TOWN OF TIMNATH, COLORADO
ORDINANCE NO 46, SERIES 2008

AN ORDINANCE REPEALING AND REENACTING ARTICLE 4 AND
AMENDING ARTICLE 6 OF CHAPTER 4 OF THE
MUNICIPAL CODE OF TIMNATH

WHEREAS, the Town of Timnath (the “Town”) is a home rule municipality that is authorized pursuant to its home rule charter, the Colorado Constitution and Article 16, Title 31 of Colorado Revised Statutes, to adopt ordinances in furtherance of the health, safety and welfare of the Town’s residents; and

WHEREAS, Chapter 4 of the Municipal Code of Timnath refers to the Town Council as the “Town Board” and the Finance Director as the “Town Treasurer”, those terms have been corrected where found in Chapter 4 of the Municipal Code of Timnath; and

WHEREAS, the Town wishes to participate in the Bad Check Restitution Program sponsored by the Larimer County District Attorney and finds it necessary to amend the Town’s returned check charge to be consistent with that charged under the program; and

WHEREAS, the Town desires to self-collect its sales tax; and

WHEREAS, the Town wishes to present the rules and regulations concerning sales tax in a consistent manner; and

WHEREAS, the Town finds it necessary to specify and adopt more precise rules and regulations related to sales tax licensing, penalties for delinquency and reporting standards.

NOW THEREFORE BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, COLORADO, THAT:

Section 1. Article 4 of Chapter 4 of the Municipal Code is hereby repealed and reenacted in full to read as follows:

ARTICLE IV SALES TAX

4.51. Definitions

For the purpose of this Article, the words herein contained shall have the meanings set forth in Section 39-26-102, C.R.S., as it currently exists or may hereafter be amended, and said
definitions are incorporated herein by this specific reference. (Ord. 8-2002; Ord. 11-2002) When not clearly indicated otherwise by the context, the following words and phrases, as used in this Article, shall have the following meanings:

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

Casual sale means an individual, single or incidental transaction which in itself does not constitute the carrying on of business.

Charitable organization means any entity which:

a. Has been certified as a not-for-profit organization under 501(c)(3) of the Internal Revenue Code; and

b. Is an entity organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office, or any veterans' organization registered under Section 501(c)(19) of the Internal Revenue Code, for the purpose of sponsoring a special event, meeting or other function in the State so long as such event, meeting or function is not part of such organization's regular activities in the State.

Claim for recovery means a claim for reimbursement of sales taxes paid to the wrong taxing jurisdiction.

Collection costs shall include, but is not limited to, all costs of audit, assessment, bank fees, hearings, execution, lien filing, distraint, litigation, prosecution and attorney fees.

Collection proceedings shall include the mailing of a notice of audit, an audit and all remedies exercised by the Director pursuant to this Article to collect any unpaid taxes, penalties and interest.

Construction or building materials means tangible personal property which, when combined with other tangible personal property, loses its identity to become an integral and inseparable part of a completed structure or project, including public and private improvements.

Construction materials include, but are not limited to, such things as: asphalt, bricks, builder's hardware, caulking material, cement, concrete, conduit, electric wiring and connections, glass, gravel, insulation, lath, lead, lime, lumber, macadam, millwork, mortar, oil, paint, piping, pipe
valves and pipe fittings, plaster, plumbing fixtures, putty, reinforcing mesh, road base, roofing, sand, sanitary sewer pipe, sheet metal, site lighting, steel, stone, stucco, tile, trees, shrubs and
other landscaping materials, wallboard, wall coping, wallpaper, weather stripping, wire netting
and screen, water mains and meters, and wood preserver. The above materials, when used for
forms or other items which do not remain as an integral or inseparable part of a completed
structure or project, are not construction materials.

Director means the Finance Director of the Town or such person's designee.

Engaged in business in the Town means performing or providing services, or selling, leasing,
renting, delivering, or installing tangible personal property as defined in this Section, for use,
storage, or consumption within the Town. This term includes, but shall not be limited to, the
following acts or methods of transacting business:

a. Maintaining within the Town, directly or indirectly or by a subsidiary, an office,
building, structure, store, distributing house, salesroom or house, warehouse, mobile vendor or
other place of business;

b. Maintaining within the Town an office for employees, agents or commissioned sales
persons to solicit business or to install, assemble, repair, service or assist in the use of its
products, or for demonstration or other reasons;

c. Sending one (1) or more employees, agents or commissioned sales persons into the
Town to solicit business or to install, assemble, repair, service or assist in the use of its products,
or for demonstration or other reasons;

d. Owning, leasing, renting or otherwise exercising control over real or personal property
within the Town.

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

Exemptions means those deductions from adjusted gross sales and services in order to arrive at a
taxable base, which exemptions may include exempt transactions (in whole or in part), sale or
purchase of exempt commodities, articles or services, or sale to exempt "persons" who may
either be exempt on their direct purchase or exempt on the type of commodity, articles or
services purchased, as set forth in this Article.

Food means food for domestic home consumption as defined in 7 U.S.C. §2012(g), as amended,
for purposes of the federal food stamp program as defined in 7 U.S.C. §2012(h), as amended;
except that food does not include carbonated water marketed in containers, chewing gum, seeds
and plants to grow foods, prepared salads and salad bars, packaged and unpackaged cold
sandwiches, deli trays and hot or cold beverages served in unsealed containers or cups that are
vended by or through machines or non-coin-operated coin-collecting food and snack devices on
behalf of a vendor.
Gross sales and service or Gross taxable sales means the total amount received in money, credit, property or other consideration valued in money for all sales, leases or rentals of tangible personal property or services.

License means a Town sales tax license.

Manufacturing means the operation of producing a new product, article, substance or commodity different from and having a distinctive name, character or use from raw or prepared materials.

Manufacturing machinery means any apparatus consisting of interrelated parts used to produce an article of tangible personal property. The term includes both the basic unit and any adjunct or attachment necessary for the basic unit to accomplish its intended function.

Net taxable sales and services means adjusted gross sales and services less authorized “exemptions” therefrom.

Person includes any individual, firm, limited liability company, partnership, joint venture, corporation, estate or trust or any group or combination acting as a unit.

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

Retail sale means all sales made within the Town except wholesale sales.

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

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

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

Tangible personal property means corporeal personal property, which may be seen, weighted, measured or felt or touched, or is in any manner perceptible to the senses.

Tax means the sales tax due from a customer or a retailer.

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

Taxable sales mean gross sales less any exemptions and deductions specified pursuant to this Code.

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

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

Total tax liability means the total of all tax, penalties or interest owed by a taxpayer and shall include sales tax collected in excess of such tax computed on total sales.
Vendor fee means a credit, as designated by the Director, to be allowed against the tax due on timely filed sales tax returns. The amount of the credit, and any limitation per return, will be stated on the sales tax return as approved by the Town.

Wholesaler means a person doing a regularly organized wholesale or jobbing business, known to the trade as such and selling to retail merchants, jobbers, dealers or other wholesalers, for the purpose of resale.

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. This term includes sales of all pre-press preparation printing materials, as defined by Section 39-26-102(6.7), C.R.S., which are used by a printer for a specific printing contract where the printed product is sold at retail to a customer accepting delivery within the Town. Documentation of a wholesale sale shall include a valid resale certificate from the customer, and the customer’s state and local resale license number prominently located on the invoice.

4.52. General provisions

A. There is hereby imposed on the sale of tangible personal property at retail or the furnishing of services as provided in Section 29-2-105(1)(d), C.R.S., a sales tax equal to three percent (3%) of the gross receipts (the "sales tax"). Items classified as food shall be charged at a sales tax rate equal to two and one quarter percent (2.25%) of the gross receipts. The tangible personal property and services taxable under this Article shall be the same as the tangible personal property and services taxable pursuant to Section 39-26-104, C.R.S.

B. For the purpose of the sales tax, all retail sales shall be considered 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 and use tax imposed by Article 26 of Title 39, C.R.S., regardless of the place to which delivery is made. If a retailer has no permanent place of business in the Town, or has more than one (1) place of business, the place at which the retail sales are consummated for the purpose of the sales tax shall be determined by the provisions of Article 26 of Title 39, C.R.S., and by rules and regulations promulgated by the Department of Revenue. The value of construction and building materials shall be exempt from the sales tax if the materials are picked up by the purchaser and if the purchaser of such materials presents to the retailer a building permit evidencing that a local use tax has been paid or is required to be paid.

C. Retailers shall add the tax imposed, or the average equivalent thereof, to the purchase price, showing such tax as a separate and distinct item. Except as provided in this Subsection, no retailer shall advertise or hold out or state to the public or to any consumer, directly or indirectly,
that the tax or any part thereof shall be assumed or absorbed by the retailer, or that it will not be added to the price, or if added, that it or any part thereof shall be refunded. Sales tax may be included in the price of any malt, vinous or spirituous liquor sold by the drink. Sales tax may be included in the price of vending machine sales. Sales tax may be included in the price of an admissions charge.

D. Any tax added to the price by a retailer shall constitute a debt from the purchaser to the retailer until paid and shall be recoverable at law in the same manner as other debts. No retailer shall gain any benefit from the collection or payment of such tax, nor shall the use or rates set forth in Sections 4-52 and 4-72 of this Article release such retailer from liability for payment of the full amount of the tax levied by this Article.

E. Exemptions.

1. All sales of personal property on which a specific ownership tax has been paid or is payable shall be exempt from the sales tax when such sales meet both of the following conditions:

   a. The purchaser is a nonresident of, or has his or her principal place of business outside the limits of the Town; and

   b. Such personal property is registered or required to be registered outside the limits of the Town under the laws of the State.

2. The tax levied by section 4.62 shall not apply to the following:

   a. Automotive vehicles sold to nonresidents of the Town for registration outside the Town.

   b. Tangible personal property that is to be used, stored or consumed outside the Town by persons residing or doing business outside the Town when the property is to be delivered to the purchaser outside the Town by mail; by common, contract or commercial carrier that is employed to effect delivery by the vendor; or by the vendor’s conveyance.

   c. Prosthetic devices and drugs dispensed in accordance with a prescription, but not including prescription drugs for animals.

   d. All sales of therapeutic devices, appliances or related accessories.

   e. All sales of medical supplies.

   f. Cigarettes.

   g. All direct sales to charitable organizational functions and activities, when billed to and paid for by the charitable organization.
h. All individual sales of twenty-five dollars ($25.00) or less by charitable organizations in the conduct of events or sales to generate funds for charitable purposes; provided that the sales shall not be conducted for more than three (3) consecutive days or more than nine (9) total days in any calendar year.

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

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

k. Tangible personal property sold to a public utility company or railroad doing business both inside and outside the Town, for use in its business operations outside the Town even though delivery thereof is made inside the Town.

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

m. All wholesale sales.

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

o. Commercial packaging materials.

p. Napkins, straws or eating utensils sold to a retailer when the following conditions are met:

1. The property is used in the consumption of food purchased;

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

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

q. Newsprint and printer’s ink for use by publishers, newspapers and commercial printers.

r. Newspapers.

s. Tangible personal property sold for rental or leasing inventory, including but not limited to coin operated devices, provided that such property is not otherwise used except for customer demonstration or display.
t. Labor sold with tangible personal property, if such labor is stated separately on the invoice from the tangible personal property sold; except that manufacturing or fabricating or other processing labor shall not be exempt.

u. Tangible personal property sold through coin-operated devices for a price of twenty-five cents ($0.25) or less.

v. Food purchased with federal food stamps or with funds provided by the special supplemental food program for women, infants and children (42 U.S.C. #1786), from retailers who qualify as:

1. Retail food stores which primarily sell for home preparation and consumption and in which one (1) or more staple food items make up more than fifty percent (50%) of eligible food sales. These stores shall include: full-line grocery stores; convenience stores; stores which sell meat, poultry or fish; stands which sell agricultural commodities; farmers' markets; milk routes; bread routes; day-old bread stores; bakeries which sell bread; and nonprofit cooperative food-purchasing ventures which are properly licensed to sell food in the State and locality in which they are operating.

2. Firms whose primary business is not the sale of food for home preparation and consumption, but who have recognized grocery departments in which staple foods make up more than fifty percent (50%) of eligible food sales.

w. Meals purchased with federal food stamps or with funds provided by the special supplemental food program for women, infants and children (42 U.S.C. Section 1786), in the following instances:

1. The meals are prepared for and served to residents of federally subsidized housing for the elderly; or are prepared for and served to persons who are sixty (60) years of age or over or who receive supplemental security income benefits, and their spouses, in senior citizens centers, apartment buildings occupied primarily by such persons, public or private nonprofit establishments (eating or otherwise) that contract with the appropriate agency of the State to offer meals for such persons at concession prices;

2. The means are prepared for and delivered to person sixty (60) years of age or over and person who are physically or mentally handicapped or otherwise so disabled that they are unable adequately to prepare all of their meals, when such meals are prepared for and delivered to them (and their spouses) at their home by a public or private nonprofit establishment that contracts with the appropriate state agency to perform such services at concession prices;

3. The meals are prepared for and served to narcotics addicts or alcoholics as part of drug addiction or alcoholic treatment and rehabilitation programs;
4. The meals are prepared for and served to disabled or blind recipients of federal financial benefits under the Social Security Act who are residents in a public or private nonprofit group living arrangement that is certified for no more than sixteen (16) residents by the appropriate state agency or agencies under regulations issued under the Social Security Act; or

5. The meals are prepared for and served to women and children temporarily residing in public or private nonprofit shelters for battered women and children.

x. Garage sales or yard sales in a residential area, not exceeding a consecutive three-day period nor a total of nine (9) days per calendar year, but not including sales conducted by a professional or compensated agent of the owner of the items sold.

y. Sales by or on behalf of a youth group affiliated with or sponsored by a charitable organization, governmental entity or a school, other than a school held or conducted for private or corporate profit.

z. Lodging services are exempt when they apply to:

1. All sales made directly to charitable organizations, in the conduct of their regular religious or charitable functions and activities, provided such sales are paid for directly to the seller by draft or warrant drawn on the funds of the exempt organization.

2. All sales to the Unites States of America, to the State, their departments, institutions or political subdivisions, which are acting in their governmental capacity, and to all sales to the Town or its departments, provided that such sales are supported by requisition on official governmental purchase orders and paid for directly to the seller by draft or warrant drawn on the funds of that government entity.

F. The sales tax shall not apply to the sale of tangible personal property at retail or the furnishing of services if the transaction already has been subjected to a legally imposed sales or use tax of another statutory or home rule city and county, city or town equal to or in excess of the sales tax. A credit shall be granted against the sales tax equal in amount to the legally imposed local sales or use tax previously paid elsewhere by the purchaser or user. The amount of the credit shall not exceed the amount of the sales tax. (Ord. 8-2002; Ord. 11-2002)

4.53. Sales tax collection

(a) The provisions of this Article shall apply to the imposition as well as administration, enforcement and collection of sales taxes by the Town, and shall apply to the administration of the Town sales tax licenses under the Timnath Municipal Code.

(b) The provisions of this Article shall be construed to effect uniformity of administration, enforcement and collection of taxes, and to establish uniform procedures, but shall not be construed to extend or increase the application, rate or amount of any tax levied or imposed
herein; provided, however, that the imposition of a penalty, interest or both penalty and interest shall be lawful and shall not be construed as an extension or increase of the application, rate or amount of tax.

(c) The purpose of this Article is to provide the power necessary to exercise effectively the right to raise revenue that is essential to home rule and self-government. Any similarities to state law herein are adopted for the purpose of promoting efficiency in the collection of revenue. Regardless of any such similarities, the provisions contained herein are matters of solely local concern. Unless otherwise provided herein this Article or by Article 2 of Title 29, C.R.S., the provisions of Article 26 of Title 39, C.R.S., shall govern the collection, administration and enforcement of the sales tax. (Ord. 8-2002; Ord. 11-2002)

4.54. Deductions and credits.

A. Deductions from gross sales. If included in reported gross sales, the following are deductible from gross sales:

1. Refunds. The price of admissions, accommodations, tangible personal property or taxable services returned by a purchaser when the price and the tax collected are refunded in cash or by credit.
2. Bad debts. Taxable sales which are found to be worthless and are actually and properly charged off as bad debts for federal income tax purposes. Any amount so deducted and subsequently collected by the taxpayer shall be subject to tax.
3. Interest and finance charges. The amount of interest or finance charges on credit extended in connection with any sale, provided that the interest and finance charges are separately stated from the price.

B. Credits from tax due.

1. All licensed vendors shall be entitled as collection agent for the Town to withhold an amount equal to three and one-third percent (3 1/3%) of the total amount of sales tax due with a maximum monthly vendor fee cap of one hundred dollars ($100) to be remitted by the vendor to the Town each month to cover the vendor's expense in the collection and remittance of the sales tax. Such vendor's fee shall be forfeited for any tax that is not reported and paid by the due date. Forfeiture of the vendor's fee shall be prima facie evidence that the taxpayer was in violation of this Article. (Ord. 8-2002; Ord. 11-2002)

2. Amounts previously paid pursuant to a tax levied by the Town may be credited against the tax due on transactions or items when the present owner or user has previously paid a legally imposed sales tax on the transaction or item computed at the rate established by Section 4.52.

4.55. Taxpayer (vendor and consumer) responsibilities.
(a) Burden of proof of exemption. The burden of proving that any vendor, retailer, consumer or purchaser is exempt from collecting or paying the tax upon any goods sold or purchased shall be on the vendor, retailer, consumer or purchaser under such reasonable requirements of proof as the Director may prescribe.

(b) Director may require reports and records. The Director may require any person, by regulation or notice served on such person, to make such return, render such statement, keep and furnish such records or make such information reports as the Director may deem sufficient to show whether or not such person is liable under this Article for payment or collection of the tax imposed herein.

(c) Vendor responsibility for collection and payment of tax. Every retailer or vendor engaged in business in the Town shall be liable and responsible for payment of an amount equivalent to the taxable sales multiplied by the rate as specified in Section 4-52 above. It shall be a violation of this Article for any seller not to collect the sales tax levied by this Article. It shall also be a violation of this Article for any purchaser not to pay the sales tax levied by this Article or to pay the tax levied upon a sale where the status of exemption is disputed.

(d) Vendor responsibility for remittance of tax. The retailer shall add the tax as a separate and distinct item, and such tax shall be a debt from the consumer to the retailer and shall be recoverable at law in the same manner as other debt.

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

(f) Disputed tax. When a dispute arises between a retailer and a purchaser who claims that the sale is exempt from the tax, the retailer shall collect and the purchaser shall pay such tax. The purchaser may then submit a claim for refund within sixty (60) days of the date of the purchase. Any such tax refunded by the Town will be paid directly to the purchaser. Refund allowed if exempt. A refund shall be made, or a credit allowed, for the tax so paid under dispute by any purchaser who has an exemption under this Article; provided that such refund shall be made by the Director after compliance with the following conditions precedent: Applications for refund must be made within sixty (60) days after the purchase of the goods whereon an exemption is claimed and must be supported by the affidavit of the purchaser accompanied by the original paid invoice or sales receipt and certificate issued by the seller; and be made upon such forms as shall be prescribed and furnished by the Director, which forms shall contain such information as the Director shall prescribe.

(g) Refund disallowed. Upon receipt of such application, the Director 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 fifteen (15) days after such decision is sent, may petition the Director for a hearing on the claim in the manner provided in Section 4-62.
(h) Trust status of tax in possession of retailer. All tax collected by a retailer shall be the property of the Town and remain public money in the hands of such retailer, who shall hold the same in trust for the sole use and benefit of the Town until paid to the Town.

(i) Timely payment evidence; computation of dates.

   (1) Timely payment may be evidenced by the postmark date if mailed; otherwise, timely payment may be evidenced by the Town’s validation date.

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

4.56. Tax returns; content, consolidation and reporting periods.

(a) Tax return: content, form. The returns to be filed by the taxpayer or the taxpayer’s trustee, manager, officer or director, shall contain such information and be completed in such manner and upon such forms as the Director may prescribe. When a return filed by a taxpayer does not include a signature, a correct Town account number or any other information required by the Director, the Director has the right to send back to the taxpayer the return and payment. The Director may consider an improperly filed return to be not filed with the Town.

(b) Consolidation of returns. A taxpayer doing business in two (2) or more locations inside the Town, who collects tax hereunder, may file a single return covering all such locations, when accompanied by a supplemental schedule showing the gross sales and service and net taxable sales and service and taxes collected thereon for each such place or location.

(c) Due date and reporting period. Every taxpayer shall file a return, whether or not tax is due, to the Town on or before the twentieth day of the month following the end of the reporting period and remit the amount of tax imposed by this Article. Unless otherwise required or approved, taxpayers shall file returns and pay taxes as follows:

   1. A taxpayer whose monthly tax due to the Town is less than fifteen dollars ($15.00) may file returns and pay sales tax annually at the end of the calendar year.

   2. A taxpayer who in any month has a monthly tax due to the Town of fifteen dollars ($15.00), but less than three hundred dollars ($300.00) may file returns and pay sales tax quarterly and continue to pay quarterly for the remainder of the year or until the monthly tax due reaches the level set forth in paragraph 3 below.

   3. A taxpayer who in any month has a monthly tax due to the Town of three hundred ($300.00) or more shall file returns and pay tax monthly and continue to pay monthly for the remainder of the calendar year.
4. The reporting period for a final return shall end on the date of the transfer of ownership of the business, or the last day of business.

5. The reporting period for a temporary business shall end on the day the temporary location closes or special event concludes.

6. If any taxpayer who is permitted to file returns and pay tax on other than a monthly basis becomes delinquent, authorization for such alternate method of reporting may be revoked by the Director. Thereafter, following notice of such revocation, the taxpayer shall file returns and pay tax on a monthly basis. If the accounting methods regularly employed by the vendor or licensed consumer in the transaction of his or her business, or other conditions, are such that the returns aforesaid made on a calendar-month basis will impose unnecessary hardship, the Director may, upon request of the vendor or licensed consumer, accept returns 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.

7. No person shall make any false statements in connection with a return.

4.57. Duties and powers of Director.

The administration of the licensing provisions of this Article is hereby vested in the Director; and the administration of all other provisions of the code and of the Town sales tax is hereby vested in and shall be exercised by the Director, who shall prescribe forms and formulate and promulgate, with the approval of the Town Manager, appropriate rules and regulations to effectuate the purpose of this code, in conformity with this code and subject to other provisions of law relating thereto, for the making of returns, for the ascertainment, assessment and collection of the taxes imposed and for the proper administration and enforcement thereof, and to provide uniform methods of adding the tax, or the average equivalent thereof, to the purchase price. The Director is authorized to delegate any duty or power to a subordinate unless otherwise provided herein.

4.58. Director to examine returns.

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 Director shall have power to examine or cause to be examined by an employee, agent or representative designated by him or her for that purpose, any books, papers, records or memoranda bearing upon the matters required to be included in the return. Subject to the provisions of the Article, the Director is authorized to prescribe the duties and powers of such officers, accountants, experts and other persons as may be necessary in the performance of his or her duty.

4.59. Audits.
(a) Taxpayer's retention of records. It shall be the duty of every person liable to the Town for any tax to keep and preserve for a period of at least three (3) years such books, accounts and records as may be necessary to determine the amount of such tax liability.

(b) Records to be made available for audit. All such books, 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 by the ordinarily prudent business person and shall be open for examination at any reasonable time by the Director. The records should show:

1) Gross receipts from sales or rental payments from leases of tangible personal property (including any services that are part of the sale or lease) made in the Town, irrespective of whether the seller or lessee regards the receipts to be taxable or nontaxable.

2) All deductions allowed by law and claimed in filing returns.

3) Total purchase price of all tangible personal property purchased for sale, consumption or lease in the Town.

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

(d) Coordinated audit.

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

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

3) Except as provided in Paragraph (7) below, any taxpayer who submits a complete request for a coordinated audit and promptly signs a waiver of limitation, if required, may be audited by the Town during the twelve (12) months after request is submitted only through a coordinated audit involving all municipalities electing to participate in such an audit.

4) If the Town desires to participate in the audit of a taxpayer who submits a complete request for a coordinated audit pursuant to Paragraph (3) above, the Director shall so notify the Director whose notice of audit prompted the taxpayer's request within ten (10) days after receipt of the
taxpayer's request for a coordinated audit. The Director shall then cooperate with other participating municipalities in the development of arrangements for the coordinated audit, including arrangement of the time during which the coordinated audit will be conducted, the period of time to be covered by the audit, and a coordinated notice to the taxpayer of those records most likely to be required for completion of the coordinated audit.

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

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

(7) The Town may conduct an audit in conjunction with another municipality at its own discretion.

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

a. When the proposed audit is a jeopardy audit;

b. To audits for which a notice of audit was given prior to the effective date of this Article;

c. When a taxpayer refuses to promptly sign a waiver of limitation; or

d. When a taxpayer fails to provide a timely and complete request for a coordinated audit as provided in Paragraph (2) above.

4.60. Tax reports and returns.

(a) Town's preservation of records. All reports and returns of taxes received by the Department of Finance covered by this Article shall be preserved until the Town Clerk orders them destroyed.
(b) Confidential nature of returns. Except in accordance with judicial order, consent of the taxpayer or as otherwise provided by law, the Director, the Town Manager and the Town Attorney 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 Director in an action or proceeding under the provisions of any such taxing or open record statutes when the report or 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. Such copies may be certified by the Director 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 Director in his or her discretion may furnish to the County Finance Director or Treasurer and his or her authorized personnel, to the Colorado Department of Revenue Executive Director and his or her authorized personnel, to the taxing officials of any 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; provided that such financial information is to be used only for tax purposes.

4.61. Notice by mail.

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 Director. In the event that a notice is sent to the taxpayer pursuant to this Article and said notice is not received by the taxpayer through no fault of the Town, 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 mailed, and the Town shall have no further obligation to complete service of the notice.

(a) Request for hearing. Any taxpayer may request a formal or informal hearing on any proposed tax by reason of Notice of Final Determination; Assessment and Demand for Payment, or by reason of denial of his or her claim for refund, by application to the Director within fifteen (15) days of the date that a notice of deficiency, assessment or denial of refund is sent by the Director. The request for hearing shall set forth the taxpayer's reasons for and the amount of the requested changes in the deficiency, assessment or denial of refund.

(b) Hearing time and place. The Director shall notify the taxpayer in writing of the time and place for such hearing thirty (30) days prior thereto, unless the taxpayer requests shorter notice or an extension of time. In no event shall the hearing be held more than sixty (60) days after the Director's receipt of request for a hearing. The Director shall notify the taxpayer in writing of the time and place of such hearing.

(c) Informal hearing. If the taxpayer elects to participate in an informal hearing, which hearing must be held within thirty (30) days of the Director's receipt of the taxpayer's request for a hearing, additional informal hearings shall not be permitted except at the discretion of the Director. Informal hearings shall be conducted in any manner acceptable to the taxpayer and the Director with the purpose of settling the outstanding issues between the parties. If no settlement is reached, the taxpayer must request, in writing, a formal hearing on the record within fifteen (15) days after the informal hearing, and the Director shall give notice of the formal hearing pursuant to Subsection (b) above. If the taxpayer fails to request a formal hearing, all further rights to a hearing and appeal are waived and the taxpayer shall be bound by the Notice of Final Determination; Assessment and Demand for Payment or final Denial of Refund.

(d) Director to conduct formal hearing. The hearing shall be held before the Director or a hearing officer designated by the Director. At the hearing, the taxpayer may assert any facts or make any arguments and file any briefs and affidavits he or she believes are pertinent to his or her case. The taxpayer shall be notified of the name of the hearing officer fifteen (15) days before the hearing date, and any objection by the taxpayer to the hearing officer shall be filed in writing at least forty-eight (48) hours prior to the hearing. All reasonable costs to the Town for a hearing officer must be paid by the taxpayer requesting the formal hearing when the hearing officer determines no change in the tax due.

(e) Hearing based on written brief. The taxpayer may also file a written brief and such other written materials or documents as he or she shall deem appropriate, and request that the Director reconsider the deficiency without a hearing. The Director shall proceed to reconsider the deficiency in the same manner as if the written material submitted had been presented at a hearing pursuant to this Section. The submission of written material shall be considered for all purposes the same as a request for and submission of the material at a hearing. The Town staff and/or agents shall be permitted to respond in writing to the submittals of the taxpayer. Rebuttal submissions may be permitted at the discretion of the Director.
(f) Time limitation on request for hearing. After the expiration of fifteen (15) days from the date that the Notice of Final Determination; Assessment and Demand for Payment or Denial of Refund is sent, if the tax has not been paid, or if no request for hearing has been requested or no written brief has been filed by the taxpayer, then the Notice of Final Determination; Assessment and Demand for Payment previously mailed, faxed or e-mailed shall constitute a final assessment of the amount of the tax specified, together with interest and penalty, or shall constitute a final Denial of Refund, as the case may be. The Director may promptly take necessary steps to collect all amounts owed. The taxpayer shall have no further right to a hearing, trial or appeal on the facts of the case.

(g) Director may adjust tax under question. Based on the evidence presented at any hearing or filed in support of the taxpayer's contentions, the Director may modify or abate in part or in full the tax and the interest and penalty related to such tax questioned at the hearing, or may approve a refund.

(h) Formal hearing determination notices. After a formal hearing, upon rejection, in whole or in part, of the claim for refund or upon the finding by the Director that, on hearing the evidence, an assessment in whole or in part has been made against the taxpayer validly, the Director shall send a hearing determination notice to the taxpayer, setting forth the amount of claim for refund denied or the amount of deficiency assessment of taxes found due, stating therein the grounds for allowance or rejection in whole or in part.

(i) Tax due date after hearing. Unless an appeal is taken as provided in this Article, the tax, together with interest theron and penalties, if any, shall be paid within thirty (30) days after the hearing determination notice is sent by the Director to the taxpayer.

(j) Appeals. The taxpayer may appeal the hearing determination notice of the Director issued pursuant to this Subsection within thirty (30) days of the date that such determination is sent by the Director. Such appeal shall be conducted pursuant to the terms of Rule 106(a)(4) of the Colorado Rules of Civil Procedure or by the method of appeals set forth in Section 29-2-106, C.R.S. 4.63 Refund of excess taxes.

(k) Whenever the Director discovers from the examination of a return or pursuant to an audit of a taxpayer's records that the taxpayer has overpaid taxes due the Town, the Director shall issue a warrant for payment of the excess taxes to the taxpayer, unless the overpayment is applied to offset other tax due. The Director shall keep a duplicate of said warrant and also a statement which sets forth the reason why such refund was ordered. If the refund totals less than fifteen dollars ($15.00), the refund amount shall be credited to the taxpayer's tax account, unless the taxpayer requests payment of the refund.

(l) Taxpayer's discovery of overpayment of tax. A taxpayer may apply for a refund of payment of excess taxes within sixty (60) days after discovery of the overpayment. The Director may deny such refund if he or she finds the taxpayer did or reasonably should have discovered the
overpayment more than sixty (60) days prior to the date of the application for a refund. The taxpayer may petition the Director for a hearing on the claim in the manner provided in Section 4-62 within fifteen (15) days after the Director's Denial of Refund is sent to the taxpayer.

(m) 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 three (3) years after the Town's receipt of sales taxes in question.

(n) Refund to offset previous tax due. Whenever it is established that any taxpayer has, for any period, overpaid a tax imposed by this Article, and that there is an unpaid balance of tax and interest accrued according to the records of the Director, owing by such taxpayer for any other period, so much of the overpayment of tax plus interest allowable thereon as does not exceed the amount of such unpaid balance shall be credited thereto and any excess of the overpayment shall be refunded.

(o) Refund of overpayment of taxes paid by the estimated payment basis. Application for refund by contractors prepaying on an estimated percentage payment basis, or actual tax basis, shall be made within three (3) years after the date of the certificate of occupancy or date of purchase, whichever is sooner. The Director may require data to accompany the application and may require an audit to be done before the refund is paid.

(p) Refunds not assignable. The right of any person to a refund under this Article shall not be assignable, and 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, except as provided in Subsection (j) below. The Director may, upon receiving a properly executed release of claim from the taxpayer and evidence to substantiate that the tax was remitted in error to another municipality, issue a joint refund check in the name of the taxpayer and the municipality, provided that the municipality has entered into an agreement to grant similar privileges to the Town.

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

(r) The Town may make a written claim for recovery directly to the municipality that received tax and/or penalty and interest owed to the Town or, in the alternative, may institute procedures for collection of the tax from the taxpayer or vendor. The decision to make a claim for recovery lies in the sole discretion of the Town. Any claim for recovery shall include a properly executed release of claim from the taxpayer and/or vendor releasing his or her 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 Town 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 Town shall not be unreasonably withheld.

(s) Within ninety (90) days after receipt of a claim for recovery, the Town 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 Town shall remit the undisputed amount to the municipality submitting the claim within thirty (30) days of approval. If a claim is submitted jointly by a municipality and a vendor or taxpayer, the check shall be made to the parties jointly. Denial of a claim of recovery may only be made for good cause.

(t) The Town 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.

(u) The period subject to a claim for recovery shall be limited to the thirty-six-month period prior to the date the municipality that was wrongly paid the tax receives the claim for recovery. This period may be extended only if a written document was approved by the Director and taxpayer to toll the running of this thirty-six-month period.

4.63. Participation in simplification meetings.

The Director shall cooperate with and participate on an as-needed basis with a permanent statewide sales and use tax committee convened by the Colorado Municipal League, which is composed of state and municipal sales and use tax and business officials. Said committee will meet for the purpose of discussing and seeking resolution to sales and use tax problems which may arise.

4.64. Joint sales and use tax collection, administration and enforcement.

The Town may enter into an intergovernmental agreement with another town, city or county for the joint collection, administration and enforcement of sales tax, use tax or both sales and use taxes.

4.65. Assessment, penalties and interest.

(a) Assessment. Subsection (b) below shall apply if the Director determines that any person, taxpayer or vendor 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 tax due;
(4) To pay in full all taxes due because of negligence, fraud or on a regular basis; or

(5) To remit taxes due pursuant to an audit, special assessment or special audit assessment.

(b) Assessment notice and due date. Penalties and interest shall be assessed and the Director shall give to the delinquent person, taxpayer or vendor a written Notice of Final Determination; Assessment and Demand for Payment, which notice shall state the full amount of taxes, penalties and interest due and shall be served personally, by mail or e-mail, which assessment of deficiency amount will be due and payable within fifteen (15) days of the date that such notice is sent by the Director.

(c) Estimated assessment. If the Director is unable to audit the records of a taxpayer, either due to the taxpayer's refusal or lack of cooperation, due to time constraints or due to other reasons which the Director may reasonably determine, the Director shall make an estimate based upon such information as may be available and shall issue an assessment as provided herein. If a person, taxpayer or vendor neglects or refuses to make a return, the Director shall make an estimate, based upon such information as may be available, of the taxes due for the period for which such person is delinquent.

(d) Failure to file, penalty. If a person, taxpayer or vendor neglects or refuses to make a return as required in this Article or fails to pay any sales tax as required by this Article, and/or unless the taxpayer shows that his or her failure to comply fully with this Article is due to reasonable cause, which the taxpayer may prove in a hearing requested pursuant to this Article, the Director 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 the greater of the sum of ten dollars ($15.00) or ten percent (10%) thereof, and interest on such delinquent taxes at the rate of one (1%) from the date when due.

(e) Mathematical error on tax returns. In the event that the amount of tax is understated on the taxpayer's return due to a mathematical error, the Director shall notify the taxpayer by written Notice of Final Determination; Assessment and Demand for Payment of the amount of tax in excess of that shown in the return which is due and has been assessed. 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 fifteen (15) days of the date that such assessment is sent by the Director.

(f) Penalty for fraud. If any deficiency in taxes paid is due to fraud with the intent to evade the tax, there shall be added, instead of the penalty prescribed in Subsection (d) above, a penalty of one hundred percent (100%) of the total amount of the deficiency to the assessment required by Subsection (a) above. Interest on such deficiency shall accrue and be collected at a rate of one percent (1%) per month on the amount of such deficiency from the time the return was due.
(g) Special penalty for repeated enforcement. In any assessment issued to a person, vendor or taxpayer against whom enforcement proceedings have been commenced in the past, a special penalty, in addition to all others provided in this Article, shall also be assessed. This special penalty shall be equal to the greater of two hundred fifty dollars ($250.00) or twenty-five percent (25%) of the tax deficiency. For purposes of this Subsection, enforcement proceedings shall mean:

(1) Issuance of a distraint warrant;

(2) Filing of a lawsuit in the district or county court; or

(3) Three (3) occurrences of the revocation of the person's, vendor's or taxpayer's license by the Director or issuance of a summons to Municipal Court for the nonpayment of taxes or a combination of revocations and summonses.

(h) Director may waive penalty. The Director is hereby authorized to waive, for good cause shown, any penalty assessed as provided in this Article. Interest imposed in excess of nine percent (9%) per annum shall be deemed a penalty. If the Director finds that a taxpayer has, in good faith, paid tax to a vendor, the Director is hereby authorized to abate the interest and penalty in its entirety.

(i) 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 applicable. If any portion of a tax is satisfied by credit of an overpayment, no interest or penalty shall be imposed under this Section on the portion of the tax so satisfied.

4.66. Lien on assets

1. If any person fails to pay the sales tax within fifteen (15) days after it is due, the Director shall issue a notice setting forth the name of the taxpayer, the amount of the sales tax owed, the date of the accrual thereof, and that the Town claims a first and prior lien therefore on any and all assets owned by the taxpayer, except as to preexisting liens of a bona fide mortgagee, pledgee, judgment creditor or purchaser, which right has attached prior to the filing of the notice as hereinafter provided. The notice shall be on forms prepared by the Director, and when filed in the office of the clerk and recorder of any county in the State in which the taxpayer owns real or personal property, such notice shall create a lien as aforesaid on such property in that county and constitute a notice thereof. (Ord. 8-2002; Ord. 11-2002)

2. Perpetuance of lien.

a. Any lien for total tax liability shall continue until release of lien is filed by the Director.
b. Any person who purchases or repossesses real or personal property upon which a lien has been filed by the Director for total tax liability shall be liable for the payment of such total tax liability up to the value of the property taken or acquired.

3. Release of lien. Upon payment of the total tax liability or enforcement of the lien, the Director shall file a release with the county clerk and recorder of the county in which the lien was filed.

4.67. Effective date.

The ordinance codified in this Article shall take effect January 1, 2009, and shall apply to transactions consummated after that date. (Ord. 8-2002; Ord. 11-2002)

Secs. 4-68--4-70. Reserved.

Section 2. Article 6 of Chapter 4 of the Municipal Code is hereby amended as follows:

4.54 Sales tax vendors 3 1/3% of total amount

4.103 Returned checks $20.00 per occurrence

6.1 Business license $25.00

6.2 Sales Tax license $25.00

4.103. Returned checks

A fee of twenty dollars ($20.00) shall be assessed by the Town against any person who issues a check returned for insufficient funds or lack of an account to the Town in payment of taxes, licenses or any other fees collectable by the Town. Any other penalties or interest prescribed by any provision of this Code or state law may be applied. (orig Ord. 11-2002)

INTRODUCED, READ, PASSED, ADOPTED AND ORDERED PUBLISHED THIS 3RD DAY OF DECEMBER, 2008.

Donna Benson, Mayor

ATTEST:

By Milissa McGuire, Town Clerk
ARTICLE IV SALES TAX

4.51. Definitions

For the purpose of this Article, the words herein contained shall have the meanings set forth in Section 39-26-102, C.R.S., as it currently exists or may hereafter be amended, and said definitions are incorporated herein by this specific reference. (Ord. 8-2002; Ord. 11-2002). When not clearly indicated otherwise by the context, the following words and phrases, as used in this Article, shall have the following meanings:

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

**Casual sale** means an individual, single or incidental transaction which in itself does not constitute the carrying on of business.

**Charitable organization** means any entity which:

a. Has been certified as a not-for-profit organization under 501(c)(3) of the Internal Revenue Code; and

b. Is an entity organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office, or any veterans' organization registered under Section 501(c)(19) of the Internal Revenue Code, for the purpose of sponsoring a special event, meeting or other function in the State so long as such event, meeting or function is not part of such organization's regular activities in the State.

**Claim for recovery** means a claim for reimbursement of sales and use taxes paid to the wrong taxing jurisdiction.

**Collection costs** shall include, but is not limited to, all costs of audit, assessment, bank fees, hearings, execution, lien filing, distraint, litigation, prosecution and attorney fees.

**Collection proceedings** shall include the mailing of a notice of audit, an audit and all remedies exercised by the Director pursuant to this code to collect any unpaid taxes, penalties and interest.

**Construction or building materials** means tangible personal property which, when combined with other tangible personal property, loses its identity to become an integral and inseparable part of a completed structure or project, including public and private improvements.

**Construction materials** include, but are not limited to, such things as: asphalt, bricks, builder's hardware, caulking material, cement, concrete, conduit, electric wiring and connections, glass, gravel, insulation, lath, lead, lime, lumber, macadam, millwork, mortar, oil, paint, piping, pipe valves and pipe fittings, plaster, plumbing fixtures, putty, reinforcing mesh, road base, roofing, sand, sanitary sewer pipe, sheet metal, site lighting, steel, stone, stucco, tile, trees, shrubs and other landscaping materials, wallboard, wall covering, wallpaper, weather stripping, wire netting and screen, water mains and meters, and wood preserver. The above materials, when used for forms or
other items which do not remain as an integral or inseparable part of a completed
structure or project, are not construction materials.

**Definition:**
- **Director** means the Finance Director of the Town or such person's designee.
- **Engaged in business in the Town** means performing or providing services or selling,
  leasing, renting, delivering, or installing tangible personal property as defined in this
  Section, for use, storage, or consumption within the Town. This term includes, but shall
  not be limited to, the following acts or methods of transacting business:
  a. Maintaining within the Town, directly or indirectly by a subsidiary, an office,
     building, structure, store, distributing house, salesroom or house, warehouse, mobile
     vendor or other place of business;
  b. Maintaining within the Town an office for employees, agents or commissioned
     sales persons to solicit business or to install, assemble, repair, service or assist in the
     use of its products, or for demonstration or other reasons;
  c. Sending one (1) or more employees, agents or commissioned sales persons
     into the taxing jurisdiction to solicit business or to install, assemble, repair, service or
     assist in the use of its products, or for demonstration or other reasons;
  d. Owning, leasing, renting or otherwise exercising control over real or personal
     property within the Town;
  e. Making more than one (1) delivery into the taxing jurisdiction within a twelve-
     month period.

**Exemptions** means those deductions from adjusted gross sales and services in order to
arrive at a taxable base, which exemptions may include exempt transactions (in whole
or in part), sale or purchase of exempt commodities, articles or services, or sale to
exempt persons who may either be exempt in their direct purchase or exempt on the
basis of community articles or services purchased, as set forth in this Article.

**Food** means food for domestic human consumption as defined in 7 U.S.C. §2012(c), as
amended, for purposes of the federal food stamp program as defined in 7 U.S.C.
§2012(h), as amended, except that food does not include carbonated water marketed in
containers, chewing gum, seeds and plants to grow foods, prepared salads and salad
bars, packaged and unpackaged cold sandwiches, meals, and hot or cold beverages
served in unsealed containers or cups that are vended by or through machines or non-
coin-operated coin-collecting food and snack devices on behalf of a vendor.

**Gross sales and service** 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 Town sales tax license.

**Manufacturing** means the operation of producing a new product, article, substance or
commodity different from and having a distinctive name, character or use from raw or
prepared materials.

**Manufacturing machinery** means any apparatus consisting of interrelated parts used to
produce an article of tangible personal property. The term includes both the basic unit
and any adjunct or attachment necessary for the basic unit to accomplish its intended
function.

**Net taxable sales and services** means adjusted gross sales and services less
authorized "exemptions" therefrom.

**Person** includes any individual, firm, limited liability company, partnership, joint
venture, corporation, estate or trust or any group or combination acting as a unit.
Retailer or vendor means a person doing a retail business, known to the trade and public as such, and selling to the user or consumer, and not for resale.

Retail sale means all sales made within the Town except wholesale sales.

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

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

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

Tangible personal property means corporeal personal property, which may be seen, weighted, measured or felt or touched, or is in any manner perceptible to the senses.

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

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

Taxable sales mean gross sales less any exemptions and deductions specified pursuant to this Code.

Taxable services mean 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.

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

Vendor fee means a credit, as designated by the Director, to be allowed against the tax due on timely filed sales tax returns. The amount of the credit and any limitation per return, will be stated on the sales tax return as approved by the Town.

Wholesaler means a person doing a regularly organized wholesale or jobbing business, known to the trade as such and selling to retailers, jobbers, dealers or other wholesalers for the purpose of resale.

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. This term includes sales of all pre-press preparation printing materials, as defined by Section 39-26-107(6.7), C.R.S., which are used by a printer for a specific printing contract where the printed product is sold at retail to a customer accepting delivery within the Town. Documentation of a wholesale sale shall include a valid resale certificate from the customer, and the customer's state and local resale license number prominently located on the invoice.

A. There is hereby imposed on the sale of tangible personal property at retail or the furnishing of services as provided in Section 29-2-105(1)(d), C.R.S., a sales tax equal to three percent (3%) of the gross receipts (the "sales tax"). Items classified as food shall be charged at a sales tax rate equal to two and one quarter percent (2.25%) of the gross receipts. The tangible personal property and services taxable under this Article shall be the same as the tangible personal property and services taxable pursuant to Section 39-26-104, C.R.S., and subject to the same exemptions as those specified in Section 39-26-114, C.R.S., and provided that the exemption of sales and purchases of those items in Section 39-26-114(1)(a)(XX), C.R.S., the exemption for sales of food specified in
section 39-2514(1)(a)(XX), C.R.S. shall apply to the Sales Tax, and the sale of such items is expressly exempted from the Sales Tax as allowed by section 39-2-105 (1)(d), C.R.S. The exemption for sales of machinery or machine tools pursuant to Section 39-2514(1)(i), C.R.S., shall not apply to the sales tax, and the sale of such items is expressly taxable under this Article. The imposition of the sales tax on individual sales shall be in accordance with schedules set forth in the rules and regulations promulgated by the Department of Revenue. If any vendor, during any reporting period, shall collect as the sales tax an amount in excess of the amount of the sales tax imposed by this Article, he or she shall remit to the Executive Director (hereinafter defined) the full amount of the sales tax herein imposed and also such excess.

B. For the purpose of the sales tax, all retail sales shall be considered 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 and use tax imposed by Article 26 of Title 39, C.R.S., regardless of the place to which delivery is made. If a retailer has no permanent place of business in the Town, or has more than one (1) place of business, the place at which the retail sales are consummated for the purpose of the sales tax shall be determined by the provisions of Article 26 of Title 39, C.R.S., and by rules and regulations promulgated by the Department of Revenue. The value of construction and building materials shall be exempt from the sales tax if the materials are picked up by the purchaser and if the purchaser of such materials presents to the retailer a building permit evidencing that a local use tax has been paid or is required to be paid.

C. The amount subject to the sales tax shall not include the amount of any sales or use tax imposed by Article 26 of Title 39, C.R.S. Retailers shall add the tax imposed or the average equivalent thereof, to the purchase price, showing such tax as a separate and distinct item. Except as provided in this Subsection, no retailer shall advertise or hold out or state to the public or to any consumer, directly or indirectly, that the tax or any part thereof shall be assured or absorbed by the retailer, or that it will not be added to the price or if added, that it or any part thereof shall be refunded. Sales tax may be included in the price of any malt, vinous or spirituous liquor sold by the drink. Sales tax may be included in the price of vending machine sales. Sales tax may be included in the price of an admissions charge.

D. Any tax added to the price by a retailer shall constitute a debt from the purchaser to the retailer until paid and shall be recoverable at law in the same manner as other debts. No retailer shall gain any benefit from the collection or payment of such tax, nor shall the use of rates set forth in Sections 4-52 and 4-72 of this Article release such retailer from liability for payment of the full amount of the tax levied by this Article.

E. Exemptions

1. All sales of personal property on which a specific ownership tax has been paid or is payable shall be exempt from the sales tax when such sales meet both of the following conditions:
   a. The purchaser is a nonresident of, or has his or her principal place of business outside the limits of the Town; and
   b. Such personal property is registered or required to be registered outside the limits of the Town under the laws of the State.

2. The tax levied by section 4.52 shall not apply to the following:
a. Automotive vehicles sold to nonresidents of the Town for registration outside the Town.

b. Tangible personal property that is to be used, stored or consumed outside the State by persons residing or doing business outside the State when the property is to be delivered to the purchaser outside the State by mail; by common, contract or commercial carrier that is employed to effect delivery by the vendor; or by the vendor's conveyance.

c. Prosthetic devices and drugs dispensed in accordance with a prescription, but not including prescription drugs for animals.

d. All sales of therapeutic devices, appliances or related accessories.

e. All sales of medical supplies.

f. Cigarettes.

g. All direct sales to charitable organizational functions and activities, when billed to and paid for by the charitable organization.

h. All individual sales of twenty-five dollars ($25.00) or less by charitable organizations in the conduct of events or sales to generate funds for charitable purposes; provided that the sales shall not be conducted for more than three (3) consecutive days or more than nine (9) total days in any calendar year.

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

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

k. Tangible personal property sold to a public utility company or railroad doing business both inside and outside the Town, for use in its business operations outside the Town even though delivery thereof is made inside the Town.

l. Motor fuel upon which there has been accrued or paid either the gasoline tax or a special fuel tax required by Article 27, of Title 39, O.R.S., and which is not subject to refund.

m. All wholesale sales.

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

o. Commercial packaging materials.

p. Napkins, straws or eating utensils sold to a retailer when the following conditions are met:

1. The property is used in the consumption of food purchased;
2. The cost of the property is included in the price of an item which is sold separately: rather than included in the price of a service; and
3. The property is not returnable or intended for reuse.

q. Newspapers and printer's ink for use by publishers, newspapers and commercial printers.

r. Newspapers.

s. Tangible personal property sold for rental or leasing inventory, including but not limited to coin operated devices, provided that such property is not otherwise used except for customer demonstration or display.
t. Labor sold with tangible personal property, if such labor is stated separately on
the invoice from the tangible personal property sold; except that manufacturing or
fabricating or other processing labor shall not be exempt.

u. Tangible personal property sold through coin-operated devices for a price of
twenty-five cents ($0.25) or less.

v. Food purchased with federal food stamps or with funds provided by the special
supplemental food program for women, infants and children (42 U.S.C. §1786) from
retailers who qualify as:

1. Retail food stores which primarily sell for home preparation and
consumption and in which one (1) or more staple food items make up more than fifty
percent (50%) of eligible food sales. These stores shall include: full-line grocery stores;
convenience stores; stores which sell meat, poultry or fish; stands which sell agricultural
commodities; farmers' markets; milk routes; bread routes; day-old bread stores;
bakeries which sell bread; and nonprofit cooperative food-purchasing ventures which
are properly licensed to sell food in the State and locality in which they are operating.

2. Firms whose primary business is not the sale of food for home
preparation and consumption, but who have recognized grocery departments in which
staple foods make up more than fifty percent (50%) of eligible food sales.

w. Meals purchased with federal food stamps or with funds provided by the
special supplemental food program for women, infants and children (42 U.S.C. Section
1786), in the following instances:

1. The meals are prepared for and served to residents of federally
subsidized housing for the elderly, or are prepared for and served to persons who are
sixty (60) years of age or over who receive supplemental security income benefits,
and their spouses, in senior citizens centers, apartment buildings occupied primarily by
such persons, public or private nonprofit establishments (eating or otherwise) that
contract with the appropriate agency of the State to offer meals for such persons at
concession prices;

2. The meals are prepared for and delivered to persons sixty (60) years of
age or over and persons who are physically or mentally handicapped or otherwise so
disabled that they are unable adequately to prepare all of their meals, when such meals
are prepared for and delivered to them (and their spouses) at their home by a public
or private nonprofit establishment that contracts with the appropriate state agency to
perform such services at concession prices;

3. The meals are prepared for and served to narcotics addicts or
alcoholics as part of drug addiction or alcoholic treatment and rehabilitation programs;

4. The meals are prepared for and served to disabled or blind recipients of
federal financial benefits under the Social Security Act who are residents in a public or
private nonprofit group living arrangement that is certified for no more than sixteen (16)
residents by the appropriate state agency or agencies under regulations issued under
the Social Security Act; or

5. The meals are prepared for and served to women and children
temporarily residing in public or private nonprofit shelters for battered women and
children.

x. Garage sales or yard sales in a residential area, not exceeding a consecutive
three-day period nor a total of nine (9) days per calendar year, but not including sales
conducted by a professional or compensated agent of the owner of the items sold.
v. Sales by or on behalf of a youth group affiliated with or sponsored by a charitable organization, governmental entity or a school, other than a school held or conducted for private or corporate profit.

z. Lodging services are exempt when they apply to:

1. All sales made directly to charitable organizations, in the conduct of their regular religious or charitable functions and activities, provided such sales are paid for directly to the seller by draft or warrant drawn on the funds of the exempt organization.

2. All sales to the United States of America, to the State, their departments, institutions or political subdivisions, which are acting in their governmental capacity, and to all sales to the Town or its departments, provided that such sales are supported by requisition on official governmental purchase orders and paid for directly to the seller by draft or warrant drawn on the funds of that governmental entity.

E.6. The sales tax shall not apply to the sale of tangible personal property at retail or the furnishing of services if the transaction already has been subjected to a legally imposed sales or use tax of another statutory or home rule city and county, city or town equal to or in excess of the sales tax. A credit shall be granted against the sales tax equal in amount to the legally imposed local sales or use tax previously paid elsewhere by the purchaser or user. The amount of the credit shall not exceed the amount of the sales tax. (Ord. B-2002; Ord. 11-2002)

4.53. Sales tax collection
(a) The provisions of this Article shall apply to the imposition as well as administration, enforcement and collection of sales and use taxes by the Town, and shall apply to the administration of the Town license as described in this Code.
(b) As used in this Article, unless the context otherwise provides, the term "code" means and includes the provisions of this Article and the provisions of each and every ordinance or code administered under the provisions of this Article.
(c) The provisions of this Article shall be construed to effect uniformity of administration, enforcement and collection of taxes, and to establish uniform procedures, but shall not be construed to extend or increase the application, rate or amount of any tax levied or imposed herein; provided, however, that the imposition of a penalty, interest or both penalty and interest shall be lawful and shall not be construed as an extension or increase of the application, rate or amount of tax.
(d) The purpose of this code is to provide the power necessary to exercise effectively the right to raise revenue that is essential to home rule and self-government. Any similarities to state law herein are adopted for the purpose of promoting efficiency in the collection of revenue. Regardless of any such similarities, the provisions contained herein are matters of solely local concern. The collection, administration and enforcement of the sales tax shall be performed by the Executive Director of the Department of Revenue of the State, at no charge to the Town, in the same manner as the collection, administration and enforcement of the state sales tax. Unless otherwise provided herein this Article or by Article 2 of Title 29, C.R.S., the provisions of Article 26 of Title 38, C.R.S., shall govern the collection, administration and enforcement of the sales tax. (Ord. B-2002; Ord. 11-2002)

4.54. Sales-tax vendor's fee, Deductions and credits
A. Deductions from gross sales. If included in reported gross sales, the following are deductible from gross sales:

1. Refunds. The price of admissions, accommodations, tangible personal property or taxable services returned by a purchaser when the price and the tax collected are refunded in cash or by credit.

2. Bad debts. Taxable sales which are found to be worthless and are actually and properly charged off as bad debts for federal income tax purposes. Any amount so deducted and subsequently collected by the taxpayer shall be subject to tax.

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

B. Credits from tax due:

1. All licensed vendors shall be entitled as collection agent for the Town to withhold an amount equal to three and one-third percent (3 1/3%) of the total amount with a maximum monthly vendor fee cap of one hundred dollars ($100) to be remitted by the vendor to the Town Executive-Director each month to cover the vendor’s expense in the collection and remittance of the sales tax. Such vendor’s fee shall be forfeited for any tax that is not reported and paid by the due date. Forfeiture of the vendor’s fee shall be prima facie evidence that the taxpayer was in violation of this Article. If any vendor is delinquent in remitting the sales tax, other than in unusual circumstances shown to the satisfaction of the Executive Director, the vendor shall not be allowed to retain any amounts to cover his or her expense in collecting and remitting said sales tax, and an amount equivalent to the full amount of the sales tax imposed by this Article shall be remitted to the Executive Director by any such delinquent vendor. (Ord. 8-2002; Ord. 11-2002)

2. Amounts previously paid pursuant to a tax levied by the Town may be credited against the tax due on transactions or items when the present owner or user has previously paid a legally imposed sales tax on the transaction or item computed at the rate established by Section 4.52.

4.55. Taxpayer (vendor and consumer) responsibilities.

(a) Burden of proof of exemption. The burden of proving that any vendor, retailer, consumer or purser is exempt from collecting or paying the tax upon any goods sold or purchased shall be on the vendor, retailer, consumer or purchaser under such reasonable requirements of proof as the Director may prescribe.

(b) Director may require reports and records. The Director may require any person, by regulation or notice served on such person, to make such return, render such statement, keep and furnish such records or make such information reports as the Director may deem sufficient to show whether or not such person is liable under this Article for payment or collection of the tax imposed herein.

(c) Vendor responsibility for collection and payment of tax. Every retailer or vendor engaged in business in the Town shall be liable and responsible for payment of an amount equivalent to the taxable sales multiplied by the rate as specified in Section 4-52 above. It shall be a violation of this Article for any seller not to collect the sales tax levied by this Article. It shall also be a violation of this Article for any purchaser not to pay the sales tax levied by this Article or to pay the tax levied upon a sale where the status of exemption is disputed.
(d) Vendor responsibility for remittance of tax. The retailer shall add the tax as a separate and distinct item, and such tax shall be a debt from the consumer to the retailer and shall be recoverable at law in the same manner as other debt.
(e) Excess tax. No retailer shall retain any tax collected in excess of the tax computed, but shall report such excess collections on the return for the period in which it was collected and include it in the calculation of tax due.
(f) Disputed tax. When a dispute arises between a retailer and a purchaser who claims that the sale is exempt from the tax, the retailer shall collect and the purchaser shall pay such tax. The purchaser may then submit a claim for refund within sixty (60) days of the date of the purchase. Any tax thus refunded by the Town will be paid directly to the purchaser. Refund allowed if exempt. A refund shall be made, or a credit allowed, for the tax paid under dispute by any purchaser who has an exemption under this code; provided that such refund shall be made by the Director after compliance with the following conditions precedent: Applications for refund must be made within sixty (60) days after the purchase of the goods whereon an exemption is claimed and must be supported by the affidavit of the purchaser accompanied by the original paid invoice, or sales receipt and certificate issued by the seller and be made upon such forms as shall be prescribed and furnished by the Director, which forms shall contain such information as the Director shall prescribe.
(g) Refund disallowed. Upon receipt of such application, the Director 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. Applicants, within fifteen (15) days after such decision is sent, may petition the Director for a hearing on the claim in the manner provided in Section 4-62.
(h) Trust status of tax in possession of retailer. All tax collected by a retailer shall be the property of the Town and remain in the hands of such retailer, who shall hold the same in trust for the sole use and benefit of the Town until paid to the Town.
(i) Timely payment evidence: computation of dates.
(1) Timely payment may be evidenced by the Town's date if mailed; otherwise, timely payment may be evidenced by the Town's validation date.
(2) Any due date, payment date or deadline for paying tax due, paying the license renewal fee, providing information or taking action which falls on a Saturday, Sunday or legal holiday recognized by either the federal government or the State shall be extended to the first business day following such weekend or holiday.

4.56 Tax returns: content, consolidation and reporting periods.
(a) Tax return: content. Form. The returns to be filed by the taxpayer or the taxpayer's trustee, manager, officer or director, shall contain such information and be completed in such manner and upon such forms as the Director may prescribe. When a return filed by a taxpayer does not include a signature, a correct Town account number or any other information required by the Director, the Director has the right to send back to the taxpayer the return and payment. The Director may consider an improperly filed return to be not filed with the Town.
(b) Consolidation of returns. A vendor doing business in two (2) or more locations, whether inside or outside the Town, who collects tax hereunder, may file a single return covering all such locations, when accompanied by a supplemental schedule showing the gross sales and service and net taxable sales and service and taxes collected thereon for each such place or location.
(c) Due date and reporting period. Every taxpayer shall file a return, whether or not tax is due, to the Town on or before the twentieth day of the month following the end of the reporting period and remit the amount of tax imposed by this Article. Unless otherwise required or approved, taxpayers shall file returns and pay taxes as follows:

1. A taxpayer whose monthly tax due to the Town is less than fifteen dollars ($15.00) may file returns and pay sales tax annually at the end of the calendar year.
2. A taxpayer who in any month has a monthly tax due to the Town of fifteen dollars ($15.00) but less than three hundred dollars ($300.00) may file returns and pay sales tax quarterly and continue to pay quarterly for the remainder of the year or until the monthly tax due reaches the level set forth in paragraph 3 below.
3. A taxpayer who in any month has a monthly tax due to the Town of three hundred ($300.00) or more shall file returns and pay tax monthly and continue to pay monthly for the remainder of the calendar year.
4. The reporting period for a final return shall end on the date of the transfer of ownership of the business, or the last day of business.
5. The reporting period for a temporary business shall end on the day the temporary location closes or special event concludes.
6. If any taxpayer who has been granted permission to file returns and pay tax on other than a monthly basis becomes delinquent, authorization for such alternate method of reporting may be revoked by the Director. Thereafter, following notice of such revocation, the taxpayer shall file returns and pay tax on a monthly basis. If the accounting methods regularly employed by the vendor or licensed consumer in the transaction of his or her business, or other conditions, are such that the returns filed made on a calendar-month basis will impose unnecessary hardship, the Director may, upon request of the vendor or licensed consumer, accept returns 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.
7. No person shall make any false statements in connection with a return.

4.57. Duties and powers of Director.
The administration of the licensing provisions of this code is hereby vested in the Director and the administration of all other provisions of the code and of the Town sales and use tax is hereby vested and shall be exercised by the Director, who shall prescribe forms and formulate and promulgate, with the approval of the Town Manager, appropriate rules and regulations to effectuate the purpose of this code, in conformity with this code and subject to other provisions of law relating thereto, for the making of returns, for the ascertainment, assessment and collection of the taxes imposed and for the proper administration and enforcement thereof, and to provide uniform methods of adding the tax, or the average equivalent thereof, to the purchase price. The Director is authorized to delegate any duty or power to a subordinate unless otherwise provided herein.

4.58. Director to examine returns.
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 Director shall have power to examine or cause to be examined by an employee, agent or representative designated by him or her for that purpose, any books, papers, records or memoranda bearing upon the matters required to be included in the return. Subject to the provisions of the code.
the Director is authorized to prescribe the duties and powers of such officers, accountants, experts and other persons as may be necessary in the performance of his or her duty.

4.55. Audits.

(a) Taxpayer's retention of records. It shall be the duty of every person liable to the Town for any tax to keep and preserve for a period of at least three (3) years such books, accounts and records as may be necessary to determine the amount of such tax liability.

(b) Records to be made available for audit. All such books, 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 by the ordinarily prudent business person and shall be open for examination at any reasonable time by the Director. The records should show:

1. Gross receipts from sales or rental payments from leases of tangible personal property (including any services that are part of the sale or lease) made in the Town, irrespective of whether the seller or lessee regards the receipts to be taxable or nontaxable.

2. All deductions allowed by law and claimed in filing returns.

3. Total purchase price of all tangible personal property purchased for sale, consumption or lease in the Town.

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

(d) Coordinated audit.

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

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

3. Except as provided in Paragraph (7) below, any taxpayer who submits a complete request for a coordinated audit and promptly signs a waiver of limitation, if required, may be audited by the Town during the twelve (12) months after request is submitted only through a coordinated audit involving all municipalities electing to participate in such an audit.

4. If the Town desires to participate in the audit of a taxpayer who submits a complete request for a coordinated audit pursuant to Paragraph (3) above, the Director shall notify the Director whose notice of audit prompted the taxpayer's request within ten (10) days after receipt of the taxpayer's request for a coordinated audit. The Director shall then cooperate with other participating municipalities in the development of arrangements for the coordinated audit, including arrangement of the time during which
the coordinated audit will be conducted, the period of time to be covered by the audit, and a coordinated notice to the taxpayer of those records most likely to be required for completion of the coordinated audit.

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

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

(5) The Town may conduct an audit in conjunction with another municipality at its own discretion.

(6) The coordinated audit procedure set forth in this Section shall not apply:
   a. When the proposed audit is a jeopardy audit;
   b. To audits for which a notice of audit was given prior to the effective date of this Article;
   c. When a taxpayer refuses to promptly sign a waiver of limitation; or
   d. When a taxpayer fails to provide a timely and complete request for a coordinated audit as provided in Paragraph (2) above.

4.60 Tax reports and returns.

(a) Town's preservation of records. All reports and returns of taxes received by the Department of Finance covered by this code shall be preserved until the Town Clerk orders them destroyed.

(b) Confidential nature of returns. Except in accordance with judicial order, consent of the taxpayer or as otherwise provided by law, the Director, the Town Manager and the Town Attorney 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 code. 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 Director in an action or proceeding under the provisions of any such taxing or open record statute when the record 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. Such copies may be certified
by the Director 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 Director in his or her discretion may furnish to the County Finance Director or Treasurer and his or her authorized personnel, to the Colorado Department of Revenue Executive Director and his or her authorized personnel, to the taxing officials of any 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 code, or in the report of an audit or investigation made with respect thereto provided; provided that such financial information is to be used only for tax purposes.

4.61. Notice by mail.
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 Director. In the event that a notice is sent to the taxpayer pursuant to this code and said notice is not received by the taxpayer through no fault of the Town, 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 mailed, and the Town shall have no further obligation to complete service of the notice.

(a) Request for hearing. Any taxpayer may request a formal or informal hearing on any proposed tax by reason of Notice of Final Determination, Assessment and Demand for Payment, or by reason of denial of his or her claim for refund, by application to the Director within fifteen (15) days of the date that a notice of deficiency, assessment or denial of refund is sent by the Director. The request for hearing shall set forth the taxpayer's reasons for and the amount of the requested changes in the deficiency, assessment, or denial of refund.

(b) Hearing time and place. The Director shall notify the taxpayer in writing of the time and place for such hearing thirty (30) days prior thereto, unless the taxpayer requests shorter notice or an extension of time. In no event shall the hearing be held more than sixty (60) days after the Director's receipt of request for a hearing. The Director shall notify the taxpayer in writing of the time and place of such hearing.

(c) Informal hearing. If the taxpayer elects to participate in an informal hearing, which hearing must be held within thirty (30) days of the Director's receipt of the taxpayer's request for a hearing, additional informal hearings shall not be permitted except at the discretion of the Director. Informal hearings shall be conducted in any manner acceptable to the taxpayer and the Director with the purpose of settling the outstanding issues between the parties. If no settlement is reached, the taxpayer must request, in writing, a formal hearing on the record within fifteen (15) days after the informal hearing, and the Director shall give notice of the formal hearing pursuant to Subsection (b) above. If the taxpayer fails to request a formal hearing, all further rights to a hearing and
appeal are waived and the taxpayer shall be bound by the Notice of Final Determination: Assessment and Demand for Payment or final Denial of Refund.

(d) Director to conduct formal hearing. The hearing shall be held before the Director or a hearing officer designated by the Director. At the hearing, the taxpayer may submit any facts or make any arguments and file any briefs and affidavits he or she believes are pertinent to his or her case. The taxpayer shall be notified of the name of the hearing officer fifteen (15) days before the hearing date, and any objection by the taxpayer to the hearing officer shall be filed in writing at least forty-eight (48) hours prior to the hearing. All reasonable costs to the Town for a hearing officer must be paid by the taxpayer requesting the formal hearing when the hearing officer determines no change in the tax due.

(e) Hearing based on written brief. The taxpayer may also file a written brief and such other written materials or documents as he or she shall deem appropriate, and request that the Director reconsider the deficiency without a hearing. The Director shall proceed to reconsider the deficiency in the same manner as if the written material submitted had been presented at a hearing pursuant to this Section. The submission of written material shall be considered for all purposes the same as a request for and submission of the material at a hearing. The Town staff and/or agents shall be permitted to respond in writing to the submittals of the taxpayer. Rebuttal submissions may be permitted at the discretion of the Director.

(f) Time limitation on request for hearing. After the expiration of fifteen (15) days from the date that the Notice of Final Determination: Assessment and Demand for Payment or Denial of Refund is sent, if the tax has not been paid, or if no request for hearing has been requested or no written brief has been filed by the taxpayer, then the Notice of Final Determination: Assessment and Demand for Payment previously mailed, faxed or e-mailed shall constitute a final assessment of the amount of the tax specified, together with interest and penalty, or shall constitute a final Denial of Refund, as the case may be. The Director may promptly take necessary steps to collect all amounts owed. The taxpayer shall have no further right to a hearing, trial or appeal on the facts of the case.

(g) Director may adjust tax under question. Based on the evidence presented at any hearing or filed in support of the taxpayer’s contentions, the Director may modify or abate in part or in full the tax and the interest and penalty related to such tax questioned at the hearing, or may approve a refund.

(h) Formal hearing determination notices. After a formal hearing, upon rejection in whole or in part of the claim for refund or upon the finding by the Director that, on hearing the evidence, an assessment in whole or in part has been made against the taxpayer validly, the Director shall send a hearing determination notice to the taxpayer, setting forth the amount of claim for refund denied or the amount of deficiency assessment of taxes found due, stating therein the grounds for allowance or rejection in whole or in part.

(i) Tax due date after hearing. Unless an appeal is taken as provided in this Article, the tax, together with interest thereon and penalties, if any, shall be paid within thirty (30) days after the hearing determination notice is sent by the Director.

(j) Appeals. The taxpayer may appeal the hearing determination notice of the Director issued pursuant to this subsection within thirty (30) days of the date that such determination is sent by the Director. Such appeal shall be conducted pursuant to the terms of Rule 106(a)(4) of the Colorado Rules of Civil Procedure or by the method of appeals set forth in Section 25-2-106, C.R.S., 4.63 Refund of excess taxes.
Whenever the Director discovers from the examination of a return or pursuant to an audit of a taxpayer's records that the taxpayer has overpaid taxes due the Town, the Director shall issue a warrant for payment of the excess taxes to the taxpayer, unless the overpayment is applied to offset other tax due. The Director shall keep a duplicate of said warrant and also a statement which sets forth the reason why such refund was ordered. If the refund totals less than fifteen dollars ($15.00), the refund amount shall be credited to the taxpayer's tax account, unless the taxpayer requests payment of the refund.

Taxpayer's discovery of overpayment of tax. A taxpayer may apply for a refund of payment of excess taxes within sixty (60) days after discovery of the overpayment. The taxpayer may deny such refund if he or she finds the taxpayer did or reasonably should have discovered the overpayment more than sixty (60) days prior to the date of the application for a refund. The taxpayer may petition the Director for a hearing on the claim in the manner provided in Section 4-62 within fifteen (15) days after the Director's Denial of Refund is sent to the taxpayer.

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 three (3) years after the Town's receipt of sales or use taxes in question.

Refund to offset previous tax due. Whenever it is established that any taxpayer has, for any period, overpaid a tax imposed by this code, and that there is an unpaid balance of tax and interest accruing according to the records of the Director, owing by such taxpayer for any other period, so much of the overpayment of tax plus interest allowable thereon as does not exceed the amount of such unpaid balance shall be credited thereto and any excess of the overpayment shall be refunded.

Refund of overpayment of taxes paid by the estimated payment basis. Application for refund by contractors paying on an estimated percentage payment basis, or actual tax basis, shall be made within three (3) years after the date of the certificate of occupancy or date of purchase, whichever is sooner. The Director may require data to accompany the application and may require an audit to be done before the refund is paid.

Refunds not assignable. The right of any person to a refund under this Code shall not be assignable, and an 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, except as provided in Subsection (k) below. The Director may, upon receiving a properly executed release of claim from the taxpayer and evidence to substantiate that the tax was remitted in error to another municipality, issue a joint refund check in the name of the taxpayer and the municipality, provided that the municipality has entered into an agreement to grant similar privileges to the Town.

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

The Town may make a written claim for recovery directly to the municipality that received tax and/or penalty and interest owed to the Town or, in the alternative, may institute procedures for collection of the tax from the taxpayer or vendor. The decision to make a claim for recovery lies in the sole discretion of the Town. Any claim for recovery shall include a properly executed release of claim from the taxpayer and/or vendor releasing his or her 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 Town 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 Town shall not be unreasonably withheld.

(s) Within ninety (90) days after receipt of a claim for recovery, the Town 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 Town shall remit the undisputed amount to the municipality submitting the claim within thirty (30) days of approval. If a claim is submitted jointly by a municipality and a vendor or taxpayer, the check shall be made to the parties jointly. Denial of a claim of recovery may only be made for good cause.

(t) The Town 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.

(u) The period subject to a claim for recovery shall be limited to the thirty-six-month period prior to the date the municipality that was wrongly paid the tax receives the claim for recovery. This period may be extended only if a written document was approved by the Director and taxpayer to toll the running of this thirty-six-month period.

4.63. Notice of sales and use tax ordinance amendment.
(a) In order to initiate a central register of sales and use tax ordinances for municipalities that administer local sales tax collection, the Director shall file with the Colorado Municipal League, prior to the effective date of this code, a copy of the Town sales and use tax ordinance reflecting all provisions in effect on the effective date of this Section.
(b) In order to keep current the central register of sales and use tax ordinances for municipalities that administer local sales tax collection, the Director shall file with the Colorado Municipal League prior to the effective date of any amendment a copy of each sales and use tax ordinance amendment enacted by the Town.
(c) Failure of the Town to file such ordinance or ordinance amendment pursuant to this Section shall not invalidate any provision of the sales and use tax ordinance or any amendment thereto.

4.64. Participation in simplification meetings.
The Director shall cooperate with and participate on an as-needed basis with a permanent statewide sales and use tax committee convened by the Colorado Municipal League, which is composed of state and municipal sales and use tax and business officials. Said committee will meet for the purpose of discussing and seeking resolution to sales and use tax problems which may arise.

4.65. Joint sales and use tax collection, administration and enforcement.
The Town may enter into an Intergovernmental agreement with another town, city or county for the joint collection, administration and enforcement of sales tax, use tax or both sales and use taxes.

4.66. Assessment, penalties and interest.
(a) Assessment: Subsection (b) below shall apply if the Director determines that any person, taxpayer or vendor 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 tax due;
(4) To pay in full all taxes due because of negligence, fraud or on a regular basis;
(5) To remit taxes due pursuant to an audit, special assessment or special audit.

(b) Assessment notice and due date. Penalties and interest shall be assessed and the Director shall serve the delinquent person, taxpayer or vendor a written Notice of Final Determination, Assessment and Demand for Payment, which notice shall state the full amount of taxes, penalties and interest due and shall be served personally, by mail or e-mail, which assessment of deficiency amount will be due and payable within fifteen (15) days of the date that such notice is served by the Director.

(c) Estimated assessment. If the Director is unable to audit the records of a taxpayer, either due to the taxpayer's refusal or lack of cooperation, due to time constraints or due to other reasons which the Director may reasonably determine, the Director shall make an estimate based upon such information as may be available and shall issue an assessment as provided herein. If a person, taxpayer or vendor neglects or refuses to make a return, the Director shall make an estimate based upon such information as may be available, of the taxes due for the period for which such person is delinquent.

(d) Failure to file penalty. If a person, taxpayer or vendor neglects or refuses to make a return as required in this code or fails to pay any sales or use tax as required by this code, and/or unless the taxpayer shows that his or her failure to comply falls within this code is due to a reasonable cause, which the taxpayer may prove in a hearing requested pursuant to this code, the Director 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 there to a penalty equal to the greater of the sum of ten dollars ($15.00) or ten percent (10%) thereof, and interest on such delinquent taxes at the rate of one percent (1%) from the date when due.

(e) Mathematical error on tax returns. In the event that the amount of tax is understated on the taxpayer's return due to a mathematical error, the Director shall notify the taxpayer by written Notice of Final Determination, Assessment and Demand for Payment of the amount of tax in excess of that shown in the return which is due and has been assessed. 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 fifteen (15) days of the date that such assessment is served by the Director.

(f) Penalty for fraud. If any deficiency in taxes paid is due to fraud with the intent to evade the tax, there shall be added, instead of the penalty prescribed in Subsection (a) above, a penalty of one hundred percent (100%) of the total amount of the deficiency to the assessment required by Subsection (a) above. Interest on such deficiency shall accrue and be collected at a rate of one percent (1%) per month on the amount of such deficiency from the time the return was due.

(g) Special penalty for repeated enforcement. In any assessment issued to a person, vendor or taxpayer against whom enforcement proceedings have been commenced in the past, a special penalty, in addition to all others provided in this code, shall also be assessed. This special penalty shall be equal to the greater of two hundred fifty dollars.
(§250,00) or twenty-five percent (25%) of the tax deficiency. For purposes of this Subsection, enforcement proceedings shall mean:

1. Issuance of a distraint warrant;
2. Filing of a lawsuit in the district or county court;
3. Three (3) occurrences of the revocation of the person's, vendor's or taxpayer's license by the Director or issuance of a summons to Municipal Court for the nonpayment of taxes or a combination of revocations and summonses.

(h) Director may waive penalty. The Director is hereby authorized to waive, for good cause shown, any penalty assessed as provided in this code. Interest imposed in excess of nine percent (9%) per annum shall be deemed a penalty. If the Director finds that a taxpayer has, in good faith, paid tax to a vendor, the Director is hereby authorized to abate the interest and penalty in its entirety.

(i) 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 applicable. If any portion of a tax is satisfied by credit of an overpayment, no interest or penalty shall be imposed under this Section on the portion of the tax so satisfied.

4.67. Lien on assets
1. If any person fails to pay the sales tax within fifteen (15) days after it is due, the Town Treasurer Director shall issue a notice setting forth the name of the taxpayer, the amount of the sales tax owed, the date of the accrual thereof, and that the Town claims a first and prior lien therefor on any and all assets owned by the taxpayer, except as to preexisting liens of a bona fide mortgagee, pledgee, judgment creditor or purchaser, which right has attached prior to the filing of the notice as hereinafter provided. The notice shall be on forms prepared by the Town Treasurer Director, and when filed in the office of the clerk and recorder of any county in the State in which the taxpayer owns real or personal property, such notice shall create a lien as aforesaid on such property in that county and constitute a notice thereof. (Ord. 8-2002; Ord. 11-2002)

2. Perpetuation of lien.
   a. Any lien for total tax liability shall continue until release of lien is filed by the Director.
   b. Any person who purchases or repossesses real or personal property upon which a lien has been filed by the Director for total tax liability shall be liable for the payment of such total tax liability up to the value of the property taken or acquired.

3. Release of lien. Upon payment of the total tax liability or enforcement of the lien, the Director shall file a release with the county clerk and recorder of the county in which the lien was filed.

4.68. Effective date. The ordinance codified in this Article shall take effect January 1, 2009, and shall apply to transactions consummated after that date. (Ord. 8-2002; Ord. 11-2002)

Secs. 4-5659-4-70. Reserved.
ARTICLE VI FEES

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<tr>
<th>Section</th>
<th>Description</th>
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<td>4.54</td>
<td>Sales tax vendors</td>
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<td>4.103</td>
<td>Returned checks</td>
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<td>6.15</td>
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4.103. Returned checks

A fee of twenty-five dollars ($25.00) shall be assessed by the Town against any person who issues a check returned for insufficient funds or lack of an account to the Town in payment of taxes, licenses or any other fees collectable by the Town. Any other penalties or interest prescribed by any provision of this Code or state law may be applied. (Ord. 11-2002)