

CITY OF CENTRAL, COLORADO

ORDINANCE 20-13

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CENTRAL, COLORADO, REPEALING AND REENACTING ARTICLE III OF CHAPTER 4 OF THE CITY OF CENTRAL MUNICIPAL CODE (“SALES AND USE TAX”) AND ADOPTING CONFORMING AMENDMENTS TO ARTICLE I OF CHAPTER 6 OF THE CITY OF CENTRAL MUNICIPAL CODE

WHEREAS, the City of Central, Colorado (the “City”) is a home rule municipality, organized and existing under Article XX, Section 6 of the Colorado Constitution; and

WHEREAS, pursuant to Article XX, Section 6 of the Colorado Constitution, the right to enact, administer and enforce sales, lodging, and use taxes is clearly within the constitutional grant of power to the City and is necessary to raise revenue with which to conduct the affairs and render the services performed by the City; and

WHEREAS, in Colorado Senate Joint Resolution 14-038 the General Assembly asked the Colorado Municipal League to revive the tax simplification project from the 1990’s to address current systemic problems associated with local tax collection; and

WHEREAS, the City Council of the City (“City Council”) has determined that the standard tax definitions project is a major collaborative sales tax simplification initiative by Colorado’s home rule municipalities that locally collect their sales tax and the retail business community; and

WHEREAS, City Council has determined that the City will cooperate in furtherance of a statewide goal to have all locally collecting municipalities agree to use standard definitions in their sales and use tax codes; and

WHEREAS, City Council has determined that maintaining the local collection of sales and use taxes for the City is of paramount importance to the continued financial strength of the City; and

WHEREAS, City Council has determined that the retail business community desires better uniformity and simplicity when operating in the City; and

WHEREAS, City Council has determined that sales tax revenue is directly tied to how well the City’s retail business community is faring, and City Council and staff have generally supported the idea that the City should simplify the tax code, without sacrificing revenue; and

WHEREAS, City Council has determined that revenue neutral tax simplification is generally construed as good for business and good for the community as a whole; and

WHEREAS, City Council has determined that modification of the City’s sales and use tax exemptions is required in an effort to comply with the Taxpayer Bill of Rights by staying revenue neutral; and

WHEREAS, pursuant to its authority under Article XX, Section 6 of the Colorado Constitution, City Council has adopted and enacted a sales, lodging, and use tax code (the “**Code**”), under which City sales tax is levied on all sales and purchases of tangible personal property or taxable services at retail unless prohibited, as applicable to the provision of this Ordinance 20-13 (this “**Ordinance**”), under the Constitution or laws of the United States; and

WHEREAS, the United States Supreme Court in *South Dakota v. Wayfair*, 138 S.Ct. 2080 (2018), overturned prior precedent and held that a State is not prohibited by the Commerce Clause from requiring a retailer to collect sales tax based solely on the fact that such retailer does not have a physical presence in the State (“**Remote Sales**”); and

WHEREAS, based upon the *Wayfair* decision, a retailer’s obligation to collect Remote Sales is no longer based on the retailer’s physical presence in the jurisdiction by the Constitution or law of the United States, and the City’s Code needs to be amended to clearly reflect such obligation consistent with said decision; and

WHEREAS, the delivery of tangible personal property, products, or services into the City relies on and burdens local transportation systems, emergency and police services, waste disposal, utilities and other infrastructure and services; and

WHEREAS, the failure to tax Remote Sales creates incentives for businesses to avoid a physical presence in the State and its respective communities, resulting in fewer jobs and increasing the share of taxes to those consumers who buy from competitors with a physical presence in the State and its municipalities; and

WHEREAS, it is appropriate for Colorado municipalities to adopt uniform definitions within their sales tax codes to encompass marketplace facilitators and marketplace sellers that do not have a physical presence in the City, but that still have a taxable connection with the City; and

WHEREAS, this Ordinance provides a safe harbor to those who transact limited sales within the City; and

WHEREAS, without this Ordinance, the continued failure of retailers to voluntarily apply and remit sales tax owed on Remote Sales would expose the City to unremitted taxes and would permit an inequitable exception that prevents market participants from competing on an even playing field; and

WHEREAS, City Council adopts this Ordinance with the intent to join in on the simplification efforts of self-collecting home rule municipalities in Colorado and to address tax administration, and, in connection therewith, to adopt the standardized definitions and to establish economic nexus for retailers or vendors without physical presence in the State and require the retailers or vendors to collect and remit sales tax for all sales made within the marketplace; and

WHEREAS, as part of the repeal and reenactment, the City desires to set forth additional provisions concerning the collection, administration, and enforcement of sales, lodging, and use taxes in a manner that is generally consistent with other self-collecting home rule municipalities in Colorado; and

WHEREAS, nothing contained in this Ordinance is intended to nor shall be interpreted or construed to effect a tax policy change resulting in a net revenue increase to the City as restricted by the Taxpayer's Bill of Rights, Section 20 of article X of the Colorado Constitution; and

WHEREAS, this Ordinance does not increase or decrease the City's effective tax base, rates, or revenues, but affects only the collection, administration, and enforcement of the City's sales, lodging, and use tax; and

WHEREAS, City Council has determined that the adoption of this Ordinance is legislative in nature and will further the public health, safety, convenience, and the general welfare of the community; and

WHEREAS, City Council conducted a public hearing, with proper notice provided, to consider adoption of this Ordinance as required by law.

BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF CENTRAL, COLORADO THAT:

Section 1. Article III of Chapter 4 of the City of Central Municipal Code, titled "Sales and Use Tax", is hereby repealed and replaced with the following new Article III:

ARTICLE III – Sales and Use Tax

Division 1 – General Provisions

Sec. 4-3-10. - Definitions.

For the purposes of this Article, the words herein contained shall have the meanings set forth in this Section.

Automotive vehicle means any vehicle or device in, upon, or by which any person or property is or may be transported or drawn upon a public highway, or any device used or designed for aviation or flight in the air. Automotive Vehicle includes, but is not limited to,

motor vehicles, trailers, semi-trailers, or mobile homes. Automotive Vehicle shall not include devices moved by human power or used exclusively upon stationary rails or tracks.

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

Charitable organization means any entity which: (1) has been certified as a nonprofit organization under Section 501(c)(3) of the Internal Revenue Code, and (2) is an organization which exclusively, and in a manner consistent with existing laws and for the benefit of an indefinite number of persons or animals, freely and voluntarily ministers to the physical, mental, or spiritual needs of persons or animals, and thereby lessens the burden of government.

City means the City of Central, Colorado.

City Manager means the City Manager of the City or his or her designee.

Collection costs means, without limitation, all costs of audit, assessment, bank fees, hearings, execution, lien filing, distraint, litigation, locksmith fees, auction fees and costs, and prosecution and attorney fees.

Community Organization means a nonprofit entity organized and operated exclusively for the promotion of social welfare, primarily engaged in promoting the common good and general welfare of the community, so long as: (1) No part of the net earnings of which inures to the benefit of any private shareholder or individual; (2) No substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; and (3) Which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

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

County means the County of Gilpin, Colorado.

Custom software program means a Software Program prepared to the special order or specifications of a single customer.

Economic nexus means the connection between the City and a person not having a physical nexus in the State of Colorado, which connection is established when the person or marketplace facilitator makes retail sales into the City, and:

- a. In the previous calendar year, the person, which includes a marketplace facilitator, has made retail sales into the State exceeding the amount specified in Section 39-26-102(3)(c), C.R.S.; or
- b. In the current calendar year, ninety (90) days has passed following the month in which the person, which includes a marketplace facilitator, has made retail sales into the State exceeding the amount specified in Section 39-26-102(3)(c), C.R.S.

This definition does not apply to any person who is doing business in this state but otherwise applies to any other person.

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

- a. Directly, indirectly, or by a subsidiary maintains a building, store, office, salesroom, warehouse or other place of business within the City;
- b. Sends one (1) or more employees, agents or commissioned salespersons into the City to solicit business or to install, assemble, repair, service, or assist in the use of its products, or for demonstration or other reasons;
- c. Maintains one (1) or more employees, agents or commissioned salespersons on duty at a location within the City;
- d. Owns, leases, rents or otherwise exercises control over real or personal property within the City; or
- e. Retailer or vendor in the state of Colorado that makes more than one (1) delivery into the City within a twelve-month period; or
- f. Makes retail sales sufficient to meet the definitional requirements of economic nexus as set forth herein.

Farm equipment means any farm tractor, as defined in Section 42-1-102(33), C.R.S., any implement of husbandry, as defined in Section 42-1-102(44), C.R.S., and irrigation equipment having a per unit purchase price of at least one thousand dollars (\$1,000.00). Farm Equipment also includes, regardless of purchase price, attachments and bailing wire, binders twine and surface wrap used primarily and directly in any farm operation. Farm Equipment also includes, regardless of purchase price, parts that are used in the repair or maintenance of the Farm Equipment described in this Paragraph, all shipping pallets, crates, or aids paid for by a farm operation, and aircraft designed or adapted to undertake agricultural applications. Farm Equipment also includes, regardless of purchase price, dairy equipment. Except for shipping pallets, crates or aids used in the transfer or shipping of agricultural products, Farm Equipment does not include: (1) vehicles subject to the registration requirements of Section 42-3-103, C.R.S., regardless of the purpose for which such vehicles are used; (2) machinery, equipment, materials, and supplies used in a manner that is incidental to a farm operation; (3) maintenance and janitorial equipment and supplies; and (4) Tangible Personal Property used in any activity other than farming, such as office equipment and supplies and equipment and supplies used in the sale or distribution of farm products, research, or transportation.

Garage sales means sales of tangible personal property, except Automotive Vehicles, occurring at the residence of the seller, where the property to be sold was originally purchased for use by members of the household where such sale is being conducted. The term includes, but is not limited to, yard sales, estate sales, and block sales.

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

License means a City sales and use tax and/or lodging tax license.

Livestock means cattle, horses, mules, burros, sheep, lambs, poultry, swine, ostrich, llama, alpaca, and goats, regardless of use, and any other animal which is raised primarily for food, fiber, or hide production. *Livestock* shall also mean "alternative livestock" as defined under Section 35-41.5-102, C.R.S. *Livestock* shall not mean a pet animal as defined under Section 35-80-102(10), C.R.S.

Lodging means rooms or accommodations furnished by any person, including a marketplace facilitator, to any person who for consideration uses, possesses or has the right to use or possess any such room or accommodation in a hotel, motel, inn, bed and breakfast, apartment hotel, lodging house, motor hotel, guesthouse, guest ranch, resort, trailer coach, mobile home, auto camp, RV park, or similar place for a period of less than thirty (30) consecutive days under any concession, permit, lease, contract, right of access agreement, license to use, or other similar agreement.

Lodging tax means either the tax payable by the purchaser or the aggregate amount of taxes to be collected and remitted to the City by a lodging vendor during the period for which the lodging vendor is required to collect and remit the lodging tax under this Article.

Lodging vendor means a person making sales of or furnishing lodging to a purchaser in the City.

Marketplace means a physical or electronic forum, including, but not limited to, a store, a booth, an internet website, a catalog, or a dedicated sales software application, where tangible personal property or taxable services are offered for sale.

Marketplace facilitator means a person who:

- a. Contracts with a marketplace seller to facilitate for consideration, regardless of whether the consideration is deducted as fees from the transaction, the sale of the marketplace seller's tangible personal property or taxable services through the person's marketplace;
- b. Engages directly or indirectly, through one or more affiliated persons, in transmitting or otherwise communicating the offer or acceptance between a purchaser and the marketplace seller; and
- c. Either directly or indirectly, through agreements or arrangements with third parties, collects payment from the purchaser on behalf of the seller.

A *marketplace facilitator* does not include a person that exclusively provides internet advertising services or lists products for sale, and that does not otherwise meet this definition.

Marketplace seller means a person, regardless of whether or not the person is engaged in business in the City, which has an agreement with a marketplace facilitator and offers for sale tangible personal property or taxable services through a marketplace owned, operated, or controlled by a marketplace facilitator.

Mining equipment means tangible personal property, including tools, machinery, equipment, and appliances, used for prospecting, developing, and working a mine, or for transporting coal, ore, other minerals and resources, and products.

Modified software program means a pre-written software program that is altered or enhanced by someone other than the purchaser to create a program for a particular user.

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.

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

Prescription drugs for animals means a drug which, prior to being dispensed or delivered, is required by the federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sect. 301, et. seq., as amended, to state at a minimum the symbol "Rx Only", and is dispensed in accordance with any order in writing, dated and signed by a licensed veterinarian specifying the animal for which the medicine or drug is offered and directions, if any, to be placed on the label.

Prescription drugs for humans means a drug which, prior to being dispensed or delivered, is required by the federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sect. 301, et. seq., as amended, to state at a minimum the symbol "Rx Only", and is dispensed in accordance with any written or electronic order 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 any required information of the patient for whom the medicine, drug or poison is offered and directions, if any, to be placed on the label.

Pre-written software program means a Software Program prepared for sale or license to multiple users, and not to the special order or specifications of a single customer. Pre-written software is commonly referred to as "canned," "off-the-shelf" ("COTS"), "mass produced" or "standardized."

Price or purchase price means the aggregate value measured in currency paid or delivered or promised to be paid or delivered in consummation of a sale, without any discount from the price on account of the cost of materials used, labor or service cost, and exclusive of any direct tax imposed by the federal government or by this Article, and, in the case of all retail sales involving the exchange of property, also exclusive of the fair market value of the property exchanged at the same time and place of the exchange, if: (1) Such

exchanged property is to be sold thereafter in the usual course of the retailer's business, or
(2) 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 the State of Colorado, 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:

- (1) The amount of money received or due in cash and credits.
- (2) Property at fair market value taken in exchange but not for resale in the usual course of the retailer's business.
- (3) Any consideration valued in money, whereby the manufacturer or someone else reimburses the retailer for part of the purchase price and other media of exchange.
- (4) The total price charged on credit sales including finance charges which are not separately stated at the time of sale. An amount charged as interest on the unpaid balance of the purchase price is not part of the purchase price unless the amount added to the purchase price is included in the principal amount of a promissory note; except the interest or carrying charge set out separately from the unpaid balance of the purchase price on the face of the note is not part of the purchase price. An amount charged for insurance on the property sold and separately stated at the time of sale is not part of the purchase price.
- (5) Installation, applying, remodeling, or repairing the property, delivery and wheeling-in charges included in the purchase price and not separately stated.
- (6) Transportation and other charges to effect delivery of tangible personal property to the purchaser.
- (7) Indirect federal manufacturers' excise taxes, such as taxes on automobiles, tires, and floor stock.
- (8) The gross purchase price of articles sold after manufacturing or after having been made to order, including the gross value of all the materials used, labor and service performed and the profit thereon.

Price or purchase price shall not include:

- (1) Any sales or use tax imposed by the State of Colorado or by any political subdivision thereof.
- (2) The fair market value of property exchanged if such property is to be sold thereafter in the retailers' 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.
- (3) Discounts from the original price if such discount and the corresponding decrease in sales tax due is actually passed on to the purchaser, and the seller is not reimbursed for the discount by the manufacturer or someone else. An

anticipated discount to be allowed for payment on or before a given date is not an allowable adjustment to the price in reporting gross sales.

Prosthetic devices for animals means any artificial limb, part, device or appliance for animal use which replaces a body part or aids or replaces a bodily function; is designed, manufactured, altered or adjusted to fit a particular patient; and is prescribed by a licensed veterinarian. Prosthetic devices include, but are not limited to, prescribed auditory, ophthalmic, or ocular, cardiac, dental, or orthopedic devices or appliances, and oxygen concentrators with related accessories.

Prosthetic devices for humans means any artificial limb, part, device or appliance for human use which replaces a body part or aids or replaces a bodily function; is designed, manufactured, altered or adjusted to fit a particular patient; 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, and oxygen concentrators 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, or sold. These terms include capital leases, installment and credit sales, and property and services acquired by:

- (1) Transfer, either conditionally or absolutely, of title or possession or both to tangible personal property or taxable services;
- (2) A lease, lease-purchase agreement, rental or grant of a license, including royalty agreements, to use tangible personal property or taxable services;
- (3) Performance of taxable services; or
- (4) Barter or exchange for other tangible personal property or taxable services.

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

- (1) A division of partnership assets among the partners according to their interests in the partnership;
- (2) The transfer of assets of shareholders in the formation or dissolution of professional corporations, if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets;
- (3) The dissolution and the pro rata distribution of the corporation's assets to its stockholders, if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets;
- (4) A transfer of a partnership or limited liability company interest;
- (5) The transfer of assets to a commencing or existing partnership or limited liability company, if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets;
- (6) The repossession of personal property by a chattel mortgage holder or foreclosure by a lienholder;

(7) The transfer of assets from a parent company to a subsidiary company or companies which are owned at least eighty percent by the parent company, which transfer is solely in exchange for stock or securities of the subsidiary company;

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

(9) The transfer of assets between parent and closely held subsidiary companies, or between subsidiary companies closely held by the same parent company, or between companies which are owned by the same shareholders in identical percentage of stock ownership amounts, computed on a share-by-share basis, when a tax imposed by this article was paid by the transferor company 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 company. To such an extent any transfer referred to in this paragraph (9) shall constitute a sale. For the purposes of this paragraph (9), a closely held subsidiary corporation is one in which the parent company owns stock possessing or membership interest at least eighty percent of the total combined voting power of all classes of stock entitled to vote and owns at least eighty percent of the total number of shares of all other classes of stock.

Purchase or sale also means, if the context requires, the acquisition or furnishing for consideration by any person of lodging within the City.

Resident means a person who resides or maintains one or more places of business within the City, regardless of whether that person also resides or maintains a place of business outside of the City.

Retail sales means all sales except wholesale sales.

Retailer or vendor means any person selling, leasing, renting, or granting a license to use tangible personal property or services at retail. Retailer or vendor shall include, but is not limited to, any:

(1) auctioneer;

(2) 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;

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

(4) retailer-contractor, when acting in the capacity of a seller of building supplies, construction materials, and other tangible personal property;

(5) Marketplace facilitator or marketplace seller.

Retailer-contractor means a contractor who is also a retailer of building supplies, construction materials, or other tangible personal property, and purchases, manufactures, or fabricates such property for sale (which may include installation), repair work, time and materials jobs, and/or lump sum contracts.

Return means any form prescribed by the City for computing and reporting a total tax liability.

Sales tax means the tax that is collected or required to be collected and remitted by a retailer on sales taxed under this Code.

Software program means a sequence of instructions that can be measured, interpreted and executed by an electronic device (e.g., a computer, tablets, smart phones) regardless of the means by which it is accessed or the medium of conveyance. *Software Program* includes the generic terms “software,” “software application,” as well as “updates,” “upgrades,” “patches,” “user exits,” and any items which add or extend functionality to existing Software Programs.

Special sales event means any sales event which includes more than 3 vendors taking place at a single location for a limited period of time not to exceed 7 consecutive days.

Tangible personal property means personal property that can be one or more of the following: seen, weighed, measured, felt, touched, stored, transported, exchanged, or that is in any other manner perceptible to the senses.

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

Tax deficiency or *deficiency* means any amount of tax, penalty, interest, or other fee that is not reported and/or not paid on or before the date that any return or payment of the tax is required under the terms of this Code.

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

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

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

Telecommunications service means the service of which the object is 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, Voice over Internet Protocol (VoIP), or any combinations of such media, including any form of mobile two-way communication.

Use means the exercise, for any length of time by any person within the City of any right, power or dominion over tangible personal property or services when rented, leased or purchased at retail from sources either within or without the City from any person or retailer or used in the performance of a contract in the City whether such tangible personal property is owned or not owned by the taxpayer. Use also includes the withdrawal of items from inventory for consumption.

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

Wholesale sales means a sale by wholesalers to retailers, jobbers, dealers, or other wholesalers for resale and does not include a sale by wholesalers to users or consumers not for resale; latter types of sales shall be deemed to be retail sales and shall be subject to the provisions of this Article.

Wholesaler means any person doing an organized wholesale or jobbing business and selling to retailers, jobbers, dealers, or other Wholesalers, for the purpose of resale, and not for storage, use, consumption, or distribution.

Sec. 4-3-20. - Liability for payment; taxes held in trust.

- (a) All sums of money paid by a person to a retailer or lodging vendor as taxes imposed by this Article shall be and remain public money and the property of the City, in the hands of such retailer or lodging vendor. Such retailer or lodging vendor shall hold the same in trust for the sole use and benefit of the City, until paid to the City. Any failure to so pay to the City, shall be punishable as provided by law.
- (b) Any statute of limitations provided in this Article does not apply to collections of public money in the possession of a retailer or lodging vendor, and such moneys are collectable at any time after their due date upon demand of the City Manager. Bankruptcy will not excuse unremitted taxes collected in trust.
- (c) Any taxpayer or person who executes any form or return required by this Article to be submitted to the City shall be personally responsible for the payment of any taxes required under this Article.

Sec. 4-3-30. - Sales, use, and lodging tax constitute lien.

- (a) Any sales, lodging, or use tax imposed by this Article, together with the interest and penalties herein provided and the cost of collection, shall be a first and prior lien upon:
 - (1) The goods, stock-in-trade, and business fixtures of or used by any taxpayer under lease, title-retaining contract, or other contractual arrangement; and
 - (2) The real and personal property owned or leased by any such taxpayer, including personal property affixed to real property, and shall take precedence on all such property over other claims and mortgages.
- (b) This lien shall arise upon the day the tax becomes due and payable and shall be extinguished by operation of law when the tax and any interest, penalty, and collection costs are paid in full.
- (c) Whenever the business or property of any taxpayer subject to this Article shall be placed in receivership, bankruptcy, or assignment for the benefit of creditors, or seized under distraint for property or other taxes, all taxes, penalties, and interest imposed by this Article and for which said person is in any way liable under the terms of this Article, shall be a prior and

preferred lien against all the property of said taxpayer, and no sheriff, receiver, assignee, or other officer shall sell the property of any person subject to this Article under process or order of any court, without first ascertaining from the City Manager the amount of any taxes, penalties, interest, and collection costs due and payable under this Article. If there are any such taxes, penalties, interest, or collection costs due, owing, or unpaid, it shall be the duty of such officer to first pay the amount of said taxes, penalties, interest, or construction costs out of the proceeds of said sale before making payment of any moneys to judgment creditors or other claims of whatsoever nature.

- (d) At any time a tax has accrued but is unpaid, the City Manager may issue a notice of tax lien, setting forth the name of the taxpayer, the amount of the tax, penalties, and interest, the date of the accrual thereof and that the City claims a first and prior lien on the real and tangible personal property of the taxpayer. Said notice 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. Any representative of the City to whom a distraint warrant has been issued may also file a notice of lien in such form as the City Manager may prescribe with the person in possession of any real or tangible personal property of the taxpayer. Issuance of such notices and filing thereof shall be at the discretion of the City Manager and shall not affect the priority or validity of the lien provided by this Article, which arises by operation of law when the tax accrues and is payable.
- (e) Any lien for taxes as shown on the records of the county clerk and recorder as herein provided, upon payment of all taxes, penalties, interest, and collection costs covered thereby, shall be released by the City Manager in the same manner as mortgages and judgments are released.

Division 2 – Imposition of Sales, Use, and Lodging Tax

Sec. 4-3-40. - Sales tax levy.

- (a) Unless exempted in Section 4-3-140 of this Article, there is levied and there shall be collected and paid a six percent (6%) tax upon all sales and services as specified in Sections 4-3-50, 4-3-60, and 4-3-70 below.
- (b) The retailer shall add the tax imposed hereby to the purchase price of the tangible personal property or taxable services sold, showing such tax as a separate and distinct item, and when added, such tax shall constitute a part of such price, shall be a debt from the purchaser to the retailer until paid, and shall be recoverable at law in the same manner as other debts.
- (c) Notwithstanding subsection (b) of this Section, any retailer selling malt, vinous or spirituous liquors by the drink may include in its sales price the sales tax levied under this Section.
- (d) It is unlawful for any retailer to advertise or hold out to the public or to any purchaser, in any manner, directly or indirectly, that the tax levied by this Section will be assumed or absorbed by the retailer or will not be added to the price or that any part thereof will be refunded.

- (e) No person other than the City may enrich himself or herself or gain any benefit from the collection or payment of such tax.

Sec. 4-3-50. - Property and services taxed.

There is levied and there shall be collected and paid a sales tax in the amount stated in Section 4-3-40 above on the following:

- (1) Upon all sales of tangible personal property at retail within the City or transactions made with vendors, lodging vendors, and/or persons within the City.
- (2) Upon the purchase price for telecommunications service within the City.
- (3) Upon all sales within the City for gas and electric service, whether furnished by municipal, public, or private corporations or enterprises, for gas and electricity furnished and sold for domestic and commercial consumption not constituting a wholesale sale, upon steam when consumed or used by the purchaser and not resold in original form, whether furnished or sold by municipal, public, or private corporations or enterprises.
- (4) Upon all amounts paid for all meals, foods, beverages and liquors, including complimentary meals, food, beverages and liquor, furnished in any restaurant, eating house, hotel, drugstore, club and resort or at any such place at which meals, food or drinks are sold to the public.
- (5) Upon the purchase price for pay cable or subscription television, including charges for services, installation, connection, or other similar charge.
- (6) Upon all sales of automotive vehicles in the City.
- (7) Upon all sales of pre-written software programs in the City.
- (8) Upon marketplace sales as set forth in Section 4-3-60 of this Article.

Sec. 4-3-60. - Marketplace Sales.

(a) (1) A marketplace facilitator engaged in business in the City is required to collect and remit sales tax on all taxable sales made by the marketplace facilitator, or facilitated by it for marketplace sellers to customers in the City, whether or not the marketplace seller for whom sales are facilitated would have been required to collect sales tax had the sale not been facilitated by the marketplace facilitator.

(2) A marketplace facilitator shall assume all the duties, responsibilities, and liabilities of a retailer under this Article. Marketplace facilitators shall be liable for the taxes collected from marketplace sellers. The City may recover any unpaid taxes, penalties, and interest from the marketplace facilitator that is responsible for collecting on behalf of marketplace sellers.

(3) The liabilities, obligations, and rights of a marketplace facilitator set forth under this Section are in addition to any duties and responsibilities that a marketplace facilitator has under

this Article if it also offers for sale tangible personal property or taxable services through other means.

(4) A marketplace seller, with respect to sales of tangible personal property or taxable services made in or through a marketplace facilitator's marketplace, does not have the liabilities, obligations, or rights of a retailer under this Article if the marketplace seller can show that such sale was facilitated by a marketplace facilitator:

- a. With whom the marketplace seller has a contract that explicitly provides that the marketplace facilitator will collect and remit sales tax on all sales subject to tax under this Article; or
- b. From whom the marketplace seller requested and received in good faith a certification that the marketplace facilitator is registered to collect sales tax and will collect sales tax on all sales subject to tax under this Article made in or through the marketplace facilitator's marketplace.

(5) If a marketplace seller makes a sale that is not facilitated by a marketplace facilitator in a marketplace, the marketplace seller is subject to all of the same licensing, collection, remittance, filing and recordkeeping requirements as any other retailer.

(6) Responsibilities, duties and liabilities of a marketplace facilitator or marketplace seller begin upon the earlier of when they become licensed to collect the City's sales tax or when they become engaged in business in the City. No obligation to collect the sales tax required by this Article may be applied retroactively.

(b) Auditing. The City shall solely audit the marketplace facilitator for sales made by marketplace sellers but facilitated by the marketplace facilitator. The City will not audit or otherwise assess tax against marketplace sellers for sales facilitated by a marketplace facilitator.

Sec. 4-3-70. - Lodging tax.

- (a) There is hereby levied and there shall be paid and collected a three-percent (3%) tax upon the entire amount charged for the furnishing of lodging in the City. This lodging tax shall be in addition to the sales tax imposed on lodging pursuant to this Article.
- (b) Issuance of a sales tax license to any vendor shall also be considered a license to collect, report and remit lodging tax.
- (c) Except as otherwise provided in this Article, all provisions set out in this Article regarding the collection, reporting, remittance, and tax delinquency of sales and use taxes shall apply to lodging tax.

Sec. 4-3-80. - Use tax.

- (a) In addition to the property and services listed in Section 4-3-50 above, there is hereby imposed a use tax of six percent (6%) on the property described in subsection (c) of this Section.
- (b) All provisions set out in this Article shall apply to the collection, reporting, remittance, and tax delinquency of use tax.
- (c) It is the legislative intent of the City Council that, for the purpose of this Section, every person who uses, distributes, or consumes within the City any tangible personal property purchased at retail, not taxed under Section 4-3-50 above and not distributed in the normal function of wholesaling, is exercising a taxable privilege. Every resident of the City or any person engaged in business in the City who purchases or leases tangible personal property for use, distribution, or consumption within the City from sources outside the City otherwise taxable under Section 4-3-50 if purchased within the City, and who has not paid the tax imposed by Section 4-3-50, shall pay to the City the use tax set forth in subsection (a) of this Section.
- (d) The use or consumption of tangible personal property includes, for the purpose of this Article, materials, commodities and items of tangible personal property affixed to or made a part of facilities and structures on real property owned or leased, and situated within the City.

Sec. 4-3-90. - Effect of retail sales taxes imposed by other municipalities.

For any person who purchases or leases tangible personal property taxable under Section 4-3-80 above for use, distribution or consumption in the City, and who has already paid a legally enacted sales tax with respect to the purchase or lease of such property to another municipality incorporated according to the laws of the State in an amount less than the use tax imposed by Section 4-3-80 of this Article, the provisions of this Article shall apply only as to the difference between the rate imposed by Section 4-3-80 of this Article and the retail sales tax imposed by the other municipality. If such retail sales tax imposed and paid to such other municipality is equal to or larger than the use tax imposed by Section 4-3-80 this Article, no use tax shall be imposed under this Article for the privilege of using, distributing or consuming such tangible personal property in the City.

Sec. 4-3-100. - Use tax; nonapplicability to use or consumption occurring more than three years after most recent sale.

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

Sec. 4-3-110. - Automotive Vehicles.

An automotive vehicle upon which a specific ownership tax is imposed by the State and which is purchased by a resident of the City or other person for use within the City, shall not be registered in the County and title to such vehicle shall not be transferred within the County by the County Clerk, if the tax imposed by the provisions of this Article has not been paid.

Sec. 4-3-120. - Construction Materials.

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

- (1) A use tax shall be collected equal to six percent (6%) of forty percent (40%) of the permit value of building permits issued by the Building Department of the City for the construction, reconstruction, remodeling and alteration of any building, dwelling or other structure or improvement within the City. The use tax shall apply to permit values of electrical, plumbing, heating or other permits issued in connection with such construction, reconstruction, remodeling, and alterations.
- (2) Persons shall pay the amount of the use tax upon the issuance of the building permit. A use tax receipt will be issued upon receipt of the payment for use tax.
- (3) When persons purchase construction materials, commodities, and items of tangible personal property from vendors within or without the City, for use within the City, and the person has paid the required use tax, these purchases will not otherwise be subject to the sales and use tax provisions of this Article. Vendors can identify such sales as exempt so long as they are identifiable with either a building permit or use tax receipt number.
- (4) If it is determined at the time of the completion of the building, dwelling or other structure or improvement that the use tax paid as required in this Article is in excess of the actual tax due therefor, the taxpayer may apply to the City for a refund of any amount paid in excess of the actual taxes due. It shall be the responsibility of the taxpayer to furnish all necessary bills and invoices evidencing overpayment of the tax. If the Finance Department is satisfied that there has been such overpayment, a refund shall be made. Applications for refunds of use tax must be made on or before the thirtieth of the month following the later of the month in which the work is completed (as evidenced by a final inspection) or, if applicable, a certificate of occupancy is issued.
- (5) The use tax due under subsection (1) of this Section may be subsequently adjusted through an audit by the City. Within thirty-six (36) months from the later of the date of issuance of the certificate of occupancy for the project or the date of final inspection of the project, if it is determined by the City that the actual cost of the project is greater than the project valuation used to determine the permit value, then the additional use tax due must be received by the City within thirty (30) days of taxpayer's receipt of notice

of such determination. If the use tax paid by the taxpayer at the time of building permit issuance exceeds the amount of use tax due, a refund shall be made.

- (6) Persons shall file a use tax return and pay the use tax due the City on purchase price of any construction materials used in performance of work in the City where such materials are purchased from sources outside the City and the tax is not paid at the source as a sales tax and a building or special permit is not required. This use tax return shall be filed, and payment shall be made, in accordance with Section 4-3-190 of this Article.
- (7) When construction materials, commodities and items of tangible personal property are affixed to or are to be made a part of the facilities on real property that belongs to the City and used by the City for a municipal purpose then such materials, commodities and items shall be exempt from the provisions of this Article. When such materials, commodities and items are affixed to or are to be made a part of the facilities on real property leased by the City for a municipal purpose, and which materials, commodities and items the City is obligated by lease or contract to pay for, then, such materials, commodities and items shall be exempt from the provisions of this Article.

Sec. 4-3-130. – Unpaid use tax shall constitute a lien.

In addition to the lien set forth in Section 4-3-30, the full amount of any use tax due and not paid for construction materials, commodities, and items of tangible personal property affixed to or made a part of facilities and structures on real property within the City, together with penalties and interest thereon as herein provided, shall be and constitute a lien upon the real property benefited by the improvements upon which such construction materials, commodities, or items of tangible personal property were used or consumed, and the City Manager is authorized to file a notice of such lien with the county clerk and recorder.

Sec. 4-3-140. - Exemptions.

The taxes levied in Sections 4-3-50, 4-3-70 and 4-3-80 of this Article shall not apply to the items listed below. The list of exemptions shall not be increased by implication or similarity. Furthermore, the burden of proving that any person is exempt from paying or collecting and remitting the tax imposed by this Article, or from making returns as required by this Article, shall be on the person claiming the exemption under such reasonable requirements or proof as the City Manager may prescribe.

- (1) All sales to the United States government, to the State, its departments and institutions, the political subdivisions thereof in the governmental capacities only.
- (2) All sales made to charitable organizations, in the conduct of their regular charitable functions and activities.
- (3) All sales which the City is prohibited from taxing under the Constitution or laws of the United States or the State; provided, however, that the exemptions provided herein shall stand on their own and separate accord and shall not be affected by the provisions of the State's sales tax exemption provisions.

- (4) All sales of cigarettes.
- (5) All sales of prescription drugs for humans, prescription drugs for animals, prosthetic devices for humans, and prosthetic devices for animals.
- (6) All sales of commodities which are taxed under the provisions of the Motor Fuel Tax of 1933, as amended.
- (7) Newspapers.
- (8) All sales of tangible personal property to a public utility doing business both within and outside the City for use in its business outside the City, even though delivery thereof is made within the City.
- (9) All sales of farm equipment, livestock, poultry, livestock and poultry feeds and drugs, seeds, and fertilizers to consumers for use outside the City even though delivery is made within the City. Trucks and lawn and garden equipment are not to be considered as farm equipment.
- (10) All permits, licenses, service charges and fines and assessments, for benefit or penalty, charged by and in accordance with this Code.
- (11) Garage sales; provided that such sales are conducted no more than four (4) days, whether consecutive or not, during any one (1) calendar year.
- (12) All sales by charitable organizations and community organizations; provided that such sales are conducted no more than twelve (12) days, whether consecutive or not, during any one (1) calendar year, that no regular place of sale is maintained, and that all proceeds from such sales are used for the activities of the organization conducting the sale.
- (13) Custom software programs or modified software programs, but not including pre-written software programs.
- (14) All sales of food purchased through the Supplemental Nutrition Assistance Program (formerly known as food stamps) or any successor program.

Division 3 – Taxpayer Obligations and Responsibilities

Sec. 4-3-150. - License required.

- (a) It is unlawful for any person to engage in the business of making retail sales or furnishing of lodging, as the same is defined in this Article, without first having obtained a sales tax license, which shall be granted and issued by the Finance Department and shall be in effect until the thirty-first day of December of the year in which it is issued, unless sooner revoked.
- (b) Persons for whom a license is required shall submit an application that states the name of the business, both the physical and mailing address of the business's primary owner, the character of the business, and any other information deemed necessary by the Finance Department. Applications for a license may be obtained from the Finance Department and must be completed and submitted to the Finance Department with the application fee, as set

by City Council resolution, at least five (5) days prior to the applicant's desired commencement of retail sales.

- (c) In the event that information given on the application changes, it shall be the sole responsibility of the licensee to report such changes to the Finance Department within thirty (30) days.
- (d) In the case that business is transacted at one (1) or more locations under the same name, a separate license shall be required for each place of business.
- (e) An existing license issued under this Article may be transferred to a new physical address provided that the business name and owner remain the same. In the event the business changes owners, the existing license shall be void and the new owner must submit an application for a new license.
- (f) No license shall be required for any person engaged exclusively in the business of selling items or services which are exempt from taxation under this Article.
- (g) No license shall be required for any person making a one-time sale within the City.

Sec. 4-3-160. - Renewal of license.

- (a) It shall be the sole responsibility of each licensee to submit a renewal application with a renewal fee as set by City Council resolution on or before January 15 of each year, granted that his or her business is in operation and is liable to collect, report and submit taxes to the City.
- (b) In the event that a business fails to renew its license prior to January 31 of each year, a fine equal to fifty percent (50%) of the license fee may be charged upon the business's account and the City may withhold issuance of the renewal license until such fine is paid.

Sec. 4-3-170. - Obligation of special sales events.

- (a) No later than five (5) days prior to a special sales event, the event organizer shall provide the City Manager with a list of the names and addresses of all retailers participating in the event and a list of all license numbers of retailers who have licenses and are remitting sales tax to the City individually. The organizer shall immediately provide the City Manager with updated lists of participating retailers and their license information if the information previously provided to the City Manager changes.
- (b) Taxes collected at a special sales event shall be remitted as follows:
 - (1) The organizer of the event shall remit all taxes collected by all retailers at the special sales event; or
 - (2) Individual retailers holding licenses may remit taxes in accordance with this Article, and the organizer of the special sales event shall remit taxes collected by all other retailers participating in the event.

- (c) As provided in subsection (b) above, retailers or organizers of a special sales event shall remit the sales tax due hereunder and complete a return on a form provided by the City Manager. Notwithstanding Section 4-3-190, the return and remittance are due fifteen (15) days after the special sales event ends.

Sec. 4-3-180. – Obligation to retain records.

(a) Retention of records.

(1) Except as otherwise provided in paragraph (2) below, it shall be the duty of every person liable to the City for any tax under this Article to keep and preserve for a period of at least thirty-six (36) months from the date of filing of each return required by this Article all original source documents, books, accounts, and records as may be necessary to determine the amount of such tax liability.

(2) It shall be the duty of every person liable to the City for use tax on construction materials at the time of building permit issuance to keep and preserve for at least thirty-six (36) months following the date of issuance of a certificate of occupancy or, if no certificate of occupancy is required, the date of final inspection all suitable records as described herein, including without limitation invoices and statements along with a summary sheet showing such purchases, which will allow the accurate determination of the use tax due.

- (b) Records to be made available for audit. All such books, databases, accounts and records, together with all bills, receipts, invoices, cash register tapes or other documents of original entry supporting the entries in the books, shall be maintained and shall be open for examination at any time by the City Manager.
- (c) Costs of travel required to perform audit. If a person does not keep the necessary books, accounts and records within the City, it shall be sufficient if such person produces within the City such books, accounts and records or such information as shall be reasonably required by the City Manager for examination by the City Manager. In lieu of producing such records within the City, such person shall pay all reasonable costs of the City associated with a City employee, agent, representative or contractor traveling to the location where the records are kept in order to perform an examination or audit of such records, including travel, lodging, meal, and related expenses. Costs may be required to be paid in advance, or as otherwise approved by the City Manager.
- (d) Any failure to preserve such records shall be deemed a violation of this Article and, upon conviction thereof, shall subject the violator to the penalties provided in this Article and Section 1-4-20 of this Code.

Sec. 4-3-190. – Tax return contents; reporting periods; due date.

- (a) All persons obligated to collect and remit sales or lodging tax under this Article shall file returns and remit the required taxes as required hereunder. Failure to do so shall subject the violator to the penalties provided in this Article and Section 1-4-20 of this Code.

- (b) Except as otherwise provided in Sections 4-3-110 and 4-3-120 of this Article, all persons obligated to collect and remit or pay use tax under this Article shall file returns and pay the required tax as required hereunder. Failure to do so shall subject the violator to the penalties provided in this Article and Section 1-4-20 of this Code.
- (c) Tax return content, form, and signatures. The returns to be filed hereunder shall contain such information and shall be completed in such manner and upon such forms that the City Manager may prescribe. When a return filed by a taxpayer does not include information required by the City Manager, the City Manager has the right to send the return back to the taxpayer for correction and further remittance. The City Manager may consider an improperly filed return to be not filed with the City.
- (d) Standard reporting period. Except as otherwise approved under subsection (e) of this Section, all returns shall be filed at the frequency which is required of taxpayers for state taxes under the State of Colorado Department of Revenue regulations period.
- (e) Alternative reporting periods. The City Manager may approve an alternative reporting period upon written request of a taxpayer. For avoidance of doubt, if the State of Colorado Department of Revenue has approved an alternative reporting period for purposes of state taxes, such taxpayer must still obtain the City Manager's approval of an alternative reporting period for purposes of reporting and remitting the taxes imposed by this Article. Alternative reporting periods will be reviewed on a case-by-case basis and approved based solely on the City Manager's judgment. If any taxpayer who has been granted permission to file returns and pay tax on an alternative reporting period becomes delinquent, authorization for such alternative reporting schedule may be revoked by the City Manager. Upon such revocation, the taxpayer shall file returns and pay tax in accordance with the standard reporting period.
- (f) Due date. Returns shall be filed and taxes paid prior to the twentieth of the month when such return is due.
- (g) Taxpayers who have filed in previous periods but who do not have any reportable sales for a specified period are not required to file a return showing zero (\$0.00) sales.
- (h) A separate report shall be made for each place of business if more than one (1) location is used in the business of sale at retail within the City.
- (i) Any reporting and payment due date which falls on a Saturday, Sunday or any legal holiday as recognized by either the federal government, the State or City shall be extended to the first business day following such due date.
- (j) Timely remittance of a report and payment shall be evidenced by the City's validation date; timely remittance shall not be evidenced by the postmark date if mailed.

Sec. 4-3-200 – Taxpayer's deduction.

When taxes are reported and paid within the standard reporting period and in accordance with Section 4-3-190 of this Article, the taxpayer may deduct three and one-third percent (3 1/3%) of such taxes to cover the taxpayer's cost of collection and reporting. If a taxpayer is delinquent in remitting a tax, this deduction shall not be allowed, and an amount equivalent to the full tax shall be remitted to the City Manager by any such delinquent taxpayer.

Sec. 4-3-210. - Obligation to provide information upon request.

The City Manager may require any person, by regulation or notice served on such person, to make such return, render such statement, or keep and furnish such records or information as the City Manager may deem sufficient to show whether or not such person is liable under this Article to obtain a license or for payment or collection of the taxes imposed herein.

Sec. 4-3-220. - Obligation to remit excess collections and disputed amounts.

If any retailer or lodging vendor, during any reporting period, collects as a tax an amount in excess of the amount required of his or her total taxable sales, he or she shall remit to the City Manager the full amount of the tax herein imposed and also such excess.

Sec. 4-3-230. – Obligation to notify City of address changes.

The taxpayer shall at all times have the burden of ensuring that his or her correct mailing address, email address, and fax number are on file with the City Manager.

Sec. 4-3-240. – Obligation on sale or purchase of business or property; lien.

- (a) New license required. Any sale, transfer, or purchase of an interest in a business enterprise by any person, where the respective interest of the person purchasing or selling as a result of the transaction has changed in any degree, requires, in the case of a retailer, lodging vendor, or other person required to be licensed under this Article, the issuance of a new license.
- (b) Must file final return. Any person who sells out his or her business or stock of goods or all the assets of a business to another person, or any person who quits a business, shall make out the return as required by this Article and remit all taxes due within ten (10) days after the business or stock of goods or assets is sold, or the person quits the business.
- (c) Tax due on business property. The taxes imposed hereunder shall be remitted on the sale or purchase price paid for the items taxable under this Article, including tangible personal property, automotive vehicles, and pre-written software programs, that are acquired with the purchase, transfer of title, or transfer of possession of a business, with the exception of items to be resold in the ordinary course of business operations of the new business. The tax shall be based on the price paid for such items as recorded in the bill of sale or agreement and constituting a part of the total transaction at the time of the sale or transfer, provided that the valuation is as great as or greater than the fair market value of such items. Where the transfer of ownership is a package deal made by a lump-sum transaction, the tax shall be paid on the book value if no determination has been made. When a business is taken over in return for the assumption of outstanding indebtedness owed by former owners, the tax shall be paid on the fair market value of all taxable items acquired by the purchaser. A bona fide gift of tangible personal property is not a sale.

- (d) All prior taxes are due. Taxes due upon the sale of a business or stock of goods or assets of a business include all sales and lodging taxes which were collected or should have been collected prior to the sale and all use taxes accruing or payable prior to the sale.
- (e) Purchaser to withhold payment until tax paid. The purchaser or successor to the business, stock of goods or assets shall withhold a sufficient amount of the purchase money to cover all of said taxes until such time as the former owner produces a receipt from the City showing that all taxes have been paid in full.
- (f) Purchaser liable for prior owner's unpaid tax. Purchasers of a business are liable for any unpaid tax of a predecessor.
- (g) Seller and seller's agent liable for tax. The seller or his or her agent will be held liable for tax remittance on the sale of a business in the event the purchaser fails to remit the tax due on the purchase.
- (h) Seller and purchaser both liable. Until all taxes due under this Section are paid in full, both the former owner and the purchaser shall remain personally liable thereon and subject to all collection proceedings available under this Article. Action by the City against the former owner shall not prevent the exercise by the City of all remedies provided herein against the purchaser or successor owner.
- (i) Delinquent taxes are a lien on the property. Any person who takes or purchases personal or real property under lease, title-retaining contract, or other contract arrangement, by purchase, foreclosure sale, or otherwise, takes the same subject to the lien for any delinquent taxes owed by the original owner and shall be liable for the payment of all delinquent taxes, interest, penalty, and collection costs of such prior owner not, however, exceeding the value of the property so taken or acquired. Any person who takes title to or possession of any real property upon which a tax is owed takes said property subject to the lien for said delinquent tax and shall be liable for the payment thereof to the extent of the tax, interest, penalties, and collection costs.

Sec. 4-3-250. – Obligations on settlement and distribution of assets.

- (a) Satisfaction of Liability. For the purpose of facilitating the settlement and distribution of estates, trusts, receiverships, other fiduciary relationships, and corporations in the process of dissolution or which have been dissolved, the City Manager may agree with the fiduciary or surviving directors upon the amount of taxes due from the decedent, or from the decedent's estate, the trust, receivership, or other fiduciary relationship or corporation, for any of his or her or its taxable periods, under the provisions of the taxes covered by this Article, and, except upon a showing of fraud, malfeasance, or misrepresentation of a material fact, payment in accordance with such agreement shall be full satisfaction of the taxes for the taxable periods to which the agreement related.
- (b) Personal Liability. Except as provided in subsection (d) below, any personal representative of a decedent or of the estate of a decedent, or any trustee, receiver, or other person acting in a fiduciary capacity or any authorized officer of a corporation in the process of dissolution or which has been dissolved, who distributes the estate or fund in his or her control without

having first paid any taxes covered by this Article due from such decedent, decedent's estate, trust estate, receivership, or corporation covered by this Article and which may be assessed within the time limited by this Article, shall be personally liable to the extent of the property so distributed, for any unpaid taxes of the decedent, decedent's estate, trust estate, or receivership or corporation, covered by this Article and which may be assessed within the time limited by this Article.

(c) Notification of Liability. The distributee of a decedent's estate, or a trust estate or fund or the stockholder of any dissolved corporation who receives any of the property of such decedent's estate, trust estate, fund or corporation shall be liable to the extent the decedent, trust estate, fund or corporation was liable for tax under this Article. Notice to such distributee or stockholder shall be given in the same manner and within the time limit which would have been applicable had there been no distribution.

(d) Limitation of Liability:

(1) In case tax covered by this Article is due from a decedent, or of his or her estate or by a corporation, in order for personal liability under subsection (b) above to remain in effect, determination of the tax due shall be made and notice and demand shall be issued within thirty-six (36) months after written request for such determination, filed after the filing of the decedent's final return or filed after the filing of the return of the decedent's estate with respect to which such request is applicable, by any personal representative of such decedent, or by the corporation, filed after the filing of its return; but a request under this provision shall not extend the period of limitation otherwise applicable.

(2) This subsection (d) will not apply in the case of a corporation unless:

- a. Such request notifies the City Manager that the corporation contemplates dissolution at or before the expiration of such thirty-six-month period;
- b. The dissolution is begun in good faith before the expiration of such thirty-six month period; and
- c. The dissolution is completed.

(3) Upon the expiration of said thirty-six-month period, without determination being made and notice and demand being issued, the personal representative or representative of the decedent and the director of the corporation no longer will be liable under the provisions of subsection (b) above.

Division 4 - Refunds

Sec. 4-3-260. - Refunds; overpayment of taxes.

(a) Disputed sales or lodging tax.

- (1) Should a dispute arise between a lodging vendor or retailer and a purchaser as to whether or not an exemption applies, the lodging vendor or retailer shall collect, and the purchaser shall pay, the disputed tax. The lodging vendor or retailer shall thereupon issue to the purchaser a receipt or certificate, in a form as may be prescribed by the City Manager, identifying the names of the lodging vendor or retailer and the purchaser, the items or services purchased, the purchase date, the price for the items or services, and the amount of tax paid.
 - (2) The purchaser may submit an application for a refund of sales or lodging taxes to the Finance Department within sixty (60) days of the purchase of the items or services whereon an exemption is claimed. Applications for refund must be supported by an affidavit of the purchaser providing a brief explanation of the claim of exemption, the receipt or certificate required by subsection (a) above, and a completed refund application form as may be prescribed and furnished by the Finance Department.
 - (3) Upon receipt of an application for refund and all required supporting documentation, the City Manager shall examine the same and shall give written notice to the applicant of his or her decision thereon within ten (10) days of receipt of the complete application and all supporting documentation. The notice shall state, in clear and conspicuous type, that the taxpayer has the right to protest the City Manager's decision pursuant to Section 4-3-360 of this Article within thirty (30) days of the date of the notice and, with respect to sales and use taxes, that the taxpayer has the right to elect a hearing on the deficiency pursuant to Section 29-2-106.1(3), C.R.S.. The notice required by this Section shall be sent by certified mail.
- (b) Retailer/lodging vendor right to refund or credit. A retailer or lodging vendor may be allowed a refund or a credit where there is an overpayment by the retailer or lodging vendor to the City, but no refund or credit shall be allowed as a result of the retailer's or lodging vendor's failure to credit an exemption or the retailer's or lodging vendor's improper imposition of a tax on a purchaser unless the retailer or lodging vendor provides such reasonable proof as the City Manager may prescribe to show that the purchaser who overpaid the tax has been refunded the amount sought for refund or credit by the retailer.
 - (c) Refunds or credits to offset existing tax liabilities. Whenever it is determined that a taxpayer has, for any reporting period, overpaid a tax imposed by this Article or is owed a refund, the amount of the overpayment or refund shall first be applied to any tax deficiencies and existing liabilities of the taxpayer. The remaining amount shall be disbursed to the taxpayer. Overpayments and refunds may not be applied to future tax liabilities.
 - (d) Statute of limitations. With the exception of a written document that tolls the running of the statute of limitations, no refund shall be allowed or paid under any circumstances more than thirty-six (36) months after the City's receipt of the taxes in question.
 - (e) Rights not assignable. The right of any person to a refund under this Article shall not be assignable except as provided in subsection (b) of this Section.
 - (f) Burden of proof. The burden of proving that any sales, services, or commodities, on which tax refunds are claimed, are exempt from taxation or were not at retail, shall be on the person making such claim under such reasonable requirements of proof as the City Manager

may prescribe, which may include, in the City's discretion, an audit in accordance with the provisions of Section 4-3-320 of this Article and related Sections.

Sec. 4-3-270. - Interest on overpayments and refunds.

- (a) Interest allowance basis. No interest shall be paid by the City upon any overpayment of sales, lodging, or use tax unless:
 - (1) Such overpayment was made under protest; and
 - (2) The taxpayer has requested a refund in writing within sixty (60) days after the tax was paid.
- (b) Payment of interest.
 - (1) Calculated interest that would be credited if allowed may be applied against interest owed by the taxpayer on an audit.
 - (2) Interest paid on an eligible overpayment of taxes pursuant to subsection (a) of this Section shall be allowed at the rate of nine percent (9%) per annum.
 - (3) Interest shall accrue only from the date of the taxpayer's application for a refund. If the refund is to be applied against other taxes owed by the taxpayer, interest shall not be paid on the refund for the period after the due date of the amount against which the credit is taken.
- (c) Refund erroneously made to bear interest. Any portion of a sales, lodging, or use tax, or any interest, assessable penalty, additional amount or additional tax which has been erroneously refunded, shall bear interest at the rate established in subsection (b)(2) of this Section from the date of the payment of the refund.

Sec. 4-3-280. – False or fraudulent refund claim.

- (a) Any applicant for refund under this Article, or any other person, who makes a false statement in connection with an application for a refund of any taxes shall be guilty of a municipal offense and a violation of this Article.
- (b) If any person is convicted of a violation of subsection (a) above, such violation shall be punishable as provided by law, including as provided in Section 1-4-20 of this Code.

Division 5 – Collection and Enforcement

Sec. 4-3-290. - Limitations period.

- (a) When there is a failure to make a return, when a false or fraudulent return is filed with intent to evade tax, when a false return is filed under circumstances that exhibit a careless disregard for the accuracy of the return, when tax is collected by a retailer or lodging vendor and not remitted to the City, or when an automotive vehicle is registered outside the City with the intent to avoid City tax liability, the taxes, together with interest and penalties

thereon, may be assessed, or proceedings for the collection of such taxes may be begun at any time and the limitations period set forth in this Section shall not apply.

- (b) Except as described in subsection (a) above or subsection (c) below, or when the City and taxpayer agree in writing to extend the limitations period hereunder, the taxes for any period, together with the interest thereon and penalties with respect thereto imposed by this Article shall not be assessed nor credit taken, nor shall any notice of lien be filed, or distraint warrant issued, or suit for collection be instituted, or any other action to collect the same be commenced more than thirty-six (36) months after the date on which the tax was or is payable, nor shall any lien continue after such period, except that when taxes are assessed before the expiration of such period and notice of lien with respect thereto has been filed prior to the expiration of such period, such lien shall continue after the filing of notice thereof.
- (c) For use taxes due on construction materials, the thirty-six-month period shall commence on, whichever is later (i) the date on which the tax was due or (ii) as applicable, the date of issuance of the certificate of occupancy or final inspection.
- (d) The commencement of collection proceedings, including the mailing of a notice of audit, shall toll the running of the limitations period set forth in subsections (b) and (c) above.
- (e) Where, before the expiration of the time prescribed in this Section for the assessment of tax, both the City Manager and the taxpayer have consented in writing to any assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon or by the commencement of collection proceedings made before the expiration of the period previously agreed upon. Interest calculated in accordance with Sections 4-3-300 and 4-3-310 of this Article may continue to accrue on any and all unpaid tax.

Sec. 4-3-300. - Penalties and interest.

- (a) If any amount of tax is not paid on or before the last date prescribed for payment, interest on such amount at the rate imposed by Section 4-3-310 of this Article shall be paid from such last date to the date paid. The last date prescribed for payment shall be determined without any regard to any extension of time for payment and shall be determined without regard to any notice and demand for payment issued, by reason 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 for payment shall be deemed to be the date the liability for the tax arises. In no event shall it be later than the notice and demand for tax is made by the City.
- (b) Penalty for tax deficiency. A delinquent taxpayer's failure to pay the assessment of deficiency amount set forth in the City's notice of final determination—assessment and demand for payment within thirty (30) days of the date of the notice, shall subject the taxpayer to a penalty of ten percent (10%) of the assessment of deficiency amount or fifteen dollars (\$15.00), whichever is greater, in addition to the monthly interest rate as determined by Section 4-3-310 of this Article.

- (c) Penalty for fraud. If a tax deficiency is due in whole or in part to fraud with the intent to evade the tax, then there shall be added to the total amount of the deficiency a penalty of one hundred percent (100%) of the total amount of the deficiency, and this sum shall be due and payable within thirty (30) days of the date that the written notice of final determination—assessment and demand for payment is sent by the City Manager. Interest on such deficiency shall accrue and be collected at a rate of three percent (3%) per month or thirty-six percent (36%) in the aggregate on the amount of such deficiency from the time the return was due.
- (d) Penalty for failure to file a return. If a taxpayer neglects or refuses to file a return, then there shall be added to the City's estimate of the taxes due a penalty equal to ten percent (10%) of such estimate or fifteen dollars (\$15.00), whichever is greater, and a monthly interest rate as determined by Section 4-3-310 of this Article, and this sum shall be due and payable within thirty (30) days of the date that the written notice of final determination—assessment and demand for payment is sent by the City Manager.
- (e) City Manager may waive penalty. The City Manager is hereby authorized to waive, for good cause shown, any penalty assessed as provided in this Section. Interest imposed in excess of the interest rate established by Section 4-3-310 of this Article shall be deemed a penalty.
- (f) Interest and penalty assessment. Interest and penalties prescribed under 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 or they are applicable. If any portion of a tax is satisfied by credit of an overpayment, then no interest or penalty shall be imposed under this Section on the portion of the tax so satisfied.

Sec. 4-3-310. - Rate of interest.

When interest is required to be assessed or permitted to be charged under any provisions of this Article, the annual rate of interest shall be established by the State Commissioner of Banking pursuant to Section 39-21-110.5, C.R.S.

Sec. 4-3-320. - Audit.

- (a) For the purpose of ascertaining the correct amount of total sales, lodging, or use tax liability, all records required to be maintained by any taxpayer under this Article shall be open for examination and audit at any time by the City Manager or his or her designee.
- (b) If any taxpayer refuses to voluntarily furnish any of the foregoing information when requested by the City Manager, the City Manager may issue a subpoena to require that the taxpayer or taxpayer's representative attend a hearing or produce any such books, accounts, and records for examination.
- (c) During the course of any audit, the City Manager may utilize a representative sample of the taxpayer's records to project the amount of tax deficiency or overpayment, if any.

Sec. 4-3-330. - Coordinated audits.

The City may conduct an audit in conjunction with one (1) or more other municipalities at the City Manager's discretion and provided that the taxpayer signs a waiver of any statute of limitation period upon the City's right to recover tax owed by the taxpayer for a reasonable period of time following the audit period.

Sec. 4-3-340. - Assessment.

- (a) Assessment and final assessment notice. If the City Manager determines that any taxpayer has failed, neglected, or refused:
- (1) To collect all taxes due;
 - (2) To make a return and pay all taxes due;
 - (3) To remit the proper amount of taxes due;
 - (4) To pay in full all taxes due because of negligence or fraud;
 - (5) To pay in full all taxes due on a regular basis; or
 - (6) To remit taxes due pursuant to an audit;

penalties and interest shall be assessed in accordance with Section 4-3-300 of this Article. The City Manager shall issue to the delinquent taxpayer a written notice of final determination—assessment and demand for payment. The notice shall state the additional taxes and the penalties and interest due. The notice shall also state, in clear and conspicuous type, that the taxpayer has the right to protest the City Manager's determination pursuant to Section 4-3-360 of this Article within thirty (30) days of the date of the notice and, with respect to sales and use taxes, that the taxpayer has the right to elect a hearing on the deficiency pursuant to Section 29-2-106.1(3), C.R.S.. The notice required by this Section shall be sent by certified mail.

(b) Calculation of taxes due.

- (1) The City Manager may calculate additional taxes due and issue the final determination—assessment and demand for payment based on an audit of the records of a taxpayer.
- (2) If the City Manager is unable to audit the records of a taxpayer due to the taxpayer's refusal or lack of cooperation, due to time constraints, or due to other reasons which the City Manager may reasonably determine, the City Manager shall make an estimate of the taxes due based upon such information as may be available and shall issue the final determination—assessment and demand for payment with such estimated assessment.

Sec. 4-3-350. - Jeopardy assessment.

- (a) Jeopardy enforcement. If the City Manager finds, in his or her discretion, that collection of a tax will be jeopardized for any reason, the City Manager may declare the taxable period immediately terminated, determine the tax liability, and issue written notice of final

determination—assessment and demand for payment. Any tax liability so assessed shall be due and payable immediately, and the City Manager may proceed to collect the tax as authorized under this Article.

- (b) Security for payment. Enforcement of a jeopardy assessment and demand for payment may be stayed if the taxpayer gives security for payment that is satisfactory to the City Manager.
- (c) Dispute of jeopardy assessment. If, in the opinion of the taxpayer, the jeopardy assessment is not for the correct amount of tax liability, the taxpayer shall remit the total tax liability as assessed and submit a claim for refund to the City.

Sec. 4-3-360. - Protest of notice of final determination-assessment or denial of refund.

- (a) Any notice of final determination—assessment and demand for payment may be protested by the taxpayer to whom it is issued.
 - (1) A taxpayer claiming an error in an assessment shall submit a written protest to the City Manager within thirty (30) days from the date of personal service or the date of mailing of the notice of assessment. Such protest shall state the facts and reasons for and the amount of the requested changes and shall otherwise comply with any rules and regulations promulgated by the City Manager relating to protests and hearings.
 - (2) The taxpayer may assert any facts and make any arguments that, in the opinion of the taxpayer, are pertinent to the protest. Only matters contained in the protest shall be considered by the City Manager.
 - (3) The taxpayer shall be prohibited from amending the protest to assert new facts or make new arguments more than ten (10) days after the protest is received by the City Manager, unless the City Manager issues an order either requiring more definite statements or granting leave to amend the protest.
 - (4) When a timely protest is made that conforms to the requirements of this Section, no further enforcement action will be instituted by the City for the portion of the assessment being protested unless:
 - (i) the taxpayer fails to pursue the protest in a timely manner; or
 - (ii) the tax liability will be jeopardized by delay and the City Manager has issued a jeopardy assessment and demand for payment pursuant to this Article.
 - (5) The filing of a protest shall not toll the accrual of interest on the amount of tax due.
- (b) Any notice that the City Manager has denied a claim for refund, in whole or in part, may be protested by the taxpayer to whom it was issued.
 - (1) A taxpayer claiming an error in denial shall submit a written protest to the City Manager within thirty (30) days from the date of personal service or the date of mailing of the notice of the City Manager's determination. Such protest shall state the facts and reasons for and the amounts of the requested changes and shall otherwise comply with any rules and regulations promulgated by the City Manager relating to protests and hearings.

- (2) The taxpayer may assert any facts and make any arguments that, in the opinion of the taxpayer, are pertinent to the protest. Only matters contained in the protest shall be considered by the City Manager.
 - (3) The taxpayer shall be prohibited from amending the protest to assert new facts or make new arguments more than ten days after the protest is received by the City Manager unless the City Manager issues an order either requiring more definite statements or granting leave to amend the protest.
- (c) Any timely protest that conforms to the requirements of this Section entitles a taxpayer to a hearing under the provisions of this Article.
- (1) If, in the opinion of the City Manager, the issues involved in such protest may be resolved administratively, the City Manager may recommend an informal meeting with the taxpayer.
 - (2) Participation in such an informal meeting does not prevent either the taxpayer or the City from holding a hearing if the dispute cannot be resolved by such meeting.
 - (3) If the issues are satisfactorily resolved at an informal meeting and a hearing is not requested, the remaining tax liability, if any, shall be paid on or before ten (10) days after the date of the notification of the amount due.

Sec. 4-3-370 - Hearings.

- (a) The City Manager shall notify the taxpayer in writing of the time and place fixed for hearing at least ten (10) days prior thereto, unless the taxpayer agrees to a shorter time.
- (b) Every hearing shall be held in the City before the City Manager or a hearing officer designed by the City Manager.
- (c) The burden of proof that the items, services, or other transactions for which refunds of taxes are claimed or for which modifications or cancellations of assessments are sought, are exempt from or not subject to taxation shall be on the taxpayer and such proof shall be by a preponderance of evidence.
- (d) At such hearing, the City Manager or the designated hearing officer is authorized to administer oaths and take evidence and hear arguments. The City Manager or the designated hearing officer may issue subpoenas to compel the attendance of witnesses, the giving of testimony, and the production of books, papers, records or memoranda.
- (e) After such hearing, the City Manager or the designated hearing officer shall issue a findings of fact, conclusions, and decision, which may modify or abate the tax, penalties, and interest protested at the hearing, approve a refund, or uphold the assessment. The decision of the City Manager or the designated hearing officer shall be final upon its entry and shall be mailed to the taxpayer forthwith.
- (f) After such hearing, the taxpayer shall not be entitled to a second hearing on the same final determination—assessment and demand for payment or denial of refund nor shall the taxpayer be entitled to file a claim for refund for amounts denied or paid pursuant to the final decision of the City Manager or the designated hearing officer on the same.

- (g) Unless the final decision of the City Manager or the designated hearing officer is appealed as provided in this Article, the remaining tax liability, if any, shall be paid on or before thirty (30) days after its entry.

Sec. 4-3-380. - Appeals.

- (a) Should the taxpayer be aggrieved by the final decision of the City Manager subsequent to a hearing held pursuant to Section 4-3-370, the taxpayer may proceed to have the same reviewed in the district court in and for Gilpin County pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure as the same now provides or may hereinafter be amended.
 - (1) The petition or complaint for review must be filed within twenty-eight (28) days from the entry of the City Manager's or the designated hearing officer's final decision.
 - (2) Upon filing a petition or complaint pursuant to this subsection, the taxpayer shall either file with the City Manager a bond for twice the unpaid amount stated in the City Manager's or the designated hearing officer's final decision, or deposit the unpaid amount with the City Manager in lieu of posting a bond. Should the taxpayer deposit the unpaid amount with the City Manager, no additional interest shall accrue on the tax deficiency. The taxpayer shall not be entitled to interest on any deposited amount returned in accord with the direction of the court.
- (b) Alternative remedy for sales and use tax. After exhausting the remedies provided in this Article, a taxpayer may elect to appeal a sales or use tax assessment or denial of a claim for a refund of a sales or use tax to the Colorado Department of Revenue pursuant to Section 29-2-106.1(3), C.R.S.
- (c) Any party, including the City, may appeal the decision of the district court, the Executive Director of the Colorado Department of Revenue, or other such tribunal having jurisdiction, using all judicial, appellate, and extraordinary proceedings available.
- (d) A taxpayer who fails to timely appeal the final decision of the City Manager or the designated hearing officer pursuant to this Section shall be forever enjoined from protesting or appealing the same or claiming a refund of amounts denied or paid to the City pursuant thereto.

Sec. 4-3-390. - City Manager's remedies in event of nonpayment.

- (a) So long as a final assessment remains unpaid, the City Manager may take any or all of the following enforcement procedures against the defaulting taxpayer:
 - (1) Issue a distraint warrant pursuant to this Article.
 - (2) File a complaint in County or District Court to collect all amounts owed.
 - (3) Issue a summons to the taxpayer to appear in the municipal court of the City on charges of violating this Code.

- (4) Take such action as deemed necessary to revoke the taxpayer's License.
- (b) Regardless of the collection or enforcement procedures invoked by the City Manager, all unpaid taxes, penalties, and interest shall be secured by a lien arising by operation of law as provided by this Article.
- (c) Nothing contained in this Section shall limit the City's authority to enforce the provisions of this Article by any other lawful means.

Sec. 4-3-400. - Certificate of discharge of property subject to lien.

- (a) Certificate of discharge of property subject to lien. If any property, real or personal, under the law, shall be subject to a lien for the payment of any tax due the City, the City Manager may issue a certificate of discharge of any part of the property subject to the lien if he or she finds that the fair market value of that part of such property remaining subject to the lien is at least double the amount of the liability remaining unsatisfied in respect to such tax and the amount of all prior liens upon such property.
- (b) Discharge in event of partial satisfaction. If any property, real or personal, under the law, shall be subject to a lien for the payment of any tax due the City, the City Manager may issue a certificate of partial discharge of any part of the property subject to the lien if there is paid to the City partial satisfaction of the tax liability.
- (c) How values determined. In determining the value of property, the City Manager shall consider the fair market value of the part to be discharged and to such liens thereon as have priority to the lien of the City.
- (d) Certificate of release conclusive. A certificate of release or of partial discharge issued under this Section shall be held conclusive that the lien of the City upon the property released therein is extinguished, but shall not extinguish, nor release, any portion of the lien nor property not specified in the release.

Sec. 4-3-410. - Collection by distraint.

- (a) Distraint warrant. The City Manager may sign and issue a distraint warrant to any agent of the City, or any sheriff of any county of the State, commanding the levy upon and distraint and sale of all property and rights to property, except as exempted by this Article, of the taxpayer or on which a lien has attached for the payment of the total tax deficiency, together with collection costs:
 - (1) When a total tax deficiency is not remitted within thirty (30) days from the date of notice of final determination—assessment and demand for payment and no protest of such assessment has been timely filed;
 - (3) When a total tax deficiency is not paid within thirty (30) days from the final decision issued by the City Manager after a hearing on a timely protested notice of final determination—assessment and demand for payment and no petition for appeal has been timely filed as provided by this Article; or
 - (4) Immediately if a jeopardy assessment and demand for payment has been issued.

(b) Distraint Seizure and Sale:

- (1) The agent charged with the collection shall make or cause to be made an account of the goods or effects distrained, a copy of which, signed by the agent making such distraint, shall be served by leaving it with the owner or possessor of the property; or at the person's usual place of abode; or with any officer, manager, accountant, bookkeeper, general agent, registered agent, or agent for process; or finally by mailing by certified mail to the last known address of the owner or possessor, together with a copy of the warrant, a notice of the sum of the total tax deficiency and related collection costs incurred to date, and notice of the time and place of sale.
 - (2) The agent shall forthwith cause to be published a notice of the time and place of sale, together with a description of the property to be sold, in some newspaper within the county wherein distraint is made, or, in lieu thereof and in the discretion of the City Manager, the agent or sheriff shall cause such notice to be publicly posted at the courthouse of the county wherein such distraint is made and copies thereof to be posted in at least two (2) other public places within said 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 such notification to the owner or possessor of the property and the publication or posting of such notices. Said sale may be adjourned from time to time by said agent or sheriff if he or she deems it advisable, but not for a time to exceed in all ninety (90) days from the date first fixed for the sale. When any personal property is advertised for sale under distraint, the agent or sheriff making the seizure shall proceed to sell such property at public auction, offering the same at not less than a fair minimum price, including the expenses of making the seizure and of advertising the sale, and if the amount bid for the property at the sale is not equal to the fair minimum price so fixed, the agent or sheriff conducting the sale may declare the same to be purchased by him or her for the City. The property so purchased may be sold by the agent or sheriff under such regulations as may be prescribed by the City Manager.
 - (4) The property distrained shall be restored to the owner or possessor if, prior to the sale, the total tax deficiency is paid, together with collection costs and other fees relating thereto, or may be redeemed by any person holding a chattel mortgage or other evidence of right of possession.
- (c) Certificate of sale and evidence of purchase. In all cases of sale under this Section, the agent or sheriff making the sale shall issue a certificate of sale to each purchaser, and such certificate shall be prima facie evidence of the right of the agent or sheriff to make such sale, and the conclusive evidence of the regularity of his or her proceedings in making the sale and shall transfer to the purchaser all right, title and interest of such delinquent taxpayer in and to the property sold; and where such property consists of certificates of stock in the possession of the agent or sheriff, the certificate of sale shall be notice, when received, to any corporation, company or association of said transfer, and said certificate of such sale shall be authority for such corporation, company or association to record the transfer on its books and records; and where the subject of sale is securities or other evidences of debt, in the possession of the agent or sheriff, the certificate of sale shall be good and valid evidence of title in the person holding the same, as against any other person. Any surplus remaining above the taxes, penalties, interest, all costs and all expenses of making the seizure and of

advertising the sale, shall be returned to the owner or such other person having a legal right thereto, and, on demand, the City Manager shall render an account in writing of the sale. Expenses of a seizure include all reasonable costs and expenses incurred by the City in enforcing collection by distraint, including but not limited to attorney's fees and all personnel and consultant costs of the City.

Sec. 4-3-420. - Civil action.

- (a) Action at law. In addition to all other remedies set forth in this Article, the City Manager may also treat any taxes, penalties, interest, and collection costs due and unpaid as a debt due to the City from the taxpayer personally. In case of failure to pay such debt when due, the City Manager may receive at law the amount of such taxes, interest, penalties, and collection costs in such county or district court of the county wherein venue may be proper under the applicable rule of civil procedure. The return of the taxpayer or the final determination—assessment and demand for payment made by the City Manager as provided in this Article shall be prima facie proof of the amount due.
- (b) Writs of attachment. If a judgment is obtained by the City, collection of the total tax deficiency and collection costs may be made by attachment, garnishment or other means authorized by law. When attachment is sought, no bond shall be required of the City Manager nor shall any sheriff require of the City Manager an indemnity bond for executing the writ of attachment or writ of execution upon any judgment.
- (c) Civil action to enforce lien against real property. If a notice of lien is filed against real property, the City Manager may direct the City Attorney to file a civil action to enforce such lien. The court may determine the interest in the property of each party, decree a sale of the real property, and distribute the proceeds according to such findings. 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.

Sec. 4-3-430. - Revocation or suspension of license.

- (a) The City shall have the power, on reasonable notice and after a hearing before the City Manager, to suspend or revoke the license of any person found to have violated the terms and conditions of its license, any of the regulations lawfully prescribed under this Article, or any of the provisions of the Code, Home Rule Charter, or state statutes. Any device or method employed by the holder of a license to evade the payment of tax provided for by this Article shall be sufficient cause for suspension or revocation. If revocation or suspension occurs due to nonpayment of taxes, then all avenues of collection prescribed in this Code shall apply. Furthermore, revocation or suspension of license shall make it unlawful for any person to, as applicable, conduct retail sales or furnish accommodation units within the City.
- (b) The City Manager may adopt rules and regulations governing the hearings contemplated by this Section.

- (c) Any finding and order of the City Manager revoking or suspending the license of any person shall be subject to review by the District Court for the County upon application of the aggrieved party. The procedure for review shall be as provided by Rule 106(a) (4) of the Colorado Rules of Civil Procedure.

Sec. 4-3-440. - Compromise.

After a final determination—assessment and demand for payment has become final because the taxpayer has waived any right to a hearing or because the City Manager has issued a final decision, the City Manager may compromise any collection proceeding arising under this Article in accordance with Section 6-1-90 of the Code.

Division 6 - Administration

Sec. 4-3-450. - Duties and powers of City Manager.

The administration of the City sales, use, and lodging tax and the licensing provisions of this Article is hereby vested in the City Manager. The City Manager shall have power and authority to prescribe forms and to add, enact, promulgate, amend, and rescind rules and regulations that are not inconsistent with the provisions of this Article and that effectuate the purpose of this Article. Rules and regulations adopted, amended, or rescinded by the City Manager shall be effective in the manner and at the time prescribed by the City Manager, subject to the provisions of the Article. The City Manager may delegate to any employee, agent, representative or contractor of the City such power and authority as deemed reasonable and proper for the effective administration of this Article.

Sec. 4-3-460. – City Manager to examine returns.

- (a) As soon as practical after receipt of the taxpayer's return, the City Manager shall recalculate the tax by known and visible factors. If the resulting recalculated tax is less than reported and paid by the taxpayer, the difference shall be returned as a refund within thirty (30) days of the filing of the return. If the recalculated tax is more than reported and paid by the taxpayer, the difference shall be recorded as a tax deficiency and a written notice of final determination—assessment and demand for payment shall be issued.
- (b) If a tax deficiency on the taxpayer's return is due to a mathematical error, the taxpayer shall have no right of protest or appeal as in the matter of other assessments but shall pay the tax due and assessed or file an amended return to show the true amount of tax due within thirty (30) days of the date that the written notice of final determination—assessment and demand for payment sent by the City Manager.
- (c) For the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of the tax due from any taxpayer, the City Manager shall have the power to examine or cause to be examined by an employee, agent, representative or contractor designated by the City Manager any books, papers, records or memoranda bearing upon the matters required to be included in the return.

Sec. 4-3-470. – Notice requirements.

Any notice of final determination-assessment and demand for payment or denial of refund sent to a taxpayer pursuant to this Article shall be sent via certified mail. Other forms of notice may be sent via regular U.S. mail, fax or e-mail. If notice is not received by the taxpayer or the notice is returned by the post office as undeliverable or rejected by the taxpayer, such notice shall be deemed given on the date sent, and the City shall have no further obligation to complete service of the notice.

Sec. 4-3-480. - Preservation, production, and confidentiality of tax reports, returns and license applications.

- (a) City's preservation of records. All reports and returns of taxes received by the City covered by this Article shall be preserved until the City Clerk orders them destroyed.
- (b) Confidential nature of license applications and returns. Except in accordance with judicial order, consent of the taxpayer, or as otherwise provided by law, the City Manager and the City Attorney and his or her authorized representatives, subject to the Colorado Open Records Act, shall not divulge or make known in any way financial information disclosed in any document, report or return filed in connection with any of the taxes covered by this Article. The officials charged with the custody of such documents, reports and returns shall not be required to produce them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the City Manager in an action or proceeding under the provisions of any such taxing or open record statutes when the report of facts shown thereby are directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit into evidence, so much of said reports, or of the facts shown thereby, as are pertinent to the action or proceeding, and no more.
- (c) Taxpayer request for records. Nothing contained in this Section shall be construed to prohibit the delivery to a person or his or her duly authorized representative of a copy of any return or report filed in connection with his or her tax, and such copies may be certified by the City Manager, and when so certified shall be evidence equally with and in like manner as the originals and may be received by the courts of this State as evidence of the contents.
- (d) Publication of statistics. Nothing in this Section shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof.
- (e) Records available to authorized jurisdictions. Notwithstanding the provisions of this Section, the City Manager in his or her discretion may furnish to the Executive Director of the State Department of Revenue and his or her authorized personnel, to the taxing officials of the State political subdivisions, to the taxing officials of any other state and its political subdivisions, and to the United States, any financial information contained in tax returns and related schedules and documents filed pursuant to this Article, or in the report of an audit or investigation made with respect thereto, provided that such financial information is to be used only for tax purposes.

Sec. 4-3-490. - Interjurisdictional claims for recovery.

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

- (a) As used herein, “claim for recovery” means a claim for reimbursement of taxes paid to the wrong taxing jurisdiction.
- (b) When it is determined by the City Manager that taxes owed to the City has been reported and paid to another municipality, the City shall promptly notify the taxpayer that taxes are being improperly collected and remitted, and that as of the date of the notice the taxpayer must cease improper tax collections and remittances.
- (c) The City may make a written claim for recovery directly to the municipality that received the tax and/or penalty and interest owed to the City or, in the alternative, may institute procedures for collection of the tax from the taxpayer. The decision to make a claim for recovery lies in the sole discretion of the City. Any claim for recovery shall include a properly executed release of claim from the taxpayer releasing its claim to the taxes paid to the wrong municipality, evidence to substantiate the claim and a request that the municipality approve or deny, in whole or in part, the claim within ninety (90) days of its receipt. The municipality to which the City submits a claim for recovery may, for good cause, request an extension of time to investigate the claim, and approval of such extension by the City shall not be unreasonably withheld.
- (d) Within ninety (90) days after receipt of a claim for recovery, the City shall verify to its satisfaction whether or not all or a portion of the tax claimed was improperly received and shall notify the municipality submitting the claim in writing that the claim is either approved or denied, in whole or in part, including the reasons for the decision. If the claim is approved in whole or in part, the City shall remit the undisputed amount to the municipality submitting the claim within thirty (30) days of approval. If a claim is submitted jointly by a municipality and a taxpayer, the check shall be made to the parties jointly. Denial of a claim of recovery may only be made for good cause.
- (e) The City may deny a claim on the grounds that it has previously paid a claim for recovery arising out of an audit of the same taxpayer.
- (f) The period subject to a claim of recovery shall be limited to the thirty-six-month period prior to the date the municipality that was wrongly paid the tax receives the claim for recovery. This period may be extended only if a written document was approved by the City Manager and taxpayer to toll the running of the thirty-six-month period.

Section 2. Subsection (a) of Section 6-1-30 of the City of Central Municipal Code, titled “License revocation procedure”, is hereby amended as follows, with bold and underlined text showing additions and strikethrough text showing deletions:

(a) Subject to Section 4-3-360(a)(4) of this Code, If any sales, lodging, or use tax, or any penalty or interest related thereto, is not paid by the deadline set forth in a written notice of final determination—assessment and demand for payment issued pursuant to Section 4-3-340 of this Code, or if any other fee, tax, penalty or interest imposed in this Chapter or any other ordinance of the City imposing a fee, tax, penalty or interest is not paid within forty-eight (48) hours after the licensee is advised in writing that the same is past due, pursuant to the terms of the ordinance imposing such fee, tax, penalty or interest, and if such ordinance imposing such sales, lodging, or use tax, or other fee, tax, penalty or interest also requires a license be obtained from the City, the City Manager may issue and serve a notice to the licensee setting forth the name of the licensee, the amount of the fee, tax, penalty or interest delinquent, the date of the accrual thereof, and the date of a hearing before the City Council to determine whether or not the license associated with the delinquent fee, tax, interest or penalty should be revoked. The hearing designated in the notice shall occur not more than thirty (30) days from the date of the notice.

Section 3. Subsection (b) of Section 6-1-50 of the City of Central Municipal Code, titled “Unpaid fee or tax a prior lien”, is hereby amended as follows, with bold and underlined text showing additions and strikethrough text showing deletions:

(b) Notice. Subject to Section 4-3-360(a)(4) of this Code, If any sales, lodging, or use taxes, or any penalties, interest, costs or attorney’s fees related thereto, are not paid by the deadline set forth in a written notice of final determination—assessment and demand for payment issued pursuant to Section 4-3-340 of this Code, or if any other fees, taxes, penalties, interest, costs or attorney's fees imposed by this Chapter or any other ordinance of the City is not paid within forty-eight (48) hours after the licensee is advised in writing that the same is past due pursuant to the terms of the ordinance imposing such fee, tax, penalty or interest and shown due by return filed by the licensee or taxpayer or shown due by assessments duly made as provided by ordinance are not paid within forty-eight (48) hours after the same are due, the City Manager may issue and serve a notice to the licensee or taxpayer, setting forth the name of the licensee or taxpayer, the amount of the fees, taxes, penalties, interest, costs and attorney's fees, the date of the accrual thereof and that the City claims a first, prior and perpetual lien on the real and tangible personal property of the licensee or taxpayer. Notices may be served personally, by posting the notice upon the licensee's property in a conspicuous place or mailing, by posting in the U.S. mail, postage prepaid, to the licensee's last known address. Notices shall be on forms prepared by the City Manager and shall be verified by the City Manager.

Section 4. Section 6-1-50 of the City of Central Municipal Code, titled “Unpaid fee or tax a prior lien”, is hereby amended by the addition of the following Subsection (f):

(f) With respect to sales, lodging, and use taxes, in the case of a conflict between the language of this Section 6-1-50 and any provision of Article III of Chapter 4 of the Code, the provision of Article III of Chapter 4 shall control.

Section 5. The new sales and use tax code and the conforming amendments adopted by this Ordinance shall be effective on January 1, 2021. City Council hereby directs staff to provide all retailers and vendors holding sales and use tax licenses or lodging tax licenses with courtesy notice of the adoption of this Ordinance by mail or electronic mail; staff shall endeavor to provide such courtesy notice prior to January 1, 2021. Failure to receive such notice shall not relieve any retailers or vendors from the requirements of this Ordinance.

Section 6. Severability. Should any one or more sections or provisions of this Ordinance be judicially determined invalid or unenforceable, such judgment shall not affect, impair or invalidate the remaining provisions of this Ordinance, the intention being that the various sections and provisions are severable.

Section 7. Repeal. Any and all ordinances or codes or parts thereof in conflict or inconsistent herewith are, to the extent of such conflict or inconsistency, hereby repealed; provided, however, that the repeal of any such ordinance or code or part thereof shall not revive any other section or part of any ordinance or code heretofore repealed or superseded and this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the effective date of this Ordinance.

Section 8. Codification Amendments. The codifier of the City's Code is hereby authorized to make such numerical and formatting changes as may be necessary to incorporate the provisions of this Ordinance within the City of Central Municipal Code.

Section 9. Effective Date. This Ordinance shall become effective immediately following publication, public hearing and the approval of City Council following second reading in accordance with Sections 5.9 and 5.10 of the City Charter.

INTRODUCED AND READ by title only on first reading at the regular meeting of the City Council of the City of Central on the 17th day of November, 2020, at Central City, Colorado.

CITY OF CENTRAL, COLORADO:



Jeremy Fey, Mayor

APPROVED AS TO FORM:



Marcus McAskin, City Attorney

ATTEST:



Reba Bechtel, City Clerk

PASSED AND ADOPTED on second reading, at the regular meeting of the City Council of the City of Central on the 15th day of December, 2020.

CITY OF CENTRAL, COLORADO:



Jeremy Fey, Mayor

ATTEST:



Reba Bechtel, City Clerk

POSTED IN FULL AND PUBLISHED BY TITLE AND SUMMARY in the Weekly Register Call newspaper on November 28, 2020.

POSTED AND PUBLISHED BY TITLE [AND SUMMARY IF AMENDED ON SECOND READING] in the Weekly Register Call newspaper on December 17, 2020.