

## CHAPTER 4

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## **ARTICLE I**

### **Funds Generally**

#### **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 Treasurer pursuant to Section 7.7 of the Home Rule Charter. The 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 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 Article, by other ordinances or laws or by this Code, the City Council may transfer out of any fund any amount at any time to be used as the City Council may direct for any purpose permitted by law. (Prior code 4-1)

#### **Sec. 4-1-20. Revenue changes.**

Pursuant to Article X, Section 20 of the Colorado Constitution, the qualified electors of the City authorize the City to collect, retain and expend the full proceeds of the City's sales and use tax, device tax, state gaming tax and all available nonfederal grants, notwithstanding any state restriction on fiscal year spending, including without limitation the restrictions of Article X, Section 20 of the Colorado Constitution on and after January 1, 1993. Nothing in this Section shall be interpreted to authorize any increase in the rate of taxation of the sales and use tax, the device tax or the state gaming tax, except bond contracts, without a vote of the people if and when required pursuant to Article X, Section 20 of the Colorado Constitution. (Prior code 4-2)

#### **Sec. 4-1-30. Severability.**

It is the intent of the qualified electors of the City that Section 4-1-20 above, and any part or provision thereof, shall be considered severable; any invalidity of any part, section, provision, clause, sentence or fragment of said Section will not affect the validity of any other portion of said Section; and the qualified electors would have adopted the provisions of said Section, or any part or provision thereof, regardless of the validity of any part, section, provision, clause, sentence or fragment thereof. (Prior code 4-3)

#### **Sec. 4-1-40. Establishing interest rate on obligations owed to City.**

(a) The City shall be entitled to interest at the rate of one and one-half percent (1.5%) per month on all past due obligations which remain past due for more than sixty (60) days. Such interest may be applied to all past due obligations, including but not limited to all fees, taxes, contractual obligations, penalties and other obligations or right to receive payment or reimbursement.

(b) In the event that a law of the State or the United States provides for a higher rate of interest, the City shall be entitled to such higher rate. (Prior code 4-4; Ord. 12-18 §1, 2012)

## ARTICLE II

### General and Special Funds

#### **Sec. 4-2-10. General Fund created.**

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

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

(2) All fixed assets of the City (to be separately designated in an account known as the General Fund Fixed Assets) not specifically belonging to any existing special fund of the City. (Prior code 4-21)

#### **Sec. 4-2-20. Capital Improvement Fund created.**

There is created a Capital Improvement Fund in the City. The City Treasurer shall account separately for all receipts and disbursements to and from the fund and shall not transfer any part of such fund to other funds. (Prior code 4-22)

#### **Sec. 4-2-30. Conservation Trust Fund created.**

There is hereby created a special fund, to be known as the Conservation Trust Fund, and the funds therein shall be used only for the purposes allowed by law. (Prior code 4-23)

#### **Sec. 4-2-40. Impact Fee Fund created.**

There is hereby created an Impact Fee Fund in the City. All impact fees collected in accordance with Article XI of Chapter 4 of this Code shall be paid into the Impact Fee Fund. The City Treasurer shall account separately for all receipts and disbursements to and from the fund and shall not transfer any part of such fund to other funds of the City. (Prior code 4-25)

## ARTICLE III

### Sales and Use Tax

#### **Sec. 4-3-10. Definitions.**

For the purposes of this Article, the words herein contained shall have the meanings set forth herein and in Sections 39-26-102 and 39-26-201, C.R.S., as may hereafter be amended. The definitions in such statutes are incorporated herein by this specific reference.

*Accommodation unit* means any room or other accommodation in any hotel, apartment hotel, motel, lodging house, motor hotel, guest ranch, trailer coach, mobile home, auto-camp, RV park or any such similar place provided to any person who, for consideration, uses, possesses or has the

right to use or possess such room or other accommodation for a period of less than ninety (90) consecutive days.

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

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

*Finance Director* or *Director* means the Finance Director and City Treasurer of the City or such other person designated by the City Manager. *Finance Director* shall also include such person's designee.

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

*Lodge* means any premises consisting of multiple rental rooms or units all held in common ownership, which shall include hotels, motels, boarding houses, recreational vehicle (RV) parks and all apartment buildings.

*Lodging services* means the furnishing of rooms or accommodations by any person, partnership, association, corporation, estate, representative capacity or any other combination of individuals by whatever name known, to a person for consideration uses, possesses or has the right or use or possess any room in a hotel, bed and breakfast, residence apartment hotel, lodging house, motor hotel, guesthouse, guest ranch, trailer coach, auto camp, RV 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.

*Long-term rental* means the lease of premises to a person for a term of thirty (30) consecutive days or longer.

*Special event business* means any business having a fixed or transitory site or premises within the City which is operating or open for business for ten (10) days or less during any calendar year.

*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 optic cable, microwave, radio wave or any combinations of such media. *Telecommunications service* includes but is not limited to basic local exchange telephone service, toll telephone service and teletypewriter service, including but not limited to residential and business service, directory assistance, cellular mobile telephone or telecommunication service, specialized mobile radio and two-way pagers and paging service, including any form of two-way communication. *Telecommunication service* does not include separately stated nontransmission services which constitute computer processing applications used to act on the information to be transmitted.

*Use tax* means the tax paid or required to be paid by a customer for using, storing, distributing or otherwise consuming tangible personal property or taxable services inside the City. (Prior code 4-41)

**Sec. 4-3-20. License required.**

(a) It is unlawful for any person to engage in the business of making retail sales, as the same is defined in this Article, without first having obtained a sales tax license, which shall be granted and issued by the Finance Department and shall be in effect until the thirty-first day of December of the year in which it is issued, unless sooner revoked.

(b) Persons for whom a license is required shall submit an application that states the name of the business, both the physical and mailing address of the business's primary owner, the character of the business and any other information deemed necessary by the Finance Department. Applications for a license may be obtained from the Finance Department and must be completed and submitted to the Finance Department with the application fee, as set by City Council resolution, at least five (5) days prior to the commencement of retail sales.

(c) In the event that information given on the application changes, it shall be the sole responsibility of the licensee to provide the City with current contact information and inform the Finance Department of filing status changes.

(d) In the case that business is transacted at one (1) or more locations under the same name, a separate license shall be required for each place of business.

(e) An existing license issued under this Article may be transferred to a new physical address provided that the business name and owner remain the same. In the event that the business changes owners, the existing license shall be void and the new owner must submit an application for a new license.

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

(g) No license shall be required for any person making a one-time sale within the City. (Prior code 4-42)

**Sec. 4-3-30. Renewal of license.**

(a) It shall be the sole responsibility of each licensee to submit a renewal application with a renewal fee as set by City Council resolution on or before January 15 of each year, granted that his or her business is in operation and is liable to collect, report and submit taxes to the City.

(b) In the event that a business fails to renew its license prior to January 31 of each year, a fine equal to fifty percent (50%) of the license fee will be charged upon the business's account and must be paid prior to the issuance of any license or retail sale. A notice stating the assessment of the fine and nonrenewal of license will be mailed to the business by February 15 each year. (Prior code 4-43; Ord. 12-18 §1, 2012)

**Sec. 4-3-40. Revocation or suspension of license.**

The City shall have the power at any time after a hearing before the Finance Director, upon violation of any holder of a license as provided for in this Article or any of the regulations lawfully prescribed under this Article, or for violation of any provisions of the Code, Home Rule Charter or state statutes, to suspend or revoke any such license. Any device or method employed by the holder of a license to evade the payment of tax provided for by this Article shall be sufficient cause for suspension or revocation. If revocation or suspension occurs due to nonpayment of taxes, then all avenues of collection prescribed in this Code shall apply. Furthermore, revocation or suspension of license shall make it unlawful for any person to conduct retail sales within the City. (Prior code 4-44)

**Sec. 4-3-50. Review of revocation or suspension of license.**

Any finding and order of the City revoking or suspending the license of any person shall be subject to review by the District Court for the County upon application of the aggrieved party. The procedure for review shall be, as nearly as possible, the same as provided by Rule 106(a) (4) of the Colorado Rules of Civil Procedure or Section 24-4-106, C.R.S. (Prior code 4-45)

**Sec. 4-3-60. Sales tax levy.**

(a) There is levied and there shall be collected and paid a four-percent tax upon on all sales and services as specified in Sections 4-3-70 and 4-3-80 below.

(b) The retailer shall add the tax imposed thereto to the sales charge of the item sold, showing such tax as a separate and distinct item, and when added, such tax shall constitute a part of such price or charge, shall be a debt from the purchaser to the retailer until paid and shall be recoverable at law in the same manner as other debts.

(c) It is unlawful for any vendor to absorb or advertise the intent to absorb the tax imposed by the provisions of this Article or to directly or indirectly reflect in any manner that the total charge including the tax is not greater than the total charge would be if the tax was not imposed.

(1) Nothing herein contained shall be deemed to prohibit any retailer selling malt, vinous or spirituous liquors by the drink from including in the sales price any tax levied under this Article.

(2) No retailer selling malt, vinous or spirituous liquors by the drink shall advertise or hold out to the public in any manner, directly or indirectly, that the tax levied by this Section is not considered as an element in the sale price to the consumer.

(d) No person other than the City may enrich himself or herself or gain any benefit from the collection or payment of such tax. (Prior code 4-46; Ord. 12-18 §1, 2012)

**Sec. 4-3-70. Property and services taxed.**

There is levied and there shall be collected and paid a tax in the amount stated in Section 4-3-60 above as follows:

(1) All sales of tangible personal property at retail within the City or transactions made with vendors and/or persons within the City. All retail sales are consummated at the place of business of the retailer.

(2) All charges for service within the City for telephone and telegraph service and televised audio and video messages carried by wire or cable, whether furnished by public or private corporations or enterprises.

(3) All charges within the City for gas and electric service, whether furnished by municipal, public or private corporations or enterprises, for gas and electricity furnished and sold for domestic and commercial consumption not constituting a wholesale sale, upon steam when consumed or used by the purchaser and not resold in original form, whether furnished or sold by municipal, public or private corporations or enterprises.

(4) All amounts paid for all meals, foods, beverages and liquors, including complimentary meals, food, beverages and liquor, furnished in any restaurant, eating house, hotel, drugstore, club and resort or at any such place at which meals, food or drinks are sold to the public.

(5) All charges for pay cable or subscription television, including charges for services, installation, connection or other similar charge.

(6) Automotive vehicles sold, leased or rented in the City.

(7) Pre-written and/or pre-packaged computer programs or software. (Prior code 4-47; Ord. 12-18 §1, 2012)

**Sec. 4-3-80. Lodging tax.**

(a) In addition to the property and services listed above and any applicable sales tax imposed, there is hereby imposed a three-percent tax upon the entire amount charged for the furnishing of rooms or accommodation units.

(b) Issuance of a sales tax license to any vendor shall also be considered a license to collect, report and remit lodging tax.

(c) All provisions set out in this Article shall apply to the collection, reporting, remittance and delinquency of lodging tax. (Prior code 4-48; Ord. 12-18 §1, 2012)

**Sec. 4-3-90. Use tax.**

(a) In addition to the property and services listed in Section 4-3-70 above, there is hereby imposed a use tax of four percent (4%) on items described in this Section.

(b) All provisions set out in this Article shall apply to the collection, reporting, remittance and delinquency of use tax.

(c) It is the legislative intent of the City Council that, for the purpose of this Section, every person who uses, distributes or consumes on or after the effective date of the ordinance codified in this Article within the City any article of tangible personal property purchased at retail on and after the effective date of the ordinance codified herein, not taxed under Section 4-3-70 above and not distributed in the normal function of wholesaling, is exercising a taxable privilege. Every resident of the City or any person doing business within the City who purchases or leases tangible personal property for use, distribution or consumption within the City from sources outside the City otherwise taxable under Section 4-3-70 if purchased within the City, and who has not paid the tax imposed by this Article, shall make a return and pay the tax to the City.

(d) The use or consumption of tangible personal property includes, for the purpose of this Article, materials, commodities and items of tangible personal property affixed to or made a part of facilities and structures on real property owned or leased, situated within the City. (Prior code 4-49)

**Sec. 4-3-100. Effect of retail sales taxes imposed by other municipalities.**

For any person who purchases or leases tangible personal property taxable under Section 4-3-90 above for use, distribution or consumption in the City, and who has already paid a legally enacted sales tax with respect to the purchase of such property to another municipality incorporated according to the laws of the State in an amount less than the tax imposed by this Article, the provisions of this Article shall apply only as to the difference between the rate imposed by the Article and the retail sales tax imposed by the other municipality. If such retail sales tax imposed and paid to such other community is equal to or larger than the tax imposed by this Article, no tax shall be imposed under this Article for the privilege of using, distributing or consuming such tangible personal property in the City. (Prior code 4-50)

**Sec. 4-3-110. Use tax; nonapplicability to use or consumption occurring more than three years after most recent sale.**

For transactions consummated on or after January 1, 1986, the City's use tax shall not be imposed with respect to the use or consumption of tangible personal property which occurs more than three (3) years after the most recent sale of the property if, within the three (3) years following such sale, the property has been significantly used within the State for the principal purpose for which it was purchased. (Prior code 4-51)

**Sec. 4-3-120. Motor vehicles.**

A *motor vehicle* is defined as any vehicle, including any device in, upon or with which any person or property is or may be transported or drawn upon a public highway, road or street; or any device used or designed for aviation or for flight in air and upon which a specific ownership tax is imposed by the State, which is purchased by a resident of the City or other person for use within the City, shall not be registered in the County, nor shall title to a motor vehicle as defined in this Section be transferred within the County by the County Clerk, if the tax imposed by the provisions of this Article has not been paid, unless exempt under this Article. (Prior code 4-52)

**Sec. 4-3-130. Building materials.**

The sales and use tax imposed by this Article upon building materials, commodities and items of tangible personal property affixed to or to be made a part of facilities on real property, will be administered according to the following procedure:

(1) A use tax shall be collected equal to four percent (4%) of forty percent (40%) of the permit value of building permits issued by the Building Department of the City for the construction, reconstruction, remodeling and alteration of any building within the City. The use tax shall apply to permit values of electrical, plumbing, heating or other permits issued in connection with such construction, reconstruction, remodeling and alterations.

(2) Persons shall pay the amount of the use tax upon the issuance of the building permit. A use tax receipt will be issued upon receipt of the payment for use tax.

(3) When persons purchase materials and other tangible personal property from vendors within or without the City, for use within the City, and the person has paid the required use tax, these purchases will not otherwise be subject to the sales and use tax provisions of this Article. Vendors can identify such sales as exempt so long as they are identifiable with either a building permit or use tax receipt number.

(4) If it is determined, at the time of the completion of the building, dwelling or other structure or improvement, that the use tax paid as required in this Article is in excess of the actual tax due therefor, the person paying said tax may make application to the City for refund of any amount paid in excess of the actual taxes due. It shall be the responsibility of the person making such application to furnish all necessary bills and invoices evidencing overpayment of the tax, and if the Finance Department is satisfied that there has been such overpayment, a refund shall be made.

(5) Applications for refunds of use tax must be made on or before the thirtieth of the month following the month in which the work is completed and/or a certificate of occupancy is issued.

(6) Persons shall file a use tax return and pay the use tax due the City for the cost of any materials used in performance of work in the City where such materials are purchases from sources outside the City and the tax is not paid at the source as a sales tax and a building or special permit is not required.

(7) When building materials, commodities and items of tangible personal property are affixed to or are to be made a part of the facilities on real property that belongs to the City and used by the City for a municipal purpose then such materials, commodities and items shall be exempt from the provisions of this Article. When such materials, commodities and items are affixed to or are to be made a part of the facilities on real property leased by the City for a municipal purpose, and which materials, commodities and items the City is obligated by lease or contract to pay for, then, such materials, commodities and items shall be exempt from the provisions of this Article. (Prior code 4-53)

**Sec. 4-3-140. Exempt sales.**

The taxes levied in Sections 4-3-60, 4-3-80 and 4-3-90 of this Article shall not apply to the items listed below. The list of exemptions shall not be increased by implication or similarity. Furthermore, the burden of proving that any retailer or vendor is exempt from collecting the tax on any goods and paying the same to the City or from making returns shall be on the retailer or vendor under such reasonable requirements or proof as the Finance Department may prescribe.

(1) All sales to the United States government, to the State, its departments and institutions, the political subdivisions thereof in the governmental capacities only.

(2) All sales to religious, charitable and eleemosynary functions and activities.

(3) All sales which the City is prohibited from taxing under the Constitution or laws of the United States or the State; provided, however, that the exemptions provided herein shall stand on their own and separate accord and shall not be affected by the provisions of the State's sales tax exemption provisions.

(4) All sales of cigarettes.

(5) All sales of prescription drugs and prosthetic devices.

(6) All sales of commodities which are taxed under the provisions of the Motor Fuel Tax of 1933, as amended.

(7) Newspapers as legally defined in Section 24-70-102, C.R.S.

(8) All sales of tangible personal property to a public utility doing business both within and outside the City for use in its business outside the City, even though delivery thereof is made within the City.

(9) All sales of farm machinery, farm machinery parts, livestock, poultry, livestock and poultry feeds and drugs, seeds and fertilizers to purchasers for use outside the City even though delivery is made within the City. Trucks and lawn and garden equipment are not to be considered as farm machinery.

(10) All permits, licenses, service charges and fines and assessments, for benefit or penalty, charged by and in accordance with this Code.

(11) All sales of personal property; provided that such sales are infrequently conducted, that the sale occurs at the residence of the owner and that the property to be sold was originally purchased for use by members of the household where such sale is being conducted.

(12) All sales by churches, clubs, lodges, parent-teacher associations, student organizations, youth organizations and organizations chartered by the State as nonprofit corporations; provided that such sales are infrequently conducted, that no regular place of sale is maintained and that all proceeds from such sales are used for the activities of the organization conducting the sale.

(13) Modified or customized computer programs or software, but not including pre-written computer programs or software.

(14) All sales of food purchased with food stamps. (Prior code 4-54; Ord. 12-18 §1, 2012)

**Sec. 4-3-150. Reports by retailer or vendor; payment of tax.**

(a) Reports. Every retailer, vendor and wholesaler shall be liable as a taxpayer and responsible for reporting and paying to the Finance Department sales tax at the rate of four percent (4%) as provided in Section 4-3-60 of this Article on the gross total of taxable sales or charges for service during the standard reporting period, as well as the three-percent lodging tax on charges for rooms and accommodations as specified in Section 4-3-80.

(b) Standard reporting form. The City shall use and shall accept the standard municipal sales and use tax reporting form and any subsequent revisions thereto adopted by the Executive Director of the Department of Revenue.

(c) Vendor's fee. When reported and paid within the standard reporting period, vendors, retailers and wholesalers may deduct three and one-third percent (3 $\frac{1}{3}$ %) of such total to cover the taxpayer's cost of collection and reporting.

(d) Standard reporting period. A reporting period shall be the same period as permitted by the State and used by the taxpayer for reporting to the State and paying the state sales tax. Such report shall be made and tax paid under the provisions of this Section prior to the twentieth of each month. Postmarks shall not be accepted as reporting and payment by the twentieth.

(e) Any due date which falls on a Saturday, Sunday or any legal holiday as recognized by either the federal government, the State or City shall be extended to the first business day following such due date.

(f) A separate report shall be made for each place of business if more than one (1) location is used in the business of sale at retail within the City.

(g) Reporting period extended. The Finance Department may extend the time for making reports if the accounting methods regularly used by the retailer or vendor are such that reports of sales made on a calendar month basis will impose unnecessary hardship. Upon written request, the Finance Department may accept reports at such intervals as will better suit the taxpayer's needs and not jeopardize the collection of the tax. Reporting period extensions will be reviewed on a case-by-case basis and decisions will be based solely on the Finance Department's judgment.

(h) Taxpayers whose monthly tax collected is less than sixty dollars (\$60.00) are permitted and encouraged to make returns and pay taxes on a quarterly basis, but not at intervals any greater than every three (3) months.

(i) Taxpayers who have filed in previous periods or years but who do not have any reportable sales for a specified period are not required to file a return showing zero (\$0.00) sales. (Prior code 4-55)

**Sec. 4-3-160. Deficient returns/taxes; penalties and interest.**

(a) Deficient returns. As soon as practical after receipt of the taxpayer's report, the City shall recalculate the tax by the use of known and visible factors. If the resulting recalculated tax is less than reported and paid by the taxpayer, the difference shall be returned as a refund within thirty (30) days. If the recalculated tax is more than reported and paid by the taxpayer, the difference shall be recorded as a deficiency.

(1) In the case of deficiency, the taxpayer shall be notified of the deficient amount and the interest thereon within thirty (30) days. Failure to respond to the City's notice of such deficiency, if not with the intent to defraud, shall subject the taxpayer to a penalty of ten percent (10%) or fifteen dollars (\$15.00), whichever is greater, of the deficient amount and a monthly interest rate as determined by Section 4-3-170 below.

(b) Failure to file a return. If a taxpayer neglects or refuses to file a return when required to do so as required by this Article, the City shall make an estimate based upon such information as may be available as to the amount of taxes due for the period in which the taxpayer is delinquent. The City shall add a penalty equal to ten percent (10%) or fifteen dollars (\$15.00), whichever is greater, and a monthly interest rate as determined by Section 4-3-170 below. The taxpayer shall receive written notification of such delinquency by certified mail or in person and shall remit payment within ten (10) days. If the taxpayer fails to remit payment within ten (10) days, then the City shall use all other avenues of collection as set out in this Article and the taxpayer's license may be revoked or suspended as set forth in Section 4-3-40 of this Article.

(c) Failure to file due to fraud. If any part of the deficiency is due to fraud with the intent to evade the tax, then there shall be added one hundred percent (100%) of the total amount of the deficiency, and the whole amount of the tax shall become due and payable ten (10) days after a written notice and demand for payment has been sent. An additional three percent (3%) per month on said amount shall be added from the date the return was due until paid. (Prior code 4-56)

**Sec. 4-3-170. Rate of interest.**

When interest is required to be assessed or permitted to be charged under any provisions of this Article, the annual rate of interest shall be established by the State Commissioner of Banking pursuant to Section 3-21-110.5, C.R.S. (Prior code 4-57)

**Sec. 4-3-180. Interest on underpayment, nonpayment or extensions of time.**

(a) If any amount of tax is not paid on or before the last date prescribed for payment, interest on such amount at the rate imposed under Section 4-3-170 above shall be paid from such last date to the date paid. The last date prescribed for payment shall be determined without any regard to any extension of time for payment and shall be determined without regard to any notice and demand for payment issued, by reason or jeopardy, prior to the last date otherwise prescribed for such payment. In the case of a tax in which the last date for payment is not otherwise prescribed, the last date for payment shall be deemed to be the date the liability for the tax arises. In no event shall it be later than the notice and demand for tax is made by the Finance Department.

(b) Interest prescribed in this Section and Section 4-3-170 above shall be paid upon notice and demand and shall be assessed, collected and paid in the same manner as the tax to which it applies.

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

(d) Interest as prescribed under this Article on any tax may be assessed and collected at any time during the period within which the tax to which such interest relates may be assessed and collected. (Prior code 4-58)

**Sec. 4-3-190. Sale of business.**

Any retailer or vendor who sells his or her business or stock of goods or quits the business shall be required to file a report and submit taxes due within ten (10) days after the final date that the business is in operation, goods are still owned or the vendor operates the business. Failure to do so constitutes a violation of the provisions in this Article. Action by the City against the former owner shall not prohibit the City from exercising the tax lien provision contained in this Article. (Prior code 4-59)

**Sec. 4-3-200. Sales tax liability disputes.**

(a) Should a dispute arise between the vendor or retailer and the purchaser as to whether or not any sale, service or commodity is exempt from taxation under this Article, the seller shall collect and the purchaser shall pay the disputed tax. The seller shall thereupon issue to the purchaser a receipt identifying the name of the seller and the purchaser, the item(s) purchased, the date, price and amount of tax paid. The purchaser thereafter has sixty (60) days to apply to the Finance Department for a refund of such taxes. It shall than be the duty of the Finance Department to determine whether or not the purchaser is liable for the tax paid.

(b) An application for refund of taxes paid in error or by mistake may be made for up to three years after the date of purchase or consumption of the goods for which the refund is claimed. (Prior code 4-60)

**Sec. 4-3-210. Refund procedure.**

(a) An application for refund of taxes paid may be made to the Finance Department within sixty (60) days of the purchase upon which an exemption is claimed. Applications for refund must be supported by an affidavit of the purchaser stating reasons for the believed exemption, the original paid invoice or sales receipt and a completed tax refund application form as shall be prescribed and furnished by the Finance Department.

(b) Upon receipt of the application and all required supporting documentation, the Finance Department shall examine the same and determine whether an exemption as specified under Section 4-3-140 of this Article exists. The Finance Department shall notify the applicant within ten (10) days in writing as to the determination.

(1) The burden of proving that sales, services and commodities on which refunds are requested are exempt from taxation under this Article shall be upon the person requesting such refund under such reasonable requirements of proof as prescribed by the Finance Department.

(2) After the notice of the determination is mailed, aggrieved applicants have thirty (30) days to petition the City for a hearing on the claim in the manner provided in Section 39-21-105, C.R.S., and may appeal to the District Court for the County in the manner provided in Section 39-21-105, C.R.S., and Section 4-3-240 of this Article.

(c) In case the Finance Department determines that the applicant is exempt from taxation under this Article, such refund shall first be applied to any tax deficiencies or existing liabilities against the claimant. The remaining amount of the refund, or full amount in the case of no deficiencies, shall be issued to the applicant in the form of a check. Refunds may not be applied to future tax liabilities.

(d) The right of any person to a refund under this Section shall not be assignable, and except as provided in Paragraph (1) below, such application for refund must be made by the same person who purchased the goods and paid the tax as shown in the receipt of the sale. Any applicant for refund under this Section, or any other person who makes a false statement in connection with an application for a refund of any taxes, is guilty of a municipal offense and upon conviction thereof shall be punishable as provided in Section 1-4-20 of this Code.

(1) A refund shall be made by the Finance Department to any person entitled to an exemption where such person establishes: that a tax was paid by another on a purchase made on behalf of such person; that a refund has not been granted to the person who made the purchase; and that the person entitled to exemption paid or reimbursed the purchaser for such tax. No such refund shall be made or credit allowed in an amount greater than the tax paid. (Prior code 4-61)

**Sec. 4-3-220. Unpaid tax; liens against property.**

(a) Lien authorized. If any taxes, penalty or interest imposed by this Chapter and shown due by the taxpayer or shown by assessments duly made as provided in this Article are not paid within ten

(10) days after the same are due, the Finance Department may issue a notice, setting forth the name of the taxpayer, the amount of the tax, penalties and interest, the date of the accrual thereof, and that the City claims a first and prior lien therefor, second only to the first and prior lien claim by the State, on the real and tangible personal property of the taxpayer except as to the preexisting claims or liens of a bona fide mortgagee, pledge, judgment creditor or purchaser whose rights shall have been attached prior to the filing of the notice as provided in this Article on property of the taxpayer.

(b) Notice. Said notice shall be on forms prepared by the Finance Department, shall be verified by the Finance Director, City Manager or City Clerk, and may be filed in the office of the Clerk and Recorder of any county in the State in which the taxpayer owns real or tangible personal property. The filing of such notice shall constitute a lien on such property in that county and constitute a notice thereof.

(1) After said notice has been filed, or concurrently therewith, or any time when taxes due are unpaid, whether such notice is filed or not, an officer of the City may issue a warrant directed to any duly authorized revenue collector, or to the sheriff of any county of the State, commanding him or her to levy upon, seize and sell sufficient of the real and personal property of the tax debtor found within his or her county for the payment of the amount due, together with interest, penalties and costs as may be provided by law, subject to valid preexisting claims or liens.

(2) Such revenue collector or sheriff shall forthwith levy upon sufficient property of the taxpayer, and said property so levied upon shall be sold and in all respects with like effect and in the same manner as is prescribed by law in respect to executions against property upon judgment in a court of record, and the remedies of garnishment shall apply. The sheriff shall be entitled to such fees in executing such warrant as are now allowed by law for similar services.

(c) Release of lien. Any lien for taxes as shown in the records of the County Clerk and Recorder as provided in this Article, upon payment of all taxes, penalties and interest covered thereby, shall be released by the Finance Department in the same manner as mortgages and judgments are released. (Prior code 4-62)

#### **Sec. 4-3-230. Civil action.**

(a) Debt recovery. The City may also treat any such taxes, penalties or interest due and unpaid as a debt due to the City from the taxpayer. In case of failure to pay the tax, any portion thereof or any penalty or interest thereon due, the City may receive at law the amount of such taxes, penalties and interest in the County or District Court having jurisdiction of the amounts sought to be collected. The return of the taxpayer or assessment made by the City, as provided in this Article, shall be prima facie proof of the amount due.

(b) Attachment. Such actions may be actions in attachment, and writs of attachment may be issued to the sheriff. It shall be the duty of the City Attorney when requested by the City Manager or Finance Department to commence action for the recovery of taxes due under this Article, and this remedy shall be in addition to all other existing remedies provided in this Article. (Prior code 4-63)

**Sec. 4-3-240. Sales or use tax; alternative dispute resolution procedure, deficiency notice or claim for refund.**

(a) For transactions consummated on or after January 1, 1986, the taxpayer may elect a state hearing on the City's final decision on a deficiency notice or claim for refund pursuant to the procedure set forth in this Section.

(b) 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.

(c) When the City asserts that sales or use taxes are due in an amount greater than the amount paid by the taxpayer, the City shall mail a deficiency notice to the taxpayer by certified mail. The deficiency notice shall contain notification, in clear and conspicuous type, that the taxpayer has the right to elect a state hearing on the deficiency pursuant to Section 29-2-106.1(3) C.R.S. The taxpayer shall also have 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.

(d) The taxpayer shall request the state hearing within thirty (30) days after the taxpayer's exhaustion of local remedies. The taxpayer shall have no right to such a 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 Subsection. For purposes of this Subsection, *exhaustion of local remedies* means:

(1) The taxpayer has timely requested in writing a hearing before the City and such City has held such hearing and issued a final decision thereon. Such hearing shall be informal and no transcript, rules of evidence or filing of briefs shall be required; but the taxpayer may elect to submit a brief, in which case the City may submit a brief. The City shall hold such hearing and issue the final decision thereon within ninety (90) days after the City's receipt of the taxpayer's written request therefor, except that the City may extend such period if the delay in holding the hearing or issuing the decision thereon was caused by the taxpayer. In any such event, the City shall hold such hearing and issue the decision thereon within one hundred eighty (180) days of the taxpayer's request in writing therefor; or

(2) The taxpayer has timely requested in writing a hearing before the City and the City has failed to issue a final decision thereon within the time periods prescribed in Paragraph (1) above.

(e) If the taxpayer has exhausted his or her local remedies as provided in Subsection (d) 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 shall be conducted in the same manner as set forth in Section 29-2-106.1(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 29-2-106.1(3) through (7), C.R.S.

(g) If the City reasonably finds that the collections 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 4-64)

## ARTICLE IV

### Improvement Districts

#### **Sec. 4-4-10. Adoption of state statutes.**

Except as otherwise provided herein or in the Home Rule Charter, the state statutes codified as Part 5 of Article 25 of Title 31, C.R.S., in effect as of the date of the ordinance codified herein, shall prescribe the method and manner of creating improvement districts by the City, and all other matters related to such improvement districts. In addition, the City shall have the right and authority to use and operate under the provisions of the state statutes codified as Part 11 of Article 25 of Title 31, C.R.S., in connection with such improvement districts. (Prior code 4-91)

#### **Sec. 4-4-20. Specific alterations of statutes.**

In accordance with the authority contained in Section 4-4-10 above, it is hereby provided that:

(1) Section 31-25-5-3(1)(a), (b), (c) and (d), C.R.S., shall not apply to improvement districts created or to be created by the City. Any improvement and any improvement district may be initiated by either: (a) the submission to the City Clerk of a petition therefor subscribed by the owners of property to be assessed for more than one-half ( $\frac{1}{2}$ ) of the entire costs estimated by the City Council to be assessed; or (b) adoption by the City Council of a resolution declaring its intention to create the district and construct, install or otherwise acquire such improvements, without the necessity of receiving a petition therefor. If initiated by such resolution, the City Council shall make a preliminary order as required by Section 31-25-503(3), C.R.S., in the same manner as if the improvements had been requested by petition. Such preliminary order may be included in the resolution of intention to construct the improvements. In accordance with Section 11.10(c) of the Home Rule Charter, if written protests are filed within ten (10) days after the public hearing by property owners of property which would be assessed more than fifty percent (50%) of the proposed assessment as determined by the City Council, the City Council shall take no further action to create the proposed district. Such protest shall not preclude the City Council from a subsequent action to propose a special or local improvement district for the same or similar improvement, subject to the requirements of Section 11.10 of the Home Rule Charter. Nothing herein shall be construed to require the City to create any improvement district, to construct, install or otherwise acquire any particular improvement, or to use any particular materials in connection therewith, regardless of any petition therefor.

(2) In accordance with Section 11.10(c) of the Home Rule Charter, notice of the creation of an improvement district shall be mailed or delivered to each property owner who is subject to the proposed assessment. The provisions of Section 31-25-503(4), C.R.S., which require newspaper publication of such notice, shall not apply to improvement districts created or to be created by the City. In addition, the provisions of Section 31-25-503(4.5), C.R.S., which permit the waiving of such notice, shall not apply to improvement districts created by the City; provided, however, that in accordance with Section 11.10(d) of the Home Rule Charter, the City Council is authorized to enter into contracts and agreements with any owner of property within the district or any other person concerning the construction or acquisition of improvements, the assessment of the cost thereof, the waiver or limitation of legal rights, or any other matter concerning the district, and such contracts or agreements may waive or vary any provisions hereof or of the Home Rule

Charter in accordance with such Section 11.10(d). The mailed or delivered notice required by Section 11.10(c) of the Home Rule Charter shall be mailed or delivered not less than twenty (20) days prior to the date of the hearing on the creation of the district; provided, however, that if a petition for an improvement is signed by one hundred percent (100%) of the owners of property to be assessed, the notice shall be mailed or delivered not less than three (3) days prior to the date of the hearing on the creation of the district. A certificate signed by the City Clerk or the City Manager certifying that such notice was mailed and delivered in accordance with the foregoing shall be conclusive of the facts so stated.

(3) Section 31-25-516, C.R.S., shall not apply to improvement districts created by the City. The letting of contracts for the construction, installation or other acquisition of improvements for improvement districts shall be in such manner as may be determined by the City Manager to be in the best interests of the City.

(4) Section 31-25-518, C.R.S., shall not apply to improvement districts created by the City. Contracts for the construction, installation or other acquisition of improvements for improvement districts shall contain such provisions as may be determined by the City Manager to be in the best interests of the City.

(5) The provisions of Section 31-25-520, C.R.S., shall not apply to improvement districts created by the City. The City Clerk shall give notice that the assessment roll has been completed and of a hearing on the assessment roll by mailing or delivering such notice to each owner of property to be assessed, such notice to be mailed or delivered not less than fifteen (15) days prior to the date of the hearing. The notice shall specify: (a) the whole cost of the improvement; (b) the portion, if any, to be paid by the City; (c) the share apportioned to each lot or tract of land; (d) that any complaints or objections which may be made in writing by the property owners or any citizen to the City Council, and filed in writing on or prior to the date of the hearing, will be heard and determined by the City Council before the passage of any ordinance assessing the cost of said improvements; and (e) the date when and the place where such complaints or objections will be heard.

(6) Section 31-25-534, C.R.S., shall not apply to improvement districts created or to be created by the City. The City may issue securities for the purpose of paying any costs in connection with a district or the improvements therefor, including the costs of refunding outstanding special assessment securities, which securities shall be payable from special assessments, and which payment may be additionally secured as provided herein. The securities may be issued in such form and amount, bearing such interest rate or rates, payable in such period, bearing such signatures or other evidences of authentication, payable in such manner and in such place or places, and having such other terms, as may be determined by the City Council and set forth in the ordinance or other documents pertaining to the issuance of the securities. In accordance with Section 11.12 of the Home Rule Charter, whenever there has been paid and cancelled three-fourths ( $\frac{3}{4}$ ) of the securities issued for a district and for any reason the remaining assessments are not paid in time to redeem the final securities for a district, the City may pay the securities when due and reimburse itself by collecting the unpaid assessments due the district. The provisions of Section 11.9 of the Home Rule Charter shall apply to such securities.

(7) Section 31-25-537, C.R.S., shall not apply to improvement districts created or to be created by the City. (Prior code 4-92)

**Sec. 4-4-30. Power to amend, supplement and repeal.**

Notwithstanding anything herein to the contrary, the City Council shall have the right to amend, supplement or repeal and reenact this Article in any manner and at any time before, during or after the creation of an improvement district. Such amendment, supplement or reenactment shall apply to all improvement districts theretofore or thereafter created by the City, unless otherwise provided in the amendment, supplement or reenactment; provided, however, that no such amendment, supplement or reenactment shall operate so as to impair substantive rights which have vested in connection with an existing or proposed improvement district, nor shall any such amendment, supplement or reenactment violate the requirements and restrictions of the Home Rule Charter, the Colorado Constitution or the United States Constitution. (Prior code 4-93)

**Sec. 4-4-40. Application to Special Improvement District No. 1991-1.**

The provisions of this Article shall apply to Special Improvement District No. 1991-1; provided that the terms and conditions applicable to such district as set forth in Resolution No. 40-91 shall not be changed so as to materially adversely affect the owners of property within such district. (Prior code 4-94)

**ARTICLE V**

**Sale of Personal Property**

**Sec. 4-5-10. Sales Agent.**

The City Manager is authorized to act as Sales Agent on behalf of the City. Sales of personal property made by the Sales Agent shall be in accordance with certain policies and procedures as hereinafter set forth in this Article. (Prior code 4-111)

**Sec. 4-5-20. Procedures.**

In enforcing and administering sales procedures, the Sales Agent, subject to the approval of the City Manager, shall:

(1) Establish policies, standards and procedures as necessary and not inconsistent with the provisions of this Article with respect to declaring personal property of the City to be surplus or excess property and determining the manner of disposition of such property.

(2) Dispose of personal property declared to be excess or surplus in a manner reasonably calculated to bring the highest price to the City, or in such other manner as is consistent with the City's best interests and this Article.

(3) Dispose of bicycles and related items held by the Police Department as lost or abandoned items for ninety (90) days or longer by donation to County Social Services referrals or an appropriate charitable organization benefitting the youth within the community or region. (Prior code 4-112)

**Sec. 4-5-30. Manner of disposition.**

Property may be sold, or property may be accepted in trade or exchange for property being sold, if such trade or exchange would benefit the City. Property having little or no value, or the sale or exchange of which is impractical, or for which no market exists, may be destroyed, donated or abandoned. (Prior code 4-113)

**Sec. 4-5-40. Property having a fair market value of ten thousand dollars or more.**

Property having a fair market value of ten thousand dollars (\$10,000.00) or more per item shall be sold at public sale, either upon written, sealed bids or public auction, as may be determined by the Sales Agent. Nothing herein contained shall prevent the placement and giving of such additional notice as may be determined to be desirable by the Sales Agent. (Prior code 4-114; Ord. 12-18 §1, 2012)

**Sec. 4-5-50. Property having a fair market value of less than ten thousand dollars.**

Property having a fair market value of less than ten thousand dollars (\$10,000.00) per item may be sold in the open market at public or private sale without bid advertisement and without observing the procedure prescribed by Section 4-5-40 above relating to written, sealed bids, in the discretion of the Sales Agent. (Prior code 4-115; Ord. 12-18 §1, 2012)

**Sec. 4-5-60. Fair market value.**

For the purpose of this Article, *fair market value of property* shall be defined as the amount a willing purchaser will pay a willing seller for such property. Fair market value shall be determined by blue book or other similar valuation guides, actual similar sale, appraisal, auctioneer valuation or such other reasonable method of valuation as determined by the Sales Agent. (Prior code 4-116)

**Sec. 4-5-70. Repair and reconditioning.**

The City Manager shall have the authority to expend funds to repair or recondition property declared to be excess or surplus when there is a reasonable expectation that such expenditures will enhance the value above the amount of funds so expended. (Prior code 4-117)

**Sec. 4-5-80. City employees.**

No official or employee of the City, or any member of their immediate family, as defined in City personnel regulations, or anyone on their behalf, shall purchase or otherwise receive surplus or excess property of the City except by public sale pursuant to Sections 4-5-40 or 4-5-50 of this Article. Property that is sold by the City to the public on a proprietary basis in connection with those activities or services generally provided by the City, or for the purpose of promoting the economic well-being of the City, may be purchased by City officials, employees or members of their families at the fair market value of such property as offered to the public. (Prior code 4-118)

**Sec. 4-5-90. Proceeds of sale.**

All proceeds of sale of surplus and excess property shall be allotted to the City's general fund. (Prior code 4-120)

## ARTICLE VI

### Sale or Trade of Real Property

#### **Sec. 4-6-10. Property eligible for sale or trade.**

(a) The City Council may sell or trade parcels or other interests in real property owned or held by the City.

(b) Property eligible for sale or trade includes, but is not limited to, the following:

(1) Parcels acquired by the City in fee by dedication, adverse possession, patent, treasurer's deed, gift or other means of conveyance.

(2) Parcels legally described as lots, tracts or outlots or defined by a metes and bounds legal description.

(3) Parcels originally granted to the City by the United States Government that have not previously been conveyed by "Mayor's Deed."

(4) Easements, rights-of-way or other interests held by the City. (Prior code 4-141)

#### **Sec. 4-6-20. Procedural requirements for real property acquisition or trade.**

(a) All requests for the sale or trade of City property shall be submitted in writing to the City Manager. Each request shall include the following:

(1) Name and address of the person requesting sale or trade of a parcel.

(2) Legal description of the property to be sold or traded.

(3) Survey of and/or improvement and location certificate for the subject property or properties.

(4) Current commitment for an owner's title insurance policy for any property to be conveyed to the City.

(5) Any appraisals or estimates of value, if available, relating to any property to be conveyed.

(6) A description of any improvements to the property.

(7) Current zoning for the property.

(8) Current land use.

(9) Total acreage or square footage of the property.

(10) List of adjacent property owners.

(11) Any additional information requested by the City Manager.

(b) Upon receipt of a request for the sale or trade of real property, the City Manager shall review the request for completeness and provide the applicant and City Council with a written evaluation including the following information:

(1) If the request is for a sale of property:

a. The value of the property requested as determined by appraisal, realtor's estimate of value or other appropriate method of valuation as determined by the City Manager.

b. A determination of whether the City-owned property is within a development proposal, adjacent to property subject to a development proposal or surplusage not related to a development project.

c. An evaluation of the current or future need for and public use of the property.

(2) If the request is for the trade of real property:

a. The value of the City-owned property as determined by appraisal, realtor's estimate of value or other appropriate method of valuation as determined by the City Manager.

b. The value of the property proposed for trade as provided by the party requesting the trade or by other appropriate method.

c. A determination of whether the City-owned property is within a development proposal, adjacent to property subject to a development proposal or surplusage not related to a development project.

d. An evaluation of the current or future need for and use of the City-owned parcels and the parcels proposed for trade.

(3) Upon completion of the evaluation of the proposed sale and/or trade, the City Manager shall submit his or her findings to the City Council for its review and approval or disapproval. City Council approval or disapproval shall indicate whether the request for trade or sale involves City-owned property within or associated with a development proposal or surplusage and shall disapprove the sale or trade of surplusage without a clear and convincing showing of specific benefit to the City. The City Council's final approval shall be in the form of an ordinance or such other form of approval that conforms to the requirements of the Home Rule Charter.

(c) All conveyances by the City shall be signed by the Mayor and attested to by the City Clerk under seal of the City.

(d) All conveyances to the City shall be by good and sufficient warranty deed, free and clear of all taxes, liens and encumbrances. Parties conveying property to the City pursuant to this Article shall further pay for and deliver to the City an owner's title insurance policy, in a form and an amount acceptable to the City Attorney, as soon as practicable after the conveyance. (Prior code 4-142)

**Sec. 4-6-30. Use of sale proceeds.**

(a) There is hereby created a Public Property and Development Trust Fund. The fund shall be included in each annual budget adopted by the City Council.

(b) The proceeds from the sale of all City-owned property pursuant to this Article shall be placed in the Public Property and Development Trust Fund.

(c) The funds collected pursuant to this Article and deposited in the Public Property and Development Trust Fund may be appropriated and expended for the acquisition of real property to be owned or traded by the City for a public purpose or for the improvement of City-owned property or for legal and administrative expenses necessary to effectuate said purchases or improvements. Funds shall not be used for the maintenance of City-owned property.

(d) The City Council may, by ordinance, in special circumstances and on a case-by-case basis, designate uses for sale proceeds other than placement in the Public Property and Development Fund. (Prior code 4-143)

**ARTICLE VII**

**Business Improvement Districts**

**Sec. 4-7-10. Creation of districts.**

(a) Authority. Part 12 of Article 25, Title 31 of the Colorado Revised Statutes ("Business Improvement Districts Act"), as it currently exists and as it may be amended from time to time, is adopted by reference, as if fully set forth herein, to provide for the method and manner of creating business improvement districts within the City by the Council, and once established in accordance with the provisions of the Business Improvement Districts Act, each business improvement district shall have all the powers provided in, and be governed by the provisions of the Business Improvement Districts Act.

(b) Provisions. In addition to or supplement of the procedures set forth in the Business Improvement Districts Act, the following provisions shall be applicable to the creation of a business improvement district:

(1) The Council shall hold a public hearing on the creation of any business improvement district and provide written notice to each property owner within the proposed district in accordance with the provisions of the Business Improvement Districts Act. Any objection to the organization of a business improvement district may be filed in writing with the City Clerk prior to the public hearing or may be stated by oral testimony at such hearing. The Council shall consider all such objections in determining whether to declare the district organized and describing its boundaries and service area.

(2) The board of directors of any business improvement district shall determine, by a majority vote at a public meeting held upon proper notice at which a quorum of directors is present, the method and manner of constructing, installing or otherwise acquiring improvements; letting

contracts therefor; assessing the cost thereof; issuing and paying securities for the construction, installation or purchase or equipping of the improvements, including the costs incidental thereto, and for assessing the costs thereof; and for all other matters related to the business improvement district. Such method and manner shall be consistent with the provisions of the Business Improvement Districts Act. Prior to levying an ad valorem tax or issuing general obligation bonds or creating any other indebtedness within the business improvement district, an election shall be held and conducted within the district in accordance with the provisions of the Business Improvement Districts Act.

(3) If any provision of this Section conflicts with any provision of the Business Improvement Districts Act, the provisions of the Business Improvement Districts Act shall be applied. (Prior code 4-201)

## **ARTICLE VIII**

### **Special Districts**

#### **Sec. 4-8-10. Authority.**

Title 32, C.R.S. ("Special District Act"), as it currently exists and as it may be amended from time to time, is adopted by reference, as if fully set forth herein, to provide for the method and manner of creating Special Districts within the City, and once established in accordance with the provisions of the Special District Act, each Special District shall have all the powers provided in, and be governed by the provisions of the Special District Act. (Prior code 4-221)

#### **Sec. 4-8-20. Alterations to state statutes.**

In addition to or supplement of the procedures set forth in the Special District Act, the following provisions shall be applicable to the creation of a Special District within the City of Central:

(1) The Council shall hold a public hearing on the service plan of any proposed Special District and provide written notice to each property owner within the proposed district in accordance with the provisions of Section 11.10(c) of the Home Rule Charter of the City of Central. Any objection to the organization of a Special District may be filed in writing with the City Clerk or may be stated by oral testimony at such hearing. The Council shall consider all such objections in determining whether to approve the service plan of the Special District.

(2) This Article shall authorize only Special Districts wholly contained within the boundaries of the City of Central and only so much of the Special District Act as applies to districts wholly contained within a municipality is adopted. (Prior code 4-222)

#### **Sec. 4-8-30. Power to amend, supplement and repeal.**

Notwithstanding anything herein to the contrary, the City Council shall have the right to amend, supplement or repeal and reenact this Article in any manner and at any time before, during or after the creation of an improvement district. Such amendment, supplement or reenactment shall apply to all Special Districts theretofore or thereafter created in the City, unless otherwise provided in the

amendment, supplement or reenactment; provided, however, that no such amendment, supplement or reenactment shall operate so as to impair substantive rights which have vested in connection with an existing or proposed improvement district, nor shall any such amendment, supplement or reenactment violate the requirements and restrictions of the Home Rule Charter, the Colorado Constitution or the United States Constitution. (Prior code 4-223)

## **ARTICLE IX**

### **Procurement of Goods and Services**

#### **Sec. 4-9-10. Purpose.**

The City's policy is to promote government efficiency, transparency and wise and economical use of public funds to ensure that the City's money is used to best serve the public interest. All procurement shall be accomplished in compliance with applicable and mandatory state and federal law. As a home rule municipality, the City's purchasing policy shall supersede any state law or requirements which are in conflict with this policy unless such state requirement is applicable to home rule municipalities by law. (Prior code 4-241; Ord. 12-18 §1, 2012)

#### **Sec. 4-9-20. Scope.**

The City's purchasing policy applies to all purchases by the City, unless otherwise specified by ordinance, resolution, other policy or exempted under Section 4-9-30. Notwithstanding this policy, the City shall comply with the requirements of any procurement or purchasing process obligation in any applicable and mandatory federal law or any funding or other agreement that requires specific purchasing procedures or requirements. No procurement, regardless of the amount, shall be initiated without annual appropriated funds. (Prior code 4-242; Ord. 12-18 §1, 2012)

#### **Sec. 4-9-30. Exemptions.**

The following purchases are exempt from this policy:

(1) Small dollar purchase. Purchases where the estimated total cost of the items or services is five thousand dollars (\$5,000.00) or less may be made directly by the City Manager or his or her designee. Although these purchases are exempt, competition is encouraged to ensure best value for products and services.

(2) Professional services. Although a competitive process is preferred, services provided by those who possess a high degree of professional or specialized skill such as accountants, public finance specialists, architects, engineers and attorneys may be exempt from this policy. Such service providers must meet the minimum qualifications and standards for providing the service.

(3) Extensions. Extensions of existing contracts may be negotiated when a vendor offers to extend under the same conditions and at the same or lower price and such extension is in the best interest of the City. Contract extensions are limited to two (2) one-year terms.

(4) Sole source. Purchases that are obtainable, for practical purposes, only from a single or sole source due to distribution rights, intellectual property or other exclusive rights as determined

by the City Manager upon a finding that, after reasonable inquiry, there is a single or sole provider of such goods or services within the local or general area. Sole source purchases in excess of thirty thousand dollars (\$30,000.00) for goods or services shall be approved by the City Council.

(5) Cooperative purchasing. Purchases made through cooperative purchasing arrangements which combine the requirements of two (2) or more political entities to obtain the advantages of volume purchase, reduction in administrative expenses or other public benefits, also known as "piggybacking" on other governmental agreements.

(6) Government purchases. Purchases from federal, state or other local government units.

(7) Employment. Employment agreements or employee services, including short-term contract employees as may be needed from time to time.

(8) Emergency purchases. Emergency purchases shall extend to contracts for goods or services where time is of the essence for performance of the contract and the increased time to bid the contract would substantially impair to performance of the contract and/or result in an increased cost of performance. In emergency situations, the City Manager has authority to make all necessary expenditures resulting from the emergency, upon consultation with the City Council.

(9) Purchases of water rights or interests in real property. (Prior code 4-243; Ord. 12-18 §1, 2012)

**Sec. 4-9-40. Purchasing policy.**

The City Council is authorized to adopt a purchasing policy consistent with the terms herein by resolution. The purchasing policy adopted by City Council is subject to the following bidding thresholds and purchasing procedures:

<i>Purchasing Range</i>	<i>Purchasing Process</i>	<i>Purchasing Approval Level of Authorization</i>	<i>Purchasing Requirements</i>	<i>Other Requirements</i>
\$0—\$5,000	Small dollar – exempt	City Manager	Buyer's best judgment	No written contract is required
\$5,001—\$25,000	Simple procurement	City Manager	Minimum of 2 written or oral quotes	Written contract or purchase order
\$25,001 and above	Formal procurement	City Manager recommendation and City Council motion or resolution	Sealed competitive bidding	Written contract signed by City Council

(Prior code 4-244; Ord. 12-18 §1, 2012)

## ARTICLE X

### Impact Fees

#### *Division 1 Impact Fees Created*

#### **Sec. 4-10-10. Legislative findings.**

New residential development imposes increasing demands upon the City's police, fire and public works departments and related capital facilities; the City's public facilities, as well as its culture and recreation infrastructure, and often overburdens such facilities and systems. The provisions of this Article are intended to impose certain fees to be collected at the time of building permit issuance in an amount calculated as shown herein for the purpose of funding the provisions of additional capital improvements as the City's population increases. The imposition of said fees on residential and nongaming commercial development is intended to regulate the use and development of land by ensuring that new growth and development in the City bear a proportionate share of the costs of capital expenditures necessary to provide police, fire, public works, culture, recreation and general government facility capital improvements. Said fees shall not be used to collect more than is necessary to fund such capital improvements. The fees provided for in this Article are based on the Impact Fee Study as herein defined and referenced. Funds collected from said fees shall not be used to remedy existing deficiencies, but only to provide new capital improvements which are necessitated by new development. The amount of revenue generated by said fees shall not exceed the cost of providing the capital improvements for which they are imposed, and the same shall be expended solely to provide the specified capital improvements. (Prior code 4-261)

#### **Sec. 4-10-20. Definitions.**

When used in this Article, the following words and terms shall have the following meanings:

*Affordable employee housing* shall mean housing that is affordable to households earning annual incomes within the range of sixty percent (60%) to one hundred twenty percent (120%) of the median family income.

*Building permit* shall mean the permit required for new construction and additions under Article I of Chapter 18 of this Code.

*Capital improvement plan* shall mean the plan prepared by the City Manager, as adopted by the City Council, which contains proposed cost estimates and funding sources for necessary capital improvements.

*Capital improvements* shall mean the purchase or long-term lease or lease-purchase of real property, the construction of public facilities or the purchase, long-term lease or lease-purchase of equipment or materials needed to facilitate the operation of such facilities or the delivery of services therefrom, to the extent that such property, improvements, equipment or materials are identified in the City's capital improvement plan as being totally or partially financed by the imposition of impact fees. For the purposes of this provision, *long-term lease* or *lease-purchase* shall mean a lease or lease-purchase of not less than three (3) years, subject to annual

appropriation. Amounts expended for capital improvements shall include amounts that are treated as capitalized expenses according to generally accepted accounting principles and shall not include costs associated with the operation, administration, maintenance or replacement of capital improvements.

*Development* shall mean any man-made change to improved or unimproved real property.

*Dwelling* shall mean a building used exclusively for residential occupancy, including single-family dwellings, two-family dwellings and multifamily dwellings. The term *dwelling* shall not include hotels, motels, tents or other structures designed or used primarily for temporary occupancy. Any dwelling shall be deemed to be a principal building.

*Dwelling unit* shall mean one (1) or more rooms and a single kitchen and at least one (1) bathroom designed to occupy or intended for occupancy as separate quarters for the exclusive use of a single family for living, cooking and sanitary purposes, located in a single-family, two-family or multifamily dwelling or mixed use building.

*Fee payer* shall mean a person or entity which is obligated to pay a fee in accordance with the provisions of this Article.

*Impact Fee Study* shall mean the report prepared by BBC Research & Consulting dated November 18, 2009, titled *Central City Impact Fee Study Final Report*, together with the Technical Appendix referenced therein, copies of which are on file at City Hall, 141 Nevada Street, Central City, Colorado, as herein adopted by reference.

*Impact Fees Fund* shall mean the separate interest bearing account or fund into which all Impact Fees received are placed and all related and allowable expenditures are made. The Impact Fees Fund may, but is not required to, be placed in a separate banking account that is separate from the other cash funds of the City, provided that the accounting of such funds clearly identifies the category of capital improvements (e.g., police, fire, etc.) for which such fees were imposed in accordance with Section 29-1-803, C.R.S.

*Low income* shall mean individuals, households or tenants with a gross household income below fifty percent (50%) of the median family income.

*Median family income* shall mean an annual household income of forty-two thousand dollars (\$42,000.00), as may be adjusted annually based on appropriate consumer indexes.

*Moderate income* shall mean individuals, households or tenants with a gross household income below eighty percent (80%) of the median family income.

*Multifamily structure* shall mean a dwelling containing three (3) or more dwelling units, not including hotels, motels and similar group accommodations.

*Nongaming commercial development* shall mean any development approved by the City for nonresidential, nongaming commercial uses.

*Residential development* shall mean any development approved by the City for residential use.

*Site* shall mean the land on which development takes place. (Prior code 4-262)

**Sec. 4-10-30. Calculation of impact fees.**

For each category of capital improvements for which an impact fee is established under the provisions of this Article, the amount of each such impact fee shall be determined on a per-dwelling-unit basis and for nongaming commercial development on a per-square-foot basis. The amount of the fee will be automatically adjusted annually commencing January 1, 2011, according to the Turner Building Cost Index, provided that no adjustment shall be made in any year if the index reflects a decrease in building costs for the previous year. Said adjustment shall be made by the Finance Director in January of each year. (Prior code 4-263)

**Sec. 4-10-40. Imposition, computation and collection of fees.**

Payment of the fees imposed under the provisions of this Article shall be required as a condition of approval of all residential development in the City for which a building permit is required. The amount of such fees has been calculated using current levels of service and the data and methodologies described in the Impact Fee Study. The fees due for such development shall be payable by the fee payer to the City's Building Official prior to or at the time of issuance of a building permit for the property to be developed, unless an agreement has been executed between the City and the fee payer which provides for a different time of payment. If the building permit for which a fee has been paid has expired and an application for a new building permit is thereafter filed, any amount previously paid for an impact fee and not refunded by the City shall be credited against any additional amount due under the provisions of this Article at the time of application for a new building permit. (Prior code 4-264)

**Sec. 4-10-50. Offsets and credits.**

(a) The City shall offset the reasonable costs of any capital improvements constructed, or real property dedicated, by or on behalf of any property owner or developer of real property from whom a fee is due and payable under this Article for that category of capital improvement, pursuant to the following requirements and any additional administrative regulations that may be established by the City Manager:

(1) No offset or credit shall be given for the dedication or construction of capital improvements not shown on the City's capital improvement plan.

(2) No offset or credit shall exceed the amount of the applicable fees due from the property owner or developer; provided, however, that if the amount of the credit or offset due from the dedication or construction of a capital improvement is calculated to be greater than the amount of the fee due, nothing herein shall be construed as preventing the City from entering into a reimbursement agreement with the property owner or developer under other applicable provisions of this Code (if any), whereby said property owner or developer may be reimbursed by subsequent property owners benefiting from the dedication or construction.

(3) If an offset or credit has not been exhausted within ten (10) years of the date of issuance of the first building permit for which a fee was due and payable under the provisions of this Article,

or within such other period as may be designated in writing by the City, such offset or credit shall lapse.

(4) A property owner or developer claiming entitlement to an offset or credit shall apply for the same prior to or at the time of application for the issuance of any building permit for which an impact fee is otherwise due, which application shall be on a form provided by the City for such purpose. Upon receipt of such application, the Finance Director shall determine, in writing, the maximum value of the offset or credit that may be applied against fees due and payable from the developer or property owner.

(b) Any offset or credit claimed under the provisions of this Section shall be prorated among all residential structures in which the off-set or credit is to be applied, and shall be applied at the time of filing and acceptance of the application for the building permit for each such structure.

(c) In the discretion of the City, the City Council may authorize alternative creditor offset agreements upon petition by a property owner or developer. (Prior code 4-265)

**Sec. 4-10-60. Establishment of accounts.**

The Finance Director shall establish separate accounts within the Capital Improvement Fund for each of the fees imposed under the provisions of this Article, into which shall be deposited all fees collected for each such category of capital improvement. Interest earned on each such account shall be considered funds of the account and shall be used solely for the purposes authorized for such funds as provided herein. The Finance Director shall establish adequate financial and accounting controls to ensure that fees disbursed from each such account are utilized solely for the purposes authorized. The Finance Director shall comply with applicable state law regarding publication of impact fee account information. (Prior code 4-266; Ord. 12-18 §1, 2012)

**Sec. 4-10-70. Use of fee proceeds.**

(a) The fees collected for each category or capital improvement specified in Division 2 of this Article shall be used to finance or to recoup the costs of any capital improvements identified in the applicable capital improvement plan. All capital facilities and improvements financed with the impact fees set forth herein will benefit all development in the City, and it is therefore appropriate to treat the entire City as a single service area for purposes of calculating, collecting and spending the impact fees provided for in this Article. Eligible costs which may be paid from revenues derived from such fees may include, without limitation, design, surveying and engineering fees; the cost of purchasing or leasing real property; construction costs; other capital improvement costs; and the costs of developing the Impact Fee Study and administering the impact fee program. The proceeds of such fees may also be used to pay the principal sum and interest and other finance costs on bonds, notes or other obligations issued by or on behalf of the City to finance such capital improvements. The City shall be entitled to retain four percent (4%) of the fees collected under this Article to cover the costs associated with the collection of the same, and the administration, investment, accounting, expenditure and auditing of the funds collected.

(b) Fees collected under the provisions of this Article shall not be used to pay for any of the following expenses:

(1) Costs incurred for the construction, acquisition or expansion of capital improvements or assets other than those identified in the applicable capital improvements plan;

(2) Costs incurred for the routine maintenance of existing or new capital improvements or facilities' expansions; or

(3) Costs incurred for the ongoing administration or operation of the funded capital improvements.

(c) Annually, or at such other times as directed by City Council, the City Manager shall present to the City Council a proposed capital improvement plan for each capital improvement for which an impact fee is charged. Such program shall assign funds, including any accrued interest, from the several impact fee categories to specific capital improvement projects and related expenses. (Prior code 4-267)

**Sec. 4-10-80. Appeals.**

(a) Any property owner or developer may appeal the following decisions to the City Manager, pursuant to the administrative hearing process established by resolution of the City Council:

(1) The applicability of any fee to the development;

(2) The amount of any such fee;

(3) The availability, amount or application of any offset or credit; or

(4) The amount of any refund, as determined by the Finance Director, under the provision of Section 4-10-100 below.

(b) The burden of proof in any such hearing shall be on the applicant to demonstrate that the amount of fee or offset or credit was not properly calculated by the City. In the event of an appeal of the amount of a fee, the fee payer shall, at his or her expense, prepare and submit to the City Manager an independent fee calculation study for the fee in question. The independent fee calculation study shall follow the methodologies used in the Impact Fee Study, as amended. The independent fee calculation study shall be conducted by a professional in impact analysis. The burden shall be on the fee payer to provide to the City Manager all relevant data, analyses and reports which would assist the City Manager in determining whether the impact fee should be adjusted.

(c) All appeals must state with specificity the reasons for the appeal and shall contain such data and documentation upon which the applicant seeks to rely. The City Manager, as applicable, shall notify the applicant of the hearing date of the application, which notice shall be given no less than fifteen (15) working days prior to the date of the hearing. At the hearing, the City Manager shall provide the applicant and City staff an opportunity to present testimony and evidence regarding the fee, credit, offset or refund being appealed. The City Manager shall modify said amount only if there is substantial competent evidence in the record that the City erred, based upon the methodologies contained in the Impact Fee Study, as amended. The decision of the City Manager shall be final. (Prior code 4-268)

**Sec. 4-10-90. Entitlement to refunds.**

(a) All fees collected pursuant to this Article shall be expended by the City for purposes approved herein within ten (10) years of the date of payment. Any fees not so appropriated or expended shall be refunded, upon application, to the record owner of the property for which the impact fee was paid or, if the impact fee was paid by another governmental entity, to such governmental entity, together with interest calculated from the date of collection to the date of refund; provided, however, that the City shall retain an additional two percent (2%) of the fee to offset the cost of refund.

(b) In determining whether fee revenues have been appropriated or expended within the requisite period of time specified in Subsection (a) above, monies in the applicable impact fee categories shall be considered to be appropriated and expended on a first in, first out basis; that is, the first fees paid shall be considered the first fees appropriated and expended.

(c) Any application for a refund under the provisions of this Section shall be made within one hundred eighty (180) days of the expiration of the ten-year period following the date of payment of such fee, according to the procedures described in Section 4-10-100 below. If a refund is due hereunder, the amount of such refund shall be divided proportionately among all applicants for refunds who have filed applications during said one-hundred-eighty-day period; provided, however, that in no event shall the amount of any refund exceed the amount of the fee paid on behalf of the property for which the refund is sought, plus interest at the rate of five percent (5%) per annum. (Prior code 4-269)

**Sec. 4-10-100. Procedure to obtain refund.**

(a) All applications for refund under this Article shall be submitted to the Finance Director. Each application shall be in a form established by the Finance Director and shall contain the following:

(1) A copy of the dated receipt issued for payment of the fee, or other written documentation evidencing payment of the fee; and

(2) A notarized, sworn statement that the applicant is the current owner of the real property for which the fee was paid and a certified copy of the current deed to such property or title policy or commitment issued within six (6) months of the refund application.

(b) The Finance Director shall determine if the application for a refund is sufficient on its face within five (5) working days. If the Finance Director determines that the application is not sufficient, a written notice shall be mailed to the applicant within said period of time specifying the deficiencies. No further action shall be taken on the application until the deficiencies are remedied. Any such deficiencies must be remedied within twenty (20) days of the date or mailing of the notice from the Finance Director, or prior to the expiration of the period of time for filing an application for a refund under Subsection 4-10-90(c) above, whichever is later. If the application is determined sufficient, the Finance Director shall notify the applicant, in writing, of the application's sufficiency and that the application is ready for review pursuant to the procedures and standards of this Section.

(c) Within ten (10) working days after the application is determined sufficient, the Finance Director shall determine whether the City has appropriated and expended the fees paid by the fee payer within the periods of time required under Subsection 4-10-90(a) above. If so, the application for refund shall be denied. If not, the applicant shall be entitled to a refund, except that the City shall retain two percent (2%) of the impact fee to offset the costs of administering the refund.

(d) The decision of the Finance Director with regard to any refund may be appealed to the City Manager under the provisions of Section 4-10-80 of this Article. (Prior code 4-270)

**Sec. 4-10-110. Exemptions from impact fees.**

(a) Except where expressly stated for a particular impact fee, the following types of development shall be exempted from payment of the impact fees imposed by this Article:

(1) Reconstruction, expansion or replacement of a dwelling unit existing on the effective date of the ordinance codified herein; provided that any change in use of a building from gaming to nongaming commercial that involves development for which a building permit is required shall require application of this Article and payment of impact fees in accordance herewith.

(2) Construction of an unoccupied, detached accessory structure related to a dwelling unit; provided, however, that with respect to the public works impact fee, this exemption may be applied to construction of any unoccupied, detached accessory structure, provided that such structure will not produce additional vehicle trips over and above those produced by the primary building or land use.

(3) The replacement of a destroyed or partially destroyed building or structure with a new building or structure of the same use, where no additional vehicle trips will be produced over and above those produced by the original building or structure.

(4) The installation or replacement of a mobile home on a lot or a mobile home site when an impact fee for such lot or site has previously been paid pursuant to this Article or where a mobile home legally existed on such site on or prior to the effective date of the ordinance codified herein.

(5) Any other type of development for which the applicant can demonstrate that the proposed land use and development will produce no greater demand for the capital facility for which the fee is imposed, or produce no more vehicle trips from such site over and above the trips from such site prior to the proposed development, or for which the applicant can show that an impact fee for such site has previously been paid in an amount that equals or exceeds the impact fee that would be required by this Article. The burden shall be on the applicant to demonstrate that such a fee was previously paid.

(b) Any such claim for exemption must be made no later than the time when the applicant applies for the first building permit for the proposed development, and any claim for exemption not made at or before that time shall have been waived.

(c) The Finance Director shall determine the validity of any claim for exemption pursuant to the criteria set forth in Subsection (a) above, subject to appeal to the City Manager in accordance with Section 4-10-80 of this Article.

(d) The City Council may, pursuant to Section 29-20-104.5(5), C.R.S., exempt from payment or reduce the amount of the payment of the impact fees imposed by this Article for any portion of a development which includes low or moderate income housing or affordable employee housing as the same are herein defined. (Prior code 4-271)

**Sec. 4-10-120. Future impact fee studies.**

The City Council is authorized to commission future impact fee studies to: adopt impact fees for other categories of capital facilities, such as parks and recreation; to expand the applicability of such fees to commercial and/or industrial development; or to increase or decrease such fees based on levels of service and methodologies presented in such future impact fee study. (Prior code 4-272)

*Division 2  
Specific Impact Fees*

**Sec. 4-10-210. Impact fees calculation.**

(a) All fees collected under this Article shall be deposited into segregated line items within each category of the Impact Fee Fund. The Impact Fee Fund shall accrue interest based upon its proportionate cash balance in relationship to the City's other funds. Interest income earned on the fees deposited therein shall be credited to the Impact Fees Fund. Funds withdrawn from any impact fee category shall be used only for the purposes specified in this Article, and said expenditures shall be subject to the provisions of this Article.

(b) Commencing upon the effective date of the ordinance codified herein, and as a condition of issuing a building permit for any new dwelling unit or for any nongaming commercial development in the City, and except as otherwise exempted by City Council, the following impact fees shall be imposed and collected on a per-unit or per-square-foot basis for the purpose of defraying the projected impacts on capital facilities of the City caused by the proposed development:

<i>Category of impact fee</i>	<i>Per resident dwelling unit</i>	<i>Per sq. ft. of nongaming commercial development</i>
Police	\$397.00	\$0.40
Fire	\$959.00	\$0.96
Public works	\$1,619.00	\$3.02
Culture and recreation	\$606.00	\$0.61
Public facilities	\$1,292.00	\$1.29
Total	\$4,873.00	\$6.28

(Prior code 4-281)