

## CHAPTER 4

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## **ARTICLE 1**

### **General and Special Funds**

#### **Sec. 4-1-10. Custody and management of funds.**

Moneys in the funds created by 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 Board of Trustees may transfer out of any fund any amount at any time to be used for such purpose as the Board of Trustees may direct. (Ord. 12-08 §1, 2008)

#### **Sec. 4-1-20. 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. 12-08 §1, 2008)

#### **Sec. 4-1-30. Special funds.**

(a) The City Treasurer shall maintain, in the accounting records of the City, separate accounts for the Capital Improvement Fund, the Capital Equipment Fund and each utility fund. The principal and interest earned by the amounts in each such fund shall be credited separately in each such account.

(b) Subsection (a) of this Section shall not prohibit the City Treasurer from commingling, for investment or deposit purposes, the monies from the Capital Improvement Fund, the Capital Equipment Fund and any utility fund, as long as the interest earned by each fund is accounted for separately and credited to the appropriate fund. (Prior code 2-350.3)

#### **Sec. 4-1-40. Capital Equipment Fund created.**

As set forth in Section 13.3 of the Charter, there is hereby created a special fund, to be known as the Capital Equipment Fund, and the funds therein shall be used only for the purposes allowed by law. (Ord. 12-08 §1, 2008)

#### **Sec. 4-1-50. Capital Improvement Fund created.**

As set forth in Section 13.3 of the Charter, 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. 12-08 §1, 2008)

**Sec. 4-1-60. 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. 12-08 §1, 2008)

**Sec. 4-1-70. Police Seizure Special Fund created.**

(a) A special fund, to be known as the Police Seizure Special Fund, is hereby created. The source of monies to be deposited in said fund shall be proceeds which have been forfeited to the Police Department pursuant to Article 13 of Title 16, C.R.S., or any other law which provides for the crediting of forfeited proceeds to the Police Department. The monies in said fund shall remain therein, subject to investment as authorized by the City Council, until expended in the manner provided in this Section and other applicable laws.

(b) In addition to the requirements of Section 16-13-701, C.R.S., et seq., and any other applicable state or federal law, and any applicable City Charter or ordinance provision, no forfeited property shall be used, and no forfeited proceeds shall be expended, until the City Council, acting by motion, has approved such use or expenditure. (Prior code 18-90; Ord. 12-08 §1, 2008)

**Sec. 4-1-80. School Resource Officer Fund created.**

(a) A special fund, to be known as the School Resource Officer Fund (S.R.O. Fund), is hereby created. The source of monies to be deposited in said fund shall be Municipal Court surcharges, and contributions and grants received by the Police Department for school resource officers and drug abuse resistance education programs. The monies in said fund shall remain therein, subject to investment as authorized by the City Council, until expended in the manner provided in this Section and other applicable laws.

(b) The monies in the S.R.O. Fund may be expended by the Police Department, in accordance with the Charter, ordinances and resolutions of the City and other applicable laws, solely for the purpose of funding school resource officer activities, including the drug abuse resistance education program conducted by school resource officers in public schools located in the City. (Prior code 18-102; Ord. 12-08 §1, 2008)

**Sec. 4-1-90. Unclaimed Property Account.**

There is created a special fund of the City, to be known as the Unclaimed Property Account. Monies collected under Article 7, including the proceeds from the sale of unclaimed property, shall be credited to this account and may be appropriated to the Finance Director for the payment of claims as provided in Article 7. There shall be maintained in this account at all times the lesser of the amount of all monies collected under Article 7 or five thousand dollars (\$5,000.00) for the prompt payment of all claims. Monies received in excess of this amount may be credited to the general fund of the City for the City's use and benefit. No expenditures from this account are authorized except as specifically set forth in this Article. Before crediting any monies, the Finance Director shall record the name and last known address of each owner of unclaimed property, if known, and the amount to which the owner of such property is entitled, which record shall be available for public inspection at all reasonable times during normal business hours. (Prior code 18-65)

**Sec. 4-1-100. Victim Assistance line item created.**

(a) There is hereby established a line item in the general fund budget of the City, to be known as the Victim Assistance, Defendant Locator and Law Enforcement line item within the Police Department budget.

(b) The Victim Assistance, Defendant Locator and Law Enforcement line item shall be a line item consisting of no revenue other than the revenue from the surcharge imposed pursuant to Section 2-5-530. The monies budgeted within and appropriated from the line item shall be used only for the purposes set forth in Section 2-5-530. (Prior code 18-82; Ord. 20-10 §1, 2010)

**Sec. 4-1-110. Signatures on checks.**

Every check in the amount of five hundred dollars (\$500.00) or more drawn on the account of the City shall be cosigned as follows:

- (1) The City Manager and City Clerk; or
- (2) If the City Clerk is absent, the City Manager and the Mayor; or
- (3) If the City Manager and the City Clerk are absent, the Mayor and the Mayor Pro Tem. (Prior code 2-351; Ord. 01-04 §1, 2004; Ord. 20-10 §2, 2010)

**ARTICLE 2**

**Sales and Use Tax**

*Division 1  
Generally*

**Sec. 4-2-10. Short title.**

The ordinance codified in this Article shall be known as the "City Sales and Use Tax Ordinance." (Prior code 21-16)

**Sec. 4-2-20. Definitions.**

As used in this Article, unless the context otherwise requires, the following terms shall have the following meanings:

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

*Acquisition charges or costs* includes *purchase price*, as defined in this Section.

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

*Automotive vehicle* means any vehicle or device in, upon or by which any person or property is or may be transported or drawn upon a public highway, or any device used or designed for aviation or flight in the air. *Automotive vehicle* includes, but is not limited to, motor vehicles, trailers, semitrailers or mobile homes. *Automotive vehicle* shall not include devices moved by human power or used exclusively upon stationary rails or racks.

*Building Inspector* means the Building Inspector for the City.

*Building Official* means any individual who determines the estimate of the cost of materials and supplies to be permanently affixed to or incorporated in any building, dwelling or other structure or improvement to realty for which a use tax is required to be paid pursuant to Section 4-2-310.

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

*Charitable organization* means any entity organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, to foster national or international amateur sports competition (but only if no part of its activities involves the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in or intervene in any political campaign on behalf of any candidate for public office (including the publishing or distributing of statements).

*Commercial packaging materials* means containers, labels and shipping cases used by a person engaged in manufacturing, compounding, wholesaling, jobbing, retailing, packaging, distributing or bottling for sale, profit or use that meets all of the following conditions:

- a. Is used by the manufacturer, compounder, wholesaler, jobber, retailer, packager, distributor or bottler to contain or label the finished product;
- b. Is transferred by said person along with and as a part of the finished product to the purchaser; and
- c. Is not returnable to said person for reuse.

*Commercial packaging materials* as defined are exempt from sales or use tax imposed by this Article.

*Construction materials* means tangible personal property which, when combined with other tangible personal property, loses its identity to become an integral and inseparable part of a completed structure or project, including public and private improvements. *Construction materials* include, but are not limited to, such things as: asphalt, bricks, builders' hardware, caulking material, cement, concrete, conduit, electric wiring and connections, fireplace inserts, electrical heating and cooling equipment, flooring, glass, gravel, insulation, lath, lead, lime, lumber, macadam, millwork, mortar, oil, paint, piping, pipe valves and pipe fittings, plaster, plumbing fixtures, putty, reinforcing mesh, road base, roofing sand, sanitary sewer pipe, sheet

metal, site lighting, steel, stone, stucco, tile, trees, shrubs and other landscaping materials, wall board, wall coping, wall paper, weather stripping, wire netting and screen, water mains and meters, and wood preserver. The above materials, when used for forms, or other items which do not remain as an integral or inseparable part of a completed structure or project, are not construction materials.

*Consumer* means:

- a. An individual person; or
- b. A person engaged in business in the City who uses, stores, distributes or otherwise consumes in the City tangible personal property or taxable services purchased from sources inside or outside the City.

*County Clerk and Recorder* means the County Clerk and Recorder for the County.

*Department of Revenue* means the Department of Revenue of the State.

*District Court* means the District Court in and for Jefferson County, Colorado.

*Doing business in the City* means providing or performing services, or selling, leasing, renting, delivering or installing tangible personal property for storage, use or consumption within the City. *Doing business in the City* includes, but is not limited to, any one (1) of the following activities by a person:

- a. Directly, indirectly or by a subsidiary maintains a building, store, office, salesroom, warehouse or other place of business within the City;
- b. Sends one (1) or more employees, agents or commissioned sales persons into the taxing jurisdiction to solicit business or to install, assemble, repair, service or assist in the use of its products, or for demonstration or other reasons;
- c. Maintains one (1) or more employees, agents or commissioned sales persons on duty at a location within the taxing jurisdiction;
- d. Owns, leases, rents or otherwise exercises control over real or personal property within the taxing jurisdiction; or
- e. Makes more than one (1) delivery into the taxing jurisdiction within a twelve-month period.

*Farm close-out sale* means the full and final disposition of all tangible personal property previously used by a farmer or rancher in farming or ranching operations which are being abandoned.

*Finance Department* means the Finance Department of the City.

*Food* means food for domestic home consumption as defined in 7 U.S.C. § 2012(g) as amended, as such section existed on October 1, 1987, or is thereafter amended for purposes of the

federal food stamp program as defined in 7 U.S.C. § 2012(h), as amended; except that *food* does not include carbonated water marketed in containers; chewing gum; seeds and plants to grow food; prepared salads and salad bars; cold sandwiches; deli trays; and food or drink vended by or through machines or non-coin-operated or coin-collecting food and snack devices on behalf of a vendor.

*Gross sales* means the total amount received in money, credit, property or other consideration valued in money for all sales, leases or rentals of tangible personal property or services.

*Gross taxable sales* means the total amount received in money, credits or property, excluding the fair market value of exchanged property which is to be sold thereafter in the usual course of the retailer's business, or other consideration valued in money from sales and purchases at retail within this City, and embraced within the provisions of this Article. The taxpayer may take credit in his or her report of gross sales for an amount equal to the sale price of property returned by the purchaser when the full sale price thereof is refunded, whether in cash or by credit. The fair market value of any exchanged property which is to be sold thereafter in the usual course of the retailer's business, if included in the full price of a new article, shall be excluded from the gross sales. On all sales at retail that are valued in money, when such sales are made under conditional sales contract or under other forms of sale where the payment of the principal sum thereunder is extended over a period longer than sixty (60) days from the date of sale thereof, only such portion of the sale amount thereof may be counted for the purpose of imposition of the tax imposed by this Article as has actually been received in cash by the taxpayer during the period for which the tax imposed by this Article is due and payable.

*License* means a City sales and use tax license.

*Linen services* means services involving provision and cleaning of linens, including but not limited to rags, uniforms, coveralls and diapers.

*Local telephone exchange company* means any person who provides public telephone or telecommunication exchange access lines, mobile telecommunication or channels necessary to effect the transfer of two-way voice or data grade information between the final user and the local telecommunication network.

*Mayor* means the Mayor of the City.

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

*Modified or customized computer program* means a computer program created or modified for a specific customer where the preparation, modification or selection of the program for the customer's use requires an analysis of the customer's requirements and system by the program vendor or independent consultant; and the program requires adaptation by the vendor to be used in a specific computer hardware environment.

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

*Pay television* shall include, but not be limited to, cable, microwave or other television service for which a charge is imposed.

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

*Prescription drugs for animals* means drugs dispensed in accordance with any order in writing, dated and signed by a practitioner of the healing arts, or given orally by a practitioner, specifying the animal for which the medicine or drug is offered and directions, if any, to be placed on the label.

*Prewritten computer program* means a system program or application or canned program that is not written specifically for the user.

*Price or purchase price* means the price to the consumer, exclusive of any direct tax imposed by the federal government or by this Article, and, in the case of all retail sales involving the exchange of property, also exclusive of the fair market value of the property exchanged at the same time and place of the exchange, if:

- a. Such exchanged property is to be sold thereafter in the usual course of the retailer's business; or
- b. Such exchanged property is an automotive vehicle and is exchanged for another automotive vehicle and both automotive vehicles are subject to licensing, registration or certification under the laws of this State, including but not limited to vehicles operating upon public highways, off-highway recreation vehicles, watercraft and aircraft. Any money or other consideration paid over and above the value of the exchanged property is subject to tax.

*Price or purchase price* includes:

- a. The amount of money received or due in cash and credits.
- b. Property at fair market value taken in exchange but not for resale in the usual course of the retailer's business.
- c. Any consideration valued in money, such as trading stamps or coupons whereby the manufacturer or someone else reimburses the retailer for part of the purchase price and other media of exchange.

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

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

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

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

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

*Price or purchase price* shall not include:

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

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

c. Discounts from the original price if such discount and the corresponding decrease in sales tax due is actually passed on to the purchaser. An anticipated discount to be allowed for payment on or before a given date is not an allowable adjustment to the price in reporting gross sales.

*Prosthetic device* means any artificial limb, part, device or appliance for human use which aids or replaces a bodily function; is designed, manufactured, altered or adjusted to fit a particular individual; and is prescribed by a licensed practitioner of the healing arts. *Prosthetic device* includes but is not limited to prescribed auditory, ophthalmic or ocular, cardiac, dental or orthopedic devices or appliances, oxygen concentrators and oxygen with related accessories.

*Retail sale, purchased at retail or selling at retail* means all sales except wholesale sales made within the City.

*Retailer or vendor* means any person selling, leasing or renting tangible personal property or services at retail. *Retailer or vendor* shall include any:

a. Auctioneer;

b. Salesperson, representative, peddler or canvasser, who makes sales as a direct or indirect agent of or obtains such property or services sold from a dealer, distributor, supervisor or employer;

c. Charitable organization or governmental entity which makes sales of tangible personal property to the public, notwithstanding the fact that the merchandise sold may have been acquired by gift or donation or that the proceeds are to be used for charitable or governmental purposes.

*Return* means the sales and use tax reporting form used to report sales and use tax.

*Rooms, accommodations or lodging services* means the furnishing of rooms or accommodations by any person, partnership, association, corporation, estate, representative capacity or any other combination of individuals by whatever name known, to a person who for a consideration uses, possesses or has the right to use or possess any room in a hotel, inn, bed and breakfast residence, apartment hotel, lodging house, motor hotel, guesthouse, guest ranch, trailer coach, mobile home, auto camp or trailer court and park, or any similar type establishment, for a period of less than thirty (30) consecutive days under any concession, permit, right of access, license to use or other agreement, or otherwise.

*Sale or sale and purchase* means the conveyance or acquisition for any consideration by any person of tangible personal property or taxable services that are purchased, leased, rented, sold, used, stored, distributed or consumed, but excludes a bona fide gift of property or services. These terms include capital leases, installment and credit sales, and property and services acquired by:

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

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

c. Performance of services; or

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

The sale, purchase, lease or rental of services specifically enumerated in this Article as taxable include: (a) telecommunication services; (b) gas, electric and steam services; (c) pay television services; (d) security system and sound system services; (e) linen services; (f) warranty and maintenance services; (g) modified or customized computer program services; and (h) services providing admission or access to motion picture performances and to establishments which are licensed to serve malt, vinous or spirituous liquors. *Sale or sale and purchase* also includes the leasing or rental of tangible personal property. *Sale or sale and purchase* also includes the transaction of furnishing rooms or accommodations or lodging services by any person, partnership, association, corporation, estate, receiver, trustee, assignee, lessee or person acting in a representative capacity, or any other combination of individuals by whatever name known, to a person who for a consideration uses, possesses or has the right to use or possess any room in a hotel, inn, bed and breakfast residence, apartment hotel, lodging house, motor hotel, guesthouse, guest ranch, trailer coach, mobile home, auto camp or trailer court and park, or similar type

establishment, for a period of less than thirty (30) days under any concession, permit, right of access, license to use or other agreement, or otherwise.

*Sale or sale and purchase* excludes:

- a. A division of partnership assets among the partners according to their interests in the partnership.
- b. The formation of a corporation by the owners of a business and the transfer of their business assets to the corporation in exchange for all of the corporation's outstanding stock, except qualifying shares, in proportion to the assets contributed.
- c. The transfer of assets of shareholders in the formation or dissolution of professional corporations.
- d. The dissolution and the pro rata distribution of the corporation's assets to its stockholders.
- e. The transfer of assets from a parent corporation to a subsidiary corporation or corporations which are owned at least eighty percent (80%) by the parent corporation, which transfer is solely in exchange for stock or securities of the subsidiary corporation.
- f. The transfer of assets from a subsidiary corporation or corporations which are owned at least eighty percent (80%) by the parent corporation to a parent corporation or to another subsidiary which is owned at least eighty percent (80%) by the parent corporation, which transfer is solely in exchange for stock or securities of the parent corporation or the subsidiary which received the assets.
- g. A transfer of a partnership interest.
- h. The transfer in a reorganization qualifying under Section 368(a)(1) of the Internal Revenue Code of 1954, as amended.
- i. The formation of a partnership by the transfer of assets to the partnership or transfers to a partnership in exchange for proportionate interests in the partnership.
- j. The repossession of personal property by a chattel mortgage holder or foreclosure by a lienholder.
- k. The transfer of assets between parent and closely held subsidiary corporations, between subsidiary corporations closely held by the same parent corporation, or between corporations which are owned by the same shareholder in identical percentage of stock ownership amounts, computed on a share-by-share basis, when a tax imposed by this Article was paid by the transferor corporation at the time it acquired such assets, except to the extent provided by Paragraph 4-2-230(c)(1) of this Article. For the purposes of this Subparagraph, a closely held subsidiary corporation is one in which the parent corporation owns stock possessing at least eighty percent (80%) of the total combined voting power of all classes of stock entitled to vote

and owns at least eighty percent (80%) of the total number of shares of all other classes of stock.

*Sales tax* means the tax to be collected and remitted by a retailer on sales taxed under this Article.

*School* means an educational institution having a curriculum comparable to grade, grammar, junior high, high school or college, or any combination thereof, requiring daily attendance and charging a tuition fee.

*Security system services* means electronic security system services. Such term does not include nonelectronic security services such as consulting or human or guard dog patrol services.

*Sound system services* means sound system services involving provision of broadcast or pre-recorded audio programming to a building or portion thereof. Such term does not include installation of sound systems where the entire system becomes the property of the building owner or the sound system service is for presentation of live performances.

*Storage or storing* means any keeping or retention of, or exercise of dominion or control over, tangible personal property in the City.

*Tangible personal property* means corporeal personal property.

*Tax* means the use tax due from a consumer or the sales tax due from a retailer or the sum of both due from a retailer who also consumes.

*Tax deficiency* means any amount of tax that is not reported or not paid on or before the due date.

*Taxable sales* means gross sales less any exemptions and deductions specified in this Article.

*Taxable services* means services subject to tax pursuant to Section 4-2-210 of this Article.

*Taxpayer* means any person obligated to collect and/or pay tax under the terms of this Article.

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

*Use tax* means the tax paid or required to be paid by a consumer for using, storing, distributing or otherwise consuming tangible personal property or taxable services inside the City.

*Wholesale sales* means sales to licensed retailers, jobbers, dealers or wholesalers for resale. Sales by wholesalers to consumers are not wholesale sales. Sales by wholesalers to nonlicensed retailers are not wholesale sales.

*Wholesaler* means any person selling to retailers, jobbers, dealers or other wholesalers, for resale, and not for storage use, consumption or distribution. (Prior code 21-17; Ord. 12-08 §1, 2008)

**Sec. 4-2-30. Confidential nature of returns.**

(a) Except in accordance with judicial order or as otherwise provided herein, the City Treasurer, the City Clerk and their agents, clerks and employees shall not divulge any information gained from any return filed under the provisions of this Article.

(b) The City officials charged with the custody of returns filed pursuant to this Article shall not be required to produce such returns or evidence of any matters contained therein in any action or proceeding in any court, except on behalf of the City Treasurer in an action under the provisions of this Article to which the City Treasurer is a party or on behalf of any party to an action or proceeding under the provisions of this Article, or to punish a violator thereof or pursuant to any judicial order, in which event the court may require the production of and may admit in evidence so much of such returns or of the facts shown thereby as are pertinent to the action or proceeding and no more.

(c) No provision of this Section shall be construed to prohibit the delivery to a taxpayer or to his or her duly authorized representative of a copy of any return or report filed in connection with his or her tax, nor to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the information contained therein, nor to prohibit the inspection by the City Attorney or any other legal representative of the City of the report or return of any taxpayer who shall bring an action to set aside or review the tax based thereon or against whom an action or proceeding is contemplated or has been instituted under this Article.

(d) The provisions of this Section shall not preclude the City Treasurer, the City Clerk and their agents, clerks and employees from divulging any information gained from any return or audit to the federal government, the State, the Department of Revenue, the City or any other municipality, the City Attorney, the City Treasurer or the City Clerk, nor shall the City Treasurer, the City Clerk, and their agents, clerks or employees be liable to any person for such disclosure made for the purpose of computing or collecting the tax due and owing from any person for the purpose of verifying compliance with this Article or for the purpose of investigating any criminal or illegal activity.

(e) Any City officer or employee, or any agent thereof, who shall divulge any information classified by this Article as confidential in any manner except in accordance with proper judicial order or as otherwise provided herein or by other law, shall be guilty of a violation of this Article and shall be punished in the manner provided by state law. (Prior code 21-18)

**Sec. 4-2-40. Tax cannot be absorbed.**

It is unlawful for any retailer to advertise, hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof imposed by this Article shall be assumed or

absorbed by the retailer, that it shall not be added to the selling price of the property sold or the services tendered, or, if added, that it or any part thereof shall be refunded. (Prior code 21-19)

**Sec. 4-2-50. Excess tax; remittance.**

If any vendor, during any reporting period, collects as a tax an amount in excess of three and one-half percent (3½%) of his or her total taxable sales, then he or she shall remit to the City Treasurer the full net amount of the tax imposed in this Article and also such excess amount. The retention by the retailer or vendor of any excess amount of tax collections over the three and one-half percent (3½%) of the total taxable sales of such retailer or vendor or the intentional failure to remit punctually to the City Treasurer the full amount required to be remitted by the provisions of this Article is declared to be a violation of this Article and shall be recovered, together with interest, penalties and costs, as provided in Section 4-2-420 of this Article. (Prior code 21-20)

**Sec. 4-2-60. License and tax additional.**

The license and tax imposed by this Article shall be in addition to all other licenses and taxes imposed by law, except as otherwise provided in this Article. (Prior code 21-21)

**Sec. 4-2-70. Duty to keep records.**

It is the duty of every taxpayer 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 taxpayer to keep and preserve for a period of three (3) years all invoices of goods and merchandise purchased. All such books, invoices and other records shall be open for examination and audit at any time by the City Treasurer. The taxpayer shall produce all such records, if required by the City Treasurer, at the Edgewater Municipal Center, 5845 W. 25th Avenue, Edgewater, Colorado 80214. Taxpayers licensed with the City under this Article, and who hold a similar sales tax license in at least four (4) other Colorado municipalities which administer their own sales tax collection, may request a coordinated audit as provided for in this Section. (Prior code 21-22; Ord. 12-08 §1, 2008)

**Sec. 4-2-80. Administration.**

The City Council shall adopt rules and regulations in conformity with this Article for the proper administration and enforcement of this Article. The administration of this Article is vested in and shall be exercised by the Mayor. The City Treasurer shall assist the Mayor in the administration of this Article to the extent provided herein and in the rules and regulations promulgated hereunder. (Prior code 21-23)

**Sec. 4-2-90. Receipts; disposition.**

The monies received by the City Treasurer from the tax imposed and collected pursuant to this Article shall be deposited in the general fund of the City.

- (1) Each year, a portion of such monies shall be applied as follows:

a. An amount equal to twelve percent (12%) of the net sales and use tax amounts received by the City in 2000 shall be designated for the capital improvement fund.

b. An amount equal to ten percent (10%) of the net sales and use tax amounts received by the City in 2000 shall be designated for the capital equipment fund.

It is the legislative intent of the City Council that the revenues and funds derived under this Article from motor vehicles be utilized by the City for the construction and maintenance of streets in the City.

(2) Nothing herein shall prohibit the City Council from budgeting and appropriating amounts in addition to those provided for in Subsection (1) hereof for capital equipment acquisition, or for the construction and maintenance of streets in the City, or both. (Prior code 21-26; Ord. 12-08 §1, 2008)

**Editor's note**—Ord. 11-06 §1, 2006 suspends the provisions of Section 4-2-90(1) above effective January 1, 2007 through December 31, 2007.

**Sec. 4-2-100. Applicability to banks.**

The provisions of this Article shall apply to national banking associations and to banks organized and chartered under state law. (Prior code 21-27)

**Sec. 4-2-110. Statute of limitations.**

The taxes for any period, together with interest thereon and penalties with respect thereto, imposed by this Article shall not be assessed, nor shall any notice of lien be filed, district warrant issued or suit for collection be instituted, nor any other action to collect the same be commenced, more than three (3) years after the date on which the tax was or is payable; nor shall any lien continue after such period, except for taxes assessed before the expiration of such period, notice of lien with respect to which has been filed prior to the expiration of such period, in which cases such lien shall continue only for one (1) year after the filing of notice thereof. The statute of limitations period as set forth hereinabove in this Section shall not apply if:

(1) A taxpayer files a false or fraudulent return with the intent to evade the tax imposed by this Article; or

(2) A taxpayer fails to file a return as required by Section 4-2-220 of this Article.

In the case of a false or fraudulent return with the intent to evade the tax imposed by this Article, the tax, together with interest and penalties thereon, may be assessed, or proceedings for the collection of such taxes may be begun at any time. In the case of failure to file a return, the tax, together with interest and penalties thereon, may be assessed and collected at any time. Before the expiration of such period of limitation, the taxpayer and the City Treasurer may agree in writing to an extension thereof, and the period so agreed on may be extended by subsequent agreements in writing. (Prior code 21-28)

*Division 2*  
*Sales Tax*

**Sec. 4-2-210. Property and services taxed.**

There is levied, and there shall be collected and paid a sales tax in the amount stated in Section 4-2-230 as follows:

(1) On the purchase price paid or charged upon all sales and purchases of tangible personal property at retail.

(2) In the case of retail sales involving the exchange of property, on the purchase price paid or charged, including the fair market value of the property exchanged at the time and place of the exchange; excluding, however, from the consideration of the purchase price, the fair market value of the exchanged property, provided that such exchanged property is to be sold thereafter in the usual course of the retailer's business.

(3) Telecommunications.

a. Upon telecommunication services, including access services sold by local telephone exchange companies to providers of telecommunication services for use in providing such services, whether furnished by public or private corporations or enterprises, for all intrastate telecommunication services originating from or received on telecommunication equipment in the City if the charge for the service is billed to a person in the City or billed to an affiliate or division of such person in the City on behalf of a person in the City.

b. Upon access services sold by local telephone exchange companies to providers of telecommunications services for use in providing such services, whether furnished by public or private corporations or enterprises for all interstate telecommunication services originating from or received on telecommunication equipment in the City if the charge for the service is billed to a person in the City, or billed to an affiliate or division of such person in the City on behalf of a person in the City.

(4) Utilities.

a. For gas and electric service, whether furnished by municipal, public or private corporations or enterprises, for gas and electricity furnished and sold for commercial consumption and not for resale, upon steam when consumed or used by the purchaser and not resold in original form, whether furnished or sold by municipal, public or private corporations or enterprises.

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

(5) Food.

a. Upon all sales of food, prepared food or food for immediate consumption.

b. Except as provided in Paragraphs 4-2-260(32) and (34) of this Article, upon the amount paid for food and drink served or furnished in or by restaurants, cafes, lunch counters, cafeterias, hotels, drugstores, social clubs, nightclubs, cabarets, resorts, snack bars, caterers, carryout shops and other like places of business at which prepared food or drink is regularly sold, including sales from pushcarts, motor vehicles and other mobile facilities.

(6) On the entire amount charged to any person for rooms or accommodations, or lodging services as designated in Section 4-2-20 of this Article.

(7) On the purchase price paid or charged for pay television services sold, purchased, leased, rented, furnished or used.

(8) If the owner of an automotive vehicle for which registration, licensing or titling is required by the State pursuant to Section 42-6-137(2), C.R.S. is required to register, license or obtain a certificate of title for such automotive vehicle at an address located within the City, then on the purchase price paid or charged for such automotive vehicle.

(9) When the right to possession or use of any tangible personal property is granted under a lease or contract and such transfer of possession would be taxable under this Article if an outright sale were made, then such lease or contract shall be considered the sale of such article, and the tax shall be computed and imposed on each individual lease or contract payment as they occur as though an outright sale taxable under this Article were occurring upon each payment. When the right to possession or use of any tangible personal property is granted under a lease or contract where the lessor or contracting party is located outside the City and such tangible personal property is not delivered within the City by the lessor or contracting party but is picked up by the lessee or other contracting party and used within the City for a period exceeding thirty (30) days, and such transfer of possession would be taxable under this Article if an outright sale were made by a lessor or contracting party located within the City, then such lease or contract shall be taxed as follows:

a. A sales tax shall be imposed on the first thirty (30) days of such lease or contract and shall be payable to the taxing jurisdiction, through the lessor or contracting party, in which such lessor or contracting party is located; and

b. A sales tax shall be imposed on the remaining term of such lease or contract and shall be payable to the City through the lessor or contracting party.

Such sales tax shall be computed and imposed on each individual lease or contract payment as it occurs as though an outright sale taxable under this Article were occurring upon each payment. The payment of the sales tax shall be made to the lessor or contracting party by the lessee or other contracting party. Except as hereinabove otherwise provided, the lessor, as trustee, shall make payment of any sales tax obligation to the City in the manner provided by Section 4-2-220.

(10) On the entire amount paid or charged for security system and sound system services, whether purchased or leased.

(11) On the entire amount paid or charged for linen services.

(12) On the entire amount paid or charged for warranty and maintenance services relating to tangible personal property, whether included in the cost of the tangible personal property relating thereto or sold separately.

(13) On the entire amount paid or charged for modified or customized computer program services. (Prior code 21-30)

**Sec. 4-2-220. Collection of sales tax.**

(a) Every retailer, also in this Article called *vendor*, shall, irrespective of the provisions of Section 4-2-230, be liable and responsible for the payment of an amount equal to three and one-half percent (3½%) of all sales made by him or her of commodities or services as specified in Section 4-2-210 and shall, before the twentieth day of each month, make a return to the City Treasurer for the preceding calendar month and remit an amount equal to said three and one-half percent (3½%) on such sales to the City Treasurer, less two percent (2%) of the sum so remitted to cover the vendor's expense in the collection and remittance of said tax; however, if any vendor is delinquent in remitting said tax, other than in unusual circumstances shown to the satisfaction of the City Treasurer, the vendor shall not be allowed to retain any amount to cover his or her expense in collecting and remitting said tax, and an amount equal to the full three and one-half percent (3½%) shall be remitted to the City Treasurer by any such delinquent vendor. Such returns of the taxpayer or his or her duly authorized agent shall be furnished by the Finance Department. The City shall use the standard municipal sales and use tax reporting form and any subsequent revisions thereto adopted by the Executive Director of the Department of Revenue by the first full month commencing one hundred and twenty (120) days after the effective date of the regulation adopting or revising such standard form.

(b) If the accounting methods regularly employed by the vendor in the transaction of his or her business or other conditions are such that returns of sales made on a calendar month basis shall impose unnecessary hardship, the City Treasurer, upon written request of the vendor, may accept returns at such intervals as shall, in his or her opinion, better suit the convenience of the taxpayer and shall not jeopardize the collection of the tax. The City Treasurer may permit taxpayers whose monthly collected tax is less than three hundred dollars (\$300.00) to make returns and pay taxes at intervals not greater than every three (3) months.

(c) The City Treasurer may extend the date for making a return and paying the taxes due under such reasonable rules and regulations as may be prescribed therefor, but no such extension shall be for a greater period than as provided in Subsection (b) hereof.

(d) The burden of proving that any retailer is exempt from collecting the tax on any goods or services sold and paying the same to the City Treasurer, or from making such returns, shall be on the retailer or vendor under such reasonable requirements of proof as set forth in the rules and regulations prescribed therefor.

(e) If a dispute arises between the purchaser and seller as to whether or not any sale, service or commodity is exempt from taxation under Section 4-2-260, nevertheless the seller shall collect, and the purchaser shall pay, the tax, and the seller shall thereupon issue to the purchaser a receipt or

certification, on forms furnished by the Finance Department, showing the names of the seller and the purchaser, the items purchased, the date, price, amount of tax paid, and a brief statement of the claim of exemption. The purchaser thereafter may apply to the City Treasurer for a refund of such taxes, and it is then the duty of the City Treasurer to determine the question of exemption. The purchaser may request a hearing pursuant to Subsection 4-2-510(a) of this Article, and the final determination of the City Treasurer may either be appealed to the District Court pursuant to Section 4-2-520 of this Article or the Department of Revenue pursuant to Section 4-2-530 of this Article.

(f) 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 the sales tax required to be paid pursuant to Section 4-2-230. 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 the amount of the sales tax required to be paid pursuant to Section 4-2-230. (Prior code 21-31)

**Sec. 4-2-230. Sales tax base; schedule of sales tax.**

(a) Except as otherwise provided in this Subsection, the sales tax is imposed on the full purchaser price of articles sold after manufacture or having been made to order, and includes the full purchase price for material used and the service performed in connection therewith, excluding, however, such articles as are otherwise exempted in this Article. In connection with the transaction referred to in Section 4-2-20 of this Article, the sales tax is imposed only on the amount of any increase in the fair market value of such assets resulting from the manufacturing, fabricating or physical changing of the assets by the transferor corporation. Except as otherwise provided in this Subsection, the sales price is the gross value of all materials, labor and service, and the profit thereon, included in the price changed to the user or consumer.

(b) There is imposed upon all sales of commodities and services specified in Section 4-2-210 a tax at the rate of three and one-half percent (3½%) of the amount of the sale, to be computed in accordance with the schedules or systems set forth in the rules and regulations prescribed therefor. Said schedules or systems shall be designed so that no such tax is charged on any sale of fourteen cents (\$0.14) or less.

(c) Retailers.

(1) Except as provided in Paragraph (2) hereof, retailers shall add the tax imposed, or the average equivalent thereof, to the sale price or charge, showing such tax as a separate and distinct item, and when added, such tax shall constitute a part of such price or charge and shall be a debt from the consumer or user to the retailer until paid and shall be recoverable at law in the same manner as other debts. The retailer shall be entitled, as collecting agent of the City, to apply and credit the amount of his or her collections against the three-and-one-half-percent rate to be paid by him or her under the provisions of Section 4-2-220, remitting any excess of collection over said three and one-half percent (3½%) less the two-percent collection expense allowance, to the City Treasurer in the retailer's next monthly sales tax return.

(2) Any retailer selling malt, vinous or spirituous liquors by the drink may include in his or her sales price the tax levied under this Article, except that no retailer shall advertise or hold out to the public in any manner, directly or indirectly, that such tax is not included as part of the sales price to the consumer. The schedule referred to in Subsection (b) hereof shall be used by such retailer in determining amounts to be included in such sales price. No such retailer shall gain any benefit from the collection or payment of such tax, except as permitted in Section 4-2-220, nor shall the use of the schedule referred to in Subsection (b) hereof relieve such retailer from liability for payment of the full amount of the tax imposed pursuant to Section 4-2-210. (Prior code 21-32)

**Sec. 4-2-240. Credit sales.**

(a) In the case of a sale upon credit, or a contract for sale where the price is paid in installments, and title does not pass until a future date, or a sale secured by a chattel mortgage or a conditional sale, there shall be paid upon each payment that portion of the total tax which the amount paid bears in relation to the total purchase price.

(b) If a retailer transfers, sells, assigns or otherwise disposes of an account receivable, then he or she shall be deemed to have received the full balance of the consideration for the original sale and shall be liable for the remittance of the sales tax on the balance of the total sale price not previously reported, except that such transfer, sale, assignment or other disposition of an account receivable by a retailer to a closely held subsidiary, as defined in Section 4-2-20 of this Article, shall not be deemed to require the retailer to pay the sales tax on the credit sale represented by the account transferred prior to the time that the customer makes payment on said account. (Prior code 21-34)

**Sec. 4-2-250. Bad debt charge-offs.**

Taxes paid on gross taxable sales represented by accounts found to be worthless and actually charged off for income tax purposes may be credited upon a subsequent payment of the tax provided in this Article; however, if any such accounts are thereafter collected by the taxpayer, then a tax shall be paid upon the amounts so collected. (Prior code 21-35)

**Sec. 4-2-260. Exemptions.**

The following goods and services shall be exempt from sales tax under the provisions of this Article:

- (1) All sales to the United States government and to the State, its departments and institutions and the political subdivisions thereof in their governmental capacities only.
- (2) All sales made to charitable organizations in the conduct of their regular charitable functions and activities.
- (3) All sales which the City is prohibited from taking under the Constitution or laws of the United States or the State, or the City's Charter.
- (4) All sales of cigarettes.
- (5) All sales of medical supplies.

- (6) All sales of prescription drugs and prosthetic devices for humans and animals.
- (7) All sales and purchases of commodities and services under the provisions of Section 4-2-210 to any occupant who is a permanent resident of any hotel, inn, bed and breakfast residence, apartment hotel, lodging house, motor hotel, guesthouse, guest ranch, trailer court, mobile home, auto camp or trailer court or park, and who enters into or has entered into a written agreement for occupancy of a room or accommodations or lodging services for a period of at least thirty (30) consecutive days during the calendar year or preceding year.
- (8) All sales made to schools, other than schools held or conducted for private or corporate profit.
- (9) Any sale of a new or used trailer, semitrailer, truck, truck-tractor or truck body manufactured within the City if such vehicle is purchased from the manufacturer for use exclusively outside the City or in interstate commerce and is delivered by the manufacturer to the purchaser within the City, if the purchaser drives or moves such vehicle to any point outside the City within thirty (30) days after the date of delivery, and if the purchaser furnishes an affidavit to the manufacturer that such vehicle shall be permanently licensed and registered outside the City and shall be removed from the City within thirty (30) days after the date of delivery.
- (10) Any sale of a new or used trailer, semitrailer, truck, truck-tractor or truck body if such vehicle is purchased for use exclusively outside the City or in interstate commerce and is delivered by the manufacturer or licensed dealer to the purchaser within the City, if the purchaser drives or moves such vehicle to any point outside the City within thirty (30) days after the date of delivery, and if the purchaser furnishes an affidavit to the seller that such vehicle shall be permanently licensed and registered outside the City and shall be removed from the City within thirty (30) days after the date of delivery.
- (11) All sales of construction materials to a common carrier by rail operating in interstate or foreign commerce for use by such common carrier in construction and maintenance of its railroad tracks.
- (12) All sales of construction materials, 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.
- (13) The transfer of tangible personal property without consideration (other than the purchase, sale or promotion of the transferor's product) to a vendee located outside the City for use outside the City in selling products normally sold at wholesale by the transferor.
- (14) The sale of tangible personal property for testing, modification, inspection or similar type of activities in the City if the ultimate use of such property in manufacturing or similar type of activities occurs outside the City, and if the test, modification or inspection period does not exceed ninety (90) days.
- (15) All commodities which are taxed under the provisions of Article 27, Title 39, C.R.S., and all commodities which are taxed under such provisions and for which the tax is refunded, and the

sale of special fuel, as defined in Section 39-27-201(8), C.R.S., used for the operation of farm vehicles when such vehicles are being used on farms and ranches.

(16) Any sale of any article to a retailer or vendor of food, meals or beverages, which article is to be furnished to a consumer or user, together with the food, meals or beverages purchased, and if a tax is paid on the retail sale as required by Subsection 4-2-210(1) or (5).

(17) Any sale of any container or bag to a retailer or vendor of food, meals or beverages, which container or bag is to be furnished to a consumer or user for the purpose of packaging or bagging articles of tangible personal property purchased at retail, if a separate charge is not made for the container or bag to the consumer or user, if such container or bag becomes the property of the consumer and if a tax is paid on the retail sale as required by Subsections 4-2-210(1) or (5) of this Article.

(18) All transactions specified in Subsection 4-2-210(2) in which the fair market value of the exchanged property is excluded from the consideration or purchase price as provided in Subsection 4-2-210(2), and in which, because there is no additional consideration involved in the transaction, there is no purchase price within the meaning of Section 4-2-20 of this Article.

(19) Contractors and subcontractors.

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

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

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

3. Schools, other than schools held or conducted for private or corporate profit.

b. On application by a purchaser or seller, the City Treasurer shall issue to a contractor or subcontractor a certificate of exemption indicating that the contractor's or subcontractor's purchase of construction materials is for a purpose stated in Subparagraph a. hereof and is, therefore, free from sales tax. The City Treasurer shall provide forms for such application and for such certificate and shall have the authority to verify that the contractor or subcontractor is, in fact, entitled to the issuance of such certificate prior to such issuance.

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

(21) Tangible personal property.

a. Sales to and purchases of tangible personal property by a person engaged in the business of manufacturing, compounding for sale, profit or use any article, substance or commodity, which tangible personal property enters into the processing of or becomes an

ingredient or component part of the product or service which is manufactured, compounded or furnished, and commercial packaging materials thereof, shall be deemed to be wholesale sales and shall be exempt from taxation under this Article.

b. As used in Subparagraph a. hereof with regard to food products, tangible personal property enters into the processing of such products and, therefore, is exempt from taxation when:

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

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

(22) All sales and purchases of electricity, coal, gas, fuel oil, coke or nuclear fuel, for use in mining, refining, irrigation construction, telecommunication services and street and railroad transportation services.

(23) All sales and purchases of cattle, sheep, lambs, poultry, swine and goats, all sales and purchases of mares and stallions for breeding purposes, all sales and purchases of live fish for stocking purposes, and all farm close-out sales.

(24) All sales and purchases of feed for livestock, including horses, or poultry, all sales and purchases of seeds, and all sales and purchases of orchard trees.

(25) Vendors.

a. Every vendor vending individual items or personal property through coin-operated vending machines, and who otherwise complies with the provisions of this Paragraph shall be exempt from the provisions of Sections 4-2-220 and 4-2-230, except as hereinafter provided; nevertheless such vendor shall pay a sales tax of three and one-half percent (3½%) less two percent (2%) of the amount so paid to cover the vendor's expense in the timely collection and remittance of such tax to the City Treasurer as set forth in Section 4-2-220, on the personal property sold in excess of thirty cents (\$0.30) so vended in the coin-operated machines unless the sale is otherwise exempt under the provisions of this Article.

b. To be eligible for the exemption provided for in this Section, each vendor shall:

1. Be licensed under Section 6-1-190;

2. Maintain a record of the identification number, ownership, location and disposition of every coin-operated vending machine used by him or her in his or her operation as a vendor; and

3. Within sixty (60) days after commencing business as such vendor, submit to the Finance Department an accurate list containing the information required under Subsection 2 hereof and submit such list annually thereafter on January 1.

(26) All sales and purchases of straw and other bedding for use in the care of livestock or poultry.

(27) Forty-eight percent (48%) of the purchase price of factory-built housing, as such housing is defined in Section 24-32-703(3), C.R.S., shall be exempt from taxation under this Article, except that the entire purchase price in any subsequent sale of a mobile home, as such vehicle is defined in Section 42-1-102(82)(b), C.R.S., after such mobile home has been subject to the payment of sales tax by virtue of Subsection 4-2-210(8), shall be exempt from taxation under this Article.

(28) The purchase price of electric-powered automotive vehicles, including both the original and all subsequent purchases of such vehicles, and the purchase of batteries and controls required for the operation and maintenance of such vehicles.

(29) In any case in which a sales tax has been imposed under this Article on lubricating oil used other than in automotive vehicles, the purchaser thereof shall be entitled to a refund equal to the amount of the sales tax paid on that portion of the sale price thereof which is attributable to the federal excise tax imposed on the sale of such lubricating oil. The refund allowed under this Section shall be paid by the City Treasurer upon receiving evidence that the purchaser has received under Section 6425 of the Internal Revenue Code of 1954, as amended, a refund of the federal excise tax paid on the sale of such lubricating oil. The claim for a refund shall be made upon forms furnished by the Finance Department.

(30) All sales and purchases of refractory materials and carbon electrodes used by a person manufacturing iron and steel for sale or profit, and all sales and purchases of inorganic chemicals used in the processing of vanadium-uranium ores.

(31) All sales and purchases of newsprint and printer's ink for use by publishers of newspapers and commercial printers, and all sales and purchases of newspapers.

(32) Meals provided to employees of the places described in Subsection 4-2-210(5)b at no charge or at a reduced charge and which are considered as part of their salary, wages or income.

(33) All sales of tangible personal property purchased or sold within the City if delivered outside the City to the purchaser.

(34) All sales and purchases of food, as specified in 7 U.S.C. § 2012(g), as such section existed on October 1, 1987, or is thereafter amended, which is purchased with food stamps pursuant to the Federal Food Stamp Program, or sales and purchases of food, as specified in 42 U.S.C. § 1786, as such section existed on October 1, 1987, or is thereafter amended, which is purchased with WIC vouchers or checks pursuant to the federal special supplemental program for women, infants and children. (Prior code 21-36; Ord. 12-08 §1, 2008)

**Sec. 4-2-270. Map or location guide of City boundaries.**

The Finance Department shall make available to any requesting vendor a map or location guide showing the boundaries of the City. The requesting vendor may rely on such map or location guide and any update thereof available to such vendor in determining whether to collect a sales or use tax or both. No penalty shall be imposed or action for deficiency maintained against a vendor who in good faith complies with the most recent map or location guide available to such vendor. (Prior code 21-38)

**Sec. 4-2-280. Electronic database; retailer held harmless.**

(a) Any retailer or vendor that collects and remits sales tax to the City as provided in this Article may make use of the electronic database of State addresses certified by the Colorado Department of Revenue pursuant to Section 39-26-105.3, C.R.S., ("the Database") to determine the jurisdiction to which the sales tax is owed.

(b) Any retailer or vendor that makes use of the data contained in the Database shall be held harmless for any tax, penalty or interest owed to the City that would be due as a consequence of failing to remit sales tax to the correct jurisdiction where such failure occurred solely as the result of an error in the Database; provided, however, that the retailer or vendor shall demonstrate that it used the most current information available from the Database on the date that the sale occurred.

(c) Notwithstanding the foregoing, where an error in collecting or remitting sales tax is a result of a deceptive or false representation or is based in fraud, this Section shall not apply. (Ord. 04-08 §1, 2008)

*Division 3*  
*Use Tax*

**Sec. 4-2-310. Property and services taxed.**

There is hereby imposed and shall be collected from every person in this City a use tax at the rate of three and one-half percent (3½%) for the privilege of storing, using or consuming in the City any articles of tangible personal property or taxable services purchased at retail. Such use tax shall be computed in accordance with schedules or systems set forth in the rules and regulations prescribed therefor. (Prior code 21-39)

**Sec. 4-2-320. Collection of use tax.**

(a) Generally.

(1) Except as otherwise provided in this Section, every person who uses, stores or consumes tangible personal property or service, which property or service is purchased either inside or outside the City and is subject to the use tax imposed pursuant to Section 4-2-310, and who has not paid the sales or use tax imposed by this Article to a retailer, shall make a return and remit the use tax imposed by Section 4-2-310 to the City Treasurer for the preceding period covered by the remittance on forms prescribed by the City Treasurer, showing in detail the tangible personal

property or service stored, used or consumed by such person within the City in the preceding period covered by the remittance and on which property the sales or use tax has not been paid. Every person subject to the provisions of Section 4-2-310 shall maintain monthly records of the amount of use tax due. Such person shall make a return and remit the use tax due before the twentieth day of the following month.

(2) Any such return shall be subscribed by the taxpayer or his or her authorized agent and shall contain a written declaration that it is made under the penalties of perjury.

(b) Except as otherwise provided in this Section, every retailer doing business in this City and making sales of tangible personal property for the storage, use, or consumption in the City which are not exempt from taxation as provided in Section 4-2-330, shall, at the time of making such sales or taking the orders therefor, or if the storage, use or consumption of such tangible personal property is not then taxable under Section 4-2-310, then at the time that such storage, use or consumption becomes taxable under Section 4-2-310, collect the tax imposed by Section 4-2-310 from the purchaser and give the purchaser a receipt therefor, which receipt shall identify the property taxed, the date that such property was sold or ordered, and the amount of tax collected and paid. The tax required to be collected by such retailer from such purchaser shall be displaced separately from the advertised price listed on the forms or advertising matter on all sales checks, orders, sales slips or other proof of sales. The tax required to be collected by any retailer or his or her authorized agent shall be remitted to the City in like manner as otherwise provided in this Article for the remittance of sales taxes collected by retailers, and all such retailers or agents collecting the use tax imposed by Section 4-2-310 shall make returns on forms provided by the City Treasurer at such times and in such manner as is provided for the making of returns in the payment of the sales tax imposed pursuant to Section 4-2-210. The procedure for assessing and collecting use taxes from such retailers or agents, or from the user when not paid to a retailer or agent, shall be the same as provided in this Article for the collection of sales tax imposed pursuant to Section 4-2-210.

(c) Agreements.

(1) If the owner of an automotive vehicle for which registration, licensing or titling is required by the State pursuant to Section 42-6-137(2), C.R.S., is required to register, license or obtain a certificate of title for such automotive vehicle at an address located within the City, then the use tax imposed pursuant to Section 4-2-310 shall be collected by the authorized agent of the Department of Revenue in the County pursuant to an agreement or agreements entered into between the City and the authorized agent of the Department of Revenue in the County. The proceeds of such use tax shall be paid to the City periodically in accordance with such agreement or agreements. If the authorized agent of the Department of Revenue in the County fails to collect any use tax imposed pursuant to Section 4-2-310, then the City Treasurer shall collect such use tax in the manner set forth in Section 4-2-420.

(2) The Mayor and the City Clerk are authorized to enter into and execute on behalf of the City any agreement or agreements necessary for the administration and enforcement of this Section, and the form of such agreement or agreements shall be approved by the City, the City Attorney and the City Treasurer.

(d) Construction materials.

(1) For construction materials, the use tax imposed pursuant to Section 4-2-310 shall be collected by the City Treasurer as hereinafter provided in this Subsection (d), and shall be collected in the amount of three and one-half percent (3½%) of the sale value of the construction materials. For purposes of this Subsection (d), fifty percent (50%) of the estimated general contract costs and/or fifty percent (50%) of the estimated mechanical contract costs shall be deemed to be the sale value of such construction materials.

(2) Any person who shall build, construct or improve any building, dwelling or other structure or improvement to realty whatsoever, including underground improvements, within the City, and who shall purchase the necessary lumber, fixtures, materials or any other supplies needed therefor from any source inside or outside the corporate limits of the City shall keep and preserve all invoices and statements from both the general and subcontractors along with a summary sheet showing such purchases, such person shall on or before the tenth day of each succeeding month following the start of such construction, file a return with the City Treasurer to which he or she shall attach such statements and invoices from both the general and subcontractors, along with a summary sheet for the lumber, fixtures, materials and other supplies purchased the previous month, and shall thereupon pay to the City Treasurer the full amount of the use tax due thereon for the preceding month or months. Any failure to preserve such statements and invoices and to make such return and payment of such use tax shall be deemed a violation of this Article, and any offending persons shall be subject to the penalties and punishment provided in this Article. It shall be the duty of the Building Inspector and the contractors and subcontractors who are hired to construct any such improvements to furnish the City Treasurer with such information as he or she may require as to any purchase of lumber, fixtures, materials and supplies for such improvements which were obtained from sources inside and outside the City. The full amount of any use tax due and not paid for lumber, fixtures, materials and supplies purchased from such inside or outside sources, together with penalties and interest thereon as herein provided, shall be and constitute a lien upon the real property benefitted by such improvements, and the City Treasurer is hereby authorized to file a notice of such lien with the County Clerk and Recorder.

(3) Any person who shall build, construct or improve any building, dwelling or other structure or improvement to realty whatsoever, including underground improvements, within the City, and who shall purchase the necessary lumber, fixtures, materials or any other supplies needed therefor from any source either within or without the corporate limits of the City, may at such person's election remit a deposit to the City prior to the issuance of any building permit, such deposit to insure and indemnify the City for the amount of use tax due within three (3) years from the date of issuance of the certificate of occupancy for the project or the date of the final inspection of the project by the City. The amount of the deposit shall be based upon an estimate of the use tax to be payable on the lumber, fixtures, materials and supplies needed therefor at the time that the respective building permit is obtained. The estimate of the cost of such lumber, fixtures, materials and supplies for a particular project structure shall be determined by the Building Official, and this estimate shall be subject to adjustment if the actual cost of such lumber, fixtures, materials or supplies needed for the project is either less than or greater than such estimate. If the taxpayer elects this basis for estimating the use tax and providing a deposit to insure the use tax payment when due, then the provisions of Subsection (2) hereof which provide for the filing of a tax return supported by related invoices shall be waived. Upon payment of such deposit to the City Treasurer, which is computed on the basis of three and one-half percent (3½%) of fifty percent (50%) of the estimated general contract costs and/or fifty percent (50%) of the estimated mechanical contract costs, the taxpayer shall be issued a receipt identifying the property that is the

subject of this deposit and the building permit number. Within three (3) years from the date of issuance of the certificate of occupancy for the project or the date of the final inspection by the City of the project, if it is determined by the City that the actual cost of the lumber, fixtures, materials and supplies needed for the project is greater than the estimate therefor and that the amount of the use tax deposit is not sufficient to provide for full payment of the use tax, then the additional use tax due must be received by the City Treasurer within thirty (30) days of such determination. If it is determined by the City that the deposit is sufficient to pay for the use tax due, then the deposit shall be used to pay the amount of the use tax due, and any excess amount of the deposit shall be returned by mail to the person who made the deposit within thirty (30) days of such determination. If the taxpayer purchases such lumber, fixtures, materials or supplies from City vendors possessing a valid City retail sales tax license, then he or she may submit invoices or statements reflecting the purchase therefor and make application to the City Treasurer within sixty

(60) days directly following the determination by the City of the use tax due, which determination shall be made within three (3) years from the date of issuance of the certificate of occupancy for the project or date of the final inspection by the City of the project, for credit or refund of any amount paid as sales taxes to the City, in which event it shall be the duty of the person making such application to furnish all necessary bills and invoices evidencing the payment of the tax. If the City Treasurer is satisfied that there has been such payment, then he or she shall either credit the account of the taxpayer if the use tax has not been levied or refund the amount if the use tax levy has been paid through such deposit within sixty (60) days after such application has been received by the City Treasurer. The amount of any use tax due and not paid constitutes a lien upon the real property benefitted by the use of such lumber, fixtures, materials or supplies.

(e) 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 sales or use tax of another statutory or home rule municipality legally imposed on the purchaser or user equal to or in excess of the use tax required to be paid pursuant to Section 4-2-310. A credit shall be granted against the City's use tax with respect to the person's storage, use or consumption in the City of tangible personal property, the amount of the credit to equal the tax paid by him or her by reason of the imposition of a sales or use tax of the previous statutory or home rule municipality on his or her purchase or use of the property. The amount of the credit shall not exceed the amount of the use tax required to be paid pursuant to Section 4-3-310. (Prior code 21-40; Ord. 12-08 §1, 2008)

#### **Sec. 4-2-330. Exemptions.**

The use tax imposed pursuant to Section 4-2-310 is declared to be supplementary to the sales tax imposed pursuant to Section 4-2-210 and shall not apply:

(1) To the storage, use or consumption of any tangible personal property, the sale of which is subject to the sales tax imposed pursuant to Section 4-2-210.

(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 gasoline which is taxed under the provisions of Part 1, Article 27, Title 39, C.R.S., and all gasoline which is taxed under such provisions and for which

the tax is refunded, and to the storage, use or consumption of special fuel, as defined in Section 39-27-208(1), C.R.S., used for the operation of farm vehicles when the same are being used on farms or ranches.

(4) To the storage, use or consumption of 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.

(5) To the storage, use, consumption or loan of tangible personal property by or to the United States government, the State or its institutions or political subdivisions in their governmental capacities only, or any charitable organizations in the conduct of its regular charitable functions and activities.

(6) Tangible personal property.

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

b. As used in Subsection a. hereof with regard to food products, tangible personal property enters into the processing of such products and, therefore, is exempt from taxation when:

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

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

(7) To the storage, use or consumption of electricity, coal, coke, fuel oil, nuclear fuel or gas for use in mining, refining, irrigation, building construction, telecommunication services and street and railroad transportation services.

(8) To the storage and use of cattle, sheep, lambs, swine and goats within the City, or to the storage and use within the City of mares and stallions kept, held and used for breeding purposes only.

(9) To the storage, use or consumption of newsprint and printer's ink for storage, use or consumption by publishers of newspapers and commercial printers and to the storage, use or consumption of newspapers, as such term is defined in Section 24-70-102, C.R.S.

(10) To the storage, use or consumption of cigarettes.

(11) The storage, use or consumption of tangible personal property acquired outside the City and brought into the City by a nonresident acquiring residency.

(12) To the storage or use of an automotive vehicle for which registration, licensing or titling is required by the State pursuant to Section 42-6-137(2), C.R.S., if the owner is or was, at the time of purchase, a nonresident of the City, and he or she purchased such motor vehicle outside 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, licensed and titled such automotive vehicle outside the City.

(13) To the storage, use or consumption of a mobile home, as such vehicle is defined in Section 42-1-102(82)(b), C.R.S., after such mobile home has been subject to the payment of use tax by virtue of Subsection 4-2-320(d)(3).

(14) To the storage or use of a new or used trailer, semi-trailer, truck, truck-tractor or truck body manufactured within the City if such vehicle is purchased from the manufacturer for use exclusively outside the City or in interstate commerce and is delivered by the manufacturer to the purchaser within the City, if the purchaser drives or moves such vehicle to any point outside the City within thirty (30) days after the date of delivery, and if the purchaser furnishes an affidavit to the manufacturer that such vehicle shall be permanently licensed and registered outside the City and shall be removed from the City within thirty (30) days after the date of delivery.

(15) To the storage or use of a new or used trailer, semi-trailer, truck, truck-tractor or truck body if such vehicle is purchased for use exclusively outside the City or in interstate commerce and is delivered by the manufacturer or licensed dealer to the purchaser within the City, if the purchaser drives or moves such vehicle to any point outside the City within thirty (30) days after the date of delivery, and if the purchaser furnishes an affidavit to the seller that such vehicle shall be permanently licensed and registered outside the City and shall be removed from the City within thirty (30) days after the date of delivery.

(16) To the storage, use or consumption of tangible personal property which is thereafter transferred to a vendee located outside the City without consideration (other than the purchase, sale or promotion of the transferor's product) for use outside of the City in selling products normally sold at wholesale by the person storing, using or consuming such property.

(17) To the testing, modification, inspection or similar type activities of tangible personal property acquired for ultimate use outside the City in manufacturing or similar type of activities if the test, modification or inspection period does not exceed ninety (90) days.

(18) To the storage, use or consumption of any article by a retailer or vendor of food, meals or beverages, which article is to be furnished to a consumer or user for use with articles of tangible personal property purchased at retail; if:

a. A separate charge is not made for the article to the consumer or user;

b. Such article becomes the property of the consumer or user, together with the food, meals or beverages purchased; and

c. A tax is paid on the retail sale as required by Subsection 4-2-210(1) or (5).

(19) To the storage, use, or consumption of any container or bag by a retailer or vendor of food, meals or beverages, which container or bag is to be furnished to a consumer or user for the purpose of packing or bagging articles of tangible personal property purchased at retail, if:

a. A separate charge is not made for the container or bag to the consumer or user;

b. Such container or bag becomes the property of the consumer or user, together with the food, meals or beverages purchased; and

c. A tax is paid on the retail sale as required by Subsection 4-2-210(1) or (5).

(20) To the storage, use or consumption of food or meals that are provided to employees of the places described in Section 4-2-210(5) if such food or meals are provided to such employees at no charge or at a reduced charge and are considered as part of their salary, wages or income.

(21) To the storage, use or consumption by a contractor or subcontractor of construction materials for use in the building, erection, alteration or repair of structures, highways, roads, streets and other public works owned and used by:

a. The United States government, the State, its department and institutions and the political subdivisions thereof in their governmental capacities only;

b. Charitable organizations in the conduct of their regular charitable functions and activities; or

c. Schools, other than schools held or conducted for private or corporate profit.

(22) To the storage, use or consumption of aircraft used or purchased for use in interstate commerce by a commercial airline.

(23) To the storage of construction materials.

(24) The City's use tax shall not be imposed with respect to the use or consumption of tangible personal property within the City which occurs more than three (3) years after the most recent sale of the property if, within the three (3) years following such sale, the property has been significantly used within the State for the principal purpose for which it was purchased.

(25) To the storage, use or consumption of food, as specified in 7 U.S.C. § 2012(g), as such section existed on October 1, 1987, or is thereafter amended, which is purchased with food stamps pursuant to the Federal Food Stamp Program, or the storage, use or consumption of food, as specified in 42 U.S.C. § 1786, as such section existed on October 1, 1987, or is thereafter amended, which is purchased with WIC vouchers or checks pursuant to the federal special supplemental program for women, infants and children. (Prior code 21-41)

**Sec. 4-2-340. Proration of use tax for certain construction equipment.**

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

(b) Construction equipment that is located within the boundaries of the City for a period of thirty (30) consecutive days or less shall be subjected to the City's use tax in an amount that does not exceed the amount calculated as follows: the purchase price of the equipment shall be multiplied by a fraction, the numerator of which is one (1) and the denominator of which is twelve (12), and the result shall be multiplied by the amount of the use tax imposed pursuant to Section 4-2-310 hereof.

(c) Where the provisions of Subsection (b) hereof are utilized, the credit provisions of Section 4-2-320 shall apply at such time as the aggregate sales and use taxes legally imposed by and paid to other statutory and home rule municipalities on any such equipment equal the amount of the use tax imposed pursuant to Section 4-2-310.

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

(1) Prior to or on the date that the equipment is located within the boundaries of the City, the taxpayer shall file with the City Treasurer an equipment declaration on a form provided by the City Treasurer. Such declaration shall state the dates on which the taxpayer anticipates that the equipment shall be located within and removed from the boundaries of the City, shall include a description of each such anticipated piece of equipment, shall state the actual or anticipated purchase price of each such anticipated piece of equipment and shall include such other information as reasonably deemed necessary by the City.

(2) The taxpayer shall file an amended equipment declaration with the City reflecting any changes in the information contained in any previous equipment declaration no less than once every ninety (90) days after the equipment is brought into the boundaries of the City or, for equipment that is brought into the boundaries of the City for a project of less than ninety (90) days' duration, no later than ten (10) days after substantial completion of such project.

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

(e) If the equipment declaration is given as provided in Subsection (d) hereof, then as to any item of construction equipment for which the customary purchase price is less than two thousand five hundred dollars (\$2,500.00) that was brought into the City temporarily for use on a construction project, it shall be presumed that the item was purchased in a jurisdiction having a local sales or use tax as high as the use tax imposed pursuant to Section 4-2-310 and that such local sales or use tax was previously paid. In such case, the burden of proof in any proceeding before the City, the Executive Director of the Department of Revenue or the District Court shall be on the City to prove that such local sales or use tax was not paid.

(f) If the taxpayer fails to comply with the provisions of Subsection (d) hereof, then the taxpayer may not avail himself or herself of the provisions of Subsection (b) hereof and shall be subject to the provisions of Subsection (a) hereof. Substantial compliance with the provisions of Subsection (d)

shall allow the taxpayer to avail himself of the provisions of Subsection (b). (Prior code 21-42; Ord. 12-08 §1, 2008)

*Division 4*  
*Refunds and Enforcement*

**Sec. 4-2-410. Refunds.**

(a) A refund shall be made, or a credit allowed, for the sales or use tax so paid under dispute by any purchaser or user who claims an exemption pursuant to Section 4-2-260 or 4-2-330. Such refund shall be made by the City Treasurer after compliance with the following conditions precedent: Applications for refund shall be made within sixty (60) days after the purchase, storage, use or consumption of the goods or services whereon an exemption is claimed, must be supported by the affidavit of the purchaser or user accompanied by the original paid invoice or sales receipt and certificate issued by the seller and shall be made upon such forms as shall be prescribed therefor.

(b) Upon receipt of an application, the City Treasurer shall examine the same with due speed and shall give notice to the applicant by order in writing of his or her decision thereon. Aggrieved applicants, within twenty (20) days after such decision is mailed to them, may petition the City Treasurer for a hearing on the claim in the manner provided in Section 4-2-510 and may either appeal to the District Court in the manner provided in Section 4-2-520 or to the Department of Revenue in the manner provided in Section 4-2-530. The right of any person to a refund under this Article shall not be assignable, and except as provided in Subsection (d) hereof, such application for refund must be made by the same person who purchased the goods or services and paid the tax thereon as shown in the invoice of the sale thereof.

(c) A refund shall be made or a credit allowed by the City Treasurer to any person entitled to an exemption where such person establishes that:

- (1) A tax was paid by another person, the purchaser, on a purchase made on behalf of the person entitled to an exemption;
- (2) A refund has not been granted to such purchaser; and
- (3) The person entitled to the exemption paid or reimbursed such purchaser for such tax.

The burden of proving that sales, services and commodities on which tax refunds are claimed are exempt from taxation under this Article or were not at retail shall be on the person making such claim under such reasonable requirements of proof as set forth in the rules and regulations prescribed therefor. No such refund shall be made or credit allowed in an amount greater than the tax paid less the expense allowance on such purchase retained by the vendor pursuant to Subsection 4-2-220(a).

(d) Such application for refund under Subsection (c) hereof shall be made on forms furnished by the Finance Department. Upon receipt of such application and proof of the matters contained therein, the City Treasurer shall give notice to the applicant by order in writing of his or her decision thereon. Aggrieved applicants, within twenty (20) days after such decision is mailed to them, may petition the City Treasurer for a hearing on the claim in the manner provided in Subsection 4-2-510(a) and may

either appeal to the District Court in the manner provided in Section 4-2-520 or to the Department of Revenue in the manner provided in Section 4-2-530. Any applicant for a refund under the provisions of this Subsection (d) or any other person who makes any false statement in connection with an application for a refund of any taxes is guilty of a violation of this Article and shall be punished in the manner provided by state law.

(e) Claims for tax moneys paid in error or by mistake shall be made within three (3) years after the date of purchase, storage, use or consumption of the goods or services for which the refund is claimed and shall be processed for refund in accordance with the rules and regulations prescribed therefor under Subsection (d) hereof, except that the proceeds of any such claim for a refund shall first be applied by the Finance Department to any tax deficiencies or liabilities existing against the claimant before allowance of such claim by the Finance Department, and further except that, if such excess payment of tax moneys in any period is discovered as a result of an audit by the Finance Department, and deficiencies are discovered and assessed against the taxpayer as a result of such audit, then such excess moneys shall be first applied against any deficiencies outstanding to the date of the assessment but shall not be applied to any future tax liabilities.

(f) If any person is convicted under the provisions of this Section, such conviction shall be prima facie evidence that all refunds received by such person during the current year were obtained unlawfully, and the City Treasurer is empowered to bring appropriate action for recovery of such refunds. A brief summary statement of the above-described penalties shall be printed on each form application for a refund. (Prior code 21-43)

**Sec. 4-2-420. Recovery of taxes, penalty and interest.**

(a) All sums of money paid by the purchaser to the retailer as taxes imposed by this Article shall be and remain public money, the property of the City, in the hands of such retailer, and he or she shall hold the same in trust for the sole use and benefit of the City until paid to the City Treasurer. For failure to so pay to the City Treasurer, such retailer shall be punished as provided herein.

(b) Delinquency.

(1) If a person neglects or refuses to make a return in payment of the sales tax or to pay any sales tax as required by this Article, then the City Treasurer shall make an estimate, based upon such information as may be available, of the amount of taxes due for the period for which the taxpayer is delinquent and shall add thereto a penalty of ten percent (10%) thereof and interest on such delinquent taxes at the rate imposed under Section 4-2-450, plus one-half percent (½%) per month from the date when due; not exceeding eighteen percent (18%) in the aggregate.

(2) If a person neglects or refuses to make a return in payment of the use tax or to pay any use tax as required by this Article, then the City Treasurer shall make an estimate, based upon such information as may be available, of the amount of taxes due for the period for which the taxpayer is delinquent and shall add thereto a penalty equal to ten percent (10%) thereof and interest on such delinquent taxes at the rate imposed under Section 4-2-450, plus one-half percent (½%) per month from the date when due.

(3) Promptly thereafter, the City Treasurer shall give to the delinquent taxpayer written notice of such estimated taxes, penalty and interest, which notice shall be sent by first-class mail directed

to the last address of such person on file with the Finance Department. Such estimate shall thereupon become a notice of deficiency. Within twenty (20) days after the notice of deficiency is mailed, the taxpayer may petition the City Treasurer for a hearing in the manner provided in Subsection 4-2-510(a) and either may appeal to the District Court as provided in Section 4-2-520 or to the Department of Revenue as provided in Section 4-2-530.

(c) Notice.

(1) If any taxes, penalty or interest imposed by this Article and shown due by returns filed by the taxpayer or as shown by assessments duly made as provided in this Section are not paid within five (5) days after the same are due, then the City Treasurer shall issue a notice, setting forth the name of the taxpayer, the amount of the tax, penalties and interest, the date of the accrual thereof, and that the City claims a first and prior lien therefor on the real and tangible personal property of the taxpayer except as to preexisting claims or liens of a bona fide mortgagee, pledgee, judgment creditor or purchaser whose rights have attached prior to the filing of the notice as provided in this Section on property of the taxpayer, other than the goods, stock in trade and business fixtures of such taxpayer.

(2) Said notice shall be on forms furnished by the Finance Department and shall be verified by the Mayor, the City Treasurer or any duly qualified agent of the Mayor or the City Treasurer, whose duties are the collection of such tax, and may be filed in the office of the county clerk and recorder in which the taxpayer owns real or tangible personal property, and the filing of such notice shall create a lien on such property in that county and constitute notice thereof. After said notice has been filed, or concurrently therewith, or at any time when taxes due are unpaid, whether such notice has been filed or not, the City Treasurer may issue a warrant directed to any duly authorized revenue collector, or to the sheriff of the county, commanding him or her to levy upon, seize and sell sufficient of the real and personal property of the amount due together with interest, penalties and costs, as may be provided by law, subject to valid preexisting claims or liens.

(d) Such revenue collector or the sheriff shall forthwith levy upon sufficient of the property of the taxpayer or any property used by such taxpayer in conducting his or her retail business, except property made exempt from the tax lien pursuant to the provisions of Paragraph 4-2-430(a)(2), and said property so levied upon shall be sold in all respects with like effect and in the same manner as is prescribed by law with respect to executions against property upon judgment of a court of record, and the remedies of garnishment shall apply. The sheriff shall be entitled to such fee in executing such warrants as are allowed by law for similar services.

(e) Any lien for taxes as shown on the records of the county clerks and recorders as provided in this Section, upon payment of all taxes, penalties and interest covered thereby, shall be released by the City Treasurer in the same manner as mortgages and judgments are released.

(f) Recovery.

(1) The City Treasurer may also treat any such taxes, penalties or interest due and unpaid as a debt due to the City from the vendor. The return of the taxpayer or the assessment made by the City Treasurer, as provided in this Article, shall be prima facie proof of the amount due.

(2) To recover such taxes, penalties or interest due, the City Treasurer may bring an action in attachment, and a writ of attachment may be issued to the sheriff. In any such proceedings, no bond shall be required of the City Treasurer, nor shall any sheriff require of the City Treasurer an indemnifying bond for executing the writ of attachment or writ of execution upon any judgment entered in such proceedings. The City Treasurer may prosecute appeals in such cases without the necessity of providing bond therefor. It is the duty of the City Attorney, when requested by the City Treasurer, to commence action for the recovery of taxes due under this Article, and this remedy shall be in addition to all other existing remedies or remedies provided in this Article.

(g) In any action affecting the title to real estate or the ownership or rights to possession of personal property, the City may be made a party defendant for the purpose of obtaining an adjudication or determination of its lien upon the property involved therein. In any such action, service of summons upon the City Treasurer or any person in charge of the office of the City Treasurer shall be sufficient service and shall be binding upon the City.

(h) The City Treasurer is authorized to waive, for good cause shown, any penalty assessed as provided in this Article, and any interest imposed in excess of the rate determined pursuant to Subsection (b) hereof shall be deemed a penalty.

(i) If a taxpayer pays for any tax imposed pursuant to this Article by check for which there are insufficient funds to cover such check, then the City Treasurer may assess a penalty against such taxpayer as follows: (1) ten dollars (\$10.00) for the first violation; (2) twenty-five dollars (\$25.00) for the second violation; and (3) fifty dollars (\$50.00) for each additional violation. If a penalty of twenty-five dollars (\$25.00) or more has been assessed against a taxpayer by the City Treasurer, then the City Treasurer may require such taxpayer to pay all tax payments, whether due or to be due in the future, by certified funds, cashier's check or cash. The penalty imposed by this Section is in addition to all other penalties imposed pursuant to this Article.

(j) The City shall participate with other cities in the State concerning intercity claims for the recovery of sales and use taxes paid to the wrong taxing jurisdiction. The intent and procedure for filing a "claim for recovery" is set forth in this Section.

(k) The City Treasurer may issue summons and complaints for violations of this Article as set forth in this Code. (Prior code 21-44)

**Sec. 4-2-430. Tax lien; exemption from lien.**

(a) Generally.

(1) The sales tax imposed pursuant to Section 4-2-210 shall be a first and prior lien upon the tangible personal property and business fixtures of or used by any retailer under lease, title retaining contract or other contract arrangement, excepting stock of goods sold or for sale in the ordinary course of business, and shall take precedence on all such property over other liens or claims of whatsoever kind or nature. The use tax imposed by Section 4-2-310 shall be a first and prior lien on the tangible personal property stored, used, or consumed, subject only to any valid mortgage or other liens of record on and prior to the recording of notice as set forth in Subsection 4-2-420(c)(2), which lien shall have precedence over all other liens of whatsoever kind or nature, except as to preexisting claims or liens of a bona fide mortgagee, pledgee, judgment creditor or

purchaser whose rights have attached prior to the filing of the notice on such tangible personal property.

(2) The real or personal property of an owner who has made a bona fide lease to a retailer or to any taxpayer owing a use tax shall be exempt from the lien created in Paragraph (1) hereof if such property can reasonably be identified from the lease description, and if the lessee is given no right to become the owner of the leased property. This exemption shall be effective from the date of the execution of the lease if the lease is recorded with the County Clerk and Recorder of the County where the property is located or based, or if a memorandum of the lease is filed with the Finance Department within ten (10) days after the execution of the lease. Motor vehicles which are properly registered in the City, showing the lessor as the owner thereof, shall be exempt from the lien created in Subsection (1) hereof, except that said lien shall apply to the extent that the lessee has an earned reserve, allowance for depreciation not to exceed fair market value or similar interest which is or may be credited to the lessee. Where the lessor and the lessee are blood relatives or relatives by law or have twenty-five percent (25%) or more common ownership, a lease between such lessee and such lessor shall not be considered as bona fide for purposes to this Section.

(3) Any retailer who is in possession of property under the terms of a lease, which property is exempt from the tax lien as provided in this Section, may be required by the City Treasurer to remit taxes collected at more frequent intervals than monthly, but no more frequently than semimonthly, or may be required to furnish security for the proper payment of taxes whenever the collection of taxes appears to be in jeopardy.

(4) Any retailer who sells out his or her business or stock of goods, or quits business, shall be required to make out the return as provided in this Article, within ten (10) days after the date he or she sold his or her business or stock of goods or quit business, and his or her successor in business shall be required to withhold sufficient purchase money to cover the amount of said taxes due and unpaid until such time as the former owner produces a receipt from the City Treasurer showing that the taxes have been paid or a certificate that no taxes are due.

(5) If the purchaser of a business or stock of goods fails to withhold the purchase money as provided in Paragraph (4) hereof, and the taxes are due and unpaid after the ten-day period allowed, he or she, as well as the vendor, shall be personally liable for the payment of the taxes unpaid by the former owner. Likewise, anyone who takes any stock of goods or business fixtures of or used by any retailer under lease, title retaining contract or other contract arrangement, by purchase, foreclosure sale or otherwise, takes the same subject to the lien for any delinquent sales taxes owned by such retailer and shall be liable for the payment of all delinquent sales taxes of such prior owner, not, however, exceeding the value of property so taken or acquired.

(b) Whenever the business or property of any taxpayer subject to this Article shall be placed in receivership, bankruptcy or assignment for the benefit of creditors, or seized under distraint for property taxes, all taxes, penalties and interest imposed by this Article and for which said retailer is in any way liable under the terms of this Article shall be a prior and preferred claim against all the property of said taxpayer, except as to preexisting claims or liens of a bona fide mortgagee, pledgee, judgment creditor or purchaser whose rights shall have attached prior to the filing or the notice as provided in Subsection 4-2-420(c)(2) hereof on the property of the taxpayer, other than the goods, stock in trade and business fixtures of such taxpayer. No sheriff, receiver, assignee or other officer

shall sell the property of any person subject to this Article under process or order of any court without first ascertaining from the City Treasurer the amount of any taxes due and payable under this Article, and if there are any such taxes due, owing or unpaid, it is the duty of such officer to first pay the amount of said taxes out of the proceeds of said sale before making payment of any moneys to any judgment creditor or other claims of whatsoever kind or nature, except the costs of the proceedings and other preexisting claims or liens as provided in this Section. For the purposes of this Subsection, "taxpayer" includes "retailer." (Prior code 21-45)

**Sec. 4-2-440. Tax deficiency.**

If the deficiency in payment of the sales or use tax occurs without intent to defraud, there shall be added ten percent (10%) of the total amount of the deficiency, and interest in such case shall be collected at the rate imposed under Section 4-2-460 on the amount of such deficiency from the time the return was due, from the person required to file the return, which interest and addition shall become due and payable twenty (20) days after written notice and demand to such person by the City Treasurer. If any part of the deficiency is due to fraud with the intent to evade the tax, then there shall be added one hundred percent (100%) 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 twenty (20) days after written notice and demand by the City Treasurer, and an additional three percent (3%) per month on said amount shall be added from the date that the return was due until paid. (Prior code 21-46)

**Sec. 4-2-450. Interest rate on delinquent taxes.**

When interest is required or permitted to be charged under Section 4-2-420(b), 4-2-440, 4-2-460(a) or 4-2-470, the annual rate of interest shall be that rate of interest established by the State Commissioner of Banking pursuant to Section 39-21-110.5, C.R.S. (Prior code 21-47)

**Sec. 4-2-460. Interest on underpayment, overpayment, nonpayment or extensions of time for payment of tax.**

(a) If any amount of sales or use tax is not paid on or before the last date prescribed for payment, then interest on such amount at the rate imposed under Section 4-2-450 shall be paid for the period from such last date to the date paid. The last date prescribed for payment shall be determined without regard to any extension of time for payment and shall be determined without regard to any notice and demand for payment issued, by reason of jeopardy, prior to the last date otherwise prescribed for such payment. In the case of a tax in which the last date for payment shall be deemed to be the date that the liability for the tax arises, in no event shall such date be later than the date that notice and demand for the tax is made by the City Treasurer.

(b) Interest prescribed under this Section and Sections 4-2-420(b), 4-2-440 and 4-2-470 shall be paid upon notice and demand and shall be assessed, collected and paid in the same manner as the tax to which such interest is applicable.

(c) If any portion of a tax is satisfied by credit of an overpayment, then no interest shall be imposed under this Section on the portion of the tax so satisfied for any period during which, if the credit had not been made, interest would have been allowed with respect to such overpayment.

(d) Interest prescribed under this Section and Sections 4-2-420(b), 4-2-440 and 4-2-470 on any sales or use tax may be assessed and collected at any time during the period within which the tax to which such interest relates may be assessed and collected. (Prior code 21-48; Ord. 12-08 §1, 2008)

**Sec. 4-2-470. Penalty interest on unpaid use tax.**

Any use tax due and unpaid shall be a debt to the City and shall draw interest at the rate imposed under Section 4-2-450, in addition to the interest provided by Section 4-2-460, from the time when due until paid. (Prior code 21-49)

**Sec. 4-2-480. Other remedies.**

No provision of this Article shall preclude the City from utilizing any other lawful penalties or other remedies applicable to the collection of sales or use taxes. The City Treasurer shall have the authority to make a compromise settlement of any claim for sales or use tax due under this Article. (Prior code 21-50)

*Division 5*  
*Hearings and Appeals*

**Sec. 4-2-510. Hearings by City Treasurer.**

(a) If any person contests any deficiency notice or denial of refund received from the City Treasurer, then he or she may apply to the City Treasurer by petition in writing, within twenty (20) days after such deficiency notice or denial of refund is mailed to him or her, for a hearing and a correction of the amount of the tax so assessed or refund requested, in which petition he or she shall set forth the reasons why the amount by which such tax should be reduced or the amount of the refund requested should be granted. The City Treasurer shall notify the petitioner in writing of the time and place fixed by him or her for such hearing. After such hearing, the hearing officer shall make such order in the matter as is just and lawful and shall furnish a copy of such order to the petitioner.

(b) Every decision of the hearing officer shall be in writing, and notice thereof shall be mailed to the petitioner within twenty (20) days after such hearing. All such decisions shall become final and all amounts due shall be paid upon the expiration of thirty (30) days after notice of such decision has been mailed to the petitioner, unless proceedings are begun within such time for review thereof as provided in Section 4-2-520 or 4-2-530. (Prior code 21-51)

**Sec. 4-2-520. Review by District Court.**

If the petitioner or if an applicant for a refund is aggrieved at the final decision of the hearing officer, then he or she may proceed to have same reviewed by the District Court. (Prior code 21-52; Ord. 12-08 §1, 2008)

**Sec. 4-2-530. Alternate review by Department of Revenue.**

In lieu of the procedure provided for in Section 4-2-520, the taxpayer may elect to appeal to the Executive Director of the Department of Revenue as set forth in Section 29-2-106.1, C.R.S. (Prior code 21-53)

**ARTICLE 3**

**Enhanced Sales Tax Incentive Program**

**Sec. 4-3-10. Creation.**

There is hereby established within the City the Enhanced Sales Tax Incentive Program ("ESTIP"). (Prior code 21-201; Ord. 08-05 §1, 2005)

**Sec. 4-3-20. Purpose and public benefit.**

(a) The purpose of the ESTIP is to encourage the establishment and substantial expansion of retail sales tax-generating businesses within the City, thereby stimulating the economy of the City and providing employment for City residents and others, further expanding the goods available for purchase and consumption by City residents, and further increasing the sales taxes collected by the City, which increased sales taxes will enable the City to provide expanded and improved municipal services to and for the benefit of City residents, while at the same time providing public or public-related improvements at no cost, or at deferred cost, to City taxpayers and residents.

(b) The ESTIP provides a joint benefit to the public at large and to private owners by: generating increased sales tax revenues for the City; allowing for the completion of public improvements by private owners through no debt obligation being incurred on the part of the City; and allowing participants an opportunity to improve properties which generate sales activities to make those properties more competitive in the marketplace and to provide additional sources of revenues for upgrading said properties. (Prior code 21-202; Ord. 08-05 §1, 2005)

**Sec. 4-3-30. Definitions.**

As used in this Article, the following terms shall have the following meanings:

*Enhanced sales tax* means the amount of the sales tax collected by the City over and above a base amount agreed upon by the ESTIP applicant and the City, which base amount shall not 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 taxes or, in the case of a new business, an amount which represents the good faith determination by the applicant and the City as to the amount of sales taxes which could be generated from the new business without the participation by the applicant in the ESTIP, which, in the case of a new business, may be zero.

*Owner* means the record owner or operator of an individual business, or 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.

*Public or public-related improvements* includes, but is 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, trails, off-street parking facilities, benches, restrooms, information booths, public meeting facilities, buildings, upgrades, historical restoration and construction that will generate additional employment opportunities or sales tax revenues, and all necessary, incidental and appurtenant structures and improvements, together with the relocation and improvement of existing utilities and any other improvements of a similar nature. (Prior code 21-203; Ord. 08-05 §1, 2005)

#### **Sec. 4-3-40. Application.**

Any owner of a newly established or proposed retail sales tax-generating business, or the owner of an existing retail sales tax-generating business who 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 one thousand dollars (\$1,000.00) in the first year of operation. (Prior code 21-204; Ord. 08-05 §1, 2005)

#### **Sec. 4-3-50. Agreement.**

Each application shall be accompanied by an agreement between the owner and the City, which agreement shall contain, at a minimum:

- (1) A list of those public or public-related improvements which justify approval, and the approximate amount to be spent on said improvements.
- (2) The maximum amount of enhanced sales taxes to be shared and the term of the agreement, it being expressly understood that the agreement will expire and be of no further force and effect upon the occurrence of the earlier of the expiration of the term 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 term has expired);
- (3) A statement that the agreement is a personal agreement which is not transferable and which does not run with the land;
- (4) A statement that the 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, 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 the ESTIP;
- (6) A provision that any enhanced sales taxes subject to sharing shall be escrowed in the event there is a legal challenge to the ESTIP or the approval of the agreement;

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

(8) Any other provisions agreed upon by the parties and approved by the City Council. (Prior code 21-205; Ord. 08-05 §1, 2005)

**Sec. 4-3-60. Approval.**

(a) The City Council shall hold a public hearing on any request to participate in the ESTIP, and shall consider the following in deciding whether to approve the application:

(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 or public-related improvements proposed by the owner, and the amount of expenditures which may be deferred by the City based upon public or public-related improvements being completed by the owner;

(3) The conformance of the project with the City's comprehensive plan and land development regulations; and

(4) The terms of the agreement required by Section 4-3-50.

(b) Approval by the City Council of inclusion in the ESTIP shall entitle the owner to share in enhanced sales taxes derived from the owner's business in an amount not to exceed fifty percent (50%) of the annual enhanced sales taxes; provided, however, that the applicant may use said amounts only for public and public-related improvements which are expressly approved by the City Council at the time of 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. (Prior code 21-206; Ord. 08-05 §1, 2005)

**Sec. 4-3-70. Computation of rebate.**

(a) The City Treasurer shall collect and hold all enhanced sales taxes in a separate account apart from the sales taxes generated by and collected from the other sales tax-generating uses and businesses within the City.

(b) The amount of rebate shall be calculated based on an agreed-upon base figure, which in the case of a new business may be zero.

(c) If, in any year, the agreed upon base figure is not met by the applicant so as to create enhanced sales tax for that year, no funds shall be shared with applicant for that year.

(d) 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 the ESTIP. Therefore, it is hereby conclusively determined that only enhanced sales taxes generated by the properties described in an application shall be subject to sharing under the ESTIP, and that this Article would

not be adopted or implemented but for the provisions of this Section. (Prior code 21-207; Ord. 08-05 §1, 2005)

**Sec. 4-3-80. No joint venture.**

Notwithstanding any provision of this Article, the City shall never be a joint venture in any private entity or activity which participates in the ESTIP, and the City shall never be liable or responsible for any debt or obligation of any participant in the ESTIP. (Prior code 21-208; Ord. 08-05 §1, 2005)

**ARTICLE 4**

**Telephone Tax**

**Sec. 4-4-10. Scope.**

The tax provided for in this Article 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 be construed to mean that any telephone utility company is issued a franchise by the City. (Prior code 21-56)

**Sec. 4-4-20. Levied; amount.**

There is levied on and against each telephone utility company 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 shall be equal to four dollars (\$4.00) per telephone account for which local exchange telephone service is provided within the corporate limits of the City on January 1 of each year. (Prior code 21-57)

**Sec. 4-4-30. Due date.**

The tax levied by this Article shall be due and payable in twelve (12) equal monthly installments. (Prior code 21-58)

**Sec. 4-4-40. Filing statement.**

(a) On or before January 31 of each year, each telephone utility company subject to this Article shall file with the City Clerk, in such form as the 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 on the preceding January 1.

(b) If any officer, agent or manager of a telephone utility company which is subject to the provisions of this Article fails, neglects or refuses to make or file the annual statement of accounts provided in Subsection (a) hereof, the officer, agent, manager or person shall, on conviction thereof, be punished by a fine not less than twenty-five dollars (\$25.00) nor more than three hundred dollars (\$300.00). Each day after such statement becomes delinquent during which the officer, agent, manager or person so fails, neglects or refuses to make and file such statement shall be considered a separate and distinct offense. (Prior code 21-59)

**Sec. 4-4-50. Failure to pay; penalty for late payment.**

If any telephone utility company subject to the provisions of this Article fails to pay the taxes as provided in this Article, the full amount thereof shall be due and collected from such company, and the same, together with an addition of ten percent (10%) of the amount of taxes due, shall be and is declared to be a debt due and owing from such company to the City. (Prior code 21-60; Ord. 12-08 §1, 2008)

**Sec. 4-4-60. Inspection of records.**

The City shall have the right at all reasonable hours and times to examine and copy the books and records of the telephone utility company which are subject to the provisions of this Article. (Prior code 21-61; Ord. 12-08 §1, 2008)

**Sec. 4-4-70. Tax in lieu of other taxes or fees.**

The tax imposed by this Article shall be in lieu of all other payments by fees or occupation taxes on any telephone utility subject to the provisions of this Article. (Prior code 21-62; Ord. 12-08 §1, 2008)

**Sec. 4-4-80. Service charge to finance emergency telephone service.**

(a) The City imposes a charge of not more than forty cents (\$0.40) per month, per subscriber line upon all telephone exchange facilities within the City. The charge shall be uniformly imposed and collected, such charge to be utilized for the installation and operation of emergency telephone services within the County and the City.

(b) Authority is delegated to the Board of the Jefferson County Emergency Telephone Service Authority, created by the intergovernmental agreement to which the City is a party signatory, to direct the telephone exchange facility to commence collection within the City of the charge authorized in this Section, and to further direct the telephone exchange facility to comply with the reporting and remittance procedures and requirements established in Section 29-11-103, C.R.S. (Prior code 21-1; Ord. 12-08 §1, 2008)

**ARTICLE 5**

**Admissions Tax**

**Sec. 4-5-10. Definition.**

For purposes of this Article, *place or event open to the public* means any place or event the admission or access to which is open to members of the public upon payment of a charge or fee. This term includes, by way of illustration only, the following places and events when a charge or fee for admission to such places and events is placed upon members of the public:

- (1) Any performance of a motion picture, stage show, play, concert or other manifestation of the performing arts;

- (2) Any sporting or athletic contest, exhibition or event whether amateur or professional;
- (3) Any lecture, rally, speech or dissertation;
- (4) Any showing, display or exhibition of any type, such as an art exhibition;
- (5) Any restaurant, tavern, lounge, bar or club, whether the admission charge is termed a cover charge, door charge or any other such term. (Prior code 21-76; Ord. 12-08 §1, 2008)

**Sec. 4-5-20. Legislative intent.**

It is the legislative intent of the City Council that every person who pays to gain admission to any place or event open to the public in the City shall pay, and every person, whether owner, lessee or the operator, who charges or causes to be charged admission to any such place or event, shall collect the tax imposed by this Article. (Prior code 21-77; Ord. 12-08 §1, 2008)

**Sec. 4-5-30. Imposition and rate of tax.**

There is levied and shall be paid and collected an excise of tax of fifteen percent (15%) on the price paid to gain admission to any place or event in the City which is open to the public. (Prior code 21-78)

**Sec. 4-5-40. Exemptions.**

This Article does not apply to:

- (1) Sales which the City is prohibited from taxing under the Constitution and laws of the United States or under the Colorado Constitution;
- (2) Sales to or by the United States government or the State, its departments or institutions and the political subdivisions thereof, in their governmental capacities only; and all sales to or by the City or any department thereof;
- (3) Sales to religious, charitable, lodge, civic and eleemosynary corporations or organizations in the conduct of their regular religious, charitable, civic and eleemosynary functions or activities;  
or
- (4) Admissions for which no consideration of any sort is paid. (Prior code 21-79; Ord. 12-08 §1, 2008)

**Sec. 4-5-50. Payment required.**

It is 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, or 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. (Prior code 21-80)

**Sec. 4-5-60. Liability and reporting procedure; rules.**

(a) The burden of proving that any transaction is not subject to the tax imposed in this Article shall be upon the person upon whom the duty to collect the tax is imposed by this Article.

(b) The City Clerk may require any person to make such return, render such statement or keep and furnish such records as the City Clerk may deem sufficient and reasonable to show whether or not such person is liable under this Article for the payment or collection of the tax imposed herein.

(c) Every owner or operator who charges or causes to be charged admission to any place or event that is open to the public shall be liable for the collection and remittance of the tax levied in this Article.

(d) Every owner, operator or person who has the duty to collect the tax imposed in this Article shall report, on forms prescribed by the City Clerk, such taxes and remit to the City the collected taxes within the following time periods:

(1) For regularly continuing or recurring events, such as the charging of admission to motion picture theaters, reports and remittances must be filed with the City Clerk on or before the seventh day of the month for the preceding month or months under report;

(2) For single, noncontinuing or nonrecurring events, such as the charge of admission to a single performance or concert, reports and remittances are due within three (3) calendar days of the performance or event, unless specific arrangements are made in advance with the City Clerk;

(3) If remittances and reports are not received on the due dates, a penalty shall be imposed in the amount of twenty percent (20%) of the tax liability and the total amount due, including tax and penalty, will bear interest at the rate of one percent (1%) per month or a fraction thereof until such reports and remittances are received by the City Clerk.

(e) The City Clerk may require an advance deposit of the estimated amount of admissions tax due under this Article from any owner or operator who holds single, noncontinuing or nonrecurring events, or any owner or operator who has been delinquent in any remittances or reports required by this Article. The amount of the deposit shall be made by the City Clerk based upon the owner's or operator's reasonable estimate of the number of taxable admissions to be sold during the month in the case of regularly continuing or recurring events, and for the event in the case of a single, noncontinuing, or nonrecurring event. In addition to any other applicable penalty, if the owner or operator fails to provide a deposit as required by this Subsection, the City Clerk may revoke, suspend, not issue or not renew any license or permit that the owner or operator is required to obtain pursuant to this Code. The City Clerk shall determine, following the end of the month or the completion of the event, as applicable, whether the deposit constituted an underpayment or overpayment of actual taxes due, and shall require an additional remittance or grant a refund, as the case may be. The owner or operator shall have the burden of establishing, by competent evidence, the actual number of taxable admissions sold.

(f) The City Clerk is authorized to promulgate rules and regulations regarding the payment, deposit, collection, reporting and accounting criteria and periods, settlement of disputes over

payment, refund and enforcement of the tax imposed by this Article. (Prior code 21-81; Ord. 12-08 §1, 2008)

## **ARTICLE 6**

### **Purchasing and Sale Procedures**

#### **Sec. 4-6-10. Purposes.**

(a) The purposes of this Article are:

- (1) To provide an efficient contracting procedure;
- (2) To assure that contracts are executed with contractors of sufficient quality and reliability to serve the City's needs;
- (3) To avoid duplication, waste and obsolescence;
- (4) To provide appropriate budgetary and fiscal control over expenditures; and
- (5) To provide a procedure for the sale or other disposition of articles not needed by the City.

(b) Such purposes, and the provisions of this Article, are declared to serve the public interest and the interests of the City. (Prior code 2-366)

#### **Sec. 4-6-20. Definitions.**

For purposes of this Article, the following terms shall have the following meanings, unless the context clearly indicates another meaning:

*Construction* means the process of building, altering, repairing, improving or demolishing any public structure or building or other public improvement of any kind, but does not include any such activities by City employees.

*Contract* means any type of agreement, including any purchase order, for the procurement of supplies, services or construction. However, the term does not include:

- a. Any employment agreement with an employee;
- b. Any intergovernmental agreement;
- c. Any contract made by another governmental entity pursuant to an intergovernmental agreement with the City; or
- d. Any contract for the purchase of supplies for a price which has been established by a formal bid process of the State, and which price is extended to the City.

*Contractor* means any person having a contract with the City.

*Emergency* means an unforeseeable circumstance in which the approval of a contract is immediately necessary to prevent delays in work which may affect the immediate safety of the City, its personnel or its citizens.

*Employee* means any compensated person who is designated as an employee of the City pursuant to the ordinances of the City.

*Officer* means any elected official of the City.

*Services* means the furnishing of labor, time or effort by a contractor, not involving the delivery of tangible personal property other than written materials which are incidental to the required performance. For purposes of this Article, *services* shall include short-term lodging and other travel-related accommodations for City employees, officers and volunteer workers on authorized overnight travel.

*Spending agency* means each department, agency, office or other spending unit of the City.

*Supplies* means tangible personal property, including but not limited to equipment, materials and printed matter.

*Volunteer worker* means any member of a City board or commission or any member of the City's Volunteer Fire Department. (Prior code 2-367; Ord. 12-08 §1, 2008)

#### **Sec. 4-6-30. City Clerk; powers and responsibilities.**

The City Clerk shall have the following powers and responsibilities, which shall be exercised under the general supervision of the Mayor and consistently with the requirements of this Article:

- (1) To oversee contracts for construction, supplies, and services for the City;
- (2) To adopt from time to time, with the approval of the Mayor, regulations which pertain to this Article and which are not inconsistent with this Article; and
- (3) To join in cooperative purchasing arrangements with other units of government. (Prior code 2-368; Ord. 12-08 §1, 2008)

#### **Sec. 4-6-40. Contracts for purchase of supplies.**

(a) The City Clerk may adopt, with the approval of the Mayor, regulations for the approval of contracts for the purchase of supplies. All such contracts shall be subject to the requirements of this Section.

(b) A contract for the purchase of supplies valued at five hundred dollars (\$500.00) or less may be approved without the solicitation of competitive prices or quotes; except that, where practicable, at least two (2) prospective contractors shall first be contacted informally to obtain prices or quotes.

(c) A contract for the purchase of supplies valued at more than five hundred dollars (\$500.00), but less than three thousand five hundred dollars (\$3,500.00), shall not be approved unless at least three (3) prospective contractors have first been contacted and have provided prices or quotes in

writing. If fewer than three (3) prospective contractors could be located, or if fewer than three (3) prospective contractors were willing to provide a price or quote in writing, the efforts made to locate such contractors and to obtain prices or quotes shall be documented.

(d) For a contract for the purchase of supplies valued at three thousand five hundred dollars (\$3,500.00) or more, but less than five thousand dollars (\$5,000.00), the requirements of Subsection (c) hereof shall apply; in addition, acceptance of such a contract shall not be effective until the City Council has, by motion, approved such acceptance.

(e) A contract for the purchase of supplies or construction valued at five thousand dollars (\$5,000.00) or more shall not be approved except in compliance with Section 4-6-70. (Prior code 2-369; Ord. 12-08 §1, 2008)

**Sec. 4-6-50. Contracts for construction.**

(a) The City Clerk may adopt, with the approval of the Mayor, regulations for the approval of contracts for construction. All such contracts shall be subject to the requirements of this Section.

(b) A contract for construction valued at one thousand dollars (\$1,000.00) or less may be approved without the solicitation of competitive bids; except that, where practicable, at least two (2) prospective contractors shall first be contacted informally to obtain prices or quotes.

(c) A contract for construction valued at more than one thousand dollars (\$1,000.00), but less than five thousand dollars (\$5,000.00), shall not be approved unless at least three (3) prospective contractors have first been contacted and have provided prices or quotes in writing. If fewer than three (3) prospective contractors could be located, or if fewer than three (3) prospective contractors were willing to provide a price or quote in writing, the efforts made to locate such contractors and to obtain prices or quotes shall be documented.

(d) A contract for construction valued at five thousand dollars (\$5,000.00) or more shall not be approved except in compliance with Section 4-6-70. (Prior code 2-370; Ord. 12-08 §1, 2008)

**Sec. 4-6-60. Contracts for services.**

Except as otherwise provided by the Charter or ordinance, contracts for the procurement of services in amounts which have previously been approved within the City's budget shall be negotiated, approved and executed by the Mayor. Contracts in excess of amounts budgeted shall be subject to ratification by the City Council. (Prior code 2-371; Ord. 10-05 §1, 2005)

**Sec. 4-6-70. Competitive sealed bidding.**

(a) This Section applies to each contract for the purchase of supplies valued at five thousand dollars (\$5,000.00) or more, and to each contract for construction valued at five thousand dollars (\$5,000.00) or more.

(b) The City Clerk may adopt, with the approval of the Mayor, regulations for the approval of contracts which are subject to the requirements of this Section. All such contracts shall be subject to the following requirements:

(1) A notice inviting bids shall be published at least once in a newspaper of general circulation in the City at least ten (10) days preceding the last day set for the receipt of bids. The notice shall also be sent to prospective contractors on any applicable bidder's list maintained by the City.

(2) The notice inviting bids shall include a general description of the contract to be awarded, the date where bid specifications may be secured and the time and place for opening bids.

(3) Bids shall be submitted sealed and shall be identified as such on the envelope in the manner prescribed by the City Clerk. The bids shall remain sealed and no person shall have any access to the bids before they have been opened in public.

(4) The bids shall be opened in public at the time and place stated in the notice inviting bids. A tabulation of all bids received shall be presented to the Mayor, together with any recommendations of the City Clerk, the affected spending agency or both. The tabulation shall be also posted for public inspection.

(5) Subject to Subsection (7), the Mayor may accept the bid or part thereof determined by the Mayor to be the most advantageous to the City. All bids or parts of bids may be rejected if such rejection is determined by the Mayor to be in the best interests of the City.

(6) Subject to Subsection (7), when the Mayor determines that no satisfactory bids are received, contracts subject to the requirements of this Section may be negotiated.

(7) No acceptance of a contract subject to the requirements of this Section shall be effective until the City Council, by motion, has approved such acceptance.

(8) No bid shall be accepted from any contractor who is in default on the payment of taxes, fees, assessments or other moneys due the City, or in default of any other obligations to the City.

(9) The terms and conditions of all contracts subject to the provisions of this Section shall be in writing. (Prior code 2-372; Ord. 12-08 §1, 2008)

#### **Sec. 4-6-80. Emergencies.**

(a) The City Clerk may adopt, with the approval of the Mayor, regulations for the approval of a contract in an emergency which necessitates such approval.

(b) Following the approval of a contract pursuant to this Section, a written report describing the circumstances of the emergency and the contract necessitated thereby shall be furnished to the City Clerk, the Mayor and the City Council. (Prior code 2-373; Ord. 12-08 §1, 2008)

#### **Sec. 4-6-90. General.**

(a) Each department head shall identify to the City Clerk available opportunities for joint purchasing arrangements with other governmental entities for the purchase of supplies and constructions. Such arrangements shall be utilized whenever determined by the City Clerk to be practicable and cost-effective.

(b) No contract shall be approved unless there exists in the budget a sufficient unencumbered appropriated sum, in excess of all unpaid obligations, to defray the amount of the contract.

(c) No contract made contrary to this Article, or made contrary to regulations established pursuant to this Article, shall be approved, and the City shall not be bound thereby.

(d) Nothing in this Article shall create or confer any right or entitlement upon any person to bid on or to receive any award of any contract.

(e) Except as otherwise provided in this Article, all records made, maintained or kept under the provisions of this Article shall be public records to the full extent required or permitted by law.

(f) When any contract for supplies, services or construction is available from a prospective contractor located in the City which meets the standards and criteria established by the City Clerk as to quality, responsibility and reliability, and the price therefor is comparable to the price charged by prospective contractors located outside the City, the contract shall be awarded to the contractor located in the City.

(g) In determining quality, responsibility and reliability of a prospective contractor, the following criteria shall be considered, to the extent relevant, in addition to any other criteria established by the City Clerk:

(1) The ability, capacity and skill of the prospective contractor;

(2) The ability of the prospective contractor to meet the time requirements of the City;

(3) The reliability, character, integrity, reputation, judgment, experience and efficiency of the prospective contractor;

(4) The quality of the prospective contractor's performance in previous contracts;

(5) The ability and record of the prospective contractor with regard to compliance with applicable laws and ordinances;

(6) The sufficiency of the financial resources of the prospective contractor;

(7) The quality of the supplies, services or work furnished by the prospective contractor, their availability, and their adaptability to the needs of the City;

(8) Warranties or repair, maintenance, replacement arrangements available from the prospective contractor; and

(9) The number and scope of conditions attached to the prospective contractor's bid or proposal. (Prior code 2-375; Ord. 12-08 §1, 2008)

**Sec. 4-6-100. Petty expenditures revolving funds.**

(a) There is appropriated out of any money in the General Fund that is not otherwise appropriated the sum of two hundred dollars (\$200.00). Such sum shall be known as the General

Petty Expenditures Revolving Fund and shall be administered by the City Clerk. From this fund shall be paid all contracts for incidental supplies not exceeding sixty dollars (\$60.00) each, except contracts for the Police Department.

(b) There is appropriated out of any money in the City Treasury that is not otherwise appropriated the sum of one hundred dollars (\$100.00). Such sum shall be known as the Police Department Petty Expenditures Revolving Fund and shall be administered by the City Clerk. From this fund shall be paid all contracts for incidental supplies for the Police Department not exceeding sixty dollars (\$60.00) each.

(c) At such intervals as deemed appropriate by the Mayor, the City Clerk shall prepare a statement showing the actual expenditures for each spending agency made out of each petty expenditures revolving fund, and each revolving fund shall be reimbursed accordingly for such expenditures. (Prior code 2-377; Ord. 12-08 §1, 2008)

**Sec. 4-6-110. Review and approval of City contracts.**

(a) Notwithstanding any other provision of this Code, every City contract whether for services, supplies or otherwise, shall be reviewed and approved by the City Attorney before the contract may be executed by the City.

(b) No City official or employee shall submit any proposed contract, whether for services, supplies or otherwise, to any other party for execution until the contract has been reviewed and approved by the City Attorney.

(c) Except in the case of an emergency as determined by the City, no contractor shall commence performance under any contract with the City, whether for services, supplies or otherwise, until the contract has been fully and properly executed by both parties.

(d) No changes shall be made to any contract with the City, whether for services, supplies or otherwise, after the City Attorney's review and approval, unless the City Attorney also reviews and approves such changes. (Prior code 2-378; Ord. 05-06 §1, 2006)

**Sec. 4-6-120. Acquisition or conveyance of interest in real property.**

(a) For purposes of this Section, the acquisition and conveyance of any interest in real property includes:

(1) The purchase or sale of real property or any interest therein.

(2) The lease or rental of real property, whether as tenant or landlord, and any amendments to any lease or rental agreement.

(3) The acceptance of any donated real property or the donation of real property.

(b) Every acquisition or conveyance by the City of any interest in real property shall first be approved by ordinance.

(c) Prior to enacting any such ordinance, the City Council shall:

(1) Review the City's current property holdings, including leases and rentals, the City's current and future space needs and any existing plans to acquire or convey real property; provided, however, that if a potential buyer, seller, lessor, lessee, landlord or tenant requires an immediate decision from the City, and the City Council has conducted a review of the City's inventory within the preceding nine (9) months, the City Council may, by motion, waive the requirement of this Subsection.

(2) Determine whether the proposed acquisition or conveyance is compatible with the City's Master Plan and vision.

(3) If the proposal is for the acquisition of real property, consider the following:

a. Whether the purchase price is reasonable.

b. The estimated cost to the City to conduct due diligence regarding the condition of the property.

c. The estimated cost to the City of any mitigation, remediation, remodeling or structural engineering that may be required prior to occupancy.

d. The mechanisms available to finance the acquisition.

(d) Prior to adoption of any ordinance approving the acquisition or conveyance of real property, the City Council shall find that the applicable requirements of Paragraphs (c)(1) through (c)(3) hereof have been satisfied. (Prior code 2-379; Ord. 16-07 §1, 2007)

**Sec. 4-6-130. Credit card user fee authorized.**

Where any type of payment to the City, including but not limited to the payment of any fee, fine, cost, charge, surcharge, penalty or deposit, debit card, check card or other card, a credit card user fee shall be assessed thereon. The City Clerk shall determine the appropriate amount of such fee based on the fees actually charged to the City at the time, and the City Clerk shall adjust the fee as necessary. Such credit card user fee shall be assessed on each transaction and shall be in addition to any other fees assessed by the City. (Prior code 2-380; Ord. 14-07 §1, 2007)

**ARTICLE 7**

**Disposition of Unclaimed Property**

**Sec. 4-7-10. Purpose.**

The purpose of this Article is to provide for the administration and disposition of unclaimed property which is in the possession or under the control of the City. The following shall be exempt from application of this Article:

(1) Abandoned motor vehicles as defined in Section 8-3-10;

(2) Property the possession of which is illegal under City, state or federal law;

- (3) Property the seizure of which is governed by state or federal law;
- (4) Property the disposition of which is provided for by an order of a court having jurisdiction concerning the same; or
- (5) Property the Mayor reasonably determines is of no value. (Prior code 18-61; Ord. 12-08 §1, 2008)

**Sec. 4-7-20. Definitions.**

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

*Owner* means a depositor in the case of a cash deposit, a beneficiary in case of a trust other than a deposit in trust, a creditor, claimant or payee in the case of other intangible property or a person having a legal or equitable interest in unclaimed property held by the City or such person's legal representative.

*Person* means an individual, business, association, state or other government, governmental subdivision or agency other than the City, public corporation, public authority, estate, trust, two (2) or more persons having a joint or common interest or any other legal or commercial entity.

*Unclaimed property* means and includes any tangible or intangible property, including money, securities and any income or increment derived from any money or securities, less any lawful charges, which has been:

- a. Held for its owner by or under the control of the City and which has not been claimed by its owner for a period of more than one (1) year after it became payable, demandable or returnable.
- b. Lost or abandoned and which has been left in the custody of the City by a person other than its owner. Such property shall be deemed to be unclaimed property immediately upon its transfer to the custody of the City.
- c. Held as evidence by or under the control of the City for criminal justice purposes, and for which more than ninety (90) days have elapsed after the date of final disposition of pending charges or after the last day for filing an appeal. (Prior code 18-62; Ord. 12-08 §1, 2008)

**Sec. 4-7-30. Procedure for disposition of property.**

(a) Prior to the disposition of any unclaimed property having an estimated value of two hundred dollars (\$200.00) or more, the Mayor shall send written notice by certified mail, return receipt requested, to the last known address of the owner of such property. The last known address of the owner shall be the last address of the owner as shown by the records of the City department or agency holding the property. The notice shall include a description of the property and its estimated value, plus the following information if known: the date on which the property became payable, demandable or returnable; the date of the last transaction with the owner with respect to the property; and the purpose for which the property was deposited or otherwise held. The notice shall state where the owner may inquire about or claim the property. The notice shall also state that, if the owner fails

to provide the Mayor with a written claim for the return of the property within thirty (30) days of the date of the notice, the property shall be deposited into the unclaimed property account of the City or held for disposition pursuant to Section 4-7-40.

(b) Prior to disposition of any unclaimed property having an estimated value of two hundred dollars (\$200.00) or more and having no last known address of the owner, the Mayor shall cause notice to be published in a newspaper of general circulation in the City. The notice shall include a description of the property and its estimated value, plus the following information if known: its owner; the date on which the property became payable, demandable or returnable; the date of the last transaction with the owner with respect to the property; and the purpose for which the property was deposited or otherwise held. The notice shall state where the owner may inquire about or claim the property. The notice shall also state that, if the owner fails to provide the Mayor with a written claim for the return of the property within thirty (30) days of the date of the publication of the notice, the property shall be deposited into the unclaimed property account of the City or held for disposition pursuant to Section 4-7-40.

(c) The Mayor is not required to mail or publish notice pursuant to this Section regarding any unclaimed property valued at less than two hundred dollars (\$200.00), unless the Mayor considers such mailing or publication to be in the public interest. If not claimed by its owner within thirty (30) days of the date on which it is deemed to be unclaimed property, such property shall be deposited into the unclaimed property account of the City or held for disposition pursuant to Section 4-7-40.

(d) If a claim is received within the thirty-day claim period, the Mayor shall evaluate the claim and give written notice to the claimant within sixty (60) days after receipt that the claim has been accepted or denied in whole or in part. Each such claim shall be accompanied by proof sufficient to establish the claimant as the owner of the property. The Mayor may investigate the validity of a claim and request further supporting documentation from the claimant prior to disbursing or refusing to disburse the property.

(e) If there is more than one (1) claimant for the same property, the Mayor may, in the Mayor's sole discretion, resolve such claims or may direct the City Attorney to deposit the disputed property with the registry of the District Court in an interpleader action.

(f) If a claim is upheld with respect to any unclaimed property, the claimant shall, as a prerequisite to recovering possession, reimburse the City for all reasonable expenses incurred in storing or handling such property.

(g) If a claim is denied with respect to any unclaimed property, such property shall be deposited into the unclaimed property account of the City or held for public sale or disposition pursuant to Section 4-7-40.

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

(i) The Chief of Police is authorized to establish and administer procedures consistent with this Article for the safekeeping, administration and disposition of unclaimed property in the custody or

control of the Police Department. The Mayor is authorized to establish and administer procedures consistent with this Article for the safekeeping, administration and disposition of unclaimed property in the custody or control of all other City departments, offices and agencies, including compliance requirements for other City officers and employees in the identification and disposition of such property.

(j) The failure of any owner of unclaimed property to submit a timely claim under this Section shall neither preclude the subsequent filing of a claim nor extinguish any legal or equitable interest of such owner in such property or, if sold or otherwise disposed of pursuant to Section 4-7-40, the proceeds of such sale or an amount equal to the estimated value of such property as determined by the Mayor at the time of final disposition.

(k) The Mayor may immediately dispose of property that reasonably appears to pose a sanitary, health or safety hazard if stored, but the Mayor shall keep a log of all property so disposed. (Prior code 18-63; Ord. 12-08 §1, 2008)

**Sec. 4-7-40. Final disposition.**

(a) Following the expiration of the thirty-day claim period and the resolution of all outstanding claims pursuant to Section 4-7-30, the City may, at the discretion of the Mayor:

(1) Use any unclaimed property in City operations if, in the opinion of the Mayor, its use will serve a public purpose;

(2) Destroy any unclaimed property which the City is otherwise unable to dispose of or use if, in the opinion of the Mayor, such property is of negligible value; or

(3) Transfer possession to the finder of any unclaimed property which has been lost or abandoned and which has been left in the custody or control of the Police Department upon written request of the individual or individuals who found such property.

(b) Weapons shall be disposed of as follows:

(1) Weapons forfeited pursuant to Section 10-12-30 shall be destroyed.

(2) Weapons which remain unclaimed following the expiration of the thirty-day claim period shall become the property of the Police Department, if usable by the Police Department for training, repairs or similar uses. If unusable by the Police Department, such weapons shall be destroyed.

(c) Any proceeds from the sale of unclaimed property pursuant to this Section shall be deposited in the unclaimed property account of the City.

(d) Any purchaser or donee of unclaimed property under this Section shall take such property without warranty against any claim of the owner or previous holder thereof and of all persons claiming through or under them. The Mayor shall execute all documents necessary to complete the transfer of ownership. (Prior code 18-64; Ord. 12-08 §1, 2008)