

ORDINANCE NO. 19-13

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
CASTLE PINES, COLORADO, REPEALING AND REPLACING
ARTICLE 3, SALES AND USE TAX, OF CHAPTER 4 OF THE
MUNICIPAL CODE**

WHEREAS, on May 14, 2019, electors of the City of Castle Pines (“City”) voted to approve the City Home Rule Charter (“Charter”); and

WHEREAS, the Charter is the controlling document for the City, and any inconsistencies in the City Municipal Code (“Code”) must be revised; and

WHEREAS, pursuant to its home rule powers and authority, the City Council desires to adopt comprehensive provisions governing the imposition of sales and use tax of the City and thereby transfer responsibility for the collection, administration and enforcement of the City’s sales tax from the Colorado Department of Revenue to the City; and

WHEREAS, through the repeal and re-enactment of Article 3 of Chapter 4 (“Sales and Use Tax Code”), the City Council further desires to effect uniformity of imposition, administration, enforcement and collection of taxes and to establish uniform procedures;

WHEREAS, through the adoption of the Sales and Use Tax Code, the Council does not intend 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; and,

WHEREAS, the City Council finds that the Sales and Use Tax Code advances the public health, safety, convenience and general welfare of the residents of the City.

**THE CITY COUNCIL OF THE CITY OF CASTLE PINES, COLORADO,
ORDAINS:**

Section 1. Repeal and Replace Article 3, Chapter 4. Article 3, Chapter 4, of the Castle Pines Municipal Code is hereby repealed and replaced with Article 3, as set forth in full in Exhibit A, attached hereto and incorporated herein by reference.

Section 2. No Existing Violation Affected. Nothing in this Ordinance shall be construed to affect any suit or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any ordinance hereby repealed or amended by this Ordinance, or any just or legal right or remedy of any character be lost, impaired, or affected by this Ordinance.

Section 3. Repeal of Previous Ordinances. Any and all ordinances or codes or parts thereof in conflict or inconsistent herewith are, to the extent of such conflict or inconsistency,

hereby repealed; provided, however, that the repeal of any such ordinance or code or part thereof shall not revive any other section or part of any ordinance or code heretofore repealed or superseded and this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the effective date of this Ordinance.

Section 4. Codification Amendments. The codifier of the City’s Municipal Code is hereby authorized to make such numerical and formatting changes as may be necessary to incorporate the provisions of this Ordinance within the Castle Pines Municipal Code.

Section 5. Safety Clause. The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Castle Pines, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

Section 6. Publication and Effective Date. The City Clerk is hereby directed to cause publication of this Ordinance in accordance with Section 6.5 of the Charter. This Ordinance shall be effective thirty (30) days after final publication on the City’s official website and posted at the City Clerk’s office pursuant to Section 1-3-40 of the Municipal Code.

INTRODUCED, READ, AND PASSED ON FIRST READING, AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES, COLORADO, the 22ND DAY OF OCTOBER, 2019.

READ, PASSED, AND ADOPTED ON SECOND READING, FOLLOWING A PUBLIC HEARING, AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES, COLORADO the 12TH DAY OF NOVEMBER, 2019.

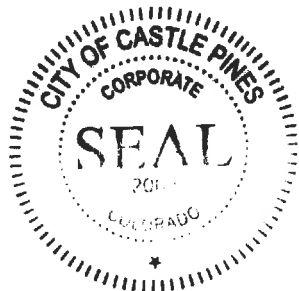
DocuSigned by:
Tera Stave Radloff
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Tera Stave Radloff, Mayor

ATTEST:

DocuSigned by:
Tobi Basile
AD02A3B02032400...
Tobi Basile, CMC, City Clerk

Approved as to form:

DocuSigned by:
Linda C. Michow
52410E00B9FF444...
Linda C. Michow, City Attorney



CERTIFICATION OF PUBLICATION

I hereby attest and certify that the within and foregoing Ordinance was introduced and read on first reading on October 22, 2019; published by title only in the *Douglas County News-Press*, together with the statement that “[t]he complete text of the ordinance is available through the City Clerk’s office and on the City’s official website with second reading and public hearing to be held on November 12, 2019”; and finally passed and adopted by the City Council on November 12, 2019, 2019, following a duly noticed public hearing and published on the City’s official website and posted at the City Clerk’s office on October 23, 2019.

ATTEST:


DocuSigned by:

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Tobi Basile, CMC, City Clerk

EXHIBIT A to ORDINANCE 19-13
CHAPTER 4
ARTICLE 3 – SALES AND USE TAX

ARTICLE 3 - Sales and Use Tax

Division 1 General Provisions

Sec. 4-3-10. - Title.

The provisions of this Article shall be known and cited as the "Castle Pines Sales and Use Tax Code."

Sec. 4-3-20. - Purpose and Interpretation.

- (a) The provisions of this Article shall apply to the imposition, administration, enforcement and collection of sales and use taxes by the City.
- (b) The provisions of this Article shall be construed to effect uniformity of imposition, 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. Regardless of any similarities or any reference to State statute, the provisions contained herein are matters of solely local concern.

Sec. 4-3-30. - Definitions.

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

Automotive vehicle means any vehicle or device in, upon, or by which any person or property is or may be transported or drawn upon a public highway, or any device used or designed for aviation or flight in the air. Automotive Vehicle includes, but is not limited to, motor vehicles, trailers, semi-trailers, or mobile homes. Automotive Vehicle shall not include devices moved by human power or used exclusively upon stationary rails or tracks.

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

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

City means the City of Castle Pines or the area within its territorial limits, depending on the context.

City Manager means the appointed City Manager of the City or any designee of the City Manager, whether an employee, agent or contractor. Whenever any right or duty is given to or placed on the City Manager under this Article, the City Manager may assign such right or delegate such duty to another employee, contract agent or contractor, unless specifically prohibited by a provision of this Article.

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, locksmith fees, auction fees and costs, prosecution and attorney fees.

Cooperative direct mail advertising means advertising for one or more businesses which is in the form of discount coupons, advertising leaflets, or other printed advertising which are delivered by mail in a single package or bundle to potential customers of such businesses participating in such advertising.

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

Consumer means any person in the City who purchases, uses, stores, distributes or otherwise consumes tangible personal property or taxable services, purchased from sources inside or outside the City.

Contract agent means a duly authorized agent designated by the City and qualified to perform functions in accordance with this Article on behalf of the City.

Contractor means any person who shall build, construct, reconstruct, alter, expand, modify, or improve any building, dwelling, structure, infrastructure, or other improvement to real property for

another party pursuant to an agreement. For purposes of this definition, Contractor also includes subcontractor.

Direct mail advertising materials means discount coupons, advertising leaflets, and other printed advertising, including, but not limited to, accompanying envelopes and labels.

Distraint warrant means a warrant served by the sheriff or authorized agent, indicating the amount due and date to be paid by and requiring that the delinquent taxpayer not remove or destroy any property in the business. If taxes are still not paid, property may be seized, advertised and sold for the amount of taxes and expenses due.

Doing business in this City means the selling, leasing, or delivering in this City, or any activity in this City in connection with the selling, leasing, or delivering in this City, of tangible personal property or taxable services by a retail sale as defined in this section, for use, storage, distribution, or consumption within this City. This definition affects the imposition, application, or collection of sales and use taxes only. Doing business in this City includes, but shall not be limited to, the following acts or methods of transacting business:

- a. The maintaining within this City, directly or indirectly or by a subsidiary, of an office, distribution facility, salesroom, warehouse, storage place, or other similar place of business, including the employment of a resident of this City who works from a home office in this City; or
- b. The soliciting, either by direct representatives, indirect representatives, manufacturers' agents, or by distribution of catalogues or other advertising, or by use of any communication media, or by use of the newspaper, radio, or television advertising media, or by any other means whatsoever, of business from persons residing in this City and by reason thereof receiving orders from, or selling or leasing tangible personal property to, such persons residing in this City for use, consumption, distribution, and storage for use or consumption in this City.
- c. Economic nexus.
 1. Except as provided in subsection (c)(2) of this section, a person is doing business in this City in a calendar year:
 - (A) If in the previous calendar year the person has made retail sales of tangible personal property, commodities, or services in the state as specified in section 4-3-210, exceeding one hundred thousand dollars; or
 - (B) On and after the first day of the month after the ninetieth day after the person has made retail sales of tangible personal property,

commodities, or services in the City as specified in section 4-3-210, in the current calendar year that exceed one hundred thousand dollars.

2. For purposes of determining whether the thresholds set forth in subsection (c)(1) of this section are met:
 - (A) A marketplace facilitator shall include all sales made by marketplace sellers in and through its marketplace; and
 - (B) A marketplace seller shall not include any sales made in or through a marketplace facilitator's marketplace.
3. This subsection (c) does not apply to any person who is doing business in this City under subsection (a) of this section but otherwise applies to any other person.

Fabricating means an operation which changes the form or state of tangible personal property.

Finance Department means the Finance Department of the City.

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

Food for home consumption means food for domestic home consumption as defined in 7 U.S.C. sec. 2012 (k) (2014), as amended, for purposes of the supplemental nutrition assistance program, or any successor program, as defined in 7 U.S.C. sec. 2012 (t), 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. In determining whether a food product is for domestic home consumption, unless the vendor is described in section 4-3-210 (e), no inference shall be drawn from the type of vendor selling the product, the location of the product within a store, or the manner in which the product is marketed.

Garage Sales means sales of tangible personal property, except automotive vehicles, occurring at or from the residence of the seller, where the property to be sold was originally purchased for use by members of the household of the seller. The term includes, but is not limited to, individual item sales, yard sales, estate sales, and block sales.

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

License means a City of Castle Pines business license.

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

Manufacturing means the operation or performance of an integrated series of operations which places a product, article, substance, commodity, or other tangible personal property in a form, composition or character different from that in which it was acquired whether for sale or for use by a manufacturer. The change in form, composition or character must result in a different product having a distinctive name, character or use from the raw or prepared materials.

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

Marketplace facilitator means

- a. A person who:
 1. Contracts with a marketplace seller to facilitate for consideration, regardless of whether the consideration is deducted as fees from the transaction, the sale of the marketplace seller's tangible personal property, commodities, or services through the person's marketplace;
 2. Engages directly or indirectly, through one or more affiliated persons, in transmitting or otherwise communicating the offer or acceptance between a purchaser and the marketplace seller; and
 3. Either directly or indirectly, through agreements or arrangements with third parties, collects the payment from the purchaser and transmits the payment to the marketplace seller.
- b. A marketplace facilitator does not include a person that exclusively provides internet advertising services or lists products for sale, and that does not otherwise meet the definition set forth in subsection a. of this section.

Marketplace seller means a person, regardless of whether the person is doing business in this state, who has an agreement with a marketplace facilitator and offers for sale tangible personal property, commodities, or services through a marketplace owned, operated, or controlled by a marketplace facilitator.

Multichannel seller means a retailer that offers for sale tangible personal property, commodities, or services through a marketplace owned, operated, or controlled by a marketplace facilitator, and through other means.

Online garage sales means sales of tangible personal property, except automotive vehicles, occurring online, where the property to be sold was originally purchased for use by the seller or members of the seller's household.

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

Prepress preparation material means all materials used by those in the printing industry including, but not limited to, airbrush color photos, color keys, dies, engravings, light-sensitive film, light-sensitive paper, masking materials, Mylar, plates, proofing materials, tape, transparencies, and veloxes, which are used by printers in the preparation of customer specific layouts or in plates used to fill customers' printing orders, which are eventually sold to a customer, either in their original purchase form or in an altered form, and for which a sales or use tax is demonstrably collected from the printer's customer, if applicable, either separately from the printed materials or as part of the inclusive price therefor. Materials sold to a printer which are used by the printer for the printer's own purposes, and are not sold, either directly or in an altered form, to a customer, are not included within this definition.

Preprinted newspaper supplements means inserts, attachments or supplements circulated in newspapers that: (1) are primarily devoted to advertising; and (2) the distribution, insertion, or attachment of which is commonly paid for by the advertiser.

Price or purchase price:

- a. Means the aggregate value measured in currency paid or delivered or promised to be paid or delivered in consummation of a sale, without any discount from the price on account of the cost of materials used, labor or service cost, and exclusive of any direct tax imposed by the federal government or by this Article, and, in the case of all retail sales involving the exchange of property, also exclusive of the fair market value of the property exchanged at the same time and place of the exchange, if:
 1. Such exchanged property is to be sold thereafter in the usual course of the retailer's business, or
 2. Such exchanged property is a vehicle and is exchanged for another vehicle and both vehicles are subject to licensing, registration, or certification under the laws of this state, including, but not limited to, vehicles operating upon public highways, off-highway recreation vehicles, watercraft, and aircraft. Any money or other consideration paid over and above the value of the exchanged property is subject to tax.

b. Price or purchase price includes:

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

c. Price or purchase price shall not include:

1. Any sales or use tax imposed by the State of Colorado or by any political subdivision thereof.
2. The fair market value of property exchanged if such property is to be sold thereafter in the retailers' usual course of business. This is not limited to exchanges in Colorado. Out of state trade-ins are an allowable adjustment to the purchase price.
3. Discounts from the original price if such discount and the corresponding decrease in sales tax due is actually passed on to the purchaser, and the seller

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

- d. In the case of the sale or transfer of wireless telecommunication equipment as an inducement to a consumer to enter into or continue a contract for telecommunication services that are taxable pursuant to this Article, purchase price means and shall be limited to the monetary amount paid by the consumer, and shall not reflect any sales commission or other compensation received by the retailer as a result of the consumer entering into or continuing a contract for such telecommunication services. Nothing in this Subparagraph shall be construed to define purchase price as it applies to the amount a retailer collects from a consumer who defaults or terminates a contract for telecommunication services.
- e. With respect to the purchase price of a heavy truck, trailer, or tractor, the price to the consumer shall also be exclusive of the federal excise tax on the first retail sale of the heavy truck, trailer, or tractor for which the retailer is liable.

Purchaser means a person that purchases, uses, stores or consumes property or services taxable under this Article.

Retail sale includes all sales made within the City except wholesale sales.

Retailer means any person selling, leasing, renting, or granting a license to use tangible personal property or services at retail. Retailer shall include, but is not limited to, any: (1) auctioneer; (2) salesperson, representative, peddler or canvasser, who makes sales as a direct or indirect agent of or obtains such property or services sold from a dealer, distributor, supervisor or employer; (3) charitable organization or governmental entity which makes sales of tangible personal property to the public, notwithstanding the fact that the merchandise sold may have been acquired by gift or donation or that the proceeds are to be used for charitable or governmental purposes; (4) retailer-contractor, when acting in the capacity of a seller of building supplies, construction materials, and other tangible personal property; and, (5) marketplace facilitator, marketplace seller, and multichannel seller doing business in this City.

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

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

Sale or sale and purchase includes installment and credit sales and the exchange of property, as well as the sale thereof, for money, every such transaction, conditional or otherwise, for a consideration, constituting a sale; and the sale or furnishing of electrical energy, gas, steam, telephone or telegraph services taxable under the terms of this Article. Sale or sale and purchase also includes the transaction of furnishing rooms or accommodations by any person to a person who, for a consideration, uses, possesses or has the right to use or possess any room in a hotel, inn, bed and breakfast, residence, apartment hotel, lodging house, motor hotel, guest house, guest ranch, trailer coach, mobile home, auto camp or trailer court and park, under any concession, permit, right of access, license to use or other agreement, or otherwise. Neither term includes:

- a. A division of partnership or limited liability company assets among the partners or limited liability company members according to their interests in the partnership or limited liability company.
- b. The formation of a corporation by the owners of a business and the transfer of their business assets to the corporation in exchange for all of the corporation's outstanding stock, except qualifying shares, in proportion to the assets contributed;
- c. The transfer of assets of shareholders in the formation or dissolution of professional corporations;
- d. The dissolution and the pro rata distribution of the corporation's assets to its stockholders;
- e. The transfer of assets from a parent corporation to a subsidiary corporation or corporations which are owned at least eighty percent (80%) by the parent corporation, which transfer is solely in exchange for stock or securities of the subsidiary corporation;
- f. The transfer of assets from a subsidiary corporation or corporations which are owned at least eighty percent (80%) by the parent corporation to a parent corporation or to another subsidiary which is owned at least eighty percent (80%) by the parent corporation, which transfer is solely in exchange for stock or securities of the parent corporation or the subsidiary which received the assets;
- g. A transfer of a limited liability company or partnership interest;
- h. The transfer in a reorganization qualifying under Section 368(a)(1) of the Internal Revenue Code, as amended.
- i. The formation of a limited liability company or partnership by the transfer of assets to the limited liability company or partnership or transfers to a limited liability company

or partnership in exchange for proportionate interests in the limited liability company or partnership.

- j. The repossession of personal property by a chattel mortgage holder or foreclosure by a lienholder.
- k. The transfer of assets between parent and closely held subsidiary corporations, between subsidiary corporations closely held by the same parent corporation, or between corporations which are owned by the same shareholders in identical percentage of stock ownership amounts, computed on a share-by-share basis, when a tax imposed by this Article was paid by the transferor corporation at the time it acquired such assets, except to the extent provided by Subparagraph l. below. For the purposes of this Subparagraph, a closely held corporation is one in which the parent corporation owns stock possessing at least eighty percent (80%) of the total combined voting power of all classes of stock entitled to vote and owns at least eighty percent (80%) of the total number of shares of all other classes of stock.
- l. Except as otherwise provided in this subparagraph, the sales tax is imposed on the full purchase price of articles sold after manufacture or after having been made to order and includes the full purchase price for material used and the service performed in connection therewith, excluding, however, such articles as are otherwise exempted in this Article. In connection with the transactions referred to in subparagraph k. above, the sales tax is imposed only on the amount of any increase in the fair market value of such assets resulting from the manufacturing, fabricating or physical changing of the assets by the transferor corporation. Except as otherwise provided in this subparagraph, the sales price is the gross value of all materials, labor and service, and the profit thereon, included in the price charged to the user or consumer.

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

School means a public or nonpublic school for students in kindergarten through 12th grade or any portion thereof.

Security system services means electronic alarm and/or monitoring services. Such term does not include non-electronic security services such as consulting or human or guard dog patrol services.

Separable means charges for transportation or other charges to effect delivery of Tangible Person Property when and if the Retailer allows the Purchaser the option either to use the Retailer's transportation services or use alternative transportation services (including but not limited to the

Purchaser picking up the property at the Retailer's location). The fact that transportation charges are separately stated does not, in and of itself, mean the charges are a separable charge.

Separately stated means set forth separately in a written sales contract, retailer's invoice or other written document issued in connection with the sale.

Storage or Storing means any keeping or retention of, or exercise dominion or control over, or possession of, for any length of time, tangible personal property not while in transit but on a stand still basis for future use when leased, rented or purchased at retail from sources either within or without the City from any person or vendor.

Tangible personal property:

a. Means corporeal personal property. The term shall not be construed to include newspapers, as legally defined by section 24-70-102, C.R.S., preprinted newspaper supplements that become attached to or inserted in and distributed with such newspapers, or direct mail advertising materials that are distributed in the City by any person engaged solely and exclusively in the business of providing cooperative direct mail advertising.

b.

1. Tangible personal property shall include computer software if the computer software meets all of the following criteria:

(A) The computer software is prepackaged for repeated sale or license;

(B) The use of the computer software is governed by a tear-open nonnegotiable license agreement; and

(C) The computer software is delivered to the customer in a tangible medium. Computer software is not delivered to the customer in a tangible medium if it is provided through an application service provider, delivered by electronic computer software delivery, or transferred by load and leave computer software delivery.

2. As used in this subparagraph b., unless the context otherwise requires:

(A) *Application service provider or ASP* means an entity that retains custody over or hosts computer software for use by third parties. Users of the computer software hosted by an ASP typically will access the computer software via the internet. The ASP may or may not own or license the computer software, but generally will own and maintain hardware and networking equipment required for the user to access the computer software. Where the ASP owns the

computer software, the ASP may charge the user a license fee for the computer software or a fee for maintaining the computer software or hardware used by its customer.

- (B) *Computer software* means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.
 - (C) *Electronic computer software delivery* means computer software transferred by remote telecommunications to the purchaser's computer, where the purchaser does not obtain possession of any tangible medium in the transaction.
 - (D) *Load and leave computer software delivery* means delivery of computer software to the purchaser by use of a tangible medium where the title to or possession of the tangible medium is not transferred to the purchaser, and where the computer software is manually loaded by the vendor, or the vendor's representative, at the purchaser's location.
 - (E) *Prepackaged for repeated sale or license* means computer software that is prepackaged for repeated sale or license in the same form to multiple users without modification and is typically sold in a shrink-wrapped box.
 - (F) *Tangible medium* means a tape, disk, compact disc, card, or comparable physical medium.
 - (G) *Tear-open nonnegotiable license agreement* means a license agreement contained on or in the package, which by its terms becomes effective upon opening of the package and accepting the licensing agreement. Tear-open nonnegotiable license agreement does not include a written license agreement or contract signed by the licensor and the licensee.
3. The internalized instruction code that controls the basic operations, such as arithmetic and logic, of the computer causing it to execute instructions contained in system programs is an integral part of the computer and is not normally accessible or modifiable by the user. Such internalized instruction code is considered part of the hardware and considered tangible personal property that is taxable pursuant to section 4-3-210 (a). The fact that the vendor does or does not charge separately for such code is immaterial.

4. If a retailer sells computer software to a City purchaser that is considered tangible personal property taxable pursuant to section 4-3-210 (a) and the City purchaser pays the retailer for a quantity of computer software licenses with the intent to distribute the computer software to any of the purchaser's locations outside of the City, the measure of City sales tax due is the total of the license fees associated only with the licenses that are actually used in the City. The City purchaser shall provide a written statement to the retailer, attesting to the amount of the license fees associated with Colorado and with points outside of Colorado. The written statement shall relieve the retailer of any liability associated with the proration.

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

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

Taxable services or 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 and/or interest owed by a taxpayer and shall include sales tax collected in excess of such tax computed on total sales.

Transportation Charges means carrying, handling, delivery, mileage, freight, postage, shipping, trip charges, stand-by and other similar charges or fees.

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

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

Vendor means retailer.

Wholesale sale:

- a. 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.
- b. Wholesale sale includes sales of all preprinted newspaper supplements, as defined in this Section that 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 City.
- c.
 1. Wholesale sale includes sales of agricultural compounds and spray adjuvants to be consumed by, administered to, or otherwise used in caring for livestock and all sales of semen for agricultural or ranching purposes.
 - (A) For purposes of this subparagraph 1., *Agricultural compounds* means:
 - i. Insecticides, fungicides, growth-regulating chemicals, enhancing compounds, vaccines, and hormones;
 - ii. Drugs, whether dispensed in accordance with a prescription or not, that are used for the prevention or treatment of disease or injury in livestock;
 - iii. Animal pharmaceuticals that have been approved by the food and drug administration.

(B) For purposes of this paragraph 1., *Spray adjuvants* means products that are used to increase the effectiveness of a pesticide.

- d. Wholesale sale includes sales of pesticides that are registered by the commissioner of agriculture for use in the production of agricultural and livestock products pursuant to the "Pesticide Act", article 9 of title 35, C.R.S., and offered for sale by dealers licensed to sell such pesticides pursuant to section 35-9-115, C.R.S.
- e. Wholesale sale includes sales of fertilizer for use in the production of agricultural commodities. For purposes of this subsection *Fertilizer* means fertilizer as defined in section C.R.S. 35-12-103 (12), but not including specialty fertilizer as defined in section C.R.S. 35-12-103 (30).
- f. Wholesale sale includes sales of spray adjuvants for use in the production of agricultural commodities. For purposes of this subsection, *Spray adjuvants* means products that are used to increase the effectiveness of a pesticide.
- g. For purposes of this subsection, agricultural commodities does not include products regulated under C.R.S. Articles 11 and 12 of title 44.

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

Sec. 4-3-40. - Duties and powers of City Manager.

- (a) The administration of all provisions of this Article and of the City sales and use tax is hereby vested in and shall be exercised by the City Manager who shall prescribe forms and formulate and promulgate appropriate rules and regulations to effectuate the purpose of this Article, in conformity with this Article 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.
- (b) The City Manager shall have power and authority to add, enact, promulgate, amend and rescind rules and regulations that are not inconsistent with the provisions of this Article. Regulations adopted, amended or rescinded by the City Manager shall be effective in the manner and at the time prescribed by the City Manager, subject to the provisions of this Article.
- (c) The City Manager may delegate to any employee, contract agent, representative or contractor of the City such power and authority as deemed reasonable and proper for the effective administration of this Article.

- (d) For the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of the tax due from any taxpayer, the City Manager shall have power to examine or cause to be examined the records required to be kept pursuant to Section 4-3-600 of this Article. Subject to the provisions of this Article, the City Manager is authorized to prescribe the duties and powers of such officers, accountants, contract agents, experts and other persons as may be necessary in the performance of his or her duty.

Sec. 4-3-50. - Violations and judicial enforcement.

- (a) It shall be a violation of this Article for any person subject to the tax levied by this Article to fail to obtain and maintain any license required hereunder, to refuse to make any return required to be made by this Article, or to make any false or fraudulent return or claim for refund, or any false statements in any return, or to fail or refuse to make payment to the City Manager of any taxes collected or due the City, or in any manner to evade the collection and payment of the tax, or any part thereof, imposed by this Article, or to fail or refuse to pay such tax or evade the payment thereof, or to otherwise violate any of the provisions of this Article or to aid or abet another in any attempt to evade the payment of the tax imposed hereunder. Any person convicted of a violation hereunder shall be subject to prosecution and the imposition of penalties as provided by law.
- (b) It shall be a violation of this Article for any purchaser or taxpayer not to pay the sales tax levied by this Article or to fail to pay the tax levied upon a sale where the status of exemption is disputed.
- (c) The City Manager has the authority of a peace officer, as such term is defined under the Colorado Municipal Court Rules, to summon into the City's Municipal Court any person who may be in violation of this Article.
- (d) If any person is convicted of a violation of filing a fraudulent claim for refund, such conviction shall be prima facie evidence that all refunds received by such person during the current year were obtained unlawfully and the Finance Director is hereby empowered and directed to bring appropriate collection proceedings for recovery of such refunds.
- (e) Personal liability. Any taxpayer, or person who executes any form or report required by this Article to be submitted to the City, shall be personally responsible for the payment of any taxes required under this Article.
- (f) Nothing contained in this section shall limit the City's authority to enforce the provisions of this Article by any other lawful means.

Sec. 4-3-60. - Liability for payment; taxes held in trust.

- (a) All sums of money paid by the purchaser to the retailer as taxes imposed by this Article shall be and remain public money, the property of the City, in the hands of such retailer and he or she shall hold the same in trust for the sole use and benefit of the City, until paid to the City, and for any failure to so pay to the City, such retailer shall be punished as provided by law.
- (b) Every retailer doing business in this City and selling at retail shall be liable and responsible for the payment of an amount equivalent to the amount of the tax imposed by this Article computed on the total of all sales made by such retailer of tangible personal property or services as specified herein.
- (c) Every person obligated to pay use tax under this Article shall be liable and responsible for the payment of such tax.
- (d) Any statute of limitations set forth in this Article does not apply to collections of public money in the possession of the retailer, and such moneys are collectable at any time after their due date upon demand of the City Manager. Bankruptcy will not excuse unremitted taxes collected in trust.

Sec. 4-3-70. – Statute of Limitations.

- (a) General limitations.
 - 1. Statute of limitations. Except as provided in this section, the taxes for any period, together with the interest thereon and penalties with respect thereto, imposed by this Article shall not be assessed or credit taken, nor shall any notice of lien be filed, distraint warrant issued or suit for collection be instituted, or any other action to collect the same be commenced, more than three (3) years after the date on which the tax was or is payable; nor shall any lien continue after such period, except for taxes assessed before the expiration of such period, notice of lien with respect to which has been filed prior to the expiration of such period. In the case of a failure to make a return or in the case of a false or fraudulent return with intent to evade tax, the tax, together with interest and penalties thereon, may be assessed, or proceedings for the collection of such taxes may be begun at any time. The commencement of collection proceedings, including the mailing of a notice of audit, shall toll the running of the statute of limitations. For purposes of the application of the statute of limitation to use tax paid on a building permit, tax shall not be assessed or credit taken, nor shall any notice of lien be filed, distraint warrant issued, suit for collection be instituted or any other action to collect the same be commenced, more than three (3) years after the date of the certificate of occupancy.
 - 2. Date fixed. For purposes of this Section, a tax return filed before the last day prescribed by law or by regulation promulgated pursuant to law for the filing thereof shall be considered as filed on such last day.

3. Payment arrangement. Where, before the expiration of the time prescribed in this Section for the assessment of tax, both the Finance Director and the taxpayer have consented in writing to any assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon or by the commencement of collection proceedings made before the expiration of the period previously agreed upon. Additional interest shall be paid on taxes due at the rate of nine percent (9%) per annum.
4. Revision qualification. Nothing in this Section shall be construed to limit any right accrued or to revive any liability barred by any statute at the date this Article becomes effective.

Sec. 4-3-80. - Preservation, production and confidentiality of tax reports, returns and license applications.

- (a) City's preservation of records. All reports and returns of taxes received by the Finance Department covered by this Article shall be preserved subject to the Colorado Municipal Records Retention Schedule, as adopted by the City.
- (b) Confidential nature of returns. Except in accordance with judicial order, consent of the taxpayer or as otherwise provided by law, the Finance Director, the City Manager and the City Attorney shall not divulge or make known in any way 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 Finance Director in an action or proceeding under the provisions of any such taxing or open record statutes when the report of facts shown thereby is directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit into evidence, so much of said reports, or of the facts shown thereby, as are pertinent to the action or proceeding, and no more.
- (c) Taxpayer request for records. Nothing contained in this Section shall be construed to prohibit the delivery to a person or his or her duly authorized representative of a copy of any return or report filed in connection with his or her tax, and such copies may be certified by the Director, and when so certified shall be evidence equal 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 Finance Director, in his or her discretion, may furnish to the Douglas County Finance

Director and his or her authorized personnel, to the State of Colorado Department of Revenue Executive Director and his or her authorized personnel, to the taxing officials of the State political subdivisions, to the taxing officials of any other state and its political subdivisions and to the United States, any information contained in tax returns and related schedules and documents filed pursuant to this Article, or in the report of an audit or investigation made with respect thereto, provided that such information is to be used only for tax purposes.

Sec. 4-3-90. - Use of revenues.

- (a) **Sales tax:** All revenues derived from the sales tax shall be used for any purpose authorized by law and the City Council.
- (b) **Use tax on building and construction materials:** The revenues derived from the use tax on the use and consumption of building and construction materials shall be used for any purpose authorized by law and the City Council.
- (c) **Use tax on automotive vehicles:** All revenues derived from the use tax on the storage, use or consumption of automotive vehicles shall be used any purpose authorized by law and the City Council.

Division 2 Imposition of Sales Tax

Sec. 4-3-200. - Rate of sales tax.

The sales tax imposed under this Article shall be at a rate of two and three-fourths percent (2.75%) on the purchase price upon the sale of tangible personal property at retail and the furnishing of services, as provided herein.

Sec. 4-3-210. - Imposition of sales tax.

In addition to the tax on automotive vehicles there is hereby levied, and there shall be collected and paid, a sales tax at the rate stated in section 4-3-200 of this Article, upon the following:

- (a) On the purchase price paid or charged upon all sales of tangible personal property at retail.
- (b) In the case of retail sales involving the exchange of property, on the purchase price paid or charged, including the fair market value of the property exchanged at the time and place of the exchange, excluding, however, from the consideration or purchase price, the fair market value of the exchanged property if:
 - 1. Such exchanged property is to be sold thereafter in the usual course of the retailer's business; or
 - 2. Such exchanged property is a vehicle and is exchanged for another vehicle and both vehicles are subject to licensing, registration, or certification under the laws of this state,

including, but not limited to, vehicles operating upon public highways, off-highway recreation vehicles, watercraft, and aircraft. The exchange of three or more vehicles of the same type by any person in any calendar year in transactions subject to the provisions of this Article shall be prima facie evidence that such person is engaged in the business of selling vehicles of the type involved in such transactions and that he is thereby subject to any licensing requirements necessary to engage in such activity.

- (c) Upon telephone and telegraph services, whether furnished by public or private corporations or enterprises for all intrastate telephone and telegraph service. Mobile telecommunications services shall be subject to the tax imposed by this Section only if the service is provided to a customer whose place of primary use is within the City and the service originates and terminates within the City. In accordance with the "Mobile Telecommunications Sourcing Act", 4 U.S.C. secs. 116 to 126, as amended, on or after August 1, 2002, mobile telecommunications service provided to a customer whose place of primary use is outside the borders of the state of Colorado is exempt from the tax imposed by this section.

1. If a customer believes that a tax, charge, or fee assessed by the state in the customer's bill for a mobile telecommunications service is erroneous, or that an assignment of place of primary use or taxing jurisdiction on said bill is incorrect, the customer shall notify the home service provider in writing within two years after the date the bill was issued. The notification from the customer shall include the street address for the customer's place of primary use, the account name and number for which the customer seeks a correction, a description of the alleged error, and any other information that the home service provider may require.

2. No later than sixty days after receipt of notice from a customer pursuant to subparagraph (1) of this paragraph (c), the home service provider shall review the information submitted by the customer and any other relevant information and documentation to determine whether an error was made. If the home service provider determines that an error was made, the home service provider shall refund or credit to the customer any tax, fee, or charge erroneously collected from the customer for a period not to exceed two years. If the home service provider determines that no error was made, the home service provider shall provide a written explanation of its determination to the customer.

3. Any customer that believes a tax, charge, or fee assessed by the state in the customer's bill for mobile telecommunications services is erroneous, or that an assignment of place of primary use or taxing jurisdiction on said bill is incorrect, may file a claim in the appropriate district court only after complying with the provisions of this subparagraph (c).

4. As used in this paragraph (c), unless the context otherwise requires:

- I. Act means the federal "Mobile Telecommunications Sourcing Act", 4 U.S.C. secs. 116 to 126, as amended.
- II. Customer means customer as defined in section 124 (2) of the act.
- III. Home service provider means home service provider as defined in section 124 (5) of the act.
- IV. Mobile telecommunications service means mobile telecommunications service as defined in section 124 (7) of the act.
- V. Place of primary use means the place of primary use as defined in section 124 (8) of the act.
- VI. Taxing jurisdiction means taxing jurisdiction as defined in section 124 (12) of the act.

5. When nontaxable services are aggregated with and not separately stated from taxable services, the provider of such services shall collect the tax imposed by this Article only on intrastate telephone and telegraph services. The provider of such services shall maintain for three years documentation of the services provided that are taxable and nontaxable. Such documentation is subject to audit, and the service provider shall be liable for any uncollected tax. A service provider shall notify the Finance Director of the percentages of taxable and nontaxable services in a package of aggregated services within thirty days of use on any invoice. If this is not done, the entire purchase price will be subject to sales tax.

- (d) For gas and electric service, whether furnished by municipal, public or private corporations or enterprises, for gas, coal, fuel oil, coke and electricity furnished and sold for commercial or industrial consumption and not for resale, and upon steam furnished or sold by municipal, public or private corporations or enterprises when consumed or used by commercial or industrial purchasers.
- (e) Upon the amount paid for food or drink served or furnished in or by restaurants, cafes, lunch counters, cafeterias, hotels, drugstores, social clubs, nightclubs, cabarets, resorts, snack bars, caterers, carryout shops, grocery delicatessens and other like places of business at which prepared food or drink is sold, including sales from pushcarts, motor vehicles and other mobile facilities. Cover charges, by whatever name known, required to be paid in order to obtain food or drink so furnished, and mandatory service charges, whether described as tips, gratuities or otherwise, shall be included as part of the amount paid for such food or drink. However, meals provided to employees of the places mentioned in this paragraph at no

charge or at a reduced charge and which are considered as part of their salary, wages or income shall be exempt from taxation under the provisions of this section.

- (f) On the entire amount charged to any person for rooms or accommodations as designated in the definition of *sale* in Section 4-3-30.

Sec. 4-3-220. - Location of sale.

(a) Except as provided in subsections (b) and (c) of this section, for purposes of determining where a sale of tangible personal property, commodities, or services is made, the following rules apply:

1. If tangible personal property, commodities, or services are received by the purchaser at a business location of the seller, the sale is sourced to that business location;
2. If tangible personal property, commodities, or services are not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser occurs, including the location indicated by instructions for delivery to the purchaser, if that location is known to the seller;
3. If subsections (a)(1) and (a)(2) of this section do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business, when use of this address does not constitute bad faith;
4. If subsections (a)(1), (a)(2), and (a)(3) of this section do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including, if no other address is available, the address of a purchaser's payment instrument, when use of this address does not constitute bad faith; or
5. If subsections (a)(1), (a)(2), (a)(3), and (a)(4) of this section do not apply, or if the seller is without sufficient information to apply the rules set forth in subsections (a)(1), (a)(2), (a)(3), and (a)(4) of this section, the sale is sourced to the location indicated by the address from which the tangible personal property, commodity, or service was shipped.

(b)

1. The lease or rental of tangible personal property or commodities, but not property identified in subsection (b)(2) or (b)(3) of this section, not leases or rentals based on a lump sum or accelerated basis, and not on the acquisition of property for lease, are sourced as follows:

(A) For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with subsection (a) of this section. Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location is as indicated by an address for the property provided by the

lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location is not altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

- (B) For a lease or rental that does not require periodic payments, the payment is sourced the same as a retail sale in accordance with subsection (a) of this section.
- 2. The lease or rental of motor vehicles, trailers, semi-trailers, or aircraft that do not qualify as transportation equipment is sourced as follows:
 - (A) For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The primary property location is as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The location does not change by intermittent use at different locations.
 - (B) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with subsection (a) of this section.
- 3. The lease or rental of transportation equipment is sourced in the same manner as a retail sale in accordance with subsection (a) of this section.

(c)

- 1. A retailer shall source its sales to the business location of the retailer regardless of where the purchaser receives the tangible personal property or service in a calendar year:
 - (A) If in the previous calendar year, the retailer has made retail sales of tangible personal property, commodities, or services in the state totaling one hundred thousand dollars or less; or
 - (B) Until the first day of the month after the ninetieth day after the person has made retail sales of tangible personal property, commodities, or services in the State in the current calendar year that total more than one hundred thousand dollars, after which the sourcing rules set forth in subsections (a) and (b) of this Section apply to all sales made by such retailers on and after such date.
- 2. Sales of tangible personal property, commodities, or services that are sourced to the business location of the retailer under this subsection (c) and that would otherwise be sourced to an out-of-state location under subsection (a) of this section are exempt from taxation under the provisions of this Article.

- (d) As used in this section, unless the context otherwise requires:
1. Purchaser may include a donee who is designated as such by the purchaser.
 2. Receipt or Receive means taking possession of tangible personal property or commodities or making first use of services but does not include possession by a shipping company on behalf of the purchaser.
 3. Transportation equipment means:
 - (A) Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce;
 - (B) Trucks and truck-tractors with a gross vehicle weight rating of ten thousand one pounds or greater, trailers, semi-trailers, or passenger buses that are registered under the international registration plan and operated under authority of a carrier authorized and certificated by the United States department of transportation or another federal or foreign authority to engage in the carriage of persons or property in interstate or foreign commerce;
 - (C) Aircraft that are operated by air carriers authorized and certificated by the United States department of transportation or another federal or foreign authority to engage in the carriage of persons or property in interstate or foreign commerce; and
 - (D) Containers designed for use on and component parts attached or secured on the items set forth in subsections (d)(3)(A) to (d)(3)(C) of this section.

Sec. 4-3-230. - Tax on credit sales.

- (a) In case of a sale upon credit, or a contract for sale wherein it is provided that the purchase price shall be paid in installments and title does not pass until a future date, or a chattel mortgage or a conditional sale, there shall be paid upon each payment that portion of the total tax which the amount paid bears in relation to the total purchase price. Notwithstanding any other provision of this subsection (a), a retailer doing business wholly or partly on a credit basis may, at his or her election, make a return and remit sales tax on credit sales, on the basis of the aggregate amount of cash received during the month from taxable credit sales. The retailer shall determine the tax to be remitted on the basis of the aggregate amount of tax which he or she has collected from his or her credit customers during the month.
- (b) If a retailer transfers, sells, assigns or otherwise disposes of an account receivable, he or she shall be deemed to have received the full balance of the consideration for the original sale and shall be liable for the remittance of the sales tax on the balance of the total sale price not previously reported; except that such transfer, sale, assignment or other disposition of an account receivable by a retailer to a closely held subsidiary corporation shall not be deemed to require the

retailer to pay the sales tax on the credit sale represented by the account transferred prior to the time the customer makes payment on said account.

Sec. 4-3-240. - Credit for tax previously paid to another municipality.

The City sales tax shall not apply to the sale of tangible personal property at retail or the furnishing of services if the transaction was previously subjected to a sales tax or use tax lawfully imposed on the purchaser or user by another municipality equal to or in excess of the rate imposed under this Article. A credit shall be granted against the City's sales tax imposed hereunder with respect to such transaction equal in amount to the lawfully imposed local sales or use tax previously paid by the purchaser or user to the previous municipality. The amount of the credit shall not exceed the sales tax imposed by the City under this Article.

Sec. 4-3-250. - Tax as a separate and distinct item.

- (a) Except as provided in subsection (b) below, retailers shall add the tax imposed hereby, or the average equivalent thereof, to the purchase price or charge, showing such tax as a separate and distinct item, and provide the purchaser with a receipt showing such tax as a separate and distinct item, and when added, such tax shall constitute a part of such price or charge and shall be a debt from the purchaser to the retailer until paid and shall be recoverable at law in the same manner as other debts.
- (b) Any retailer selling malt, vinous or spirituous liquors by the drink, or any retailer selling individual items of tangible personal property through coin-operated vending machines or any special sales event retailer may include in the sales price the tax levied under this Article. No such retailer shall gain any benefit from the collection or payment of such tax.
- (c) It is unlawful for any retailer to advertise or hold out or state to the public, or any purchaser, in any manner, directly or indirectly, that such tax, or any part thereof, will be assumed or absorbed by the retailer or will not be added to the selling price or that any part thereof will be refunded.

Sec. 4-3-260. - Sales tax; exempt property and services.

The tangible personal property and services taxable pursuant to this Article are subject to the same sales tax exemptions as those specified in Part 7 of Article 26 of Title 39, C.R.S., except that the items set forth in Section 29-2-105(1)(d), C.R.S., are taxable unless the exemptions are explicitly set forth below.

There shall be exempt from the sales tax levied under the provisions of this Article the following:

- (a) All sales to the United States government, to the State, its departments and institutions, and the political subdivisions thereof only when purchased in their governmental capacities.
- (b) All sales made to charitable organizations when purchased for their regular religious or charitable functions and activities as determined by the City.
- (c) All sales of cigarettes.

- (d) All sales of motor fuel and special fuel.
- (e) All sales of medical supplies and prosthetic devices.
- (f) All sales of food for domestic home consumption as defined in 7 U.S.C. § 2012(k), as amended, excluding 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 and excluding those sales of prepared food and drink.
- (g) Sales of tangible personal property to purchasers residing or doing business outside the City, provided that delivery thereof is made to the purchaser at such residence or business address of the purchaser outside the City by a common carrier, by the seller or by mail.
- (h) All sales which the City is prohibited from taxing under the Constitution or laws of the United States or the Constitution or laws of the State.
- (i) All sales of construction materials for use in improving real property outside the City if the purchaser presents to the retailer or vendor a building permit or similar documentation approved by the Finance Director, providing evidence that a locally imposed use tax has been paid or is required to be, and will be, paid to the locality in which the real property is located and on which the construction materials are to be used.
- (j) Sales and purchases of electricity, coal, wood, gas, fuel oil or coke sold, but not for resale, to occupants of residences, whether owned, leased or rented by said occupants, for the purpose of operating residential fixtures and appliances that provide light, heat and power for such residences. Gas shall include natural manufactured and liquefied petroleum gas.
- (k) Subject to (b) above, occasional sales by a charitable organization as provided in Section 39-26-718(1)(b), C.R.S.
- (l) No sales tax shall apply to the sale of personal property on which a specific ownership tax has been paid or is payable when the sale meets both of the following conditions:
 - 1. The purchaser is a nonresident of or has his or her principal place of business outside of the City; and
 - 2. Such personal property is registered or required to be registered outside the limits of the City under the laws of the State.
- (m) Wholesale sales.
- (n) Registered pesticides in agricultural use as defined in Title 35, Article 9, C.R.S.

- (o) Sales to and purchases of tangible personal property by a person engaged in the business of manufacturing, compounding for sale, profit, or use, any article, substance, or commodity, which tangible personal property enters into the processing of or becomes an ingredient or component part of the product or service which is manufactured, compounded, or furnished, and the container, label, or the furnished shipping case thereof. With regard to food products, tangible personal property enters into the processing of such products and is therefore exempt from taxation when: (I) It is intended that such property become an integral or constituent part of a food product which is intended to be sold ultimately at retail for human consumption; or (II) Such property, whether or not it becomes an integral or constituent part of a food product, is a chemical, solvent, agent, mold, skin casing, or other material; is used for the purpose of producing or inducing a chemical or physical change in a food product or is used for the purpose of placing a food product in a more marketable condition; and is directly utilized and consumed, dissipated, or destroyed, to the extent it is rendered unfit for further use, in the processing of a food product which is intended to be sold ultimately at retail for human consumption.
- (p) Sales and purchases of electricity, coal, gas, fuel oil, steam, coke, or nuclear fuel, for use in processing, manufacturing, mining, refining, irrigation, construction, telegraph, telephone, and radio communication, street and railroad transportation services, and all industrial uses, and newsprint and printer's ink for use by publishers of newspapers and commercial printers.

Division 3 Imposition of Use Tax

Sec. 4-3-300.- Use tax imposition and exemptions.

- (a) Rate and imposition of use tax. There is hereby levied and there shall be collected and paid a use tax of two and three-fourths percent (2.75%) by every person exercising the taxable privilege of using or consuming in the City construction and building materials and for the privilege of storing, using or consuming in the City any motor or other vehicles purchased at retail on which registration is required, as set forth in Section 29-2-109, C.R.S.
- (b) Exclusions and exemptions. The use tax shall not apply to the following:
 - 1. The storage, use or consumption of any tangible personal property the sale of which is subject to a retail sales tax imposed by the City.
 - 2. The storage, use or consumption of tangible personal property purchased for resale in the City, either in its original form or as an ingredient of a manufactured or compounded project, in the regular course of a business.
 - 3. The storage, use or consumption of tangible personal property brought into the City by a nonresident thereof for his or her own storage, use or consumption while temporarily within the City; however, this exemption does not apply to the storage, use or

consumption of building and construction materials brought into the State by a nonresident to be used in the conduct of a business in the State.

4. The storage, use or consumption of tangible personal property by the United States government or the State, its institutions or its political subdivisions in their governmental capacities only, or by religious or charitable corporations in the conduct of their regular religious or charitable functions.
5. The storage, use or consumption of tangible personal property by a person engaged in the business of manufacturing or compounding for sale, profit or use any article, substance or commodity, which building and construction materials enter into the processing of or become an ingredient or component part of the product or service which is manufactured, compounded or furnished, and the container, label or the furnished shipping case thereof.
6. The storage, use or consumption of tangible personal property the sale or use of which has already been subjected to a legally imposed sales or use tax of another municipality equal to or in excess of that imposed by this Article. Except as provided in subsection 4-3-730 (c) of this Article, a credit shall be granted against the use tax imposed by this Article with respect to a person's storage, use or consumption in the City of tangible personal property purchased by him or her in a previous municipality. The amount of the credit shall be equal to the tax paid by him or her by reason of the imposition of a sales or use tax of the previous municipality on his or her purchase or use of the property. The amount of the credit shall not exceed the tax imposed by this Section.
7. The storage, use or consumption of tangible personal property and household effects acquired outside of the City and brought into it by a nonresident acquiring residency.
8. The storage, use or consumption of a motor vehicle if the owner is or was, at the time of purchase, a nonresident of the City and he or she purchased the vehicle outside the City and actually so used it for a substantial and primary purpose for which it was acquired and he or she registered, titled and licensed said motor vehicle outside of the City.

Sec. 4-3-310. - Collection of motor and other vehicles use tax.

- (a) The use tax of two and seventy-five one-hundredths percent (2.75%) provided for herein shall be applicable to every motor vehicle for which registration is required by the laws of the State, no registration shall be made of any motor or other vehicle for which registration is required, and no certificate of title shall be issued for such vehicle by the State Department of Revenue or its authorized agents, including the County Clerk and Recorder, until any tax due upon the use, storage or consumption thereof pursuant to this Article has been paid.

- (b) The use tax imposed by this Article shall be collected by the authorized agent of the County Clerk and Recorder.
- (c) The proceeds of said use tax shall be paid to the City periodically in accordance with an agreement entered into by and between the City and the County Clerk and Recorder.

Sec. 4-3-320. - Incorrect registration of motor vehicle.

- (a) It is unlawful to register a motor vehicle in violation of the provisions of Section 42-6-139(2), C.R.S.
- (b) Any resident who registers a vehicle at an address other than his or her principal residence or place of business within the City for the purpose of evading the sales or use tax shall be considered in violation of this Article and subject to the penalties set forth herein.
- (c) Any person residing in the City, as specified by Section 42-6-139, C.R.S., who shall purchase any motor vehicle, whether new or used, from sources within or without the City, for use within the City, and who has not paid the tax imposed thereon by this Article to a vendor required or authorized to collect such tax, shall immediately, and prior to registering the vehicle pursuant to Section 42-6-139, C.R.S., and obtaining the license therefor, make a return showing such transaction to the City Manager and thereupon pay to him or her the tax applicable thereto as provided in this Article, and failure to do so shall constitute a violation of this Article.
- (d) Definitions for this Section:
 - 1. *Notice of deficiency* means the notice issued by the City Manager of failure, neglect or refusal to pay any sales or use tax due or any penalties or interest thereon.
 - 2. *Penalty assessment* means a written notice of the City Manager's determination that a violation of Section 42-6-139(2), C.R.S., has occurred and assessment and demand for the payment of the civil penalty provided for in Subsection (e) below.
- (e) Any person who causes a motor vehicle to be registered in violation of the provisions of Section 42-6-139(2), C.R.S., shall be assessed a five-hundred-dollar civil penalty pursuant to the authority granted in Section 42-6-139(4), C.R.S. The procedure for the assessment of such penalty shall be as follows:
 - 1. When the City Manager determines, on such information as is available, that a person has caused a motor vehicle to be registered in violation of the provisions of Section 42-6-139(2), C.R.S., the City Manager shall provide to such person a penalty assessment. If the City Manager also has determined that sales or use taxes are due to the City on the purchase of such motor vehicle, such penalty assessment may be included in a notice of deficiency.

2. Such person shall pay such penalty assessment within the same time period provided pursuant to Subsection 4-3-610(b) of this Article for payment of any amount due pursuant to a notice of deficiency, unless such person requests a hearing in the manner provided in this Article.
3. If such person desires to protest such penalty assessment, such person shall request in writing a hearing from the City Manager within the same time period provided pursuant to Subsection 4-3-610(b) for payment of any amount due on the notice of deficiency. The request for hearing shall also set forth the facts which show that a violation of Section 42-6-139(2), C.R.S., did not occur. The City Manager shall issue a written decision affirming or withdrawing such penalty assessment within the same time period and in the same manner as provided pursuant to Section 4-3-610, after a hearing on a notice of deficiency. If the decision affirms the penalty assessment, such person shall pay such provided pursuant to Section 4-3-610 for payment of any amount due pursuant to a notice of deficiency.
4. Such person may seek judicial review of the City Manager's decision pursuant to C.R.C.P. 106(a)(4). No such judicial review shall be available if a request for hearing was not timely made in the manner provided for in this Section.
5. The City Manager may enforce collection of such penalty assessment in the same manner as provided for the collection of unpaid use taxes, penalties or interest.
6. Nothing in this Article shall preclude the collection of any tax or fee provided by law, the collection of any penalties or interest thereon provided by law, or the imposition of any other civil or criminal penalty provided by law.

Sec. 4-3-330. - Collection and enforcement of construction and building materials use tax.

- (a) Any person who shall build, construct, reconstruct, alter, expand, modify or improve any building, dwelling, other structure or real property, including all site development work, whether above, on or below the ground, not including work performed on federal state, county, City and exempt institution job sites in the City, and who shall purchase lumber, fixtures or any other construction and building materials, supplies and other tangible personal property used, consumed or stored therefor on realty, improvements and/or attached or affixed structures situated in the City, from sources within or without the City, shall pay the City use tax by paying the tax on the "estimated percentage basis" based on a percentage of the total valuation of the construction contract and paid, either through the owner, lessee or general contractor, or separately, if he or she is a subcontractor electing to do so, at the time a building permit is issued.
- (b) The minimum valuation of construction and building materials for purposes of calculating the estimated percentage basis use tax due at the time of the building permit issuance is established

at fifty percent (50%) of the job valuation as determined by the City. The use tax to be collected at the time of the building permit issuance shall equal the City use tax rate, and shall include the County use tax, which amount shall be transmitted from the City to the County. The contractor, property owner/lessor and property lessee are held liable for any tax due in this Article, and all applicable parties may be required to provide adequate records as requested by the City Manager for the City Manager to ascertain that taxes were paid in full.

- (c) Contractors are considered to be the end users of construction and building materials in the City. Owners, lessors, contractors and their subcontractors must not pay municipal sales tax to a vendor in another jurisdiction for construction and building materials to be used or consumed at a location in the City, as it is the intent of this Article for all City taxes to be paid at the time a building permit is issued. No refund of another municipality's tax will be paid if a contractor or subcontractor pays another jurisdiction's tax. The City Manager may enter into a payment agreement for the tax referenced in this Subsection, to be paid in installments that include an interest rate of nine percent (9%) per annum.
- (d) City sales tax paid on construction and building materials purchased outside of the City are not considered legally imposed. In no case shall the use tax paid upon issuance of a City building permit be credited for another jurisdiction's sales tax.
- (e) No final inspection shall be made by the City or the County, and no certificate of occupancy, temporary or otherwise, shall be issued by the City or its agents unless all taxes due as provided in this Article have been paid in full.
- (f) At the City Manager's discretion, audits may be performed on any building or construction project located in whole or in part within the City, regardless of whether a building permit was issued, to ensure compliance with this Article.
- (g) The full amount of any use tax due and not paid for construction and building materials, together with penalties and interest thereon as herein provided, shall be and constitute a lien upon the real property benefited by the improvements upon which the construction and building materials were used or consumed, and the City Manager is authorized to file a notice of such lien with the County Clerk and Recorder.

Division 4 Business License

Sec. 4-3-400. - Business licenses.

- (a) It shall be unlawful for any person to engage in business in the City without first having received a business license, except that a person required to register as a contractor within the meaning of Chapter 6 of the Castle Pines Municipal Code shall not be required to obtain a business license.

- (b) Such license shall be granted and issued by the Finance Director and shall be in force and effect until December 31 of the year following the year in which it is issued, unless sooner revoked. Such license shall be granted only upon application stating the name and address of the person desiring such a license, the name of such business and the location, including the street number of such business, and such other facts as the Finance Director may require.
- (c) Nontransferable. No license shall be transferable.
- (d) Renewal. It is the duty of each such licensee on or before January 1 of the second year following the year in which the license is issued or renewed to obtain a renewal thereof if the licensee remains in retail business or liable to account for the tax provided in this Article.
- (e) Grounds for denial. The Finance Director shall not issue a license for the conducting or maintaining of any business, occupation or activity prohibited by ordinance, state or federal law and applicable regulations or upon grounds set forth in section 6-1-80. Upon denial of an application for any of the foregoing reasons, an applicant may request in writing a hearing in accordance with Section 6-1-90 of this Code.
- (f) If a retailer makes retail sales at two or more separate places of business in the City, a separate license for each place of business shall be required. Consolidated tax returns may be filed for those various locations as set forth in subsection 4-3-720(b) of this Article.
- (g) Carrying or posting of license required. No licensee shall fail to carry any license issued in accordance with the provisions of this Article upon his or her person at all times when engaged in the operation, conduct or carrying on of any retail trade, profession or business for which the license was granted; except that, where such trade or business is operated, conducted or carried on at a fixed place or establishment, such license shall be exhibited at all times in some conspicuous place in the place of business. Every licensed business shall produce its license for examination when requested to do so by the Finance Director.
- (h) Any person operating exclusively as a wholesaler may apply to the Finance Director for a license to engage in the business of selling at wholesale. Such license shall be granted only upon application stating the name and address of the person desiring such a license, the name of such business and the location, including the street number of such business, and such other facts as the Finance Director may require.
- (i) A person operating as a charitable organization may apply to the Finance Director for a license to engage in the business of selling at retail. The application shall state the name and address of the person applying for such license, the name and location of the person's organization, including the street number of such organization, and such other information as the Finance Director may require.

- (j) License fee. Each application for a license or renewal of a license shall be accompanied by payment of a license fee, if any, as set forth in the City fee schedule adopted by resolution by the City Council, as amended from time to time.
- (k) Each license shall be numbered and shall show the name, and place and character of business of the licensee, mailing address and expiration date of the license.

Sec. 4-3-410. – Sales event licenses.

- (a) A person conducting a singular sales event may apply to the Finance Director for a license to engage in the business of selling at retail for a temporary period of time. The application shall state the name and address of the person applying for such license, the name and location of the person's organization, including the street number of such organization, and such other information as the Finance Director may require.
- (b) A person engaged in retail sales at more than one special sales event in any two-year period may apply to the Finance Director for a license to engage in selling at retail at such special sales events over a two-year period. Such special sales event license shall only apply to retail sales made by the person to whom the license is issued at such special sales events and shall not apply to sales at such person's business location or to any other sales. The application shall state the name of such business and the location, including the street number of such business, and such other facts as the Finance Director may require. Except as otherwise provided in paragraph (c)(2) of this section a person to whom a special sales event license has been issued shall file a separate return and payment of sales taxes for each special sales event at which retail sales are made by such person, which return shall be filed on the twentieth day of the month following the month in which such special sales event began.
- (c) Any person who organizes a special sales event shall inform each person making any retail sales at such special sales event of the various taxes and tax rates that apply to retail sales at the special sales event and shall mail or mail electronically to the City within ten days of the last day of such special sales event a list of the name, address, and special sales event license number, if any, of each person making any retail sales at the special sales event.
 - 1. For purposes of this Section, "special sales event" means an event where retail sales are made by more than three persons at a location other than their normal business location, which event occurs no more than three times in any calendar year.
 - 2. Any person engaged in retail sales at a special sales event shall obtain a special sales event license pursuant to the provisions of paragraph (b) of this section unless the person who organizes such special sales event elects to obtain a special sales event license pursuant to paragraph (c)(3) of this section and such person who engages in retail sales at such special sales event elects to remit such sales tax collected to the person who

organized such special sales event. Any person engaged in retail sales at a special sales event who has obtained a special sales event license pursuant to the provisions of paragraph (b) may elect to remit sales tax collected at such special sales event to the person who organized such special sales event and to whom a special sales event license has been issued pursuant paragraph (c)(3) of this section.

3. Any person who organizes a special sales event may apply to the Finance Director for a license for retail sales made at such special sales event. Such special sales event license shall only apply to retail sales made at such special sales event organized by the person to whom the license is issued and shall not apply to any other special sales events or sales. The application shall state the name of such business and the location, including the street number of such business, and such other facts as the Finance Director may require. A person to whom a special sales event license has been issued pursuant to this paragraph (3) shall file a separate return and shall make payment of sales tax collected by persons making retail sales at such special sales event who have elected to remit such sales tax collections to the person licensed pursuant to the provisions of this paragraph (3). Such return shall be filed on the twentieth day of the month following the month in which such special sales event began. In addition to the information specified in subparagraph (c) of this section, any person issued a special sales event license pursuant to this paragraph (3) shall maintain, at his place of business, a list showing the name and address of each person making any retail sales at such special sales event, the amount of gross retail sales made by such person at such special sales event, and the amount of sales tax collected by such person on such retail sales which are remitted by such licensee.

Sec. 4-3-420. - Exceptions.

- (a) An individual having an occasional or isolated sale of tangible personal property is not required to have a City business license. Except for garage sales or online garage sales, such sales must be made from the private residences of such individuals, and the aggregate dollar amount of such sales may not exceed one thousand dollars for any one calendar year. In addition, the following conditions must be met:
 1. Neither the seller nor any member of his household may be engaged in a trade or business where similar items are sold; and,
 2. An annual report of casual sales must be filed with the Finance Department by every individual making such sales, and the sales tax due must be remitted on an annual basis as provided in section 4-3-430(c)(3), on forms provided by the Finance Director, showing in detail all such sales made during the year.

- (b) When in the opinion of the City Manager it is necessary for the efficient administration of this Article to treat any salesman, representative, peddler, or canvasser as the agent of the vendor, distributor, supervisor, or employer under whom he operates or from whom he obtains tangible personal property sold by him or for whom he solicits business, the City Manager may, in his or her discretion, treat such agent as the vendor jointly responsible with his principal, distributor, supervisor, or employer for the collection and payment over of the tax.

Division 5 Taxpayer Responsibilities and Obligations

Sec. 4-3-500. - Taxpayer (retailer and consumer) liability.

(a)

1. Except as provided in subsection (b) of this section, every retailer shall be liable and responsible for the payment of an amount equivalent to the rate of sales tax on all sales made by the retailer of commodities or services as specified in 4-3-200.
2. Every retailer shall, before the twentieth day of each month, make a return to the Finance Director for the preceding calendar month. The Finance Director shall determine what information the returns must contain, how the returns must be made, and the type of forms that must be used.
3. Every retailer shall remit, along with the return required in subsection (a)(2) of this section, an amount equivalent to the percentage on sales as specified in subsection (a)(1) of this section to the Finance Director.

(b)

1. With respect to sales of tangible personal property, commodities, or services made by marketplace sellers in or through a marketplace facilitator's marketplace, a marketplace facilitator has all of the liabilities, obligations, and rights of a retailer or vendor under subsection (a) of this section and this Article whether or not the marketplace seller (because the marketplace seller is a multichannel seller):
 - (A) Has or is required to have a license under section 4-3-400(a); or
 - (B) Would have been required to collect and remit tax under this Article had the sale not been made in or through the marketplace.
2. The liabilities, obligations, and rights set forth in subsection (b)(1) of this section are in addition to any requirements the marketplace facilitator has under subsection (a) of this section if it also offers for sale tangible personal property, commodities, or services through other means.

3. Except as provided in subsection (d)(2) of this section, a marketplace seller, with respect to sales of tangible personal property, commodities, or services made in or through a marketplace facilitator's marketplace, does not have the liabilities, obligations, or rights of a retailer or vendor under subsection (a) of this section and this Article if the marketplace seller can show that such sale was facilitated by a marketplace facilitator:
 - (A) With whom the marketplace seller has a contract that explicitly provides that the marketplace facilitator will collect and remit sales tax on all sales subject to tax under this Article; or
 - (B) From whom the marketplace seller requested and received in good faith a certification that the marketplace facilitator is registered to collect sales tax and will collect sales tax on all sales subject to tax under this Article made in or through the marketplace facilitator's marketplace.
- (c) The Finance Director may extend the time for making a return and paying the taxes due under such reasonable rules as the Finance Director may prescribe, but no such extension shall be for a greater period than three (3) months.
- (d)
 1. Except as provided in subsection (d)(2) of this section, the burden of proving that any retailer is exempt from collecting the tax on any goods sold and paying the same to the Finance Director, or from making such returns, shall be on the retailer under such reasonable requirements of proof as the Finance Director may prescribe.
 2.
 - (A) If a marketplace facilitator demonstrates to the satisfaction of the Finance Director that the marketplace facilitator made a reasonable effort to obtain accurate information regarding the obligation to collect tax from the marketplace seller and that the failure to collect tax on any tangible personal property, commodities, or services sold was due to incorrect information provided to the marketplace facilitator by the marketplace seller, then the marketplace facilitator, but not the marketplace seller, is relieved of liability under this section for the amount of the tax the marketplace facilitator failed to collect, plus applicable penalties and interest.
 - (B) If a marketplace facilitator is relieved of liability under subsection (d)(2)(A) of this section, the marketplace seller is liable under this section for the amount of tax the marketplace facilitator failed to collect, plus applicable penalties and interest.

- (C) This subsection (d)(2) does not apply to any sale by a marketplace facilitator that is not facilitated on behalf of a marketplace seller or that is facilitated on behalf of a marketplace seller who is an affiliate of the marketplace facilitator.
- (e) Every retailer conducting a business in which the transaction between the retailer and the consumer consists of the supplying of tangible personal property and services in connection with the maintenance or servicing of the same shall be required to pay the taxes levied under this Article upon the full contract price, unless application is made to the Finance Director for permission to use a percentage basis of reporting the tangible personal property sold and the services supplied under such contract. The Finance Director is authorized to determine the percentage based upon the ratio of the tangible personal property included in the consideration as it bears to the total of the consideration paid under said combination contract or sale that is subject to the sales tax levied under the provisions of this Article. This section shall not be construed to include items upon which the sales tax is imposed on the full purchase price.
- (f) Finance Director may require reports and records. The Finance Director may require any person, by regulation or notice served on such person, to make such records, as specified in Section 4-3-600(b) of this Article, available for inspection so that the Finance Director may determine whether a person is liable for payment or collection of the taxes imposed by this Article.
- (g) 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 Finance Department validation date or receipt of an electronic payment.
 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.
- (h) Duty of retailer to collect. It shall be the duty of every retailer to collect the taxes imposed by this Article, unless the retailer is furnished with satisfactory proof that the sale is exempt under this Article. Whenever there is a disagreement between a retailer and a buyer as to whether a given sale is tax exempt under this Article, it shall be the duty of the retailer to collect and the duty of the buyer to pay the tax. The retailer shall thereupon give to the buyer a receipt that is a copy of the sales invoice showing the amount of sales tax collected by the retailer, and the buyer may then make application to the City for a refund, pursuant to Section 4-3-800 of this Article.

- (i) Taxes paid on the amount of gross sales that are represented by accounts that are found to be worthless and are actually and properly charged off as bad debts for the purpose of the income tax imposed by the laws of the State of Colorado may be credited upon a subsequent payment of the tax as herein provided. Should, however, any such amounts be thereafter collected by the retailer, the tax shall be paid to the City upon the amount so collected.

Sec. 4-3-510. - Obligation to update address with city.

All persons obligated to remit tax to the city under this Article shall at all times have the burden of ensuring that his or her correct mailing address, and e-mail address are on file with the City Manager.

Division 6 Collection and Enforcement

Sec. 4-3-600. - Audits.

- (a) Taxpayer's retention of records. It shall be the duty of every person, firm or corporation liable to the City for any tax to keep and preserve for a period of at least three (3) years the records described in subsection (b) below.
- (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, including subcontractor's detailed invoices for goods and services, shall be maintained and shall be open for examination at any reasonable time by the Director. The records shall 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 City, irrespective of whether the seller or lessor 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 City.
 - 4. In the case of a construction project, any contracts agreements, documents, invoices and statements, along with a summary sheet showing such purchases, and any other records supporting the entries in the books, in order to allow the accurate determination of the use tax due.
- (c) Travel required to perform audit. In the case of a person, firm or corporation which does not keep the necessary books, accounts and records within the City, it shall be sufficient if such person, firm or corporation produces within this City such books, accounts and records or such information as shall be reasonably required by the Finance Director for examination by the Finance Director; or in lieu thereof, said person, firm or corporation shall pay in advance, or as approved by the Finance Director, such travel, lodging, meal and related expenses as

shall reasonably be incurred by the Finance Director or his or her duly authorized agent in examination of said books, accounts and records at such place where said books, accounts and records are kept.

(d) Coordinated audit.

1. Any taxpayer licensed in this City and holding a similar sales tax license or business license in at least four (4) other Colorado municipalities that administer their own sales tax collection, may request a coordinated audit as provided in this Article.
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 Finance Director, by mail or electronic mail, 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 business license.
3. Except as provided in subsection (6) below, any taxpayer that submits a complete request for a coordinated audit and promptly signs a waiver of limitation, if required, may be audited by the City during the twelve (12) months after the request is submitted only through a coordinated audit involving all municipalities electing to participate in such an audit.
4. If the City desires to participate in the audit of a taxpayer that submits a complete request for a coordinated audit pursuant to subsection (3) above, the Finance Director shall so notify the municipality 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 Finance 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 City, the Finance Director shall facilitate arrangements between the City 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 City, the Finance Director shall, once arrangements for the coordinated audit between the City 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 Finance Director shall also propose a schedule for the coordinated audit.
7. The City may conduct an audit in conjunction with another municipality.
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 Section;
 - (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 subsection (2) above.
9. The Finance Director may retain a contract agent to perform an audit on behalf of the City.

Sec. 4-3-610. - Assessment; interest and penalties.

- (a) **Assessment.** Subsection (b) below shall apply if the Finance Director determines that any person, taxpayer or retailer 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 resulting in an assessment; or
 6. To pay in full all interest and penalty due.
- (b) **Assessment notice and due date.** The Finance Director shall give to the delinquent person, taxpayer or retailer a written Notice of Final Determination—Assessment and Demand for Payment, which notice shall be sent via certified mail and shall state the full amount of taxes,

interest and penalties due, which assessment of deficiency amount shall be due and payable within thirty (30) days of the date that such notice is sent by the Finance Director, unless a hearing has been timely requested according to Section 4-3-640 of this Article.

- (c) Estimated assessment. If the Finance Director is unable to audit the records of a taxpayer, either due to the taxpayer's refusal, lack of cooperation or lack of records; due to time constraints; or due to other reasons which the Finance Director may determine, the Finance Director shall make an estimate based upon such information as may be available of the taxes due for the period under audit and shall issue an assessment as provided in this Article. If a person, taxpayer or retailer neglects or refuses to make a return, the Finance 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, and shall issue an assessment as provided in this Article.
- (d) Failure to file penalty. If a person, taxpayer or retailer neglects or refuses to make a return as required in this Article, a minimum penalty equal to the sum of ten dollars (\$10.00) shall be paid for every return not filed that is required to be filed by this Article. If the penalty mentioned in subsection (f) below is more than this ten-dollar amount, only the subsection (f) penalty will apply. This penalty does not apply to returns filed prior to the issuance of a Notice of Final Determination—Assessment and Demand for Payment. Interest shall not accrue on this minimum penalty.
- (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 Finance 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, which notice shall be sent via certified mail. The taxpayer shall have no right of protest or appeal as in the matter of other assessments but shall pay the tax due and assessed or file an amended return to show the true amount of tax due within thirty (30) days of the date that such assessment is sent by the Finance Director.
- (f) Interest and penalty for failure to comply. Unless the taxpayer shows that its 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, there shall be added to all assessments a penalty of fifteen percent (15%) of the tax deficiency. Interest in such case shall accrue and be collected at a rate of one and one-half percent (1½%) per month on the amount of such tax deficiency, plus accrued interest, but not including the amount of the penalty, from the time the return was due.
- (g) Penalty for fraud. If any tax deficiency is due to fraud with the intent to evade the tax, there shall be added to all assessments a penalty of one hundred percent (100%) of the tax

deficiency. Interest on such deficiency shall accrue and be collected at a rate of one and one-half percent (1½%) per month on the amount of such tax deficiency, plus accrued interest, but not including the amount of the penalty, from the time the return was due.

- (h) Special penalty for repeated enforcement proceedings. In any assessment issued to a person, retailer 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 imposed. 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 the same as "Finance Director's remedies in the case of nonpayment," as provided in Section 4-3-660 of this Article.
- (i) Finance Director may waive penalty. The Finance Director may waive, for good cause shown, any penalty assessed as provided in this Article, including any interest imposed at a rate in excess of one and one-half percent (1½%) per month.
- (j) 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, then no interest or penalty shall be imposed under this Section on the portion of the tax so satisfied.

Sec. 4-3-620. - Jeopardy assessment.

- (a) Jeopardy enforcement. If the Finance Director finds that collection of the tax will be jeopardized by delay, in his or her discretion, he or she may declare the taxable period immediately terminated, determine the tax and issue notice and demand for payment thereof; and, having done so, the tax shall be due and payable forthwith, and the Finance Director may proceed immediately to collect such tax as provided in Section 4-3-660 of this Article.
- (b) Immediate enforcement action. In any other case wherein it appears that the revenue is in jeopardy, the Finance Director may immediately issue demand for payment; and, regardless of the provisions of Sections 4-3-640 and 4-3-650 of this Article, the tax shall be due and payable forthwith and, in his or her discretion, the Finance Director may proceed immediately to collect said tax as provided in Section 4-3-660 of this Article.
- (c) Security for payment. Collection under either subsection (a) or (b) above may be stayed if the taxpayer gives such security for payment as shall be satisfactory to the Finance Director.

Sec. 4-3-630. - Notice by mail.

Any notice required to be given to any taxpayer or the agent or personal representative of the estate of any taxpayer shall be sufficient if mailed, postpaid by first-class mail to the last known address of the

taxpayer or the agent or personal representative of the estate of the taxpayer. The first-class mailing of any notice under the provisions of this Article creates a presumption that such notice was received by the taxpayer or agent or personal representative of the estate of the taxpayer if the City maintains a record of the notice and maintains a certification that the notice was deposited in the United States mail by an employee of the City. Evidence of the record of the notice mailed to the last known address of the taxpayer or agent or personal representative of the estate of the taxpayer as shown by the records of the City and a certification of mailing by first-class mail by a City employee is prima facie proof that the notice was received by the taxpayer or agent or personal representative of the estate of the taxpayer.

Sec. 4-3-640. - Hearing.

- (a) Request for Hearing: Within thirty (30) days of the date that a written notice of deficiency, assessment or denial of refund in the form of a Notice of Final Determination - Assessment and Demand for Payment or Denial of Refund is placed in the mail in accordance with subsection 4-3-510 of this Article by the City Manager, any taxpayer may request a hearing on any proposed tax, penalty or interest that the City seeks to impose as set forth in such notice by making written application for a hearing to the City Manager, which application must be actually received by the City Manager within such thirty-day period. The request for hearing shall set forth the taxpayer's reasons for and the amount of the requested changes in the written notice of deficiency, assessment or denial of refund.
- (b) Hearing Time and Place: The hearing and the issuance of a final decision thereon shall be held within one hundred eighty (180) days after the City Manager's receipt of request for a hearing pursuant to subsection (a) above. This period may be extended by written agreement as provided in sections 29-2-106.1(2)(c) and 29-2-106.1(8)(b), C.R.S., as amended from time to time. In addition, the taxpayer and City may agree in writing that either no hearing shall be held, or no final decision shall issue in accordance with and meeting the requirements of Sections 29-2-106.1(2)(c) and 29-2-106.1(8)(b), C.R.S., as may be amended from time to time. The City Manager shall notify the taxpayer in writing of the time and place for such hearing at least thirty (30) days prior to the hearing, unless the taxpayer requests shorter notice or an extension of time.
- (c) Pre-Hearing Conference: The City or the taxpayer may request a pre-hearing conference prior to the hearing to be provided under subsection (a) above which shall be conducted in any manner acceptable to the taxpayer and the City Manager with the purpose of settling the outstanding issues between the parties. If no settlement is reached, the hearing shall be held as scheduled.
- (d) City Manager to Conduct Hearing: The hearing shall be held before the City Manager or a hearing officer designated by the City Manager pursuant to rules and regulations for the conduct of such hearing as are promulgated by the City Manager. At the hearing, the

taxpayer shall be present and shall assert any facts, make any arguments and file any briefs and affidavits he or she believes pertinent to his or her case.

- (e) **Hearing Based on Written Brief:** At any time before ten (10) days before the date of the hearing, any taxpayer may request that the hearing be based on written brief only in lieu of the hearing provided under subsection (d) above. If the Taxpayer elects such hearing based on brief, the Taxpayer shall file a written brief and such other written materials or documents as he or she shall deem appropriate on or before the hearing date and shall request that the City Manager reconsider the deficiency without a hearing. The City Manager 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 City 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 City Manager.
- (f) **Designated Hearing Officer:** The taxpayer may request that the City Manager designate a hearing officer rather than serve as hearing officer for either a hearing or to determine a matter submitted only on written brief. If the taxpayer makes such a request, the City Manager shall select a hearing officer and all reasonable costs to the City for engaging a hearing officer shall be paid by the taxpayer requesting the hearing if the hearing officer determines no change in the tax due as set forth in the final Notice of Final Determination - Assessment and Demand for Payment or Denial of Refund on which the hearing is based.
- (g) **Passage of Time Limitation on a Request for Hearing without Taxpayer Action:** After the expiration of thirty (30) 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 sent 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 City Manager may promptly take necessary steps to collect all amounts owed. The taxpayer shall have no further right to a hearing, trial or appeal, the decision being final.
- (h) **City Manager May Adjust Tax Under Question:** Based on the evidence presented at any hearing or filed in support of the taxpayer's contentions, the City Manager or Designated Hearing Officer, if any, may modify or abate, in part or in full, the tax and the interest and penalty related to such tax at issue at the hearing or may approve a refund.
- (i) **Hearing Determination Notices:** After a hearing, upon rejection in whole or in part, of the claim for refund, or upon the finding by the City Manager or hearing officer if designated, that upon hearing the evidence, an assessment in whole or in part has been made against the

taxpayer validly, the City Manager or hearing officer 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.

- (j) Tax Due Date After Hearing: Unless an appeal is filed as provided in section 4-3-650, the tax, together with interest thereon and penalties, if any, shall be paid within thirty (30) days after the Hearing Determination Notice is sent to the taxpayer.

Sec. 4-3-650. - Appeals.

The taxpayer may appeal the Hearing Determination Notice of the Director issued pursuant to Section 4-3-640 above within thirty (30) days of the date that such determination is sent by the Director. Any such appeal shall be conducted in accordance with the provisions of Section 29-2-106.1, C.R.S., as amended, and shall be conducted de novo.

Sec. 4-3-660. - Finance Director's remedies in case of nonpayment.

- (a) So long as a final assessment remains unpaid, the Finance Director may take enforcement procedures against the defaulting taxpayer, including, but not limited to:
 1. Revoke the taxpayer's business license, as described in Section 4-3-440 of this Article.
 2. Issue a summons to the person, retailer or taxpayer to appear in the Castle Pines Municipal Court on charges of violating this Article.
 3. Issue a distraint warrant pursuant to this Article.
 4. File a complaint in county or district court to collect all amounts owed.
 5. Levy upon all property and rights to property by serving a notice of levy on any person in possession of, or obligated with respect to, property or rights to property subject to levy, including receivables, bank accounts, evidences of debt and securities.
- (b) Regardless of the collection or enforcement procedures invoked by the Finance Director, all unpaid taxes, unpaid license fees, and accrued interest and penalties shall be secured by a lien arising by operation of law as provided by this Article. All lien costs incurred by the City, including but not limited to filing costs, notary costs, attorney costs, City labor costs and publication costs, are to be reimbursed by the taxpayer to the City before the lien discharge can be filed.

Sec. 4-3-670. - Enforcing collection by distraint.

- (a) Warrant. The Finance Director may issue a warrant under his or her own hand directed to any representative of the Finance Department, including the sheriff of any county of the State, commanding him or her to distraint, seize and sell the personal property of the

taxpayer, except such personal property as is exempt from execution and sale by any provision of this Article, for the payment of the tax due, together with interest and penalties accrued thereon and collection costs:

1. When any deficiency in tax, interest and penalty is not paid within thirty (30) days from the date of Notice of Final Determination—Assessment and Demand for Payment and no hearing has been requested and no appeal from such deficiency assessment has been docketed with any district court of this State within said period;
2. When any other amount of tax, interest or penalty is not paid within thirty (30) days from the date of the assessment and demand for payment thereof and no hearing has been requested and no appeal from such assessment or demand has been docketed with any district court of this State within said period; or
3. Immediately upon making of a jeopardy assessment or of the issuance of a demand for payment, as provided in Section 4-3-620 of this Article.

(b) Distraint seizure:

1. The agent charged with the collection shall make or cause to be made an account of the goods or effects distrained, a copy of which, signed by the agent making such distraint, shall be properly personally served on the owner or possessor of the goods or effects according to the Colorado Rules of Civil Procedure. If said notice cannot be served on the taxpayer within thirty (30) miles of the City, it shall be mailed to the taxpayer's last known address, return receipt requested.
2. The agent shall forthwith cause to be published a notice of the time and place of sale, together with a description of the property to be sold, in some newspaper within the county wherein distraint is made, or, in lieu thereof and in the discretion of the Finance Director, the agent or sheriff shall cause such notice to be publicly posted at the courthouse of the county wherein such distraint is made, and copies thereof to be posted in at least two (2) other public places within said county.

(c) Distraint sale:

1. The time fixed for the sale shall not be less than ten (10) days nor more than sixty (60) days from the date of such notification to the owner or possessor of the property and the publication or posting of such notices. Said sale may be adjourned from time to time by said agent or sheriff if he or she deems it advisable, but not for a time to exceed ninety (90) days from the date first fixed for the sale. When any personal property is advertised for sale under distraint as aforesaid, the agent or sheriff making the seizure shall proceed to sell such property at public auction, offering the same at not less than a fair minimum price, including the expenses of making the seizure and of advertising the sale; and if the

amount bid for the property at the sale is not equal to the fair minimum price so fixed, the agent or sheriff conducting the sale may declare the same to be purchased by him or her for the City. The property so purchased may be sold by the agent or sheriff under such regulations as may be prescribed by the Finance Director.

2. In any case of distraint for the payment of taxes, the real property, goods, chattels, or effects so distrained shall be restored to the owner or possessor if, prior to the sale, the amount due is paid, together with the fees and other charges, or may be redeemed by any person holding a chattel mortgage or other evidence of right of possession.
- (d) Certificate of sale and evidence of purchase. In all cases of sale, the agent or sheriff making the sale shall issue a certificate of sale to each purchaser, and such certificate shall be prima facie evidence of the right of the agent or sheriff to make such sale and the conclusive evidence of the regularity of his or her proceedings in making the sale; and shall transfer to the purchaser all right, title and interest in and to the property sold; and where such property consists of certificates of stock in the possession of the agent or sheriff, the certificate of sale shall be notice, when received, to any corporation, company or association of said transfer, and said certificate of such sale shall be authority for such corporation, company or association to record the transfer on its books and records; and where the subject of sale is securities or other evidences of debt, in the possession of the agent or sheriff, the certificate of sale shall be good and valid evidence of title in the person holding the same, as against any other person. Any surplus remaining above the taxes, interest, penalties, all costs and all expenses of making the seizure and of advertising the sale shall be returned to the owner or such other person having a legal right thereto, and, on demand, the Finance Director shall render an account in writing of the sale. Expenses of a seizure include all reasonable costs and expenses incurred by the City in enforcing collection by distraint, including, but not limited to, all personnel costs of the City.

Sec. 4-3-680. - Recovery of unpaid tax.

- (a) Action at law. The Finance Director may also treat any taxes, interest and penalties due and unpaid as a debt due the City from the taxpayer personally. In case of failure to pay the tax or any portion thereof or any penalty or interest thereon, or any penalty when due, the Finance Director may receive at law the amount of such taxes, interest, penalties and collection costs in such county or district court of the county wherein venue may be proper under the applicable rule of civil procedure. The taxpayer's return or the assessment made by the Finance Director as provided in this Article shall be prima facie proof of the amount due.
- (b) Writs of attachment. Such actions may be actions in attachment, and writs of attachment may be issued to the sheriff. In any such proceedings, no bond shall be required of the Finance Director nor shall any sheriff require of the Finance Director an indemnifying bond for

executing the writ of attachment or writ of execution upon any judgment entered in such proceedings; and the Finance Director may prosecute appeals or writs of error in such cases without the necessity of providing a bond therefor. The City Attorney, when requested by the Finance Director, may commence action for the recovery of taxes due under this Article, and this remedy shall be in addition to all other existing remedies or remedies provided in this Article.

- (c) Civil action to enforce lien against real property. In any case where there has been a refusal or neglect to pay any tax due the City, the Finance Director may cause to be filed a civil action to enforce the lien of the City. The court shall decree a sale of such real property and shall order distribution of the proceeds from the sale. The manner of sale, the period for and manner of redemption from such sale and the execution of any deeds of conveyance shall proceed according to the laws relating to foreclosures of mortgages upon real property. In any such action, if equity so requires, the court may appoint a receiver of the real property involved.
- (d) Exhaustion of administrative remedies. No action to recover amounts may be filed by the City until the time for the taxpayer to exercise his or her administrative remedies or to file an appeal has expired. This remedy shall be in addition to all other existing remedies available to the City. No de novo trial of the facts shall be permitted if the taxpayer has had a hearing before the City Manager or has had the opportunity for such a hearing but failed to exhaust his or her administrative remedies.

Sec. 4-3-690. - Sales and use tax constitutes lien.

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

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

- (d) At any time a tax has accrued but is unpaid, the Finance Director may issue a notice of tax lien, setting forth the name of the taxpayer, the amount of the tax, interest and penalties, the date of the accrual thereof and that the City claims a first and prior lien therefor on the real and tangible personal property of the taxpayer. Said notice may be filed in the office of the clerk and recorder of any county in the State in which the taxpayer owns real or tangible personal property. Issuance of such notice and filing thereof shall be at the discretion of the Finance Director and shall not affect the priority or validity of the lien provided by this Article, which arises by operation of law when the tax accrues and is payable.
- (e) Any representative of the Finance Director to whom a distraint warrant has been issued may file a notice of lien in such form as the Finance Director may prescribe with the person in possession of any personal property or rights to property belonging to the taxpayer if not previously recorded with the County Clerk and Recorder. The Finance Director may release said lien as to any part or all of the property or rights to property covered by such lien upon such terms as he or she may deem proper.
- (f) Upon payment of all taxes, interest and penalties, the Finance Director shall release any recorded tax lien in the same manner as mortgages and judgments are released.

4-3-695. - Certificate of discharge.

- (a) Certificate of discharge subject to lien. If any property, real or personal, under the law, shall be subject to a lien for the payment of any tax due the City, the City Manager may issue a certificate of discharge of any part of the property subject to the lien if he or she finds that the fair market value of that part of such property remaining subject to the lien is at least double the amount of the liability remaining unsatisfied in respect to such tax and the amount of all prior liens upon such property.
- (b) Certificate of discharge to part of property. If any property, real or personal, under the law, shall be subject to a lien for the payment of any tax due the City, the City Manager may issue a certificate of discharge of any part of the property subject to the lien if there is paid over to the City Manager in part satisfaction of the liability in respect to such tax an amount

determined by the City Manager, which shall not be less than the value, as determined by him or her, of the interest of the City in the part to be so discharged.

- (c) How values determined. In determining such values, the City Manager shall give consideration to the fair market value of the part to be so discharged and to such lien thereon as have priority to the lien of the City.
- (d) Certificate of release conclusive. A certificate of release or of partial discharge issued shall be held conclusive that the lien of the City upon the property released therein is extinguished, but shall not extinguish or release any portion of the lien or property not specified in the release.

4-3-700. - Compromise.

- (a) Compromise Limitation: After an assessment has become final because the taxpayer has waived any right to a hearing or because the hearing officer has issued his or her final decision, the City Manager may compromise any collection proceeding arising under this Article.
- (b) Compromise Record: Whenever a compromise is made by the City Manager, there shall be placed on file in the office of the City Manager the opinion of the City Manager with the reasons therefor, which may include financial inability of the taxpayer to pay a greater amount, with a statement of:
 - 1. The amount of tax assessed;
 - 2. The amount of penalty, interest and/or penalty interest imposed by law on the taxpayer against whom the tax is assessed; and
 - 3. The amount paid in accordance with the terms of the compromise.

Sec. 4-3-710. - Excess collections.

If any retailer, during any reporting period, collects as a City tax an amount in excess of two and three-fourths percent (2.75%) of the retailer's total taxable sales, the retailer shall remit to the City the full net amount of the tax imposed herein and also such excess.

Sec. 4-3-720. - Tax returns—Content, consolidation and reporting periods.

- (a) Tax return: content and 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 Finance Director may prescribe. When a return filed by a taxpayer does not include a signature, a correct City account number or any other information required by the Finance Director, the Finance Director has the right to send back to the taxpayer the return and payment. The Finance Director may consider an improperly filed

return to be not filed with the City. A valid digital signature, or the equivalent thereof, on a filed return transmitted electronically over the internet or transmitted by other similar means is accepted and held as a written signature. Signing a return over the internet can be done by any means acceptable to the Finance Director. A signature on a return sent via facsimile is accepted and held as a written signature.

- (b) Consolidation of returns. A retailer doing business in two (2) or more places or locations, whether within or outside of the City, and collecting taxes hereunder, may file one (1) return covering all such places or locations, when accompanied by a supplemental report showing the gross sales and service and net taxable sales and service and taxes collected thereon for each such place or location.
- (c) Reporting periods. Retailers shall report and remit tax due hereunder on a monthly basis of the tax due per month, unless otherwise approved by the Finance Director.
- (d) Electronic returns. All returns required by this Article shall be submitted electronically over the internet or transmitted by such other similar electronic means as may be specified by the Finance Director. Any taxpayer electing to submit a return on paper shall be assessed an administrative fee in an amount to be set by resolution of the City Council to defray the cost to the City. Payments shall be applied first to such assessed administrative fee with the remaining payment balance applied to the tax amount due and then to any penalty and interest amount due, if applicable.

Sec. 4-3-730. - Closing agreements.

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

Article, shall be personally liable to the extent of the property so distributed for any unpaid taxes of the decedent, decedent's estate, trust estate, receivership or corporation, covered by this Article.

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

(d) Limitation of liability.

1. In case use tax covered by this Article is due from a decedent or from his or her estate or by a corporation, in order for personal liability under Subsection (b) above to remain in effect, determination of the use tax due shall be made and notice and demand therefor shall issue within three (3) years after written request for such determination, filed after the filing of the decedent's final return or filed after the filing of the return of the decedent's estate with respect to which such request is applicable, by any personal representative of such decedent, or by the corporation filed after the filing of its return; but a request under this provision shall not extend the period of limitation otherwise applicable.
2. This Subsection will not apply in the case of a corporation unless:
 - (A) Such request notifies the City Manager that the corporation contemplates dissolution at or before the expiration of such three-year period;
 - (B) The dissolution is begun in good faith before the expiration of such three-year period; and
 - (C) The dissolution is completed.
3. Upon the expiration of such three-year period, without determination being made and notice and demand being issued, the personal representative or representative of the decedent and the directors of the corporation no longer will be liable under the provisions of Subsection (b) above.

Division 7 Claims for refunds and recovery

Sec. 4-3-800. - Refunds.

- (a) Disputed sales tax. Should a dispute arise between the purchaser and seller as to whether or not any sale, service or commodity is exempt from taxation under this Article, nevertheless

the seller shall collect and the purchaser shall pay the tax and the seller shall issue to the purchaser a receipt or certificate, on forms prescribed by the Finance Director, showing the names of the seller and the purchaser, the items purchased, the date, price, amount of tax paid and a brief statement of the claim of exemption.

- (b) Refund allowed if exempt. A refund shall be made, or a credit allowed, for the sales tax so paid under dispute by any purchaser who has an exemption under this Article, provided that such refund shall be made by the Finance 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 Finance Director, which forms shall contain such information as the Finance Director shall prescribe.
- (c) Refund disallowed. Upon receipt of such application, the Finance Director shall examine same with all due speed and shall give notice to the applicant by order in writing of his or her decision thereon. Aggrieved applicants, within thirty (30) days after such decision is sent, may petition the Director for a hearing on the claim in the manner provided in Section 4-3-640 of this Article.
- (d) Refund of excess use taxes. Whenever the Finance Director discovers from the examination of a return or pursuant to an audit of a taxpayer's records that the taxpayer has overpaid use taxes due the City, the Finance Director shall issue a refund for payment of the excess taxes to the taxpayer, plus interest at the rate established by subsection 4-3-820(b)(2) of this Article, unless the overpayment and interest are applied to offset other tax due. The Finance Director shall keep a duplicate of said refund and also a statement that sets forth the reason why such refund was ordered.
- (e) Taxpayer's discovery of overpayment of use tax. A taxpayer may apply for a refund of payment of excess use taxes within sixty (60) days after discovery of the overpayment. The Finance Director may deny such refund if he or she finds that the taxpayer discovered 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 Finance Director for a hearing on the claim in the manner provided in Section 4-3-640 above within thirty (30) days after the Director's Denial of Refund is sent to the taxpayer.
- (f) Statute of limitations. With the exception of a written document that tolls the running of the statute of limitations, no refunds of sales taxes shall be allowed or retailers paid under any circumstances, including the circumstances set forth in subsection (b) above, more than thirty-six (36) months after the City's receipt of sales or use taxes in question.

- (g) Refund to offset previous tax due. Any overpayment of tax for any tax period by any taxpayer may be applied, plus interest at the rate established by subsection 4-3-820(b)(2) of this Article, by the Finance Director to any other balance of unpaid tax, penalty or interest due and owing by that taxpayer.
- (h) Refunds of overpayment of use taxes paid by the estimated percentage basis shall be administered as set forth in Subsection 4-3-330(a) of this Article. The statute of limitations for refunds of overpayment of use taxes is ninety (90) days from the date of the final inspection by the building official, if no certificate of occupancy will be issued, or ninety (90) days from the date of the issuance of the certificate of occupancy, when a certificate of occupancy, temporary or otherwise is issued.
- (i) Refunds not assignable. The right of any taxpayer 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 Finance 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 City.
- (j) Burden of proof of exemption. Except as provided in subsection (k)(1), the burden shall be on the taxpayer making such claim to prove that sales, services and commodities on which tax refunds are claimed are exempt from taxation or were not purchased at retail. The Finance Director may prescribe reasonable requirements for such proof.
- (k)
 - 1. If a marketplace facilitator demonstrates to the satisfaction of the Finance Director that the marketplace facilitator made a reasonable effort to obtain accurate information regarding the obligation to collect tax from the marketplace seller and that the failure to collect tax on any tangible personal property, commodities, or services sold was due to incorrect information provided to the marketplace facilitator by the marketplace seller, then the marketplace facilitator, but not the marketplace seller, is relieved of liability under this section for the amount of the tax the marketplace facilitator failed to collect, plus applicable penalties and interest.
 - 2. If a marketplace facilitator is relieved of liability under subsection (k)(1) of this section, the marketplace seller is liable under this section for the amount of tax the marketplace facilitator failed to collect, plus applicable penalties and interest.

3. This subsection (k) does not apply to any sale by a marketplace facilitator that is not facilitated on behalf of a marketplace seller or that is facilitated on behalf of a marketplace seller who is an affiliate of the marketplace facilitator.
- (l) False or fraudulent refund claims. Any person, including any applicant for refund under the provisions of this Article, who shall make any false statement in connection with an application for a refund of any taxes shall be deemed guilty of a violation of this Article.
- (m) Action to recover fraudulent claims. If any person is convicted of a violation of Subsection (g) above, such conviction shall be prima facie evidence that all refunds received by such person during the current year were obtained unlawfully, and the City Manager is hereby empowered and directed to bring appropriate collection proceedings for recovery of such refunds.

Sec. 4-3-810. - Claims for interjurisdictional recovery.

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

- (a) When it is determined by the Finance Director that sales and use tax owed to the City has been reported and paid to another municipality, the City shall promptly notify the retailer 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.
- (b) The City may make a written claim for recovery directly to the municipality that received tax and/or penalty and interest owed to the City or, in the alternative, may institute procedures for collection of the tax from the taxpayer or retailer. The decision to make a claim for recovery lies in the sole discretion of the City. Any claim for recovery shall include a properly executed release of claim from the taxpayer and/or retailer releasing its claim to the taxes paid to the wrong municipality, evidence to substantiate the claim and a request that the municipality approve or deny, in whole or in part, the claim within ninety (90) days of its receipt. The municipality to which the City submits a claim for recovery may, for good cause, request an extension of time to investigate the claim, and approval of such extension by the City shall not be unreasonably withheld.
- (c) Within ninety (90) days after receipt of a claim for recovery, the City shall verify to its satisfaction whether or not all or a portion of the tax claimed was improperly received, and shall notify the municipality submitting the claim in writing that the claim is either approved or denied in whole or in part, including the reasons for the decision. If the claim is approved in whole or in part, the City shall remit the undisputed amount to the municipality submitting the claim within thirty (30) days of approval. If a claim is submitted jointly by a municipality and a

retailer or taxpayer, the check shall be made to the parties jointly. Denial of a claim of recovery may only be made for good cause.

- (d) The City may deny a claim on the grounds that it has previously paid a claim for recovery arising out of an audit of the same taxpayer.
- (e) The period subject to a claim of recovery shall be limited to the thirty-six (36-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 Finance Director and taxpayer to toll the running of this thirty-six-month period.

Sec. 4-3-820. - Interest on overpayments and refunds.

- (a) Interest on sales or use tax overpayment. No interest shall be paid upon any overpayment of tax unless such overpayment was made under protest.
- (b) Interest on license fee overpayment. No interest shall be paid on any overpayment of license fees.
- (c) Payment of interest:
 - 1. Interest owed by the taxpayer on an audit may be applied against calculated interest that would be credited if allowed.
 - 2. Interest paid on an eligible overpayment of taxes pursuant to subsection (a) above under protest shall be paid at the interest rate set by the Finance Director on January 1 of each year for the next succeeding year, as allowed by Section 39-21-110.5, C.R.S., as amended, which interest rate is currently defined to be the prime rate, as reported on the previous July 1, plus three (3) points, rounded to the next full percent.
 - 3. Interest shall accrue only from the date of the taxpayer's application for a refund. If the refund is to be applied against other taxes owed by the taxpayer, interest shall not be paid on the refund for the period after the due date of the amount against which the credit is taken.
- (d) Refund erroneously made to bear interest. Any portion of a sales or use tax, or any interest, assessable penalty, additional amount or additional tax, which has been erroneously refunded, shall bear interest at the rate established in subsection (b) above from the date of the payment of the refund.

Division 8 Severability; Effective Date

Sec. 4-3-900. - Severability—Saving clause.

- (a) As used in this section, the term provision means and includes any part, division, subdivision, section, subsection, sentence, clause or phrase; the term application means and includes an

application of an ordinance or any part thereof, whether considered or construed alone or together with another ordinance or ordinances, or part thereof, of the City; and the term this Article means and includes the ordinance enacting this Section, together with any and all exhibits and schedules therein incorporated, and each Title, Article and Section of the Municipal Code in which such ordinance is codified.

- (b) If any provision of this Article, or the application of such provision to any person or circumstance, is for any reason held to be invalid, such invalidity shall not affect other provisions or applications of this Article which can be given effect without the invalid provision or application; and, to this end, the provisions of this Article are declared to be severable. The City Council hereby declares that it would have passed this Article and each provision thereof, even though any one (1) of the provisions might be declared unconstitutional or invalid.
- (c) The amendment, repeal or supersession of any ordinance or provision of any ordinance by this Article shall not release, extinguish, alter, modify or change in whole or in part any penalty, liability or right which may have been incurred or obtained under such Article or provision thereof; and such Article or provision thereof so amended, repealed or superseded shall be treated and held as remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions, for the enforcement of such penalty, liability or right and for the enforcement of such penalty, liability or right and for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered or made in such actions, suits or proceedings, or prosecutions imposing, inflicting or declaring such penalty or liability or enforcing such right, and shall be treated and held as remaining in force for the purpose of sustaining any and all proceedings, actions, hearings and appeals pending before any court or administrative tribunal.

Sec. 4-3-910. – Effective date.

This Article shall become effective on January 1, 2020 and shall be subject to enforcement on and after that date.