

Title 3

REVENUE AND FINANCE

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Chapter 3.04

General Financial Provisions

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3.04.010 Fiscal year.

The fiscal year of the town shall commence on the first day of January in each year. (Prior code §6-1)

3.04.020 Budget.

A. The board of trustees shall adopt an annual budget for each year in accordance with the Local Governmental Budget Law of Colorado and the requirements of this code.

B. As part of the proposed budget or as a separate report accompanying the proposed budget, there shall be submitted to the board of trustees a program of proposed capital projects for the next fiscal year and the four following fiscal years. An estimate of the costs of such projects shall be submitted, together with suggested methods of financing those costs and any recommendations for the addition, omission or deferment of projects.

C. As part of the proposed budget or as a separate report accompanying the proposed budget, there shall be submitted to the board of trustees one or more schedules for the proposed maintenance, repair, improvement and replacement of enterprise and nonenterprise capital assets of the town, including schedules relating to each of the categories of infrastructure or assets for which there has been established a replacement reserve fund as set forth in Section 3.04.110. The schedules shall include inventories of the capital infrastructure and assets of the town; schedules for anticipated maintenance, repair, improvement and/or replacement thereof based on estimated useful life; methodology for calculating maintenance, repair, improvement and replacement costs; suggested methods of financing such costs; and recommendations for addition, omission or deferment of proposed asset investments for the next fiscal year.

D. The board of trustees shall conduct at least one mid-year budget assessment each fiscal year after receipt of the final audited financial statements for the preceding fiscal year. (Ord. 668 §2, 2008)

3.04.030 Rate of tax levy.

The board of trustees shall, by resolution, fix the rate of tax to be levied upon all the taxable property within the town for municipal purposes and, through the town clerk, shall officially certify the levy to the county commissioners of Weld County in accordance with Colorado Statutes. (Prior code §6-3)

3.04.040 Appropriations.

The board of trustees shall, within the last quarter of each fiscal year, enact one or more ordinances or resolutions to approve the budget and make appropriations for the next fiscal year. In the annual appropriations measure, the board of trustees may appropriate such sums of money as may be deemed necessary to defray all necessary expenses and liabilities of the town. The amounts appropriated shall not exceed the expenditures specified in the budget. Appropriations shall be made by fund or department spending agencies within a fund as the board of trustees shall determine. The adopted budget and appropriations documents shall present a complete financial plan by fund and by departmental spending agencies within each fund and contain information showing and classifying expenditures by object, revenues by source and the amount and purpose of each appropriation. Any budget transfer, supplemental appropriation, revised appropriation or other change to the adopted budget shall be approved by the board of trustees by ordinance or resolution after compliance with any applicable notice provisions of state law. (Ord. 668 §3, 2008)

3.04.050 Outlays not to exceed appropriation.

Neither the board of trustees or any department or officer of the town shall add to the corporation expenditures in any one year anything over and above the amount provided for in the annual appropriation bill of that year, except as is otherwise specifically provided in this section. No expenditure for an improvement to be paid for out of the general fund of the town, shall exceed in any one year the amount provided for such improvement in the annual appropriation bill. Nothing contained in this section shall prevent the board of trustees from ordering by a two-thirds vote, any improvement the necessity of which is caused by any casualty, accident, or unforeseen happening after such annual appropriation is made. (Prior code §6-5)

3.04.060 No contract unless previous appropriation.

No contract shall be made by the board of trustees, and no expense shall be incurred by any officer or department of the town, whether the object of the expenditure shall have been ordered by the board of trustees or not, unless an appropriation shall have been previously made concerning such expense, except as otherwise provided in this code. (Prior code §6-6)

3.04.070 Deposits—Investments.

The board of trustees shall annually and in accordance with statutes, designate by resolution, the depositing or depositories for moneys and funds of the town. The board of trustees may by resolution authorize the treasurer to invest all or part of such funds and moneys in securities which are authorized for such investment by state law. (Prior code §6-7)

3.04.080 Warrants signed—Countersigned—Fund.

All warrants or checks drawn upon the treasurer must be signed by at least two of the following three persons – the mayor, the mayor pro-tem, the clerk/treasurer – stating the particular fund or appropriation to which the same is chargeable and the person to whom payable. (Ord. 246 §65, 1988; prior code §6-8)

3.04.090 Appropriations for public purposes.

The board of trustees shall appropriate money for corporate purposes only, but the board of trustees shall have the power to appropriate money for the following purposes which shall be considered to be public:

A. Public Entertainment. To appropriate money in an amount not exceeding six-tenths of one mill on the assessed valuation for the purpose of giving public concerts and entertainments by the town;

B. Advertising. To appropriate moneys for the purpose of advertising the business, social and educational advantages, and the natural resources and the scenic attractions of the town. (Prior code §6-9)

3.04.100 Annual audits.

The town board of trustees shall appoint a certified public accountant to serve as the town auditor and he or she shall serve at the pleasure of the board of trustees. He or she shall audit the books and records of the town and its financial affairs and transactions at least once each year, in the form provided by state law, and shall make a written report to the board of trustees after each audit of the condition of the town's finances and the results of his or her examination. He or she shall also make recommendations to the board of trustees concerning the system of keeping the books, records and accounts of the town. (Prior code §6-10)

3.04.110 Infrastructure replacement reserve funds.

A. There are established the following funds within the town budget with funds therein to be used for the purposes stated:

1. The Building Replacement Reserve Fund with funds therein to be used for the repair, improvement and replacement of town-owned buildings and building improvements, fixtures and equipment.

2. The Fleet Replacement Reserve Fund with funds therein to be used for replacement of governmental fund assets such as public works and police department equipment, machinery and vehicles, and other nonenterprise capital equipment.

3. The Park Replacement Reserve Fund with funds therein to be used for the improvement of town parks, trails and open space and repair, improvement and replacement of facilities and equipment located within town parks, trails and open space.

4. The Storm Water Facilities Replacement Reserve Fund with funds therein to be used for the repair, improvement and replacement of any facilities, properties, improvements or equipment utilized in the provision of storm water services, whether owned in whole or part by the town, in fee or otherwise.

5. The Street and Highway Replacement Reserve Fund with funds therein to be used for the repair, improvement and replacement of town streets and highway improvements, including, without limitation, all improvements within town-owned rights-of-way such as asphalt, concrete, sub-base preparation, road

base, seal coat, curb and gutter, medians, entryways, sidewalks, bike and pedestrian paths, traffic signs, street lighting, street name signs and nonenterprise surface or subsurface utility improvements.

B. Appropriations to the reserve funds set forth in Subsection A of this section shall be in such amounts as are determined by the board of trustees. In addition to consideration of appropriations to such funds at the time of adoption of the annual budget, the board of trustees shall, at a mid-fiscal year budget assessment held each year, review the final audited financial statements for the preceding fiscal year, the five-year capital improvement program, the town's long-term capital asset replacement schedules and such other information as the board deems appropriate, and determine whether supplemental appropriations to any one or more of such reserve funds can be made in conjunction with such mid-year budget assessment. (Ord. 668 §1, 2008)

Chapter 3.08

Sales and Use Tax

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3.08.010 Purpose.

The purpose of this chapter shall be to impose a sales tax on the sale of tangible personal property at retail or the furnishing of services in the town as provided in this chapter and to impose a use tax for the privilege of using or consuming in the town any construction and building materials purchased at retail or for the privilege of storing, using or consuming in the town any motor and other vehicle purchased at retail on which registration is required or both, all as provided in CRS 29-2-101, et seq. (Ord. 219 §1(part), 1986; prior code §6-20)

3.08.020 Definitions.

For purposes of this chapter, the definitions of words contained in this chapter shall be as defined in CRS, Section 102, Article 26 of Title 39, and such definitions are incorporated into this chapter. (Ord. 219 §1(part), 1986; prior code §6-21)

3.08.030 Applicability.

This chapter shall take effect July 1, 1986, and shall apply to:

A. A sales tax on the sales of tangible personal property, and services in the town that are taxable pursuant to CRS 39-26-104, together with amendments thereto and subject to the same exemptions as those specified in CRS 39-26-114, excluding the exemption specified in CRS 39-26-114(1)(a)(XXI), but including:

1. The exemption of machinery or machine tools as provided in CRS 39-26-114(11); and
2. The exemption for all sales of food as set forth in CRS 39-26-114(1)(a)(XX) and as defined in CRS 39-26-102(4.5); and
3. All sales of personal property on which a specific ownership tax has been paid or is payable shall be exempt from the sales tax when such sales meet both of the following conditions:
 - a. The purchaser is a nonresident of or has his or her principal place of business outside of the local taxing entity, and
 - b. Such personal property is registered or required to be registered outside the limits of the local taxing entity under the laws of this state;
4. In addition, no sales tax shall apply to the sale of construction and building materials, as the term is used in CRS 39-26-109, 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 such local government evidencing that a local use tax has been paid or is required to be paid;
5. No sales tax shall 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 city and county, city or town. A credit shall be granted against the sales tax imposed by the subsequent statutory or home rule city and county, city or town 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 city and county, city or town. The amount of the credit shall not exceed the sales tax imposed by the subsequent statutory or home rule city and county, city or town.

B. A use tax on the use or consumption in the town of any construction and building materials purchased at retail or for the privilege of storing, using or consuming in Firestone any motor or other vehicles, purchased at retail on which registration is required except the use tax shall not apply:

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

2. To the storage, use or consumption of any tangible personal property purchased for resale in Firestone, 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 tangible personal property brought into Firestone by a nonresident thereof for his or her own storage, use or consumption while temporarily within Firestone; however, this exemption does not apply to the storage, use or consumption of tangible personal property brought into this state by a nonresident to be used in the conduct of a business in this state;

4. To the storage, use or consumption of tangible personal property by the United States government, or the state of Colorado, or its institutions or its political subdivisions in their governmental capacities only or by religious or charitable corporations in the conduct of their regular religious or charitable functions;

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

6. With respect to the use tax of Firestone to the storage, use or consumption of any article of tangible personal property the sale or use of which has already been subjected to a legally imposed sales or use tax of another statutory or home rule city and county, city or town equal to or in excess of that imposed by this chapter, a credit shall be granted against the use tax imposed by this chapter with respect to a person's storage, use or consumption in the town or city of tangible personal property purchased by him in a previous statutory or home rule city and county, city or town. The amount of the credit shall be equal to the tax paid by him by reason of the imposition of a sales or use tax of the previous statutory or home rule city and county, city or town of his purchase or use of the property. The amount of the credit shall not exceed the tax imposed by this chapter;

7. To the storage, use or consumption of tangible personal property and household effects acquired outside of Firestone and brought into it by a nonresident acquiring residency;

8. To the storage or use of a motor vehicle if the owner is or was, at the time of purchase, a nonresident of Firestone and he purchased the vehicle outside of Firestone for use outside Firestone and actually so used it for a substantial and primary purpose for which it was acquired and he registered, titled and licensed the motor vehicle outside of Firestone;

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

10. To the storage, use or consumption of any construction and building materials required or made necessary in the performance of any construction contract bid, let or entered into at any time prior to the effective date of such use tax ordinance, resolution or proposal;

11. To the storage of construction and building materials. (Ord. 280, §§1, 2, 1990; Ord. 246 §66, 1988; Ord. 219 §1(part), 1986; prior code §6-22)

3.08.040 Amount of tax.

A. There is imposed on all sales of tangible personal property at retail or furnishing of services in the town except as provided herein, a tax equal to two percent of the gross receipts of:

1. All retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to a destination outside the limits of Firestone or to a common carrier for delivery to a destination outside the limits of Firestone. The gross receipts from such sales shall include delivery charges when such charges are subject to the state sales and use tax imposed by CRS Article 26 of Title 39, regardless of the place to which delivery is made. If a retailer has no permanent place of business in Firestone or has more than one place of business, the place at which the retail sales are consummated for the purpose of a sales tax imposed by this chapter shall be determined by the provisions of C.R.S. Article 26 of Title 39, and by rules and regulations promulgated by the Department of Revenue.

2. The amount subject to tax shall not include the amount of any sales or use tax imposed by C.R.S. Article 26 of Title 39.

B. There is imposed a use tax on the use or consumption of any construction and building materials purchased at retail or for the privilege of storing, using or consuming in Firestone any motor or other vehicles, purchased at retail on which registration is required, of two percent except as otherwise provided herein, but the amount subject to tax shall not include the amount of any sales or use tax imposed by C.R.S. Article 26 of Title 39. (Ord. 219 §1(part), 1986; prior code §6-23)

3.08.050 Sales tax collection--Administration--Enforcement.

The collection, administration and enforcement of the Firestone sales tax shall be performed by the Executive Director of the Department of Revenue in the same manner as the collection, administration and enforcement of the Colorado state sales law. Unless otherwise provided in this chapter or by state law, the provisions of C.R.S. Article 26 of Title 39 shall govern the collection, administration, and enforcement of sales taxes authorized under this chapter. (Ord. 219 §1(part), 1986; prior code §6-24)

3.08.060 Use tax collection--Administration--Enforcement.

The collection, administration and enforcement of the use tax imposed by this chapter shall be performed by the town clerk, an authorized agent of the Department of Revenue, or by such intergovernmental agreements as the mayor, on behalf of the town, may enter into when approved by the board of trustees. Such collection, administration and enforcement shall be in compliance with any applicable state law. (Ord. 219 §1(part), 1986; prior code §6-25)

3.08.070 Appeal of deficiency notice.

The taxpayer receiving a deficiency notice or claim for refund-final decision from the town may elect a state hearing on such decision within thirty days after the making of such final decision pursuant to the procedures set forth in C.R.S. 29-2-106.1. (Ord. 219 §1(part), 1986; prior code §6-26)

3.08.080 Sales tax limitation.

In the event the seven percent limitation on total sales tax or total use tax provided in C.R.S. 29-2-108 is to be exceeded in Firestone, it shall not exceed the limitation by more than one percent. (Ord. 219 §1(part), 1986; prior code §6-27)

3.08.090 Sales tax license--Required—Issuance--Term.

It is unlawful for any person to engage in the business of selling tangible personal property at retail without first having obtained a sales tax license therefor. Such sales tax license shall be granted and issued by the town clerk and shall be in force and effect until December 31st of the year in which it is issued, unless sooner revoked. (Ord. 251, §4, 1989; Ord. 219 §1(part), 1986; prior code §6-28)

3.08.100 Sales tax license—Required—Separate places of business.

In case business is transacted at more than one premises by one person, a separate sales tax license for each separate place of business shall be required. (Ord. 251, §4, 1989; Ord. 219 §1(part), 1986; prior code §6-29)

3.08.110 Sales tax license—Application required—Contents.

Such sales tax licenses shall be granted and renewed only upon application stating the name and address of the person desiring such a sales tax license, the name of such business, and the location and such other facts as the town clerk may require. (Ord. 251, §4, 1989; Ord. 219 §1(part), 1986; prior code §6-30)

3.08.120 Sales tax license—Renewal—Licensee's duties.

It shall be the duty of each sales tax licensee, on or before January 1st of each year during which this chapter remains in effect, to obtain a renewal of such sales tax license if the licensee remains in the retail business or liable to account for the tax provided in this chapter, but nothing contained in this chapter shall be construed to empower the town clerk to refuse such renewal except revocation for cause of the sales tax licensee's prior license. (Ord. 251, §4, 1989; Ord. 219 §1(part), 1986; prior code §6-31)

3.08.130 Sales tax license—Fee.

For each sales tax license issued under this chapter, a fee of two dollars shall be paid, which fee shall accompany the application. A further fee of two dollars shall be paid for each year or fraction thereof for which the sales tax license is renewed. (Ord. 251, §4, 1989; Ord. 219 §1(part), 1986; prior code §6-32)

3.08.140 Unlicensed sale prohibited.

Any person engaged in the business of selling tangible personal property at retail in the town, without having secured a sales tax license therefor, except as specifically provided herein, shall be guilty of a violation of this chapter. (Ord. 251, §4, 1989; Ord. 219 §1(part), 1986; prior code §6-33)

3.08.150 Regulations—Amendment procedure.

The board of trustees may amend, alter or change this chapter, except as to the ___ percent rate of tax herein imposed, subsequent to adoption by a majority. Such amendment, alteration or change need not be submitted to the electors of the town for their approval. (Ord. 219 §1(part), 1986; prior code §6-34)

3.08.160 Violation—Penalty.

Any person, firm or corporation violating this chapter or any provision of applicable state law is guilty of a violation of this chapter and, upon conviction thereof, shall be punished by a fine of not more than three hundred dollars, or by imprisonment for not more than ninety days, or by both such fine and imprisonment. (Ord. 219 §1(part), 1986; prior code §6-36)

3.08.170 Tax credit on PIRA Property.

Notwithstanding any other provisions of this chapter, and in order to implement the provisions of the Amended and Restated Public Improvements Reimbursement Agreement, dated July 31, 2006 (the "Agreement"), by and among the town, American Furniture Warehouse Co. and THF Firestone Development, L.L.C., there shall be granted to each person or entity obligated to pay, collect or remit the sales tax on the sale or provision of goods or services which are subject to town sales taxes occurring within the Amended PIRA Property, as defined in the Declaration of Covenants Imposing and Implementing the Firestone City Centre Public Improvements Fee (the "PIF Covenant"), and incorporated herein by this reference, a tax credit against collection of the sales tax as hereinafter set forth. Such tax credit shall be granted in the form of a reduction in the applicable sales tax rate in an amount equivalent to the rate of the Credit PIF, and shall attach to a particular transaction only to the extent that the Credit PIF Revenues are received by the PIF Collecting Agent/Trustee for such transaction. Notwithstanding any other provisions of this chapter, there shall be granted to each applicant for a building permit within the Amended PIRA Property a tax credit against the collection of the town's use tax (on building materials only) as hereinafter set forth. Such tax credit shall be granted in the form of a reduction in the applicable use tax rate (on building materials only) in an amount equivalent to the rate of the Credit PIF, and shall attach to a particular transaction only to the extent that the Credit PIF Revenues are received by the PIF Collecting Agent/Trustee for such transaction. The tax credit for both the sales tax and the use tax shall be automatic and shall take effect immediately upon the applicable retailer's (as reflected on the retailer's periodic sales tax report) or building permit applicant's remittance to and receipt by the PIF Collecting Agent/Trustee of the Credit PIF Revenues in accordance with the PIF Covenant and the Agreement. The tax credit for both the sales tax and the use tax (on building materials only) shall be granted during the Credit PIF Period and shall terminate when the Credit PIF Period terminates. The amount of sales and use tax credit granted hereunder shall not exceed one and twenty-five hundredths percent. All capitalized terms used in this section and not otherwise defined herein shall have the meanings given to them in the Agreement. (Ord. 615 §3, 2006)

3.08.180 Tax credit on Firestone City Centre.

Notwithstanding any other provisions of this chapter, and in order to implement the provisions of the Firestone City Centre Retail Infrastructure Funding Agreement, dated as of September 4, 2008 (the "RIFA"), by and among the town, THF Firestone Development, L.L.C. and TFD Firestone City Centre Public Improvement Company, there shall be granted to each person or entity obligated to pay, collect or remit the sales tax on the sale or provision of goods or services which are subject to town sales taxes occurring within Firestone City Centre, as defined in the Declaration of Covenants Imposing and Implementing the Firestone

City Centre Retail Transaction Fee (the "RTF Covenant"), and incorporated herein by this reference, a tax credit against collection of the sales tax as hereinafter set forth. Such tax credit shall be granted in the form of a reduction in the applicable sales tax rate in an amount equivalent to the rate of the Offset RTF, and shall attach to a particular transaction only to the extent that the Offset RTF Revenues are received by the RTF Collecting Agent/Trustee for such transaction. Notwithstanding any other provisions of this chapter, there shall be granted to each applicant for a building permit within Firestone City Centre a tax credit against the collection of the town's use tax (on building materials only) as hereinafter set forth. Such tax credit shall be granted in the form of a reduction in the applicable use tax rate (on building materials only) in an amount equivalent to the rate of the Offset RTF, and shall attach to a particular transaction only to the extent that the Offset RTF Revenues are received by the RTF Collecting Agent/ Trustee for such transaction. The tax credit for both the sales tax and the use tax shall be automatic and shall take effect immediately upon the applicable retailer's (as reflected on the retailer's periodic sales tax report) or building permit applicant's remittance to and receipt by the RTF Collecting Agent/Trustee of the Offset RTF Revenues in accordance with the RTF Covenant and the RIFA. The tax credit for both the sales tax and the use tax (on building materials only) shall be granted during the Offset Period and shall terminate when the Offset Period terminates. The amount of sales and use tax credit granted hereunder shall not exceed twenty-five hundredths percent during the time that the Credit PIF is being imposed in accordance with the PIRA, shall not exceed one and one-half percent during the PIRA Gap Period (which will commence after the expiration of the Credit PIF Period), and shall not exceed twenty-five hundredths percent upon expiration of the PIRA Gap Period. All capitalized terms used in this section and not otherwise defined herein shall have the meanings given to them in the RIFA. (Ord. 699 §3, 2008)

Chapter 3.10

Lodging Occupation Tax

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- 3.10.170 Open space preservation fund.

3.10.010 Purpose.

The board of trustees hereby finds, determines and declares:

A. For the purposes of this chapter, every person that furnishes a lodging room or accommodation for consideration in the town is exercising a taxable privilege. The purpose of this chapter is to impose a tax which will be paid by every vendor providing such lodging room or accommodation in the town, which tax will provide revenues for the preservation of open space and open agricultural areas and for acquisition, maintenance and management of land and easements in and around the town for open space buffer zones, trails within open space areas, wildlife habitats, and wetlands preservation.

B. Pursuant to authority found in the laws of the state, the following lodging occupancy tax is adopted for the purpose of promoting the health, safety, morals and general welfare of the town.

C. The provision of lodging rooms and accommodations to the traveling public results in the increased use of town streets and rights-of-way, increased traffic, increased demands upon municipal services such as police protection and has substantial effect upon the health, safety and welfare of the citizens of the town and upon expenditures budgeted by the town which is a matter of local concern; and

D. The classification of the provision of lodging as separate businesses and occupations is reasonable, proper, uniform, nondiscriminatory and necessary. (Ord. 476 §1, 2001)

3.10.020 Definitions.

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

A. "Lodging" shall mean hotel rooms, motel rooms, lodging rooms, motor hotel rooms, guest house rooms or other similar accommodations that are rented to persons for a period of less than one month or thirty consecutive days, but shall not include rentals under a written agreement for occupancy for a period of at least one month or thirty days.

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

C. "Sale" means the furnishing for consideration by any person of lodging within the town.

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

E. "Taxpayer" means the vendor obligated to pay the tax under the terms of this chapter.

F. "Vendor" means a person furnishing lodging for consideration within the town. (Ord. 476 §1, 2001)

3.10.030 Levy of tax.

Effective January 1, 2002, there is hereby levied by the town an occupation tax on the provision of lodging upon every person or business that furnishes any hotel room, motel room, lodging room, motor hotel room, guest house room or other similar accommodation for consideration for less than one month or thirty consecutive days within the town in the amount of two dollars per day, per occupied lodging room or accommodation. (Ord. 476 §1, 2001)

3.10.040 Exemptions.

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

A. Lodging or accommodations provided by the United States, the state, its departments and institutions and the political subdivisions of the state in their governmental capacities only;

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

C. Lodging or accommodations provided to a person who is a permanent resident of a hotel, motel, apartment hotel, lodging house, motor hotel, guest house or other similar business pursuant to a written agreement for a period of at least one month or thirty consecutive days. (Ord. 476 §1, 2001)

3.10.050 Collection of tax.

A. Every vendor providing lodging taxable under this chapter shall remit such tax on or before the tenth day of each month on account of lodging provided in the preceding month. Said payment shall be accompanied by a return which shall contain such information and be in such form as the town clerk may prescribe.

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

C. If the accounting methods regularly employed by the vendor in the transaction of business, or other conditions, are such that the returns aforesaid made on a calendar month basis will impose unnecessary hardship, the town clerk may, upon request of the vendor, accept returns at such intervals as will, in the town clerk's opinion, better suit the convenience of the vendor and will not jeopardize the collection of the tax; provided, however, that the town clerk may by rule permit a vendor whose monthly tax obligation is less than sixty dollars to make returns and pay taxes at intervals not greater than three months.

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

E. The tax to be paid by a vendor shall not be stated and charged separately from the sales price of lodging on any record thereof at the time when the sale is made or at the time when evidence of the sale is issued, provided that the vendor may indicate the sales price "includes \$2.00 town Lodging Occupation Tax." (Ord. 476 §1, 2001)

3.10.060 Audit of records.

A. For the purpose of ascertaining the correct amount of the occupation tax on the provision of the lodging due from any person engaged in such business in the town under this chapter, the town clerk or an

authorized agent may conduct an audit by examining any relevant books, accounts and records of such person.

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

C. Any exempt organization claiming exemption under the provisions of this chapter is subject to audit in the same manner as any other person engaged in the lodging business in the Town. (Ord. 476 §1, 2001)

3.10.070 Tax overpayments and deficiencies.

An application for refund of tax monies paid in error or by mistake shall be made within three years after the date of payment for which the refund is claimed. If the town clerk determines that within three years of the due date, a vendor overpaid the occupation tax on the provision of lodging, the town clerk shall process a refund or allow a credit against a future remittance from the same taxpayer. If at any time the town clerk determines the amount paid is less than the amount due under this chapter, the difference together with the interest shall be paid by the vendor within ten days after receiving written notice and demand from the town clerk. The town clerk may extend that time for good cause. (Ord. 476 §1, 2001)

3.10.080 Tax information confidential.

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

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

C. Nothing contained in this section shall be construed to prohibit the delivery to the taxpayer or their duly authorized representative a copy of such confidential information relating to such taxpayer, the publication of statistics so classified as to prevent the identification of particular taxpayers, or the inspection of such confidential information by an officer, employee or legal representative of the town. (Ord. 476 §1, 2001)

3.10.090 Forms and regulations.

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

- A. A form of report on the provision of lodging to be supplied to all vendors;
- B. The records which vendors providing lodging are to keep concerning the tax imposed by this chapter. (Ord. 476 §1, 2001)

3.10.100 Enforcement and penalties.

A. It shall be unlawful for any person to intentionally, knowingly or recklessly fail to pay the tax imposed by this chapter, or to make any false or fraudulent return, or for any person to otherwise violate any provisions of this chapter. Any person convicted of a violation of this chapter shall be deemed guilty of a municipal criminal offense and shall be punished by a fine of not more than one thousand dollars or by imprisonment for a period of one year, or by both such fine and imprisonment. Each day, or portion thereof, that any violation of this chapter continues shall constitute a separate offense.

B. A penalty in the amount of ten percent of the tax due or the sum of ten dollars, whichever is greater, shall be imposed upon the vendor and become due in the event the tax is not remitted by the tenth day of the month as required by this chapter, or such other date as prescribed by the town clerk, and one and one-half percent interest shall accrue each month on the unpaid balance. The town clerk is hereby authorized to waive for good cause shown, any penalty assessed.

C. If any part of a deficiency is due to negligence or intentional disregard of the provisions of the ordinance codified herein or rules and regulations concerning the same, but without intent to defraud, there shall be added ten percent of the total amount of the deficiency, and interest, from the vendor required to file a return. If any part of the deficiency is due to fraud with the intent to evade the tax, then there shall be added fifty percent of the total amount of the deficiency together with interest, and in such case, the whole amount of the unpaid tax, including the additions, shall become due and payable ten days after written notice and demand by the town clerk.

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

E. Such petition shall be in writing, and the facts and figures submitted shall be submitted either in writing or orally and shall be given by the taxpayer under penalty of perjury. Thereupon, the town clerk may modify such assessment in accordance with the facts submitted in order to effectuate the provisions of this chapter. Such assessment shall be considered the final order of the town clerk, and may be reviewed under

Rule 106(a)(4) of the Colorado Rules of Civil Procedure, provided that the taxpayer gives written notice to the town clerk of such intention within ten days after receipt of the final order of assessment. (Ord. 476 §1, 2001)

3.10.110 Tax lien.

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

B. The tax imposed by this chapter shall be and remain a first and prior lien superior to all other liens on the real property and appurtenant premises at which the taxable transactions occurred. (Ord. 476 §1, 2001)

3.10.120 Recovery of unpaid tax.

A. The town clerk may also treat any such taxes, penalties, costs or interest due and unpaid as a debt due the town from the taxpayer.

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

C. The return of the taxpayer or the assessment made by the town clerk shall be prima facie proof of the amount due.

D. Such actions may be actions in attachment and writs of attachment may be issued to the Firestone Police or Weld County Sheriff, as the case may be, and in any such proceeding no bond shall be required of the town clerk, nor shall any police officer or sheriff require of the town clerk an indemnifying bond for executing the writ of attachment or writ of execution upon any judgment entered in such proceedings. The town clerk may prosecute appeals in such cases without the necessity of providing bond therefor.

E. It shall be the duty of the town attorney, when requested by the town clerk, to commence action for the recovery of taxes due under this chapter, and this remedy shall be in addition to all other existing remedies or remedies provided in this chapter.

F. The town may certify the amount of any delinquent tax, plus interest, penalties and the costs of collection, as a charge against the property at which the taxable transaction occurred to the county treasurer for collection in the same manner as delinquent ad valorem taxes. (Ord. 476 §1, 2001)

3.10.130 Status of unpaid tax in bankruptcy and receivership.

Whenever the business or property of a taxpayer subject to this chapter shall be placed in receivership, bankruptcy or assignment for the benefit of creditors or seized under distraint for taxes, all taxes, penalties and interest imposed by this chapter and for which the taxpayer is in any way liable under the terms of this chapter shall be a prior and preferred lien against all the property of the taxpayer, except as to other tax liens which have attached prior to the filing of the notice, and no sheriff, receiver, assignee or other officer shall sell the property of any person subject to this chapter under process or order of any court, without first ascertaining from the town clerk the amount of any taxes due and payable under this chapter, and if there be any such taxes due, owing and unpaid, it shall be the duty of such officer to first pay the amount of the taxes out of the proceeds of such sale before making payment of any monies to any judgment creditor or other claimants of whatsoever kind or nature, except the costs of the proceedings and other preexisting tax liens as above provided. (Ord. 476 §1, 2001)

3.10.140 Hearings, subpoenas and witness fees.

A. Hearings before the town clerk pursuant to provisions in this chapter shall be held pursuant to the ordinance codified herein and rules and regulations promulgated by the town clerk. Any subpoena issued pursuant to this chapter may be enforced by the municipal judge pursuant to Section 13-10-112(2), C.R.S. The fees of witnesses for attendance at hearings shall be the same as the fees of witnesses before the district court, such fees to be paid when the witness is excused from further attendance. When the witness is subpoenaed at the instance of the town clerk, such fees shall be paid in the same manner as other expenses under the terms of this chapter, and when a witness is subpoenaed at the instance of any party to any such proceeding, the town clerk may require that the cost of service of the subpoena and the fee of the witness be borne by the party at whose instance the witness is summoned. In such case, the town clerk, at his or her discretion, may require a deposit to cover the cost of such service and witness fees. A subpoena issued as aforesaid shall be served in the same manner as a subpoena issued out of a court of record.

B. The municipal judge, upon the application of the town clerk, may compel the attendance of witnesses, the production of books, papers, records or memoranda and the giving of testimony before the town clerk or duly authorized hearing officers, by an action for contempt, or otherwise, in the same manner as production of evidence may be compelled before the Court. (Ord. 476 §1, 2001)

3.10.150 Depositions.

The town clerk or any party in an investigation or hearing before the town clerk may cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in courts of this state and to that end compel the attendance of witnesses and the production of books, papers, records or memoranda. (Ord. 476 §1, 2001)

3.10.160 Statute of limitations.

A. Except as otherwise provided in this section, the taxes for any period, together with interest thereon and penalties with respect thereto, imposed by this chapter shall not be assessed, nor shall notice of lien be filed or distraint warrant be issued or suit for collection be instituted, or any other action to collect the same be commenced, more than three years after the date on which the tax was or is payable. Nor shall any lien continue after such period, except for taxes assessed before the expiration of such three-year period, notice of lien with respect to which has been filed prior to the expiration of such period.

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

C. Before the expiration of such period of limitation, the taxpayer and the town clerk may agree in writing to an extension thereof, and the period so agreed on may be extended by subsequent agreements in writing. (Ord. 476 §1, 2001)

3.10.170 Open space preservation fund.

There is hereby created a fund to be known as the "open space preservation fund." All of the revenues derived from the occupation tax on the provision of lodging imposed by this chapter shall be placed in such fund. All expenditures from such fund shall be used exclusively for the preservation of open space and open agricultural areas and for acquisition, maintenance and management of land and easements in and around the town for open space buffer zones, trails within open space areas, wildlife habitats and wetlands preservation. (Ord. 476 §1, 2001)

Chapter 3.12

Park Fund

Sections:

- 3.12.010 Park fund established.
- 3.12.020 Residential unit defined.
- 3.12.030 Separate fund.
- 3.12.040 Collection of moneys.

3.12.010 Park fund established.

There is established a park fund for the town. Disbursements from the fund shall be limited to the acquisition or improvement of lands for parks, open space, trails and other recreational facilities in the town, and construction or improvement of parks, open space, trails and other recreational facilities. (Ord. 309 §1, 1995; prior code §6-11)

3.12.020 Residential unit defined.

For purposes of this chapter, a residential unit shall be defined as consisting of a single-family dwelling, each dwelling unit of any structure containing two or more residential units, and each parking space in a trailer park or mobile home park. (Prior code §6-11.2a)

3.12.030 Separate fund.

All fees or moneys collected by means of this chapter shall be deposited in a separate fund heretofore described as the park fund and shall be dispersed and used only for the purposes set forth in this chapter and only upon authorization of the board of trustees. (Prior code §6-11.1)

3.12.040 Collection of moneys.

The town clerk is authorized and directed to collect, for each residential unit as defined herein at the time the building permit is issued for the structure, a park fund fee. The fee shall be in the amount determined by the board of trustees to be sufficient to offset the impact on and demand for parks, open space, trails and recreational facilities caused by the development or construction to which the building permit applies. The fee shall be deposited in the park fund established pursuant to Section 3.12.010. (Ord. 309 §2, 1995; prior code §6-11.2)

Chapter 3.16

Revenue Sharing Trust Fund

Sections:

3.16.010 Created.

3.16.010 Created.

A special revenue sharing trust fund is established for all moneys received from distribution by the federal government under authority and by direction of the State and Local Fiscal Assistance Act of 1972, including any and all earnings, or prorated share of earnings, on the distribution. (Prior code §6-12)

Chapter 3.20

Development Impact Fees and Funds

Sections:

- 3.20.010 Short title, authority and applicability.
- 3.20.020 Intent.
- 3.20.030 Definitions.
- 3.20.040 Development impact fees imposed.
- 3.20.050 Credits.
- 3.20.060 Refund of impact fees paid.
- 3.20.070 Impact Fee Trust Fund.
- 3.20.080 Expenditure of impact fees.
- 3.20.090 Benefit areas and expenditures.
- 3.20.100 Review every three years.
- 3.20.110 Miscellaneous provisions.

3.20.010 Short title, authority and applicability.

A. Title. This chapter shall be known and may be cited as the "Firestone Colorado Impact Fee Ordinance" or "Impact Fee Ordinance."

B. Authority. The town has the authority to adopt this chapter pursuant to the town's general police powers, Sections 29-20-101 et seq., 31-23-101 et seq. and 29-1-801 et seq., C.R.S., and other relevant laws of the State.

C. Application. This chapter shall apply to the development of any new residential dwelling unit within the territorial limits of the town, except as exempted pursuant to the provisions hereof. This chapter shall not apply to any development for which the applicant has submitted a complete application prior to the January 17, 2003 effective date of the ordinance enacting this chapter. (Ord. 514 §2, 2002)

3.20.020 Intent.

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

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

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

D. No intent to remedy existing deficiencies. It is not the intent of this chapter that impact fees be used to remedy any deficiency in town capital facilities existing on the effective date of the ordinance enacting this chapter.

E. No intent to commingle funds. It is not the intent of this chapter that any monies collected from any impact fee deposited in an Impact Fee Trust Account ever be commingled with monies from a different trust account, or ever be used for capital facilities that are different from those for which the fee was paid, or ever be used to maintain, rehabilitate or operate existing capital facilities. (Ord. 514 §2, 2002)

3.20.030 Definitions.

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

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

B. "Capital facilities" means any improvement or facility that:

1. Is directly related to any service that the town is authorized to provide;
2. Has an estimated useful life of five years or longer; and
3. Is required by general policy of the town pursuant to a resolution or ordinance.

The phrase "capital facilities," as used in this chapter, is limited to the following categories, all of which are as further defined herein and in the *Impact Fee Analysis* regional transportation network capital facilities, regional storm drainage capital facilities, regional parks, police capital facilities and utility transmission line undergrounding. No costs of vehicles or equipment are included within such capital facilities.

C. "Commencement of impact-generating development" occurs upon the approval of a preliminary planned unit development (PUD) development plan, a final PUD development plan, a rezoning, a special review use permit, a preliminary subdivision plat, a final subdivision plat, a minor subdivision plat or the issuance of a building permit, whichever occurs first after the effective date of the ordinance enacting this chapter.

D. "Complete application" means an application that:

1. Has been submitted to and received by the town planning department;
2. Contains all information and submittal materials required by the town code and the development regulations; and
3. Has been determined in writing by town staff to be complete under the applicable provisions of the town code and development regulations.

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

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

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

H. "Fee schedule or impact fee schedule" means the impact fees established by this chapter. The impact fee schedule is set forth as Appendix 3A to this chapter.

I. "Impact fees" means the fees established by this chapter for the following capital facilities: regional transportation network (the Roadway Impact Fee), regional storm drainage (the Drainage Impact Fee), regional parks (the Regional Parks Impact Fee), police capital facilities (New Police Station Impact Fee) and utility transmission line undergrounding (Undergrounding Impact Fee).

J. "Impact fee analysis" means the *2003 Impact Fee Analysis* and *Memorandum of Impact Fee Update*, both prepared by town staff and dated December 10, 2002, and all other additional materials prepared in connection with such analysis, memorandum and this chapter.

K. "Independent fee calculation study" means a study prepared by a fee payer, calculating the cost of a capital facility for which an impact fee is imposed and which is required to served the fee payer's proposed development, that is performed on an average cost (not marginal cost) methodology, uses the service units

and unit construction costs stated in the *Impact Fee Analysis* and is performed in compliance with the criteria established in this chapter.

L. "Impact Fee Trust Fund" means the trust fund established by Section 3.20.070, which includes individual accounts for the Roadway Impact Fees, the Drainage Impact Fees, the Regional Parks Impact Fees, the New Police Station Impact Fees and the Undergrounding Impact Fees. The Impact Fee Trust Fund is also called the "Trust Fund."

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

N. "Regional Transportation Network (RTN)" and "RTN capital facilities." The "RTN" consists of all existing or planned section line roads and the planned Del Camino Parkway and is depicted on Exhibit B to the ordinance codified herein, a copy of which is available for inspection at the office of the town clerk. "RTN capital facilities" are defined as all engineering work, design studies, land surveys, alignment studies, permitting work, land costs and construction related to all necessary features for any road on the RTN, undertaken to accommodate additional traffic resulting from new impact-generating development in the town. Such features that are part of the RTN capital facilities include, but are not limited to:

1. New through lanes;
2. New bridges;
3. New drainage facilities in conjunction with new road construction;
4. Traffic signals, including new and upgraded signalization;
5. Curbs, gutters, sidewalks, medians and shoulders in conjunction with new road construction;
6. Relocation of utilities to accommodate new road construction;
7. The construction and reconstruction of intersections;
8. The widening of existing roads;
9. Bus turnouts;
10. Acceleration and deceleration lanes;
11. Interchanges; and
12. Traffic control devices.

For the purposes of this chapter, site-related improvements shall not constitute RTN capital facilities.

O. "Site-related improvements," except for arterial roads and interchanges on the RTN, means those transportation improvements that provide direct access to a development. Direct access improvements include but are not limited to the following:

1. Driveways and streets leading to and from the development;
2. Right- and left-turn lanes leading to those driveways and streets;
3. Traffic control measures for those driveways; and
4. Internal streets.

Credit is not provided for site-related improvements under the terms of this chapter.

P. "Successor-in-interest" means a person who is conveyed a fee simple interest in land for which an impact fee is paid or a credit is approved pursuant to the terms of this chapter. (Ord. 514 §2, 2002)

3.20.040 Development impact fees imposed.

A. Fee obligation, payment and deposit.

1. **Obligation to pay and time of payment.** After the effective date of the ordinance enacting this chapter, any person who causes the commencement of impact-generating development shall be obligated to pay impact fees pursuant to the terms of this chapter. The obligation to pay impact fees shall run with the land. The amount of the impact fees shall be determined with Subsection C below and paid to the town at the time and as a condition of issuance of a building permit for the new residential dwelling unit constituting development. If any credits are due pursuant to this chapter, they shall be determined at that time.

2. **Fees promptly deposited into accounts in trust fund.** All monies paid by a fee payer pursuant to this chapter shall be identified as impact fees and shall be promptly deposited in the appropriate impact fee trust accounts established in Section 3.20.070.

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

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

5. **Prior conditions and agreements.** Any person who, prior to the effective date of the ordinance enacting this chapter, agreed as a condition of permit approval to pay any impact fee provided for in this chapter shall be responsible for the payment of the fees under the terms of any such agreement and the payment of the fees will be offset against any impact fees due pursuant to the terms of this chapter.

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

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

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

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

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

5. Government. Development by the federal government, the State or the town.

6. Development for which complete application submitted prior to effective date. Development for which a complete application for a building permit was submitted prior to the effective date of the ordinance enacting this chapter. The decision of the town with respect to completeness is final.

7. Development without greater impact. Development which the fee payer can demonstrate will create no greater impact over and above that existing prior to the proposed development.

C. Calculation of amount of impact fees.

1. General. Except for those electing to pay impact fees pursuant to Subsection C.3 below, the impact fees applicable to and payable for the impact-generating development shall be as determined by the fee schedule set forth in Appendix 3A at the end of this chapter. The impact fee schedule set forth in Appendix 3A is based on the *Impact Fee Analysis*. It applies to all residential land use development for new residential dwelling units and is intended to defray the projected impacts caused by proposed new development on capital facilities.

2. Annual adjustment of fees to reflect effects of inflation. The impact fees shown in the impact fee schedule shall be adjusted annually to reflect the effects of inflation on those costs for capital facilities. Commencing on January 1, 2004, and on January 1 of each following year unless and until the fees in Appendix 3A are revised and replaced, each impact fee amount set forth in Appendix 3A shall be adjusted for inflation, based on the annual Construction Cost Index published by *Engineering News Record*. Such adjustments in the impact fees shall become effective immediately upon calculation by the town and shall not require additional action by the board of trustees to be effective.

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

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

b. General parameters for independent fee calculation study. Each independent fee calculation study shall be based on the same LOS standards and unit costs for the capital facilities that are used in the *Impact Fee Analysis* and shall document the relevant methodologies and assumptions used.

c. Procedure.

(1) An independent fee calculation study shall be undertaken through the submission of an application to the director of operations, along with an application fee to defray the costs associated with the review of the independent fee calculation study.

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

(3) When it is determined the application is complete, the application shall be reviewed by the director of operations or designee and a written decision rendered within thirty days on whether the impact fees should be modified, and if so, what the amount should be, based on the standards in Subsection d below.

d. Standards. If, on the basis of generally recognized principles of impact analysis, it is determined by the town that the data, demand information, methodologies and assumptions used by the applicant to calculate the impact fees in the independent fee calculation study more accurately measures the proposed impact-generating development's impact on the appropriate capital facilities, the fees determined in the independent fee calculation study shall be deemed by the town to be the fees due and owing for the proposed development. The fee adjustment shall be set forth in a fee agreement executed prior to payment of the adjusted fees and the issuance of the first building permit. If the independent fee calculation study fails to satisfy these requirements, the fees applied shall be the fees established in Appendix 3A, Impact Fee Schedule. (Ord. 712 §1, 2009; Ord. 514 §2, 2002)

3.20.050 Credits.

A. Standards.

1. General.

a. Intent. No individual landowner is required to provide any site specific dedication or improvement to meet the same need for capital facilities for which impact fees are imposed pursuant to this chapter. The intent of this section is to allow for credits whether such a site specific dedication or improvements is required or agreed upon in connection with impact-generating development.

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

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

2. Valuation of credits.

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

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

c. Contributions. Contributions for capital facilities shall be based on the value of the contribution or payment at the time it is made to the town.

3. When credits become effective.

a. Land dedication. Credits for land dedication shall become effective after the credit is approved pursuant to this section, a credit agreement is entered into and the land has been conveyed to the town in a form established by the board of trustees at no cost to the town and the dedication of land has been accepted by the board of trustees.

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

c. Contribution. Credits for contribution for capital facilities shall become effective after the credit is approved pursuant to this section, a credit agreement is entered into and the contribution is actually made to the town in a form acceptable to the town and has been accepted by the board of trustees.

4. Transferability of credits. Credits shall be transferable within the same development and for the same capital facility for which the credit is provided, but shall not be transferable outside the development or used as credit against impact fees for other capital facilities. Credit may be transferred pursuant to these terms and conditions by any written instrument that clearly identifies which credits approved under this

section are to be transferred. The instrument shall be signed by both the transferor and transferee, and the document shall be delivered to the director of operations or designee for registration of the change of ownership. If there are outstanding obligations under a credit agreement, the town may require that the transferor or transferee, or both (as appropriate) enter into an amendment to the credit agreement to assure the performance of such obligations, and may require additional assurances that the transferee has the financial capability and other qualifications necessary to perform such obligations.

5. Total amount of credit. The total amount of the credit shall not exceed the amount of the impact fees due for the individual facility component.

6. Capital facility reimbursement agreement. The town may but shall not be required to enter into a capital facility reimbursement agreement with any person who proposes to construct capital facilities to the extent the fair market value of the construction of these capital facilities exceed the obligation to pay impact fees for which a credit is provided pursuant to this section. The capital facility reimbursement agreement shall provide proportionate and fair share reimbursement linked to the impact-generating development's use of the capital facilities constructed.

B. Procedure.

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

2. Offer contents. The offer for credit shall include the following:

a. Dedication of land. If the proposed offer involves credit for the dedication of land for capital facilities:

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

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

b. Construction. If the proposed credit involves construction of capital facilities:

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

(2) The projected costs for the suggested improvement, which shall be based on local information for similar improvements, along with the construction timetable for the completion thereof. Such estimated costs shall include the costs of construction or reconstruction, the costs of all labor and materials, the costs of all lands, property, rights, easements and franchises acquired, financing charges, interest prior to and during construction and for one year after completion of construction, costs of plans and specification, surveys of estimates of costs and of revenues, costs of

professional services and all other expenses necessary or incident to determining the feasibility or practicability of such construction or reconstruction;

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

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

(1) A certified copy of the development permit in which the contribution was agreed;

(2) If payment has been made, proof of payment; or

(3) If payment has not been made, the proposed method of payment.

3. Determination of completeness. Within fifteen days of receipt of the proposed application, the director of operations or designee shall determine if the application is complete. If it is determined that the proposed application is not complete, the town planning director or designee shall send a written statement to the applicant outlining the deficiencies. No further action shall be taken on the application until all deficiencies have been corrected or otherwise settled.

4. Decision. Once the director of operations or designee determines the offer for credit is complete, it shall be reviewed within thirty days and may be approved by the board of trustees if there is compliance with the standards in this section.

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

D. Accounting of credits. Each time a request to use approved credits is presented to the town, the director of operations or designee shall reduce the amount of the impact fees, and shall note in the town's records and the credit agreement the amount of credit remaining, if any. Upon request of the fee payer or the fee payer's transferee, the director of operations or designee shall issue a letter stating the amount of credit remaining. A request to use approved credits may be rejected in the event there is uncertainty or dispute as to the ownership of a credit being claimed. (Ord. 712 §1, 2009; Ord. 514 § 2002)

3.20.060 Refund of impact fees paid.

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

B. Procedure for refund. The refund shall be administered by the director of operations or designee, and shall be according to the following process:

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

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

b. A copy of the building permit; and

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

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

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

C. Limitations.

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

2. No refund if project demolished, destroyed, altered, reconstructed or reconfigured. After an impact fee has been paid pursuant to this chapter, no refund of any part of such fee shall be made if the development for which the fee was paid is later demolished, destroyed, or is altered, reconstructed or reconfigured so as to reduce the size of the development or the number of units in the development. (Ord. 712 §1, 2009; Ord. 514 §2, 2002)

3.20.070 Impact Fee Trust Fund.

A. Establishment of trust fund and trust accounts.

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

2. Establishment of accounts. The trust fund shall be divided into five accounts: a Roadway Impact Fee account, a Drainage Impact Fee account, a Regional Parks Impact Fee account, a Police Capital Facilities Fee account and an Undergrounding Impact Fee Account.

B. Deposit and management of accounts and trust fund.

1. Managed in conformance with Section 29-1-801, et seq., C.R.S. The Impact Fee Trust Fund and each account therein shall be maintained as an interest-bearing account and shall be managed in conformance with Section 29-1-801, et seq., C.R.S.

2. Deposit of fees in appropriate account in trust fund. All impact fees collected by the town pursuant to this chapter shall be promptly deposited into the appropriate account in the trust fund.

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

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

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

6. Record of trust fund available for public inspection. A record of the trust fund accounts shall be available for public inspection in the director of operations' or designee's office, during normal business hours. (Ord. 712 §1, 2009; Ord. 514 §2, 2002)

3.20.080 Expenditure of impact fees.

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

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

C. No monies spent to remedy existing deficiencies. No monies shall be spent to remedy deficiencies in capital facilities existing on the effective date of the ordinance enacting this chapter.

D. Annual impact fee capital facilities budget. At least once during each fiscal year of the town, the director of operations or designee shall present to the board of trustees a proposed program and budget for town capital facilities. This capital facilities program and budget shall recommend assigning monies from each Impact Fee Trust Account to specific capital facilities. Based on this recommendation, the board of trustees shall approve an annual capital facilities program and budget and assign monies from the trust accounts for the specific capital facilities identified. Any monies, including any accrued interest, not assigned to specific capital facility projects and not expended shall be retained in the same Impact Fee Trust Account until the next fiscal year. (Ord. 712 §1, 2009; Ord. 514 §2, 2002)

3.20.090 Benefit areas and expenditures.

A. Establishment. Because all new impact-generating development will benefit from the capital facilities funded by the impact fees, the boundaries of the area to be benefited by such facilities are hereby determined to be the same as the town's boundaries, as existing from time to time. Notwithstanding the foregoing, the impact-generating development to be benefited by the Police Capital Facilities Impact Fee as established in this chapter is limited to that development identified in the *Impact Fee Analysis*.

B. Expenditures. Fees shall be used only to acquire, construct, improve or expand capital facilities within the town, on the RTN within or outside of the town, and otherwise outside the town as may be permitted by law. (Ord. 514 §2, 2002)

3.20.100 Review every three years.

The impact fees described in this chapter and the administrative procedures of this chapter shall be reviewed at least once every three years to ensure that:

1. The demand and cost assumptions underlying the impact fees are still valid;
2. The resulting impact fees do not exceed the actual costs of constructing capital facilities that are of the type for which the fees are paid and that are required to serve new impact-generating development;
3. The monies collected or to be collected in each Impact Fee Trust Account have been and are expected to be spent for capital facilities for which the fees were paid; and
4. The capital facilities for which the fees are to be used will benefit the development paying the fees. (Ord. 514 §2, 2002)

3.20.110 Miscellaneous provisions.

A. Requirements to construct improvements; other obligations. Nothing in this chapter shall restrict the town from requiring an applicant for a development permit to construct reasonable capital facility improvements designed and intended to serve the needs of the applicant's project, whether or not such capital facility improvements are of a type for which credits are available under Section 3.20.050. The impact fees charged pursuant to this chapter shall be in addition to any other fees, charges, tolls or requirements

applicable to development, including, by way of example and not limitation, public land dedication, fair contributions for public school sites, tap fees and building permit fee.

B. Administrative costs. The town shall be entitled to retain not more than two percent of the impact fees collected as payment for the expenses of collecting the fees and administering this chapter and fees collected. In the case of refunds of impact fees under Section 3.20.060, the town shall be entitled to retain not more than an additional two percent of the impact fee payment made as payment for the expenses of processing the refund request.

C. Mistake and misrepresentation in payment of fee. If an impact fee has been calculated and paid based on a mistake or misrepresentation, it shall be recalculated. Any amounts overpaid by a fee payer shall be refunded by the town within thirty days after the town's acceptance of the recalculated amount, with interest at the rate of five percent per annum since the date of such overpayment. Any amounts underpaid by the fee payer shall be paid to the town within thirty days after the town's acceptance of the recalculated amount, with interest at the rate of five percent per annum since the date of such underpayment. In the case of an underpayment to the town, the town shall not issue any additional development permits or approvals for the project for which the impact fee was previously paid until such underpayment is corrected, and if amounts owed to the town are not paid within such thirty-day period, the town may also repeal any permits issued in reliance on the previous payment of such impact fee and refund such fee to the then-current owner of the land.

D. Appeal of decision of director of operations or designee.

1. Appeal. An appeal may be filed of any determination or decision made by the director of operations or designee under this chapter regarding: (1) the applicability of any fee to development; (2) the amount of any such fee; (3) the availability or amount of any credit; or (4) the amount of any refund. Such appeal shall be made to the board of trustees by filing with the town clerk or designee within thirty days of the determination or decision for which the appeal is being filed: (1) a written notice of appeal on a form provided by the town clerk or designee; (2) a written explanation of why the applicant feels the determination or decision is in error; and (3) an appeal fee established by administrative rule of the town. Additionally, any appeal concerning the amount of a fee shall be accompanied by an independent fee calculation study prepared in accordance with Subparagraph 3.20.040C.3. of this Chapter.

2. Board of trustees review. The board of trustees shall promptly fix a time and place for hearing the appeal, and shall have the town clerk mail notice of the hearing to the appellant at the address given in the notice of appeal. The hearing shall be conducted at the time and place stated in the notice. The board of trustees shall consider the appeal and either affirm or modify the decision or determination of the director of operations or designee based on the relevant standards and requirements of this chapter. The appellant shall bear the burden of proof in such appeal. The decision of the board of trustees shall be final.

E. Judicial action or proceeding. Any judicial action or proceeding to attack, review, set aside or annul the adoption of the fee schedule established in Appendix 3A to this chapter and any actions taken by the town or any officers or designees thereof pursuant to the terms of this chapter shall be governed by Section 29-20-104.5(7), C.R.S., and all other relevant state laws.

F. Administrative rules. The director of operations or designee may from time to time establish written administrative rules, not inconsistent with the provisions of this chapter, to facilitate the implementation of this chapter. (Ord. 712 §1, 2009; Ord. 514 §2, 2002)

Appendix 3A

Impact Fee Schedule

Categories and Total Fee for Each Residential Dwelling Unit

Roadway Impact Fee	\$4,189.12
Drainage Impact Fee	639.20
Regional Parks Impact Fee	756.75
New Police Station Impact Fee	817.10
Undergrounding Impact Fee	97.83
Total Impact Fee (per unit)	\$6,500.00