

CHAPTER 4

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ARTICLE I

General and Special Funds

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

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

transfer out of any fund any amount at any time to be used for such purpose as the City Council may direct. (Ord. 4 §1, 2005)

Sec. 4-1-20. General Fund.

The General Fund, established in the Charter, shall consist of the following:

(1) All cash balances of the City not specifically belonging to any existing special fund of the City.

(2) All fixed assets of the City (to be separately designated in an account known as the General Fund Fixed Assets) not specifically belonging to any existing special fund of the City. (Ord. 4 §1, 2005)

Sec. 4-1-30. Capital Fund created.

There is hereby created a special fund, to be known as the Capital Fund, and the funds therein shall be used only for the purposes allowed by law. (Ord. 4 §1, 2005)

Sec. 4-1-40. Capital Project Fund created.

(a) The Capital Project Fund is established for the purpose of paying the cost of capital improvements, including purchase of land, buildings or equipment, and the improvement and construction of public works.

(b) The City Council may by resolution transfer from time to time money from the General Fund to the Capital Project Fund.

(c) The City Council may, by the affirmative vote of five (5) or more of the City Council, appropriate money from the Capital Project Fund. Said appropriations shall not lapse until the purpose for which the appropriation was made shall have been accomplished or abandoned.

(d) Interest earned by the Capital Project Fund shall accrue to the Capital Project Fund. Once a year the Finance Director shall report to the City Council on the amount of interest earned. (Prior code 3.14.010, 3.14.020, 3.14.030, 3.14.040; Ord. 4 §1, 2005)

Sec. 4-1-50. Cemetery Operations Fund created.

There is hereby created a special fund, to be known as the Cemetery Operations Fund, and the funds therein shall be used only for the purposes allowed by law. (Ord. 4 §1, 2005)

Sec. 4-1-60. Conservation Trust Fund.

(a) Pursuant to state statutes, there is established a special fund to be known as the Conservation Trust Fund.

(b) Any moneys received from the State for conservation trust fund purposes shall be deposited in the Conservation Trust Fund and shall be expended upon direction of the City Council for the purposes allowed by state statutes. (Prior code 3.12.010, 3.12.020; Ord. 4 §1, 2005)

Sec. 4-1-70. Downtown Development Fund created.

There is hereby created a special fund, to be known as the Downtown Development Fund, and the funds therein shall be used only for the purposes allowed by law. (Ord. 4 §1, 2005)

Sec. 4-1-80. Economic Development Fund created.

There is hereby created a special fund, to be known as the Economic Development Fund, and the funds therein shall be used only for the purposes allowed by law. (Ord. 4 §1, 2005)

Sec. 4-1-90. Information Center Fund created.

There is hereby created a special fund, to be known as the Information Center Fund, and the funds therein shall be used only for the purposes allowed by law. (Ord. 4 §1, 2005)

Sec. 4-1-100. Sanitation Fund created.

There is hereby created a special fund, to be known as the Sanitation Fund, and the funds therein shall be used only for the purposes allowed by law. (Ord. 4 §1, 2005)

Sec. 4-1-110. Sewer Fund created.

There is hereby created a special fund, to be known as the Sewer Fund, and the funds therein shall be used only for the purposes allowed by law. (Ord. 4 §1, 2005)

Sec. 4-1-120. Street Improvement Fund created.

There is hereby created a special fund, to be known as the Street Improvement Fund, and the funds therein shall be used only for the purposes allowed by law. (Ord. 4 §1, 2005)

Sec. 4-1-130. Water Fund created.

There is hereby created a special fund, to be known as the Water Fund, and the funds therein shall be used only for the purposes allowed by law. (Ord. 4 §1, 2005)

Sec. 4-1-140. Visitors Improvement Fund created.

There is hereby created a special fund, to be known as the Visitor Improvements Fund, and the funds therein shall be used only for the purposes allowed by law. (Ord. 33 §3, 2007)

Sec. 4-1-150. Parks and Recreation Fund created.

There is hereby created a special fund, to be known as the Parks and Recreation Fund, and the funds therein shall be used only for the purposes allowed by law. (Ord. 34 §2, 2007)

ARTICLE II

Retail Sales and Use Tax

Division 1 General Provisions

Sec. 4-2-10. Short title.

This Article shall be known and cited as the *City Retail Sales and Use Tax Code*. (Prior code 3.04.010)

Sec. 4-2-20. Legislative intent; uniform interpretation; simplification.

(a) It is hereby declared to be the legislative intent of the City Council that every person engaged in business in the City, who shall deliver or cause to be delivered to a purchaser in the City any taxable property or services, is exercising a taxable privilege and shall collect the tax imposed by this Article on the total purchase price of such article of tangible personal property or taxable services that are purchased, sold, leased or rented at any time by or to every customer or buyer.

(b) It is hereby declared to be the legislative intent of the City Council that, for the purposes of this Article, every person who stores or uses any motor vehicle, trailer, semi-trailer or other personal property for which a title is issued and registered with the County Clerk and Recorder is exercising a taxable privilege.

(c) All sales and purchases of tangible personal property are subject to the tax, except as specifically exempted. Sales and purchases of services as specifically set forth in Section 4-2-110 of this Article are subject to the tax. The sales and use tax is imposed on the consumer. The duty is imposed on the seller to collect and remit the tax to the City under the penalties prescribed.

(d) The City Council also intends that this Article be construed in a manner uniform and consistent with other sales and use tax ordinances imposed by other home rule municipalities and by the Colorado Department of Revenue.

(e) In order to initiate a central register of sales and use tax ordinances for municipalities that administer local sales tax collection, the Finance Director shall file with the Colorado Municipal League, prior to the effective date of the initial ordinance codified herein, a copy of the City sales and use tax ordinance reflecting all provisions in effect on the effective date of the initial ordinance codified herein.

(f) In order to keep current the central register of sales and use tax ordinances for municipalities that administer local sales tax collection, the Finance Director shall file with the Colorado Municipal League, prior to the effective date of any amendment, a copy of each sales and use tax ordinance amendment enacted by the City.

(g) Not later than ten (10) days after the effective date of the initial ordinance codified herein or any amendment hereto, or the promulgation of any rule or regulation hereunder, the City Clerk shall file a copy thereof with the Department of Revenue as required by Section 29-2-106(7), C.R.S.

(h) Failure of the City to file such ordinance or ordinance amendment pursuant to this Section shall not invalidate any provision of this Article.

(i) The Finance Director shall cooperate with and participate on an as-needed basis with a permanent statewide sales and use tax committee convened by the Colorado Municipal League which is composed of state and municipal sales and use tax officials and business officials. Said committee will meet for the purpose of discussing and seeking resolution to sales and use tax problems which may arise. (Prior code 3.04.020; Ord. 4 §1, 2005)

Sec. 4-2-30. Definitions.

The following words and phrases, as used in this Article, shall have the meanings set forth below. These definitions are intended, as nearly as practical, to be consistent with other sales and use tax ordinances imposed by other home rule municipalities.

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

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

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

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

Construction materials means tangible personal property which, when combined with other tangible personal property, loses its independent identity to become an integral part of a completed structure or project for all private improvements. *Construction materials* includes but is not limited to such things as: asphalt, bricks, builders' hardware, caulking material, cement, concrete, conduit, electric wiring and connections, fireplace inserts, electrical heating and cooling equipment, flooring, glass, gravel, insulation, lath, lead, lime, lumber, macadam, millwork, mortar, oil, paint, piping, pipe valves and pipe fittings, plaster, plumbing fixtures, putty, reinforcing mesh, road base, roofing, sand, sanitary sewer pipe, sheet metal, site lighting, steel, stone, stucco, tile, trees, shrubs and other landscaping materials, wallboard, wall coping, wallpaper, weather stripping, wire netting and screen, water mains and meters, and wood preserver. The above materials, when used for forms or other items which do not remain as an integral part of a completed structure or project are not construction

materials. *Construction materials* shall include installed cabinetry, equipment and major appliances such as dishwashers, refrigerators and ovens when installed or attached.

Consumer means: any individual person or a person engaged in business in the City, who uses, stores, distributes or otherwise consumes in the City tangible personal property or taxable services purchased from sources inside or outside the City.

Drugs dispensed in accordance with a prescription means drugs dispensed in accordance with any order in writing, dated and signed by a licensed practitioner of the healing arts, or given orally by a practitioner, and immediately reduced to writing by the pharmacist, assistant pharmacist or pharmacy intern, specifying the name and address of the person for whom the drug is offered, and directions, if any, to be placed on the label.

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

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

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

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

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

Finance Director means the City Treasurer or such other person designated by the City.

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

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

License means a sales and use tax license issued by the City.

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

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

Medical supplies means drugs, prosthetic devices, medical and dental appliances and special beds for patients with neuromuscular or similar debilitating ailments, when sold for the direct, personal use of a specific individual in accordance with a prescription or other written directive issued by a licensed practitioner of medicine, dentistry or podiatry; corrective eyeglass lenses (including eyeglass frames) and corrective contact lenses, when sold for the direct, personal use of a specific individual in accordance with a prescription or other written directive issued by a licensed practitioner of medicine or optometry; wheelchairs and crutches, when sold for the direct, personal use of a specific individual; oxygen and hemodialysis products for use by a medical patient; hearing aids, hearing aid batteries, insulin, insulin-measuring and insulin-injecting devices, glucose to be used for treatment of insulin reactions; and human whole blood, plasma, blood products and derivatives. This exemption excludes items purchased for use by medical and dental practitioners or medical facilities in providing their services, even though certain of those items may be packaged for single use by individual patients after which the item would be discarded.

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

Newspaper means a publication, printed on newsprint, intended for general circulation and published regularly at short intervals, containing information and editorials on current events and news of general interest. The term *newspaper* does not include: magazines, trade publications or

journals, credit bulletins, advertising inserts, circulars, directories, maps, racing programs, reprints, newspaper clipping and mailing services or listings, publications that include an updating or revision service, or books or pocket editions of books.

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

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

Preprinted newspaper supplements means inserts, attachments or supplements circulated in newspapers that:

- a. Are primarily devoted to advertising; and
- b. The distribution, insertion or attachment of which is commonly paid for by the advertiser.

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

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

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

Price or purchase price includes:

- a. The amount of money received or due in cash and credits.
- b. Property at fair market value taken in exchange but not for resale in the usual course of the retailer's business.
- c. Any consideration valued in money, such as trading stamps or coupons whereby the manufacturer or someone else reimburses the retailer for part of the purchase price and other media of exchange.
- d. The total price charged on credit sales, including finance charges which are not separately stated. An amount charged as interest on the unpaid balance of the purchase price is not part of

the purchase price unless the amount added to the purchase price is included in the principal amount of a promissory note; except that the interest or carrying charge set out separately from the unpaid balance of the purchase price on the face of the note is not part of the purchase price. An amount charged for insurance on the property sold and separately stated is not part of the purchase price.

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

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

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

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

Price or purchase price shall **not** include:

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

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

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

Private communications services means telecommunications services furnished to a subscriber, which entitle the subscriber to exclusive or priority use of any communication channel or group of channels, or to the exclusive or priority use of any interstate intercommunications system for the subscriber's stations.

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

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

- a. Transfer, either conditionally or absolutely, of title, possession or both to tangible personal property.
- b. A lease, lease-purchase agreement, rental or grant of a license, including royalty agreements, to use tangible personal property or taxable services.
- c. Performance of taxable services.
- d. Barter or exchange for other property or services, including coupons.

The terms *purchase* and *sale* do **not** include:

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

fair market value of such assets resulting from the manufacturing, fabricating or physical changing of the assets by the transferor corporation. To such an extent any transfer referred to in this Paragraph shall constitute a sale. For the purposes of this Paragraph, a closely held subsidiary corporation is one in which the parent corporation owns stock possessing at least eighty percent (80%) of the total combined voting power of all classes of stock entitled to vote and owns at least eighty percent (80%) of the total number of shares of all other classes of stock.

Recreation services means all services relating to athletic or entertainment participation events, including but not limited to pool, golf, billiards, skating, tennis, bowling, coin-operated amusement devices, video games and video club memberships.

Retail sales means all sales except wholesale sales.

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

- a. Auctioneer.
- b. Salesperson, representative, peddler or canvasser, who makes sales as a direct or indirect agent of or obtains such property or services sold from a dealer, distributor, supervisor or employer.
- c. Charitable organization or governmental entity which makes sales of tangible personal property to the public, notwithstanding the fact that the merchandise sold may have been acquired by gift or donation or that the proceeds are to be used for charitable or governmental purposes.

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

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

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

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

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

Tangible personal property means corporeal personal property.

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

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

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

Taxable services means services subject to tax pursuant to this Article.

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

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

Therapeutic devices means devices, appliances or related accessories that are sold to correct or treat a human physical disability or surgically created abnormality. If such device, appliance or related accessory has a retail value of more than one hundred dollars (\$100.00), it must be sold in accordance with a written recommendation from a licensed doctor to qualify as a *therapeutic device* for purposes of this Article.

Total tax liability means the total of all taxes, penalties or interest owed by a taxpayer and shall include sales tax collected in excess of such tax computed on total sales.

Transient merchant means any person who engages in the temporary business of selling and delivering goods, wares, property and merchandise within the City for which a sales tax license is required by this Article, but who does not have a permanent place of business within the City limits.

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

Vendor is synonymous with *retailer*, as the same is defined above.

WATS/800 service means any outbound or inbound interstate wide area telecommunications service or other similar service which entitles the subscriber, upon payment of a periodic charge, based upon a flat amount and/or usage, to make or receive a large volume of telephonic communications to or from persons having telephone or radio telephone stations in specified areas which are outside the telephone system area in which the subscriber's station is located.

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

Wholesaler means any person selling to retailers, jobbers, dealers or other wholesalers for resale, and not for storage, use, consumption or distribution. (Prior code 3.04.030; Ord. 4 §1, 2005)

Sec. 4-2-40. Tax revenues pledged for certain purposes.

(a) The proceeds of the one-half-percent increase in sales and use tax imposed by the Rifle electorate in September 1987 shall be accounted for separately by the City and shall be used only for improvements to streets, curbs and sidewalks.

(b) The proceeds of the one-percent increase in sales and use tax imposed by Ordinance No. 13, Series of 2005, shall be used solely for recreation programs and facilities, parks, trails and open space purposes.

(c) Three and one-third percent (3 $\frac{1}{3}$ %) of sales tax revenues not specifically allocated by Subsections (a) and (b) above shall be used solely for the development and encouragement of tourism and industry within the City, including but not specifically limited to the construction, operation and maintenance of the Rifle Information Center, as determined by the budget process by the City Council. (Prior code 3.04.040; Ord. 13 §5, 2005; Ord. 25 §2, 2005)

*Division 2
Sales Tax*

Sec. 4-2-110. Sales tax imposed upon certain transactions, property and services.

There is hereby levied a tax in an amount equal to three and one-half percent (3.5%) of the amount of the sale, which shall be imposed upon:

- (1) All sales of commodities and services as defined in Section 4-2-30 above.
- (2) The sale of tangible personal property, including food, that is sold, leased or rented at retail, whether or not such property has been included in a previous taxable transaction.
- (3) Telephone services for all local calls originating in the City on telephone instruments located in the City.
- (4) Meals, food, drinks and cover charges, if any, furnished in any restaurant, eating house, hotel, club, resort or other such place at which meals, food or drinks are regularly sold to the public.
- (5) Gas and electricity furnished for domestic, commercial or industrial consumption.
- (6) Motor vehicles sold, leased or rented to residents of the City.
- (7) Services of an operator when furnished with the lease or rental of tangible personal property if such services are not separately stated.
- (8) Tangible personal property, dispensed by a coin-operated device.
- (9) The amount paid for the use of the facilities and accommodations of a hotel, motel, motor court or trailer park operated for the accommodation of the general public for charge and having facilities for more than ten (10) accommodations; provided, however, that a permanent resident thereof shall not be obligated to pay the tax herein provided. A permanent resident shall be deemed

to be one who has entered into an agreement for occupation of a room for accommodation for a period of at least thirty (30) consecutive days.

(10) The full purchase price of articles sold after manufacture or after having been made to order, including the full purchase price of materials used and services performed in connection therewith.

(11) That portion of the sales price of a manufactured or modular home which represents the value of materials used therein, computed in the same manner as used by the Colorado Department of Revenue. (Prior code 3.04.100; Ord. 4 §1, 2005; Ord. 13 §3, 2005)

Sec. 4-2-120. Transactions exempt from sales tax.

The following transactions shall be exempt from the sales tax:

- (1) Automotive vehicles sold to nonresidents.
- (2) Tangible personal property if **both** of the following conditions exist:
 - a. The sales are to individuals who reside or businesses which are located outside the City;
and
 - b. The articles purchased are delivered to the purchaser outside the City by common carrier or by the seller, and such articles delivered are used outside the City.
- (3) Prescription drugs and prosthetic devices.
- (4) Cigarettes.
- (5) All direct sales, except of construction materials used in a project for which a City building permit is required, to the United States, the State, its departments or institutions and the political subdivisions thereof in their governmental capacities only, when billed to and paid for directly by the governmental entity.
- (6) Motor fuel upon which there has been accrued or paid either the gasoline tax or special fuel tax, required by Article 27 of Title 39, C.R.S., and which is not subject to refund.
- (7) Farm implements and parts and accessories for the same, which are to be used for tilling the soil or harvesting crops.
- (8) Cattle, sheep, lambs and swine; and goats, mares and stallions for breeding purposes.
- (9) Feed for livestock or poultry, seeds and orchard trees.
- (10) Farm closeout sales.
- (11) Wholesale sales.

(12) Tangible personal property sold to a person engaged in manufacturing or processing for sale when the product being manufactured or processed is transformed in fact by the addition of the property, and such property becomes a constituent part of the finished product.

(13) Tangible personal property sold for use as containers, labels or shipping cases, or napkins, straws or eating utensils sold to a retailer or person engaged in manufacturing or processing for sale when **all** of the following conditions are met:

a. The property is used either to contain or label an item sold or used in the consumption of food purchased;

b. The cost of the property is included in the price of an item which is sold separately, rather than included in the price of a service; **and**

c. The property is not returnable or intended for reuse.

(14) Newsprint and printer's ink for use by publishers, newspapers and commercial printers.

(15) Newspapers.

(16) Labor sold with tangible personal property, if such labor is stated separately on the invoice from the tangible personal property sold; except that manufacturing, fabricating or other processing labor is never exempt.

(17) Construction materials if the purchaser of such materials presents to the retailer a building permit, or other documentation acceptable to the City, which evidences that a use tax on such materials has been paid or is required to be paid to another city or municipality.

(18) Sales of construction and building materials, as the term is used in Section 29-2-109, C.R.S., if such materials are picked up by the purchaser and if the purchaser of such materials presents to the retailer a building permit or other documentation acceptable to the City evidencing that a local use tax has been paid or is required to be paid.

(19) Food, as defined in Section 39-26-102(4.5), C.R.S., only when purchased with food stamps or with funds provided by the special supplemental food program for women, infants and children, 42 U.S.C. § 1786.

(20) Electricity, gas and propane which becomes part of a meal sold within the City. The following method is available for restaurant operators who qualify to claim an adjustment for sales tax paid on their purchases of gas and electricity used in processing food for immediate human consumption:

a. If the sales of processed food exceed twenty-five percent (25%) of the total sales revenue, the restaurant may receive an adjustment based on fifty-five percent (55%) of the City sales tax paid on their purchase of gas and electricity during the previous year. The restaurant must show its monthly purchases of gas and electricity for the entire year and the monthly City sales tax paid, multiply the annual total sales tax by fifty-five percent (0.55) and deduct that amount on the appropriate line of its January return.

b. Alternatively, the taxpayer may multiply the total food sales for the year by one-half of one percent (0.005%). For purposes of determining the applicable percentage of food sales, the term *food sales* shall include only sales of edible foodstuffs which are processed and sold for immediate consumption, but shall not include sales of alcoholic beverages. The second method may be used even though the applicable percentage of food sales exceeds twenty-five percent (25%).

c. The adjustment shall be claimed on an annual basis on the January sales tax return for the previous year. The computation for claiming this adjustment should be submitted with the January return and the credit should be itemized in the deductions section and subtracted from January gross sales.

(21) Resale of a manufactured home on which the City sales or use tax has previously been paid.

(22) The sale of tangible personal property at retail or the furnishing of services if the transaction was previously subjected to a sales or use tax lawfully imposed on the purchaser or user by another statutory or home rule municipality equal to or in excess of the tax rate imposed by this Article. A credit shall be granted against the City's sales or use tax with respect to such transaction equal in amount to the lawfully imposed local sales or use tax previously paid by the purchaser or user to the municipality. The amount of the credit shall not exceed the amount of the City's sales or use tax imposed by Section 4-2-110 of this Article, as required by Section 29-1-105(4), C.R.S., with respect to sales taxes, and by Section 29-1-109(6), C.R.S., with respect to use taxes.

(23) All sales which the City is prohibited from taxing under the Constitution of the United States or of the State, or under the Charter.

(24) Effective January 1, 1998, all occasional sales by a charitable organization shall be exempt from taxation under this Division. For purposes of this Paragraph, *occasional sales* means retail sales of tangible personal property, including concessions, for fund-raising purposes if:

a. The sale of tangible personal property or concessions by the charitable organization takes place no more than twelve (12) days, whether consecutive or not, during any one (1) calendar year;

b. The funds raised by the charitable organization through these sales are retained by the organization to be used in the course of the organization's charitable service; and

c. The funds raised by the charitable organization through these sales do not exceed twenty-five thousand dollars (\$25,000.00) during any one (1) calendar year. (Prior code 3.04.110; Ord. 4 §1, 2005)

Sec. 4-2-130. Vendor responsible for collection of tax.

(a) Every vendor shall be liable and responsible for payment of an amount equivalent to the tax imposed by this Article on all sales made by him or her.

(b) Any tax added to the price by a retailer shall constitute a debt from the purchaser to the retailer until paid, and the retailer shall be responsible for collecting the same from the purchaser in the same manner as other debts.

(c) All sums of money paid to any vendor for sales or use taxes shall be and remain public money and the property of the City held in trust for the sole use and benefit of the City. (Prior code 3.04.120)

Sec. 4-2-140. Tax cannot be absorbed by vendor.

(a) Vendors shall add the tax imposed to the price, showing such tax as a separate and distinct item, except that the tax collected for the City may be combined with the tax collected for all other taxing jurisdictions.

(b) Except as provided in this Subsection, no retailer shall advertise, hold out or state to the public or any consumer, directly or indirectly, that the sales tax or any part thereof shall be assumed or absorbed by the retailer or not be added to the price or, if added, that it or any part thereof shall be refunded.

(1) Sales tax may be included in the price of any malt, vinous or spirituous liquor sold by the drink.

(2) Sales tax may be included in the price of items sold from coin-operated devices or the price of utilizing such devices. (Prior code 3.04.130; Ord. 4 §1, 2005)

Sec. 4-2-150. Credit sales.

Whenever an article is sold under a conditional sales contract in which the seller retains title as security for all or part of the price or takes a security interest in the article, the total tax based upon the total selling price is due and payable. No refund or credit shall be allowed to either party in the event of a foreclosure or repossession. (Prior code 3.04.140)

Division 3
Use Tax

Sec. 4-2-210. Use tax on certain transactions, property and services.

(a) A use tax of three and one-half percent (3.5%) of the retail purchase price of all the tangible personal property described in this Division shall be payable to and collected by the Finance Director.

(b) The use tax shall be levied upon and collected from every resident person who purchases outside of the corporate limits of the City any automotive vehicle, motor vehicle, trailer, snowmobile, mobile home, semi-trailer or other personal property for which a certificate of title is issued and registered with the County Clerk and Recorder. The amount of the use tax upon mobile homes, modular homes or prefabricated structures shall be computed as provided by state statutes in order to exclude that portion of the cost of the property equal to the cost of the labor used in its construction.

(c) The use tax shall be levied upon, imposed against and collected from every person in the City who uses, consumes or brings into the City any tangible personal property of every kind and form used as construction materials purchased at retail outside the corporate limits of the City for use in the construction or improvement of any building, structure or other improvement to property, subject to Section 4-2-220 below regarding exemptions from the levy of the use tax. (Prior code 3.04.300; Ord. 4 §1, 2005; Ord. 13 §4, 2005)

Sec. 4-2-220. Transactions exempt from use tax.

The use tax imposed by Section 4-2-210 above shall not apply to the storage, use or consumption of:

(1) Tangible personal property the sale of which has been subject to the retail sales tax imposed under the other terms of this Article.

(2) Tangible personal property purchased for resale in the City, either in its original form or as an ingredient of a manufactured or compounded product in the regular course of a business.

(3) Motor fuel upon which there has accrued or been paid the motor fuel tax prescribed by the State.

(4) Tangible personal property brought into the City by a person not residing in the City for his or her own storage, use or consumption while temporarily within the City.

(5) Tangible personal property by the United States government; by the State or its political subdivisions in their governmental capacities only; or by religious or charitable organizations in the conduct of their regular religious or charitable functions.

(6) Tangible personal property by a person engaged in the business of manufacturing, compounding for sale, profit or use any article, substance or commodity, which 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 crate thereof.

(7) Electricity, coal, coke, fuel oil or gas for use in processing, manufacturing, mining, refining, irrigation, building construction, telegraph, telephone and radio communication, street and railroad transportation services and all industrial uses.

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

(9) Printers' ink and newsprint.

(10) Cigarettes, fermented malt beverages and malt, vinous or spirituous liquors. (Prior code 3.04.310)

Sec. 4-2-230. Building materials and supplies.

(a) Any person required to pay use tax upon building materials or supplies shall keep and preserve all invoices and statements showing all purchases, made both inside and outside the City, for necessary lumber, materials, fixtures or other supplies. It shall be the duty of any such person and his or her contractors and subcontractors to furnish the Finance Director with such information as he or she may require to assess such purchases. The Finance Director may request the Building Official to assist him or her in determining the amount of the use tax due.

(b) The full amount of the use tax due shall be, until paid, a lien upon the real property benefited by such improvement, and the Finance Director is authorized to file, when appropriate, a notice of such lien with the County Clerk and Recorder.

(c) No final inspection shall be performed for any building erected or altered until evidence of payment of all use taxes due and owing is supplied to the Building Official.

(d) Upon issuance of a building permit, a certificate shall be issued to the building permit applicant by the Building Official. The certificate shall state in part that no statutory or home rule city, town or city and county shall apply any sales tax to the sale of construction and building materials designed for the use, construction or alteration of property located in the City.

(e) The estimated valuation figure on which the use tax is determined shall be established by a formula in accordance with the annually updated "Building Valuation Data" established by the International Code Council ("ICC") and published in *Building Safety*; provided, however, that the Building Official may modify the valuation data based upon a review of local conditions, which modification is subject to the prior approval of the City Manager; and further provided that the Building Official's discretion to modify the ICC's valuation shall be reasonable and shall be limited to plus or minus ten percent (10%) of the ICC's annually published regional modifier.

(f) The assessed use tax is imposed and assessed at the time of the building permit issuance, and a deposit in the estimated amount of the use tax shall be paid prior to the issuance of the building permit. This use tax is the first tax imposed on construction and building materials designed for use in the City, and no other public entity may subsequently impose any sales or use tax on the subject construction and building materials. The estimated amount of construction and building materials shall be fifty percent (50%) of the building valuation established in Subsection (e) above. The estimated amount of use tax assessed shall be calculated multiplying the fifty percent (50%) figure by the current use tax percentage rate; provided, however, that nothing herein shall modify Section 4-2-210 pertaining to use taxes on manufactured homes and mobile homes.

(g) Any person or entity paying the use tax who disagrees with the amount of the estimated tax as calculated herein shall have the right, upon completion of the project, to dispute the use tax assessment through presenting a final itemized cost breakdown, with invoices of purchases of construction and building materials, to the Finance Director, and must prove that the assessed tax and amount deposited with the Finance Director at building permit issuance is inconsistent with the amount of use tax deposited with the City. The decision of the Finance Director shall be final and appealable to a court of competent jurisdiction. Any dispute and request for the Finance Director to review a final itemized cost breakdown and invoices must be made within thirty (30) days of final inspection, or the amount assessed and deposited upon the issuance of the building permit shall be conclusively determined to be the use tax due, and the deposit shall be retained by the City; provided, however, that nothing contained herein shall prohibit the City from performing an audit pursuant to this Article to determine if the amount of use tax deposited with the City upon the issuance of the building permit is consistent with the amount of actual use tax due to the City.

(h) Fraudulent misuse of the use tax certificate shall be a crime punishable in accordance with Section 4-2-470(c) of this Article. (Prior code 3.04.320; Ord. 15 §2, 2004)

Sec. 4-2-240. Motor vehicles and trailers.

(a) It is unlawful to register a motor vehicle in violation of the provisions of Section 42-6-137(2), C.R.S.

(b) Any person who causes a motor vehicle to be registered in violation of the provisions of Section 42-6-137(2), C.R.S., in addition to any other penalties provided by law, shall be assessed a civil penalty of five hundred dollars (\$500.00) pursuant to the authority granted in Section 42-6-137(4), C.R.S. This civil penalty shall be assessed as follows:

(1) When the Finance Director determines on such information as is available that a person has caused a motor vehicle to be registered in violation of the provision of Section 42-6-137(2), C.R.S., the Finance Director shall provide such person with a penalty assessment. If the City Treasurer has also determined pursuant to this Article that sales or use taxes are due to the City on the purchase of such motor vehicle, the penalty assessment may be included in the notice of deficiency.

(2) Such person shall pay the penalty assessment within the same time period provided pursuant to this Article for any amount due upon a notice of deficiency, unless the person files a protest in the manner provided in the following Paragraph.

(3) If the taxpayer desires to protest a penalty assessment, such person shall file a written protest with the Finance Director within the same time period prescribed for protesting a notice of deficiency. The protest shall set forth the facts which show that a violation of Section 42-6-137(2), C.R.S., did not occur. The Finance Director shall issue a written decision affirming or withdrawing the penalty assessment within the same time period and in the same manner as a protest of notice of deficiency. If the decision affirms the civil penalty assessment, the person shall pay the penalty assessment within the same period as provided in this Article for payment of any amount due pursuant to a notice of deficiency.

(4) The person may seek judicial review of the City Treasurer's decision pursuant to Rule 106, C.R.C.P. Judicial review shall be unavailable if the person failed to file a timely protest.

(5) The Finance Director may enforce collection of unpaid penalty assessment notices in the same manner as for collection of unpaid taxes, penalties or interest.

(6) Nothing contained in this Section shall preclude the collection of any tax or fee provided by law, the collection of any penalties or interest thereon provided by law or the imposition of any other civil or criminal penalty provided by law for the violation hereof. (Prior code 3.04.330)

Sec. 4-2-250. Payment of use tax.

The use tax imposed upon automotive vehicles shall be paid on or before the vehicle is registered with the County Clerk and Recorder, and shall be paid either to the City or to the County Clerk and Recorder in accordance with any collection agreement entered into between the City and the County Clerk and Recorder. The estimated amount of use tax imposed upon building materials and supplies shall be deposited with the City prior to the issuance of a building permit and shall be conclusively deemed the use tax due unless disputed by the taxpayer or the City pursuant to this Article. The use tax

imposed upon any other transaction subject to the use tax shall be paid on or before the twentieth day of the month following the purchase. (Prior code 3.04.340; Ord. 15 §3, 2004)

Division 4
Administration and Appeals

Sec. 4-2-310. Administration.

- (a) The administration of this Article is hereby vested in the Finance Director.
- (b) The City shall use the uniform reporting forms as required by Section 29-2-106(9), C.R.S.

(c) The Finance Director may formulate and promulgate appropriate regulations to effectuate the purpose of this Article, after hearing. Copies of such regulations shall be filed with the City Clerk and the State Department of Revenue, as required by Section 29-2-106(7), C.R.S.

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

(e) The Finance Director may require any person to make additional returns, render statements, furnish records or make information reports to determine whether such person is liable for payment or collection of the tax.

(f) The Finance Director shall have the authority to conduct hearings, issue subpoenas, administer oaths and so forth, as provided by Chapter 1, Article VII of this Code.

(g) The Finance Director may designate agents to assist in the performance of the duties and responsibilities set forth in this Article.

(h) The Finance Director may accept any partial payment made and apply such payments towards the tax due. Deposit of such payments shall not in any way imply that the remaining balance is or has been abated. (Prior code 3.04.400; Ord. 4 §1, 2005)

Sec. 4-2-320. Audit of records.

(a) For the purpose of ascertaining the correct amount of tax due from any person engaged in business in the City, the Finance Director may authorize an agent to conduct an audit by examining any relevant books, accounts and records of such person.

(b) All books, accounts and records shall be made available within the City limits and be open at any time during regular business hours for examination by an authorized agent of the Finance Director. If any taxpayer refuses to voluntarily furnish any of the foregoing information when requested, the Finance Director may issue a subpoena to require that the taxpayer or his or her 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 Article is subject to audit in the same manner as any other person engaged in business in the City. (Prior code 3.04.410)

Sec. 4-2-330. Tax information confidential.

(a) All specific information gained under the provisions of this Article 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 City and its officers, employees or legal representatives as confidential.

(b) Except as directed by judicial order or as provided in this Section, no City officer, employee or legal representative shall divulge any confidential information.

(c) The Finance Director may furnish to officials of any other governmental entity who may be owed sales tax any confidential information, provided that said jurisdiction enters into an agreement with the City to grant reciprocal privileges to the City.

(d) Nothing contained in this Section shall be construed to prohibit the delivery to a taxpayer or his or her 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 City. If directed by judicial order, the official charged with the custody of such confidential information shall be required to provide only such information as is directly involved in the action or proceeding. (Prior code 3.04.420)

Sec. 4-2-340. Timely payment; computation of dates.

(a) Timely payment shall be evidenced by the postmark date if mailed; otherwise timely payment shall be evidenced by the City cashier validation date.

(b) Any due date, payment date or deadline for paying tax due, providing information or taking other action, which falls on a Saturday, Sunday or legal holiday recognized by either the federal government or State shall be extended to the first business day following such weekend or holiday. (Prior code 3.04.430)

Sec. 4-2-350. Tax overpayments and deficiencies.

(a) An application for refund of tax moneys paid in error or by mistake shall be made within three (3) years after the date of purchase, storage, use or consumption of the goods for which the refund is claimed. If the Finance Director determines within three (3) years of the due date that a vendor overpaid sales tax, he or she shall process a refund or allow a credit against a future remittance from the same taxpayer. If the amount paid is less than the amount due, the difference, together with interest, shall be paid by the vendor within ten (10) days after receiving written notice and demand from the Finance Director. The Finance Director may extend that time for good cause.

(b) If any part of the deficiency is due to negligence or intentional disregard of regulations but without intent to defraud, there shall be added ten percent (10%) of the total amount of the deficiency, together with interest, from the person required to file the return. If any part of the deficiency is due to fraud with the intent to evade the tax, there shall be added fifty percent (50%) of the total amount of the

deficiency; and, in such case, the whole amount of the tax unpaid, including the additions, shall become due and payable ten (10) days after written notice and demand by the City Treasurer.

(c) Interest on underpayment, nonpayment or extensions of time for payment of tax. If any amount of sales or use tax is not paid on time, interest shall be paid for the period from the due date to the date paid. Interest shall be paid upon notice and demand and shall be assessed, collected and paid in the same manner as the tax to which it is applicable.

(d) When interest is required or permitted to be charged under any provision of this Article, the annual rate of interest shall be that established by the Colorado State Commissioner of Banking pursuant to Section 39-21-110.5, C.R.S. (Prior code 3.04.440; Ord. 4 §1, 2005)

Sec. 4-2-360. Taxpayers' remedies.

(a) Any notice of assessment may be protested by the taxpayer to whom it is issued. When the City asserts that sales or use taxes are due in an amount greater than the amount paid by a taxpayer, the City shall mail a deficiency notice to the taxpayer by certified mail. The deficiency notice shall state the additional sales and use taxes due. The deficiency notice shall contain notification, in clear and conspicuous type, that the taxpayer has the right to elect a state hearing on the City's denial of such taxpayer's claim for a refund of sales or use tax paid. As used in this Section, *state hearing* means a hearing before the Executive Director of the Department of Revenue or delegate thereof as provided in Section 29-2-106.1(3), C.R.S.

(1) Protests must be submitted in writing to the Finance Director on or before the payment date of such notice of assessment and must identify the amount of tax disputed and the basis for the contention that the tax is not due.

(2) When a timely protest is made, no further enforcement action will be instituted by the City and no further interest will accrue for the portion of the assessment being protested unless the taxpayer fails to pursue the protest in a timely manner.

(b) Any denial of a claim for refund may be protested by the taxpayer who submitted the claim. Such protest must be submitted in writing to the Finance Director within thirty (30) days of the Finance Director's denial and shall identify the amount of the denial contested and the basis for the contention that the refund is due.

(c) Any timely protest entitles a taxpayer to a hearing under the provisions of this Article.

(1) If, in the opinion of the Finance Director, the issues involved in such protest are not a matter of interpretation or may be resolved administratively, the Finance Director may recommend an informal meeting with the taxpayer.

(2) Participation in such an informal meeting does not prevent either the taxpayer or the City from holding a hearing if the dispute cannot be resolved by such meeting.

(3) The City shall commence a hearing within ninety (90) days after the City's receipt of the taxpayer's written protest; except that the City may extend such period if the delay is requested by the taxpayer. The Finance Director shall notify the taxpayer in writing of the time and place of such

hearing which, in any case, must be held within one hundred eight (180) days of the taxpayer's written request.

(4) Every hearing shall be held before the Finance Director.

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

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

(7) After such hearing, the taxpayer shall not be entitled to a second hearing on the same notice of assessment or denial of refund.

(8) Unless the decision of the Finance Director is appealed as provided in this Article, the remaining tax due, if any, shall be paid on or before thirty (30) days after the date of the findings of fact, conclusions and decision.

(d) The taxpayer shall request a state hearing within thirty (30) days after the taxpayer's exhaustion of local remedies. The taxpayer shall have no right to such hearing if he or she has not exhausted local remedies or if he or she fails to request such hearing within the time period provided for in this Section. For purposes of this Subsection, *exhaustion of local remedies* means: the taxpayer has timely requested in writing a hearing before the City and the City held such hearing and issued a final decision thereon.

(e) If a taxpayer has exhausted his or her local remedies as provided above, the taxpayer may request a state hearing on such deficiency notice or claim for refund, and such request shall be made and such hearing conducted in the same manner as set forth in Subsections 9-2-106.1(3) through (7), C.R.S.

(f) If the deficiency notice or claim for refund involves only the City, in lieu of requesting a state hearing, the taxpayer may appeal such deficiency notice or denial of a claim for refund to the district court of the County as provided in Section 9-2-106.1(8), C.R.S., provided that the taxpayer complies with the procedures set forth. If the City reasonably finds that the collection of sales or use tax will be jeopardized by delay, the City may utilize the procedures set forth in Section 39-21-111, C.R.S. (Prior code 3.04.450)

Sec. 4-2-370. Limitations.

Unless the limitation period has been extended as provided in this Section, the statute of limitations for provisions contained in this Article shall be as follows:

(1) Refunds.

a. Any claim for refund for disputed tax shall be submitted to the City on or before sixty (60) days from the date of such purchase.

b. Any claim for refund resulting from a notice of overpayment shall be submitted to the City on or before thirty (30) days after the date of such notice of overpayment.

c. Any other claim for refund shall be filed on or before three (3) years after the date such overpayment was paid to the City.

(2) Assessments. No notice of assessment shall be issued more than three (3) years after the due date of such tax due or, for a construction project which requires a City building permit, thirty (30) days following the date the final inspection on such project occurs; provided, however that nothing herein shall prohibit the City from collecting tax due under applicable law after said dates for which a notice of assessment has been issued.

(3) Liens. No notice of lien shall be issued more than three (3) years after the due date of the tax due. If the limitation period is extended, a notice of lien may be filed on or before thirty (30) days from the date of the notice of assessment issued for such extended period.

(4) Collection. When a taxpayer fails or refuses to file a return, the tax due may be assessed and collected at any time.

(5) False returns. In the case of a false or fraudulent return filed with intent to evade tax, the tax due may be assessed, or proceedings for the collection of such tax due may be begun at any time.

(6) Protests. No protest of a notice of assessment or denial of a claim for refund shall be valid if submitted to the Finance Director in other than written form or after the period allowed in this Article.

(7) Period of limitation. The period of limitation may be extended before its expiration.

a. The taxpayer and the Finance Director may agree in writing to extend the period.

b. If the City provides written notice to the taxpayer prior to the expiration of the period of limitation that the latter's records will be audited pursuant to this Article, such period of limitation shall be extended for the audit period until thirty (30) days after the date of the notice of assessment or notice of overpayment issued as a result of such audit. *Audit period* is the thirty-six-month reporting period preceding the date of the notice of audit or, if a City building permit is required, the period between the issuance of such building permit thirty (30) days following the performance of the final inspection by the City.

(8) Performance of an audit does not constitute a statute of limitations or preclude additional audits of the same period within the parameters of this Section. (Prior code 3.04.460; Ord. 15 §4, 2004; Ord. 4 §1, 2005)

Sec. 4-2-380. Coordinated audit procedure.

(a) Any taxpayer licensed in the City pursuant to this Code and holding a similar sales tax license in at least four (4) other Colorado municipalities that administer their own sales tax collection may request a coordinated audit as provided herein.

(b) Within fourteen (14) days of receipt of notice of an intended audit by any municipality that administers its own sales tax collection, the taxpayer may provide to the Finance Director, by certified mail, return receipt requested, a written request for a coordinated audit indicating the municipality from which the notice of intended audit was received and the name of the official who issued such notice.

Such request shall include a list of those Colorado municipalities utilizing local collection of their sales tax in which the taxpayer holds a current sales tax license and a declaration that the taxpayer will sign a waiver of any passage-of-time based limitation upon the City's right to recover tax owed by the vendor for the audit period.

(c) Except as provided in Subsection (g) below, any taxpayer who submits a complete request for a coordinated audit and promptly signs a waiver of the time limitations provided by Section 4-2-370 above may be audited by the City during the twelve (12) months after such request is submitted only through a coordinated audit involving all municipalities electing to participate in such an audit.

(d) If the City desires to participate in the audit of a taxpayer who submits a complete request for a coordinated audit pursuant to Subsection (b) above, the Finance Director shall so notify the finance director of the municipality whose notice of audit prompted the taxpayer's request within ten (10) days after receipt of the taxpayer's request for a coordinated audit. The Finance Director shall then cooperate with other participating municipalities in the development of arrangements for the coordinated audit, including arrangement of the time during which the coordinated audit will be conducted, the period of time to be covered by the audit and a coordinated notice to the taxpayer of those records most likely to be required for completion of the coordinated audit.

(e) If the taxpayer's request for a coordinated audit was in response to a notice of audit issued by the City, the Finance Director shall facilitate arrangements between the City and other municipalities participating in the coordinated audit unless and until an official from another participating municipality agrees to assume this responsibility. The Finance Director shall cooperate with other participating municipalities to, whenever practicable, minimize the number of auditors that will be present on the taxpayer's premises to conduct the coordinated audit on behalf of the participating municipalities. Information obtained by or on behalf of those municipalities participating in the coordinated audit may be shared only among such participating municipalities.

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

(g) The coordinated audit procedure set forth in this Section shall not apply:

(1) When the proposed audit is a jeopardy audit;

(2) To audits for which a notice of audit was given prior to the effective date of the initial ordinance codified in this Section;

(3) When a taxpayer refuses to promptly sign a waiver of the time limitations provided in Section 4-2-370 above; or

(4) When a taxpayer fails to provide a timely and complete request for a coordinated audit as provided in Subsection (b) above. (Prior code 3.04.470; Ord. 4 §1, 2005)

Sec. 4-2-390. Inter-city claims for recovery.

The intent of this Section is to streamline and standardize procedures related to situations where tax has been remitted to the incorrect municipality. It is not intended to reduce or eliminate the responsibilities of the taxpayer or vendor to correctly pay, collect and remit sales and use taxes to the City.

(1) As used herein, *claim for recovery* means a claim for reimbursement of sales and use taxes paid to the wrong taxing jurisdiction.

(2) When it is determined by the Finance Director that sales and use tax owed to the City has been reported and paid to another municipality, the City shall promptly notify the vendor that taxes are being improperly collected and remitted and that, as of the date of the notice, the vendor must cease improper tax collections and remittances.

(3) The City may make a written claim for recovery directly to the municipality that received tax and/or penalty and interest owed to the City or, in the alternative, may institute procedures for collection of the tax from the taxpayer or vendor. The decision to make a claim for recovery lies in the sole discretion of the City. Any claim for recovery shall include a properly executed release of claim from the taxpayer and/or vendor releasing its claim to the taxes paid to the wrong municipality; evidence to substantiate the claim; and a request that the municipality approve or deny in whole or in part the claim within ninety (90) days of its receipt. The municipality to which the City submits a claim for recovery may, for good cause, request an extension of time to investigate the claim, and approval of such extension by the City shall not be unreasonably withheld.

(4) Within ninety (90) days after receipt of a claim for recovery, the City shall verify to its satisfaction whether or not all or a portion of the tax claimed was improperly received, and shall notify the municipality submitting the claim in writing that the claim is either approved or denied in whole or in part, including the reasons for the decision. If the claim is approved in whole or in part, the City shall remit the undisputed amount to the municipality submitting the claim within thirty (30) days of approval. If a claim is submitted jointly by a municipality and a vendor or taxpayer, the check shall be made to the parties jointly. Denial of a claim for recovery may only be made for good cause.

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

(6) The period subject to a claim for recovery shall be limited to the thirty-six-month period prior to the date the municipality that was wrongly paid the tax receives the claim for recovery. (Prior code 3.04.480; Ord. 4 §1, 2005)

Sec. 4-2-400. Lien for tax due.

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

(b) The notice of lien shall be filed in the office of the Clerk and Recorder of any county in Colorado in which the real or personal property of the taxpayer is located. Such filing shall create a lien on such property in that county and constitute a notice thereof.

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

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

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

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

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

(5) Where a lessor and lessee are blood relatives or relatives by law or have twenty-five percent (25%) or more common ownership, a lease between such lessee and such lessor shall not be considered as for purposes of this Section.

(d) If a notice of lien is filed against real property, the Finance Director may direct the City Attorney to file a civil action to enforce such lien. The court may determine the interest in the property of each party, decree a sale of the real property and distribute the proceeds according to such findings. The procedure for the action and the manner of sale, the period for and manner of redemption from the sale, and the execution of the deed of conveyance shall be in accordance with the law and practices relating to foreclosures of mortgages upon real property. In any such action, the court may appoint a receiver of the real property involved in such action if equity so requires. (Prior code 3.04.490)

Sec. 4-2-410. Perpetuance of lien.

(a) Any lien for tax due shall continue until a release of lien is filed by the Finance Director, or until the limitation period set forth in Section 4-2-370 above has expired.

(b) Any person who purchases or repossesses real or personal property upon which a lien has been filed by the Finance Director for tax due shall be liable for the payment of such tax due up to the value of the property taken or acquired. (Prior code 3.04.500)

Sec. 4-2-420. Release of lien.

Upon payment of the tax due or enforcement of the lien, the Finance Director shall file a release of lien with the County Clerk and Recorder of the county in which the lien was filed. (Prior code 3.04.510)

Sec. 4-2-430. Civil action to recover tax due.

(a) Any unpaid tax due shall constitute a debt of the taxpayer to the City, and the Finance Director may direct the City Attorney to file a civil action to collect such tax due.

(b) The return filed by a taxpayer or the notice of assessment issued by the Finance Director shall be proof of the tax due.

(c) If a judgment is obtained by the City, collection of the tax due may be made by attachment, garnishment or other means established by law. When attachment is sought, no bond shall be required of the Finance Director, nor shall any sheriff require of the Finance Director an indemnity bond for executing the writ of attachment or writ of execution upon any judgment. (Prior code 3.04.520)

Sec. 4-2-440. Jeopardy assessment.

(a) If the collection of any tax due from a taxpayer, whether or not previously assessed, will be jeopardized by delay, the City Manager may declare the taxable period immediately terminated, order the Finance Director to determine the tax and issue a jeopardy assessment and demand for payment. Any tax so assessed shall be due and payable immediately.

(b) Enforcement of a jeopardy assessment and demand for payment may be stayed if the taxpayer gives security for payment which is satisfactory to the City Manager.

(c) If, in the opinion of the taxpayer, the jeopardy assessment is not for the correct amount of tax due, the taxpayer shall pay the tax due as assessed and submit a claim for refund to the City. (Prior code 3.04.530)

Sec. 4-2-450. Distraint and sale.

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

(1) Such warrant may be issued if the tax due is not paid on or before twenty-one (21) days from the payment date of a notice of assessment and no protest of such assessment has been timely filed.

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

(b) If the taxpayer does not volunteer entry to the premises, the City Manager may apply to the Municipal Court for a warrant authorizing any employee or agent of the City to search for and distraint property located inside the City to enforce the collection of tax due.

(1) The City Manager shall demonstrate to the Municipal Court that the premises to which entry is sought contain property that is subject to distraint and sale for tax due.

(2) If a jeopardy assessment and demand for payment have been issued, the City Manager shall specify to the Municipal Court why collection of the tax should be jeopardized.

(3) The procedures to be followed in issuing and executing a warrant pursuant to this Subsection shall comply with Rule 241 of the Colorado Municipal Court Rules of Procedure.

(c) Disposal of distrainted property:

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

(2) A notice of the time and place of the sale, together with a description of the property to be sold, shall be published in a newspaper of general circulation within the county where distraint is made or, in lieu thereof and in the discretion of the Finance Director, the notice shall be posted at the courthouse of the county where distraint is made and in at least two (2) other places within such county. The Finance Director may publicize the sale in any other fashion he or she deems appropriate.

(3) The time fixed for the sale shall not be less than ten (10) days nor more than sixty (60) days from the date of distraint. The sale may be postponed by the City for no more than ninety (90) days from the date originally fixed for the sale.

(4) The property shall be sold at public auction for not less than a fair minimum price, and if the amount bid for the property is less than the fair minimum price so fixed, the property may be declared to be purchased by the City and the City shall file a release of lien thereof. If the property is purchased by the City, such property maybe disposed of in the same manner as other City property and the lien thereon shall be released.

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

(6) The property offered for sale may be redeemed if the owner, possessor or other person holding an unperfected chattel mortgage or other right of possession pays the tax due and all collection costs not less than twenty-four (24) hours before the sale.

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

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

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

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

(e) The Finance Director shall submit a written account of the sale to the City Manager.

(f) Property of the taxpayer subject to distraint shall include the personal property of the taxpayer and the goods, stock in trade and business fixtures owned or used by any taxpayer, including those used under lease, installment sale or other contract arrangement. Property exempt from distraint and sale shall include the personal property exempt from execution and levy by the State Constitution and statutes.

(g) The taxpayer or any person who claims an ownership interest or right of possession in the distrained property may petition the City Manager, or the Municipal Court if the property was seized pursuant to a warrant issued by the Court, for the return of the property.

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

(2) The fact-finder shall receive evidence on any issue of fact necessary to the decision of the petition. If the fact-finder determines by a preponderance of the evidence in favor of the taxpayer or other petitioner, the property shall be returned. (Prior code 3.04.540; Ord. 4 §1, 2005)

Sec. 4-2-460. Status of tax due in bankruptcy and receivership.

Whenever the business or property of any taxpayer is subject to receivership, bankruptcy or assignment for the benefit of creditors, or distrained for property taxes, all tax due shall be a prior and preferred lien against all the property of the taxpayer. No sheriff, receiver, assignee or other officer shall sell the property of any such taxpayer under process or order of any court, without first ascertaining from the Finance Director the amount of tax due. The officer shall pay any tax due before making payment to any judgment creditor or other claimants. (Prior code 3.04.550)

Sec. 4-2-470. Violations; summons and complaint; penalty.

(a) It shall be a violation of this Article to fail to perform any applicable affirmative duty specified in this Article, including but not limited to:

(1) The failure of any person engaged in business in the City to obtain a license;

(2) The failure of any taxpayer to file a timely return or to make a timely payment of any tax due;

(3) The failure of any resident individual or business to comply with the registration requirements for automotive vehicles;

(4) The making of any false or fraudulent statement by any person in any return, claim for refund or hearing; or

(5) The evasion of collection of any sales tax by any person or the aiding or abetting of any other person in an attempt to evade the timely payment of tax due.

(b) The procedure to be followed in the event of a violation is governed in Chapter 10 of this Code, and by the Colorado Municipal Court rules of procedure.

(c) Any person who violates any of the provisions of this Article, or any of the rules and regulations promulgated hereunder, shall be guilty of a misdemeanor, which may be punished in accordance with the provisions of Section 1-4-20 of this Code. (Prior code 3.04.560; Ord. 4 §1, 2005)

ARTICLE III

Purchasing

Sec. 4-3-10. Purpose.

The purpose of this Article is to prescribe the purchasing procedure that the City will follow in contracting for or constructing public works, purchasing tangible property and insurance policies, and obtaining consulting services. The City Council adopts these rules and regulations pursuant to Section 13.9 of the City Charter. (Prior code 2.24.010)

Sec. 4-3-20. Definitions.

The following words and phrases, as used in this Article, shall have the meanings set forth below.

Design/build contract means a contract in which the contractor performs both the design and construction (build) of a structure or facility based on a conceptual design and parameters set by the City. Benefits of this type of contract are that it dramatically reduces contract modifications due to design errors, design omissions and changed conditions during the construction phase of the contract.

Invitation for bids means all documents, whether attached or incorporated by reference, utilized for soliciting bids.

Local goods means supplies and materials produced, manufactured, sold, distributed or grown in the City, or for purposes of secondary preference, within the County.

Local vendors means contractors, vendors, suppliers or materialmen with offices or a place of business located within the City, for the purposes of the primary preference, or within County, for purposes of secondary preference.

Lowest responsive and responsible bidder means the bidder with the lowest price and the highest qualifications, based on the following criteria: (1) The ability, capacity and skill of the bidder to perform the contract or furnish the supplies required; (2) whether the bidder can perform the contract or furnish the supplies promptly or within the time specified, without delay or interference; (3) the character, integrity, reputation, judgment, experience and efficiency of the bidder; (4) the quality of performance on previous contracts; (5) previous and existing compliance by the bidder with laws and ordinances relating to the contract or service; (6) sufficiency of financial resources and ability of the bidder to perform the contract or furnish the supplies; (7) the ability of the bidder to provide future maintenance and service; and (8) the response to the invitation for bids.

Purchasing Agent means the City Manager.

Request for proposals means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

Responsible bidder or *offeror* means a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.

Responsive bidder means a person who has submitted a bid which conforms in all material respects to the invitation for bids. (Prior code 2.24.020; Ord. 4 §1, 2005; Ord. 28 §3, 2005)

Sec. 4-3-30. General powers and duties of Purchasing Agent.

(a) The City Council hereby delegates the purchasing authority conferred upon it by Charter to the Purchasing Agent. The Purchasing Agent may further delegate such purchasing duties to members of City staff.

(b) The Purchasing Agent's general duties and powers are as follows:

(1) Procure for the City the highest quality in supplies and contractual services at the least expense to the City.

(2) Consolidate purchases in bulk quantities when possible to maximize economic benefit to the City. Quantities purchased should represent a reasonable balance based on transportation costs, quantity discount, price, budget and cost.

(3) Endeavor to obtain as full and open competition as is practical for all purchases and sales.

(4) Establish, and amend when required, all rules and regulations necessary for the proper function of the purchasing procedures established herein.

(5) Enforce the terms and conditions of contracts and purchase orders with all vendors and suppliers, and to declare vendors who default on their quotations as nonresponsive bidders and so disqualify them from receiving any business from the City for a stated period of time.

(6) Secure all applicable federal and state tax exemptions for the City on purchases or contracts.

(7) Strive to uphold the local preference policy by purchasing goods and services from local vendors when appropriate.

(8) Coordinate with the Finance Department to secure the maximum efficiency in budgeting and accounting. (Prior code 2.24.030; Ord. 4 §1, 2005)

Sec. 4-3-40. Methods and procedures for source selection.

(a) Sole source. Procurements may be made without competition when the Purchasing Agent reasonably determines, after conducting a good faith review of available sources, that there is only one (1) viable source within the relevant supply area for the required supply, service or construction item. The Purchasing Agent shall conduct negotiations, as appropriate, as to price, delivery and terms. A record of sole-source procurements shall be maintained for one (1) year from the date of purchase.

(b) Emergency procurements. Notwithstanding any provisions of this Article, the Purchasing Agent may make or authorize others to make emergency procurement of supplies, service or construction items in a maximum amount of one hundred thousand dollars (\$100,000.00), when there exists a threat to public health, safety or welfare, and when the purchase cannot reasonably be delayed:

(1) Until one (1) of the following events occurs:

- a. A special meeting of the City Council is convened; or
- b. A quorum can be reached where a special meeting call has failed to achieve a quorum; and

(2) Until compliance with this Article can be accomplished.

The Purchasing Agent shall attempt, where circumstances permit, to conduct a telephone poll of the Mayor and City Council prior to emergency purchases. The Purchasing Agent shall determine the procurement process for emergency purchases, provided that competition shall be encouraged to the extent practicable under the circumstances. The Purchasing Agent shall report all emergency purchases to the City Council at its next regularly scheduled meeting.

(c) Open market. Open market purchases involve an informal evaluation of price, quality, convenience and service from any source, and the exercise of sound decision-making by the Purchasing Agent based on such information.

(d) Comparative pricing. For purchases based on comparative pricing, the Purchasing Agent shall solicit quotes from no less than three (3) vendors/suppliers, unless it is impracticable under the circumstances to obtain three (3) quotes. Quotes may be solicited by telephone, fax or in writing, in the discretion of the Purchasing Agent.

(e) Requests for proposals (RFPs). RFPs must be in writing, shall be distributed to a minimum of three (3) firms or individuals, and the Purchasing Agent shall reserve the right to reject any and all proposals.

(f) Competitive sealed bidding. Where competitive sealed bidding is required by Section 4-3-50 below, the following procedures shall apply:

(1) Notice to bidders. An invitation for bids will be advertised in a newspaper of general circulation in the City a minimum of two (2) times, at least ten (10) days prior to the date set for the opening of sealed bids. For bonded bids, notice shall also be published one (1) time in the appropriate publication, at least ten (10) days prior to the date for bid opening. The notice shall state: a general description of the materials and/or services to be procured; the place where bid blanks and specifications may be obtained; the closing date for acceptance of bids; the time and place for opening bids; the need for bonding, if applicable; and the reservation by the Purchasing Agent of the right to reject any and all bids.

(2) Bid requirements. Each bid submitted to the City shall meet the following conditions:

- a. A signed, written bid, enclosed in a sealed envelope, and filed with the City by the deadline stated in the invitation for bids.

b. Only one (1) bid will be accepted per bidder.

c. Where bonded bids are required by Section 4-3-50 below, the bid shall be accompanied by a certified check or bid bond equal to five percent (5%) of the bid, to be forfeited to the City if a bid is accepted and the bidder fails to sign a contract within fifteen (15) days of acceptance.

(3) Pre-bid qualification. Competitive sealed bidding may be limited to prequalified bidders if the Purchasing Agent determines in his or her sole discretion, after conducting a good faith review of potential bidders, that it is in the best interests of the City to allow a limited number of persons to bid on a particular procurement, because special qualifications are needed.

(4) Withdrawal/correction of bids. Bids may be withdrawn up to twenty-four (24) hours prior to expiration of the deadline for submitting bids. An otherwise low bidder is permitted to correct a material mistake in his or her bid, including price, when the intended bid is obvious from the bid document or is otherwise supported by proof that has evidentiary value. A low bidder is not permitted to correct a bid for mistakes or errors in judgment.

(5) Waiver of informalities in bids. The Purchasing Agent may waive informalities in a bid if:

a. The item is only a matter of form or is an immaterial variation from the exact requirements of the invitation for bids;

b. The item being waived has trivial or no effect on price, quality, quantity, delivery or performance; and

c. Such a waiver would not affect the relative standing of bidders or otherwise prejudice other bidders.

(6) Bid opening procedure. At the time and place specified in the notice for bids, the Purchasing Agent shall open the sealed bids in public. The Purchasing Agent will announce the names of those who have bid and the amounts of the bids, and shall state whether any bids submitted have been withdrawn. As the bids are opened, such details as are appropriate shall be read and copied on the bid tally record, which will be open for public inspection. The person recording bids shall sign the tally sheet.

(7) Bid evaluation; award. The Purchasing Agent shall perform a review and analysis of all tabulated bids. Evaluation criteria include a combination of price, quantity and/or quality offered, and capacity to fulfill all requirements of the contract. For bonded competitive bids, unless all bids are rejected, the award shall be made to the lowest qualified bidder, as defined in Section 4-3-20 above. All awards shall be made by the awarding authority (City Council or the Purchasing Agent) by written notice to the bidder. Alternate bids may be awarded whenever it is deemed necessary by the Purchasing Agent. Other than for bonded competitive bids, the City need not award a bid to the lowest responsive and responsible bidder, but rather the bid shall be awarded to the bidder who, in the sole discretion of the awarding authority, provides the best overall value to the City based on the evaluation criteria described in this Paragraph.

(8) Rejection of bids. The Purchasing Agent may reject all or any part of a bid (unless the bid expressly excludes the ability to partially accept the bid) when it is determined to be in the best

interests of the City, or if the vendor or contractor is in default on the payment of taxes, license fees or other sums due to the City.

(9) Nonresponsive vendor. Any vendor/ bidder who fails to comply with the terms of an awarded contract, quote or purchase order, or the required specifications contained in the bid, may be declared a nonresponsive vendor/bidder by the Purchasing Agent. Any nonresponsive vendor/bidder may be removed by the Purchasing Agent and/or the awarding authority from all vendor and bid lists compiled by the City for a period not to exceed three (3) years.

(10) Bonding; conditions. For a contract awarded based on a bonded competitive bid, the individual or company contracting with the City shall be required at the time the contract is executed to deliver to the City a contractor's performance bond or a labor and material payment bond in the amount of one hundred percent (100%) of the contract price, with a good and sufficient surety, for approval by the Purchasing Agent. Such contractor shall properly perform work required by the contract on behalf of the City, and shall promptly pay all amounts lawfully due to all persons supplying or furnishing labor or materials, used or performed in the prosecution of the work provided for in such contract. Further, the contractor shall indemnify and hold the City harmless for all payments or liabilities arising from the execution of the terms of the contract. (Prior code 2.24.040; Ord. 4 §1, 2005)

Sec. 4-3-50. Purchasing authority and process.

(a) The purchasing authority and process required for all types and amounts of procurement shall be as follows, provided that all monetary limits set forth in this Section are maximum ceilings; and nothing shall prohibit the Purchasing Agent from utilizing a higher level process than set forth or from requesting Council consideration of a purchase when not required:

(1) Capital construction.

a. Authority. The City Council must approve all awards of a contract for capital construction in an amount estimated to exceed twenty thousand dollars (\$20,000.00), and any purchase for such purpose from the Capital Fund.

b. Required procedures:

<i>Estimated Contract Amount</i>	<i>Process</i>
Less than \$5,000	Open market
\$5,000 to \$20,000	Comparative pricing
\$20,001 to \$100,000	Competitive bid*
Greater than \$100,000	Bonded competitive bid
Design/build contract (any amount)	Request for proposals

* The City Manager may require in his or her discretion that contracts awarded based upon competitive bid be bonded.

(2) Capital construction – change orders; authority. The City Manager or department head must approve all change orders to awarded contracts for capital construction when the total change orders

to date are less or equal to ten percent (10%) of the awarded contract. The City Council must approve all change orders to awarded contracts when total change orders to date are greater than ten percent (10%) of the awarded contract.

(3) Capital equipment.

a. Authority. The City Council must approve all awards of contract for capital equipment in excess of twenty thousand dollars (\$20,000.00), and any purchase for such purpose from the Capital Fund.

b. Required procedures:

<i>Estimated Contract Amount</i>	<i>Process</i>
Less than \$5,000	Open market
\$5,000 to \$20,000	Comparative pricing
Greater than \$20,000	Competitive bid

(4) Plant equipment replacement. Purchases necessary for the replacement of existing equipment that is a component part of any water, sewer or physical plant.

a. Authority. The City Council must approve all purchases for plant equipment replacement in excess of seventy-five thousand dollars (\$75,000.00).

b. Required procedures:

<i>Estimated Contract Amount</i>	<i>Process</i>
Less than \$7,500	Open market
\$7,500 to \$75,000	Comparative pricing
Greater than \$75,000	Competitive bid

(5) Materials, supplies, nonprofessional, and technical services (including hardware and software maintenance services).

a. Authority. The City Council must approve all purchases in excess of twenty thousand dollars (\$20,000.00).

b. Required procedures:

<i>Estimated Contract Amount</i>	<i>Process</i>
Less than or equal to \$10,000	Open market
Greater than \$10,000	Comparative pricing

(6) Professional services.

a. Authority. The City Council must approve all professional services anticipated to exceed twenty-five thousand dollars (\$25,000.00) per year to a single vendor; provided, however, that the Purchasing Agent may approve professional service contracts in amounts up to seven thousand five hundred dollars (\$7,500.00) regardless of the total annual amount paid to a single vendor, so long as the funds for the contract have been budgeted and appropriated and the Purchasing Agent advises the City Council of such approval at the next regular City Council meeting.

b. Required procedures. For nonappointed professional service positions, the following procedures shall be used:

<i>Estimated Contract Amount</i>	<i>Process*</i>
Less than or equal to \$25,000	Open market
Greater than \$25,000	Request for proposal (written)**

* The process for appointed positions (auditor, attorney, engineer, municipal judge) shall be determined by the City Council pursuant to applicable law.

** When it is determined by the Purchasing Agent that one professional service vendor clearly has exceptional expertise in the required service area, the Purchasing Agent may waive the request for proposal requirement and conduct contract negotiations as appropriate.

(7) Utilities including installation of equipment. Purchases to secure utility services (natural gas, electricity, local telephone, water, sewer) shall be authorized by the Purchasing Agent on a sole-source procedure.

(8) Real property interests (including easements and rights-of-way). The Purchasing Agent shall have discretion for real property purchases under a sole-source procedure, provided that City Council must approve all such purchases in excess of five thousand dollars (\$5,000.00).

(b) The purchasing authority for all purchases, awards of contracts and sales not requiring City Council approval shall be the Purchasing Agent. (Prior code 2.24.050; Ord. 4 §1, 2005; Ord. 15 §2, 2005; Ord. 28 §2, 2005)

Sec. 4-3-60. Division of contracts prohibited.

No contracts or purchases shall be divided to avoid the procedural requirements in this Article. (Prior code 2.24.060)

Sec. 4-3-70. Recurring purchases.

Quotes obtained for routine purchases of supplies, equipment or materials under either the open market, comparative pricing, or RFP procedures may be deemed valid for a period of two (2) years from the date of the quote. The Purchasing Agent is not required to obtain revised quotes for such items during the two-year period, provided that the vendor is informed of the City's intention to make repeated purchases at the time of the initial purchase. (Prior code 2.24.070)

Sec. 4-3-80. Waiver of procedures.

Except for the provisions of Paragraphs 4-3-50(a)(1) and (2) above, upon a majority vote, City Council may approve a waiver of any of the provisions of this Article, after consideration of the particular facts and circumstances necessitating the request for waiver. All of the procedures herein may be modified to prevent the loss of any gift or grant to the City. (Prior code 2.24.080)

Sec. 4-3-90. Cooperative purchasing.

The Purchasing Agent is authorized to participate in joint bidding with other public agencies or entities when deemed to be in the City's best interests. The Purchasing Agent, in his or her sole discretion, may use pricing schedules of higher governmental entities to purchase materials and services based on bids established for that purpose. (Prior code 2.24.090; Ord. 4 §1, 2005)

Sec. 4-3-100. Ethical relationships with vendors and suppliers.

(a) All City personnel are obligated to establish and maintain ethical relationships with all vendors or suppliers of City goods and services. The following are examples of prohibited relationships or activities between City employees and vendors/suppliers:

(1) Soliciting or accepting, directly from any person or his or her agent doing business, or seeking to do business with the City, any services, cash, loans, vacations, pleasure trips, gifts exceeding fifteen dollars (\$15.00) in value or any special consideration.

(2) Knowingly overestimating or underestimating the requirements or failing to disclose the existing requirements in order to avoid doing business with a particular vendor or supplier.

(3) Misrepresenting competitors' prices, quality or services in order to obtain concessions from vendors or suppliers.

(4) If involved in the purchasing process or decision, being employed by any bidder unless such employment relationship is fully disclosed to the awarding authority in writing, prior to engaging in the purchasing process.

(5) Accepting any gratuity greater than fifteen dollars (\$15.00), or a kickback of any kind from a vendor or supplier.

(b) The above-listed examples are merely illustrative, and do not constitute an exhaustive list of potential ethical violations. City employees must also consider the appearance of unfairness and impropriety in their treatment of City vendors and suppliers. (Prior code 2.24.100; Ord. 4 §1, 2005)

Sec. 4-3-110. Local preference.

(a) Notwithstanding other provisions of this Article, in the awarding of contracts for goods or services, the City Council and Purchasing Agent shall provide the following primary and secondary percentage preferences for local goods and services provided by local vendors when quality, delivery time and service are judged by the Purchasing Agent to be essentially equal:

<i>Contract Amount</i>	<i>Primary Preference for City Goods/Vendors</i>	<i>Secondary Preference for County Goods/Vendors</i>
Less than \$1,000	10% discount	5% discount
\$1,001 to \$5,000	6% discount	3% discount
\$5,001 and >	3% discount	1.5% discount

(b) The local percentage preference shall be calculated based on the price of the lowest responsive and responsible bidder. Qualifying primary preference bids shall be first considered before any qualifying secondary preference bid is considered. No local preference will apply in the bonded competitive bid process, nor where grant funds are used which expressly prohibit the use of such local preference. (Prior code 2.24.110)

Sec. 4-3-120. Sale of real and personal property.

All sales of real property must be approved by City Council. Sales of personal property (materials, supplies, equipment) must only be approved by City Council if the estimated value of the property exceeds one thousand dollars (\$1,000.00). Items with an estimated value over one thousand dollars (\$1,000.00) must be sold by sealed bid, unless otherwise approved by City Council. Bids for the sale of property valued over twenty thousand dollars (\$20,000.00) must be accompanied by a five-percent bid bond, which will be forfeited if the buyer fails to perform the contract for sale. Property impounded or seized through forfeiture by the Police Department shall be excluded from this Section. (Prior code 2.24.120)

ARTICLE IV

Local Improvements Regulations

Division 1

General Provisions

Sec. 4-4-10. Short title.

This Article shall be known as the *Local Improvements Law*. (Prior code 12.04.002)

Sec. 4-4-15. Legislative declaration.

It is hereby declared as a matter of legislative determination:

(1) That the notices herein provided are reasonably calculated to inform each interested person of any proceedings hereunder which may directly and adversely affect his or her legally protected interests; and

(2) That the powers, rights and privileges herein granted and the duties, disabilities, liabilities and immunities herein provided comply in all respects with any constitutional, charter or statutory requirement or limitation. (Prior code 12.04.004)

Sec. 4-4-20. Liberal construction.

This Article is necessary to secure the public health, safety, convenience and welfare, and shall be liberally construed to effect its purposes. (Prior code 12.04.006)

Sec. 4-4-25. Definitions and construction.

(a) Definitions. Except where the context otherwise requires, the definitions in this Section govern the construction hereof:

Acquire or *acquisition* means the opening, laying out, establishment, purchase, construction, securing, installation, reconstruction, lease, gift, grant from any source, bequest, devise, condemnation, transfer, assignment, option to purchase, other contract or other acquirement (or any combination thereof) of any project, facilities or other property, or an interest therein.

Assess or *assessment* means the levy of a special assessment, or the special assessment, against any tract specially benefited by any project, which assessment shall be made on a front-foot, zone, area or other equitable basis as may be determined by the City Council, but in no event shall any assessment exceed the estimated maximum special benefits to the tract assessed as provided in Subsections 4-4-415(d) and (e) of this Article.

Assessable property means the tracts of land specially benefited by any project the cost of which is wholly or partly defrayed by the City by the levy of assessments, except any tract owned by the federal government, in the absence of its consent to assessment, and except any street or other public right-of-way of a municipality or public body, as provided in Section 4-4-540 of this Article.

Assessment lien means a lien on a tract created by ordinance of the city to secure the payment of an assessment levied against that tract, as provided in Section 4-4-465 of this Article.

Assessment unit means a unit or quasi-improvement district designated by the City Council for the purpose of petition, remonstrance and assessment in the case of a combination of projects, pursuant to Section 4-4-135 of this Article.

Bond means a special obligation payable from special assessments and any other special fund authorized by law, pursuant to Section 4-4-310 of this Article.

Combined sewer project means one (1) integrated project consisting of a sanitary sewer project and a storm sewer project, as hereinafter defined, and shall consist wholly or in part of combined storm and sanitary sewers.

Condemn or *condemnation* means the acquisition by the exercise of the power of eminent domain of property for any project, facilities or other property. Pursuant to Section 13.4 of the Charter, the City may exercise the power of eminent domain, either within or without the City, in the manner provided by the Constitution and statutes of the State, as from time to time amended. The City may take any property necessary to carry out any of the objects or purposes hereof, and may condemn any existing works or facilities in the City now or hereafter used. The power of eminent domain vested in the City Council shall include the power to condemn, in the name of the City, either the fee simple or

any lesser estate or interest in any real property which the City Council shall determine is necessary for carrying out the purposes hereof.

Corporate district means any school district, drainage district, irrigation district, electrical irrigation district, conservancy district, housing authority, urban renewal agency and any other district, authority, commission or other political subdivision of the State constituting a body corporate. The term *corporate district* is used in contradistinction to the term *district*.

Cost, cost of the project or any phrase of similar import means all or any part of the cost of any project, facilities or interest therein being acquired and the cost of all or any part of any property, rights, easements, privileges, agreements and franchises necessary or useful and convenient therefor or in connection therewith, as may be designated by the City Council, which cost, at the option of the City Council, may include all or any part of the incidental costs pertaining to a project, including without limiting the generality of the foregoing: preliminary expenses advanced by the City for the making of surveys, preliminary plans, estimates of costs, assessment plats and other preliminaries; the costs of appraisals, printing and inspection; the costs of employing engineers, architects, attorneys at law, clerical help and other agents or employees; the cost of issuing securities; the costs of capitalizing interest or any discount, or both interest and discount, on any securities; any administrative and other expenses of the City appertaining to the project and becoming due prior to the levy and collection of special assessments; replacement expenses or the costs of the payment or security of the principal of or interest on any securities; the costs of making, publishing, posting, mailing and otherwise giving any notice in connection with the project; the costs of options, filing or recording instruments, and levying and collecting special assessments and installments thereof; the costs of reimbursements by the City to any public body, the federal government or any person of any moneys theretofore expended for or in connection with any facility or project; and all other expenses necessary or desirable and appertaining to any project, as estimated or otherwise ascertained by the City Council.

County Treasurer means the County Treasurer of the County.

Curb and gutter project means any curbs and gutters to be acquired or improved and appertaining to sidewalks, streets, or both, and all appurtenances and incidentals, including real and other property therefor.

Disposal or *dispose* means the sale, destruction, razing, loan, lease, gift, grant, transfer, assignment, mortgage, option to sell, other contract or other disposition (or any combination thereof) of facilities, other property, any project or an interest therein, as herein authorized.

District means the geographical area within the City designated and delineated by the City Council as an improvement district, in which the project is located and in which each tract to be assessed therefor is situated. A district may consist of noncontiguous tracts. Districts in the City shall be designated by consecutive numbers or designated in some other manner in order to separately identify each district.

Engineer means any engineer in the permanent employ of the City or any competent independent engineer or firm of such engineers employed by the City in connection with any facility, property, project or power herein authorized.

Equip or equipment means the furnishing of all necessary or desirable facilities appertaining to any project, facilities or other property, or an interest therein, as herein authorized.

Facility means any of the facilities or other property appertaining to any project herein authorized.

Federal government means the United States of America or any agency, instrumentality or corporation thereof.

Improve or improvement means the extension, widening, lengthening, betterment, alteration, reconstruction, capital repair or other improvement (or any combination thereof) of facilities, other property, any project or an interest therein, herein authorized.

Improvement district means a district, as hereinabove defined.

Law means this local improvements law or this Article.

Mailed notice or notice by mail means the giving by the engineer, City Clerk, City Treasurer, County Treasurer or any deputy thereof, as determined by the City Council, of any designated written or printed notice addressed to the last known owner of each tract assessed or to be assessed or other designated person at his or her last known address, by deposit, at least seven (7) days and not more than fourteen (14) days prior to the designated hearing or other time or event, in the United States mails, postage prepaid, as first-class mail. The failure to mail any such notice shall not invalidate any proceedings hereunder. The names and addresses of such property owners shall be obtained from the records of the County Assessor or from such other source as the person so giving the notice deems reliable. Any list of such names and addresses appertaining to any improvement district may be revised from time to time, but such a list need not be revised more frequently than at twelve-month intervals. Any mailing of any notice herein required shall be verified by the affidavit or certificate of the Engineer, City Clerk, City Treasurer, County Treasurer or the deputy mailing the notice, which verification shall be retained in the records of the City at least until all special assessments and securities appertaining thereto have been paid in full or any claim is barred by a statute of limitations.

Project means any structure, facility, undertaking, improvement or system which the City is herein authorized to acquire, improve, equip, maintain or operate. A *project* may consist of all kinds of personal and real property.

Property means real property and personal property.

Public body means the State or any agency, instrumentality or other body corporate thereof, or any county, corporate district or other political subdivision of the State, excluding the City and excluding the federal government.

Publication or publish means publication in a newspaper of general circulation in the City. Except as herein otherwise expressly provided or necessarily implied, *publication* or *publish* also means publication at least seven (7) days and not more than fourteen (14) days prior to the designated time or event. Any publication herein required shall be verified by the affidavit of the publisher and filed with the City Clerk and shall be retained in the records of the City at least until all special assessments and securities appertaining thereto have been paid in full or any claim is barred by the statute of limitations. Nothing herein contained in connection with any provision concerning the publication of

an ordinance, either before or after its final passage, shall be construed as requiring its publication in any manner other than a manner which is in substantial compliance with some method for the passage of an ordinance as provided in the Charter.

Real property means:

- a. Land;
- b. Buildings, structures, fixtures and improvements on land;
- c. Any property appurtenant to or used in connection with land; and
- d. Every estate, interest, privilege, easement, franchise and right in land, legal or equitable, including, without limiting the generality of the foregoing, rights-of-way, terms for years, and liens, charges or encumbrances by way of judgment, mortgage or otherwise, and the indebtedness secured by such liens.

Sanitary sewer project means facilities appertaining to a municipal sanitary sewage system for the collection, interception, transportation, treatment, purification and disposal of sewage, liquid wastes, solid wastes, night soil and industrial wastes, including without limitation a sewage treatment plant, sewage purification and treatment works, disposal facilities, drying beds, pumping plant and station, ejector station, gauging station, inlets, connections, laterals, other collection lines, outfalls, outfall sewers, trunk sewers, intercepting sewers, force mains, sub-mains, water lines, sewer lines, conduits, ditches, pipes transmission lines, engines, valves, pumps, meters, apparatus, fixtures, structures, buildings and all appurtenances and incidentals necessary, useful or desirable for the collection, interception, transportation, treatment, purification and disposal of sewage, liquid wastes, solid wastes, night soil and industrial wastes (or any combination thereof), including land and other property therefor.

Securities means any bonds, temporary bonds, interim warrants or other obligations of the City appertaining to any project, or interest therein, herein authorized.

Sidewalk project means any sidewalk primarily for use by pedestrians, including without limitation graded, regraded, graveled, surfaced, macadamized and paved pedestrian rights-of-way, artificial lights and lighting equipment, and all appurtenances and incidentals (or any combination thereof), including real and other property therefor.

Special assessment means *assessment*, as hereinabove defined.

Special surplus and deficiency fund means the special account and special fund created and maintained with moneys remaining to the credit of a district when all outstanding bonds of the district have been paid, pursuant to Section 10.5 of the Charter and to Sections 4-4-335 and 4-4-340 of this Article.

Storm sewer project means facilities appertaining to a municipal storm sewer system for the collection, interception, transportation and disposal of rainfall and other storm waters, including without limitation gauging stations, inlets, connections, laterals, other collection lines, outfalls, outfall sewers, trunk sewers, intercepting sewers, force mains, sub-mains, water lines, sewer lines, canals,

pipes, transmission lines, natural and artificial watercourses, wells, ditches, reservoirs, revetments, engines, valves, pumps, meters, apparatus, fixtures, structures, buildings and all appurtenances and incidentals necessary, useful or desirable for the collection, interception, transportation and disposal of rainfall and other storm waters (or any combination thereof), including real and other property therefor.

Street means any street, avenue, boulevard, alley, highway or other public right-of-way used for any vehicular traffic, but excluding a sidewalk designed primarily for use by pedestrians.

Street project means any street, including without limitation grades, regrades, gravel, oiling, surfacing, macadamizing, paving, crosswalks, sidewalks, driveway approaches, curb cuts, curbs, gutters, culverts, catch basins, drains, sewers, manholes, inlets, outlets, retaining walls, bridges, overpasses, tunnels, underpasses, approaches, sprinkling facilities, artificial lights, lighting equipment, parkways, grade separators, traffic separators, traffic control equipment and all appurtenances and incidentals (or any combination thereof), including real and other property therefor.

Taxes means general (ad valorem) taxes.

Tract means any tract, lot or other parcel of land for assessment purposes, whether platted or unplatted, regardless of lot or land lines. Lots, plots, blocks and other subdivisions may be designated in accordance with any recorded plat thereof; and all lands, platted and unplatted, shall be designated by a definite description, as provided in Section 4-4-530 of this Article.

Warrant means an interim warrant authorized by Section 4-4-245 of this Article.

Water project means facilities appertaining to a municipal water system for the collection, transportation, treatment, purification and distribution of water, including without limitation springs, wells, other raw water source, basin cribs, dams, reservoirs, towers, other storage facilities, pumping plants and stations, filter plants, purification systems, water treatment facilities, power plants, waterworks plants, gauging stations, valves, standpipes, connections, hydrants, conduits, flumes, sluices, canals, ditches, water transmission and distribution mains, pipes, lines, laterals, service pipes, engines, boilers, pumps, meters, apparatus, tools, equipment, fixtures, structures, buildings and all appurtenances and incidentals necessary, useful, or desirable for the acquisition, transportation, treatment, purification and distribution of potable water or untreated water for domestic, commercial and industrial use and irrigation (or any combination thereof), including real and other property therefor.

(b) Construction. Except where the context otherwise requires, this Article shall be construed as follows:

(1) Sections, subsections, paragraphs and subparagraphs mentioned by number, letter or otherwise designate the respective sections, subsections, paragraphs and subparagraphs of this Article so numbered or otherwise designated.

(2) Where appropriate, figures may be used instead of words and words may be used instead of figures in all notices, proceedings and other documents appertaining hereto.

(3) Each tract in a district need not be separately described except in the assessment rolls.

(4) Any cost or estimated cost may be stated as a designated amount per front foot, per square foot, or per other unit appertaining to the method of prorating costs and of computing assessments, or per lot of a given size and proportionate amounts for other lots, except in the case of assessments. (Prior code 12.04.008; Ord. 4 §1, 2005)

Sec. 4-4-30. General powers of City.

The City Council, upon behalf of the City and in its name, without any election, shall have the power from time to time to acquire, improve, equip, operate and maintain, within or without the City, or both within and without the City:

- (1) A combined sewer project;
- (2) A curb and gutter project;
- (3) A sanitary sewer project;
- (4) A sidewalk project;
- (5) A storm sewer project;
- (6) A street project; and
- (7) A water project. (Prior code 12.04.010)

*Division 2
Procedures*

Sec. 4-4-110. Collateral powers.

The City Council, upon behalf of the City and in its name, for the purpose of defraying all the cost of acquiring, improving or acquiring and improving any projects herein authorized, or any portion of the cost thereof not to be defrayed with moneys available therefor from the General Fund, any special fund or otherwise, shall have power hereunder:

- (1) To levy assessments against assessable property within the City and to cause the assessments so levied to be collected;
- (2) To pledge the proceeds of any assessments levied hereunder to the payment of securities and to create liens on such proceeds to secure such payments;
- (3) To issue securities as herein provided; and
- (4) To make all contracts, to execute all instruments and to do all things necessary or convenient in the exercise of the powers granted herein or in the performance of the City's duties or in order to secure the payment of its securities; provided, however, that no encumbrance, mortgage or other

pledge of property (excluding any money) of the City is created thereby; and provided that no property (excluding any money) of the City is liable to be forfeited or to be taken in payment of the securities. (Prior code 12.04.012)

Sec. 4-4-115. Initiating procedures.

The procedure for acquiring improving or acquiring and improving any project can be initiated in one (1) of the following ways:

- (1) Provisional order method; or
- (2) Petition method. (Prior code 12.04.014)

Sec. 4-4-120. Provisional order method.

(a) Whenever the City Council shall determine that any project or improvement is necessary for the preservation of the public peace, safety, health or welfare, the City Council, by resolution, shall direct the Engineer to prepare:

- (1) Preliminary plans showing:
 - a. A typical section of the contemplated project; and
 - b. The type, approximate thickness and width of material.
- (2) A preliminary estimate of the cost of the project, including incidental costs.
- (3) An assessment plat showing:
 - a. The area to be assessed; and
 - b. The amount of maximum benefits estimated to be assessed against each tract in the assessment area.

(b) The resolution may provide for one (1) or more types of construction, and the Engineer shall separately estimate the cost of each type of construction. The estimate may be made in a lump sum or by unit prices, as may seem most desirable to the Engineer for the facilities complete in place.

(c) The resolution shall describe the project in general terms.

(d) The resolution shall state:

(1) What part or portion of the expense thereof is of special benefit and, therefore, shall be paid by assessments;

(2) What part, if any, has been or is proposed to be defrayed with moneys derived from other than the levy of assessments; and

(3) The basis by which the cost will be apportioned and assessments will be levied.

(e) In case the assessment is not to be made according to front feet, the resolution:

(1) Shall by apt description designate the improvement district, including the tracts to be assessed;

(2) Shall describe definitely the location of the project; and

(3) Shall state that the assessment is to be made upon all the tracts benefited by the project proportionately to the benefits received.

(f) In case the assessment is to be upon the abutting property upon a frontage basis, it shall be sufficient for the resolution so to state and to define the location of the project to be made.

(g) It shall not be necessary in any case to describe minutely in the resolution each particular tract to be assessed but simply to designate the property, improvement district or location so that the various parts to be assessed can be ascertained and determined to be within or without the proposed improvement district.

(h) The Engineer shall forthwith prepare and file with the City Clerk:

(1) The preliminary plans;

(2) The preliminary estimate of cost; and

(3) The assessment plat.

(i) Upon the filing of the plans, preliminary estimate of cost and plat, the City Council shall examine the same; and if the plans, estimate and plat are found to be satisfactory, the City Council shall make a provisional order by resolution to the effect that such project shall be acquired or improved, or both acquired and improved. (Prior code 12.04.016; Ord. 4 §1, 2005)

Sec. 4-4-125. Petition method.

(a) The owners of lands to be assessed in the proposed improvement district comprising more than fifty percent (50%) of the area of the proposed district, and also including not less than fifty percent (50%) of the landowners residing in the territory, may by written petition initiate the acquisition and improvement of any project which the City Council is authorized to initiate, subject to the following limitations:

(1) The City Council may incorporate such project in any improvement district or districts.

(2) The City Council need not proceed with the acquisition of any such project or any part thereof after holding a hearing thereon, pursuant to Section 4-4-145 of this Article, and all provisions thereof thereunto enabling, if the City Council shall determine that it is not for the interests of the petitioners or the general public that the proposed project or a part thereof be then ordered to be made.

(3) Any particular kind of project, any material therefor, or any part thereof need not be acquired or located, as provided in the petition, if the City Council shall determine that such is not for the interests of the petitioners or the general public.

(b) The City Council need not take any action upon receiving any petition if the City Council shall determine by resolution that:

(1) The acquisition of the requested project probably is not feasible for reasons stated in such resolution;

(2) A designated cash deposit or pledge of property shall be required in at least an amount or of a value found by the City Council to be sufficient to defray the City's probable expenses and costs incurred preliminary to and in the attempted acquisition of the project; and

(3) Such deposit or pledge must be made with the City Treasurer within a designated time after notice by publication of the resolution's adoption and of its content in summary form. Similarly, an additional deposit or pledge may from time to time be required as a condition precedent to the continuation of action by the City.

(c) Whenever a deposit or pledge has been made and thereafter the City Council determines by resolution that such acquisition is not feasible within a reasonable period of time, the City Council may require that all or any portion of the costs incurred by the City in connection therewith after its receipt of the petition shall be defrayed from the deposit or the proceeds of the pledged property unless the petitioners or other interested persons defray such costs within a designated time after the determination by resolution of the amount so to be defrayed and after such published notice thereof. (Prior code 12.04.018; Ord. 4 §1, 2005)

Sec. 4-4-130. Subsequent procedure.

Upon the filing of a petition, the City Council shall proceed in the same manner as provided for where proceedings are initiated by the City Council, except as provided by Section 4-4-125 of this Article. (Prior code 12.04.020)

Sec. 4-4-135. Combination of projects.

(a) More than one (1) project may be combined in one (1) improvement district when the City Council determines that such projects may be combined together in an efficient and economical manner.

(b) If projects which have been combined together are separate and distinct by reason of substantial differences in their character, location or otherwise, each such project shall be considered as a unit or quasi-improvement district for the purpose of petition, remonstrance and assessment.

(c) In case of such a combination, the City Council shall designate the project and the area constituting each such unit; and, in the absence of an arbitrary and unreasonable abuse of discretion, its determination that such a combination is efficient and economical and its determination of the project and the area constituting each such unit shall be final and conclusive.

(d) The costs of acquiring, improving or acquiring and improving each such project shall be segregated for the levy of assessments, and an equitable share of the incidental costs shall be allocated to each such unit. (Prior code 12.04.022)

Sec. 4-4-140. Effect of estimates.

(a) Any estimate of cost required or authorized herein shall not constitute a limitation upon such cost nor a limitation upon the rights and powers of the City Council or of any officers, agents or employees of the City, except as herein otherwise expressly stated.

(b) No assessment shall exceed the amount of the estimate of maximum special benefits to the tract assessed from any project. (Prior code 12.04.024)

Sec. 4-4-145. Provisional order hearing and notice thereof.

(a) In the provisional order made as provided in Subsection 4-4-120(i) of this Article, the City Council shall set a time and a place at which the owners of the tracts to be assessed or any other persons interested therein may appear before the City Council and be heard as to the propriety and advisability of acquiring improving or acquiring and improving the projects provisionally ordered as to:

- (1) The estimated cost thereof; and
- (2) The estimated amount thereof to be assessed against each tract in the improvement district.

(b) Notice shall be given:

- (1) By publication; and
- (2) By mail.

(c) The notice shall state:

- (1) The kind of projects proposed without mentioning minor details or incidentals;
- (2) The estimated cost of the projects, or the estimated total amount of projects, and the part or portion, if any, to be paid from sources other than assessments;
- (3) The basis for apportioning the assessments, which assessments shall be in proportion to the special benefits derived to each of the several tracts comprising the assessable property and on a front-foot, area, zone or other equitable basis;
- (4) The number of installments and the time in which the assessments will be payable;
- (5) The maximum rate of interest on unpaid installments of assessments;
- (6) The extent of the improvement district to be assessed by boundaries or other brief description;
- (7) The time and the place when and where the City Council will consider the ordering of the proposed projects and will hear all complaints, protests and objections that may be made in writing and filed with the City Clerk prior to the hearing or made verbally or in writing at the hearing concerning the same by the owner of any tract to be assessed or by any person interested;

(8) The fact that the description of the tracts to be assessed, the maximum amount of benefits estimated to be conferred on each such tract, and all proceedings in the premises are on file and can be seen and examined by any person so interested at the office of the City Clerk at any time during business hours; and

(9) That, regardless of the basis used for apportioning assessments, in cases of wedge, "V" or any other irregular shaped tracts, an amount apportioned thereto shall be in proportion to the special benefits derived thereby.

(d) If any project will result in any substantial change in any existing street elevation or grade, it shall be sufficient for the notice required in this Section merely so to state without stating a description of the extent or the location of such change.

(e) No substantial change in the improvement district, details, preliminary plans, specifications or estimates shall be made after the publication or mailing of notice to property owners, whichever occurs first, except for any deletion of a portion of a project and property from the proposed program and improvement district or any assessment unit.

(f) The Engineer shall have the right to make minor changes in time, plans and materials entering into the work at any time before its completion. (Prior code 12.04.026; Ord. 4 §1, 2005)

Sec. 4-4-150. Provisional order hearing.

(a) On the date and at the place fixed for such hearing, any and all property owners interested in such project may, by specific and written complaints, protests or objections, present their views in respect to the proposed projects to the City Council or may present them orally. The City Council may adjourn the hearing from time to time.

(b) After the hearing has been concluded, after all written complaints, protests and objections have been read and duly considered, and after all persons desiring to be heard in person have been heard, the City Council shall consider all protests and shall establish or reject all or any part of the proposed district as the interests of the petitioners, if any, and the general public may best be served.

(c) Thereafter, if the City Council determines that it is not for the interests of the petitioners, if any, or the general public that the proposed project or a part thereof be made, the City Council shall make an order by resolution to that effect; and thereupon the proceeding for the project or for any part thereof determined against by such order shall stop and shall not be begun again until the adoption of a new resolution.

(d) The City Council shall forthwith defray any expenses theretofore accruing and pertaining to any project or any part thereof so ordered not to be made.

(e) Any complaint, protest or objection to the regularity, validity and correctness of the proceedings and instruments taken, adopted or made at or prior to the date of the hearing shall be deemed waived unless presented at the time and in the manner herein provided.

(f) Except for sidewalks, water mains, sewers and their appurtenances, no project or other local improvement shall be ordered by the City Council in the event a majority in area or majority in frontage,

as the case may be, of the lands to be assessed with the cost thereof shall by written petition protest against such local improvements. (Prior code 12.04.028)

Sec. 4-4-155. Appealing adverse order.

Any person filing with the City Clerk or the City Council a complaint, protest or objection in writing, or making the same verbally at said hearing, as aforesaid, shall have the right within fifteen (15) days after the City Council has finally passed on such complaint, protest or objection, to commence an action or suit in any court of competent jurisdiction to correct or set aside such a determination of the City Council on any such complaint, protest or objection; and thereafter all actions or suits attacking the validity of the preliminary plans, any preliminary estimate of cost, assessment plat, other proceedings and any maximum amount of benefits shall be perpetually barred. (Prior code 12.04.030)

Sec. 4-4-160. Post-hearing procedure.

(a) After the hearing, after the City Council has disposed of all written and verbal complaints, protests and objections, the City Council shall determine whether to proceed with the improvement district and with each assessment unit therein, if there is more than one (1) unit.

(b) If the City Council desires to proceed, it shall pass a motion or resolution directing the Engineer to prepare and to present to the City Council:

(1) A revised and detailed estimate of the total cost, including, without limiting the generality of the foregoing, the cost of acquiring, improving or acquiring and improving each proposed project and of each of the incidental costs, which revised estimate shall not constitute a limitation for any purpose, except as otherwise provided herein;

(2) Full and detailed plans and specifications for each proposed project designed to permit and to encourage competition among the bidders if any project is to be acquired by construction contract; and

(3) A revised map and assessment plat showing, respectively, the location of each project and the tracts to be assessed therefor, not including any area or project not before the City Council at a provisional order hearing.

(c) That resolution, a separate resolution or the ordinance establishing the improvement district may combine or divide the proposed project or projects pertaining to the district and any other facilities into suitable construction units for the purpose of letting separate and independent contracts, regardless of the extent of any project constituting an assessment unit and regardless of whether a portion or none of the cost of any project is to be defrayed other than by the levy of special assessments.

(d) Nothing herein contained shall be construed as not requiring the segregation of costs of unrelated projects for assessment purposes, as herein provided. (Prior code 12.04.032; Ord. 4 §1, 2005)

Division 3
Construction of District

Sec. 4-4-210. Creation of district.

(a) When a revised and detailed estimate of cost, full and detailed plans and specifications, and a revised map and assessment plat are prepared, are presented and are satisfactory to the City Council, it shall by ordinance establish the district and order the proposed project or projects to be acquired improved or acquired and improved.

(b) The ordinance shall prescribe and provide:

(1) The extent of the improvement district by boundaries or by other brief description and similarly of each assessment unit therein, if there is more than one (1);

(2) The kind and location of each project proposed (without mentioning minor details);

(3) The method and manner of making such improvements;

(4) The method and manner of the letting of contracts therefor, including the character and extent of any construction units;

(5) The method and manner of assessing the costs thereof, including the amount or the proportion of the total cost to be defrayed by assessments, the method of levying assessments, the number of installments and the time in which the costs assessed will be payable; and

(6) For issuing and paying special improvement bonds to defray the costs and expenses of the organization of said district and of the construction or installation of said improvements.

(c) The Engineer may further revise such costs, plans and specifications, and map from time to time for all or any part of any project; and the ordinance may be appropriately amended prior to letting any construction contract therefor or prior to any property being acquired or work being done other than by independent contract let by the City.

(d) The ordinance, as amended, if amended, shall order the work to be done as hereinafter provided. (Prior code 12.04.034; Ord. 4 §1, 2005)

Sec. 4-4-215. Methods of acquisition and improvement.

(a) Any construction work for a project shall be done in any one (1) or more of the following three (3) ways:

(1) By independent contract;

(2) By use of municipally owned or leased equipment and municipal officers, agents and employees; and/or

(3) By any public body or by the federal government acquiring or improving a project or any interest therein which is authorized herein and which results in general benefits to the City and in special benefits to the assessable property being assessed therefor by the City within its boundaries.

(b) Any project or any interest therein not involving construction work pertaining to a capital improvement may be acquired or improved pursuant to any appropriate contract or otherwise, including without limiting the generality of the foregoing, the condemnation or other acquisition of real property. In such case, nothing in Subsection (a) above, nor in Sections 4-4-220 through 4-4-235 below, shall be applicable.

(c) Notwithstanding that a project authorized herein or any interest therein may not be owned by the City nor be directly acquired, improved or acquired and improved, nor the costs thereof directly incurred by the City, and notwithstanding that the project herein authorized or any interest therein may be located on land, an easement or other interest therein, or other real property owned by the federal government or by a public body, the City shall have the power:

(1) To acquire, improve or both acquire and improve, or to cooperate in the acquisition, improvement or acquisition and improvement of, the project or any interest therein with the federal government or with any public body pursuant to agreement between or among the City and such other bodies corporate and politic so long as the project or the interest therein acquired, improved or both acquired and improved, results in general benefits to the City and in special benefits to the assessable property being assessed therefor by the City within its boundaries;

(2) To levy special assessments on such assessable property to defray all or any part of the costs of the project or any interest therein or to defray all or any part of the City's share of such costs if all costs are not being defrayed by the City; and

(3) To issue bonds and exercise other powers herein granted and pertaining to such acquisition, improvement or both such acquisition and improvement. (Prior code 12.04.036; Ord. 4 §1, 2005)

Sec. 4-4-220. Construction contracts.

(a) No contract for performing construction work for acquiring or improving the project contemplated shall be made or awarded, nor shall the City Council incur any expense or any liability in relation thereto, except for maps, plats, diagrams, estimates, plans, specifications and notices, until after the provisional order hearing and notice thereof provided for herein have been given and had.

(b) Nothing contained in this Section shall be construed as preventing the City Council from advertising by publication for proposals for performing the work whenever the City Council sees fit; however, the contract shall not be made or awarded before the time stated in Subsection (a) above.

(c) In the case of construction work performed by independent contract for any project or portion thereof in any improvement district, the City Manager shall request competitive bids and publish notice, as defined in Section 4-4-25, stating that bids will be received at a time and at a place designated in said notice.

(d) The City may contract only with the responsible bidder submitting the lowest and best bid upon proper terms.

(e) The City shall have the right to reject any and all bids and to waive any irregularity in any bid.

(f) Any contract may be let on a lump-sum or unit basis.

(g) No contract shall be entered into for such work unless the contractor gives an undertaking with a sufficient surety approved by the City Council and in an amount fixed by it for the faithful performance of the contract, substantially as required by Section 38-26-106, C.R.S., except as expressly otherwise provided herein.

(h) Upon default in the performance of any contract, the City Manager, as directed by motion of the City Council, may advertise and relet the remainder of the work without further ordinance or resolution, may deduct the cost from the original contract price and may recover any excess cost by suit on the original bond, or otherwise.

(i) All contracts shall provide, among other things, that the person entering into the contract with the City will pay for all materials furnished and services rendered for the performance of the contract, and that any person furnishing the materials or rendering the services may maintain an action to recover for the same against the obligor in the undertaking as though the person were named therein. Final settlement shall be effected substantially as required by Section 38-26-107, C.R.S., and all applicable laws.

(j) If any contract or any agreement is made in violation of the provisions of this Section, it shall be voidable, and no action shall be maintained thereon by any party thereto against the City.

(k) To the extent that the City makes any payment thereunder, such contract or agreement shall be valid, and any such payment may be included in any cost defrayed by the levy of assessments unless, before the levy of assessments, the City has elected to void the contract or agreement in its entirety and to recover any such payment from the party to whom such payment is made.

(l) The City Council, except as hereinabove expressly limited, may in the letting of contracts impose such conditions upon bidders with regard to bonds and securities, and such guaranties of good and faithful performance, completion of any work and the keeping of the same in repair, and may provide for any further matter in connection therewith as may be considered by the City Council to be advantageous to the City and to all interested persons. (Prior code 12.04.038; Ord. 4 §1, 2005)

Sec. 4-4-225. Extra work authorized; payment.

Extra work may arise in connection with any project herein mentioned and not particularly provided for in the plans, specifications, estimates, bids and contracts; and such extra work shall be performed by the contractor at the direction of the Engineer at cost of labor and materials plus ten percent (10%) for superintendence, said amount to be included in the assessment for said projects (but not exceeding in the aggregate the estimated maximum special benefits to the tract so assessed) or to be paid out of the general or road funds of the City in the discretion of the City Council. (Prior code 12.04.040)

Sec. 4-4-230. Construction by City.

(a) In the case of construction work done by the use of municipally owned or leased equipment and by municipal officers, agents and employees for any project or portion thereof in any improvement district, supplies and materials may be purchased or may be otherwise acquired therefor.

(b) All supplies, materials, equipment or lease options for equipment purchased by the City for any improvement district costing five hundred dollars (\$500.00) or more shall be purchased only after the City Manager has given notice by publication in accordance with Section 4-4-25 above.

(c) The City shall accept the lowest and best bid, kind, quality and material being equal; however, the City shall have the right to reject any and all bids, to waive any irregularity in any bid and to select a single item from any bid.

(d) The provision as to bidding shall not apply to the purchase of patented and manufactured products offered for sale in a noncompetitive market or solely by a manufacturer's authorized dealer. (Prior code 12.04.042; Ord. 4 §1, 2005)

Sec. 4-4-235. Cooperative construction.

(a) Any projects, any portion of the cost of which may be defrayed by the City by the levy of special assessments hereunder, may be acquired, improved or acquired and improved with the cooperation and assistance of, or under a contract let by, or with labor or supplies and materials, or all of such furnished by, any one (1) or more such public bodies or by the federal government (or any combination thereof).

(b) In the case of any project or any portion thereof in any improvement district acquired, improved or acquired and improved by the City with the cooperation and assistance of one (1) or more public bodies or the federal government (or any combination thereof), the City may enter into and carry out any contract, or may establish or comply with the rules and regulations concerning labor and materials and other related matters, in connection therewith as the City may deem desirable or as may be required by the federal government or any such public body, regardless of whether the City is a party to any construction contract or any other contract pertaining to incurring costs of the project.

(c) Advantage may be taken of any offer from any source to complete any project on a division of expense or responsibility.

(d) The Engineer, on behalf of and in the name of the City, is authorized to acquire improve or acquire and improve any such project in such a manner when so authorized by the ordinance establishing the improvement district or by any amendment thereto. (Prior code 12.04.044; Ord. 4 §1, 2005)

Sec. 4-4-240. Use of existing improvements.

After the provisional order hearing and at the time of the passage of the ordinance establishing any improvement district and any projects for the improvement district or any amendment thereof, if any tract or the property of any railway company to be assessed in the improvement district has the whole or any part of the proposed projects conforming to the general plan, the same may be adopted in whole or in part or may be changed to conform to the general plan, if deemed practical; and the owner of such real

estate shall, when the assessment is made, be credited with the amount which is saved by reason of adapting or of adopting such existing improvements. (Prior code 12.04.046)

Sec. 4-4-245. Interim warrants.

(a) Until moneys are available from the levy and collection of assessments and from any issuance of bonds, the City Council may issue interim warrants for the purpose of paying any contractor or otherwise defraying any costs of the project as the same become due from time to time.

(b) Any interim warrants issued for any construction work shall be issued only upon estimates of the Engineer.

(c) Any interim warrants shall bear such dates, shall mature in such denominations at such time or at any time upon call, shall bear interest at a rate or rates not exceeding six percent (6%) per annum, and shall be payable in such medium of payment at such places within and without the State, including but not limited to the City Treasurer, as the City Council may determine.

(d) Any interim warrants may be issued with privileges for registration for payment as to only principal or as to both principal and interest, may be negotiable or non-negotiable, shall be special obligations payable from designated special assessments, any bond proceeds and any other moneys designated to be available for the redemption of such interim warrants, and generally shall be issued in such manner, in such form, with such recitals, terms, covenants and conditions, and with such other details, as may be provided by the City Council by ordinance. (Prior code 12.04.048; Ord. 4 §1, 2005)

Division 4
Bond Regulations

Sec. 4-4-310. Issuance of bonds.

(a) The City Council shall have power to cause to be issued on behalf of the City negotiable, coupon bonds in an amount not exceeding the estimated cost of the project or part thereof to be defrayed by the levy and collection of assessments.

(b) Any bonds issued pursuant hereto shall be sold to the highest and best bidder for cash at public sale, after advertisement for public sale and, if all bids are rejected, the bonds may be sold at private sale and to the best advantage of the City, to defray the cost of the project, including all proper incidental expenses.

(c) Bonds shall be sold for not less than the principal amount thereof and accrued interest thereon or, at the option of the City Council, below par at a discount not exceeding seven percent (7%) of the principal amount thereof, and shall bear interest at a rate not to exceed nine percent (9%) per annum.

(d) No discount (except as herein otherwise provided expressly or by necessary implication) or commission shall be allowed or paid on or for any bond sale to any purchaser or bidder directly or indirectly.

(e) The City Council may employ legal, engineering and other expert services in connection with any project authorized herein and with the authorization, issuance and sale of bonds.

(f) Any accrued interest and any premium shall be applied to the payment of the interest on or the principal of the bonds, or of both interest and principal.

(g) Any unexpected balance of such bond proceeds remaining after the completion of the project for which such bonds were issued shall be paid immediately into the fund created for the payment of the principal of and the interest on the bonds and shall be used therefor, subject to the provisions as to the times and methods for their payment as stated in the bonds and in the proceedings authorizing their issuance.

(h) The validity of the bonds shall not be dependent on nor affected by the validity or the regularity of any proceedings relating to the acquisition, improvement or acquisition and improvement of any project for which the bonds are issued.

(i) The purchasers of the bonds shall in no manner be responsible for the application of the proceeds of the bonds by the City or by any of its officers, agents and employees.

(j) Subject to the conditions provided herein, the City Council may enter into a contract to sell bonds at any time; however, notwithstanding any other provisions hereof if the City Council enters into such contract before it awards a construction contract or otherwise contracts for acquiring, improving or acquiring and improving the project, the City Council may terminate the contract to sell the bonds if, before the awarding of the construction contract or otherwise contracting for the acquisition, improvement or acquisition and improvement of the project, it determines not to acquire, improve or acquire and improve the project and if the City Council has not elected to proceed under Subsection 4-4-215(b) or (c) above but has elected to proceed by independent contract pursuant to Paragraph 4-4-215(a)(1) above, if at all. (Prior code 12.04.050; Ord. 4 §1, 2005)

Sec. 4-4-315. Use of assessments; payment of bonds.

(a) The assessments when levied shall be and remain a lien on the respective tracts assessed until paid as provided herein.

(b) When assessments consisting of principal, interest and any penalty are collected, they shall be placed in a special fund, shall at all times constitute a sinking fund for and be deemed specially appropriated to the payment of the bonds and the interest thereon, and shall not be used for any other purpose until the bonds and the interest thereon are fully paid; or if no bonds are issued, all assessments upon their payment shall be so appropriated and used to defray the costs of such project.

(c) The bonds, both principal and interest, shall be payable only out of moneys collected on account of the assessments (including installments thereof, interest thereon and any penalties) for the projects in any district, except as hereinafter provided. (Prior code 12.04.052; Ord. 4 §1, 2005)

Sec. 4-4-320. Incontestable recital in bonds.

(a) Any ordinance authorizing any bonds hereunder may provide that each bond therein authorized shall recite that it is issued under authority hereof.

(b) Such recital shall conclusively impart full compliance with all of the provisions hereof, and all bonds issued containing such recital shall be incontestable for any cause whatsoever after their delivery for value. (Prior code 12.04.054)

Sec. 4-4-325. Maximum bond interest rate.

Bonds shall not bear interest at any time at a rate exceeding nine percent (9%) per annum or at a rate exceeding the interest rate (or lower or lowest rate if more than one [1]) borne by the unpaid principal of the assessments payable in installments. Interest on any bond shall never accrue at any time prior to its maturity at a rate or combined rates the same as or exceeding the rate of interest (or lower or lowest rate if more than one [1]) on deferred installments of assessments. (Prior code 12.04.056; Ord. 4 §1, 2005)

Sec. 4-4-330. Bond limitations and details.

(a) All bonds shall be issued by the City Treasurer upon estimates of the Engineer and upon the City Manager's order approved by the City Council; and the City Treasurer shall preserve the estimates in a suitable book kept for that purpose.

(b) Any bonds shall bear such; shall mature in such denominations at such time or serially at such times, but in no event after that date which is one (1) year after the last assessment installment payment date; shall bear interest which may be evidenced by one (1) or by two (2) sets of coupons, payable annually or semiannually, except that, on any coupon or registered bond, the first interest payment date may occur at any time within two (2) years from such date or dates, as may be provided by ordinance; shall be payable in such medium of payment at such places within or without the State, including but not limited to the office of the County Treasurer; and, at the option of the City Council, may be made subject to prior redemption in advance of maturity, in such order or by lot or otherwise, at such times and without or with the payment of such premiums not exceeding seven percent (7%) of the principal amount of each bond so redeemed.

(c) Bonds may be issued with privileges for registration for payment as to principal or as to both principal and interest; and, where interest accruing on the bonds is not represented by interest coupons, the bonds may provide for the endorsing of payments of interest thereon.

(d) The bonds generally shall be issued in such manner, in such form, with such provisions for conversion into bonds of other denominations, with such provisions for reissuance, with such recitals, terms, covenants and conditions, and with such other details as may be provided by the City Council in the ordinances authorizing the bonds, except as herein otherwise provided.

(e) Pending preparation of the definitive bonds, temporary bonds may be issued in such form and with such provisions as the City Council may determine.

(f) Subject to the payment provisions herein expressly provided, the bonds, any interest coupons thereto attached and any temporary bonds shall be fully negotiable within the meaning of and for all the purposes of any negotiable instruments law, including the Uniform Commercial Code, then in effect.

(g) Any bond shall be executed in the name of and on behalf of the City, shall be signed with the manual signature of the Mayor, with the seal of the City affixed thereto, shall be manually signed and

attested by the City Clerk and countersigned with the manual signature of the City Treasurer, and shall bear the designation of the district.

(h) Except for such bonds which are registrable for payment of interest, interest coupons payable to the bearer shall be attached to the bonds and shall bear the original or facsimile signature of the City Treasurer.

(i) The City Clerk may cause the seal of the City to be printed, engraved, stamped or otherwise placed in facsimile on any bond. The facsimile seal has the same legal effect as the impression of the seal.

(j) The bonds and the coupons bearing the signatures of the officers in office at the time of the signing thereof shall be the valid and binding obligations of the City, notwithstanding that, before the delivery thereof and payment therefor, any or all of the persons whose signatures appear thereon shall have ceased to fill their respective offices.

(k) Any officer herein authorized or permitted to sign any bond, at the time of its execution and of the execution of a signature certificate, may adopt as and for his or her own signature the manual or facsimile signature of his or her predecessor in office in the event that such manual or facsimile signature appears upon the bond, the coupons pertaining thereto or both the bond and such coupons. (Prior code 12.04.058; Ord. 4 §1, 2005)

Sec. 4-4-335. Special obligations.

(a) Bonds issued pursuant to this Article shall not be a debt of the City and the City shall not be liable thereon, nor shall it thereby pledge its full faith and credit for their payment, nor shall the bonds be payable out of any funds other than the special assessments (including installments thereof, interest thereon and any penalties) and other funds and moneys pledged to the payment thereof, as authorized herein.

(b) Each bond issued under this Article shall recite in substance that said bond and the interest thereon are payable solely from the special assessments and other funds and moneys pledged to the payment thereof.

(c) The payment of bonds shall not be secured by an encumbrance, mortgage or other pledge of property of the City, except for such special assessments and other funds and moneys pledged for the payment of bonds. No property of the City, subject to said exceptions, shall be liable to be forfeited or taken in payment of the bonds. (Prior code 12.04.060; Ord. 4 §1, 2005)

Sec. 4-4-340. Additional security.

(a) The City shall additionally secure the payment of the bonds pertaining to any district as provided herein.

(b) Whenever there is a deficiency in any improvement district to meet payment of outstanding bonds and interest due thereon, it shall be paid out of the City's special surplus and deficiency fund.

(c) The City shall pay the bonds when due and interest due thereon and reimburse itself by collecting the unpaid assessments due said district whenever:

(1) A special or local improvement district has paid and cancelled three-fourths ($\frac{3}{4}$) of its outstanding bonds;

(2) For any reason the remaining assessments are not paid in time to take up the remaining bonds of the district and the interest due thereon; and

(3) There is not sufficient money in the special surplus and deficiency fund.

(d) When all outstanding bonds have been paid in a public improvement district and any money remains to the credit of said district, said money shall be transferred to the special surplus and deficiency fund, as provided in Section 10.5 of the Charter. (Prior code 12.04.062; Ord. 4 §1, 2005)

Sec. 4-4-345. Permissive additional security.

In addition to the additional security provided for in Section 4-4-340 above, and not in limitation thereof, the City may further additionally secure the payment of bonds of any district, both as to principal and interest, as may be provided by ordinance and permitted by the Charter, including Section 10.6 thereof. (Prior code 12.04.064; Ord. 4 §1, 2005)

Sec. 4-4-350. Redemption of bonds.

Whenever considered advisable by the City Treasurer, he or she may, and whenever funds may be in his or her hands to the credit of any district exceeding the amount of interest on the unpaid principal becoming due on and prior to one (1) year next after the last interest payment date, and, if maturing serially, the principal becoming due on the next principal payment date, he or she shall, subject to the provisions concerning the payment of bonds of the district prior to maturity in the bonds and in any ordinance pertaining to their issuance, by publication at least once not less than fifteen (15) days prior to the redemption date, call in a suitable number of bonds of the district for payment, for the principal amount thereof, accrued interest to the redemption date and for any prior redemption premium due thereon. After the redemption date so designated, interest on the bonds so called shall cease. Nothing contained herein shall be construed as preventing the City from providing that such bonds shall be redeemed only on interest payment dates. The notice shall specify the bonds so called by number, and all such bonds shall be paid in the order designated in any such ordinance. The holder of any bond may, at any time, furnish his or her post office address to the City Treasurer; and, in such case, a copy of such advertisement shall be mailed by the City Treasurer to the holder of the bond called at such address within three (3) days of the date of such publication. (Prior code 12.04.066; Ord. 4 §1, 2005)

Sec. 4-4-355. Remedies.

(a) Subject to any contractual limitations binding upon the holders or trustees of any issue or series of bonds, including but not limited to the restriction of the exercise of any remedy to a specified proportion, percentage or number of such holders, any holder of bonds or trustee therefor shall have the right and power for the equal benefit and protection of all holders of bonds similarly situated:

(1) By mandamus or other suit, action or proceeding at law or in equity to enforce his or her rights against the County Treasurer, the City, the City Council and any of the City's officers, agents and employees, and to require and compel the County Treasurer, the City, the City Council or any such officers, agents or employees to perform and carry out its and their duties, obligations or other commitments under this Article and under its and their covenants and agreements with the bondholders;

(2) By action or suit in equity to require the County Treasurer, the City and the City Council to account as if they were the trustees of an express trust;

(3) By action or suit in equity to have appointed a receiver, which receiver may take possession of any accounts and may collect, receive and apply all revenues or other moneys pledged for the payment of the bonds in the same manner as the City itself might do;

(4) By action or suit in equity to enjoin any acts or things which might be unlawful or might be in violation of the rights of the bondholders; and

(5) To bring suit upon the bonds.

(b) No right or remedy conferred by this Article upon any holder of bonds or any trustee therefor is intended to be exclusive of any other right or remedy; however, each such right or remedy is cumulative, is in addition to every other right or remedy and may be exercised without exhausting and without regard to any other remedy conferred by this ordinance or by any other law. The failure of any bondholder to proceed as herein provided shall not relieve the County Treasurer, the City, the City Council or any of the City's officers, agents and employees of any liability for failure to perform or carry out any duty, obligation or other commitment. (Prior code 12.04.068; Ord. 4 §1, 2005)

Sec. 4-4-360. Reissuance of bonds.

(a) In case any outstanding bond is mutilated, destroyed, stolen or lost, the City may deliver a new bond (with any appropriate coupons attached) of like tenor, number and amount as the bond and the appurtenant coupons, if any, so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated bond and upon surrender of such mutilated bond and appurtenant coupons, if any; or, in lieu of such surrender:

(1) Upon filing with the City evidence satisfactory to it that such bond and appurtenant coupons, if any, have been destroyed, stolen or lost and proof of ownership thereof; and

(2) Upon furnishing the City with indemnity satisfactory to it, upon complying with such other reasonable regulations as the City may prescribe and upon paying such expenses as the City may incur in connection therewith.

(b) The City may reissue any bond under any other circumstances in exchange for any outstanding bond pertaining to the district to which each reissued bond pertains, as provided in Section 4-4-330 above, without substantially modifying the City's obligation evidenced thereby, upon complying with such reasonable regulations as the City may prescribe and upon paying such expenses as the City may incur in connection therewith. (Prior code 12.04.070; Ord. 4 §1, 2005)

Sec. 4-4-365. Statement of cost of project.

Upon the completion of any project in any district, or in the case of assessment units or sewers upon completion from time to time of a project in any assessment unit or any part of sewers affording complete drainage for any part of the district, or after the determination of the net cost to the City; and upon the acceptance thereof by the City Council, or whenever the total cost of such project or any of such part of sewers can be definitely ascertained; and upon the City Council's determination to assess all or a part of the cost thereof, the Engineer shall prepare and furnish to the City Council a statement showing the total cost of the project or of any such part thereof. (Prior code 12.04.072; Ord. 4 §1, 2005)

*Division 5
Assessments*

Sec. 4-4-410. Order for and form of proposed assessment roll.

(a) Upon receipt by the City Council of said statement of cost, the City Council by resolution shall:

(1) Determine the cost of the project to be paid by the assessable property in the improvement district;

(2) Order the Engineer to make out an assessment roll containing, among other things:

a. The name of each last known owner of each tract to be assessed or, if not known, a statement that the name is "unknown," and

b. A description of each tract to be assessed and the amount of the proposed assessment thereon, apportioned upon the basis for assessments stated in the provisional order for the hearing on the project; and

(3) Cause a copy of the resolution to be furnished by the City Clerk to the Engineer.

(b) In fixing the amount or the sum of money that may be required to pay the costs of the project, the City Council need not necessarily be governed by the estimates of the costs of such project provided for herein, but the City Council may fix such other sum within the limits prescribed as it may deem necessary to cover the cost of the project.

(c) If, by mistake or otherwise, any person is improperly designated in the assessment roll as the owner of any tract or if the same is assessed without the name of the owner or in the name of a person other than the owner, such assessment shall not for that reason be vitiated, but it shall in all respects be valid upon and against such tract as though assessed in the name of the owner thereof. When the assessment roll has been confirmed, such assessment shall become a lien on such tract and shall be collected as provided by law. (Prior code 12.04.074; Ord. 4 §1, 2005)

Sec. 4-4-415. Method of computing and limitations upon assessments.

(a) If the assessment is made upon the basis of frontage, the Engineer shall assess each tract with such relative portion of the whole amount to be levied as the length of the front of such premises bears to

the whole frontage of all the tracts to be assessed, and the frontage of all tracts to be assessed shall be deemed to be the aggregate number of feet as determined upon for assessment by the Engineer.

(b) If the assessment is directed to be according to an area, zone or equitable basis other than a front-foot basis, the Engineer shall assess upon each tract such relative portion of the whole sum to be levied as is proportionate to the estimated benefit according to such basis.

(c) Regardless of the basis used, in cases of wedge, "V" or other irregularly shaped tracts, an amount apportioned thereto shall be in proportion to the special benefits derived thereby.

(d) No assessment shall exceed the amount of the estimate of maximum special benefits to the tract assessed, as provided in Subsection 4-4-140(b) of this Article.

(e) Any difference between the amount of the assessment levied against any tract and the amount which would have been levied against such tract, except that it would then have exceeded the limitation in Subsection (d) above, shall be defrayed by the City by other than the levy of assessments. (Prior code 12.04.076; Ord. 4 §1, 2005)

Sec. 4-4-420. Determination of assessable tracts.

The City Council shall determine what amount or part of every tract upon which the same shall be levied, and as often as the City Council deems it expedient, it shall require all of the tracts chargeable therewith respectively to be reported by the City Clerk to the Engineer for assessment. (Prior code 12.04.078; Ord. 4 §1, 2005)

Sec. 4-4-425. Preparation of proposed roll.

(a) Upon receiving the resolution mentioned in Section 4-4-410 above, the Engineer shall make an assessment roll and state a proposed assessment upon each such tract, and shall defray the amounts of all charges so directed to be levied upon each of such tracts respectively. When completed, he or she shall report the assessment roll to the City Council.

(b) When any assessment is reported by the Engineer to the City Council as directed in this Section, the same shall be filed and numbered in the office of the City Clerk. (Prior code 12.04.080; Ord. 4 §1, 2005)

Sec. 4-4-430. Notice of assessment hearing.

(a) Upon receiving the assessment roll, the City Council by resolution shall:

(1) Fix a time and a place when and where complaints, protests and objections that may be made in writing or verbally concerning the same by the owner of any tract or by any person interested may be heard; and

(2) Order the City Clerk to give notice of the hearing.

(b) The City Clerk shall give notice by publication and by mail of the time and the place of such hearing, which notice shall also state:

- (1) That the assessment roll is on file in his or her office;
- (2) The date of filing the same;
- (3) The time and the place when and where the City Council will hear all complaints, protests and objections that may be made in writing or verbally to the assessment roll and to the proposed assessments by the parties thereby aggrieved; and
- (4) That any complaint, protest or objection to the regularity, validity and correctness of the proceedings, of said assessment roll, of each assessment contained therein and of the amount thereof levied on each tract shall be deemed waived unless filed in writing with the City Clerk prior to the assessment hearing or made verbally or in writing at the hearing. (Prior code 12.04.082; Ord. 4 §1, 2005)

Sec. 4-4-435. Assessment hearing.

(a) At the time and the place so designated, the City Council shall hear and shall determine any written complaint, protest or objection filed as hereinabove provided, any verbal views expressed in respect to the proposed assessments, the assessment roll or the assessment procedure; and the City Council may adjourn the hearing from time to time.

(b) The City Council, by resolution, shall have power in its discretion to revise, correct, confirm or set aside any assessment and to order that such assessment be made de novo. (Prior code 12.04.084)

Sec. 4-4-440. Levy of assessments.

(a) After the assessment roll is in final form and is confirmed by resolution, the City Council by ordinance shall, by reference to such assessment roll as so modified, if modified, and as confirmed by such resolution, levy the assessments in the roll.

(b) No assessment shall be levied for any project located or to be located on any land until the City Council, by the adoption of the ordinance or otherwise, shall determine that the City has the right to possession of such land or an interest therein for the purpose of acquiring, improving or acquiring and improving the project.

(c) Such decision, resolution and ordinance shall be a final determination of the regularity, validity and correctness of the proceedings, of the assessment plat, of the assessment roll, of each assessment contained therein and of the amount thereof levied on each tract.

(d) Such determination by the City Council shall be conclusive upon the owners of the property assessed.

(e) The roll shall be prima facie evidence in all courts and tribunals of the regularity of all proceedings preliminary to the making thereof and the validity of the assessments and the assessment roll. (Prior code 12.04.086)

Sec. 4-4-445. Appeal of adverse determination.

(a) Within the fifteen (15) days immediately succeeding the final publication of the assessment ordinance, any person who made a complaint, protest or objection, as hereinbefore provided, shall have the right to commence an action or a suit in any court of competent jurisdiction to correct or set aside such determination.

(b) Thereafter, all actions or suits attacking the regularity, validity and correctness of the proceedings, of the assessment plat, of the assessment roll, of each assessment contained therein and of the amount thereof levied on each tract, including the defense of confiscation, shall be perpetually barred. (Prior code 12.04.088)

Sec. 4-4-450. Thirty-day payment period; deferred payments.

(a) All assessments made pursuant to the assessment ordinance shall be due and payable in full without demand within thirty (30) days after the effective date of the assessment ordinance following its final passage.

(b) Each payment in full shall be subject to a discount of not exceeding five percent (5%) of the principal amount of the assessment as shall be set by the City Council, the discount in no event to exceed its proportional share of the bond interest plus the cost of annual collection.

(c) Each such assessment or any part thereof may, at the election of the owner, be paid in installments with interest as hereinafter provided whenever the City Council so authorizes the payment of assessments.

(d) Failure to pay the whole assessment within the period of thirty (30) days shall be conclusively considered and held an election on the part of all persons interested, whether under disability or otherwise, to pay in installments the amount of the assessment then unpaid.

(e) All persons so electing to pay in installments shall be conclusively considered and held as consenting to the project for which each such assessment was levied, and such election shall be conclusively considered and held as a waiver of any and all rights to question the power of jurisdiction of the City to acquire, improve or acquire and improve the project, the quality of the work, the regularity or sufficiency of the proceedings or the validity or correctness of the assessment.

(f) The owner of any tract assessed may at any time pay the whole unpaid principal and the interest accrued to the next interest payment date, together with any prepayment premium and any penalties pertaining thereto.

(g) Subject to the foregoing provisions, all installments, both of principal and interest, shall be payable at such times as may be determined in and by the assessment ordinance. (Prior code 12.04.090)

Sec. 4-4-455. Acceleration upon delinquency.

(a) Failure to pay any installment, whether principal or interest, when due shall cause the whole amount of the unpaid principal to become due and payable immediately at the option of the County Treasurer, City, bondholder or trustee therefor initiating foreclosure proceedings, the exercise of the

option to be indicated by the commencement of foreclosure proceedings for not only each delinquent installment but also all other unpaid installments of any assessment.

(b) At any time prior to the day of sale, the owner may pay the amount of delinquent installments, with accrued interest, all penalties and costs of collection accrued, including but not necessarily limited to any attorneys' fees, and shall thereupon be restored to the right thereafter to pay in installments in the same manner as if default had not been made. (Prior code 12.04.092)

Sec. 4-4-460. Limitations upon deferred payments.

(a) In case of such election to pay in installments, the assessment shall be payable in not less than two (2) nor more than fifteen (15) substantially equal annual installments or not less than four (4) nor more than thirty (30) substantially equal semiannual installments of principal.

(b) Interest shall in all cases on the unpaid principal accruing from the effective date of the assessment not exceed ten and one-half percent (10.5%) per annum.

(c) Nothing herein contained shall be construed as limiting the discretion of the City Council in determining whether assessments shall be payable in installments and the time the first installment of principal, interest or both, and any subsequent installments thereof shall become due.

(d) The City Council in the assessment ordinance shall state the number of installments in which assessments may be paid, the period of payment, the rates of interest upon the unpaid installments of principal to their respective due dates, any privileges of making prepayments, and any premium to be paid to the City for exercising any such privilege, the rate of interest upon unpaid principal and accrued interest after any delinquency at the rate of one percent (1%) per month, or any fraction thereof, and any penalties and collection costs payable after delinquency. (Prior code 12.04.094)

Sec. 4-4-465. Assessment liens.

(a) The payment of the amount so assessed, including each installment thereof, the interest thereon and any penalties and collection costs, shall be secured by an assessment lien upon the tract assessed from the effective date of the assessment ordinance.

(b) Each such lien upon each tract assessed shall be:

(1) Subordinate and junior to any lien thereon for any general (ad valorem) taxes, whether prior in time or not;

(2) Prior and superior to any assessment lien thereon subsequently levied by the City or by any public body;

(3) Subordinate and junior to any assessment lien thereon theretofore levied by the City or by any public body; and

(4) Prior and superior to all liens, claims, mortgages, other encumbrances and titles other than the liens of assessments and general taxes; and all purchasers, mortgagees, or encumbrancers of any such tract shall hold the same subject to such lien so created, whether prior in time or not.

(c) Each such assessment lien shall continue as to unpaid installments, principal, interest and any penalties and costs until such assessments, the principal thereof, interest thereon and any penalties and costs appurtenant thereto shall be fully paid, unless terminated by the foreclosure of any prior and superior lien on the tract assessed; however, unmatured installments shall not be deemed to be within the terms of any general covenant or warranty.

(d) No statute of limitations shall begin to run against any assessment or the assessment lien to secure its payment until after the last installment of principal thereof shall become due.

(e) The City may use any available moneys for the satisfaction of any lien prior in right to any special assessment lien created by the City.

(f) In the resale of any property to which the City has so acquired title, the City shall use its best efforts to sell the property for an amount at least equal to the moneys so used plus the amount necessary to satisfy the special assessment lien created by the City, principal, interest, penalties and collection costs.

(g) The moneys received from such a resale in payment for the property shall be used initially to satisfy such special assessment liens, and thereafter to restore to the fund from which any such prior liens were satisfied and the moneys used therefor.

(h) Pursuant to Section 11.5 of the Charter, the City is authorized to purchase and otherwise acquire property on which there are delinquent taxes or special assessments, or both. The City Council may, by ordinance, sell and dispose of any property acquired under this authority. (Prior code 12.04.096; Ord. 4 §1, 2005)

Sec. 4-4-470. Division of tract.

(a) Should any tract be divided after a special assessment thereon has been levied and divided into installments and before the collection of all the installments, the City Council may require the County Assessor to apportion the uncollected amounts upon the several parts of land so divided according to the proportions thereof based upon their assessed valuations for taxes.

(b) The report of such apportionment, when approved, shall be conclusive on all the parties, and all assessments thereafter made upon such tracts shall be according to such subdivision. (Prior code 12.04.098)

Sec. 4-4-475. Surpluses and deficiencies.

(a) Should any assessment prove insufficient to pay for the project or the work for which it is levied and the expense incident thereto, the amount of such deficiency shall be paid from the General Fund of the City, from its capital improvements fund or from such other account in which moneys are accounted for which may be made available for such purpose by the City Council.

(b) If a greater amount has been collected than was necessary, the excess shall be transferred as provided in Section 4-4-340 above. (Prior code 12.04.100)

Sec. 4-4-480. Notice of assessment or installment due.

(a) The City Treasurer shall give notice by mail and publication of the levy of any assessment, of the fact that it is payable, and of the last day for its payment, as provided in Subsection 4-4-450(a) above.

(b) The City Treasurer shall give notice by mail and by publication of any installment which is payable and of the last day for its payment, as provided in Section 4-4-460 above and in the assessment ordinance.

(c) Each such notice given by the City Treasurer shall state the following:

(1) The amount of the assessment or of the installment due, except in the case of any published notice;

(2) The amount of the discount, if any, appurtenant thereto, expressed in terms of a percentage or otherwise;

(3) How unpaid principal is payable in installments; and

(4) The place of payment and the time for it to close.

(d) The failure of the City Treasurer to give notice or to do any other act or thing required by this Section shall not affect the assessment or any installment thereof. (Prior code 12.04.102; Ord. 4 §1, 2005)

Sec. 4-4-485. Collection of assessments by County Treasurer.

Payments may be made to the City Treasurer at any time within thirty (30) days after the effective date following the final passage of the assessment ordinance, without penalty or the payment of interest; and the allowance of the discount, as heretofore provided, shall be made on all payments made during the period, but not thereafter. At the expiration of the thirty-day period, the City Treasurer shall return the local assessment roll to the City Clerk, showing all payments made thereon, with the date of each payment. The Engineer shall thereupon extend the assessment roll, showing in suitable columns the information required by Paragraph 4-4-410(a)(2) of this Article, the whole amount of the assessment unpaid, the amount of each installment of principal and interest, and the date when the same will become due, with suitable columns for use in case of payment of the whole amount unpaid or of any installment or penalties. The roll shall be certified by the City Clerk under the seal of the City, and delivered by him or her to the County Treasurer with his or her warrant for the collection of the same. It shall be the duty of the County Treasurer to provide a receipt for the same, and all such rolls shall be numbered for convenient reference. (Prior code 12.04.104; Ord. 4 §1, 2005)

Sec. 4-4-490. Sale of property for nonpayment.

The County Treasurer shall receive payment of all assessments appearing upon the extended assessment roll with interest and in case of default in the payment of any installment of principal or interest when due, shall advertise and sell any and all property concerning which such default is suffered, for the payment of the whole or any part of the unpaid assessment thereon in the manner, under the same

conditions and with the same effects as are provided by Section 31-25-521, C.R.S. (Prior code 12.04.106; Ord. 4 §1, 2005)

Sec. 4-4-495. Collections paid to City.

All collections made by the County Treasurer upon the assessment roll in any calendar month shall be accounted for and paid over to the City Treasurer on or before the tenth day of the next succeeding calendar month, with a separate statement for all such collections for each improvement. (Prior code 12.04.108)

Sec. 4-4-500. Optional filing of claim of lien.

(a) The City Council may (but is not required), in any assessment ordinance or in any ordinance amending the same, provide that the City Clerk, within sixty (60) days after the publication of the assessment ordinance after its final passage, shall make out, sign, attest with the seal of the City and file for record in the office of the County Clerk a claim of lien for the unpaid amount due and assessed against each tract.

(b) When a claim of lien is so filed and any assessment pertaining thereto is paid in full, the City Clerk shall release the lien against any specific tract either by entering and signing a receipt of payment upon the margin of the record thereof or by filing for record in the office of the County Clerk a separate release wherein payment of the assessment, principal, interest and any penalty is recited. (Prior code 12.04.110; Ord. 4 §1, 2005)

Sec. 4-4-505. Duties imposed for levy of special assessments.

Whenever the City Council has provided for any project hereunder or for any similar project heretofore authorized by any other law, has levied assessments therefor and has issued bonds for the financing of the same, there are hereby imposed upon the City the following additional duties:

(1) The City shall act as the agency for collection of such assessments (except to the extent that the County Treasurer is so acting) and, in so doing, shall act as trustee for the benefit of such holders of interim warrants or bonds.

(2) In case the City Council shall have created more than one (1) district, the funds of each district shall be kept in a separate fund to be used for the payment of interest and principal.

(3) The City shall prepare annually and shall make available for inspection in the City Treasurer's office to each holder of interim warrants or bonds a statement of the financial condition of the district relating to such interim warrants or bonds, which shall include a statement of all delinquencies existing at such time.

(4) When the City Council determines that the interests of the City and the inhabitants thereof require the foreclosure of one (1) or more delinquent assessments, the City, after having given written notice to the County Treasurer of its intention, shall institute proceedings to foreclose the assessment lien against the property wherein the delinquency exists in the manner provided by Article 1 of Title 32, C.R.S., and all laws thereunto enabling.

(5) The holder or trustee of any bond issued hereunder shall have the right to institute such foreclosure proceedings in the name of the City, if such a delinquency has continued for a period of one and one-half (1½) years and if the City has not previously instituted such foreclosure proceedings. The failure of any bondholder or trustee to proceed shall not be deemed a waiver of any other right or privilege and shall not relieve the County Treasurer, the City or any of the City's officers, agents or employees of any liability for failure to perform any duty. (Prior code 12.04.112; Ord. 4 §1, 2005)

Sec. 4-4-510. Placement of previously omitted property on assessment roll.

(a) Whenever, by mistake, inadvertence or for any cause, any tract otherwise subject to assessment within any district has been omitted from the assessment roll for any project, the City Council may, upon its own motion or upon the application of the owner of any tract within such district charged with the lien of an assessment for any project, assess the same in accordance with the special benefits accruing to such omitted tract by reason of such project and in proportion to the assessments levied upon other tracts in such district.

(b) In any such case, the City Council shall first pass a resolution setting forth that certain tracts described therein were omitted from such assessment roll; notifying all persons who may desire to object thereto to appear at a meeting of the City Council at a time specified in such resolution and present their objection thereto; and directing the Engineer to report to the City Council at or prior to the date fixed for such hearing the amount which should be borne by each such tract so omitted, which resolution shall be published and given by mail to the last known owner of each such tract.

(c) At the conclusion of such hearing or any adjournment thereof, the City Council shall consider the matter as though each such tract had been included upon the original roll, and may confirm the same or any portion thereof by ordinance.

(d) The assessment on such roll of each omitted tract shall be collected, the payment of which shall be secured by an assessment lien; and a claim of lien may be filed for record in the office of the County Clerk as other assessments, as provided in Section 4-4-500 above. (Prior code 12.04.114; Ord. 4 §1, 2005)

Sec. 4-4-515. Irregularities in contracts and assessments.

(a) Whenever the City Council has made any contract pertaining to any project provided herein or shall hereafter make any assessment against any tract within a district for any project authorized herein, and has in making such contract or assessment acted in good faith and without fraud or shall hereafter act in good faith and without fraud, said contract and assessment shall be valid and enforceable as such, and said assessment shall be a lien upon the tract upon which the same purports to be a lien.

(b) It shall be no objection to the validity of such contract, assessment or lien:

(1) That the contract pertaining to such project was not awarded in the manner or at the time required hereby or otherwise;

(2) That the same was made by an unauthorized officer or person if it has been confirmed by the authorities of the City; and

(3) That any assessment is based upon an improper basis of benefits to the tract within the district, unless it is made to appear that the City authorities acted fraudulently or oppressively in making such assessment.

(c) All assessments made by the City authorities in good faith are hereby declared to be valid and in full force and effect and to be collectible in the manner which is now or may hereafter be provided by law for the collection of assessments for the purposes specified in this Section. (Prior code 12.04.116; Ord. 4 §1, 2005)

Sec. 4-4-520. Payment of assessments by joint owner.

Whenever any assessment or installment is paid, any delinquency is redeemed or any judgment is paid by any joint owner of a tract assessed for any project, such joint owner may, after demand and refusal, by an action brought in the district court, recover from each of his or her co-owners the respective amounts of such payment which each such co-owner should bear, with interest thereon at ten percent (10%) per annum from the date of such payments and costs of the action; and the joint owner making such payment shall have a lien upon the undivided interest of his or her co-owners in and to such property from the date of such payment. (Prior code 12.04.118; Ord. 4 §1, 2005)

Sec. 4-4-525. Assessment paid in error.

Whenever, through error or inadvertence, any person shall pay any assessment or installment thereof upon the tract of another, such payor may, after demand and refusal, by an action in the district court recover from the owner of such tract the amount so paid and costs of the action. (Prior code 12.04.120)

Sec. 4-4-530. Description of property; notice to transferee.

(a) It shall be sufficient in any case to describe the tract as the same is platted or recorded or described in any official record, although the same belongs to several persons.

(b) Any purchaser, lien holder, assignee or transferee of any tract subject to assessment as herein provided, after the first publication of the notice of the provisional order to create such district, shall be held to notice thereof and of all proceedings with reference thereto the same as the owners of such tract at the time of such notice or proceedings. (Prior code 12.04.122)

Sec. 4-4-535. Assessment for street intersections.

(a) The cost of acquiring, improving or acquiring and improving street intersections may be segregated.

(b) Such cost, except the share assessable to street or other railroad companies, may be assessed upon all frontage of the street acquired, improved or acquired and improved (excluding an alley), and on intersecting streets within a distance of one-half ($\frac{1}{2}$) block in each direction from such intersections in proportion to the frontage of each lot or tract on the street acquired, improved or acquired and improved (excluding an alley), on an intersecting street, or on both within said distance.

(c) The cost of acquiring, improving or acquiring and improving an alley intersection may be assessed upon the real property in the same block extending to the nearest street intersection and half the

length of the block along its sides; provided, however, that where the sides of blocks are of unequal length, the City Council may determine the limit of assessment.

(d) In the alternative, the cost of acquiring, improving or acquiring and improving street intersections (including alley intersections) may be treated as one (1) of the costs of any project without separately segregating such intersection cost. In such case the total cost of any project shall be assessed as hereinabove provided upon the basis determined without any separate assessment for intersection costs. (Prior code 12.04.124)

Sec. 4-4-540. Assessment of public property.

(a) When the City, any public body or the federal government in the case of consent by Congress to assessment owns any tract or holds the title to any tract not used as a street or other public right-of-way which, if owned by a private person, would be liable to assessment for benefits to pay for any project herein mentioned, an assessment shall be made against such tract as though such tract were the property of a private person.

(b) The City, a public body or the federal government in the case of such consent shall pay the amount of each such assessment from funds available therefor.

(c) If an assessment against the City or a public body is not paid as provided by law, suit may be brought in a district court to enforce the collection of the assessment, and any judgment rendered against the City or a public body shall be enforced as other judgments.

(d) Delinquent assessments shall be enforced against the federal government as provided by the federal laws, if any, then existing.

(e) No such tract owned thereby shall be sold under any such judgment, as the result of any foreclosure of an assessment or otherwise. (Prior code 12.04.126; Ord. 4 §1, 2005)

Sec. 4-4-545. Railroad assessments.

The City Council shall have power to assess against the property of any railroad or street railroad occupying or abutting any street ordered to be improved the whole cost of the street project between or under the rails and tracts of the roadbed and within the balance of the right-of-way of the railroad or street railroad. In addition, the City Council shall have power by ordinance to levy an assessment upon the property of said railroad or street railroad, including its roadbed, ties, rails, fixtures, chattels, rights and franchises, which shall constitute an assessment lien which may be enforced either by foreclosure of the lien and sale of said property in the manner provided herein or by suit against the owner. (Nothing contained herein shall be construed as preventing the City from assessing any property of any railroad or street railroad which is not peculiarly located as herein provided but which is specially benefited by a project.) (Prior code 12.04.128; Ord. 4 §1, 2005)

Sec. 4-4-550. Sidewalk project.

In districts for the acquisition or improvement of sidewalks alone or in combination with other improvements, the work may include the necessary grading from curb line to lot line. If the sidewalk project is not combined with any other project, the owner of any lot or tract to be assessed shall have the

right to construct or reconstruct his or her own walks in conformity with the plans and specifications for the district within thirty (30) days from the publication of the ordinance authorizing the improvement. (Prior code 12.04.130)

Sec. 4-4-555. Assessment of sidewalk costs.

The whole cost of the acquisition or improvement of sidewalks, including intersections and necessary grading and removal of obstructions, may be assessed upon the lots or lands in front of which such improvements are made, as follows:

- (1) The grading, removal of obstructions, intersections and all other general expenses, including cost of collection and interest, pro rata per front foot;
- (2) New walks, pro rata per front foot where required; and
- (3) Improved walks upon each lot or piece of land where reconstructed or otherwise improved, according to the cost of improvement. (Prior code 12.04.132)

Division 6
Sewer Connections

Sec. 4-4-610. Sewer districts and subdistricts.

The City may establish and maintain separate or combined sewer systems, which systems shall be divided into district and subdistrict sewers for storm drainage, sanitary drainage or both, upon initiation by City Council. (Prior code 12.04.134)

Sec. 4-4-615. Sewer acquisition.

Sewers shall be established and constructed at such time and in such locations, to such extent, with such dimensions and materials and in accordance with such full details and specifications as may be prescribed by City Council. Whenever necessary, land and rights-of-way for any sewer ordered by the City Council may be purchased, condemned or otherwise acquired on behalf of the district and the cost charged to such district. (Prior code 12.04.136)

Sec. 4-4-620. Classification of sewer districts.

- (a) The City Council may order by ordinance:
 - (1) The acquisition of district sewers and appurtenances for sanitary drainage for districts to be known as sanitary sewer districts;
 - (2) The acquisition of district sewers and appurtenances for storm and sanitary drainage for districts to be known as combined sewer districts;
 - (3) The acquisition of relief sewers or intercepting sewer and appurtenances for storm drainage, sanitary drainage or both, for districts to be known as relief sewer districts or as intercepting sewer districts; and

(4) The acquisition of district sewers and appurtenances for sanitary drainage for districts to be known as special sanitary sewer districts.

(b) Such sewers shall be constructed so as to connect within or without the district with some other sufficient sewer or sewage disposal station or with some natural drainage. Such districts, except special sanitary sewer districts, may be composed of subdistricts to be specifically named or numbered in said ordinance.

(c) District sewers, except as hereinafter provided, shall include all sub-mains necessary to provide outlets for all subdistrict laterals within the district.

(d) Special district sewers shall include the necessary mains to provide outlets for all laterals within the special sewer district. (Prior code 12.04.138)

Sec. 4-4-625. Acquisition of subdistrict laterals.

The City Council may, at the time of ordering the acquisition of district sewers or at any time thereafter, order the acquisition of subdistrict laterals in any such subdistrict so as to connect the same with the sub-mains or with the district main sewer, the same to be approved by ordinance as in the case of district sewers. (Prior code 12.04.140)

Sec. 4-4-630. Assessment of district sewers.

(a) The cost of district sewers shall be assessed upon all the assessable tracts in the district, in proportion as the area of each of the several tracts in the district is to the area of all the tracts in the district, exclusive of public highways and parks; and the cost of subdistrict laterals shall be assessed in like manner upon all the assessable tracts in the subdistrict.

(b) The acquisition, however, of any sub-main may be omitted until such time as it may be required, in which case subdistricts left without sub-mains shall not be assessed for any part of the cost of sub-mains acquired along, with and as a part of the sewer district.

(c) Whenever sub-mains so omitted are required and are constructed, they may be ordered as provided for other sewers, and their cost shall be assessed to the subdistricts which are supplied with sub-mains. (Prior code 12.04.142)

Sec. 4-4-635. Temporary sewer connections.

Temporary connections may be made with any sewer from property lying without the district with the consent of the City Council and upon such terms as it may require. (Prior code 12.04.144)

Sec. 4-4-640. Private sewer connections.

Private sewers connected with district sewers may be acquired under such restrictions and subject to such regulations as may be prescribed by City Council; however, no expense shall be incurred by the City in acquiring them, and the City shall have power by ordinance to compel the owner of any premises in any sewer district or subdistrict to connect the same with the district or with the subdistrict at his or her own expense. (Prior code 12.04.146)

Sec. 4-4-645. Acquisition of district sewers.

(a) The City may extend and maintain any existing public sewer or district sewer main wherever acquired from its outlet to any point within or without the City.

(b) Such sewer extensions shall be established and acquired at such times, in such locations within or without the City, to such extent, with such dimensions and materials, and in accordance with such full details and specifications as may be prescribed by the City Council.

(c) Necessary lands and rights-of-way may, upon the order of the City Council, be purchased, condemned or otherwise acquired on behalf of the City, and the whole cost of such sewer rights-of-way may be paid by the City solely or partially by assessment or otherwise. (Prior code 12.04.148)

Sec. 4-4-650. Connections to sewers.

No tract in any sewer district shall be connected with the sewer district sewer unless, before the completion thereof, a pro rata share of the estimated cost shall be paid or, after completion, the assessment has been paid, except that in cases where the cost of sewers is to be assessed upon property in a district and the payment therefor had been fixed by the City Council to be made in installments, connections may be made at any time when deemed advisable by the Engineer. (Prior code 12.04.150; Ord. 4 §1, 2005)

Sec. 4-4-655. Connections when assessment deemed illegal.

If, in any sewer district, any assessment upon the lots therein for the acquisition of the sewer has in any court of competent jurisdiction been held illegal, the owner of any lot in such district shall only be permitted to connect with such sewer upon payment into the treasury, for the use of the holder of warrants or bonds issued for the acquisition of such sewer or, if such warrants and bonds have been taken up, into the general fund of the City, such amount as may be fixed by ordinance. Nothing contained in this Article concerning sewer districts shall be construed as applicable to storm sewers and to drains acquired as a part of a street project. (Prior code 12.04.152)

Division 7
Refunding and Reassessment

Sec. 4-4-710. Issuance of refunding bonds.

(a) Any bonds issued under this Article may be refunded pursuant to an ordinance to be adopted by the City Council in the manner herein provided for the issuance of other bonds. Refunding bonds so issued may be secured in such manner and may be made payable from such sources as was provided in the ordinance authorizing their issuance.

(b) The security for the payment of the refunding bonds shall not be greater than the security for the payment of the bonds refunded, nor shall there be pledged for the payment of the refunding bonds revenues which are not pledged for the payment of the bonds refunded, unless approved by a majority of those qualified electors voting on a proposal authorizing the City to issue such refunding bonds.

(c) Refunding bonds so issued may be sold at public or private sale or may be exchanged dollar-for-dollar for the bonds being refunded.

(d) If sold, the proceeds of sale may be escrowed for the payment of the bonds to be refunded in such manner as may be provided in the ordinance authorizing the refunding bonds.

(e) No bonds may be refunded hereunder unless they either mature or are callable for redemption under their terms within twelve (12) months from the date of issuance of the refunding bonds or unless the holders thereof voluntarily surrender them for exchange or payment. (Prior code 12.04.154; Ord. 4 §1, 2005)

Sec. 4-4-715. Reassessments.

Whenever any assessment for a project effected by the City hereunder or under any other law heretofore enacted is, in the opinion of the City Council, invalid by reason of any irregularity or informality in the proceedings, or if any court of competent jurisdiction determines such assessments to be illegal, the City Council shall, whether the project has been effected or whether any parts of the assessments have been paid, have power to cause a new assessment to be made for the same purpose for which the former assessment was made. (Prior code 12.04.156; Ord. 4 §1, 2005)

Sec. 4-4-720. Procedure for relevy.

(a) When an assessment has been or is hereafter so determined to be invalid or illegal, the City Council shall by ordinance order and make a new assessment or reassessment upon the tracts which have been or will be benefited by the project to which the invalid assessment pertains to the extent of their proportionate part of the expense thereof. In case the cost exceeds the actual value of such project, the new assessment or reassessment shall be for and shall be based upon the actual value of the same at the time of the project's completion.

(b) The Engineer shall make a new assessment roll in an equitable manner with reference to the benefits received, as near as may be in accordance with the law in force at the time such reassessment is made; and when the same has been confirmed and approved by the City Council as provided for the original assessments, the reassessment shall be enforced and collected in the same manner that other assessments for such project are enforced and collected under the provisions in Sections 4-4-420 through 4-4-500 of this Article; however, all proceedings relative to making the cost of any project chargeable upon property benefited thereby, required and provided by the laws of the City prior to the making of the original assessment roll, shall not be included or required within the purpose of Sections 4-4-715 through 4-4-770 above. (Prior code 12.04.158; Ord. 4 §1, 2005)

Sec. 4-4-725. Reassessment ordinance.

The City Council shall by ordinance order and make a new assessment or reassessment, as provided in Section 4-4-720 above, upon the tracts which have been or will be benefited by such project to the extent of their proportionate part of the cost of the project. (Prior code 12.04.160)

Sec. 4-4-730. Assessment roll; certification.

Upon the passage of an ordinance as hereinbefore provided, the Engineer shall make out an amended assessment roll according to the provisions of said ordinance and shall certify the same to the City Council, as provided in Section 4-4-430 above. (Prior code 12.04.162; Ord. 4 §1, 2005)

Sec. 4-4-735. Notice of assessment roll filing and hearing; publication; written protest.

Upon receiving said amended assessment roll, the City Clerk shall give notice of an assessment hearing, as provided in Section 4-4-430 above. (Prior code 12.04.164; Ord. 4 §1, 2005)

Sec. 4-4-740. Hearing.

At the time and place appointed for hearing, the City Council shall hold an assessment hearing and shall otherwise proceed as provided in Section 4-4-435 above. (Prior code 12.04.166)

Sec. 4-4-745. Levy of reassessment; cost and value.

(a) The fact that the contract has been let or that such project has been acquired, improved or acquired and improved and otherwise completed in whole or in part shall not prevent such assessment from being made, nor shall the omission, failure or neglect of any officer to comply with the provisions of the laws governing the City as to petition, notice, resolution to acquire, improve or both acquire and improve, estimate, survey, diagram, manner of letting contract or execution of work or any other matter whatsoever connected with the project and the first assessment thereof, operate to invalidate or in any way affect the making of the new assessment or reassessment, as provided for by Sections 4-4-715 through 4-4-770 above, charging the property benefited with the expense thereof, except as otherwise provided herein.

(b) Any such reassessment shall be levied by ordinance, shall become final and shall be subject to appeal, as provided in Sections 4-4-440 and 4-4-445 above.

(c) Such reassessment shall be for an amount which shall not exceed the actual cost and value of the project, together with any interest that has lawfully accrued thereon; and such amount shall be equitably apportioned upon the property benefited thereby according to the provisions of this Code.

(d) It is the true intent and meaning of Sections 4-4-715 through 4-4-770 above, to make the cost and expense of each local improvement project payable by the tracts benefited by such project by making a reassessment therefor, notwithstanding the fact that the proceedings of the City Council, Engineer or other body or any officers thereof may be found irregular or defective, whether jurisdictional or otherwise. (Prior code 12.04.168; Ord. 4 §1, 2005)

Sec. 4-4-750. Credits for prior assessment.

Whenever any sum or any part thereof levied upon a tract in the assessment set aside has been paid and not refunded, the payment so made shall be applied upon the reassessment of the tract for which the same was paid. (Prior code 12.04.170; Ord. 4 §1, 2005)

Sec. 4-4-755. Collection of assessments; new warrant or order.

(a) In all cases where the County Treasurer or other municipal and county authorities is unable to enforce the collection of any assessment by reason of irregularity or omission in any proceedings subsequent to the confirmation of the assessment, the City Council is authorized and empowered to cause a new warrant or order to issue to the County Treasurer or other proper officer for the collection of any assessment which, by reason of such irregularity or omission, remains unpaid and not collected.

(b) The County Treasurer or other proper officer shall proceed under such new warrant or order to enforce and to collect the assessments therein specified in the same manner, as near as may be, as is prescribed by the provisions of Sections 4-4-450 through 4-4-495 above, for the enforcement and collection of assessments, after the same has been confirmed and reassessed, as provided in Sections 4-4-715 through 4-4-770 above.

(c) As often as any failure shall occur by reason of such irregularities or omissions, a new warrant or order may issue, and new proceedings shall be had in like manner until such assessment has been fully collected as to each and every tract charged therewith. (Prior code 12.04.172; Ord. 4 §1, 2005)

Sec. 4-4-760. Appeal to court.

Any person who has filed objections to such new assessment or reassessment, as hereinbefore provided, shall have the right to appeal to the district court as provided and subject to the limitations in Section 4-4-445 above. (Prior code 12.04.174; Ord. 4 §1, 2005)

Sec. 4-4-765. Procedure exclusive.

The rights and remedies hereinbefore given the taxpayer and the property owner for objecting to, contesting or appealing from the amount, correctness, regularity or validity of such new assessment or reassessment are hereby declared to be exclusive of all other rights, remedies, suits or actions, either at law or in equity, which might otherwise be available and to afford him or her a sufficient day in court for the redressing of all rights and grievances that he or she may have in connection with such new assessment or reassessment. (Prior code 12.04.176)

Sec. 4-4-770. Application of funds from reassessment to outstanding indebtedness.

Whenever the City has issued or shall issue interim warrants or bonds to obtain funds to pay for any project which has been actually acquired, improved or both acquired and improved, and the assessment levied therefor has failed or shall fail to be valid or sufficient in whole or in part and a new assessment or reassessment has been levied and confirmed, as provided in Sections 4-4-715 through 4-4-770 above, the City is hereby authorized and directed to apply all moneys derived from such assessments, new assessments and reassessments to the payment of the warrants and bonds according to their tenor; and the warrants and bonds issued for any project actually acquired, improved or both acquired and improved shall be valid and binding obligations of the City, payable out of such assessments, new assessments and reassessments, which shall be levied and relieved until payment in full has been made, as provided in Section 4-4-315. (Prior code 12.04.178; Ord. 4 §1, 2005)

Division 8
Miscellaneous Provisions

Sec. 4-4-810. Connections before paving.

Whenever any district or local improvement providing for paving is ordered under the provisions hereof, the City Manager, if he or she deems it advisable, may order the owners of the abutting tracts or other property to connect their premises with the water and gas mains or with any other utility in the street in front of their premises. Upon default of the owners for twenty (20) days after such order to make such connections, the City may contract for and make the connections or do the work by day labor in the manner and in accordance with the specifications prescribed for such work. The whole cost of each connection shall be assessed against the premises with which the connections are made in accordance with the provisions of this Article for the acquisition of improvements, the creation of districts and the defraying of the costs thereof for such districts. (Prior code 12.04.180; Ord. 4 §1, 2005)

Sec. 4-4-815. Early hearings.

(a) All cases in which there may arise a question of validity of any power herein granted or of any other provision hereof shall be advanced as a matter of immediate public interest and concern and shall be heard at the earliest practicable moment.

(b) The courts shall be open at all times for the purposes hereof. (Prior code 12.04.182)

Sec. 4-4-820. Decision of City Council final.

The action and decision of the City Council proceeding hereunder as to all matters passed upon by the City Council in relation to any action or matter provided herein shall be final and conclusive in the absence of fraud. (Prior code 12.04.184; Ord. 4 §1, 2005)

Sec. 4-4-825. Correction of faulty notices.

In any case where a notice is provided for herein, if the City Council or the court finds for any reason that due notice was not given, the City Council or the court shall not thereby lose jurisdiction and the proceeding in question shall not be void or abated; however, the City Council or court shall order due notice to be given and shall continue the hearing until such time as notice has been properly given and thereupon shall proceed as though notice has been properly given in the first instance. (Prior code 12.04.186; Ord. 4 §1, 2005)

Sec. 4-4-830. Correction of errors in proceedings.

It shall be the duty of the City Council, and the City Council shall have the power by any subsequent proceedings, to correct any mistakes, errors or irregularities in any of the proceedings mentioned herein. (Prior code 12.04.188; Ord. 4 §1, 2005)

Sec. 4-4-835. Retention of jurisdiction.

(a) The City Council may continue the hearing upon any petition, resolution or remonstrance provided for herein and shall retain jurisdiction until the same is fully disposed of.

(b) The City Council shall not lose jurisdiction over the acquiring, improving or acquiring and improving of any project, the levy of any assessment or the issuance of any bond or any other matter provided for herein by reason of any adjournment or any delays, errors, mistakes or irregularities on the part of any Council member, any City officer or any person whatsoever. (Prior code 12.04.190; Ord. 4 §1, 2005)

Sec. 4-4-840. Delegated powers.

The officers of the City are authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Article. (Prior code 12.04.192; Ord. 4 §1, 2005)

Sec. 4-4-845. Savings clause.

(a) The adoption of this Article shall not be construed to repeal or in any way affect or modify:

- (1) Any substantive or vested right;
- (2) Any law authorizing the issuance of any outstanding special assessment local improvement bonds of the City;
- (3) Any law pursuant to which special assessments levied by the City principal, interest and any penalties have not been paid in full; and
- (4) The running of any statute of limitation in force at the time the ordinance codified herein becomes effective.

(b) All incomplete proceedings had and taken under any law hereby repealed, preliminary to and in the acquisition, improvement or acquisition and improvement, of any project, the creation of any district, the levy and collection of any assessment, or the issuance of any interim warrant, bond, temporary bond, refunding bond or other security appertaining to such project, which proceedings are in substantial compliance herewith, may, at the option of the City Council, be completed hereunder the same as if such incomplete proceedings had been had and taken pursuant to the provisions hereof. (Prior code 12.04.194; Ord. 4 §1, 2005)

Sec. 4-4-850. Sufficiency of law.

(a) This Article, without reference to other state statutes, except as herein otherwise expressly provided, shall constitute full authority for the exercise of powers granted herein, including but not limited to:

- (1) The acquisition, improvement or acquisition and improvement of any project;
- (2) The levy and collection of any assessment;
- (3) The borrowing of any money or incurrence of any other obligation; and
- (4) The authorization and issuance of any security hereunder.

(b) No other act or law with regard to the authorization or issuance of securities or the exercise of any other power granted herein that provides for an election, requires an approval or in any way impedes or restricts the carrying out of the acts herein authorized to be done shall be construed as applying to any proceedings taken hereunder or acts done pursuant hereto.

(c) No board, agency, bureau, commission or official other than the County Treasurer or the City Council shall have authority to fix, prescribe, modify, supervise or regulate the levy or collection of special assessments or taxes designated herein, except as expressly provided or necessarily implied herein, nor to supervise or regulate the acquisition, improvement or acquisition and improvement of any project herein authorized.

(d) The provisions of no other law, either general, special or local, except as provided herein, shall apply to the doing of the things herein authorized to be done; and no public body other than the City Council shall have authority or jurisdiction over the doing of any of the acts authorized herein to be done.

(e) The powers conferred hereby shall be in addition and supplemental to and not in substitution for, and the limitations imposed hereby shall not affect the powers conferred by, any other law. (Prior code 12.04.196; Ord. 4 §1, 2005)

ARTICLE V

Telephone Utilities Tax

Sec. 4-5-10. Levy of tax.

There is levied on and against each telephone utility company operating within the City a tax on the occupation and business of maintaining a telephone exchange and lines connected therewith in the City, and of supplying local exchange telephone service to the inhabitants of the City. The amount of the tax levied hereby shall be:

(1) For the portion of 1979 remaining after the date upon which the tax begins to accrue as provided in Section 4-5-20 below, two dollars and twenty-five cents (\$2.25) per telephone account for which the local exchange telephone service is provided within the corporate limits of the City on such date; and

(2) For each subsequent calendar year, three dollars (\$3.00) per telephone account for which the local exchange telephone service is provided within the corporate limits of the City, on the anniversary of the date on which the tax begins to accrue as provided in Section 4-5-20 below. (Prior code 3.18.010)

Sec. 4-5-20. Schedule for payment of tax.

The tax levied by this Article shall begin to accrue on April 1, 1979, and shall be due and payable in three (3) prorated installments for the remaining portion of 1979, payable on the last business day of June, September and December, 1979; and in four (4) equal quarterly installments for years subsequent

to 1979, to be paid on the last business days of the months of March, June, September and December. (Prior code 3.18.020)

Sec. 4-5-30. Filing statement.

Within thirty (30) days after the date on which the tax begins to accrue as provided in Section 4-5-20 above, each telephone utility company subject to this Article shall file with the City Clerk, in such forms as the City Clerk may require, a statement showing the total telephone accounts for which local exchange telephone service was provided within the corporate limits of the City on such date. Such statement shall be filed within thirty (30) days after each anniversary of the date on which the tax begins to accrue, showing such accounts on the anniversary date. (Prior code 3.18.030)

Sec. 4-5-40. Failure to pay.

If any telephone utility company subject to the provisions of this Article shall fail to pay the taxes as herein provided, the full amount thereof shall be due and collected from such company; and the same together with an addition of ten percent (10%) of the amount of taxes due shall be and is declared to be a debt due and owing from such company to the City. The City Attorney, upon direction of the City Council, shall commence and prosecute to final judgment and determination in any court of competent jurisdiction an action at law to collect such debt. (Prior code 3.18.040)

Sec. 4-5-50. Penalty.

If any officer, agent or manager of a telephone utility company which is subject to the provisions of this Article shall fail, neglect or refuse to make or file the annual statement of accounts provided in Section 4-5-30 above, such officer, agent, manager or person shall, on conviction thereof, be punished in accordance with the provisions of Section 1-4-20 of this Code. (Prior code 3.18.050; Ord. 4 §1, 2005)

Sec. 4-5-60. Inspection of records.

The City, its officers, agents or representatives shall have the right at all reasonable hours and times to examine the books and records of the telephone utility companies which are subject to the provisions of this Article and to make copies of the entries or contents thereof. (Prior code 3.18.060)

Sec. 4-5-70. Local purpose.

The tax levied herein is upon occupations and businesses in the performance of local functions and is not a tax upon those functions relating to interstate commerce. It is expressly understood that none of the terms of this Article shall be construed to mean that any telephone utility company is issued a franchise by the City. (Prior code 3.18.070; Ord. 4 §1, 2005)

Sec. 4-5-80. Tax in lieu of other business and occupation taxes.

The tax levied herein shall be in lieu of all other occupation taxes or taxes on the privilege of doing business in the City on any telephone utility company subject to the provisions of this Article and, in addition, shall be in lieu of any free service furnished the City by any such telephone company. (Prior code 3.18.080; Ord. 4 §1, 2005)

ARTICLE VI

Lodging Tax

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

Commencing January 1, 2008, there is hereby levied a tax on the leasing or renting of rooms or other accommodations within the City constituting lodging services as defined at Section 4-2-30 of this Code, for less than thirty (30) consecutive days at the rate of two and one-half percent (2.5%) of the total price paid or charged for such lodging. The person to whom the accommodations are rented shall pay the tax, and the lodging services vendor from whom the accommodations are rented shall be required to collect the tax. All sums of money paid to any lodging services vendor for lodging taxes shall be and remain public money and the property of the City held in trust for the sole use and benefit of the City. (Ord. 33 §2, 2007)

Sec. 4-6-20. Tax revenues pledged for certain purposes.

The proceeds of the lodging tax described in Section 4-6-10, together with investment earnings thereon, shall be used primarily for the development and marketing of visitor improvements and attractions, special events and beautification projects in the City, historic preservation and the general promotion of the City and its environs. (Ord. 33 §2, 2007)

Sec. 4-6-30. Collection, administration and enforcement.

The tax levied by this Article shall begin to accrue on January 1, 2008. The collection, administration and enforcement of this lodging tax shall be performed by the Finance Director, who is hereby authorized to prescribe forms and administrative procedures for the ascertainment, assessment and collection of the lodging tax not inconsistent with this Article, and for the enforcement of this Article. (Ord. 33 §2, 2007)

Sec. 4-6-40. Violation; penalty.

Failure to comply with the terms of this Article by payment of taxes, remitting the lodging tax to the City, and otherwise complying with the terms of this Article shall constitute an offense in violation thereof subject to the violation provisions for retail sales and use tax at Section 4-2-470 of this Chapter. Such remedies shall be cumulative with all other remedies provided herein for the enforcement of this Article. The City shall have the right to collect from any person who fails to comply with the terms of this Article all legal, court and other costs and expenses necessary to or incidental to the collection of said tax and/or lien action as provided for in Section 4-6-50, including reasonable attorneys' fees, filing fees and other costs and recording fees. (Ord. 33 §2, 2007)

Sec. 4-6-50. Lien on property.

If any person fails to pay the lodging tax when due, the Finance Director may issue a notice of lien on the real and personal property of the taxpayer following the provisions of Sections 4-2-400 through 4-2-460 of this Code. (Ord. 33 §2, 2007)