit costs for the capital facilities that are used in the impact fee analysis, and shall document the relevant methodologies and assumptions used.

(3) Procedure.

a. An independent fee calculation study shall be undertaken through the submission of an application to the city administrator, along with an application fee to defray the costs associated with the review of the independent fee calculation study.

b. Within fifteen (15) days of receipt of an application for independent fee calculation study, the city administrator or his or her designee shall determine if the application is complete. If it is determined the application is not complete, a written statement specifying the deficiencies shall be sent by mail to the person submitting the application. The city administrator or his or her designee shall take no further action on the application until it is complete.

c. When it is determined the application is complete, the application shall be reviewed by the city administrator or his or her designee and a written decision rendered within thirty (30) days on whether the impact fees should be modified and, if so, what the amount should be, based on the standards in paragraph 4-110(c)(4) below.

(4) Standards. If, on the basis of generally recognized principles of impact analysis, it is determined by the city that the data, demand information, methodologies and assumptions used by the applicant to calculate the impact fees in the independent fee calculation study more accurately measures the proposed impact-generating development's impact on the appropriate capital facilities, the fees determined in the independent fee calculation study shall be deemed by the city to be the fees due and owing for the proposed development. The fee adjustment shall be set forth in a fee agreement executed prior to payment of the adjusted fees and the issuance of the first building permit. If the independent fee calculation study fails to satisfy these requirements, the fees applied shall be the fees established in Appendix 4-A attached to this Chapter. (Ord. 641 §2, 2004)

Sec. 4-112. Credits; general.

(a) Intent. No individual landowner is required to provide any site-specific dedication or improvement to meet the same need for capital facilities for which impact fees are imposed pursuant to this article. The intent of this section is to allow for credits whether such a site-specific dedication or improvements is required or agreed upon in connection with impact-generating development. The total amount of any credit shall not exceed the amount of the impact fees due for the individual facility component.

(b) Application. Any person causing the commencement of impact-generating development may apply for credit against impact fees otherwise due, up to but not exceeding the full obligation of impact fees proposed to be paid pursuant to the provisions of this article, for any contribution, construction or dedication of land (where appropriate) accepted by the city for capital facilities. Credits against transportation impact fees shall be provided only for regional transportation capital facilities.

(c) Eligibility. No credit shall be awarded for land dedications not accepted by the city, facilities not included in the Impact Fee Analysis or any undertaking not approved in advance pursuant to this section. No credits shall be awarded for any property required to be dedicated in conjunction with a development, whether pursuant to this code or public works manual, or pursuant to an annexation or other agreement affecting the development. All credits must be processed in accordance with this section.

(d) Capital facility reimbursement agreement. The city may, but shall not be required to, enter into a capital facility reimbursement agreement with any person who proposes to construct capital facilities to the extent the fair market value of the construction of these capital facilities exceeds the obligation to pay impact fees for which a credit is provided pursuant to this article. The capital facility reimbursement agreement shall provide proportionate and fair share reimbursement linked to the impact-generating development's use of the capital facilities constructed. (Ord. 641 §2, 2004)

Sec. 4-114. Credits; valuation.

(a) Land dedication. Credit for land dedication, at the fee payer's option, shall be valued at the fair market value of the land established by a professional appraiser acceptable to the city in an appraisal paid for by the fee payer.

(b) Construction. Credit for construction of capital facilities shall be valued by the city based on complete engineering drawings, specifications and construction cost estimates submitted by the fee payer to the city. The city shall determine the amount of credit due based on the information submitted or, if it determines the information is inaccurate or unreliable, then on alternative engineering or construction costs acceptable to the city engineer or his or her designee.

(c) Contributions. Contributions for capital facilities shall be based on the value of the contribution or payment at the time it is made to the city. (Ord. 641 §2, 2004)

Sec. 4-116. When credits become effective.

(a) Land dedication. Credits for land dedication shall become effective after the credit is approved pursuant to this article, a credit agreement is entered into, the land has been conveyed to the city in a form established by the city council at no cost to the city and the dedication of land has been accepted by the city council.

(b) Construction. Credits for construction of capital facilities shall become effective after the credit is approved pursuant to this article, a credit agreement is entered into and (1) all required construction has been completed and has been accepted by the city; (2) a suitable maintenance and warranty bond has been received and approved by the city; and (3) all design, construction, inspection, testing, bonding and acceptance procedures have been completed in compliance with all applicable city and state requirements. Approved credits for the construction of capital facilities may become effective at an earlier date if the fee payer posts security in the form of an irrevocable letter of credit or cash escrow agreement and the amount and terms of such security are accepted by the city council. At a minimum, such security must be in the amount of the approved credit or an amount determined to be adequate to allow the city to construct the capital facilities for which the credit was given, whichever is higher.

(c) Contribution. Credits for contributions for capital facilities shall become effective after the credit is approved pursuant to this article, a credit agreement is entered into and the contribution is actually made to the city in a form acceptable to the city and has been accepted by the city council. (Ord. 941 §2, 2004)

Sec. 4-118. Transferability of credits.

Credits shall be transferable within the same development and for the same capital facility for which the credit is provided, but shall not be transferable outside the development or used as credit against impact fees for other capital facilities. Credit may be transferred pursuant to these terms and conditions by any written instrument that clearly identifies which credits approved under this article are to be transferred. The instrument shall be signed by both the transferor and transferee, and the document shall be delivered to the city administrator or his or her designee for registration of the change in ownership. If there are outstanding obligations under a credit agreement, the city may require that the transferor or transferee or both, (as appropriate) enter into an amendment to the credit agreement to assure the performance of such obligations, and may require additional assurances that the transferee has the financial capability and other qualifications necessary to perform such obligations. (Ord. 641 §2, 2004)

Sec. 4-120. Credits; procedure.

(a) Submission of application. In order to obtain a credit against impact fees otherwise due, the fee payer shall submit an offer for contribution, construction or dedication of land. The offer shall be submitted to the city administrator or his or her designee and must specifically request a credit against impact fees.

(b) Offer contents. The offer for credit shall include the following:

(1) Dedication of land. If the proposed offer involves credit for the dedication of land for capital facilities:

a. A drawing and legal description of the land; the city may require that an ALTA survey prepared at the fee payer's expense be submitted if a credit is approved.

b. The value of the land at the date a building permit is proposed to be issued for the impact-generating development prepared by a professional appraiser and, if applicable, a certified copy of the development permit in which the land was agreed to be dedicated.

(2) Construction. If the proposed credit involves construction of capital facilities:

a. The proposed plan of the specific construction certified by a duly qualified and licensed Colorado engineer or contractor.

b. The projected costs for the suggested improvement, which shall be based on local information for similar improvements, along with the construction time table for the completion thereof. Such estimated costs shall include the costs of construction or reconstruction, the costs of all labor and materials, the costs of all lands, property, rights, easements and franchises acquired, financing charges, interest prior to and during construction and for one (1) year after completion of construction, costs of plans and specifications, surveys of estimates of costs and of revenues, costs of professional services and all other expenses necessary or incident to determining the feasibility or practicability of such construction or reconstruction.

c. A statement under oath of the facts that qualify the fee payer to receive a credit.

(3) Contribution. If the proposed offer involves a credit for any contribution for capital facilities, the following documentation shall be provided:

- a. A certified copy of the development permit in which the contribution was agreed;
- b. If payment has been made, proof of payment; or
- c. If payment has not been made, the proposed method of payment.

(c) Determination of completeness. Within fifteen (15) days of receipt of the proposed application, the city administrator or his or her designee shall determine if the application is complete. If it is determined that the proposed application is not complete, the city administrator or his or her designee shall send a written statement to the applicant outlining the deficiencies. No further action shall be taken on the application until all deficiencies have been corrected or otherwise settled.

(d) Decision. Once the city administrator or his or her designee determines that the offer for credit is complete, it shall be reviewed within thirty (30) days and may be approved by the city council if there is compliance with the standards in this article.

(e) Credit agreement. If the offer for credit is approved, a credit agreement shall be prepared and signed by the applicant and the city. The credit agreement shall specifically outline the land dedication for capital facilities, construction of capital facilities or contribution for capital facilities, the time by which it shall be dedicated, completed or paid and any extensions thereof, and the value (in dollars) of the credit against the impact fees that the fee payer shall receive for the dedication, construction or contribution.

(f) Accounting of credits. Each time a request to use approved credits is presented to the city, the city administrator or his or her designee shall reduce the amount of the impact fees, and shall note in the city's records and the credit agreement the amount of credit remaining, if any. Upon request of the fee payer or the fee payer's transferee, the city administrator or his or her designee shall issue a letter stating the amount of credit remaining. A request to use approved credits may be rejected in the event there is uncertainty or dispute as to the ownership of a credit being claimed. (Ord. 641 §2, 2004)

Sec. 4-122. Refund of impact fees paid.

(a) Impact fees not spent or encumbered in ten (10) years refunded. Any impact fees collected shall be returned to the fee payer or the fee payer's successor-in-interest if the impact fees have not been spent or encumbered within ten (10) years from the date the building permit for the development was issued, along with actual interest earned on the fees. Fees shall be deemed to be spent on the basis that the first fee collected shall be the first fee spent.

(b) Procedure for refund. The refund shall be administered by the city administrator or his or her designee, and shall be according to the following process:

(1) Submission of refund application. A refund application shall be submitted within one (1) year following the end of the tenth year from the date on which the building permit was issued. The refund application shall include the following information:

a. A copy of the dated receipt issued for payment of the fee;

b. A copy of the building permit; and

c. Evidence that the applicant is the successor-in-interest to the fee payer (if applicable). Such evidence shall consist of a sworn statement that the applicant is the current owner of the property for which the fee is paid and a certified copy of the current deed for the property.

(2) Determination of completeness. Within fifteen (15) days of receipt of the refund application, the city administrator or his or her designee shall determine if it is complete. If it is determined the application is not complete, a written statement specifying the deficiencies shall be forwarded by mail to the person submitting the application. The city administrator or his or her designee shall take no further action on the refund application until it is deemed complete.

(3) Decision on refund application. When it is determined the refund application is complete, it shall be reviewed within thirty (30) days and shall be approved if it is determined that a fee has been paid, which has not been spent within the period of time permitted under this section. The refund shall include the fee paid plus interest earned on the fee. At the time of payment, the applicant shall sign a sworn statement acknowledging that the facts stated in the application remain true and correct as of the date of payment.

(c) Limitations.

(1) Expiration of building permit without possibility of extension. If a fee payer has paid an impact fee required by this article and obtained a building permit and the building permit for which the fee was paid later expires without the possibility of further extension, then the fee payer or the fee payer's successor-in-interest shall be entitled to a refund of the fee paid, without interest. In order to be eligible to receive a refund of impact fees pursuant to this subsection, the fee payer or the fee payer's successor-in-interest shall be required to submit an application for such refund to the city administrator or his or her designee within thirty (30) days after the expiration of the building permit for which the fee was paid. Any claim for refund not made at or before that time shall be waived. If a successor-in-interest claims a refund of the impact fee, the city may require written documentation that such rights have been conveyed to the claimant. If there is uncertainty as to the person to whom the refund is to be paid, or if there are conflicting demands for such refund, the city may interplead such funds.

(2) No refund if project is demolished, destroyed, altered, reconstructed or reconfigured. After an impact fee has been paid pursuant to this article, no refund of any part of such fee shall be made if the development for which the fee was paid is later demolished, destroyed or is altered, reconstructed or reconfigured so as to reduce the size of the development or the number of units in the development. (Ord. 641 §2, 2004)

Sec. 4-124. Impact fee trust fund.

(a) Establishment of trust fund. There is hereby established the impact fee trust fund ("trust fund") for the purpose of ensuring that impact fees collected pursuant to this article are designated for the accommodation of capital facility impacts reasonably attributable to the new impact-generating development that paid the fees.

(b) Establishment of accounts. The trust fund shall be divided into four (4) accounts: a transportation impact fee account, a drainage impact fee account, a regional parks and trails impact fee account and a city hall facilities impact fee account.

(c) Deposit and management of accounts and trust fund.

(1) Managed in conformance with Section 29-1-801 et seq., C.R.S. The impact fee trust fund and each account therein shall be maintained as an interest-bearing account and shall be managed in conformance with Section 29-1-801 et seq., C.R.S.

(2) Deposit of impact fees in appropriate account in trust fund. All impact fees collected by the city pursuant to this article shall be promptly deposited into the appropriate account in the trust fund.

(3) Interest earned on trust account monies. Any proceeds in the trust fund accounts not immediately necessary for expenditure shall be invested in an interest-bearing account. Interest earned on monies in the accounts shall be considered part of such account and shall be subject to the same restrictions on use applicable to the impact fees deposited in such account.

(4) Income derived retained in trust fund until spent. All income derived from these investments shall be retained in the accounts until spent pursuant to the requirements of this article.

(5) Expenditure of fees. Monies in each trust account shall be considered to be spent in the order collected, on a first-in/first-out basis.

(6) Record of trust fund available for public inspection. A record of the trust fund accounts shall be available for public inspection in the city administrator's or his or her designee's office, during normal business hours. (Ord. 641 §2, 2004)

Sec. 4-126. Expenditure of impact fees.

(a) Expenditures limited to facilities for which impact fee imposed. The monies collected from the each of the four (4) categories of capital facility impact fees shall be used only to finance or recoup the costs of capital facilities within such fee category. For example, transportation impact fees shall only be used for regional transportation capital facilities. Eligible costs which may be paid from revenues derived from such fees may include, without limitation, design, engineering, surveying and permitting fees and costs; alignment study and other study costs related to capital improvements; the costs of purchasing or leasing real property; construction, labor and materials costs; other capital improvement costs and the costs of administering the capital facilities program and budget of the city.

(b) No monies spent for routine maintenance, rehabilitation or operation of capital facilities. No monies from the trust fund shall be spent for periodic or routine maintenance, rehabilitation or operation of any capital facilities.

(c) No monies spent to remedy existing deficiencies. No monies shall be spent to remedy deficiencies in capital facilities existing on January 1, 2005, the effective date of the ordinance enacting this article.

(d) Annual impact fee capital facilities budget. At least once during each fiscal year of the city, the city administrator or his or her designee shall present to the city council a proposed program and budget for city capital facilities. This capital facilities program and budget shall recommend assigning monies from each impact fee trust account to specific capital facilities. Based on this recommendation, the city council shall approve an annual capital facilities program and budget and assign monies from the trust accounts for the specific capital facilities identified. Any monies, including any accrued interest, not assigned to specific capital facility projects and not expended, shall be retained in the same impact fee trust account until the next fiscal year. (Ord. 641 §2, 2004)

Sec. 4-128. Benefit areas and expenditures.

(a) Establishment. Because all new impact-generating development will benefit from the capital facilities funded by the impact fees, the boundaries of the area to be benefited by such facilities are hereby determined to be the same as the city's boundaries, as existing from time to time.

(b) Expenditures. Fees shall be used only to acquire, construct, improve or expand capital facilities within the city, regional transportation capital facilities within or outside of the city and otherwise outside the city as may be permitted by law. (Ord. 641 §2, 2004)

Sec. 4-130. Review every three years.

The impact fees described in this article and the administrative procedures of this article shall be reviewed at least once every three (3) years to ensure that: (1) the demand and cost assumptions underlying the impact fees are still valid; (2) the resulting impact fees do not exceed the actual costs of constructing capital facilities that are of the type for which the fees are paid and that are required to serve new impact-generating development; (3) the monies collected or to be collected in each impact fee trust account have been and are expected to be spent for capital facilities for which the fees were paid; and (4) the capital facilities for which the fees are to be used will benefit the development paying the fees. (Ord. 641 §2, 2004)

Sec. 4-132. Miscellaneous provisions.

(a) Requirements to construct improvements; other obligations. Nothing in this article shall restrict the city from requiring an applicant for a development permit to construct reasonable capital facility improvements designed and intended to serve the needs of the applicant's project, whether or not such capital facility improvements are of a type for which credits are available under section 4-112 of this article. The impact fees charged pursuant to this article shall be in addition to any other fees, charges, tolls or requirements applicable to development, including, by way of example and not limitation, public land dedication, fair contributions for public school sites, tap fees and building permit fees.

(b) Administrative costs. The city shall be entitled to retain not more than two percent (2%) of the impact fees collected as payment for the expenses of collecting the fees and administering this article and fees collected. In the case of refunds of impact fees under section 4-122 above, the city shall be entitled to retain not more than an additional two percent (2%) of the impact fee payment made as payment for the expense of processing the refund request.

(c) Mistake and misrepresentation in payment of impact fee. If an impact fee has been calculated and paid based on a mistake or misrepresentation, it shall be recalculated. Any amounts overpaid by a fee payer shall be refunded by the city within thirty (30) days after the city's acceptance of the

recalculated amount, with interest at the rate of five percent (5%) per annum since the date of such overpayment. Any amounts underpaid by the fee payer shall be paid to the city within thirty (30) days after the city's acceptance of the recalculated amount, with interest at the rate of five percent (5%) per annum since the date of such underpayment. In the case of an underpayment to the city, the city shall not issue any additional development permits or approvals for the project for which the impact fee was previously paid until such underpayment is corrected, and if amounts owed to the city are not paid within such thirty (30) day period, the city may also repeal any permits issued in reliance on the previous payment of such impact fee and refund such fee to the then-current owner of the land.

(d) Appeal of decision of city administrator or his or her designee.

(1) Appeal. An appeal may be filed of any determination or decision made by the city administrator or his or her designee under this article regarding: (a) the applicability of any fee to development; (b) the amount of any such fee; (c) the availability or amount of any credit; or (d) the amount of any refund. Such appeal shall be made to the city council by filing with the city clerk or his or her designee within thirty (30) days of the determination or decision for which the appeal is being filed: (a) a written notice of appeal on a form provided by the city clerk or his or her designee; (b) a written explanation of why the appellant believes the determination or decision is in error; and (c) an appeal fee established by administrative rule of the city. Additionally, any appeal concerning the amount of a fee shall be accompanied by an independent fee calculation study prepared in accordance with subsection 4-110(c) of this article.

(2) City council review. The city council shall promptly fix a time and place for hearing the appeal, and shall have the city clerk mail notice of the hearing to the appellant at the address given in the notice of appeal. The hearing shall be conducted at the time and place stated in the notice. The city council shall consider the appeal and either affirm or modify the decision or determination of the city administrator or his or her designee based on the relevant standards and requirements of this article. The appellant shall bear the burden of proof in such appeal. The decision of the city council shall be final.

(e) Judicial action or proceeding. Any judicial action or proceeding to attack, review, set aside or annul the adoption of the fee schedule established in this article (Appendix 4-A), and any actions taken by the city or any officers thereof pursuant to the terms of this article shall be governed by Section 29-20-104.5(7), C.R.S., and all other relevant laws of the state.

(f) Administrative rules. The city administrator or his or her designee may from time to time establish written administrative rules, not inconsistent with the provisions of this article, to facilitate the implementation of this article. (Ord. 641 §2, 2004)

Secs. 4-133—4-149. Reserved.

APPENDIX 4-A

Impact Fee Schedule (2009)

Transportation Impact Fee	\$3,953.00 per residential unit
Drainage Impact Fee	217.00 per residential unit
Regional Parks and Trails Impact Fee	1,769.00 per residential unit

City Hall Facilities Impact Fee

175.00 per residential unit

(Ord. 641 §2, 2004; Ord. 723 §1, 2008)