

CHAPTER 4

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ARTICLE I**General****Sec. 4-1. Fiscal year established.**

In accordance with Section 9.1 of the Charter, the fiscal year for the financial records of the Town shall commence on January 1 and end on December 31 of each year. (Prior code Ch. II §1-1; Ord. 4-1994 §1)

Sec. 4-2. Business and sales tax license.

An annual license is required to conduct business, collect sales tax, either or both. The base fee for a license shall be eighty-five dollars (\$85.00). Commencing with the fiscal year 2004, the Town Manager shall determine the current year fee by multiplying the base fee by the percentage increase in the Denver-Boulder Consumer Price Index from the year 2003 and rounding the result to the next highest whole dollar, which rate shall not exceed one hundred twenty-five dollars (\$125.00). The license fee shall be paid at the time of the submission of an application for a new license, or a renewal license. The Town Manager shall establish rules and regulations for the issuance of such licenses. (Ord. 10-1997 §3; Ord. 8-2003 §2)

Secs. 4-3—4-10. Reserved.**ARTICLE II****Fund Management****Sec. 4-11. Custody and management of funds.**

Moneys in the funds created in this Chapter shall be in the custody of and managed by the Town Treasurer. The Town Treasurer shall maintain accounting records and account for all of said moneys as provided by law. Moneys in

the funds of the Town shall be invested or deposited by the Town Treasurer in accordance with the provisions of law. All income from the assets of any fund shall become a part of the fund from which derived and shall be used for the purpose for which such fund was created; provided that, except as otherwise provided in this Article, by other ordinances or laws or by this Code, the Town Council may transfer out of any fund any amount at any time to be used for such purpose as the Town Council may direct. (Ord. 4-1994 §1)

Sec. 4-12. Establishment and purpose of Road Maintenance Mill Levy Fund.

There is hereby established the Road Maintenance Mill Levy Fund. All revenue generated by the road maintenance mill levy, described herein, shall be credited to the Road Maintenance Mill Levy Fund upon receipt. Interest, if any, earned from the investment or reinvestment of moneys on deposit in the Road Maintenance Mill Levy Fund shall be retained therein and used for the purposes thereof. Moneys on deposit in the Road Maintenance Mill Levy Fund need not be segregated from other tax revenues collected by the Town but shall be accounted for separately. (Ord. 6-1986 §1; Ord. 10-1997 §3)

Sec. 4-13. Limitation on use of Road Maintenance Mill Levy Fund.

Revenues from the road maintenance mill levy and all other moneys from whatever source credited to the Road Maintenance Mill Levy Fund shall be used solely for the maintenance, repair or reconstruction of public roadways located within the Town, together with such administrative, engineering, surveying, legal, financing and interest expense, and other related and incidental expenses as may be required to accomplish such purposes, and for the payment of debt service and other costs in connection

with the issuance of bonds or other obligations issued for the purpose of providing funds for the maintenance, repair or reconstruction of the Town road system. (Ord. 6-1986 §2; Ord. 4-1994 §1; Ord. 10-1997 §3)

Sec. 4-14. Administration of Road Maintenance Mill Levy Fund.

The annual budget of the Town shall include a separate budget item entitled Road Maintenance Mill Levy Fund. The budget for the Road Maintenance Mill Levy Fund shall include an estimate of the revenue expected to be generated by the road maintenance mill levy, the occupancy assessment charged pursuant to Chapter 18 of this Code and other sources, the categories of expenditures, and the amounts to be allocated to each category. The amount of the levy and the categories and amounts of budgeted expenditures shall be determined by the Town Council on the basis of a program and analysis to be prepared by the Public Works Director following a public hearing called for such purpose. Such program and analysis shall describe with particularity the work to be done, the timing of the work and the estimated cost thereof. The amount of the levy shall be limited to the estimated cost plus a reasonable contingency, but in no event shall the levy be greater than five (5) mills in any one (1) year. The Town Council shall appropriate the funds collected by the road maintenance mill levy in accordance with the budget. Any surplus shall be retained in the Road Maintenance Mill Levy Fund for appropriation in current or subsequent fiscal years. (Ord. 6-1986 §3; Ord. 4-1994 §1; Ord. 10-1997 §3)

Sec. 4-15. Road maintenance mill levy.

To operate the Road Maintenance Mill Levy Fund, the Town Council shall annually levy a general ad valorem tax of up to five (5) mills over and above the general fund mill levy, any

increases authorized by Section 11.1 of the Charter and, if applicable, by Part 3 of Article I of Title 29, C.R.S., and over and above any levies for bonds or other purposes now or hereafter authorized. (Ord. 6-1986 §4; Ord. 4-1994 §1; Ord. 10-1997 §3)

Secs. 4-16—4-30. Reserved.

ARTICLE III

Allocation of Fees Collected

Sec. 4-31. Allocation of business and sales tax license fees.

The fees collected under Article I of this Chapter shall be allocated to the costs and expenses of the operation of the Town Clerk's Department. (Ord. 10-1997 §3)

Sec. 4-32. Allocation of solid waste collection fees.

The fees collected under Chapter 7, Article III of this Code shall be allocated to the costs and expenses of the operation of the Public Works Department. (Ord. 10-1997 §3)

Sec. 4-33. Allocation of animal impoundment fees.

The fees collected under Chapter 7, Article V of this Code shall be allocated to the costs and expenses of the operation of the animal control functions of the Police Department. (Ord. 10-1997 §3)

Sec. 4-34. Allocation of dog licensing fees.

The fees collected under Chapter 7, Article VI of this Code shall be allocated to the costs and expenses of the operation of the animal control functions of the Police Department. (Ord. 10-1997 §3)

Sec. 4-35. Allocation of parking permit fees.

The fees collected under Chapter 8, Article III of this Code shall be allocated to the costs and expenses of the operation of the transportation and parking functions of the Transportation Department. (Ord. 10-1997 §3; Ord. 2-2003 §2)

Sec. 4-36. Allocation of access, excavation and obstruction permit fees.

The fees collected under Chapter 11, Article I of this Code shall be allocated to the costs and expenses of the operation of the Public Works Department. (Ord. 10-1997 §3)

Sec. 4-37. Allocation of land use application fees.

The fees collected under Chapter 16, Article I and Section 16A-5-40(b)(7) of this Code shall be allocated to the costs and expenses of the operation of the Planning Department. (Ord. 10-1997 §3; Ord. 4-1998 §1; Ord. 2-2003 §2)

Sec. 4-38. Allocation of accessory employee unit mitigation fees.

The fees collected under Section 16A-3-230 except for 16A-3-230(3)g5 shall be allocated to creation and operation of Town employee housing through the Housing Department. (Ord. 10-1997 §3; Ord. 4-1998 §1)

Sec. 4-39. Allocation of employee housing resale fee.

The fees collected under Chapter 17, Articles I of this Code shall be allocated to the costs and expenses of the operation of the Housing Department. (Ord. 10-1997 §3; Ord. 2-2003 §2)

Sec. 4-40. Allocation of contractor licensing and building permit fees.

The fees collected under Chapter 18 of this Code, except as hereinafter expressly allocated,

shall be allocated to the costs and expenses of the operation of the Building and Planning Departments. (Ord. 10-1997 §3; Ord. 2-2003 §2)

Sec. 4-41. Allocation of occupancy assessment fees.

The fees collected under Chapter 18, Section 18-42(h)4 of this Code shall be allocated to the maintenance, repair and reconstruction of public roadways through the Road Maintenance Mill Levy Fund. (Ord. 10-1997 §3)

Sec. 4-42. Allocation of emergency alarm fees.

The fees collected under Chapter 18, Article VIII of this Code shall be allocated to the costs and expenses of the operation of the Police Department. (Ord. 10-1997 §3)

Secs. 4-43—4-50. Reserved.**ARTICLE IV****Sales Tax****Sec. 4-51. Sales tax imposed.**

(a) There is hereby imposed on all sales of tangible personal property at retail and the furnishing of services as provided in Section 39-26-104, C.R.S., a tax equal to one percent (1%) of the gross receipts. The tangible personal property and services taxable by this Article shall be the same as the tangible personal property and services taxable pursuant to Section 39-26-101, C.R.S., *et seq.* The imposition of the tax on individual sales shall be in accordance with schedules set forth in the rules and regulations promulgated by the Town Treasurer or by separate ordinance of the Town. If any vendor, during any reporting period, shall collect as a tax an amount in excess of one percent (1%) of his or her total taxable sales, he or she shall remit to the Town Treasurer the full amount of tax herein imposed and also such excess.

(b) The collection, administration and enforcement of this sales tax shall be performed by the Town Treasurer in the same manner as the collection, administration and enforcement of the state sales tax. The provisions of Article 26, Title 39, C.R.S., and all rules and regulations promulgated by the Town Treasurer shall govern the collection, administration and enforcement of the sales tax imposed by this Article. (Prior code Ch. XIV §1-2; Ord. 18-1993 §1)

Sec. 4-52. Definitions.

As used in this Article, the following words shall be construed to have the meanings defined below:

Auction sale means any sale conducted or transacted at a permanent place of business operated by an auctioneer or a sale conducted and transacted at any location where tangible personal property is sold by an auctioneer at any sale defined herein, except when acting as an agent for a duly licensed retailer or vendor or when selling only tangible personal property which is exempt under the provisions of Sections 4-65(d) and (e) of this Article, is a retailer or vendor as defined in Subsection (7) below and the sale made by him or her is a retail sale as defined in Subsection (6) below, and the business conducted by said auctioneer is accomplishing such sale in a transaction of a business as defined in Section 1-21 of this Code.

Doing business in the Town, for the purpose of this Article, means the selling, leasing or delivering in the Town or any activity in the Town in connection with the selling, leasing or delivering in the Town of tangible personal property by a retail sale as defined in this Section, for use, storage, distribution or consumption within the Town. This term shall include, but shall not be limited to, the following methods of transacting business:

a. The maintaining within the Town directly, or indirectly, or by a subsidiary, an office, distributing house, salesroom or house, warehouse or other place of business.

b. The soliciting, either by direct representatives, indirect representatives or manufacturers' agents, by distribution of catalogues or other advertising, by use of any communications media, or by any other means whatsoever, of business from persons residing in the Town and by reason thereof receiving orders from, or selling or leasing tangible personal property to, such persons residing in the Town for use, consumption, distribution and storage for use or consumption in the Town.

Farm close out sale means a sale by auction or private treaty, of all tangible personal property of a farmer or rancher previously used by him or her in carrying on the farming or ranching operations. Unless said farmer or rancher is making or attempting to make full and final disposition of all property used in his or her farming or ranching operations and is abandoning said operations on the premises whereon they were previously conducted, such sale shall not be deemed a *farm close out sale* within the meaning of this Article.

Gross taxable sales means the total amount received in money, credits and property, excluding the fair market value of exchanged property which is to be sold thereafter in the usual course of the retailer's business, or other consideration valued in money from sales and purchases at retail within the Town, and embraced within the provisions of this Article. The taxpayer may take credit in his or her report of gross sales for an amount equal to the sale price of property returned by the purchaser when

the full sale price thereof is refunded whether in cash or by credit. The fair market value of any exchanged property which is to be sold thereafter in the usual course of the retailer's business, if included in the full price of a new article, shall be excluded from the gross sales. On all sales at retail, valued in money, when such sales are made under conditional sales contracts, or under other forms of sale where the payment of the principal sum thereunder be extended over a period longer than sixty (60) days from the date of sale thereof, only such portion of the sale amount thereof may be counted for the purpose of imposition of the tax imposed by this Article as has actually been received in cash by the taxpayer during the period for which the tax imposed by this Article is due and payable. Taxes paid on gross sales represented by accounts found to be worthless and actually charged off for income tax purposes may be credited upon a subsequent payment of the tax herein provided, but if any such accounts are thereafter collected by the taxpayer, a tax shall be paid upon the amount collected.

Purchase price means the price to the consumer, exclusive of any direct tax imposed by the federal government or by this Article and, in the case of all retail sales involving the exchange of property, also exclusive of the fair market value of the property exchanged at the time and place of the exchange, provided that such exchanged property is to be sold thereafter in the usual course of the retailer's business.

Retail sale includes all sales made within the Town, except wholesale sales.

Retailer or vendor means a person doing a retail business, known to the trade and public as such, and selling to a user or consumer, and not for resale.

Sale or sale and purchase includes installment and credit sales and the exchange of property, as well as the sale thereof for money, and every such transaction, conditional or otherwise, for consideration, constituting a sale; and also includes the sale or furnishing of electrical energy, gas, steam, telephone or telegraph services, taxable under the terms of this Article. The term *sale or sale and purchase* also includes the transaction of furnishing rooms or accommodations by any person, or any other combination of individuals by whatever name known to a person or persons who, for a consideration, use, possess or have the right to use or possess any room or rooms in a hotel, apartment hotel, lodging house, motor hotel, guest house, guest ranch, mobile home, auto camp, trailer court or trailer park under any concession, permit, right of access, license to use or other agreement, or otherwise.

Tangible personal property means corporeal personal property. This shall not be construed to include newspapers, as legally defined in Section 24-70-102, C.R.S.

Tax means either the tax payable by the purchaser of a commodity or service subject to tax, or the aggregate amount of taxes due from the vendor of such commodities or services during the period for which he or she is required to report his or her collections, as the context may require.

Taxpayer means any person obligated to account to the Town Treasurer for taxes collected or to be collected under the terms of this Article.

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

Wholesaler means a person doing a regularly organized wholesale or jobbing business, and known to the trade as such and selling to retail merchants, jobbers, dealers or other wholesalers for the purpose of resale. (Prior code Ch. XIV §1-3; Ord. 18-1993 §1)

Sec. 4-53. Wholesale sales exempt from taxation.

(a) Sales to and purchases of tangible personal property by a person engaged in the business of manufacturing, compounding for sale, profit or use, any article, substance or commodity, which tangible personal property enters into the processing of or becomes an ingredient or component part of the product or service which is manufactured, compounded or furnished and the container, label or the furnished shipping case thereof, shall be deemed to be wholesale sales and shall be exempt from taxation under this Article.

(b) Sales and purchases of electricity, coal, gas, fuel oil or coke, for use for processing, manufacturing, mining, refining, irrigation, building construction, telegraph, telephone and radio communication, street and railroad transportation services and all industrial uses, and newsprint and printers' ink for use by publishers of newspapers and commercial printers shall be deemed to be wholesale sales and shall be exempt from taxation under this Article. (Prior code Ch. XIV §1-3)

Sec. 4-54. Disputes regarding exemptions.

Should a dispute arise between the purchaser and seller as to whether or not any such sale is exempt from taxation hereunder, nevertheless, the seller shall collect and the purchaser shall pay such tax and the seller shall thereupon issue to the purchaser a receipt or certificate on forms prescribed by the Town Treasurer, showing the names of the seller and purchaser, the items purchased, the date, price, amount of tax paid and a brief statement of the claim of exemption. The

purchaser thereafter may apply to the Town Treasurer for a refund of such taxes, and it shall then be the duty of the Town Treasurer to determine the question of exemption, subject to review by the courts, as hereinafter provided. It shall be a misdemeanor, punishable as provided in this Article, for any seller to fail to collect, or purchaser to fail to pay, the tax imposed by this Article and on sales on which exemption is disputed. (Prior code Ch. XIV §1-3; Ord. 18-1993 §1)

Sec. 4-55. Tax imposed on rentals.

When right to continuous possession or use of any article of tangible personal property is granted under a lease or contract and such transfer or possession would be taxable if outright sale were made, such lease or contract shall be considered the sale of such article and the tax shall be computed and paid by the vendor upon the rentals paid. (Prior code Ch. XIV §1-3)

Sec. 4-56. Tax imposed on full purchase price.

The sales tax is imposed on the full purchase price of articles sold after manufacture or after having been made to order and includes the full purchase price for material used and the service performed in connection therewith, excluding however, such articles as are otherwise exempted in this Article. The sales price is the gross value of all materials, labor, service and the profit thereon, included in the price charged to the user or consumer. (Prior code Ch. XIV §1-3)

Sec. 4-57. Property and services taxed.

There is hereby levied and there shall be collected and paid a tax on the amounts stated in Section 4-51 as follows:

- (1) On the purchase price paid or charged upon all sales and purchases of tangible personal property at retail.

(2) In the case of retail sales involving the exchange of property, on the purchase price paid or charged, including the fair market value of the property exchanged at the time and place of exchange, excluding, however, from the consideration or purchase price, the fair market value of the exchanged property, provided that such exchanged property is to be sold thereafter in the usual course of the retailer's business.

(3) Upon telephone and telegraph services, whether furnished by public or private corporations or enterprises, for all intrastate telephone and telegraph services.

(4) 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 and not for resale, 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. (Prior code Ch. XIV §1-4)

Sec. 4-58. Vendor liable for tax.

(a) Every retailer, also herein called *vendor*, shall, irrespective of the provisions of Section 4-51, be liable and responsible for the payment of an amount equivalent to one percent (1%) of all sales made by him or her of commodities or services as specified in Section 4-57, and shall before the twentieth day of each month make a return to the Town Treasurer for the preceding calendar month and remit an amount equivalent to said one percent (1%) on such sales to the Town Treasurer. Such returns of the taxpayer or his or her duly authorized agent shall contain such information and be made in such manner and upon such forms that the Town Treasurer may prescribe.

(b) The Town Treasurer may extend the time for making a return and paying the taxes

due under such reasonable rules and regulations as he or she may prescribe, but no such extension shall be for a greater period than is provided for in Section 4-61 of this Article.

(c) The burden of proving that any retailer is exempt from collecting the tax on any goods and paying the same to the Town Treasurer, or from making such returns, shall be on the retailer or vendor under such reasonable requirements or proof as the Town Treasurer may prescribe. (Prior code Ch. XIV §1-5; Ord. 18-1993 §1)

Sec. 4-59. Rules and regulations.

To provide uniform methods of adding the tax, or the average equivalent thereof, to the selling price, the Town Treasurer may formulate and promulgate appropriate rules and regulations to effectuate the purpose of this Article. (Prior code Ch. XIV §1-6; Ord. 18-1993 §1)

Sec. 4-60. Tax cannot be absorbed.

It shall be unlawful for any retailer to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof imposed by this Article will be assumed or absorbed by the retailer or that it will not be added to the selling price of the property sold, or if added that it or any part thereof will be refunded. Any person violating any of the provisions of Sections 4-58 through 4-64 of this Article shall be guilty of a misdemeanor. (Prior code Ch. XIV §1-7)

Sec. 4-61. Reports of vendors.

If the accounting methods regularly employed by the vendor in the transaction of his or her business, or other conditions, are such that reports of sales made on a calendar month basis will impose unnecessary hardship, the Town Treasurer, upon written request of the vendor, may accept reports at such intervals as will in his or her opinion better suit the convenience of the

taxpayer and will not jeopardize the collection of the tax; provided that the Town Treasurer may by rule permit taxpayers whose monthly tax collected is less than sixty dollars (\$60.00) to make returns and pay taxes at intervals not greater than every three (3) months. (Prior code Ch. XIV §1-8; Ord. 18-1993 §1)

Sec. 4-62. Retailer; multiple locations.

A retailer doing business in two (2) or more places or locations taxable hereunder may file separate returns covering all such business activities engaged within the Town. (Prior code Ch. XIV §1-9)

Sec. 4-63. Credit sales.

In case of a sale upon credit, a contract for sale wherein it is provided that the price shall be paid in installments and title does not pass until a future date, chattel mortgage or conditional sale, there shall be paid upon each payment upon the account of the purchase price, that portion of the total tax which the amount paid bears in the total purchase price. The Town Treasurer may authorize a retailer doing business, fully or partly on a credit basis, to make returns on the basis of cash actually received. Thereafter, the retailer shall make return and pay taxes on that basis until further order of the Town Treasurer. (Prior code Ch. XIV §1-10; Ord. 18-1993 §1)

Sec. 4-64. Excess tax; remittance.

If any vendor, during any reporting period, shall collect as a tax an amount in excess of one percent (1%) of his or her total taxable sales, he or she shall remit to the Town Treasurer the full net amount of the tax herein imposed and also such expenses. The retention by the retailer or vendor of any excess sales tax collections over the one percent (1%) of the total taxable sales of such retailer or vendor or the intentional failure to remit punctually to the Town Treasurer in the

full amount declared to be remitted by the provisions of this Article, is declared to be unlawful and shall constitute a misdemeanor. (Prior code Ch. XIV §1-11; Ord. 18-1993 §1)

Sec. 4-65. Exemptions from tax; dispute.

(a) There shall be exempt from taxation under the provisions of this Article the following:

(1) All sales to the federal government, to the State, its departments and institutions, and the political subdivisions thereof in their governmental capacities only;

(2) All sales made to religious, charitable or eleemosynary organizations, in the conduct of regular religious, charitable or eleemosynary functions and activities;

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

(4) All sales of cigarettes;

(5) All sales of drugs dispensed in accordance with a prescription and all sales of prosthetic devices;

(6) All sales and purchases of commodities and services under the provisions of Section 4-52(8) to any occupant who is a permanent resident of any hotel, apartment hotel, lodging house, motor hotel, guest ranch, mobile home, auto camp, trailer court or park, and who enters into or has entered into a written agreement for occupancy of a room or rooms or accommodations for a period of at least thirty (30) consecutive days during the calendar year or preceding year;

(7) All commodities which are taxed under provisions of Sections 39-26-101 to 39-26-119, C.R.S., and all commodities which are taxed under said provisions and the

tax refunded, and all sales or purchases of aviation fuel upon which no state sales tax was in fact collected and retained prior to July 1, 1973, shall be exempt from taxation under this Article, and the storage, use or consumption of such aviation fuel shall be exempt from taxation under this Article; and

(8) Should a dispute arise between the purchaser and seller as to whether or not any sale, service or commodity is exempt from taxation under this Section, nevertheless, the seller shall collect and the purchaser shall pay the tax and the seller shall thereupon issue to the purchaser a receipt or certificate, on forms prescribed by the Town Treasurer showing the names of the seller and the purchaser, the items purchased, the date, price, amount of tax paid and a brief statement of the claim of exemption. The purchaser thereafter may apply to the Town Treasurer for a refund of such taxes, and it shall then be the duty of the Town Treasurer to determine the question of exemption. The purchaser may request a hearing, and the final determination of the Town Treasurer may be appealed to the District Court for the County. Such hearing or appeal shall be governed by Sections 39-21-103 and 39-21-105, C.R.S., to the extent applicable.

(b) A refund shall be made, or a credit allowed, for the tax so paid under dispute by a purchaser who has an exemption as in this Article provided. Such refund shall be made by the Town Treasurer after compliance with the following conditions precedent:

(1) Applications for refund must be made within sixty (60) days after the purchase of the goods whereon an exemption is claimed; must be supported by the affidavit of the purchaser accompanied by the original paid invoice or sales receipt and a certificate issued by the seller; and be made upon such forms as shall be prescribed and furnished by

the Town Treasurer, which forms shall contain such information as the Town Treasurer shall prescribe.

(2) Upon receipt of such application, the Town Treasurer shall examine the same with all due speed and shall give notice to the applicant by order in writing of his or her decision thereon. Aggrieved applicants, within thirty (30) days after such decision is mailed to them, may petition the Town Treasurer for a hearing on the claim in a manner provided in Section 39-21-103, C.R.S., and may appeal to the District Court for the County in the manner provided in Section 39-21-105, C.R.S. The right of any person to a refund under this Article shall not be assignable, and except as provided in subsection (4) below, such application for refund must be made by the same person who purchased the goods and paid the tax thereon as shown in the invoice of the sale thereof. Any applicant for refund under the provisions of this Section or any other person who shall make any false statement in connection with an application for a refund of any taxes shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punishable in accordance with the provisions of Section 1-72 of this Code.

(3) A refund shall be made or credit allowed by the Town Treasurer to any person entitled to an exemption where such person establishes: that a tax was paid by another on a purchase made on behalf of such person; that a refund has not been granted to the person making the purchase; and that the person entitled to exemption paid or reimbursed the purchaser for such tax. No such refund shall be made or credit allowed in an amount greater than the tax paid.

(4) Such application for refund under subsection (2) above shall be made within three (3) years after the date of purchase and

shall be made on forms prescribed and furnished by the Town Treasurer, which forms shall contain, in addition to the foregoing information, such pertinent data as the Town Treasurer shall prescribe. Upon receipt of such application and proof of the matters therein contained, the Town Treasurer shall give notice to the applicant by order in writing of his or her decision thereon. Aggrieved applicants, within thirty (30) days after such decision is mailed to them, may petition the Town Treasurer for a hearing on the claim in the manner provided in Section 39-21-103, C.R.S., and may appeal to the District Court for the County in the manner provided in Section 39-21-105, C.R.S. Any applicant for refund under the provisions of this Subsection or any other person who shall make any false statement in connection with an application for refund of any taxes shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished in accordance with Section 1-72 of this Code.

(5) Claims for tax monies paid in error or by mistake may be processed for refund in accordance with regulations of the Town Treasurer under subsection (3) above; provided that the proceeds of any such claim for refund shall first be applied by the Town Treasurer to any tax deficiencies or liabilities existing against the claimant before allowance of such claim by the Town Treasurer; and provided further that if such excess payment of tax monies in any period is discovered as a result of audit by the Town Treasurer and deficiencies are discovered and assessed against the taxpayer as a result of such audit, such excess money shall be first applied against any deficiencies outstanding to the date of the assessment but shall not be applied to any future tax liabilities.

(c) The burden of proving that sales, services and commodities, on which tax refunds are claimed, are exempt from taxation under this

Article, or were not at retail, shall be on the one making such claim under such reasonable requirements of proof as the Town Treasurer may prescribe. Should the applicant for refund be aggrieved at the final decision of the Town Treasurer, he or she may proceed to have the same reviewed by the District Court for the County, in the manner provided in Section 39-21-105, C.R.S.

(d) All sales and purchases of neat cattle, sheep, lambs, swine and goats; all sales and purchases of mares and stallions for breeding purposes and all farm close out sales shall be exempt from taxation under this Article.

(e) All sales and purchases of feed for livestock or poultry, all sales and purchases of seeds and all sales and purchases of orchard trees shall be exempt from taxation under this Article.

(f) Every vendor vending individual items of personal property through coin-operated vending machines shall be exempt from the provisions of Section 4-51 and 4-58 of this Chapter, but nevertheless, such vendor shall pay a sales tax of one percent (1%) on the personal property sold in excess of ten cents (\$.10) so vended in the coin-operated machines unless the sales shall be otherwise exempt under the provisions of this Article. (Prior code Ch. XIV §1-13; Ord. 18-1993 §1)

Sec. 4-66. Deficiency due to negligence.

If any part of the deficiency is due to negligence or intentional disregard of authorized rules and regulations with knowledge thereof, but without intent to defraud, there shall be added ten percent (10%) of the total amount of the deficiency, and interest in such case shall be collected at the rate of one-half (.5%) percent per month on the amount of such deficiency from the time the return was due, from the person required to file the return, which interest shall become due and payable ten (10) days after

written notice and demand to him or her by the Town Treasurer. If any part of the deficiency is due to fraud with the intent to evade the tax, then there shall be added fifty percent (50%) of the total amount of the deficiency, and in such case, the whole amount of the tax unpaid, including the additions, shall become due and payable ten (10) days after written notice on demand by the Town Treasurer, and an additional one percent (1%) per month on said amount shall be added from the date the return was due until paid. (Prior code Ch. XIV §1-16; Ord. 18-1993 §1)

Sec. 4-67. Recovery of taxes, penalty and interest.

(a) All sums of money paid by the purchaser to the retailer as taxes imposed by this Article shall be and remain public money, the property of the Town, in the hands of such retailer, and he or she shall hold the same in trust for the sole use and benefit of the Town until paid to the Town Treasurer, and for failure to so pay to the Town Treasurer, such retailer shall be punished as provided by law.

(b) If a person neglects or refuses to make a return and payment of the tax as required by this Article, the Town Treasurer shall make an estimate, based upon such information as may be available, of the amount of taxes due for the period for which the taxpayer is delinquent; and shall add thereto a penalty equal to ten percent (10%) thereof and interest on such delinquent taxes at the rate of one percent (1%) per month from the date when due. Promptly thereafter, the Town Treasurer shall give to the delinquent taxpayer written notice of such estimated taxes, penalty and interest, which notice shall be served personally or deposited in the United States mail, postage prepaid, to the address of the taxpayer on file with the Town. Such estimates shall thereupon become a notice of deficiency. A hearing may be held and the Town Treasurer shall make a final determination. The

taxpayer may appeal said final determination in the manner provided in Section 39-21-105, C.R.S.

(c) If any taxes, penalty or interest imposed by this Article and shown due by returns filed by the taxpayer, or shown by assessments duly made as provided herein, are not paid within five (5) days after the same are due, the Town Treasurer shall issue a notice, setting forth the name of the taxpayer, the amount of tax, penalties and interest, the date of the accrual thereof, and that the Town claims a first and prior lien therefor, second only to the first and prior lien claimed by the State, on the real and tangible personal property of the taxpayer except as to the pre-existing claims or liens of a bona fide mortgagee, pledgee, judgment creditor or purchaser whose rights shall have attached prior to the filing of the notice as herein provided on the property of the taxpayer. Said notice shall be on forms prepared by the Town Treasurer, and shall be verified by him or her or his or her duly qualified deputy, or any duly qualified agent of the Town Treasurer whose duties are the collection of such tax, and may be filed in the office of the Clerk and Recorder of any county in the State in which the taxpayer owns real or tangible personal property; and the filing of such notice shall constitute a lien on such property in that county and constitute notice thereof. After said notice has been filed, or concurrently therewith, or any time when taxes due are unpaid, whether such notice be filed or not, the Town Treasurer may issue a warrant directed to any duly authorized revenue collector, or to the sheriff of any county of the State, commanding him or her to levy upon, seize and sell sufficient of the real and personal property of the tax debtor found within his or her county for the payment of the amount due, together with interest, penalties and costs, as may be provided by law, subject to valid pre-existing claims or liens.

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

(e) Any lien for taxes as shown in the records of the County Clerk and Recorder as herein provided, upon payment of all taxes, penalties and interest covered thereby, shall be released by the Town Treasurer in the same manner as mortgages and judgments are released.

(f) The Town Treasurer may also treat any such taxes, penalties or interest due and unpaid as a debt due the Town from the vendor. In case of failure to pay the tax, or any portion thereof, or any penalty or interest thereon due, the Town Treasurer may receive at law the amount of such taxes, penalties and interest in the county or district court having jurisdiction of the amounts sought to be collected. The return of the taxpayer or assessment made by the Town Treasurer, as herein provided, shall be prima facie proof of the amount due. Such actions may be actions in attachment, and writs or attachment may be issued to the sheriff. It shall be the duty of the Town Attorney when requested by the Town Treasurer to commence action for the recovery of taxes due under this Article, and this remedy shall be in addition to all other existing remedies provided in this Article.

(g) In any action affecting the title to real estate or the ownership or rights to possession of personal property, the Town may be made a party defendant for the purpose of obtaining

adjudication or determination of its lien upon the property involved therein and in any such action service of summons upon the Town Clerk shall be sufficient service and binding upon the Town.

(h) The Town Treasurer is hereby authorized to waive, for good cause shown, any penalty assessed as in this Article provided, and interest imposed in excess of six percent (6%) per annum shall be deemed a penalty. (Prior code Ch. XIV §1-23; Ord. 18-1993 §1; Ord. 4-1994 §1)

Sec. 4-68. Sales tax; nonapplicability.

For transactions consummated on or after January 1, 1986, the Town's sales tax shall not apply to the sale of construction and building materials, as the term is used in Section 29-2-101, C.R.S., if such materials are picked up by the purchaser and if the purchaser of such materials presents to the retailer a building permit from another jurisdiction or documentation acceptable to the Town evidencing that a local use tax has been paid or is required to be paid. (Prior code Ch. XIV §1-26)

Sec. 4-69. License and tax.

The license and tax imposed by this Article shall be in addition to all other licenses and taxes imposed by law, except as herein otherwise provided. (Prior code Ch. XIV §1-27)

Sec. 4-70. Violation.

It shall be unlawful for any retailer or vendor to refuse to make any return provided to be made in this Article, to make any false or fraudulent return or false statement on any return, to fail and refuse to make payment to the Town Treasurer of any taxes collected or due the Town, or in any manner to evade the collection and payment of the tax, or any part thereof; or

for any person or purchaser to fail or refuse to pay such tax or evade the payment thereof or to aid or abet another in any attempt to evade the payment of the tax. (Prior code Ch. XIV §1-28; Ord. 18-1993 §1; Ord. 4-1994 §4)

Sec. 4-71. Sales tax; credit for sales or use taxes previously paid to another municipality.

For transactions consummated on or after January 1, 1986, the Town sales tax shall not apply to the sale of tangible personal property at retail or the furnishing of services if the transaction was previously subjected to a sales or use tax lawfully imposed on the purchaser or user by another statutory or home rule municipality equal to or in excess of the Town sales tax. A credit shall be granted against the Town sales tax with respect to such transaction equal in amount to the lawfully imposed local sales or use tax previously paid by the purchaser or user to the previous statutory or home rule municipality. The amount of the credit shall not exceed two percent (2%). (Prior code Ch. XIV §1-29)

Sec. 4-72. Administration.

The administration of this Article is vested in and shall be exercised by the Town Treasurer, and the Town Treasurer shall prescribe forms and reasonable rules and regulations in conformity with this Article for the making of returns, for the ascertainment, assessment and collection of taxes imposed hereunder, and for the proper administration and enforcement of this Article. (Prior code Ch. XIV §1-30; Ord. 18-1993 §1)

Sec. 4-73. Limitations.

The taxes for any period, together with interest thereon and penalties with respect thereto, imposed by this Article shall not be assessed nor shall any notice of lien be filed, distraint warrant issued or suit for collection be instituted, or any action to collect same be commenced, more than three (3) years after the date on which the tax

was or is payable; nor shall a lien continue after such period, except for taxes assessed before the expiration of such period, notice of lien with respect to which has been filed prior to the expiration of such period, in which cases such lien shall continue only for one (1) year after the filing of notice thereof. In the case of a false or fraudulent return with intent to evade tax, the tax, together with interest and penalties thereon, may be assessed or proceedings for the collection of such taxes may be commenced at any time. Before the expiration of such period limitation, the taxpayer and the Town Treasurer may agree in writing to an extension thereof, and the period so agreed on may be extended by subsequent agreements in writing. (Prior code Ch. XIV §1-32; Ord. 18-1993 §1)

Sec. 4-74. Application.

The sales tax imposed by this Article on the privilege of selling tangible personal property at retail shall apply to every retailer in the Town. For the purpose of this Article, all retail sales are deemed to be consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his or her agent to a destination outside the limits of the Town or to a common carrier for delivery to a destination outside the limits of the Town. The gross receipts from such sales shall include delivery charges, when such charges are subject to the State sales tax imposed by Chapter 39, Article 26, C.R.S., regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the Town, or has more than one (1) place of business, the place or places at which the retail sales are consummated for the purpose of this sales tax imposed by this Article shall be determined by the provisions of Chapter 39, Article 26, C.R.S., and rules and regulations promulgated by the Town Treasurer. The amount subject to tax shall not include the amount of any sales or use tax imposed by Chapter 39, Article 26, C.R.S. In addition to the other exemptions provided by

this Article, all sales of personal property on which a specific ownership tax has been paid or is payable shall be exempt from the sales tax provided by this Article when such sales meet both of the following conditions:

(1) The purchaser is a nonresident of or has its principal place of business outside the Town; and

(2) Such personal property is registered or required to be registered outside the limits of the Town under the laws of the State. (Prior code Ch. XIV §1-33; Ord. 18-1993 §1)

Secs. 4-75—4-90. Reserved.

ARTICLE V

Real Estate Transfer Tax

Sec. 4-91. Imposition of tax.

There is hereby imposed a tax on all transfers, whether by deeds, instruments, writings, leases or any other documents or otherwise, by which any lands, tenements or other interests in real property located in the Town are sold, granted, let, assigned, transferred, exchanged or otherwise conveyed to or vested in a purchaser thereof or any other person, except as may be specifically exempted by Section 4-95 below. Said tax shall be due and payable at the time of transfer and contemporaneously therewith. (Ord. 5-1986 §1)

Sec. 4-92. Persons liable for tax.

Each purchaser and any other person to whom a transfer is made, which is subject to the tax imposed under Section 4-91 above, shall be jointly and severally liable for payment of the tax. The purchaser or person to whom a transfer is made shall remit the tax to the Town Treasurer. (Ord. 5-1986 §2)

Sec. 4-93. Definitions.

The following defined words and terms shall have the indicated meanings for the purpose of this Article:

Consideration means the gross consideration paid for the real property affected by the transfer and shall include actual cash paid, the fair market value of real and personal property delivered or conveyed in exchange for the transfer, or contracted to be so paid, delivered or conveyed in return for the transfer, and shall include the amount of any lien, mortgage, contract indebtedness or other encumbrance or debt, either given to secure the purchase price, or any part thereof, or remaining unpaid on the property at the time of the transfer. The term *consideration* does not include as an addition to gross consideration the amount of any outstanding lien or encumbrance in favor of the United States, the State or a municipal or quasi-municipal corporation or district for taxes or assessments for special or local benefits or improvements. In the event the transaction or transfer is by lease agreement not specifically exempted in Section 4-95 below, the consideration shall be deemed to be the capitalized value of the average annual rental under the lease, computed as follows: the average annual rental over the entire term of the lease (including any renewal term, plus the actual consideration, other than rent, paid or to be paid) shall be computed and the average annual rent multiplied by ten (10) shall equal the capitalized value. The payment of ad valorem real property taxes, insurance and the assumption of maintenance obligations under any lease agreement shall not be included in the annual rent-capitalization computation; however, capital improvements required to be made shall be part of the actual consideration. When the average annual rental cannot be determined for a lease agreement, or at the election of the

Town Manager, the consideration therefor shall be based upon the appraised total value of the property covered by the lease as determined by an independent appraisal obtained by the Town Manager and paid for by the purchaser, or upon the capitalized value of the rentals and other consideration in terms of the present worth of the stream of rentals and other consideration under the lease and any other economic considerations to reflect the capitalized value of the transferred or leased property.

Land transfer tax means the tax imposed by this Article on the transfer of real property.

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

Real property shall be deemed to mean real property as defined by and under the laws of the State.

Taxable lease means any lease of real property, including a right to use timeshare estate as defined in Section 1-21 of this Code, with a term or initial term and all renewal terms which aggregate in length twenty-nine (29) years or more; provided that lessee has possession or the right to possession on payment of rents. *Taxable lease* also means any lease of real property for less than twenty-nine (29) years of term or initial term and all renewal terms aggregated if lessee has a clause which would permit lessee at its discretion to extend the lease beyond twenty-nine (29) years or if lessee has an option to purchase some or all of the real property leased. If lessee has a lease with such an option to purchase, which option may be exercised only within three (3) years after the date the lease and option is entered into, then the land transfer tax shall not be due and payable

unless and until the exercise of such option and consummation of the sale. If any other lease with such an option to purchase is entered into, the land transfer tax shall be due and payable at the time of such transfer.

Unless exempt as provided in Section 4-95 below, *transfer* means (whether or not the same is in writing or is recorded) and includes (a) any grant, assignment, transfer, exchange, conveyance or consummated sale of any ownership or title to real property situated in the Town, or (b) the letting, conveyance, assignment, transfer or consummated sale of a possessory interest in real property, or (c) the conveyance, assignment, transfer or consummate sale of an interval or time span estate, as defined in Section 1-21 of this Code. *Conveyance of ownership or title to real property*, for the purpose of Article V of this Chapter, means and includes the transfer of more than fifty percent (50%) of the authorized and issued shares of a corporation which has as its principal asset real property situated in the Town. (Ord. 5-1986 §3; Ord. 4-1994 §1)

Sec. 4-94. Amount of tax.

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

(1) Where there is no consideration or when the consideration is five hundred dollars (\$500.00) or less, no land transfer tax shall be payable.

(2) Where the consideration exceeds five hundred dollars (\$500.00), the land transfer tax payable is one percent (1%) of the consideration. (Ord. 5-1986 §4, amended by the 11/8/94 election; amended by the 11/4/04 election)

Sec. 4-95. Exemptions.

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

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

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

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

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

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

the association or organization or in the real property immediately before and after said transfer, and if there is no consideration other than their respective interests in the new association or organization or in the property.

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

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

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

(9) Any transfer of cemetery lots.

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

(11) The conveyance, assignment, transfer or consummated sale of right to use a timeshare estate, provided that such estate does not constitute a taxable lease, and further that the conveyance, transfer or sale is or was subject to sales tax and that such sales tax has been paid in accordance with law.

(12) Any mineral transfer or royalty transfer.

(13) Transfers to secure a debt or other obligation, or the release of real property which is security for a debt or other obligation.

(14) Any transfer:

a. By deed in lieu of foreclosure, on the condition that:

1. Such transfer shall be exempt only if the grantee in such deed is the same person or entity which is the holder, payee or beneficiary (as determined at the time of the transfer by deed) of the debt or instrument which is being canceled, in whole or in part, in exchange for the transfer; and

2. Such transfer shall be exempt only to the extent of the current amount of the debt which is being canceled in exchange for the transfer.

b. By sheriff's deed, trustee's deed or other conveyance of real property in connection with an execution sale, foreclosure sale by the public trustee under a power of sale, court decree foreclosing a mortgage, deed of trust or other security instrument or court decree of lien foreclosure, on the condition that:

1. Such transfer shall be exempt only if the grantee in such deed is the same person or entity which is the holder, payee or beneficiary (as determined at the time of the commencement of foreclosure or execution) of the debt or instrument which is the basis of the proceeding, or such person or entity is a junior lienor exercising redemption rights pursuant to a

lien that was recorded prior to commencement of the foreclosure or execution; and

2. Such transfer shall be exempt only to the extent of the current amount of the obligation satisfied at the execution or foreclosure sale, plus any obligations to prior lien holders paid from the sale; and

3. The certificate of purchase or other evidence of purchase issued by the person or entity conducting the sale shall, if the above described conditions are met, be exempt from the within transfer tax. If the conditions are not so satisfied, there shall be a tax imposed as provided herein, at the time of the issuance of the certificate of purchase or other evidence of purchase issued by the person or entity conducting the sale, which payment shall be made to the Town in escrow. If no redemption is made by the owner, the tax shall become absolute to the Town upon expiration of the owner's redemption periods. If redemption is made by the owner, the tax shall be refunded to the person who paid it to the Town. A transfer of the certificate of purchase or other evidence of purchase issued by the person or entity conducting the sale shall be subject to a transfer tax. The deed issued by the person or entity conducting the sale is not a transfer subject to the transfer tax.

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

(16) Any transfer that is made pursuant to a valid and legally enforceable contract for sale entered into prior to the effective date of the ordinance codified herein, provided that an application for exemption is made with the Town prior to the effective date of the ordinance codified herein upon such forms and in such a manner as may be prescribed. Similarly, any transfer that is made pursuant to a valid and legally enforceable contract for sale entered into prior to the increase in tax rate provided for in Subsection 4-94(b) shall be taxed at the initial rate of one-half percent (.5%), provided that an application for exemption is made with the Town prior to the effective date of the increase upon such forms and in such a manner as may be prescribed.

(17) Any sale or conveyance of real property or improvements for the purpose of constructing or providing low or moderate priced housing units for sale or lease to low, moderate and middle income persons pursuant to a plan authorized and supervised by the Town Housing Department and the initial sale or resale of such units to qualified purchasers pursuant to regulations adopted by said Department.

(18) Any transfer for the purpose of raising investment/equity funds or capital (e.g., sale of partnership interests or stock) to facilitate development or redevelopment of real estate wherein the transferor retains a significant interest in the real estate to be developed or redeveloped or in the entity to which the real estate is so transferred.

(19) Any transfer to a straw man or intermediary for the purpose of obtaining nonrecognition of gain or loss as contemplated by Section 1031 of the Internal Revenue Code of 1986, or otherwise, where vesting of title in

the straw man or intermediary is transitory and the straw man or intermediary receives no consideration or only a nominal fee for participation in the transaction. Should the Internal Revenue Service determine that the transaction does not meet the requirements of Section 1031 for purposes of nonrecognition of gain or loss, then this exemption shall be inapplicable. (Ord. 5-1986 §5; Ord. 3-1989 §1; Ord. 14-2010 §1)

Sec. 4-96. Application for exemption.

(a) In the event of any transfer claimed to be exempt from the land transfer tax herein imposed, the grantor or purchaser shall apply for and obtain from the Town Manager a certificate of exemption, which may be affixed to the deed or instrument of transfer. The burden of proving any exemption shall in all cases be upon the one claiming it. The exemptions provided in Section 4-95 above shall be allowed only with a certificate of exemption issued by the Town Manager prior to the date the land transfer tax is payable to the Town. The form of application for exemption and the certificate of exemption may be in substantially the same form as is contained in Exhibit A, attached to the ordinance codified in this Article and incorporated herein by reference.

(b) Any person whose claim of exemption duly applied for under the provisions of this Section is denied by the Town Manager may immediately appeal to the Town Council for a determination of such exemption, and such appeal shall be considered by the Town Council within thirty (30) days of receipt of the same. In the event of a determination by the Town Council favorable to the appellant, any amount previously deposited, or so much thereof as may be allowed by the Town Council, shall be promptly refunded to the person paying or depositing the same. If a decision is not made by the Town

Council within thirty (30) days of the receipt of the appeal, the decision will be deemed favorable to the appellant, unless the appellant has obtained a continuance of the matter, in which case the Town Council shall make its decision within six (6) months after receipt of the appeal.

(c) In case of an application for an exemption which is not granted before the transfer takes place, the land transfer tax shall be paid as required by this Article. Thereafter if the exemption shall be allowed, upon application to the Town Manager, the person who has paid said tax shall be entitled to a refund thereof, or so much of said tax as shall qualify for refunding pursuant to the exemption granted. (Ord. 5-1986 §6)

Sec. 4-97. Lands affected.

When a transfer subject to this Article includes real property located within the Town as well as real property located elsewhere, the tax imposed under the authority of this Article shall be computed only with respect to real property located within the Town, and the tax shall be imposed based on that part of the consideration fairly attributable to such real property located within the Town. (Ord. 5-1986 §7)

Sec. 4-98. Town Manager to enforce.

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

(b) At the time of any transfer upon which a tax is imposed under this Article, there shall be made a report to the Town Manager on forms

prescribed by him or her, setting forth the true, complete and actual consideration for the transfer, the names of the parties thereto, the description and location of the real property transferred, and such other information as the Town Manager may require.

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

(d) The Town Manager is hereby authorized to negotiate and enter into an intergovernmental contract with appropriate officers of the County for the collection of this tax, including the payment of a fee to the County officers for said collection. (Ord. 5-1986 §8)

Sec. 4-99. Application of funds.

All funds received by the Town pursuant to this Article shall be deposited in a special fund, to be kept separate from the other funds of the Town, and designated the "Town of Snowmass Village Land Transfer Tax Fund" ("Fund"), which Fund is hereby created. The Fund shall be subject to appropriation only for the following purposes:

(1) Transportation related structures, improvements and facilities in the vicinity of the Town mall, including land acquisition.

(2) The capital expenditures of the Town transportation system and department.

(3) Landscaping of the Snowmelt Road parking lots, numbered 1--13, owned and operated by the Town.

(4) Landscaping other parking lots or transportation facilities owned and operated by the Town and any other rights-of-way or other real property owned or controlled by the Town.

(5) Repair and maintenance of Brush Creek Road, Owl Creek Road, Highline Road, Snowmelt Road and the trails network within the Town.

(6) All parks and recreation costs and transportation operating and maintenance costs for vehicles and rolling stock.

Expenditures for the above categories may include directly related costs such as administration, architecture, engineering, design, legal, financing and the like. The allowable categories of expenditures set forth above shall also constitute a prioritization of those categories. In conjunction with the annual budget process, the Town Council shall establish a budget for the anticipated revenues to be raised by the tax. Pursuant to said budget, the Town Council shall apply the anticipated revenues to the categories in the order in which they are listed above, such that the total amount budgeted for Subsection (1) shall be funded prior to the funding of Subsection (2) and so on. Nothing herein shall prevent the Town from investing, from time to time, any portion of or all of the funds on deposit in the Fund in any lawful manner. The interest earned on such investment shall be deposited in the Fund and shall be subject to appropriation as provided herein. (Ord. 5-1986 §9; amended by the 11/4/04 election)

Sec. 4-100. Due dates, delinquencies, penalties, interest, evasion.

(a) The land transfer tax imposed under this Article is due and payable at the time of the

transfer of real property and is delinquent if it remains unpaid for thirty (30) days thereafter. In the event that the tax is not paid prior to becoming delinquent, a delinquency penalty of ten percent (10%) of the amount of tax due shall accrue. In the event a portion of the tax is paid prior to becoming delinquent, the penalty shall only accrue as to the portion which is delinquent. Interest shall accrue at the rate of one and one-half percent (1½%) per month, or fraction thereof, or at such other interest rate as the Town Council may from time to time establish by ordinance, on the amount of the tax, exclusive of penalties, from the date the tax becomes delinquent to the date of payment. Interest and penalty accrued shall become a part of the tax.

(b) Any person liable for the land transfer tax upon a transfer who shall cause the deed, instrument of conveyance or document evidencing said transfer to be filed of record in the office of the County Clerk and Recorder or attempts to so record the document until and unless the land transfer tax and all penalties and interest thereon have been paid in full, shall be in violation of this Article.

(c) Notwithstanding the provisions of Section 4-95, if an artifice or device is employed in connection with the transfer of real property, which term *artifice or device* means a transaction or transactions a substantial purpose of which is to evade the provisions of this Article and the imposition of the tax hereunder, then such transfer will nevertheless be subject to the land transfer tax. *Artifice or device* includes, but is not limited to, (1) a transfer to a corporation, partnership, limited partnership, joint venture, business trust or other association or organization followed within three (3) years by an assignment of the controlling interest in such association or organization, and (2) such a transfer plus the intent at the time of transfer to ultimately assign the controlling interest in such association or organization. (Ord. 5-1986 §10)

Sec. 4-101. Lien.

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

(b) The recording of the ordinance codified herein in the office of the County Clerk and Recorder shall constitute notice to all persons interested in the transfer of real property of the existence of and the lien imposed by the land transfer tax on such transfers.

(c) If the land transfer tax is unpaid and delinquent, the Town Manager shall give written notification to the purchaser or person to whom the transfer is made at the address shown on any deed or instrument evidencing the transfer, or his or her last known address, of said delinquency. Said notification shall be mailed certified mail, postage prepaid, return receipt requested, and shall be effective on the date of mailing. If the tax, penalty and interest are not paid within thirty (30) days of the effective date of the notification, the Town Manager shall commence foreclosure of the lien for said tax in the same manner as the foreclosure of a mortgage in accordance with state law.

(d) The amount of the tax, penalty and interest imposed under the provisions of this Article shall be deemed a personal debt owed by the purchaser to the Town. Any person owing money to the Town under the provisions of this

Article shall be liable to an action brought in the name of the Town for the recovery of such amount.

(e) Any person who shall fail or refuse to pay any tax due hereunder may be punished as set forth in Section 1-72 of this Code.

(f) Any remedies provided for herein shall be cumulative and not exclusive and shall be in addition to any other remedies provided by law. (Ord. 5-1986 §11)

Sec. 4-102. Review.

The Town Manager shall annually prepare a report of the receipts from the land transfer tax, expenditures made in the preceding fiscal year and the projected revenue and expenditures for the next fiscal year. Such report shall be submitted to the Town Council two (2) weeks prior to the submission of the budget as required by the Town Council. (Ord. 5-1986 §12)

Secs. 4-103—4-129. Reserved.**ARTICLE VI****Floor Area Excise Tax****Sec. 4-130. Purpose.**

The purpose of this Article is to implement the authorization of the electorate of the Town given on November 2, 1999, to enact a limited excise tax to allow the construction of improvements in excess of the allowable floor area for certain single-family detached dwellings. (Ord. 2-2000 §1; Ord. 8-2003 §3)

Sec. 4-131. Imposition of tax.

An excise tax is hereby imposed on construction, remodeling or expansion of improvements requiring the issuance of a building permit within the scope of Chapter 18 of this Code in

excess of the allowable floor area, as defined in the Land Use and Development Code, except as specifically provided in this Article. (Ord. 2-2000 §1; Ord. 8-2003 §3)

Sec. 4-132. Liability for tax.

The owner of a lot which is subject to the excise tax imposed under Section 4-131 is liable for the payment of the tax upon issuance of a building permit within the scope of Chapter 18 of this Code. (Ord. 2-2000 §1)

Sec. 4-133. Amount of tax.

The amount of the excise tax shall be calculated by the Planning Director by multiplying the square footage that is in excess of the allowable floor area for the lot by:

- (1) The actual value of the improvements on the lot as calculated from the records of the County Assessor, divided by the floor area square footage of the single-family detached dwelling and any accessory building, not including the floor area subject to the excise tax, as calculated in accordance with the provisions of Section 16A-3-210(b), Measuring Floor Area, multiplied by seventy percent (70%),

$$(\text{Actual Value} \div \text{Existing Floor Area Square Footage}) \times 70\%; \text{ or}$$

- (2) In the event that the lot is unimproved, then one hundred twenty-five percent (125%) of the numeric average of the actual value of improvements on all lots for the subdivision or PUD in which the lot exists as calculated from the records of the County Assessor shall be divided by the allowable floor area square footage of the lot, multiplied by seventy percent (70%),

$$((125\% \times \text{Average Actual Value}) \div \text{Allowable Floor Area Square Footage}) \times 70\%;$$

The certificate of occupancy for the improvements including the excise tax square footage shall include a notation that after the date of the issuance of the certificate of occupancy, the amount of the excise tax shall be recalculated by the Planning Director based upon the actual value of improvements on the lot as calculated from the records of the County Assessor for one hundred percent (100%) completion of improvements. The Planning Director shall notify the owner of the amount of the additional excise tax, which shall be paid by the owner within thirty (30) days. If an excise tax was paid in excess of the recalculated excise tax, then the Planning Director shall cause the overpayment to be refunded to the owner. (Ord. 2-2000 §1; Ord. 8-2003 §3)

Sec. 4-134. Exemptions.

The excise tax imposed under Section 4-131 shall not apply to floor area in excess of the allowable floor area on a lot, as defined in the Land Use and Development Code, as follows:

- (1) That has received a variance under the provisions of the Land Use and Development Code; or

- (2) Upon which an AEU has been installed in accordance with the provisions of the Land Use and Development Code; or

- (3) That existed prior to the incorporation of the Town and that was constructed under a valid building permit issued by the County Building Official; or

- (4) That was created after the incorporation of the Town and that was constructed under a valid building permit issued by the Building Official. (Ord. 2-2000 §1; Ord. 8-2003 §3)

Sec. 4-135. Effective date.

The provisions of this Article shall become effective at 12:00 a.m. on March 23, 2000 and shall extend in perpetuity, as approved by the electors of the Town on November 4, 2008. (Ord. 2-2000 §1; Ord. 6-2010 §1)

Sec. 4-136. Applicability of tax.

The excise tax shall apply specifically to construction, remodeling or expansion of improvements on a single-family detached dwelling lot in the following subdivisions only:

- (1) Divide PUD;
- (2) Fox Run PUD;
- (3) Gracie's Cabin PUD;
- (4) Horse Ranch PUD;
- (5) Melton Ranch Units I-III;
- (6) Ridge Run Units I-IV, but not including any area zoned DU;
- (7) The Pines PUD, but not in any area zoned DU;
- (8) Two Creeks PUD, but not in any area zoned DU;
- (9) Wild Oak Unit I;
- (10) Wildridge Units I-II; and
- (11) Wood Run Units I-V.

excluding therefrom any restricted employee housing within the meaning of Chapter 17 of this Code. (Ord. 2-2000 §1; Ord. 8-2003 §3)

Sec. 4-137. Square footage subject to tax.

The square footage that is subject to the excise tax is square footage in excess of the allowable floor area not to exceed five hundred fifty (550) square feet or ten percent (10%) of the allowable floor area, whichever is less, minus square footage in excess of the allowable floor area as defined in Subsections 4-134(1), (3) and (4). (Ord. 2-2000 §1; Ord. 8-2003 §3)

Secs. 4-138—4-150. Reserved.

ARTICLE VII

Project Spending Limitation

Sec. 4-151. Purpose.

Initiative Ordinance No. 1, Series of 2000, was approved by the electors of the Town on November 7, 2000, and the provisions of this Article are intended to implement and to provide procedures therefor. (Ord. 28-2000, §1)

Sec. 4-152. Definitions.

The following definitions are established for application in this Article:

Audited total of general revenue of the Town is the total revenue and other financing sources of the Town as described in the independent audit at the end of each fiscal year, less the proceeds of bond issuance. Until the independent audit for a fiscal year has been completed and accepted by the Town Treasurer, the most recent audit shall be utilized to determine the audited total of general revenue of the Town.

Money means money from any source and of any type.

Project means the total of any activity or group of activities, which are properly, usually or best planned or executed together to achieve an objective or related objectives. A *project* does not mean the maintenance, repair, replacement or upgrade of an existing Town road and appurtenances that is funded by the expenditure of money, the source of which was previously approved by the electors.

Project spending limitation during a current year is forty percent (40%) of the latest available year's audited total of general revenue of the Town. (Ord. 28-2000 §§1, 2; Ord. 20-2001 §1, Ord. 20-2000, §1)

Sec. 4-153. Project limitation.

The Town shall not implement, approve, institute or contract any project or obligate itself in any way to any project within the Town or to be paid for by the Town, which requires an expenditure of money in excess of the project spending limitation without a vote of the electors of the Town approving the project and the money for the project. (Ord. 28-2000, §1)

Sec. 4-154. Project evaluation.

The Town is authorized to analyze, consider, design, plan, review, obtain approvals for a project required by other provisions of this Code, and expend money in furtherance thereof for a project that is subject to the provisions of Section 4-153 without a vote of the electors of the Town approving the project and the money for the project. In the event that the electors do not approve the project and the money for the project at the project approval election, the Town Council may continue to analyze, modify or redesign the project within the meaning of this Section. (Ord. 28-2000, §2)

Sec. 4-155. Project approval election.

Prior to the entrance into a contract, joint venture or other irrevocable obligation for the

acquisition, construction or equipping of a project that is subject to the provisions of Section 4-153, the Town Council shall cause a vote of the electors of the Town approving the project and the money for the project at a regular or special election. Nothing contained herein shall prevent the question presented to the electors from being consolidated in a question within the meaning of the provisions of Article X, Section 20 of the Colorado Constitution. (Ord. 28-2000, §2)

Sec. 4-156. Ballot information.

The question submitted to the electors shall minimally contain a good faith description of the following information:

- (1) A description of the project;
- (2) The projected cost of the project; and
- (3) The sources of money projected to pay for the project. (Ord. 28-2000, §2)

Sec. 4-157. Project construction.

Upon the electors' approval of the project and the money for the project at the project approval election, the Town Council may proceed to acquire, construct and equip the project without further application of the provisions of this Article, even if the actual cost of the project exceeds the projected cost of the project. (Ord. 28-2000, §2)

Sec. 4-158. Penalty.

The provisions of Sections 1-72 and 1-78 shall not apply to violations of this Article. The sole remedy for the enforcement of the provisions of this Article shall be a proceeding brought under the provisions of Rule 106(a)(4) of the Colorado Rules of Civil Procedure. (Ord. 28-2000, §2)

Secs. 4-159—4-170. Reserved.

