

## CHAPTER 4

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**ARTICLE 1**

**Establishment and Management of Funds**

**Sec. 4-1-10. Airline Guaranty Program Fund created.**

A separate fund of the Town, to be known as the Airline Guaranty Program Fund, is created into which there shall be deposited all tax moneys and revenues generated and collected from the imposition of the excise tax provided for in this Article. Moneys deposited into the Airline Guaranty Program Fund shall be recorded and accounted for separate and apart from all other Town funds, and shall not be intermingled or mixed with general or other tax revenues. (Prior code 3.40.160)

**Sec. 4-1-20. Capital Improvement Fund created.**

(a) A Capital Improvement Fund is created, which fund shall be kept separate from the general funds of the Town and which fund shall be used to provide capital improvements for the Town, including acquisition of real estate for public purposes for the Town and payment of any obligations of the Town entered for such purposes.

(b) The Town Council may transfer part of the unencumbered appropriation balance from the Capital Improvement Fund to the General Fund; provided, however, that no appropriation shall exceed the total amount of the sales and use taxes annually deposited in the Capital Fund and the total of:

(1) The appropriations that were budgeted in 2001 in the Capital Improvement Fund for CASE in the amount of one hundred fifty thousand dollars (\$150,000.00) and Community Support Grants in the amount of one hundred fourteen thousand ninety-three dollars (\$114,093.00); and

(2) The appropriations that were budgeted in 2001 in the Capital Improvement Fund for the Airline Guaranty Program in the amount of two hundred forty thousand dollars (\$240,000.00). (Prior code 3.16.020; Ord. 1288 §1, 2008)

**Sec. 4-1-30. Open Space Fund created.**

A separate fund of the Town, to be known as the Open Space Fund, is created, and the funds therein shall be used only for the purposes allowed by law. (Ord. 1288 §1, 2008)

**Sec. 4-1-40. Parking and Transportation Fund created.**

A parking and transportation fund is created for the purpose of planning and implementing a parking and transportation system with expending authority vested in the Town Council. (Prior code 3.16.010)

**Sec. 4-1-50. Custody and management of funds.**

Moneys in the funds created in this Article shall be in the custody of and managed by the Finance Director. The Finance Director shall maintain accounting records and account for all of said moneys as provided by law. Moneys in the funds of the Town shall be invested or deposited by the Finance Director in accordance with the provisions of law. All income from the assets of any fund shall become a part of the fund from which derived and shall be used for the purpose for which such fund was created; provided that, except as otherwise provided in this Code or by other ordinances or laws, the Town Council may transfer out of any fund any amount at any time to be used for such purpose as the Town Council may direct. (Ord. 1288 §1, 2008)

**Sec. 4-1-60. Investment of funds.**

The Finance Director may invest public funds and moneys of the Town in any securities now or hereafter designated as legal investments in any applicable state statute or in any of the following securities:

- (1) Obligations issued by any agency, instrumentality or public corporation of the United States;
- (2) Obligations issued by or on behalf of the State or any agency, instrumentality or public corporation thereof;
- (3) Obligations issued by or on behalf of any political subdivision of the State, including the Town;
- (4) Guaranteed investment contracts of domestically regulated insurance companies with claims paying ability ratings of "AA" or better from Standard & Poor's Corporation;
- (5) Repurchase agreements of any marketable security described in this Article which afford the Town a perfected security interest in such security; and
- (6) Shares in any money market fund or account, unit investment trust or open- or closed-end investment company, all of the net assets of which are invested in securities described in this Article, to the extent not prohibited by Colorado Constitution Article XI, Section 2. (Prior code 3.17.010)

**Sec. 4-1-70. Deposits.**

The Finance Director may deposit the Town's public funds and moneys in any bank, savings and

loan association or credit union located in the State as now or hereafter provided in any applicable state statute, or in any bank, savings and loan association or credit union located outside the State, provided that such deposit is insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation or the National Credit Union Administration or collateralized as provided under the laws governing deposits of public funds of the state in which such institution is located. (Prior code 3.17.020)

**Sec. 4-1-80. Payment reports.**

The Town may disburse appropriated funds by check. Payment reports shall be routinely prepared for each check issue date. Purchase orders shall be submitted to the Finance Department after approval pursuant to the written policy for payment promulgated by the Town Manager. Payment reports shall be routinely submitted to the Town Council for its review at regularly scheduled Town Council meetings. (Prior code 3.05)

**Sec. 4-1-90. Debts to Town.**

Whenever the owner of any land in the Town becomes delinquent in paying any charges, assessments or taxes, the Town may, in addition to other remedies it may have, certify the delinquent amounts, plus ten percent (10%) thereof to cover administrative expenses, plus reasonable interest on the delinquent amounts accruing from the date they became delinquent, to the County Treasurer, to be collected against the land, and paid over to the Town in the same manner as for ad valorem taxes under Title 31, Article 20, C.R.S. (Prior code 3.04.010)

**ARTICLE 2**

**Sales and Use Tax**

*Division 1*

*General Provisions*

**Sec. 4-2-10. Purpose.**

The purpose of this Article is to impose a sales or use tax on all retail sales, certain leases of tangible property and the furnishing of certain services as hereafter defined, within the Town, and to provide to the Town the authority and administrative mechanisms to collect and administer said sales taxes. All sales, leases and purchases of tangible personal property and the furnishing of certain services as defined in this Article are taxable unless specifically exempted in this Article or by other statutory authority. The sales tax imposed by this Article applies to each transfer of ownership, possession and control of such tangible personal property, and may occur more than once during the life of the property. (Ord. 1263, 2007)

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

The following words and phrases as used in this Article shall have the following meaning:

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

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

*Automotive vehicle* means any vehicle or device in, upon, or by which any person or property is, or may be, transported or drawn by

a public highway, or any device used or designated for aviation or flight in the air. *Automotive vehicle* includes, but is not limited to, motor vehicles, trailers, semi-trailers or mobile homes. *Automotive vehicle* shall not include devices moved solely by human power, or those used exclusively upon stationary rails or tracks.

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

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

*City or Town* means the municipality of the Town of Telluride, Colorado, a Home Rule Municipality.

*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, gravel, insulation, lath, lead, lime, lumber, macadam, millwork, mortar, oil, paint, piping, pipe valves and pipe fittings, plaster, plumbing fixtures, putty, reinforcing mesh, road base, roofing; and 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 and wire netting, screen, water mains and meters and wood preservatives. The above materials, when used for forms or other items that do not remain as an integral or inseparable part of a completed structure or project are not construction materials.

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

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

*Engaged in business in the Town* means performing or providing services, or selling, leasing, renting, delivering or installing tangible personal property for storage, use or consumption within the Town. *Engaged in business in the Town* 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 Town;

b. Sends one (1) or more employees, agents or commissioned salespersons into the Town to solicit business, or to install, assemble, repair, service or assist in the use of its products or for demonstration purposes;

c. Maintains one (1) or more employees, agents or commissioned salespersons on duty at a location within the Town;

d. Owns, leases, rents or otherwise exercises control over real or personal property within the Town; or

e. Makes more than one (1) delivery into the Town within a twelve-month period.

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

a. Is used by the manufacturer, compounder, wholesaler, jobber, retailer, packager, distributor or bottler to contain or label the finished product;

b. Is transferred by said person along with and as a part of the finished product to the purchaser; and

c. Is not returnable to said person for reuse.



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

*Finance Director* means the Finance Director (Department Head) for the Town of Telluride, Colorado, or such other person designated by the Town.

*Food* means food for domestic home consumption as defined in 7 U.S.C. § 2012(g), for purposes of the federal food stamp program as defined in 7 U.S.C. § 2012(h).

*Gross taxable sales* means the total amount received in money, credit, property or other consideration valued in money for all sales, leases or rentals of tangible personal property, excluding the fair market value of exchanged property which is to be sold thereafter in the normal course of a retailer's business.

*License* means a Town sales tax license.

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

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

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

*Mobile machinery and self-propelled construction equipment* means those vehicles, self-propelled or otherwise, which are not designed primarily for the transportation of persons or cargo over the public highways, and those motor vehicles which may have originally been designed for the transportation of persons or cargo over the public highways, and those motor vehicles which may have originally been designed for the transportation of persons or cargo but have been redesigned or modified by the mounting thereon of special equipment or machinery, and which may be only incidentally operated or moved over the public highway. This definition includes, but is not

limited to, wheeled vehicles commonly used in the construction, maintenance and repair of roadways, the drilling of wells and the digging of ditches.

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

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

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

*Preprinted newspaper supplements* means inserts, attachments or supplements circulated in newspapers that are primarily devoted to advertising; and the distribution, insertion or attachment of which is commonly paid for by the advertiser.

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

*Price or purchase price* means the price to the consumer, exclusive of any direct tax imposed by the federal government or by this

Chapter, and, in the case of all retail sales involving the exchange of property, also exclusive of the fair market value or the property exchanged at the same time and place of the exchange, if:

a. Such exchanged property is to be sold thereafter in the usual course of the retailer's business; or

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

*Price or purchase price* includes:

a. The amount of money received in cash or due in cash and credits.

b. Property at fair market value taken in exchange but not for resale in the usual course of the retailer's business.

c. Any consideration valued in money, such as trading stamps or coupons whereby the manufacturer or someone else reimburses the retailer for part of the purchase price and other media of exchange.

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

price. An amount charged for insurance on the property sold and separately stated is not part of the purchase price.

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

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

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

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

*Price or purchase price* shall not include:

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

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

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

*Private communications services* means telecommunications services furnished to a

subscriber, which entitle the subscriber to exclusive or priority use of any communication channel or groups of channels, or to the exclusive or priority use of any interstate intercommunications system for the subscriber's stations.

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

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

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

b. A lease, lease-purchase agreement, rental or grant of a license, including royalty agreements, to use tangible personal property or taxable services; the utilization of coin-operated devices, except coin-operated telephones, which do not vend articles of tangible personal property shall be considered short-term rentals of tangible personal property;

c. Performance of taxable services; or

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

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

a. A division of partnership assets among the partners according to their interests in the partnership;

b. The formation of a corporation by the owners of a business and the transfer of their business assets to the corporation in exchange for all the corporation's outstanding stock, except qualifying shares, in proportion to the assets controlled.

c. The transfer of assets of shareholders in the formation or dissolution of professional corporations;

d. The dissolution of the pro-rata distribution of the corporation's assets to its stockholders;

e. A transfer of a partnership interest;

f. The transfer in a reorganization qualifying under Section 368(a)(1) of the "Internal Revenue Code of 1954";

g. The formation of a partnership by the transfer of assets to the partnership or transfers to a partnership in exchange for proportionate interests in the partnership;

h. The repossession of personal property by a chattel mortgage holder or foreclosure by a lien holder;

i. The transfer of assets from a parent corporation to a subsidiary corporation which is owned at least eighty percent (80%) by the parent corporation, which transfer is solely in exchange for stock or securities of the subsidiary corporation;

j. The transfer of assets from a subsidiary corporation which is owned at least eighty percent (80%) by the parent corporation to a parent corporation, or to another subsidiary which is owned at least eighty percent (80%) by the parent corporation, which transfer is solely in exchange for stock or securities of the parent corporation or the subsidiary which received the assets;

k. The transfer of assets between parent and closely held subsidiary corporations, or between subsidiary corporations closely held by the same parent corporation, or between corporations which are owned by the same shareholders in identical percentage of stock ownership amounts, computed on a share-by-share basis, when a tax imposed by this Chapter was paid by the transferor corporation at the time it acquired such assets, except to the extent that there is an increase in the fair market value of such assets resulting from the manufacturing, fabricating or physical changing of the assets by the transferor corporation. To such an extent any transfer referred to in this Subparagraph shall constitute a sale. For the purposes of this Subparagraph, a *closely held subsidiary corporation* is one in which the parent corporation owns stock possessing at least eighty percent (80%) of the total combined voting power of all classes of stock entitled to vote and owns at least eighty percent (80%) of the total number of shares of all other classes of stock.

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

*Retail sales* means all sales except whole-sale sales.

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

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

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

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

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

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

*Tangible personal property* means corporeal personal property.

*Tax* means the sales tax due from a retailer.

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

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

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

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

*Telecommunications service* means the transmission of any two-way interactive electromagnetic communications, including but not limited to voice, image, data and any other information, by the use of any means but not limited to wire, cable, fiber optical cable, microwave, radio wave or any 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 telecommunications service, specialized mobile radio and two-way pagers and paging service, including any form of mobile two-way communication. *Telecommunications service* does not include separately stated nontransmission services which constitute computer processing applications used to act on the information to be transmitted.

*Therapeutic device* means a device, appliance or related accessory that is sold to correct or treat a human physical disability or surgically created abnormality; if such device,

appliance or related accessory has a retail value of more than one hundred dollars (\$100.00), it must be sold in accordance with a written recommendation from a licensed doctor to qualify as a therapeutic device for purposes of this Article.

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

Except when a different municipality is named or implied, *Town* means the Town of Telluride, Colorado, a Home Rule Municipality.

*Town Manager* means the Town Manager of Telluride, Colorado, or an authorized designate.

*Transportation* includes cars, buses and all other means or instrumentalities of conveyance of passengers and their baggage, irrespective of ownership or any contract, expressed or implied, for the purpose of transporting, carrying or otherwise moving from place to place tourists, residents, skiers, the public at large or any other persons to and/or from the Town, or other points of destination and/or departure in the County and the State, and to conduct and engage in, and carry on a transportation service of passengers and baggage of every class and description, and by any means now or hereafter in use. *Transportation* also means to own, operate, maintain, hold and use, purchase, construct, establish, lease or otherwise acquire and sell, or otherwise dispose of or deal with, terminal properties, depots, freight and passenger stationhouses, storage facilities, machine and repair shops, machinery, appliances and appurtenances and any and all other property above described, which may be necessary or useful in connection with the service being rendered, whether individually, in partnership or in conjunction with any other entity, person, as the Town may determine from time to time

to be in the best interests of its citizens, the public at large and the persons using the transportation service.

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

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

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

*Wholesaler* means any person selling to retailers, jobbers, dealers or other wholesalers, for resale and not for storage, use, consumption or distribution. (Ord. 1263, 2007)

*Division 2  
Sales Tax*

**Sec. 4-2-110. Rate, imposition and collection, distribution.**

(a) Sales tax. There is hereby levied in, and shall be paid to and collected by, the Town, a tax or excise upon all sales of tangible personal property and services specified in Section 4-2-130 in the amount of four and one-half percent (4½%), inclusive of a one-half percent (0.5%) sales tax for affordable housing.

(b) Imposition and collection. The tax specified herein is imposed upon the purchaser. Any seller engaged in business within the Town shall collect the tax and remit it to the Town pursuant to this Article.

(c) Distribution.

(1) Except as otherwise specified in this Section, the Town shall distribute sales tax proceeds on a formula allocating fifty percent (50%) for capital improvements within the Town or for payment of any obligations entered into for such purposes and deposited immediately upon collection into the Town's Capital Improvement Fund. Commencing on January 1, 1994, twenty percent (20%) of the unencumbered revenues collected and received by the Town through the sales tax imposed pursuant to this Article shall be dedicated to and deposited in a separate Open Space Fund as established under Section 4-1-30 of this Code. For purposes of this Section, *unencumbered revenues* shall mean those tax revenues not already pledged or dedicated to debt service or obligations created or in effect prior to the collection of said revenues. In no event shall revenues dedicated and transferred to the Open Space Fund exceed twenty percent (20%) of the total annual sales tax revenues collected and received by the Town in any given year absent the express prior authorization of the Town Council by ordinance or resolution.

(2) Further, pursuant to the vote of the Town electorate at the November 8, 1994 municipal election, all revenues collected and received by the Town pursuant to the one-half-percent sales tax for affordable housing shall be deposited in a separate Affordable Housing Fund, which shall be used exclusively to fund and finance the development and preservation of affordable housing, including the acquisition of land therefor.

(d) The taxes imposed in this Article shall continue to be levied and collected until amended or repealed by ordinance.

(e) The taxes imposed in the Chapter shall be in addition to all other taxes imposed by law. (Ord. 1263, 2007)

**Sec. 4-2-120. Sales tax schedule.**

The sales taxes imposed under this Article shall be computed and collected in accordance with applicable schedules, systems and regulations, including those approved by the Executive Director of the Colorado Department of Revenue. (Ord. 1263, 2007)

**Sec. 4-2-130. Transactions, items and services subject to sales tax.**

(a) The tax levied by Section 4-2-110 shall apply to the price of the following:

(1) Tangible personal property that is sold, leased or rented for any duration, whether or not such property has been included in a previous transaction.

(2) Telecommunications service, access services and WATS/800 service.

(3) Installation in the Town of equipment required to receive or transmit telecommunications service, and upon telecommunications services, whether furnished by public or private corporations or enterprises for all intrastate telephone or telecommunications services, including access and WATS/800 services, sold by local telecommunications service providers originating from or received on telecommunications equipment located within the Town; provided, however, that the charge for the service is billed to a person, and any affiliates, residing within or doing business at a location within the Town.

(4) Upon gas and electric services, whether furnished by governmental, public or private corporations or enterprises, for gas and electricity furnished and sold for domestic and commercial consumption and not for resale.

(5) Upon the entire amount charged to any person for lodging services, to include the Town Campground.

(6) Upon the amount paid for all meals and beverages prepared or furnished by any restaurant, eating house, snack bar, catering service, hotel, drugstore, delicatessen or other such carry-out shop, food vending or push cart, mobile vending service, vending machines, club, resort, medical facility or other such place at which meals or food are regularly sold, or sold in conjunction with another business or enterprise.

(7) Upon admissions and cover charges if tangible personal property such as food or beverages and/or gifts are received as consideration for the amount paid.

(8) Upon the sale, lease or transfer of computer equipment, programs and software.

(9) Upon pay, cable or subscription television services sold, purchased, leased, rented, furnished or used, including any equipment rentals furnished as a part of the price or separately stated, if the charge is billed to a person residing in or doing business at a location within the Town.

(10) Coin-operated and other such vending devices that dispense food or tangible personal property.

(11) Linen and towel services.

(12) Dry cleaning services.

(13) Automotive vehicle repair services and associated automobile parts.

(14) Security devices, smoke or chemical detection equipment, hazardous substance detection equipment, whether purchased or leased.

(15) The sale of food.

(b) For the purpose of this Article, all retail sales are consummated at the place of business of the seller, provider or retailer, unless the tangible personal property sold or provided is delivered by the retailer or his or her agent to a destination outside the limits of the local taxing authority or to a common carrier for delivery to a destination outside the limits of the Town. The gross receipts from such sales shall include the delivery charges, when such charges are subject to the state sales and use tax imposed by state statutes, regardless of the place to which delivery is made.

(c) In the event a retailer or sales provider of tangible personal property has no permanent place of business in the Town, or has more than one (1) place of business, the place, places and conditions upon which the retail sales are consummated shall be the same as those in Subsection (b) above for the purpose of the sales tax imposed by this Article. (Ord. 1263, 2007)

**Sec. 4-2-140. Exemptions from sales tax.**

The tax levied by Section 4-2-110 shall not apply to the following:

(1) Automotive vehicles sold to nonresidents of the Town for registration outside the Town.

(2) Tangible personal property when both of the following conditions exist:

a. The sales are to individuals who reside or businesses which are located outside the Town, and



b. The articles purchased are delivered to the purchaser outside the Town by common carrier, by the conveyance of the seller or by mail, and such articles delivered are used outside the Town.

(3) The sale and purchase of medical supplies, prescription drugs for animals and therapeutic devices.

(4) Cigarettes.

(5) All direct sales to charitable organizations in the conduct of their regular charitable functions and activities, when billed to and paid for by the charitable organization.

(6) All sales of construction and building materials to contractors and subcontractors for use in the building, erection, alteration or repair of structures, highways, roads, streets and other public works owned or used by charitable organizations in the conduct of their regular charitable functions and activities.

(7) All direct sales to the United States Government, the State, its departments or institutions and the political subdivisions thereof in their governmental capacities only, when billed to and paid for by the governmental entity.

(8) All sales of construction and building materials to contractors and subcontractors for use in the building, erection, alteration or repair of structures, highways, roads, streets and other public works owned or used by the United States Government, the State, its departments and institutions or the political subdivisions thereof in their governmental capacities only.

(9) All sales which the Town is prohibited from taxing under the Constitution or laws of the United States, or the Constitution or laws of the State.

(10) All sales of construction and building materials to a common carrier by rail operating in interstate or foreign commerce for use by such common carrier in construction and maintenance of its railroad tracks.

(11) Motor fuel upon which there has been accrued or paid either gasoline tax or special fuel tax, required by Article 27 of Title 39, C.R.S., and which is not subject to refund.

(12) Neat cattle, sheep, lambs, fish for stock purposes, swine and goats; mares and stallions for breeding purposes.

(13) Feed for livestock or poultry, seeds and orchard trees when such products are to be used in the commercial production of livestock or crops.

(14) All wholesale sales.

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

(16) Exempt commercial packaging materials.

(17) Newsprint and preprinted newspaper supplements which become attached to, or inserted in and distributed with, newspapers.

(18) Newsprint and printer's ink for use by publishers and commercial printers.

(19) Tangible personal property sold for rental or leasing inventory, including but not limited to coin-operated devices, provided that such property is not otherwise used except for customer demonstration or display.

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

(21) Construction materials, if the purchaser of such materials presents to the retailer a building permit which evidences that a use tax on such materials has been paid or is required to be paid to the Town or any other municipality.

(22) Tangible personal property sold through coin-operated devices for a price of fifteen cents (\$0.15) or less.

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

(24) Forty-eight percent (48%) of the purchase price of factory-built housing, as such housing is defined in Section 24-32-703(3), C.R.S., shall be exempt from taxation under this Article.

(25) The sale of recreation services, but not equipment. (Ord. 1263, 2007)

**Sec. 4-2-150. Exemption; burden of proof.**

The burden of proving that any retailer is exempt from collecting or paying sales tax shall be on the retailer under such reasonable requirements of proof as the Town Manager or the Finance Director may prescribe. (Ord. 1263, 2007)

**Sec. 4-2-160. Deductions from gross sales.**

(a) Deductions from gross sales. If included in reported gross sales, the following are deducted from gross sales:

(1) Refunds. The price of tangible personal property or taxable services returned by a

purchaser when the price and the sales tax collected are refunded in cash or by credit.

(2) Bad debts charged off. Taxable sales which are represented by accounts not secured by conditional sales contract, rental purchase contract or security interest, and which are found to be worthless and are actually and properly charged off as bad debts for the purpose of the income tax imposed by the laws of the State; provided, however, that if such amounts are thereafter collected by the taxpayer, a tax shall be paid on the amount so collected.

(3) Interest and finance charges. The amount of interest or finance charges on credit extended in connection with any sale, if the interest or finance charges are separately stated from the price.

(b) Credits from tax due:

(1) Vendor's fee. A retailer's collection and remittance expense equal to one and thirty-five one-hundredths (1 35/100%) of the sum of the sales tax computed, and any excess tax collected may be taken as a credit against sales tax paid, on or before the due date. Such vendor's fee shall be forfeited for any sales tax that is not reported and paid by the due date. Forfeiture of the vendor's fee shall be prima facie evidence that the taxpayer was in violation of this Article.(Ord. 1310, 2009)

(2) Amounts previously paid pursuant to a tax levied by a municipality may be credited against the tax due on transactions or items other than construction materials as follows:

a. When the present owner or user has previously paid a legally imposed sales or use tax on the transaction or item; except that the amount of such credit shall not exceed the amount of tax on such transaction or item computed at the rate established herein.

b. When the present owner or user of construction equipment has not previously paid a legally imposed sales or use tax attributable to any one (1) municipality on the full price of such equipment, the credit shall be the aggregate value of all such taxes paid on such equipment up to the amount of tax due to the Town on such equipment. (Ord. 1263, 2007)

**Sec. 4-2-170. Credit sales.**

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

(b) If a retailer transfers, sells, assigns or otherwise disposes of an account receivable, then he or she shall be deemed to have received the full balance of the consideration for the original sale and shall be liable for the remittance of the sales tax on the balance of the total sale price not previously reported; except that such transfer, sale, assignment or other disposition of an account receivable by a retailer to a closely held subsidiary shall not be deemed to require the retailer to pay the sales tax on the credit sale represented by the account transferred prior to the time that the customer makes payment on said account. (Ord. 1263, 2007)

**Sec. 4-2-180. Acquisition inception or cessation of business.**

(a) Acquisition of existing business.

(1) Seller's responsibilities: Any person engaged in business in the Town who sells such business shall file a final return. The reporting period shall end on the date of the transfer of ownership of the business in question.

(2) Purchaser's responsibilities:

a. Any person who purchases an existing business shall be responsible for determining whether there is any tax due from that business and shall withhold from the initial purchase payment an amount sufficient to cover all such tax due, unless the former owner produces a receipt from the Town showing that all tax due has been paid or a certificate from the Town indicating that there is no tax due.

b. Any amount so withheld shall be paid to the Town within ten (10) days of the date of the sale of the business.

c. Any purchaser who fails to withhold such tax due or fails to pay to the Town the amount so withheld within the ten-day period shall, as well as the seller, be liable for any tax due.

(b) Cessation of business. Every person engaged in business in the Town who quits doing business in the Town shall file a final return. The reporting period of such return shall end on the last day of business in the Town. (Ord. 1263, 2007)

**Sec. 4-2-190. Retailer responsible for collection and payment of tax.**

Every retailer engaged in business in the Town shall be liable and responsible for payment of an amount equivalent to the taxable sales multiplied by the sales tax rate established by Section 4-2-30.

(1) Tax added to price. Retailers shall add the tax imposed, or the average equivalent thereof, to the price, showing such tax as a separate and distinct item. Except as provided in this Paragraph, no retailer shall advertise, hold out or state to the public or to any consumer, either directly or indirectly, that the sales tax or any part thereof shall be assumed

or absorbed by the retailer, or that it will not be added to the price or, if added, that it or any part thereof shall be refunded.

a. Nothing herein contained shall be deemed to prohibit any retailer selling malt, vinous or spirituous liquors by the drink from electing to include in his or her purchase price any tax levied under this Section.

b. Sales tax may be included in the price of items sold from coin-operated devices or the price of utilizing such devices.

(2) Tax constitutes debt. Any tax added to the price by a retailer shall constitute a debt from the purchaser to the retailer until paid and shall be recoverable at law in the same manner as other debts.

(3) Excess tax. No retailer shall retain any sales tax collected in excess of the tax computed, but shall report such excess collections on the return for the period in which it was collected, and include it in the calculation of tax due.

(4) Disputed tax. When a dispute arises between a retailer and a purchaser who claims that the sale is exempt from the tax, the retailer shall collect, and the purchaser shall pay, such tax. The purchaser may submit a claim for refund to the Town within sixty (60) days of the date of purchase. Any such tax refunded by the Town will be paid directly to the purchaser. (Ord. 1263, 2007)

**Sec. 4-2-200. Trust status of tax in possession of retailer.**

All sales tax collected by any retailer shall be the property of the Town and remain public money in the hands of such retailer, who shall hold the same in trust for the sole use and benefit of the Town until paid to the Town. (Ord. 1263, 2007)

**Sec. 4-2-210. Filing returns; due date.**

(a) Every taxpayer shall file a return, whether or not a tax is due, and remit any tax due to the Town on or before the twentieth day of the month following the reporting period. Failure to receive a return does not relieve a taxpayer of its legal responsibility for filing a return on or before the due date.

(b) A retailer engaged in business in the Town at two (2) or more locations, whether inside or outside the Town, who collects sales tax, may file one (1) return for all such locations, when accompanied by a supplemental schedule showing the gross sales and net taxable sales for each location.

(c) For good cause shown in a written request of a taxpayer, the Finance Director may extend the time for making returns and paying the tax due. Such good cause shall not include the retailer's inability to pay taxes due to the Town due to other debts incurred by the retailer or his or her business.

(d) No person shall make any false statement in connection with a return. (Ord. 1263, 2007)

**Sec. 4-2-220. Reporting periods.**

(a) Unless otherwise approved by the Town, taxpayers must file returns and pay taxes as follows:

(1) Upon approval of the Finance Director, a taxpayer whose monthly tax is ten dollars (\$10.00) or less may file returns and pay tax annually, semi-annually, quarterly or monthly.

(2) Upon approval of the Finance Director, a taxpayer whose monthly tax due is more than ten dollars (\$10.00) and less than twenty dollars (\$20.00) may file returns and pay tax semi-annually, quarterly or monthly.

(3) Upon approval of the Finance Director, a taxpayer whose monthly tax due is more than twenty dollars (\$20.00) and less than forty dollars (\$40.00) may file returns and pay tax quarterly or monthly.

(4) A taxpayer whose monthly tax due is forty dollars (\$40.00) or more shall file returns and pay tax monthly.

(5) For the purpose of the timing of the filing of returns, the amounts considered in Paragraphs (1) through (4) must be consistent for a period of three (3) consecutive months to be approved for any schedule other than reporting monthly.

(b) The reporting period for a final return shall end on the date of the transfer of ownership or cessation of the business.

(c) The reporting period for a vendor selling tangible personal property at a temporary location or site of a special event within the Town shall end on the day the temporary location closes or special event concludes.

(d) If any taxpayer who has been granted permission to file returns and pay tax on other than a monthly basis becomes delinquent, authorization for such alternate method of reporting may be revoked by the Finance Director, and immediately following notice of such revocation, the taxpayer shall file returns and pay tax on a monthly basis as if the alternate method of reporting and paying the tax had never been granted. (Ord. 1263, 2007)

**Sec. 4-2-230. Duty to keep books and records.**

(a) Every person engaged in business in the Town shall keep and preserve for at least three (3) years after the date of the taxable transaction suitable records which allow the accurate determination of the tax due.

(b) Every person shall provide all such records for audit by the Town during normal business hours. (Ord. 1263, 2007)

**Sec. 4-2-240. License required.**

(a) Except as provided in this Article, any person engaged in business in the Town must first obtain a sales tax license. No sales tax license shall be required for any governmental agency or charitable organization which is exempt from the sales tax under this Article. However, although such organizations may be exempt from paying sales taxes on the purchases of tangible personal property, the collection, reporting and payment of appropriate sales taxes to the Town is required on the sale or auction of tangible personal property even when used for the purpose of not-for-profit fundraising, whether or not a sales tax license is required or has been obtained.

(b) When business is transacted by one (1) person at two (2) or more separate locations inside the Town, a separate license for each place of business shall be required. (Ord. 1263, 2007)

**Sec. 4-2-250. License; application and content.**

(a) Persons for whom a license is required shall first submit to the Finance Director an application stating the name and address of the person requesting such license; the name of the business being licensed and the character thereof; the location, including the street number of such business; and such other information as the Finance Director may require.

(b) Licenses which are granted shall be issued without fee by the Finance Director on January 1 of each year, and provided to the license holder as soon as practical thereafter.

(c) Licenses shall be in effect for one (1) year and shall be renewed upon renewal of the general business license or upon completion of a license renewal request.

(d) Each license shall be numbered and shall show the name, mailing address, location and character of business of the license, and shall be posted in a conspicuous place at the business location for which it is issued.

(e) No license shall be transferable. After any sale or acquisition of a business, the new owner shall apply for a new license. (Ord. 1263, 2007)

**Sec. 4-2-260. License cancellation or revocation.**

(a) Cancellation. The Finance Director may cancel any license:

(1) Upon receipt of a written notice that the taxpayer is no longer engaged in business in the Town.

(2) Upon the taxpayer's failure to respond to three (3) consecutive notices of delinquency.

The Finance Director shall give notice to the taxpayer that the license has been cancelled. Notice shall be in writing, served to the taxpayer in person by a Town Marshal, delivered by certified mail or any combination of those notification procedures.

(b) Revocation. The Finance Director may, after a reasonable notice and a full hearing, issue a finding and order to revoke the license of any person found to have violated any provision of this Article.

(c) Appeal. Any person may appeal a finding and order revoking their license in District Court pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

(d) No taxpayer shall continue engaging in business in the Town after his or her license has been cancelled or revoked. (Ord. 1263, 2007)

**Sec. 4-2-270. Authority of Finance Director.**

The administration of this Article is hereby vested in the Finance Director, except where otherwise noted.

(1) Forms and procedures. The Finance Director shall prescribe forms and administrative procedures for the ascertainment, assessment and collection of tax.

(2) Regulations. The Finance Director may formulate and promulgate, after hearing, appropriate and additional regulations to effectuate the purpose of this Article.

(3) Additional information. The Finance Director may require any person to make additional returns, render statements, furnish records or make informational reports to determine whether or not such person is liable for payment or collection of the tax.

(4) Subpoenas. The Finance Director may issue a subpoena to command a person to attend and give testimony or to produce books, records or accounts.

a. Any subpoenas issued under the terms of this Article shall be served as set forth in the Colorado Rules of Civil Procedure, including payment of witness fees. When the witness is subpoenaed at the insistence of the Town, such fees shall be paid by the Town. When a witness is subpoenaed at the insistence of the taxpayer, the Finance Director may require that the cost of the service of the subpoena and the fee be paid by the taxpayer. In the discretion of the Finance Director, a deposit to cover the cost of the subpoena and witness fees may be required.

b. If a subpoena issued by the Finance Director is duly served and the respondent fails to attend, give testimony or produce books, accounts or records as commanded, the Finance Director may request the Town Attorney to file a motion with the Municipal Court for an order enforcing the subpoena.

(5) Oaths. The Finance Director is authorized to administer oaths and take testimony at the hearing.

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

(7) Partial payments. The Finance Director may accept any partial payment made and apply such payments toward the tax due. Deposit of such payments shall not in any way imply that the remaining balance is or has been abated.

(8) Notices. Notices required by this Article shall be in writing and delivered in person by the Finance Director or an agent, sent post-age paid by certified mail to the last known address of the taxpayer or served in person by an officer of the Town Marshal's office. (Ord. 1263, 2007)

**Sec. 4-2-280. Audit of record.**

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

(b) All books, accounts and records shall be available at any time during regular business hours for examination by an authorized agent of the Finance Director. If any taxpayer refuses to voluntarily furnish any of the foregoing information when requested by the Finance Director, the Finance Director may issue a subpoena to require that the taxpayer or his or her representative attend a hearing or produce any such books, accounts or records for examination.

(c) Any tax deficiency or overpayment ascertained through audit shall be computed by one (1) or more of the following methods as the Finance Director deems appropriate:

(1) By comparing the tax reported and paid on returns to the actual tax due.

(2) By identifying transactions on which the tax was not properly or accurately collected or paid.

(3) By identifying other irregularities in the calculation of tax due.

(d) Any charitable organization claiming exemption under the provisions of this Article is subject to audit in the same manner as any other person engaged in business in the Town. (Ord. 1263, 2007)

**Sec. 4-2-290. Coordinated audit.**

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

(b) Within fourteen (14) days of receipt of notice of an intended audit by any municipality that administers its own sales tax collection, the taxpayer may provide to the Finance Director, by certified mail, return receipt requested, a written request for a coordinated audit indicating the municipality from which the notice of intended audit was received and the name of the official who issued such notice. Such request shall include a list of those Colorado municipalities utilizing local collection of their sales tax in which the taxpayer holds a current sales tax license and a declaration that the taxpayer will sign a waiver of any passage of time-based limitation upon the Town's right to recover tax owed by the taxpayer for the audit period.

(c) Except as provided in Subsection (g) below, any taxpayer who submits a complete request for a coordinated audit and promptly signs a waiver of any statute of limitations may be audited by the Town during the twelve (12)

months after such a request is submitted only through a coordinated audit involving all municipalities electing to participate in such an audit.

(d) If the Town desires to participate in the audit of a taxpayer who submits a complete request for a coordinated audit pursuant to Subsection (c) above, the Finance Director shall so notify the finance director or other proper authority of the municipality whose notice of audit prompted the taxpayer's request for a coordinated audit. The Finance Director shall cooperate with other participating municipalities in arranging the time in which the coordinated audit will be conducted, the period of time to be covered by the audit and a coordinated notice to the taxpayer of those records most likely to be required for completion of the coordinated audit.

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

(f) If the taxpayer's request for a coordinated audit was in response to a notice of audit issued by the Town, the Finance Director shall, once arrangements for the coordinated audit between the Town and other participating municipalities are completed, provide written notice to the taxpayer of which municipalities will be participating, the period of time to be audited and the

records most likely to be required by the participating municipalities for completion of the coordinated audit. The Finance Director shall also propose a schedule for the coordinated audit.

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

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

(2) To audits for which a notice of audit was given prior to the effective date of the ordinance codified herein.

(3) When a taxpayer refuses to promptly sign a waiver of any pertinent statutes of limitations.

(4) When a taxpayer fails to provide a timely and complete request for a coordinated audit as provided for in Subsection (b) above. (Ord. 1263, 2007)

#### **Sec. 4-2-300. Tax information confidential.**

All specific information gained under the provisions of this Article which is used to determine the tax due from a taxpayer, whether furnished by the taxpayer or obtained through an audit, shall be treated by the Town and its officers, employees or legal representatives as confidential.

(1) Except as directed by judicial order or as provided in this Section, no Town officer, employee or legal representative shall divulge any confidential information. Nothing contained in this Section shall be construed to prohibit the delivery to a taxpayer or his or her duly authorized representative of a copy of such confidential information relating to such taxpayer, the publication of statistics so classified as to prevent the identification of particular taxpayers or the inspection of such confidential information by an officer, employee or legal representative of the Town.



(2) If directed by judicial order, the officials charged with the custody of such confidential information shall be required to provide only such information that is directly involved in the action or proceeding. (Ord. 1263, 2007)

**Sec. 4-2-310. Overpayment from returns.**

If the amount remitted with the return is more than the tax due as computed from information in such return, the taxpayer shall be notified.

(1) If the overpayment is at least fifteen dollars (\$15.00), a notice of overpayment will be issued. After examining such notice, the taxpayer may either submit a claim for a refund or report the correct tax due by filing an amended return. No refund of such overpayment shall be paid unless a signed claim for a refund is submitted on or before the thirtieth day after the date of notice of overpayment.

(2) If the overpayment is less than fifteen dollars (\$15.00), it shall be credited to the tax due for the next reporting period. (Ord. 1263, 2007)

**Sec. 4-2-320. Tax overpayment determined through audit.**

If the Town ascertains through audit of a taxpayer's records that the tax due is less than the full amount paid, a notice of overpayment shall be issued. Such notice will serve as documentation for a claim of refund, if such claim is signed and submitted by the taxpayer within thirty (30) days of the date of the notice of overpayment. (Ord. 1263, 2007)

**Sec. 4-2-330. Refunds of disputed tax.**

Refunds of tax paid to a retailer by a purchaser who claims that the sale is exempt from the tax may be requested by such purchaser by signing and submitting a claim for refund on or before sixty (60) days from the date of such purchase. (Ord. 1263, 2007)

**Sec. 4-2-340. Claim for refund.**

No tax overpayment except as provided in Paragraph 4-2-310(2) above shall be refunded unless a claim for refund is signed and submitted to the Town by the taxpayer.

- (1) An application for refund of tax shall:
  - a. Be made on a claim for refund form furnished by the Town.
  - b. Be signed by the taxpayer.
  - c. Include adequate documentation of the claim.

(2) The Finance Director shall examine the claim for refund and give written notice to the taxpayer of the amount to be refunded or denied.

(3) Refunds are not assignable. The right of any person to obtain a refund pursuant to this Article shall not be assignable.

(4) No person shall make any false statement in connection with a claim for refund. (Ord. 1263, 2007)

**Sec. 4-2-350. Intercity claims for recovery.**

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

- (1) As used herein, *claim for recovery* means a claim for reimbursement of sales and use taxes paid to the wrong jurisdiction.
- (2) When it is determined by the Finance Director that sales and use tax owed to the Town has been reported and paid to another

municipality or jurisdiction, that town shall promptly notify the vendor that taxes are being improperly collected and remitted and that as of the date of the notice the vendor must cease improper tax collections and remittances.

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

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

(5) A municipality or jurisdiction claimed to be receiving taxes in error may deny a claim for recovery on the grounds that it has previously paid a claim for recovery arising out of an audit of the same taxpayer.

(6) The period subject to a claim for recovery shall be limited to the thirty-six-month period prior to the date the municipality or jurisdiction which was wrongly paid the tax receives the claim for recovery. (Ord. 1263, 2007)

**Sec. 4-2-360. Underpayments from returns.**

If the amount remitted with a return is less than the tax computed from information in such return, the taxpayer shall be notified.

(1) If the underpayment is at least fifteen dollars (\$15.00), a notice of assessment shall be issued.

(2) If the underpayment is less than fifteen dollars (\$15.00), it shall be added to the tax due for the next reporting period. (Ord. 1263, 2007)

**Sec. 4-2-370. Tax deficiencies from failure to file.**

(a) If any taxpayer neglects or refuses to obtain a license, the amount of tax due shall be estimated, based upon such information as may be available, and a notice of assessment shall be issued.

(b) If any taxpayer neglects or refuses to file a return by the date due, the tax due shall be estimated, based on such information as may be available, and a notice of assessment shall be issued.

(c) Estimated tax due shall be adjusted if a return reporting actual tax due is filed on or before the payment date of the notice of assessment. (Ord. 1263, 2007)

**Sec. 4-2-380. Tax deficiencies determined through audit.**

If the Town determines through an audit of the taxpayer's records that the tax due has not been fully reported or paid by the applicable due date, a notice of assessment shall be issued. (Ord. 1263, 2007)

**Sec. 4-2-390. Penalties.**

A penalty shall be levied for any tax deficiency.

(1) Penalty for late payment. For transactions consummated after the effective date of the ordinance codified herein, the penalty for late payment shall be fifteen dollars (\$15.00) or ten percent (10%) of the tax deficiency, whichever is greater. Additionally, one percent (1%) of the tax deficiency per month from the date when due, not exceeding eighteen percent (18%) in the aggregate, shall be assessed.

(2) Penalty for fraud. If any tax deficiency is due to fraud or intent to evade the tax, the penalty shall be one hundred percent (100%) of the total tax deficiency.

(3) Abatement of penalty. Any penalty assessed under this Section may be abated by the Finance Director, with the approval of the Town Manager, if the taxpayer submits a written request for such abatement on or before the payment date of the applicable notice of assessment, and if the Finance Director and the Town Manager find good cause thereof. (Ord. 1263, 2007)

**Sec. 4-2-400. Interest.**

Interest shall be levied on any tax deficiency.

(1) Interest shall be calculated for each month or portion of a month from the due date that a tax deficiency remains unpaid. For

transactions consummated after the effective date of the ordinance codified herein, the monthly interest rate shall be determined by the Commissioner of Banking pursuant to Section 39-21-110.5, C.R.S.

(2) When a timely protest is made to a notice of assessment, no additional interest shall be assessed on any tax upheld by the Finance Director for the period between the due date of such assessment and the payment date established in an informal meeting or thirty (30) days after the date of a finding of fact, conclusion or a decision issued after a hearing.

(3) Interest properly assessed on any tax deficiency shall not be abated. (Ord. 1263, 2007)

**Sec. 4-2-410. Notice of assessment.**

The Finance Director or specifically authorized agent shall issue a notice of assessment for any tax deficiency, penalties or interest due.

(1) Notices of assessment shall be in writing and delivered in person or sent postage paid by first-class mail to the last known address of the taxpayer.

(2) The payment due date for the tax due pursuant to a notice of assessment shall be twenty-one (21) days after the date of the notice of assessment.

(3) The Finance Director, with the consent of the Town Manager, may abate a portion of any tax deficiency if good cause therefor exists. (Ord. 1263, 2007)

**Sec. 4-2-420. Protest of notice of assessment or denial of refund.**

(a) Any notice of assessment may be protested by the taxpayer to whom it is issued.

(1) A protest of a notice of assessment issued to a vendor or taxpayer for failure to file a return, underpayment of tax owed or as a result of an audit shall be submitted in writing to the Finance Director within twenty (20) calendar days from the date of the notice of assessment. Any such protest shall identify the amount of tax disputed and the basis for the protest.

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

(b) Any denial of a claim for a refund may be protested by the taxpayer who submitted the claim. A protest of a denial of a refund shall be submitted in writing to the Finance Director within twenty (20) calendar days from the date of the denial of the refund, and shall identify the amount of the refund requested and the basis for the protest.

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

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

(2) Participation in such an informal meeting does not prevent either the taxpayer or the Town from holding a formal hearing if the dispute cannot be resolved by such meeting. (Ord. 1263, 2007)

**Sec. 4-2-430. Hearings.**

(a) The Town shall commence a hearing within ninety (90) days after the Town's receipt of the taxpayer's written protest; except that the Town may extend such period if the delay is requested by the taxpayer. The Finance Director

shall notify the taxpayer in writing of the time and place of such hearing.

(b) Every hearing shall be held within the Town and before the Finance Director and/or the Town Manager.

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

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

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

(f) Unless the decision of the Finance Director is appealed as provided in this Article, the remaining tax due, if any, shall be paid on or before thirty (30) days after the date of the finding of fact, conclusions and decision. (Ord. 1263, 2007)

**Sec. 4-2-440. Appeals.**

(a) Subsequent to a hearing, the taxpayer may appeal the decision of the Finance Director in District Court pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

(b) Upon appeal to the District Court, the taxpayer shall either file with the Finance Director a bond for twice the unpaid amount or deposit the unpaid amount with the Finance Director.

(c) An appeal of a final decision of the Finance Director in a hearing held pursuant to this Article shall be commenced within thirty (30) days of such decision. (Ord. 1263, 2007)

**Sec. 4-2-450. Lien for tax due.**

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

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

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

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

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

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

clerk and recorder of the county where the property is located or based.

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

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

(d) Enforcement against real property. If a notice of lien is filed against any real property, the Finance Director may direct the Town Attorney to file a civil action to enforce such lien. The court may determine the interest in the property of each party, decree a sale of the real property and distribute the proceeds according to such findings. Procedure for the action and the manner of sale, the period for and manner of redemption from the sale and the execution of deed of conveyance shall be in accordance with the law and practice relating to foreclosures of mortgages upon real property. In any such action, the court may appoint a receiver of the real property involved in such action if equity so requires. (Ord. 1263, 2007)

**Sec. 4-2-460. Performance of lien.**

(a) Any lien for tax due shall continue until a release of lien is filed by the Finance Director.

(b) Any person who purchases or repossesses real or personal property upon which a lien has been filed by the Finance Director for tax due shall be liable for the payment of such tax due up to the value of the property taken or acquired. (Ord. 1263, 2007)

**Sec. 4-2-470. Release of lien.**

Upon payment of the tax due or enforcement of the lien, the Finance Director shall file a release of the lien with the county clerk and recorder of the county in which the lien was filed. (Ord. 1263, 2007)

**Sec. 4-2-480. Civil action to recover tax due.**

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

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

(c) If a judgment is obtained by the Town, collection of the tax due may be made by attachment, garnishment or other means established by law. When attachment is sought, no bond shall be required of the Finance Director, nor shall any sheriff require of the Finance Director an indemnity bond for executing the writ of attachment or writ of execution upon any judgment. (Ord. 1263, 2007)

**Sec. 4-2-490. Jeopardy assessment.**

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

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

(c) Dispute of jeopardy assessment. If, in the opinion of the taxpayer, the jeopardy assessment is not for the correct amount of the tax due, the taxpayer shall pay the tax due as assessed and submit a claim for refund to the Town. (Ord. 1263, 2007)

**Sec. 4-2-500. Distrain and sale.**

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

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

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

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

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

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

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

(c) Disposal of distrained property:

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

(2) A notice of time and place of the sale, together with a description of the property to be sold, shall be published in a newspaper of general circulation within the Town where distraint is made or, in lieu thereof and in the discretion of the Finance Director, the notice shall be posted at the courthouse of the county where the distraint is made and in at least two (2) other places of general public view within such county.

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

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

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

(6) The property offered for sale may be redeemed if the owner or possessor or other person holding an unperfected chattel mortgage or other right of possession pays the tax due and all collection costs no less than twenty-four (24) hours before the sale.

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

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

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

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

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

(d) Exempt property. Property of the taxpayer subject to distraint shall include the personal property of the taxpayer and the goods, stock in trade and business fixtures owned or used by any taxpayer, including those used under lease, installment sale or other contract arrangement. Property exempt from distraint and sale shall include the personal property described in Subsection 4-2-370(c) of this Article.

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

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

(2) The finder of fact shall receive evidence on any issue of fact necessary to the decision of the petition. If the finder of fact determines by a preponderance of the evidence in favor of the taxpayer or other petitioner, the property shall be returned. (Ord. 1263, 2007)

**Sec. 4-2-510. Status of tax due in bankruptcy and receivership.**

Whenever the business or property of any taxpayer is subject to receivership, bankruptcy or assignment for the benefit of creditors or distrainted for property taxes, all tax due shall be a prior and preferred lien against all the property of the taxpayer. No sheriff, receiver, assignee or other officer shall sell the property of any such taxpayer under process or order of the Finance Director or Town Manager for less than the amount of the tax due. The officer shall pay any tax due before making payment to any judgment, creditor or other claimant. (Ord. 1263, 2007)

*Division 3  
Use Tax*

**Sec. 4-2-610. Use tax levied.**

There is to be levied, and there shall be collected, a use tax on every person, firm, corporation or association for the privilege of storing,

using or otherwise consuming within the Town any tangible personal property, construction or building materials, motor or other vehicles for which registration is required, purchased at retail outside the Town. The use tax shall be imposed and collected at a rate of four and one-half percent (4½%), inclusive of a one-half-percent use tax for affordable housing, of the storage costs or purchase price at retail of the tangible personal property, construction or building materials, motor or other vehicles, purchased outside the Town and stored, used or otherwise consumed in the Town. Except as may otherwise be provided in this Article, the use tax shall be due and payable at the time the property is brought into the Town. Such tax is payable and shall be collected by the Town Clerk, Finance Director or an authorized agent. (Ord. 1263, 2007)

**Sec. 4-2-620. Revenue dedication.**

(a) Except for the revenue as described in Subsection (b) below, fifty percent (50%) of the proceeds derived from the use tax imposed herein shall be pledged for capital improvements of the Town or for payment of any obligations entered into for such purposes. Said fifty percent (50%) of such proceeds of the use tax shall be deposited immediately upon being received or collected into a special fund entitled the Capital Improvements Fund. Commencing January 1, 1994, twenty percent (20%) of the unencumbered revenues collected and received by the Town through the use tax imposed pursuant to this Article shall be dedicated to the Open Space Fund as established under Section 4-1-30 of this Chapter. For purposes of this Section, *unencumbered revenues* shall mean those tax revenues not already pledged or dedicated to debt service or obligations created or in effect prior to the collection of said revenues. In no event shall revenues dedicated and transferred into the Open Space Fund exceed twenty percent (20%) of the total annual use tax revenues collected and received by the Town in any given year absent express prior authorization of the Town Council by ordinance or resolution.



(b) Pursuant to the vote of the Town electorate at the November 8, 1994 municipal election, all revenues collected and received by the Town pursuant to the one-half-percent use tax for affordable housing shall be deposited in a separate Affordable Housing Fund which shall be used exclusively to fund and finance the development and preservation of affordable housing, including the acquisition of land therefor. (Ord. 1263, 2007)

#### Sec. 4-2-630. Exemptions.

This use tax shall not apply to:

(1) The storage, use or consumption of any tangible personal property, the sale of which is subject to a retail sales tax imposed by the Town and described in this Article.

(2) The storage, use or consumption of any tangible personal property purchased for resale in the Town, either in its original form or as an ingredient of a manufactured or compounded product in the regular course of business.

(3) The storage, use or consumption of tangible personal property brought into the Town by a nonresident thereof for his or her own storage, use or consumption while temporarily within the Town; however, this exemption does not apply to the storage, use or consumption of tangible personal property brought into the State by a nonresident to be used in the conduct of a business in the State.

(4) The storage, use or consumption of tangible personal property by the United States Government or the State, or their institutions or political subdivisions, in their governmental capacities only or by religious or charitable corporations in the conduct of their regular religious or charitable functions.

(5) The storage, use or consumption of tangible personal property by a person engaged

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

(6) The storage, use or consumption of any item of tangible personal property, the sale or use of which has already been subjected to a sales or use tax of another statutory or home rule municipality equal to or in excess of the tax imposed by this Article. A credit shall be granted against the use tax imposed by this Article with respect to the storage, use or consumption in the Town of tangible personal property purchased in another municipality equal to the tax paid by the taxpayer by reason of the imposition of a sales tax by the previous municipality on the purchase or use of the property. The amount of credit shall not exceed the tax as imposed by this Article.

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

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

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

(10) The use or consumption of any construction and building materials required or made necessary in the performance of any construction bid let or entered into at any time prior to the effective date of the ordinance codified in this Article.

(11) The storage of construction and building materials.

(12) The use or consumption of tangible personal property within the Town 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. (Ord. 1263, 2007)

**Sec. 4-2-640. Proration as applied to certain construction equipment.**

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

(b) With respect to transactions consummated on or after January 1, 1986, construction equipment which is located within the boundaries of the Town for a period of thirty (30) consecutive days shall be subjected to the Town's use tax in an amount calculated as follows: the purchase price of the equipment shall be multiplied by a fraction, the numerator of which is one (1) and the denominator of which is twelve (12), and the product shall be multiplied by the use tax rate as established by this Article.

(c) Where the provisions of Subsection (b) above are utilized, the credit provisions of Subsection (f) below apply at such time as the

aggregate sales taxes legally imposed by and paid to other municipalities on any such equipment equal the tax as imposed by this Article.

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

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

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

(e) If the equipment declaration is given as provided in Subsection (d) above, then as to any item of construction equipment for which the customary purchase price is under two thousand five hundred dollars (\$2,500.00) which was brought into the boundaries of the Town temporarily for use on a construction project, it shall be presumed that the item was purchased in a jurisdiction having a local sales tax or use tax as high as the sales or use taxes imposed by this Article

and that such local sales or use tax was previously paid. In such case, the burden of proof in any proceeding before the Town or a District Court shall be on the Town to prove such local sales or use tax was not paid.

(f) If the taxpayer fails to comply with the provisions of Subsection (d) above, the taxpayer may not avail himself or herself of the provisions of Subsection (b) of this Section and is subject to the provisions of Subsection (a) of this Section. However, substantial compliance with the provisions of Subsection (d) above shall allow the taxpayer to avail himself or herself of the provisions of Subsection (b) of this Section. (Ord. 1263, 2007)

**Sec. 4-2-650. Payment requirements on building and construction use tax; exemption certificate required.**

(a) No building permit shall be issued by the Building Official to any person requesting a permit for construction within the Town until the person has paid the use tax in an amount calculated by applying the use tax rate of taxation to forty percent (40%) of the valuation of the project based on current Building Code data as applied to the type of construction involved, including electrical, plumbing or mechanical material.

(b) All of such estimated valuations shall be computed by the Building Official.

(c) Any person entitled to a whole or partial exemption shall execute an affidavit showing why he or she should be excused wholly or in part from paying an estimated use tax and shall also file such other forms as the Finance Director may require to prove his or her exemption. After review of these documents, the Finance Director may excuse such person from paying an estimated use tax if he or she finds that the person requesting an exemption qualified for such exemption under Section 4-2-530 above.

(d) All construction projects five hundred thousand dollars (\$500,000.00) or less in valuation shall pay the use tax when the building permit is issued. All construction projects in excess of five hundred thousand dollars (\$500,000.00) shall pay the use tax as follows:

(1) First payment: first one-third (1/3) of total use tax when permit is issued;

(2) Second payment: second one-third (1/3) of use tax prior to framing inspection;

(3) Third payment: last one-third (1/3) of use tax prior to the issuance of the certificate of occupancy. (Ord. 1263, 2007)

**Sec. 4-2-660. Vehicle use tax.**

The following provisions shall apply to the payment of and collection of the vehicle use tax:

(1) The use tax imposed by this Article shall be collected by the authorized agent of the Colorado Department of Revenue.

(2) The proceeds of the use tax imposed by this Article shall be paid to the Town periodically in accordance with an agreement entered into by and between the Town and the authorized agent of the Colorado Department of Revenue.

(3) The Town Manager is empowered to enter into and execute on behalf of the Town any agreements necessary for the administration and enforcement of this Article. (Ord. 1263, 2007)

**Sec. 4-2-670. Collection; limitation of action.**

For transactions initiated on or after January 1, 1986:

(1) No use tax, interest thereon or penalties with respect thereto shall be assessed,

nor any notice of lien be filed, distraint warrant issued or suit for collection be instituted, nor any other action to collect the same be commenced, more than three (3) years after the date on which the tax was or is payable; nor shall any lien continue after such period, except for taxes assessed before the expiration of such period, notice of lien with respect to which has been filed prior to the expiration of such period, in which case such lien shall continue only for one (1) year after the filing of notice thereof. In the case of a false or fraudulent return with intent to evade tax, the tax, together with interest and penalties thereon, may be assessed, or proceedings for the collection of such taxes may begin, at any time. Before the expiration of such period of limitation, the taxpayer and the Town Manager may agree in writing to an extension thereof, and the period so agreed to may be extended by subsequent agreements in writing.

(2) In the case of failure to file a return, the use tax may be assessed and collected at any time. (Ord. 1263, 2007)

**Sec. 4-2-680. Refunds; limitations of actions.**

For transactions consummated on or after January 1, 1986:

(1) An application for refund of use tax paid under dispute by a purchaser or user who claims an exemption pursuant to Section 4-2-520 of this Article shall be made within sixty (60) days after the storage, use or consumption of the goods or services whereon an exemption is claimed.

(2) An application for refund of tax moneys paid in error or by mistake shall be made within three (3) years after the date of storage, use or consumption of the goods for which the refund is claimed. (Ord. 1263, 2007)

**Sec. 4-2-690. Interest in underpayment, nonpayment or extensions of time for payment of tax.**

(a) If any amount of use tax is not paid on or before the last due date prescribed for payment, interest on such amount at the rate imposed under Section 4-2-620 of this Article shall be paid for the period from such last date to the date paid. The last date prescribed for payment shall be determined without regard for any extension of time for payment and shall be determined without regard to any notice and demand for payment issued, by reason of jeopardy, prior to the last date otherwise prescribed for such payment. In the case of a tax in which the last date for payment is not otherwise prescribed, the last date of payment shall be deemed to be the date the liability for the tax arises, and in no event shall it be later than the date notice and demand for the tax is made by the Town Manager.

(b) Interest prescribed under Sections 4-2-580 through 5-2-610 of this Article shall be paid upon notice and demand, and shall be assessed, collected and paid in the same manner as the tax to which it is applicable.

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

(d) Interest prescribed under this Section and Sections 4-2-590 through 4-2-610 on any use tax may be assessed and collected at any time during the period within which the tax to which such interest relates may be assessed and collected. (Ord. 1263, 2007)

**Sec. 4-2-700. Deficiency due to negligence.**

If any part of the deficiency in payment of the use tax is due to negligence or intentional disregard of the ordinances or of authorized rules and

regulations of the Town with knowledge thereof, but without intent to defraud, there shall be added ten percent (10%) of the total amount of the deficiency, and interest in such case shall be collected at the rate imposed under Section 4-2-620 below, in addition to the interest provided by Section 4-2-320 of this Article, on the amount of such deficiency from the time the return was due from the person required to file the return, which interest and addition shall become due and payable ten (10) days after written notice and demand to him or her by the Town Manager. If any part of the deficiency is due to fraud with intent to evade the tax, then there shall be added one hundred percent (100%) of the total amount of the deficiency, and in such case, the whole amount of the tax unpaid, including the additions, shall become due and payable ten (10) days after written notice and demand by the Town Manager, and an additional three percent (3%) per month on the amount shall be added from the date the return was due until paid. (Ord. 1263, 2007)

**Sec. 4-2-710. Neglect or refusal to make return or pay.**

If a person neglects or refuses to make a return in payment of the use tax or to pay any use tax as required, the Town Manager shall make an estimate, based upon such information as may be available, of the amount of taxes due for the period for which the taxpayer is delinquent and shall add thereto a penalty equal to ten percent (10%) thereto and interest on such delinquent taxes at the rate imposed under Section 4-2-730 below, plus one percent (1%) per month from the date due. (Ord. 1263, 2007)

**Sec. 4-2-720. Penalty interest upon unpaid use tax.**

Any use tax due and unpaid shall be a debt to the Town and shall draw interest at the rate imposed under Section 4-2-730 below, in addition to the interest provided by Section 4-2-740, from the time when due until paid. (Ord. 1263, 2007)

**Sec. 4-2-730. Rate of interest.**

When interest is required or permitted to be charged under any provisions of Sections 4-2-690 through 4-2-720 above, the annual rate of interest shall be that established by the state Commissioner of Banking pursuant to Section 39-21-110.5, C.R.S. (Ord. 1263, 2007)

**Sec. 4-2-740. Other remedies.**

Nothing in Sections 4-2-690 through 4-2-720 above shall preclude the Town from utilizing any other applicable penalties or remedies for the collection or enforcement of use taxes to include such other provisions of this Article which may be applicable. (Ord. 1263, 2007)

**Sec. 4-2-750. Final decision of Town.**

For transactions consummated on or after January 1, 1986:

(1) Within fifteen (15) days after filing a notice of appeal as provided in Subsection 4-2-760(e) below, the taxpayer shall file with the District Court a surety bond of twice the amount of the taxes, interest and other charges stated in the final decision by the Town Manager which are contested on appeal. The taxpayer may, at his or her option, satisfy the surety bond requirement by a savings account or deposit in or a certificate of deposit issued by a state or national bank or a state or federal savings and loan association, in accordance with the provisions of Section 11-35-101(1), C.R.S., equal to twice the amount of the taxes, interest and other charges stated in the final decision by the Town Manager.

(2) The taxpayer may, at his or her option, deposit the disputed amount with the Town Manager in lieu of posting a surety bond. If such amount is so deposited, no further interest shall accrue on the deficiency contested during the pendency of the action. At the conclusion

of the action, after appeal to the Supreme Court or Court of Appeals or after the time for such appeal has expired, the funds deposited shall be, at the direction of the court, either retained by the Town Manager and applied against the deficiency or returned in whole or in part to the taxpayer with interest at the rate imposed pursuant to Section 4-2-620 of this Article. No claim for refund of amounts deposited with the Town Manager need be made by the taxpayer in order for such amounts to be repaid in accordance with the direction of the court. (Ord. 1263, 2007)

**Sec. 4-2-760. Collection; map of municipal boundaries.**

The Town shall make available to any requesting vendor a map showing the boundaries of the Town. For transactions consummated on or after January 1, 1986, the requesting vendor may rely on such map and any update thereof available to such vendor in determining whether to collect a use tax. No penalty shall be imposed or action for deficiency maintained against such a vendor who in good faith complies with the most recent map available to it. (Ord. 1263, 2007)

**Sec. 4-2-770. Dispute resolution and appeal.**

If the deficiency notice or claim for refund as asserted by the Town Manager, and involving only the Town, the taxpayer may appeal the deficiency notice or denial of a claim for a refund to the District Court of the County as provided in Section 29.2.106.1(8), C.R.S., provided that the taxpayer files such appeal within thirty (30) days after the taxpayer's exhaustion of all other local remedies. The taxpayer shall have no right to such appeal if he or she has not exhausted all applicable local remedies, or if he or she fails to file an appeal within the time 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 Town, and the

Town has held the hearing and issued a final decision thereon. The 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 Town may submit a brief. The Town shall hold the hearing and issue the final decision thereon within ninety (90) days after the Town's receipt of the taxpayer's written request for the hearing, except that the Town may extend such period if the delay in holding the hearing or issuing the decision thereon was occasioned by the taxpayer, but, in any such event, the Town shall hold the hearing and issue the decision thereon within one hundred eighty (180) days of the taxpayer's request in writing; or

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

If the Town reasonably finds that the collection of use tax will be jeopardized by delay, the Town may utilize the procedures set forth in Section 4-2-410 of this Article. (Ord. 1263, 2007)

*Division 4  
Violations and Limitations*

**Sec. 4-2-810. Violations; summons and complaints; penalty.**

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

(1) The failure of any person engaged in business in the Town to obtain applicable licenses.

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

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

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

(b) The Finance Director or the Town Manager may direct the issuance of a complaint and summons to appear before the Municipal Court to any person who may be in violation of this Chapter, or of the rules and regulations promulgated by the Finance Director or the Town Manager, to enforce this Chapter.

(c) Violations of this Chapter shall be punished by a fine or imprisonment, or both, pursuant to the limits established in this Code. Each and every twenty-four-hour continuation of any violation shall constitute a distinct and separate offense. (Ord. 1263, 2007)

**Sec. 4-2-820. Statute of limitations.**

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

(1) Refunds.

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

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

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

(2) Assessments. No notice of assessment shall be issued more than three (3) years after the due date of such tax due.

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

(4) Returns.

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

b. In the case of a false or fraudulent return filed with intent to evade tax, the tax due may be assessed, or proceedings for the collection of such tax due may begin at any time.

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

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

a. The taxpayer and Town Manager may agree in writing to extend the period.

b. If the Town provides written notice to the taxpayer prior to the expiration of the period of limitation that the latter's records will be audited pursuant to this Chapter, such period of limitation shall be extended for the audit period until thirty (30) days after the date of the notice of assessment or notice of overpayment issued as a result of such audit. *Audit period* means the thirty-six-month reporting period preceding the date of the notice of audit.

(7) Performance of an audit does not constitute a waiver or exemption from the statute of limitations or preclude additional audits of the same period within the parameters of this Section. (Ord. 1263, 2007)

**ARTICLE 3**

**Real Estate Transfer Tax**

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

As used in this Article, the following words shall have the definitions ascribed to them, unless otherwise provided:

*Affordable housing units* means dwelling units restricted to the housing size and type for individuals meeting asset, income and occupancy guidelines approved by the Town Council and/or the Housing Authority, whichever shall apply.

*Consideration* means the gross consideration paid for the real property affected by the transfer and includes actual cash paid, the fair market value of real and personal property delivered or conveyed in exchange for the transfer, or contracted to be so paid or delivered or conveyed in return for the transfer, and includes the amount of any lien, mortgage, contract indebtedness or other encumbrance or debt, either given to secure the purchase price or any part thereof, or remaining unpaid on the property at the time of the transfer. *Consideration* does not include as an addition to gross consideration the amount of any outstanding lien or encumbrance in favor of the United States, the State or a municipal or quasi-municipal corporation or district for taxes or special or local benefits or improvements. In the event the transaction or transfer is by lease agreement not specifically exempted in Section

4-3-60 below, the consideration is the capitalized value of the average annual rental unit of the lease, computed as follows: the average annual rental over the entire term of the lease (including any renewal term, plus the actual consideration, other than rent, paid or to be paid) shall be computed and the average annual rental shall be ten percent (10%) of the capitalized value. The payment of ad valorem real property taxes, insurance and the assumption of maintenance obligations under any lease agreement shall not be included in the annual rent-capitalization computation; however, capital improvements required to be made shall be part of the actual consideration. When the average annual rental cannot be determined for a lease agreement, or at the election of the Town Manager, the consideration therefor shall be based upon the appraised total value of the property covered by the lease as determined by an independent appraisal obtained by the Town Manager and paid for by the purchaser, or the capitalized value of the rentals or other consideration in terms of the present worth of the stream of rentals and other consideration under the lease, and any other economic considerations to reflect the capitalized value of the transferred or leased property.

*Deed in lieu of foreclosure* means a conveyance by a property owner to a secured party which is the subject of a mortgage, deed of trust or other security instrument in consideration of the cancellation of all or part of the indebtedness secured by such security instrument.

*Purchaser* means any person to whom a transfer of real property is made.

*Real estate transfer tax* means the tax imposed by this Article on the transfer of real property.

*Real property* means real property as defined by and under the laws of the State.



*Taxable lease* means any lease of real property with a term, or initial term and all renewal terms, which aggregate in length twenty-nine (29) years or more; provided that the lessee has possession or the right to possession on payment of rents. *Taxable lease* also means any lease of real property for less than twenty-nine (29) years of term, or initial term and all renewal terms aggregated, if the lessee has a clause which would permit the lessee at his or her discretion to extend the lease beyond twenty-nine (29) years or if the lessee has an option to purchase some or all of the real property leased. If the lessee has a lease with such an option to purchase which option may be exercised only within three (3) years after the date the lease and option is entered into, then the real estate transfer tax shall not be due and payable unless and until the exercise and consummation of such option. If any other lease with such an option to purchase is entered into, the real estate transfer tax is due and payable at the time of such transfer as transfer is defined in this Section.

*Transfer*, whether or not the same is in writing or is recorded, means and includes:

- a. Any grant, assignment, transfer, exchange, conveyance or consummated sale of any ownership or title to real property situated in the Town;
- b. The leasing, letting, conveyance, assignment, transfer or consummated sale of a possessory interest in real property, subject to the exemptions provided in this Article; or
- c. The conveyance, assignment, transfer or consummated sale of a timeshare, interval or time span estate, as defined in Section 2-215 of the Land Use Code. *Conveyance of ownership or title to real property*, for the purpose of this Article, means and includes the transfer of more than fifty percent (50%) of the authorized

and issued shares of a corporation which has as its principal asset real property situated in the Town. (Prior code 3.12.010)

**Sec. 4-3-20. Tax imposed.**

There is imposed a tax on all transfers, whether by deeds, instruments, writings, leases or any other documents or otherwise by which any lands, tenements or other interests in real property located in the Town are sold, granted, let, assigned, transferred, exchanged or otherwise conveyed to or vested in a purchaser thereof, or any other person, except as may be specifically exempted by Section 4-3-60 below. The tax shall be due and payable at the time of any such transfer and contemporaneously therewith as specified in this Article. (Prior code 3.12.020)

**Sec. 4-3-30. Revenue dedication.**

(a) All of the proceeds of the real estate transfer tax shall be specifically pledged for the acquisition of real estate for public purposes for the Town, for capital improvements of the Town or for both such purposes, including, without limitation, payment of any obligations of the Town entered into for such purposes. The proceeds of the real estate transfer tax shall be deposited in the Capital Improvement Fund, or any other special fund of the Town as the Town Council shall determine from time to time. Subject to the limitations of Subsection 4-1-20(b), the remainder of the proceeds, if there are any from time to time, may revert to the General Fund of the Town for the given year only, subject to annual appropriation by the Town Council.

(b) Twenty percent (20%) of the unencumbered revenues collected and received by the Town through the real estate transfer tax imposed pursuant to this Article shall be dedicated to and deposited in a separate Open Space Fund as established under Section 4-1-30 of this Code. For purposes of this Section, *unencumbered revenues* shall mean those tax revenues not already pledged or dedicated to debt service or

obligations created or in effect prior to the collection of said revenues. In no event shall revenues dedicated and transferred into the Open Space Fund exceed twenty percent (20%) of the total annual transfer tax revenues collected and received by the Town in any given year absent the express prior authorization of the Town Council by ordinance or resolution. (Prior code 3.12.030; Ord. 1288 §1, 2008)

**Sec. 4-3-40. Liability for payment.**

(a) Each purchaser and any other person to whom a transfer is made, which transfer is subject to the tax imposed under Section 4-3-20 above, shall be jointly and severally liable for payment of the tax.

(b) The purchaser or person to whom a transfer is made shall remit the tax to the Finance Director. (Prior code 3.12.040)

**Sec. 4-3-50. Amount.**

The amount of real estate transfer tax payable in each case shall be as follows:

- (1) Transfer between co-owners.
  - a. A nonexempt transfer from one (1) or more co-owners to another co-owner or co-owners is taxable in accordance with this Section. The real estate transfer tax payable with respect to such transfer shall be three percent (3%) of the gross consideration for the transfer paid to the grantor by the grantee. Notwithstanding the definition of *consideration* contained in Section 4-3-10 above, for the purpose of this Section, *gross consideration* means and includes:

- 1. Actual cash paid, the money equivalent of real and personal property delivered or conveyed in exchange for the transfer, or contracted to be paid or delivered or conveyed in return for the transfer;

- 2. The amount of any lien, mortgage, contract, indebtedness or other encumbrance or debt given to secure the purchase price, or any part thereof; and

- 3. The grantor's proportionate share of the unpaid balance of any debt which is owed against the property at the time of the transfer and not satisfied in connection with such transfer. For purposes of this Paragraph, the grantor's proportionate share of any unpaid debt which is owed against the property at the time of the transfer shall be determined by multiplying the grantor's fractional or percentage ownership interest in the property prior to the transfer, times the unpaid balance of such debt existing as of the time of the transfer.

- b. The term *gross consideration* does not include as an addition thereto the amount of any outstanding lien or encumbrance in favor of the United States, the State or a municipal or quasi-government corporation or district for taxes, special benefits or improvements.

- c. The real estate transfer tax on any transfer between co-owners by lease agreement shall be determined in accordance with the definition of *consideration* contained in Section 4-3-10 of this Article.

- (2) Where the consideration exceeds five hundred dollars (\$500.00), the real estate transfer tax payable shall be three percent (3%) of the consideration.

- (3) When required pursuant to Subsection 4-3-90(b) of this Article, the cost of the appraisal shall be added to the amount of real estate transfer tax as computed pursuant to this Section. (Prior code 3.12.050)

**Sec. 4-3-60. Exemption; grounds.**

The real estate transfer tax imposed by this Article shall not apply to:

(1) Any transfer where there is no consideration or when the consideration is five hundred dollars (\$500.00) or less.

(2) Any transfer wherein the United States, or any agency or instrumentality thereof, the State, any county, city and county, municipality, district or other political subdivision of the State, is either the grantor or grantee.

(3) Any transfer by gift of real property, where there is no consideration other than love and affection or charitable donation.

(4) Any transfer by document, decree or agreement partitioning, terminating or evidencing termination of a joint tenancy, tenancy in common or other co-ownership in real property; however, if additional consideration or value is paid in connection with such partition or termination, the tax shall apply and be based upon such additional consideration.

(5) Any transfer of title or change of interest in real property by reason of death, pursuant to a will, the law of descent and distribution, or otherwise.

(6) Transfers made pursuant to reorganization, merger or consolidation of corporations or by a subsidiary to a parent corporation for no consideration other than cancellation or surrender of the subsidiary's stock, or transfers made to a corporation, partnership, limited partnership, joint venture, business trust or other association or organization if that association or organization is owned by the persons by whom such transfer was made and if such owners have the same relative interests in the association or organization as they had in the

real property immediately prior to the transfer and there is no consideration other than their respective interests in the new association or organization.

(7) Transfers to make effective any plan confirmed or ordered by a court of competent jurisdiction under the Bankruptcy Code in an equity receivership proceeding.

(8) Any transfer made and delivered without consideration for the purpose of confirming, correcting, modifying or supplementing a transfer previously made; making minor boundary adjustments; removing clouds on titles; or granting rights-of-way, easements or licenses.

(9) Any decree or order of a court of record quieting, determining or resting title, including a final order awarding title pursuant to a condemnation proceeding.

(10) Any transfer of cemetery lots.

(11) Any lease of any real property (or assignment or transfer of any interest in any such lease), provided that the terms and conditions of such lease do not constitute a taxable lease, as defined in this Article, of the property.

(12) Transfers to secure a debt or other obligation, or releases other than by foreclosure of real property which is security for a debt or other obligation.

(13) An executory contract for the sale of real property of less than three (3) years' duration, under which the vendee is entitled to or takes possession thereof without acquiring title thereto, or any assignment or cancellation of any such contract.

(14) Any transfer by deed in lieu of foreclosure, provided that:

a. Such transfer shall be exempt only if the grantee in such deed is the person holding the obligation or instrument which is being canceled, in whole or in part, in exchange for the transfer; and

b. Such transfer shall be exempt only to the extent of the amount of the obligation which is being canceled, in whole or in part, in exchange for the transfer.

(15) Any transfer by sheriff's deed, trustee's deed or other conveyance of real property in connection with an execution sale; foreclosure sale by the public trustee under a power of sale; court decree foreclosing a mortgage, deed of trust or other security instrument; or court decree of lien foreclosure; provided that:

a. Such transfer shall be exempt only if the grantee in such deed is the same person who is the holder, payee or beneficiary (as determined at the time of the commencement of foreclosure or execution) of the debt or instrument which is the basis of the proceeding, or such person is a junior lien holder or exercising redemption rights pursuant to a lien that was recorded prior to commencement of the foreclosure or execution; and

b. Such transfer shall be exempt only to the extent of the current amount of the obligation satisfied at the execution or foreclosure sale, plus any obligations to prior lienholders paid from the sale.

The certificate of purchase or other evidence of purchase issued by the person conducting the sale shall, if the above-described conditions are met, be exempt from the within transfer tax. If the conditions are not so satisfied, there shall be a tax imposed as provided herein, at the

time of the issuance of the certificate of purchase or other evidence of purchase issued by the person conducting the sale, which payment shall be made to the Town in escrow. If no redemption is made by the owner, the tax shall become absolute to the Town upon expiration of the owner's redemption periods. If redemption is made by the owner, the tax shall be refunded to the person who paid it to the Town. A transfer of the certificate of purchase or other evidence of purchase issued by the person conducting the sale shall be subject to a transfer tax. The deed by the person or entity conducting the sale is not a transfer subject to the transfer tax.

(16) Any transfer which fulfills all of the following three (3) conditions:

a. The transferor obtained title to the property from the transferee.

b. The transfer occurred pursuant to a written agreement entered into on or before the date of the deed which conveyed title from the transferee to the transferor. At a minimum, the agreement shall either:

1. Allow the transferor to require the transferee to reacquire the property; or

2. Allow the transferee to require the transferor to reconvey the property to the transferee.

c. The transfer occurred on or before three hundred sixty-five (365) days after the transferor obtained title from the transferee.

(17) A transfer under foreclosure or power of sale, or a voluntary conveyance in lieu of foreclosure, whereby the secured party takes back the property or the property is redeemed by the original debtor. However, a purchaser at a foreclosure sale who holds no security interest or redemption rights in the property,



CERTIFICATE OF EXEMPTION

I hereby certify this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, that the above described Transfer of Real Property is exempt from the payment of the Real Estate Transfer Tax under Telluride Municipal Code Chapter 4, Article 3.

\_\_\_\_\_  
Town Manager  
Telluride, Colorado

(b) Any person whose claim of exemption duly applied for under the provisions of this Section is denied by the Town Manager may immediately appeal to the Town Council for a determination of such exemption, and such appeal shall be considered by the Town Council within sixty (60) days of receipt of the same. In the event of a determination by the Town Council favorable to the appellant, any amount previously deposited, or so much thereof as may be allowed by the Town Council, shall be promptly refunded to the person paying or depositing the same. If a decision is not made by the Town Council within sixty (60) days of the receipt of an appeal, the decision will be deemed favorable to the appellant, unless the appellant has obtained a continuance of the matter, in which case the Town Council shall make its decision within six (6) months after receipt of the appeal.

(c) In case of an application for an exemption which is not granted before the transfer takes place, the real estate transfer tax shall be paid as required by this Article. Thereafter, if the exemption is allowed, upon application to the Town Manager, the person who has paid the tax is entitled to a refund thereof, or so much of the tax as qualified for refunding pursuant to the exemption granted.

(d) A one-hundred-dollar application fee shall be required with submission of the application. If the application is approved, the fee shall be refunded. (Prior code 3.12.070; Ord. 1288 §1, 2008)

**Sec. 4-3-80. Property outside Town.**

When a transfer subject to this Article includes real property located within the Town as well as real property located elsewhere, the tax imposed under the authority of this Article shall be computed only with respect to real property located within the Town, and the tax shall be assessed based on that part of the consideration fairly attributable to such real property located within the Town. (Prior code 3.12.080)

**Sec. 4-3-90. Enforcement by Town Manager.**

(a) The Town Manager is charged with the enforcement of the provisions of this Article and is authorized and empowered to prescribe, adopt, promulgate and enforce rules and regulations pertaining thereto.

(b) In the event the purchaser fails or refuses to provide full and complete information regarding the consideration paid for transfer of real property subject to the transfer tax, the Town Manager may obtain an independent appraisal and the transfer tax will be computed on the appraised value as determined by said appraiser, including allocation of consideration between real property and other things of value conveyed contemporaneously when applicable. The cost of said appraisal shall be added to the amount of real estate transfer tax due. (Prior code 3.12.090)

**Sec. 4-3-100. Annual report to Town Council.**

The Town Manager shall annually prepare a report of the receipts from the real estate transfer tax, expenditures relating thereto made in the preceding fiscal year, funds into which the proceeds have been deposited, the disposition of those funds and the projected revenue and expenditures for the next fiscal year. Such report shall be submitted to the Town Council concurrently with the submission of the Town budget. (Prior code 3.12.100)

**Sec. 4-3-110. Report of transfer.**

At the time of any transfer upon which a real estate transfer tax is imposed or which is claimed to be exempt under this Article, there shall be made a report to the Town Manager on forms prescribed by the Town Manager, setting forth the true, complete and actual consideration for the transfer, the names of the parties thereto, the description and location of the real property transferred, the basis of any claimed exemption and such other information as he or she may require. (Prior code 3.12.110)

**Sec. 4-3-120. Collection by closing agents.**

For the purpose of collection of the tax imposed by this Article, all banks, title companies, escrow companies, building and loan institutions, attorneys, real estate agencies or other closing agents or agencies, permitted as such to do business under the laws of the State, may collect the real estate transfer tax (holding the funds in trust for the Town) and remit the same to the Town for and on behalf of the purchaser, forthwith. The funds shall not be commingled with other funds of the collector. (Prior code 3.12.120)

**Sec. 4-3-130. Collection by County.**

(a) The Real Estate Transfer Tax Administrator is authorized to certify delinquent real estate transfer taxes to the County Treasurer for collection, pursuant to Title 31, Article 20, C.R.S. The Town shall pay the County reasonable and just compensation for collection services as provided by statute.

(b) Collection by the County Treasurer shall be in addition to all of the Town's other remedies at law or in equity. (Prior code 3.12.130)

**Sec. 4-3-140. Delinquency; interest.**

The real estate transfer tax imposed under this Article is due and payable at the time of the transfer of the real property, and is delinquent if it

remains unpaid for thirty (30) days thereafter. In the event that the tax is not paid prior to becoming delinquent, a delinquency penalty of fifteen percent (15%) of the amount of tax due shall accrue. In the event a portion of the tax is paid prior to becoming delinquent, the penalty shall only accrue as to the portion which is delinquent, and interest shall accrue at the rate of one and one-half percent (1.5%) per month, or fraction thereof, on the amount of tax, exclusive of penalties, from the date the tax becomes delinquent to the date of payment. Interest and penalty accrued shall become part of the tax. (Prior code 3.12.140)

**Sec. 4-3-150. Lien status.**

(a) The real estate transfer tax imposed by this Article, and any penalty, fees and interest due thereon, if not paid when due, together with all costs of collection of the tax, penalty, fees and interest, shall constitute a perpetual lien on the real property transferred in the amount applicable to each lot or parcel of real property transferred and shall have priority over all other liens except general tax liens and special or local improvement district assessment liens. Except as provided in this Subsection, the lien for the tax shall be and shall remain a first and prior lien superior to all other liens upon the property and shall take precedence on such property over other liens or claims of whatsoever kind or nature. The lien shall continue until the amount thereof is paid or until its discharge of record by foreclosure or otherwise.

(b) The recording of the ordinances from which this Article derives in the office of the County Clerk and Recorder shall constitute notice to all persons interested in the transfer of real property of the existence of the lien imposed by the real estate transfer tax on such transfer. (Prior code 3.12.150)

**Sec. 4-3-160. Notice of delinquency.**

If the real estate transfer tax is unpaid and delinquent, the Town Manager shall give written

notification of the delinquency to the purchaser or person to whom the transfer is made at the address shown on any deed or instrument evidencing the transfer, or his or her last known address. The notification shall be mailed by certified mail, postage prepaid, return receipt requested, and shall be effective on the date of mailing. If the tax, penalty and interest are not paid within thirty (30) days of the effective date of the notification, the Town Manager shall commence foreclosure of the lien for the tax in the same manner as the foreclosure of a mortgage in accordance with state law. (Prior code 3.12.160; Ord. 1288 §1, 2008)

**Sec. 4-3-170. Collection action.**

The amount of the tax, penalty, fees and interest imposed under the provisions of this Article shall be deemed a personal debt owed by the purchaser to the Town. Any person owing money to the Town under the provisions of this Article is liable to an action brought in the name of the Town for the recovery of such amount. (Prior code 3.12.170)

**Sec. 4-3-180. Recording without payment.**

Any person liable for the real estate transfer tax upon a transfer who causes the deed, instrument of conveyance or document evidencing the transfer to be filed of record in the office of the County Clerk and Recorder or attempts to so record the document until and unless the real estate transfer tax and all penalties and interest thereon have been paid in full is in violation of this Article. (Prior code 3.12.180)

**Sec. 4-3-190. Evasion by artifice or device.**

Notwithstanding the provisions of Section 4-3-60 of this Article, if an artifice or device is employed in connection with the transfer of real property, artifice or device, meaning a transaction a substantial purpose of which was to evade the provisions of this Article, then such transfer will

nevertheless be subject to the real estate transfer tax. *Artifice* or *device* includes, but is not limited to:

(1) A transfer to a corporation, partnership, limited partnership, joint venture, business trust or other association or organization followed within three (3) years by an assignment of the controlling interest in such association or organization.

(2) Such a transfer plus the intent to ultimately assign the controlling interest in such association or organization. (Prior code 3.12.190; Ord. 1288 §1, 2008)

**Sec. 4-3-200. Remedies cumulative.**

Any remedies provided for in this Article are cumulative and not exclusive and are in addition to any other remedies provided by law. Violation by any person of any of the provisions of this Article shall constitute a misdemeanor and is punishable by a maximum penalty as set forth in Paragraph 1-4-10(a)(1) of this Code. (Prior code 3.12.200; Ord. 1288 §1, 2008)

**ARTICLE 4**

**Excise Tax**

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

This Article has been enacted to implement the vote of the Town Electorate made on November 4, 2003, to adopt and impose a two-percent excise tax on lodging rentals and the sale of food and drink served or furnished in restaurants and bars, the revenue from which shall be collected and deposited in a special separate fund and retained or expended to fund an airline guaranty program, and all provisions contained within this Article shall be liberally interpreted and construed in furtherance of said purpose. (Prior code 3.40.010)



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

The following words and/or phrases used in this Article shall be defined as follows:

*Airline guaranty program* means a program of defined activities established, intended and administered exclusively to encourage, support, enhance and expand commercial and/or charter airline service to the Telluride and Montrose regional airports by, among other things, providing contractual revenue guarantees to commercial and/or charter airlines.

*Bar* means a premises or establishment required to be licensed under Chapter 6, Article 2 of this Code and/or Articles 46 or 47 of Title 12, C.R.S., within which fermented malt beverages or malt, vinous or spirituous liquors are sold and consumed, and may include restaurants.

*Consumer* means any person who purchases or otherwise obtains for a fee or other consideration a lodging rental, food or drink within the Town.

*Drink* means any beverage for human consumption, including, without limitation, soft drinks, beer, liquor, tea or milk.

*Finance Director* means the Finance Director for the Town.

*Food* means any raw, cooked, prepared or processed edible substance intended for human consumption.

*Lodging rental* means any room, apartment, condominium, boardinghouse, hotel room, guesthouse, lodge, campground site, recreational vehicle space, bed and breakfast, residence or similar accommodation generally used for sleeping and made available for a fee to transient guests on an overnight basis.

*Restaurant* means a business or premises equipped with a kitchen or other food preparation facilities used for the preparation, service and sale of meals, sandwiches or other ready-to-eat food items to customers for immediate consumption, and which may include, without limitation, grocery stores and delicatessens serving sandwiches, salads or other ready-to-eat food, vending carts, and coffee, pizza and sandwich shops.

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

*Vendor* means any person who provides a lodging rental or food or drink to a consumer or patron for a fee or other consideration. (Prior code 3.40.020; Ord. 1288 §1, 2008)

**Sec. 4-4-30. Excise tax imposed.**

(a) There is hereby imposed and levied in the Town, and shall be collected and paid, a two percent excise tax on the purchase price or other consideration paid or charged for any lodging rental, and on the price or other consideration paid or charged for food and drink served or furnished by a restaurant or bar.

(b) The excise tax imposed by this Section shall be separately stated on the invoice, bill, sales receipt or similar document illustrating the price or charge for the lodging, food or drink provided to the consumer by the vendor.

(c) It is unlawful for any consumer, patron or other purchaser not to pay, or for any vendor not to collect and timely remit, the excise tax imposed by this Section. (Prior code 3.40.030; Ord. 1288 §1, 2008)

**Sec. 4-4-40. Excise tax license required; suspension or revocation.**

(a) It is unlawful for any person to engage in renting, leasing or otherwise providing a lodging rental, or for any person to engage in the sale of food or drink in any restaurant or bar, without first having obtained an annual excise tax license. The license required by this Section may be incorporated into the business license required under Chapter 6, Article 1 of this Code.

(b) Applications for an excise tax license shall be made to the Finance Director on forms prescribed therefor. A license shall be valid until December 31 of the year in which it was issued, unless earlier revoked or suspended. A fee as may be established by the Town shall accompany each license application.

(c) A separate license and fee, if any, shall be required for each place of business engaged in the type of transactions subject to the excise tax under this Article. No license shall be transferable, and the license and tax imposed by this Article shall be in addition to all other licenses and taxes required and/or imposed by any other ordinance or law. Whenever a business or other entity licensed under this Section is sold or transferred so that the ownership interest in the same changes, then the purchaser shall obtain a new license.

(d) The Town Council, upon reasonable prior and written notice to the licensee and after a hearing, may revoke or suspend the license of any person found by the Town Council to have violated any provision of this Article. (Prior code 3.40.040; Ord. 1288 §1, 2008)

**Sec. 4-4-50. Collection and remittance of tax; vendor collection fee; delinquency interest and penalty.**

(a) All vendors subject to this Article shall timely collect and be liable for an amount equivalent to two percent (2%) of the price or cost paid for lodging rentals and for food and drink

sold in a restaurant or bar as specified in Subsection 4-4-30(a) of this Article, and shall, before the twentieth day of each month, make a return to the Town for the preceding calendar month and remit said collected tax amounts to the Town; however, in the event the tax collected in a month is less than three hundred dollars (\$300.00), then the return and remittance may be performed at the end of the calendar quarter. Vendors shall compute and add the two-percent tax to all taxable amounts in accordance with the tax schedule established by the Finance Director, said schedule to be designed so that no tax is imposed and collected on a sale or charge of seventeen cents (\$0.17) or less.

(b) All returns and remittances shall be made in such a manner and upon such forms as the Finance Director may prescribe, inclusive of the standard reporting forms devised by the Executive Director of the Colorado Department of Revenue. The Finance Director may extend the time for making a return and paying the taxes due under such reasonable rules, regulations or conditions as he or she may determine necessary from time to time.

(c) If the accounting methods regularly employed by a vendor, or other conditions, are such that reporting taxable sales and remitting the collected tax on a calendar month basis will impose an unnecessary hardship, the Finance Director may, upon written request of the vendor, accept reports and remittances at such intervals as will, in his or her opinion, better suit the convenience of the vendor while not jeopardizing the collection of the tax; provided, however, that the Finance Director may not permit vendors to make returns and pay taxes at intervals greater than every three (3) months, and any failure by the vendor to timely remit all taxes due under such alternate method of reporting shall, upon written notice to the vendor, result in the immediate revocation of such alternate method.

(d) A vendor doing business in two (2) or more places or locations within the Town may file one (1) return covering all such business locations.

(e) If any vendor during a reporting period collects a total tax amount in excess of two percent (2%) of the total taxable charges or sales, the vendor shall remit to the Town the full net amount of the tax imposed along with any collected excess. The retention by a vendor of any excess collected tax, or the intentional failure to remit punctually to the Town the full amount required to be remitted by the provisions of this Article, is unlawful.

(f) Should a dispute arise between a consumer and vendor as to whether or not a charge or sale is exempt from taxation hereunder, the vendor shall nevertheless collect and the consumer shall pay such tax, and the vendor shall thereupon issue to the consumer a receipt or certificate on a form prescribed by the Finance Director showing the names of the vendor and consumer, the transaction, sale and/or price subject to the dispute, the date and amount of tax paid, and a brief statement of the claim for exemption. The consumer may apply to the Finance Director thereafter for a refund of the tax, and it shall then be the duty of the Finance Director to determine the question of exemption.

(g) A vendor may retain one and thirty-five one-hundredths percent (1 35/100%) of the sum of the excise tax remitted to the Town to cover the vendor's expense in the collection and remittance of the tax; except that, in the event a vendor is delinquent or deficient in remitting said tax to the Town, other than for unusual circumstances demonstrated to the satisfaction of the Finance Director, the vendor shall not be allowed to retain any amounts to cover such expenses in collecting and remitting the tax. (Ord. 1310, 2009)

(h) Interest shall accrue on all delinquent or deficient payments of the excise tax from the date of delinquency or underpayment to the date of full payment at the rate of one percent (1%) per month. Interest shall be calculated for each month, or portion of a month, that a tax delinquency or deficiency remains unpaid. A penalty equal to ten percent (10%) of the delinquent or

deficient tax amount shall also be paid, unless the delinquency or deficiency is due to fraud or an intent to evade the tax, in which case the penalty shall be one hundred percent (100%) of the total amount of such delinquency or deficiency, and the same shall be due and paid, along with the unpaid tax, within twenty (20) days after written notice and demand for payment is made by the Town. No interest shall be allowed or paid on any overpayment of the excise tax.

(i) The timely submission of a collection report and/or payment of the excise tax required under this Article shall be evidenced by the U.S. Mail postmark date if mailed, or by the Town's stamped receipt validation date if submitted by other method of delivery. Any due date, payment date or deadline for submitting a report and/or remitting payment of the excise tax, or for providing information or taking other action, which falls on a weekend or legal holiday recognized by the Town or federal or state government, shall be automatically extended to the first business day following such weekend or holiday.

(j) It is unlawful for any person to submit false information in connection with a collection report and/or tax return. (Prior code 3.40.050; Ord. 1288 §1, 2008)

#### **Sec. 4-4-60. Exemption from excise tax.**

(a) There shall be exempt from the excise tax imposed under this Article the following:

(1) Lodging rentals or sales to the United States government and all departments and institutions thereof, the State and the departments, institutions and political subdivision thereof, and the Town; but only in the exercise of their governmental functions and only when rentals and purchases are supported by official government purchase orders or other official documentation, and paid for by draft or warrant drawn on the government's account directly to the vendor.

(2) Lodging rentals or sales to charitable organizations duly established and recognized under state or federal law, but only to the extent any such rental or sale is transacted in the conduct of the organization's regular charitable functions and activities and is paid for directly by the organization without reimbursement therefor.

(3) All rentals or sales which the Town is prohibited from taxing under the Constitution or laws of the United States or the State.

(b) The burden of proving that any rental, sale or other transaction is exempt from the excise tax imposed under this Article shall be on the person asserting such exemption under such reasonable requirements of proof as the Finance Director may prescribe. (Prior code 3.40.060; Ord. 1288 §1, 2008)

**Sec. 4-4-70. Review of return; underpayment and overpayment of tax; notices.**

(a) As soon as practicable after a return is filed, it shall be reviewed for accuracy and completeness. If it appears from the information on a return that the tax due is greater or lesser than the amount remitted, the tax shall be recomputed.

(b) If the amount of tax remitted with a return is more than is due based upon the information on the return, a notice shall be sent to the taxpayer. If the overpayment is at least fifteen dollars (\$15.00), a notice of overpayment shall be issued and the taxpayer may either submit a written claim for refund or file an amended return reporting the correct tax due. No refund of a tax overpayment shall be paid unless a claim for refund is submitted to the Town on or before the thirtieth day from receipt of the notice of overpayment. If an overpayment is less than fifteen dollars (\$15.00), it shall be credited to the tax due for the next reporting period.

(c) If the amount of the tax remitted with a return is less than is due based upon the information on the return, and the underpayment is at least fifteen dollars (\$15.00), a notice of assessment shall be issued and the taxpayer shall pay to the Town the tax due, along with the appropriate interest and penalty set forth in Subsection 4-4-50(h) above, within twenty (20) days after the notice of assessment is served on the taxpayer. The taxpayer may appeal a notice of assessment, or the amount due thereunder, to the Town Manager.

(d) Every claim for a refund submitted under this Section must be made in writing and, if not made on the appropriate form therefor, shall, at a minimum, be signed by the taxpayer and include the amount of the asserted refund and adequate documentation of the claim. The Finance Director shall promptly review and determine all claims for a refund and notify the taxpayer of the same in writing. Determinations of the Finance Director may be appealed to the Town Manager. Any taxpayer dissatisfied with a decision of the Town Manager on his or her claim for a refund may file an appeal in the District Court in and for the County.

(e) It is unlawful for any person to make any false statement in connection with a refund claim; and no refund or claim for a refund shall be assignable. (Prior code 3.40.070; Ord. 1266 §1, 2007; Ord. 1288 §1, 2008)

**Sec. 4-4-80. Disputed tax payment; refund.**

(a) A refund shall be made, or a credit allowed, for a tax amount paid under protest or dispute or by mistake, by a taxpayer who is entitled to an exemption as provided in this Article. Applications for a refund of a tax payment made under protest must be made within sixty (60) days after the sale or other event whereon an exemption is claimed, be supported by the affidavit of the taxpayer, and be accompanied by the original invoice or sales receipt and a certificate verifying

the same by the vendor. Applications for a refund of a tax payment made by mistake must be made within three (3) years from the date of the sale or other event whereon an exemption is claimed, and must be supported by the same information as that required for protesting a tax payment. The Finance Director may prescribe forms for use in making a refund application.

(b) The Finance Director shall promptly examine and determine all applications for refund and notify the applicant for the same in writing of his or her decision thereon. An applicant aggrieved of a decision by the Finance Director may appeal to the Town Manager for a hearing on his or her refund application. Any appeal must be submitted in writing to the Town Manager not later than twenty (20) days from the date of the decision of the Finance Director appealed from. Any taxpayer dissatisfied with a decision of the Town Manager on his or her claim for a refund may file an appeal in the District Court in and for the County.

(c) The burden of establishing that a sale or other transaction is exempt from taxation under this Article, or that the taxpayer is entitled to an exemption from having to pay the tax, rests on the party asserting the exemption. (Prior code 3.40.080; Ord. 1266 §2, 2007; Ord. 1288 §1, 2008)

**Sec. 4-4-90. Records and audits; investigations.**

(a) It shall be the obligation and duty of every taxpayer required to collect and remit the excise tax imposed under this Article to keep accurate and suitable records of all transactions subject to the tax, along with such other books, accounts and records as may be necessary to determine the amount of any tax liability. All records and books, inclusive of invoices or other rental or purchase receipts, shall be preserved for a period of three (3) years, and all such records, books and accounts shall be open for examination at any time by the Finance Director.

(b) For the purpose of ascertaining the correctness of a return, or for the purpose of determining the amount of tax due, the Town may audit the business records and examine all relevant books, papers, accounts or memoranda of any taxpayer at his or her place of business, or elsewhere, and it shall be the duty of such taxpayer to make such relevant information available during reasonable hours for examination by the Town. In the event the Town cannot ascertain the correctness of a return or the amount of tax due by such examination, the Town may conduct further investigations and hearings concerning any matter covered by this Article. Both the Finance Director and Town Manager shall have the power to administer oaths to such persons, and depositions of witnesses may be taken and offered in the manner prescribed by law or judicial rule for depositions in civil actions in courts of this State. To the ends described hereinabove, the attendance of witnesses and the production of records and other tangible things may be compelled by subpoena issued by the Finance Director and/or Town Manager, such subpoenas to be enforceable by order of the Municipal Court. If the results of an audit or investigation indicates that taxes paid or reported were in excess or less than what was due, the procedures set forth in Subsections 4-4-70(b) and (c) in this Article addressing tax overpayments and underpayments, respectively, shall be followed. (Prior code 3.40.090; Ord. 1288 §1, 2008)

**Sec. 4-4-100. Failure to collect tax or file return; recovery of tax deficiencies.**

(a) All sums of money paid as taxes imposed under this Article shall be and remain public funds and the property of the Town, and all vendors or other persons collecting the same shall hold the funds in trust for the sole use and benefit of the Town until paid to the Town.

(b) If a taxpayer neglects or refuses to collect or pay the tax imposed under this Article, or neglects or refuses to make a return, the Finance

Director shall make an estimate of the amount of the tax due for the period for which the taxpayer is delinquent based upon the information that may be available, and shall add thereto a penalty equal to ten percent (10%) of the delinquent amount unless the delinquency is found to be due to fraud or an intent to evade the tax, in which case the penalty shall be one hundred percent (100%) of the delinquent amount, plus interest at one percent (1%) per month on both the delinquent amount and the penalty from the date when the taxes were due. Promptly thereafter, the Finance Director shall provide to the delinquent taxpayer a written delinquency notice of such estimated tax, along with the penalty and interest applicable thereto, which notice shall be sent by certified mail to the last address for the taxpayer on record with the Town. The notice shall also set forth in clear and conspicuous type that the delinquent taxpayer has the right to elect a hearing on the deficiency before the Town Manager. Such estimate shall thereupon become an assessment and the amount therein shall be final and due and payable from the taxpayer to the Town twenty (20) days from the date of mailing; provided, however, that, within said twenty-day period, the delinquent taxpayer may appeal the assessment to the Town Manager for a modification or other action. Any appeal must be filed in writing with the Town Manager, with a copy to the Finance Director, and shall describe in plain language the grounds for such appeal and the relief requested from the assessment.

(c) When a timely appeal is filed in accordance with this Section, no further enforcement action will be instituted by the Town on such portion of the assessment being appealed, unless the taxpayer fails to pursue the appeal.

(d) If any taxes, penalty or interest imposed by this Article and shown due by returns filed by a taxpayer, or as shown by assessments duly made as provided herein, are not paid within five (5) days after the same are due, the Finance Director shall issue a notice setting forth the name of the

taxpayer, the amount of the tax, penalties and interest, the date of the accrual thereof, and that the Town claims a first and prior lien therefor on the real and tangible personal property of the taxpayer; except as to pre-existing claims or liens of a bona fide mortgagee, pledgee, judgment creditor or purchaser whose rights shall have attached prior to the filing of the notice as herein provided on property of the taxpayer, other than the goods, stock in trade and business fixtures of such taxpayer. Said notice shall be on forms prepared by the Finance Director, shall be verified by him or her or by any duly qualified agent of the Town whose duties are the collection of such tax, 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 create a lien on such property in that county and constitute a notice thereof. After said notice has been filed, or concurrently therewith, or at any time when taxes due are unpaid, whether such notice is filed or not, the Town may issue a warrant directed to any duly authorized revenue collector or to the sheriff of any county in 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, subject to valid pre-existing claims or liens as above provided.

(e) When performing under this Section, revenue collectors or sheriffs shall levy upon sufficient property of the taxpayer, or on property used by such taxpayer in conducting his or her business, and said property so levied upon shall be sold in all respects, with like effect and in the same manner as is prescribed by law in respect to executions against property upon a judgment of a court of record, and the remedies of garnishments shall apply. The sheriff shall be entitled to such fees in executing such warrants as are allowed by law for similar services.

(f) Any lien for taxes shown on the records of a county clerk and recorder as herein provided shall, upon the payment of all taxes, penalties and interest covered thereby, be released by the Town in the same manner as mortgages or judgments are released.

(g) The Town may treat any taxes, penalties or interest due and unpaid as a debt due the Town from the taxpayer. In the case of a failure to pay the tax or any portion thereof, or any penalty or interest thereon when due, the Town may recover at law the amount of such taxes, penalties and interest in any county or district court of the county wherein the taxpayer resides, or has his or her principal place of business, and having jurisdiction of the amounts sought to be collected. The return of the taxpayer or the assessment made by the Town, as herein provided, shall be prima facie proof of the amount due. Such actions may be actions in attachment, and writs of attachment may be issued to the sheriff. In any such proceeding, no bond shall be required of the Town, nor shall any sheriff require of the Town an indemnifying bond for executing the writ of attachment or writ of execution upon any judgment entered in such proceedings; and the Town may prosecute appeals in such cases without the necessity of providing bond therefor. It shall be the duty of the Town Attorney when requested by the Town Manager to commence an action for the recovery of taxes due under this Article, and the remedy shall be in addition to all other existing remedies, including the remedies provided in this Article.

(h) In any action affecting the title to real estate or the ownership or rights to possession of personal property upon which the Town has asserted a lien, the Town may be made a party defendant for the purpose of obtaining a judgment or determination of its lien upon the property involved therein. (Prior code 3.40.100; Ord. 1266 §3, 2007; Ord. 1288 §1, 2008)

#### **Sec. 4-4-110. Tax lien.**

(a) The tax imposed by this Article shall be a first and prior lien upon the goods and business fixtures of, or used by, any taxpayer under lease, title-retaining contract or other contract arrangement, excepting stocks of goods sold or for sale in the ordinary course of business, and shall take precedence on all such property over other liens or claims of whatsoever kind or nature.

(b) Any taxpayer who sells out his or her business or stock of goods, or quits business, shall be required to make out the return as provided in this Article within ten (10) days after the date the business or stock of goods is sold or the business is closed; and his or her successor in business shall be required to withhold sufficient money from the purchase price to cover the amount of any taxes due and unpaid under this Article until such time as the taxpayer produces a receipt from the Town showing that the taxes have been paid, or a certificate that no taxes are due. (Prior code 3.40.110; Ord. 1288 §1, 2008)

#### **Sec. 4-4-120. Appeals to Town Manager.**

(a) Any taxpayer aggrieved by a decision of the Finance Director to make an assessment or deny a refund or exemption under this Article may appeal the same to the Town Manager. All appeals shall be made in writing, shall set forth in plain language the basis for the appeal and the relief sought, and must be delivered to the Town Manager within twenty (20) days from the date of the decision appealed from. The taxpayer shall also deliver a copy of the notice of appeal to the Finance Director. The Town Manager shall notify the taxpayer in writing of the time and place fixed for a hearing on the appeal at least ten (10) days in advance thereof.

(b) The hearing before the Town Manager 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 Finance Director may submit a brief. The

Town Manager shall hold such hearing and issue the final decision thereon within ninety (90) days after receipt of the taxpayer's written notice of appeal; however, the Town Manager may extend such period if the delay in holding the hearing or issuing the decision thereon was occasioned by the taxpayer. In any such event, the Town Manager shall hold such hearing and issue the decision thereon within one hundred eighty (180) days of the taxpayer's request in writing therefor.

(c) A taxpayer aggrieved of a decision made by the Town Manager under this Section may choose to pursue judicial review in the District Court in and for the County.

(d) The Town Manager may abate any penalty or interest on any assessment or deficiency for good and just cause if the taxpayer submits a written request for such abatement not less than two (2) business days before payment of the penalty or interest is due. All abatement decisions must be reduced to writing and promptly placed in the tax records for the taxpayer on file with the Town. (Prior code 3.40.120; Ord. 1266 §4, 2007)

**Sec. 4-4-130. Administration of tax collections; authority of Finance Director.**

The administration of this Article is hereby vested in the Finance Director, who shall have the following powers and authority:

- (1) To render written interpretations of the provisions in this Article and any administrative rules or regulations adopted pursuant thereto.
- (2) To prescribe forms and administrative procedures for the ascertainment, assessment and collection of the tax.
- (3) To formulate and promulgate appropriate regulations to effectuate the purpose of this Article, except that any such regulations shall

not become effective until the same have been reviewed and approved by the Town Council at a noticed public hearing.

(4) To require any taxpayer or person to make additional returns, render statements, furnish records or make informational reports to determine whether or not such taxpayer or other person is liable for the collection or payment of a tax.

(5) To administer oaths and take testimony.

(6) To designate agents to assist in the performance of the duties and responsibilities set forth in this Article.

(7) To issue subpoenas for witnesses and/or for the production of books, accounts and records required to be kept under the provisions of this Article, such subpoenas to be served in accordance with the Colorado Municipal Court Rules of Procedure, including the payment of fees. In the event a duly served subpoena is not honored, the Finance Director may request the Town Attorney to seek the enforcement of the same in the Municipal Court.

(8) To maintain and make available to any person a current map showing the boundaries of Town, which map can be relied upon by taxpayers and vendors for the purpose of collecting the tax imposed under this Article. (Prior code 3.40.130)

**Sec. 4-4-140. Tax information confidential.**

(a) All specific information gained under the provisions of this Article which is used to determine the tax due from a taxpayer, whether furnished by the taxpayer or obtained through audit, shall be treated by the Town and its officers, employees or legal representatives as confidential.



(b) Except in accordance with judicial order, or as otherwise provided by law, neither the Town nor any official or employee thereof shall divulge or make known in any way any information disclosed in any document, report or return filed under this Article, except such information as is displayed on a tax license. Town personnel charged with the custody of documents, reports or returns shall not be required to produce any of them, or evidence of anything contained in them, in any action or proceeding in any court, except on behalf of the Town in an action or proceeding under the provisions of this Article when the report of a fact shown thereby is directly involved in such action or proceedings. In either of such events, the court may require the production of, and may admit into evidence, so much of said reports or the facts shown thereby, as are pertinent to the action or proceeding.

(c) Nothing contained in this Section shall be construed to prohibit the delivery to a taxpayer or his or her duly authorized representative of a copy of any return or report filed by him or her in connection with his or her own tax, nor to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereon, nor to prohibit their inspection, reproduction and use by the Town in the administration and enforcement of this Article.

(d) Notwithstanding any other provision in this Section, the Finance Director may furnish to taxing officials of the State or its political subdivisions, any other state or political subdivision, or the United States, any information contained in tax returns and related documents filed pursuant to this Article, or in the report of an audit or investigation made with respect to a return, if the recipient jurisdiction agrees to grant similar privileges to the Town, and provided that such information shall be used by the recipient jurisdiction only for tax purposes. (Prior code 3.40.140; Ord. 1288 §1, 2008)

#### **Sec. 4-4-150. Limitations.**

No taxes for any period, together with any interest thereon and/or penalties with respect thereto, may be assessed, nor shall any notice of lien be filed, distraint warrant issued or suit for collection be instituted, nor shall any other action to collect the same be commenced, more than three (3) years after the date on which the tax was or is payable to the Town; nor shall any lien continue after such period, except for taxes assessed before the expiration of such period, notice of lien with respect to which has been filed prior to the expiration of such period, in which case such lien shall continue only for one (1) year after the filing of notice thereof. Before the expiration of such period of limitation, the taxpayer and the Town may agree in writing to an extension thereof, and the period so agreed on may be extended by subsequent agreements in writing. In the case of a false or fraudulent return made with intent to evade a tax, or where no return was filed for the same purpose, the tax, together with interest and penalties thereon, may be assessed, and/or proceedings for the collection of such taxes may be begun, at any time. (Prior code 3.40.150)

#### **Sec. 4-4-160. Revenue dedication; Airline Guaranty Program Fund.**

(a) All moneys deposited into the Airline Guaranty Program Fund, as created in Section 4-1-10 of this Chapter, shall, subject to duly adopted appropriation made by the Town Council from year to year, be expended exclusively to support, enhance and expand commercial and/or charter airline service to the Telluride and Montrose regional airports, inclusive of providing funding for the airline guaranty program administered by the Telluride/Montrose Regional Air Organization, a not-for-profit organization established under Section 501(c)(6) of the Internal Revenue Code, or its successor organization, such organization having been created and charged with the responsibility to effectively secure and maintain commercial air service into the Telluride/

Mountain Village/Montrose Region in a fiscally responsible manner; except that, in the event the Town Council is prohibited or otherwise precluded from appointing and/or maintaining representation on behalf of the Town of Telluride on the governing body of such organization or its successor, or the Town Council determines that funds provided for the airline guaranty program are not being expended for the purposes or in the manner for which they were appropriated, then the dedication and expenditure of moneys derived from the two-percent excise tax provided for in this Article to fund the airline guaranty program shall terminate.

(b) Notwithstanding any other provision of this Section, not more than two percent (2%) of the tax revenues annually deposited into the Airline Guaranty Program Fund may be retained by the Town to offset tax collection costs and as an administration and management fee. (Prior code 3.40.160; Ord. 1288 §1, 2008)

**Sec. 4-4-170. Sunset and repealer.**

Pursuant to the terms of the ballot question voted upon and approved by the Town electorate at the regular municipal election conducted on November 4, 2003, and absent a prior countervailing amendment or a repeal of this Section, the imposition of the two-percent excise tax provided for under this Article shall automatically sunset and be repealed effective upon the first day following the termination of the airline guaranty program, or such similar successor program, described in Section 4-4-160 above. (Prior code 3.40.170)

**Sec. 4-4-180. Violations; penalty.**

(a) It is unlawful for any person to violate any provision contained within this Article, or to fail to perform any affirmative duty set forth therein, including but not limited to failing to obtain a license or timely file a return or pay a tax when due, or making a false statement with respect to any tax form, report or record.

(b) Each person shall be guilty of a separate offense for each and every day, or portion thereof, on which a violation of this Article occurs and/or continues, and such person shall be punished accordingly.

(c) Every person found to have violated any provision of this Article, or who pleads guilty or no contest to any violation, shall be punished in accordance with the provisions of Section 1-4-10 of this Code. (Prior code 3.40.180; Ord. 1288 §1, 2008)

**ARTICLE 5**

**Property Tax**

**Sec. 4-5-10. Revenue dedication.**

Twenty percent (20%) of the unencumbered revenues collected and received by the Town pursuant to the annual levy of general ad valorem property taxes on real property as authorized under Section 12.1 of the Town Charter shall be dedicated to and deposited in a separate Open Space Fund as established under Section 4-1-30 of this Code. For purposes of this Section, *unencumbered revenues* means those tax revenues not already pledged or dedicated to debt service or obligations created or in effect prior to the collection of said revenues. In no event shall revenues dedicated and transferred into the Open Space Fund exceed twenty percent (20%) of the total annual property tax revenues collected and received by the Town in any given year absent the express prior authorization of the Town Council by ordinance or resolution. (Prior code 3.30.010; Ord. 1288 §1, 2008)

**Sec. 4-5-20. Museum tax revenue dedication.**

(a) Unencumbered tax revenues in an amount equal to those generated by the levy of 0.33 mills, and remitted to the Town less any administration fees imposed by the County, pursuant to the annual levy of general ad valorem taxes on real

property, as authorized by the Town electorate at the November 2, 2004 special election, shall be dedicated and used exclusively to support the operation and maintenance of the Telluride Historical Museum, including staffing, preserving artifacts, managing exhibits, marketing and maintaining the historic miners' hospital building.

(b) Subject to annual appropriation, such unencumbered tax revenues shall be remitted upon receipt by the Town to the Telluride Historical Museum, Inc., provided that:

(1) The bylaws of the Telluride Historical Museum, Inc., provide for an elected representative of the Town to sit on the Board of Directors of the Telluride Historical Museum, Inc.;

(2) The Board of Directors report annually to the Town on its budget and operations no later than March 1 of each year for the previous year; and

(3) The financial information of the Telluride Historical Museum, Inc., be made available for public inspection upon reasonable request.

(c) If at any time the Town Council determines that the Telluride Historical Museum is no longer functioning as an historical museum or that the Telluride Historical Museum, Inc., has lost its not-for-profit status or has failed to use the funds so remitted for the purposes described herein and fails to remedy these conditions, the Town Council may, by ordinance, rescind the 0.33 mill levy.

(d) For purposes of this Section, *unencumbered tax revenues* means those tax revenues not already pledged or dedicated to debt service or obligations created or in effect prior to the collection of said tax revenues.

(e) It is hereby declared that the property tax mill levy described in this Article, as approved by the Town electorate, is not for "municipal purposes" and that Section 12.1 of the Town Charter

is therefore inapplicable thereto. If for any reason a court of competent jurisdiction shall hold otherwise, any unencumbered tax revenues in excess of the limits imposed by Section 12.1 of the Town Charter that have been remitted to the Telluride Historical Museum, Inc., shall be refunded to the Town or, if not so refunded, shall be credited against the obligation of the Town to remit future unencumbered tax revenues to the Telluride Historical Museum, Inc. (Prior code 3.30.020; Ord. 1288 §1, 2008)

**ARTICLE 6**

**Procurement Code**

*Division 1  
General Provisions*

**Sec. 4-6-10. Purpose.**

(a) Purposes and policies. The underlying purposes and policies of this Article are:

(1) To simplify, clarify and standardize the law governing procurement by the Town;

(2) To provide for increased public confidence in the policies and procedures followed by Town employees engaged in the procurement of goods and services for the Town;

(3) To ensure the fair and equitable treatment of all persons who interact within the procurement system of the Town;

(4) To provide increased economy in Town procurement activities and to maximize to the fullest extent practicable the purchasing value of public funds of the Town;

(5) To provide safeguards for the maintenance of a procurement system of quality and integrity; and

(6) To contract with qualified local contractors when economically feasible.

(b) Interpretation. This Article shall be construed and applied to promote its underlying purposes and policies. (Prior code 17.01.010)

**Sec. 4-6-20. Procurement contrary to Article.**

Except as otherwise may be provided by law, it is unlawful for any officer or employee of the Town to make a procurement contrary to the provisions of this Article. Any procurement or contract so made shall be void and wholly without effect and shall not be binding upon the Town in any manner. (Prior code 17.01.020; Ord. 1288 §1, 2008)

**Sec. 4-6-30. Requirement of good faith.**

This Article requires all parties involved in the negotiation, performance or administration of Town contracts to act in good faith. (Prior code 17.01.030)

**Sec. 4-6-40. Application of provisions.**

This Article shall apply to every expenditure of Town funds irrespective of their source, including federal assistance moneys, by the Town, except that this Article shall not apply to either grants or contracts between the Town and other governments. Nothing in this Article or in regulations promulgated hereunder shall prevent the Town from complying with the terms and conditions of any grant, gift, bequest or cooperative agreement. (Prior code 17.01.040)

**Sec. 4-6-50. Definitions.**

The words defined in this Section shall have the meanings set forth below whenever they appear in this Article, unless the context in which they are used clearly requires a different meaning, or a different definition is prescribed for a particular article or provision:

*Brand name* means a specification limited to one (1) or more items by manufacturer's name or catalog number.

*Business* means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or any other private legal entity.

*Change order* means a written order signed by a department head, modifying an existing contract to authorize, within the scope of work, additions or deletions to the work or an adjustment to any other provision of the contract.

*Construction* means the process of building, altering, repairing, improving or demolishing any public structure or building, or other public improvements of any kind, to any public real property. It does not include the routine operations, routine repair or routine maintenance of existing structures, buildings or real property.

*Contract* means any agreement enforceable by law between the Town and one (1) or more outside parties, regardless of form or title, for procurement of supplies, services or construction.

*Contract modification* means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity or other provisions of any contract accomplished by mutual action of the parties to the contract. Before a contract is executed, modifications are typically processed as an addendum to the invitation for bids or request for proposals; after the contract is executed, modifications are processed as change orders.

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

*Cost reimbursement contract* means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and provisions of this Article, and a fee if any.

*Data* means recorded information, regardless of form or characteristic.

*Department head* means the person in charge of each major administrative division of the Town who has overall management responsibility for an operation or group of related operations within a functional area, as determined by the Town Manager. Any authority for procuring supplies, services or construction granted to department heads pursuant to this Article are intended to be granted similarly to Assistant Town Managers and project managers.

*Designee* means a duly authorized representative of a person holding a superior position.

*Employee* means an individual drawing a salary from the Town.

*Established catalog price* means the price included in a catalog, price list, schedule or other form that:

- a. Is regularly maintained by a manufacturer or contractor;
- b. Is either published or otherwise available for inspection by customers; and
- c. States prices at which sales are currently or were last made to a significant number of any category of buyers constituting the general buying public for the supplies or services involved.

*Grant* means the furnishing by the Town of assistance, whether financial or otherwise, to any person to support a program authorized by law. It does not include an award whose primary purpose is to procure an end product, whether in the form of supplies, services or construction; a contract resulting from such an award is not a grant but a procurement contract.

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

*Legal services* means the advice, representation, document preparation or related services of an attorney as special counsel provided to the Town upon the request of the Town Attorney.

*Litigation services* means professional or other services procured by the Town Attorney for the purpose of evaluating, preparing, providing or presenting evidence at the trial of any lawsuit to which the Town is a party. *Litigation services* shall not include legal services.

*May* denotes the permissive.

*Person* means any business, individual, union, committee, club or other organization or group of individuals.

*Procurement* means buying, purchasing, renting, leasing or otherwise acquiring any supplies, services or construction. It also includes all functions that pertain to the obtaining of any supply, service or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract and all phases of contract administration. *Procurement* shall not include the buying, purchasing, renting or leasing of real property.

*Procurement officer* means the Finance Director.

*Professional services* means the furnishing of labor, time, effort or expertise by a contractor with specialized knowledge in a field, including but not limited to architecture, engineering, medicine, finance, accounting, appraisal and land surveying.

*Public notice* means any publication reasonably calculated to inform responsible bidders or offerors. Public notice shall occur for a reasonable time and may be disseminated through any means of mass communication, including but not limited to newspapers, other written publications, posting, television, radio, other broadcasting media and electronic billboards.

*Purchase description* means the word used in a solicitation to describe the supplies, services or construction to be purchased, and includes specifications attached to or made part of the solicitation.

*Regulation* means a governmental statement, having general or particular applicability and future effect, designed to implement, interpret or prescribe law or policy, or describing organization, procedure or practice requirements.

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

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

*Responsive bidder* means a person who has submitted a bid which conforms in all material respects to the invitation for bids or requests for proposals.

*Services* means the performance of maintenance or the furnishing of labor, time or effort that does not involve the delivery of a specific end product other than a report or other item which is merely incidental to the performance of the service. *Services* shall not include services rendered under an employment agreement, nor shall it include professional services as that term is defined in this Section.

*Shall* denotes the imperative.

*Small purchase* means any procurement not exceeding fifty thousand dollars (\$50,000.00).

*Specification* means any description of the physical or functional characteristics of or the nature of the supply, service or construction item. It may include a description of any requirement for inspecting, testing or preparing a supply, service or construction item for delivery or a procedure for determining whether the requirements are satisfied.

*Supplies* means all property, including but not limited to equipment, materials, printing, insurance and leases of real property, excluding land or permanent interest in land.

*Surplus supplies* means any supplies no longer having any use to the Town. This includes obsolete supplies, scrap materials and nonexpendable supplies that no longer have a useful life or purpose.

*Sustainable procurement* means integrating sustainability considerations into supplies, services and construction selections so that impacts on society and the environment are minimized. (Prior code 17.01.050; Ord. 1264 §1, 2007; Ord. 1288 §1, 2008)

**Sec. 4-6-60. Public access to procurement information.**

Procurement information shall be a public record to the extent provided by law and shall be available to the public as provided by law. (Prior code 17.01.060)

**Sec. 4-6-70. Specifications.**

(a) Intent. All specifications, including but not limited to design, performance and brand name specifications, shall be drafted so as to provide a clear and concise description of the supply, service or construction.

(b) Preparation. Before appropriate approvals are obtained in accordance with Section 4-6-140 of this Article, the department head shall cause to be prepared written specifications detailing the Town's requirements for the supplies, services or construction.

(c) Brand name specifications. A brand name specification may be used when the Procurement Officer has determined that sufficient sources for competition exist for the procurement of the supply and that the use of the brand name specification is not intended to limit or restrict competition. A brand name specification may also be used to describe the standard of quality, performance and other salient characteristics. In such cases, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard desired and that the substitution of equivalent supplies is permitted. (Prior code 17.01.070)

*Division 2*

*Procurement Organization and Authority*

**Sec. 4-6-110. Authority and duties of Town Manager.**

(a) The Procurement Officer shall perform those duties set forth in this Article with respect to procurement on behalf of the Town of supplies, services or construction.

(b) Except as otherwise provided in this Article, the Town's Personnel Policies and Procedures and the Ethics Code provided at Chapter 2, Article 4 of this Code, the Town Manager shall have the authority and responsibility to promulgate regulations consistent with this Article, governing the procurement, management, control and disposal of any and all supplies, services and construction to be procured by the Town.

(c) No regulation shall change any commitment, right or obligation of the Town or of a contractor under a contract in existence on the

effective date of such regulation. The Town Manager shall consider and decide matters of policy within the provisions of this Article. (Prior code 17.02.010; Ord. 1288 §1, 2008)

**Sec. 4-6-120. Duties of department heads and Procurement Officer.**

(a) Department heads shall, in accordance with regulations and policies which may be promulgated by the Town Manager, work closely with the Procurement Officer and other department heads to ensure compliance by all employees and departments of the Town with the provisions of this Article and any regulations which may be promulgated pursuant thereto.

(b) Except as otherwise provided in this Article, the Procurement Officer shall, in accordance with regulations and policies that may be promulgated by the Town Manager:

(1) Establish a mandatory fixed asset tracking system;

(2) Act to procure for the Town the highest quality in supplies, services and construction at the least expense to the Town consistent with the provisions of this Article and regulations promulgated pursuant to this Article by the Town Manager;

(3) Discourage uniform bidding and endeavor to obtain as full and open competition as possible on all purchases and sales;

(4) Establish and maintain procedures for the inspection, testing and acceptance of supplies, services and construction;

(5) Explore the possibilities of "bulk purchasing" so as to take full advantage of discounts;

(6) Act so as to procure for the Town all federal, state and local tax exemptions to which it might be entitled;

(7) Cooperate with other departments so as to secure for the Town the maximum efficiency in budgeting and accounting;

(8) Have the authority, upon approval of the Town Manager, to identify irresponsible bidders and to begin disqualification proceedings against them in accordance with this Code;

(9) Endeavor to make purchases of recycled materials and other supplies that preserve, to the maximum extent possible, the environment and minimize energy consumption for their production or use;

(10) Endeavor to solicit and encourage locally owned businesses and suppliers to participate in the Town's procurement process; and

(11) As outlined in the Town's DBE/SBE Program, endeavor to solicit and encourage local, minority and women-owned businesses and suppliers to participate in the Town's procurement process. (Prior code 17.02.020; Ord. 1288 §1, 2008)

**Sec. 4-6-130. Authority of Town Attorney.**

The Town Attorney shall have the same authority with respect to procurements for the Town Attorney's office as set forth herein for the Town Manager. Notwithstanding any provision to the contrary in this Article relating to competition or otherwise, the Town Attorney shall have the authority to contract for legal services and litigation services, as defined herein, by any method that the Town Attorney believes is in the Town's best interests. (Prior code 17.02.030)

**Sec. 4-6-140. Approvals.**

No procurement shall be made without the completion of a purchase order to be approved as follows, and unless sufficient funds are available

in the appropriate budget for the items purchased, and the items to be purchased have been specifically budgeted for:

(1) Town Manager. All procurements of supplies subject to the terms of this Article and all procurements of professional services and construction in excess of one thousand dollars (\$1,000.00) shall be approved by both the department head and Town Manager.

(2) Department heads. Department heads shall have the authority to approve procurements in an amount which does not exceed one thousand dollars (\$1,000.00) for supplies, professional services or construction, without the prior approval of the Town Manager.

(3) No procurement shall be divided so as to avoid the approvals that would otherwise be required by the above. (Prior code 17.02.040)

**Sec. 4-6-150. Formal contract procedure.**

Except as otherwise provided herein, all procurement in excess of fifty thousand dollars (\$50,000.00), or whenever a department head or the Town Manager requests the same, shall be purchased by formal written contract approved as to form by the Town Attorney. (Prior code 17.02.050)

**Sec. 4-6-160. Business license required.**

No procurement shall be made with any person or entity required to have a Town business license until the required license has been obtained. (Prior code 17.02.060)

*Division 3*

*Source Selection and Contract Formation*

**Sec. 4-6-210. Methods of source selection.**

(a) Unless otherwise authorized by law, all Town contracts shall be awarded by competitive



sealed bidding, pursuant to Section 4-6-220 below, except as provided in Sections 4-6-230, 4-6-240, 4-6-250, 4-6-260 and 4-6-270 below.

(b) Preference shall be given in the procurement of supplies and services produced, manufactured, sold, distributed or grown in the Town, if such preference is not for supplies or services of inferior quality to those offered by competitors outside of the Town; and in the procurement of services and construction contracts to bidders with offices or a place of business located within the Town if all other evaluation criteria set forth herein or in the invitation for bids or requests for proposals are equal to bidders with offices located outside the Town. Secondary preference may be given by the Town in procurement of supplies and services produced, manufactured, sold, distributed or grown in the R-1 School District if such preference is not for supplies or services of inferior quality to those offered by competitors outside of the District; and in the procurement of services and construction contracts to bidders located in the R-1 School District if all other evaluation criteria set forth herein, or in the invitation for bids or requests for proposals, are equal to bidders located outside of the District. For any procurement, the preference given pursuant to this Subsection may be in an amount not to exceed three percent (3%) of the total price.

(c) Preference shall be given in the procurement of recycled materials and other supplies that preserve, to the maximum extent possible, the environment and minimize energy consumption for their production or use. For any procurement, the preference given pursuant to this Subsection may be in an amount not to exceed three percent (3%) of the total price. (Prior code 17.03.010; Ord. 1288 §1, 2008)

#### **Sec. 4-6-220. Competitive sealed bidding.**

(a) Conditions for use. Contracts shall be awarded by competitive sealed bidding except as otherwise provided in Section 4-6-210 above or if

the Town Manager provides by regulation or policy that it is either not practicable or not advantageous to the Town to procure specified types of supplies, services or construction by competitive sealed bidding.

(b) Invitation for bids. An invitation for bids shall be issued and shall include a purchase description and all contractual terms and conditions applicable to the procurement. The purchase description shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the Town's needs, and it shall not be unduly restrictive.

(c) Public notice. Adequate public notice of the invitation for bids shall be given a reasonable time prior to the date set forth therein for the opening of bids. If a state or federal law or regulation controls the procurement process for any particular purchase, adequate public notice may be mandated by applicable state or federal laws or regulations. In the absence of exigent or emergency circumstances described in Section 4-6-260 below, *adequate notice* shall mean publication of a public notice which summarizes the invitation for bids in the newspaper designated by the Town for legal publications with at least one (1) publication (1) one week prior to the date set forth therein for the opening of bids.

(d) Bid opening. Bids shall be opened publicly in the presence of two (2) or more witnesses at the time and place designated in the invitation for bids. The amount of each bid and such other relevant information as may be specified by regulation, together with the name of each bidder, shall be recorded; the record and each bid shall be open to public inspection.

(e) Facsimile transmission. Facsimile transmissions may be accepted for either bids or corrections to previously submitted bids. The Town, by receiving facsimile transmissions, makes no representation with respect to its ability to maintain the confidentiality of the contents of such transmissions.

(f) Bid acceptance and bid evaluation. Bids shall be unconditionally accepted without alteration or correction, except as authorized in this Article. Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs and total or life cycle costs. The invitation for bids shall set forth the evaluation criteria to be used. In addition to the evaluation criteria set forth in the invitation to bid, the following criteria may be considered, in addition to price:

- (1) The ability, capacity and skill of the bidder to perform the contract or provide the service or construction required;
- (2) Whether the bidder can perform the contract or provide the service or construction promptly, or within the time specified, without delay or interference;
- (3) The character, integrity, reputation, judgment, experience and efficiency of the bidder;
- (4) The quality of performance of previous contracts with the Town or services provided to the Town or the quality of previous contracts or services provided to other parties and verified to the Procurement Officer during a check of references;
- (5) The previous and existing compliance by the bidder with laws and ordinances relating to the contract or service;
- (6) The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service or construction;

(7) The quality, availability and adaptability of the supplies, services or construction to the particular use required;

(8) The bidder's demonstrated commitment to the most environmentally sound practices as well as its commitment to the Town's sustainability goals.

(9) The ability of the bidder to provide future maintenance and service for the use of the subject of the contract; and

(10) The preferences set forth at Subsections 4-6-210(b) and (c) above.

(g) Correction or withdrawal of bids; cancellation of award. Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or contracts based on such bid mistakes, shall be permitted. Except as otherwise provided by regulation, all decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the department head and approved by the Town Attorney.

(h) Award. The contract shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth at Subsection (f) above and in the invitation for bids or request for proposals. In the event all bids for a construction project exceed available funds as certified by the appropriate fiscal officer of the Town, and the low responsible and responsive bid does not exceed such funds by more than ten percent (10%), the department head is authorized, in situations where time or economic considerations preclude resolicitation of work of a reduced scope, to negotiate an adjustment of the bid price, including changes in the bid requirements with the low responsible and responsive, in order to bring the bid within the amount of available funds. If the low bid exceeds available funds by ten percent (10%) or more, the Town Manager

may authorize the department head to negotiate an adjustment of the bid price after determining in writing that such action is in the best interests of the Town. Even if the lowest bid does not exceed available funds a department head, with the Town Manager's prior approval, shall have the authority, consistent with the general underlying purposes and policies of this Article as set forth at Subsection 4-6-10(a) of this Article and in the best interests of the Town, to negotiate with the lowest responsible and responsive bidder to adjust the bid price, alter the quantity or quality of supplies to be procured, or alter the scope of services or construction to be provided.

(i) Multi-step sealed bidding. When considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation. (Prior code 17.03.020; Ord. 1264 §§2, 3, 2007; Ord. 1288 §1, 2008)

**Sec. 4-6-230. Competitive sealed proposals.**

(a) Conditions for use. Procurement for the following is eligible for award by competitive sealed proposals:

(1) When a department head determines that the use of competitive sealed bidding is either not practicable or not advantageous to the Town, a contract may be entered into by competitive sealed proposals. The Town Manager may provide by regulation or policy that it is either not practicable or not advantageous to the Town to procure specified types of supplies, services or construction by competitive sealed bidding; or

(2) For professional services.

(b) Requests for proposals. Proposals shall be solicited through a request for proposals. The

request for proposals shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the Town's needs, and it shall not be unduly restrictive.

(c) Evaluation factors. The request for proposals shall state the relative importance of price and other evaluation factors.

(d) Discussion with responsible offerors and revisions to proposals. As provided in the request for proposals, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submission and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

(e) Award. Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the Town, taking into consideration price and the evaluation factors set forth at Subsection 4-6-220(f) above. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made. (Prior code 17.03.030)

**Sec. 4-6-240. Small purchases.**

(a) Small purchases. Any procurement not exceeding fifty thousand dollars (\$50,000.00) may be made by the department head by negotiation without formal competition for the purchase of supplies, services or construction, subject to the approval process required by Section 4-6-140 of this Article, provided that:

(1) Personal service contracts in excess of ten thousand dollars (\$10,000.00) shall require formal competition;

(2) The provisions of Paragraph (1) above notwithstanding, all construction-related personal service contracts shall require formal competition; and

(3) Any procurement of vehicles shall be by fleet and, if in excess of fifty thousand dollars (\$50,000.00), shall be by formal competition.

(b) Negotiated procurement. Negotiated procurement pursuant to this Section shall be made on the open market, but whenever practical or advantageous, the department head shall obtain quotes from at least three (3) suppliers or vendors. Negotiated procurement shall be awarded to the person supplying the lowest responsible bid or offer.

(c) Division of procurement. No contract shall be divided so as to constitute a small purchase under this Section. (Prior code 17.03.040; Ord. 1288 §1, 2008)

**Sec. 4-6-250. Miscellaneous exemptions.**

A contract may be awarded for a supply, service or construction item without competition when one (1) or more of the following conditions exist.

(1) There exists only one (1) responsible source;

(2) Although there exists more than one (1) responsible source, a competitive process cannot reasonably be used or, if used, will result in a substantially higher cost to the Town, will otherwise injure the Town's financial interests or will substantially impede the Town's administrative functions or the delivery of services to the public, or provide uniform and economical repair and maintenance;

(3) A particular supply or service is required in order to standardize or maintain standardization for the purpose of reducing financial investment or simplifying administration;

(4) The supply is perishable;

(5) The supply qualifies as an object of fine art;

(6) A particular supply is required to match supplies in use;

(7) A particular supply is required to enable use by a specific individual;

(8) A particular supply is prescribed by a professional advisor;

(9) The contract is for purchases from federal, state or other local governments;

(10) The contract is for cleanup and disposal of hazardous materials;

(11) The contract is for CIRSA coverage or for insurance procured through a broker;

(12) The contract is for an employee assistance program;

(13) The product or service is required to maintain interchangeability or compatibility as part of an existing integrated system;

(14) The supply, service or construction is the subject of a change order to an existing contract for construction which does not exceed a cumulative cost of five percent (5%) of the original contract awarded pursuant to an invitation for bids;

(15) The supply, service or construction is the subject of a change order to an existing contract for construction which does exceed a cumulative cost of fifteen percent (15%) of the

original contract awarded pursuant to an invitation for bids and the Town Manager determines that it is either not practicable or not advantageous to the Town to procure the additional supply, service or construction by competitive sealed bid; and/or

(16) In any case where the Town has, within the preceding two (2) years, pursuant to an invitation to bid, awarded a contract for the procurement of any supply, service or construction on a unit price basis, the Procurement Officer may negotiate with the successful bidder for the purchase of additional quantities of the supply, units of service or construction. No such procurement shall be made at a price higher than the previous award adjusted by the Denver/Boulder Consumer Price Index. (Prior code 17.03.050)

**Sec. 4-6-260. Emergency procurement.**

(a) Notwithstanding any other provision of this Article, in the case of an apparent emergency which threatens the public health, welfare or safety, requiring the immediate purchase of a supply, service or construction, the Town Manager shall have the power to authorize a department head to secure the necessary items in the open market without competition regardless of the amount of the expenditure.

(b) In no event shall the contract price exceed commercially reasonable prices.

(c) A full written report of the circumstances of all emergency purchases over fifty thousand dollars (\$50,000.00) shall be made by the Town Manager to the Town Council. The report shall be received by the Town Council at a regular meeting, and such report shall be open to public inspection. (Prior code 17.03.060)

**Sec. 4-6-270. State, federal or CML bid.**

A contract may be awarded for a supply, service or construction item on the terms and to the

contractors that have been selected under a federal, state or Colorado Municipal League competitive bid system for use by local government. Consideration should be given in all instances to the possible procurement by this method. (Prior code 17.03.070)

**Sec. 4-6-280. Cancellation of invitations for bids or requests for proposals.**

An invitation for bids, a request for proposals or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part, at the sole discretion of the Town. (Prior code 17.03.080)

**Sec. 4-6-290. Responsibility of bidders and offerors.**

A written determination of nonresponsibility of a bidder or offeror may be made by the Procurement Officer upon reasonable grounds. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such bidder or offeror. (Prior code 17.03.090)

**Sec. 4-6-300. Prequalifications of suppliers.**

Prospective suppliers may be prequalified for particular types of supplies, services and construction. Solicitation mailing lists of potential contractors shall include but shall not be limited to such prequalified suppliers. (Prior code 17.03.100)

**Sec. 4-6-310. Bid security.**

(a) Requirement for bid security. When deemed necessary by a department head or the Procurement Officer, bid bonds or other equivalent security shall be required and the invitation for bids or request for proposals shall describe the requirements. Bid security shall be a bond provided by a surety company authorized to do

business in the State, or the equivalent in cash or some other instrument in a form satisfactory to the Town.

(b) Amount of security bid. Bid security shall be in an amount equal to at least five percent (5%) of the amount of the bid.

(c) Rejection of bids for noncompliance with bid security requirements. When the invitation for bids requires security, noncompliance requires that the bid be rejected unless it is determined that the bid fails to comply in an insubstantial manner with the security requirements.

(d) Withdrawal of bids. After the bids are opened, they shall be irrevocable for the period specified in the invitation for bids, except as provided in Subsection 4-6-220(g). If a bidder is permitted to withdraw its bid before award, no action shall be had against the bidder or the bid security.

(e) Forfeiture of security. Unsuccessful bidders or offerors shall be entitled to the return of any cash deposit following the execution of an agreement with the successful bidder. Unless a specific extension is granted in writing, a successful bidder or offeror shall forfeit any bid bond or equivalent security required by the department head upon its failure to enter into a contract within thirty (30) days after the award. (Prior code 17.03.110)

**Sec. 4-6-320. Contract performance and payment bonds.**

(a) When required; amounts. When a construction contract is awarded in excess of fifty thousand dollars (\$50,000.00), or it is deemed necessary by the department head or the Town Manager, the following bonds or security shall be delivered to the Town and shall become binding on the parties upon the execution of the contract:

(1) A performance bond or other security satisfactory to the Town, executed by a surety company authorized to do business in the State, or otherwise secured in a manner satisfactory to the Town; and

(2) A payment bond or other security satisfactory to the Town, executed by a surety company authorized to do business in the State, or otherwise secured in a manner satisfactory to the Town, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract.

(b) Amount of bonds or other security. The amount of the performance and payment bonds or other security specified in Subsection (a) above shall be determined by the Town Manager. In determining the amounts required, the Town Manager shall weigh the following policy considerations:

(1) The Colorado State Legislature has determined that, for construction contracts in excess of fifty thousand dollars (\$50,000.00), it is prudent to obtain performance and payment bonds in amounts equal to fifty percent (50%) of the price specified in the contract. (See Sections 24-105-202 and 38-26-106, C.R.S.).

(2) The Town has a policy of encouraging local, minority and women-owned businesses to participate in the Town's procurement process. The cost of obtaining performance and payment bonds may discourage local, minority and women-owned businesses from bidding on Town construction projects.

(3) It is in the Town's interest to ensure that construction projects will be completed according to the contract documents without the Town having to expend more than the contract amount.

(4) It is in the Town's interest to ensure that payment is made for all labor and materials supplied to Town construction projects by contractors and subcontractors.

(5) Certain construction projects may be required by state or federal law to be bonded in a particular manner or in a certain amount.

(6) Phasing of bond amounts should be considered, when appropriate, for projects that are constructed in discrete and identifiable phases. (Prior code 17.03.120)

**Sec. 4-6-330. Bond form and copies.**

(a) Bond forms. The Town Attorney may determine the form of the bonds required by this Article.

(b) Certified copies of bonds. Any person may request and obtain from the Town a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents, execution and delivery of the original.

(c) All bonds shall be held by the Director of Finance. (Prior code 17.03.130)

**Sec. 4-6-340. Type of contracts.**

Subject to the limitations of this Section, any type of contract which will promote the best interests of the Town may be used. A cost reimbursement contract may be used only when a determination is made that such a contract is likely to be less costly to the Town than any other type or that it is impracticable to obtain the supplies, services or construction required except under such a contract. (Prior code 17.03.140)

**Sec. 4-6-350. Multi-term contracts.**

(a) Specified period. No contract for supplies, services or construction, including all

renewals, shall be made by the Town for a period longer than three (3) years, and all multi-year contracts must be signed by the Town Manager. All contracts extending beyond one (1) year in duration shall be contingent upon and subject to duly enacted appropriations of the Town.

(b) Determination prior to use. Prior to the utilization of a multi-year contract, it shall be determined:

(1) That estimated requirements cover the period of the contract and are reasonably firm and continuing;

(2) That such a contract will serve the best interests of the Town by encouraging effective competition or otherwise promoting economies in Town procurement;

(3) That the contract beyond the first fiscal year shall be expressly contingent upon the annual budgeting and appropriation of sufficient funds on an annual basis or by nonlapsing appropriations; and

(4) That the contract clearly states that, when funds are not appropriated or otherwise made available to support the continuation of the Town's performance or obligations in a subsequent fiscal period, the contract shall be cancelled. (Prior code 17.03.150)

**Sec. 4-6-360. Contract clauses.**

The Town Attorney may require the inclusion in Town contracts of clauses providing for adjustments in prices, time of performance or other contract provisions, as deemed appropriate by the Town Attorney, and covering the following subjects:

(1) Liquidated damages as appropriate;

(2) Specified excuses for delay or nonperformance;

- (3) Termination of the contract for default;
- (4) Termination of the contract in whole or part for the convenience of the Town;
- (5) Nondiscrimination;
- (6) Insurance and indemnification requirements; and
- (7) Notice of the applicability of the Procurement Code. (Prior code 17.03.160)

**Sec. 4-6-370. Contract modifications and change orders; fiscal responsibility.**

Every contract modification, change order or contract price adjustment under a contract with the Town shall be subject to prior written certification by the Town Manager as to the effect of the contract modification, change order or adjustment in contract price on the total project budget or the total contract budget. In the event that the certification discloses a resulting increase in the total project budget and/or the total contract budget, the department head shall not execute or make such contract modification, change order or adjustment in contract price unless sufficient funds are available therefor, or the scope of the project or contract is adjusted so as to permit the degree of completion that is feasible within the total project budget and/or total contract budget as it existed prior to the contract modification, change order or adjustment in contract price under consideration. (Prior code 17.03.170)

**Sec. 4-6-380. Right to inspect plant.**

The Town may, at reasonable times, inspect the part of the plant or place of business of a contractor or any subcontractor that is related to the performance of any contract awarded or to be awarded by the Town. (Prior code 17.03.180)

**Sec. 4-6-390. Right to audit records.**

The Town shall be entitled to audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract other than a firm fixed price contract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three (3) years from the date of final payment under the prime contract and by the subcontractor for a period of three (3) years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing. (Prior code 17.03.190)

**Sec. 4-6-400. Finality of determinations.**

The determinations required by Subsections 4-6-220(f) and (g), Subsection 4-6-230(e), Section 4-6-250, Section 4-6-260, Section 4-6-290, Section 4-6-340 and Section 4-6-350 of this Article are final and conclusive unless they are clearly erroneous, arbitrary, capricious or contrary to law as determined by a court of competent jurisdiction. (Prior code 17.03.200; Ord. 1288 §1, 2008)

**Sec. 4-6-410. Reporting of anti-competitive practices.**

When for any reason collusion or other anti-competitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the Town Attorney. (Prior code 17.03.210)

**Sec. 4-6-420. Retention of procurement records.**

All procurement records shall be retained and disposed of in accordance with records retention guidelines and schedules approved by the law. All retained documents shall be made available to the Town Attorney upon request and proper receipt therefor. (Prior code 17.03.220)



*Division 4  
Methods of Disposal*

**Sec. 4-6-510. Reporting.**

Equipment that is no longer useful to the Town and is being disposed of (excess, obsolete or surplus), with an original purchase cost of five hundred dollars (\$500.00) or more, shall be reported to the Finance Department in order to update the Department's fixed asset account. (Prior code 17.04.010)

**Sec. 4-6-520. Methods.**

The following methods of disposition may be used for departmental surplus items.

(1) Transfer. An acceptable method of disposition is transferring to another department. Both the transferring and receiving departments' inventory records must be updated to document the disposition of such item.

(2) Sale. There are various methods of selling excess property and surplus items as outlined below:

a. Auction: The Town may auction to sell items to the highest bidder at advertised public auctions.

b. Sealed bids: The Finance Department may offer surplus items for purchase by sealed bid. The items shall be advertised locally, by posting at the Town offices, by Internet or by publishing in a local newspaper.

c. Scrap: Some items are of no use but may have a residual value. Department heads may arrange for the sale of scrap items with the money returned to the Town's General Fund.

d. Posted prices: When there is no regular market and demand is erratic, an item may be marked with a pre-established price and sold to the public on a first-come basis.

(3) Trade-in. The Town Manager or the department head may determine that it is advantageous to the Town to seek bids on replacement items with the bidders offering trade allowance and no trade allowance pricing. Award may be made in the manner that is most advantageous to the Town.

(4) Cannibalization. Disassembling an item to use its components for repair or maintenance of a similar item is authorized only if cannibalization has more value and benefit than disposal or trade-in of the item. The Town Manager or the department head must grant approval prior to cannibalizing an item.

(5) Donation. Only the Town Council may dispose of an item by donation to a qualifying entity if the item has a value in excess of ten thousand dollars (\$10,000.00). Items donated with a value of less than ten thousand dollars (\$10,000.00) may be approved by the Town Manager. (Prior code 17.04.020)

**Sec. 4-6-530. Hazardous materials.**

There are strict federal and state laws regarding the disposal of hazardous materials. Departments generating hazardous materials shall follow posted guidelines for the proper disposal of these materials. (Prior code 17.04.030)

**Sec. 4-6-540. Sales to employees.**

To avoid any appearance of impropriety in the disposition program, employees of the Town may only purchase Town-owned property when the sale is to the highest bidder at a public auction or by sealed bid. (Prior code 17.04.040)

**Sec. 4-6-550. Grant-funded equipment.**

Equipment purchased with state or federal grant funds shall be disposed of by following the provisions of the grant, if any. It is the responsibility of the disposing department to notify the Finance Department if grant provisions for disposal need to be followed. If there are no special provisions for disposal, the requirements of this Section shall apply. (Prior code 17.04.050)

*Division 5*

*Legal and Contractual Remedies*

**Sec. 4-6-610. Authority to resolve protested solicitations and awards.**

(a) Right to protest. Any actual or prospective bidder, offeror or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the Town Manager. The protest shall be submitted in writing within fourteen (14) days after such aggrieved person knows or should have known of the facts giving rise thereto.

(b) Authority to resolve protests. The Town Manager shall have the authority, prior to the commencement of an action in court concerning the controversy, to settle and resolve a protest of an aggrieved bidder, offeror or contractor, actual or prospective, concerning the solicitation or award of a contract.

(c) Decision. If the protest is not resolved by mutual agreement, the Town Manager shall promptly issue a decision in writing. The decision shall:

- (1) State the reason for the action; and
- (2) Inform the protestant of his or her right to administrative review as provided in this Article.

(d) Notice of decision. A copy of the decision under Subsection (c) above shall be mailed or otherwise furnished immediately to the protestant and any other party intervening.

(e) Finality of decision. A decision under Subsection (c) above shall be final and conclusive, unless the protestant appeals administratively to Town Council acting as the Procurement Appeals Board. (Prior code 17.05.010)

**Sec. 4-6-620. Authority to debar or suspend.**

After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the Town Manager, after consultation with the Town Attorney, shall have the authority to debar a person for cause from consideration for award of contracts. The debarment shall not be for a period of more than three (3) years. The Town Manager, after consultation with the Town Attorney, shall also have authority to suspend a person from consideration for award of contracts if there is probable cause for debarment. The suspension shall not be for a period exceeding three (3) months. (Prior code 17.05.020)

**ARTICLE 7**

**Telephone Utilities Tax**

**Sec. 4-7-10. Levied.**

There is levied against every telephone utility which is engaged in the business of furnishing local exchange telephone service within the Town a tax on the privilege of engaging in such business. The amount of such tax is twenty-five cents (\$0.25) per month for each telephone account for which local exchange telephone service is provided within the Town. (Prior code 5.08.010)

**Sec. 4-7-20. Computation; payment.**

The tax levied by this Article is due monthly commencing thirty (30) days from the effective date of Ordinance No. 322, 1976. For purposes of computing the monthly payment, the number of telephone accounts for which local exchange telephone service is provided within the Town is that number of accounts on the subscriber list of the telephone utility on the effective date of said ordinance and updated every month thereafter. (Prior code 5.08.020)

**Sec. 4-7-30. Inspection of records.**

The Town, its officers, agents or representatives have the right, at any reasonable time, to examine the books and records of any telephone utility which is subject to the tax imposed by this Article and to make copies of the entries or contents thereof. (Prior code 5.08.030)

**Sec. 4-7-40. Local purpose.**

The tax provided for in this Article is upon the affected occupations and businesses in their performance of local functions and is not a tax upon those functions relating to interstate commerce. (Prior code 5.08.040)

**Sec. 4-7-50. Other business taxes superseded.**

The tax provided for in this Article is in lieu of all other occupation taxes, or taxes on the privilege of doing business within the Town, on any telephone utility subject to the provisions of this Article. (Prior code 5.08.050)

**Sec. 4-7-60. Failure to pay.**

If any telephone utility subject to this Article fails to pay the taxes as provided in this Article, the full amount thereof shall be due and collected from such company, and the tax, together with an addition of ten percent (10%) of the amount of taxes due, is a debt due and owing from such utility to the Town. (Prior code 5.08.060)

**Sec. 4-7-70. Failure to file statement.**

If any officer, agent or manager of a telephone utility which is subject to the provisions of this Article fails, neglects or refuses to file any statement required by this Article within the time prescribed in this Article, such officer, agent or manager, upon conviction therefor, shall be subject to a maximum penalty as set forth in Paragraph 1-4-10(a)(1); and each day after such statement becomes delinquent during which the officer, agent or manager so fails, neglects or refuses to file such statement shall be considered a separate offense. (Prior code 5.08.070)

**ARTICLE 8****Unclaimed Property****Sec. 4-8-10. Purpose.**

The purpose of this Chapter is to provide for the local administration and local disposition of unclaimed property which is in the possession of or under the control of the Town so that such unclaimed property becomes the property of the Town and not the State. (Prior code 3.24.010)

**Sec. 4-8-20. Definitions.**

Unless otherwise required by context or use, the words and terms used in this Article shall be defined as follows:

*Director* means the Finance Director or designee thereof.

*Owner* means a person, entity, including a corporation, partnership, association, governmental entity other than the Town, or a duly authorized legal representative or successor in interest of the same, which owns unclaimed property held by the Town.

*Unclaimed property* means any tangible or intangible property, including any income or

increment derived therefrom, less any lawful charges, that is held by or under the control of the Town and which has not been claimed by its owner for a period of more than one (1) year after it became payable, recoverable or distributable or, in the case of an abandoned motor vehicle, has not been claimed by its owner for a period of not less than thirty (30) days after notification of impoundment of such vehicle, pursuant to Section 42-4-1804(4), C.R.S. The term *unclaimed property* shall not include tangible property which has been found by an individual and placed in the custody of the Marshal's Department on the condition that, if such property is not claimed by its owner within thirty (30) days, the property shall become the property of the finder. (Prior code 3.24.020)

**Sec. 4-8-30. Procedure for disposition of property.**

(a) Prior to disposition of any unclaimed property having an estimated value of one hundred dollars (\$100.00) or more, the Director shall send a written notice by certified mail, return receipt requested, to the last known address, if any, of any owner of unclaimed property. The last known address of the owner shall be the last address of the owner as shown by the records of the Town department or agency holding the property. The notice shall include a description of the property, the amount or estimated value of the property and, when available, the purpose for which the property was deposited or otherwise held. The notice shall also state that, if the owner fails to provide the Director with a written proof of claim for the return of the property within sixty (60) days of the date of the mailing of notice, the property shall become the sole property of the Town, and any claim of the owner to such property shall be deemed forfeited.

(b) Prior to disposition of any unclaimed property having an estimated value of less than one hundred dollars (\$100.00) or having no last

known address of the owner, the Director shall cause a notice to be published in a newspaper of general circulation in the Town. The notice shall include a description of the property, the identity of the owner of the property if known, the amount or estimated value of the property and, when available, the purpose for which the owner may make inquiry of or claim the property. The notice shall also state that, if the owner fails to provide the Director with a written claim for the return of the property within sixty (60) days of the date of the publication of the notice, the property shall become the sole property of the Town, and any claim of the owner to such property shall be deemed forfeited.

(c) If the Director receives no written claim within the above sixty-day claim period, the property shall become the sole property of the Town, and any claim of the owner to such property shall be deemed forfeited.

(d) If the Director receives a written claim within the sixty-day claim period, the Director shall evaluate the claim and give written notice to the claimant within ninety (90) days thereof that the claim has been accepted or denied in whole or in part. The Director may investigate the validity of a claim and may require further supporting documentation from the claimant prior to disbursing or refusing to disburse the property.

(e) In the event there is more than one (1) claimant for the same property, the Director may, in the Director's sole discretion, resolve said claims, or may resolve such claims by depositing the disputed property with the registry of the Municipal or District Court in an interpleader action.

(f) In the event that all claims filed are denied, the property shall become the sole property of the Town, and any claim of the owners of such property shall be deemed forfeited.

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

(h) The Director is authorized to establish and administer procedures for the administration and disposition of unclaimed property consistent with this Article, including compliance requirements for other officers and employees of the Town in the identification and disposition of such property. (Prior code 3.24.030)

**Sec. 4-8-40. Public sale of abandoned property.**

(a) Except as provided in Subsections (b) and (c) below and not sooner than thirty (30) days after unclaimed property becomes the property of the Town, the Director may sell it to the highest bidder at public sale anywhere in the State which affords, in the judgment of the Director, the most favorable market for the property involved. The Director may decline the highest bid and reoffer the property for sale if, in the judgment of the Director, the bid is insufficient. If, in the judgment of the Director, the probable cost of sale exceeds the value of the property, it need not be offered for sale. Any sale held under this Section must be preceded by a single publication of notice, at least three (3) weeks in advance of sale, in a newspaper of general circulation in the county in which the property is to be sold.

(b) Securities listed on an established stock exchange must be sold at prices prevailing on the exchange at the time of sale. Other securities may be sold over the counter at prices prevailing at the time of sale or by any other method the Director considers advisable.

(c) Unless the Director considers it to be in the best interest of the Town to do otherwise, all securities which become the property of the Town delivered to the Director must be held for at least one (1) year before sale.

(d) The purchaser of property at any sale conducted by the Director pursuant to this Article takes the property free of all claims of the owner or previous holder thereof and of all persons claiming through or under them. The Director shall execute all documents necessary to complete the transfer of ownership.

(e) The purchaser of property at any sale conducted by the Director pursuant to this Article takes the property free of all claims of the owner or previous holder thereof, and of all persons claiming of the owner or previous holder thereof and of all persons claiming through or under them. The Director shall execute all documents necessary to complete the transfer of ownership. (Prior code 3.24.040)

**Sec. 4-8-50. Disposition of revenues.**

All revenues and proceeds from any sale of unclaimed property shall be credited to the Town's General Fund. (Prior code 3.24.050)

