

ORDINANCE NO. 09-07

INTRODUCED BY:

Councilperson Coppola

Councilperson Dooley

**ORDINANCE OF THE CITY COUNCIL
OF
THE CITY OF CASTLE PINES NORTH**

AN AMENDED AND RESTATED ORDINANCE IMPOSING A SALES TAX ON THE SALE OF TANGIBLE PERSONAL PROPERTY AT RETAIL AND THE FURNISHING OF TAXABLE SERVICES, LEVYING A USE TAX ON BUILDING AND CONSTRUCTION MATERIALS AND MOTOR AND OTHER VEHICLES IN THE CITY OF CASTLE PINES NORTH, COLORADO, AND REQUIRING A SALES AND USE TAX LICENSE, AND SETTING PENALTIES FOR CERTAIN VIOLATIONS OF THIS ORDINANCE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CASTLE PINES NORTH, COLORADO:

ARTICLE I. AUTHORITY

The City of Castle Pines North (the "City") is a statutory municipality incorporated and organized pursuant to the provisions of Section 31-2-101 et seq., Colorado Revised Statutes ("C.R.S."). Section 29-2-102, C.R.S., provides that any incorporated town or city in the State of Colorado may adopt a sales and use tax in accordance with the provisions of Article 2 of Title 29, Colorado Revised Statutes. This Ordinance 09-07 is intended to and shall restate in their entirety Ordinances 08-03 and 08-05, the provisions of which shall remain in effect as amended hereby. Notwithstanding, the effective date of the City's imposition of sales and use taxes imposed hereby and by Ordinances 08-03 and 08-05 shall remain the same as the effective date of Ordinance 08-03, May 7, 2008.

ARTICLE II. DECLARATIONS OF POLICY

- A. Section 20(4) of Article X of the Constitution of Colorado ("TABOR") requires any tax policy change by a district that results or would result in a net tax revenue gain to have voter approval in advance; and
- B. The City is a "district" subject to the requirements of TABOR; and

C. At an election duly called and conducted on November 6, 2007, pursuant to an order of the Douglas County District Court, a majority of the electors of the City of Castle Pines North voting on the question approved the following Ballot Question 2C:

BALLOT QUESTION 2C

SHALL THE CITY OF CASTLE PINES NORTH BE AUTHORIZED TO INSTITUTE A NEW SALES AND USE TAX, ON ALL ITEMS TAXABLE BY LAW, RESULTING IN AN INCREASE TO THE CITY OF CASTLE PINES NORTH OF \$ 420,650 ANNUALLY (ESTIMATED FIRST FISCAL YEAR DOLLAR INCREASE), BEGINNING THE FIRST FISCAL YEAR OF 2008, AND BY WHATEVER ADDITIONAL AMOUNTS ARE PRODUCED EACH YEAR THEREAFTER, WITH SUCH REVENUES TO BE GENERATED FROM A SALES AND USE TAX NOT TO EXCEED A RATE OF 2.75%, AND SHALL SUCH INCREASED TAXES CONSIST OF SALES AND USE TAXES IMPOSED BY THE CITY THROUGH ORDINANCES ADOPTED FROM TIME TO TIME, SUCH ORDINANCES SUBJECT ONLY TO THE LIMITATIONS CONTAINED IN THE COLORADO AND U.S. CONSTITUTIONS; AND IN CONNECTION THEREWITH AS A VOTER-APPROVED TAX INCREASE, SHALL THE PROCEEDS OF ANY SUCH TAXES, AND INVESTMENT INCOME THEREON, BE RETAINED, COLLECTED, AND SPENT BY THE CITY WITHOUT REGARD TO ANY SPENDING, REVENUE-RAISING, OR OTHER LIMITATION CONTAINED IN ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION OR ANY OTHER LAW, AS IT CURRENTLY EXISTS OR AS IT MAY BE AMENDED, AND WITHOUT LIMITING IN ANY YEAR THE AMOUNT OF OTHER REVENUE THAT MAY BE COLLECTED AND SPENT BY THE CITY, AND SHALL A PERCENTAGE OF THE SALES AND USE TAX AUTHORIZED BE SHARED WITH THE CITY OF CASTLE PINES, IF SUCH A CITY IS INCORPORATED, PURSUANT TO THE REVENUE SHARING AND SETTLEMENT AGREEMENT ENTERED INTO BY THE CITIZENS FOR THE PRESERVATION OF CASTLE PINES NORTH, THE CASTLE PINES NORTH HOMEOWNERS ASSOCIATION, THE COMMITTEE TO PROTECT CASTLE PINES VILLAGE AND THE CASTLE PINES HOMES ASSOCIATION AND APPROVED BY THE DOUGLAS COUNTY DISTRICT COURT IN CASE NO. 06CV2550?

D. TABOR permits the registered electors of the City of Castle Pines North to approve a tax policy change and to adopt a "voter approved revenue change," thus allowing the City to keep and spend revenues in excess of the limitations provided in TABOR and in Section 20(7) thereof.

ARTICLE III. LEGISLATIVE INTENT, ADOPTION, AND POLICY DECLARATIONS

A. The City declares that the purpose of the levy of the taxes imposed by this Ordinance is for raising funds for the payment of expenses of operating and improving the City and its facilities and for the payment of the principal of and interest due upon any general obligation or special revenue bonds that may in the future be lawfully authorized and issued by or on behalf of the City; and, in accordance with these purposes, the proceeds of the taxes shall be placed in the sales and use tax fund, or other appropriate fund or funds, from which shall be allocated, apportioned, and transferred such sums as may be lawfully appropriated and authorized by the City Council from time to time.

B. It is further declared to be the legislative intent of the City, acting through its duly elected representatives, that, for purposes of this Ordinance, the taxes imposed hereunder shall be reduced by the amount of tax which the City is prohibited from collecting under the State and federal Constitutions and laws by reason of a tax legally imposed and paid to another State or

local, including municipal, government on a transaction that would otherwise be taxable pursuant to this Ordinance.

C. It is hereby further declared to be the legislative intent of the City, acting through its duly elected representatives, that, for the purposes of this Ordinance, every person who stores, uses, distributes or consumes in the City any article of tangible personal property or any taxable service subject to the provisions of this Article, which has been purchased at retail, is exercising a taxable privilege.

D. It is hereby further declared to be the legislative intent of the City, acting through its duly elected representatives, that, for the purposes of this Ordinance, every vendor who is engaged in business in the City and who delivers or causes to be delivered to a purchaser in the City any property or service taxable hereunder shall collect the tax imposed by this Ordinance by adding it to the purchase price of such property or service that is purchased in the manner set forth herein.

ARTICLE IV. DEFINITIONS

For purposes of this Ordinance, the definition of words herein contained shall be as said words are defined in Sections 39-26-102 and 39-26-201, C.R.S., as amended, provided that references to the "state" as the jurisdictional taxing authority shall be read to mean "City." The enumerated definitions set forth in Sections 39-26-102 and 39-26-201, C.R.S. shall control, supersede, and govern where there is a conflict between the statutory definitions and the definitions herein set forth. Further, in instances in which the statutory definitions give rise to an exclusion or exemption from the taxes herein imposed, the terms of the statutes shall control. Said definitions of Sections 39-26-102 and 39-26-201, C.R.S., as amended from time to time, are incorporated herein by this reference.

A. "Agent" means any employees or contractors authorized by the City Manager to perform functions in accordance with this Ordinance.

B. "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.

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

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

candidate for public office, or any veterans' organization registered under Section 501(c)(19) of the "Internal Revenue Code of 1986," as amended, for the purpose of sponsoring a special event, meeting or other function in the state of Colorado so long as the event, meeting, or function is not part of such organization's regular activities in the state.

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

F. "City Clerk" means the duly elected and acting City Clerk of the City of Castle Pines North.

G. "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 Ordinance, the City Manager may assign such right or delegate such duty to another employee, agent or contractor, unless specifically prohibited by a provision of this Ordinance.

H. "Commercial packaging materials" means containers, labels, and shipping cases used or transferred by a person engaged in manufacturing, compounding, wholesaling, jobbing, retailing, packaging, distributing, or bottling for sale, profit or use that meets all of the following conditions: (1) is used by the person to contain or label a finished product; (2) is transferred by the person along with and as a part of the finished product to the purchaser; and (3) is not returnable to the person so engaged for reuse.

I. "Construction and building materials" means tangible personal property which, when combined with other tangible property, loses its identity to become an integral and inseparable part of a structure or building project, and the term includes public and private improvements to real property. Construction and building 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 conduit, pipes, and 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, wall paper, weather stripping, wire netting and screen, water mains and meters, and wood preserver. The above materials, when used for forms or other items which do not remain as an integral or inseparable part of a structure or project are not construction materials.

J. "Engaged in or doing business in the City" means the selling, leasing, hiring for use, or delivering in the City, or any activity in the City in connection with the selling, leasing, hiring for use, or delivering in the City, of tangible personal property and/or taxable services by a retail sale for use, storage, distribution or consumption within the City. This term shall include, but shall not be limited to, the following acts or methods of transacting business:

1. The maintaining within the City directly or indirectly or by a subsidiary of an office, building, structure, store, distributing house, salesroom or house, warehouse, or other place of business, including mobile facilities and vehicles temporarily in the City.

2. 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 state and by reason thereof receiving orders from or selling or leasing tangible personal property to such persons residing in this state for use, consumption, distribution, and storage for use or consumption in this state.

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

L. "Person" means any individual, firm, partnership, joint venture, corporation or company, association, estate or trust, receiver, trustee, assignee, lessee, or fiduciary, or any group or combination acting as a unit and includes the plural as well as the singular number.

M. "Pre-press preparation supplements" means inserts, attachments, or supplements circulated in or with newspapers that (1) are primarily devoted to advertising and (2) the distribution, insertion, or attachment of which is commonly paid for by the advertiser.

N. "Purchase price"

1. means the price to the consumer, exclusive of any direct tax imposed by the federal government or by this Ordinance, and, in the case of all retail sales involving the exchange of property, also exclusive of the fair market value of the property exchanged at the time and place of the exchange, if:

- (a) Such exchanged property is to be sold thereafter in the usual course of the retailer's business; or
- (b) Such exchanged property is a vehicle and is exchanged for another vehicle and both vehicles are subject to licensing, registration, or certification under the laws of this state, including, but not limited to, vehicles operating upon public highways, off-highway recreation vehicles, watercraft, and aircraft.

2. 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 Ordinance, 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.

O. "Return" means the sales and use tax reporting forms used to report sales and use tax.

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

Q. "Security system services" means electronic security services engaged for the warning or protection of persons or property.

R. "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 Ordinance. Neither term includes:

1. 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;

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

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

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

5. The transfer of assets from a parent corporation to a subsidiary corporation or corporations which are owned at least eighty percent by the parent corporation, which transfer is solely in exchange for stock or securities of the subsidiary corporation;

6. The transfer of assets from a subsidiary corporation or corporations which are owned at least eighty percent by the parent corporation to a parent corporation or to another subsidiary which is owned at least eighty percent 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;

7. A transfer of a limited liability company or partnership interest;

8. The transfer in a reorganization qualifying under Section 368(a)(1) of the "Internal Revenue Code of 1986", as amended;

9. 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;

10. The repossession of personal property by a chattel mortgage holder or foreclosure by a lienholder;

11. The transfer of assets between parent and closely held subsidiary corporations, or between subsidiary corporations closely held by the same parent corporation, or between corporations which are owned by the same shareholders in identical percentage of stock ownership amounts, computed on a share-by-share basis, when a tax imposed by this Ordinance was paid by the transferor corporation at the time it acquired such assets, except to the extent provided by subparagraph (13) of this subsection (R). For the purposes of this subparagraph (11), a closely held subsidiary corporation is one in which the parent corporation owns stock possessing at least eighty percent of the total combined voting power of all classes of stock entitled to vote and owns at least eighty percent of the total number of shares of all other classes of stock.

12. "Sale" or "sale and purchase", in addition to the items included in this Section, includes the transaction of furnishing rooms or accommodations by any person, partnership, limited liability company, association, corporation, estate, receiver, trustee, assignee, lessee, or person acting in a representative capacity or any other combination of individuals by whatever name known, to a person who for a consideration uses, possesses, or has the right to use or possess any room in a hotel, apartment hotel, lodging house, motor hotel, guesthouse, 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.

13. Except as otherwise provided in this subsection (13), 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 Ordinance. In connection with the transactions referred to in subparagraph (11) of subsection (R) of this Section, 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 subsection (13), 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.

S. "Storage" means any keeping or retention of or exercise of dominion or control over tangible personal property within the City.

T. "Tangible personal property" means corporeal personal property. The term shall not be construed to include newspapers, as legally defined by Section 24-70-102, C.R.S., pre-press preparation newspaper supplements which become attached to or inserted in and distributed with such newspapers, or direct mail advertising materials which are distributed in Colorado by any person engaged solely and exclusively in the business of providing cooperative direct mail advertising.

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

V. "Taxpayer" means any person obligated to account to the Colorado State Department of Revenue, Treasurer or other designated officials of the City for taxes collected or to be collected or from whom a tax is due under the terms of this Ordinance.

W. "Taxable services" or "services" mean services subject to tax pursuant to this Ordinance.

X. "Treasurer" means the duly elected and acting Treasurer of the City of Castle Pines North, with the duties provided by Sections 31-4-111 and 31-20-301, C.R.S., as well as all other provisions of Colorado law defining the duties of the Treasurer in a statutory city.

Y. "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 taxable services including those (1) under a lease or license to use, or (2) pursuant to a transaction whereby tangible personal property together with the services of an operator thereof, is furnished for another person, irrespective of the fact that during all times that the said property is so furnished, the control of the operation of the same remains in the person so providing the said property, or (3) pursuant to a purchase at retail, either within or without the City.

Z. "Wholesale sale" means a sale by wholesalers to retail merchants, jobbers, dealers, or other wholesalers for resale and does not include a sale by wholesalers to users or consumers not for resale, and the latter sales shall be deemed retail sales and subject to the provisions of this Ordinance. This term includes sales of all pre-press preparation printing supplements, as defined by subsection (M) of this Section, which are used by a printer for a specific printing contract where the printed product is sold at retail to a customer accepting delivery within this state.

ARTICLE V. DUTIES AND POWER OF THE CITY MANAGER

The administration of the licensing provisions of this Ordinance is hereby vested in the City Manager. The administration of all other provisions of the Ordinance and of the City sales and use tax is hereby vested in and shall be exercised by the City Manager, limited only by the

authority of the Colorado Department of Revenue to collect, administer and enforce the sales tax as authorized under state statute and herein. The City Manager shall prescribe forms and formulate and promulgate appropriate rules and regulations to effect the purpose of this Ordinance, in conformity with this Ordinance 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. The City Manager shall have power and authority to enact, promulgate, amend, and rescind rules and regulations consistent with the provisions of this Ordinance. 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 Ordinance.

ARTICLE VI. CITY MANAGER TO EXAMINE RETURNS

For the purpose of ascertaining the correctness of any return, for the purpose of making an estimate of the use tax due from any taxpayer, for the purpose of ascertaining the correctness of use tax due on a building permit, or for the purpose of ascertaining the correctness of any use tax due under this Ordinance, the City Manager shall have power to examine any books, papers, records, or memoranda bearing upon the matters required to be included in the return. Subject to the provisions of the Ordinance, the City Manager is authorized to prescribe the duties and powers of such officers, accountants, experts, and other persons as may be necessary in the performance of his/her duty.

ARTICLE VII. RETENTION OF RECORDS FOR 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 thirty-six (36) months such books, accounts and records as may be necessary to determine the amount of such tax liability. Every Contractor, property owner/lessor or lessee engaged in construction projects in the City shall keep and preserve for at least thirty-six (36) months following the date of issuance of a certificate of occupancy or final inspection all suitable records which will allow the accurate determination of the use tax due. For all construction and building materials subject to the use tax which are not used or consumed in a project for which a certificate of occupancy or final inspection is required to be obtained, all suitable records as described herein shall be kept and preserved for at least thirty-six (36) months after the date of the taxable transaction.

B. Records to be Made Available for Audit. All such books, accounts and records, together with all bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books, shall be maintained by the Taxpayer in the same manner as would an ordinarily prudent business person and shall be open for examination at any reasonable time by the Colorado Department of Revenue or the City Manager or his/her duly authorized agents. The records should show:

1. Gross receipts from sales or rental payments from leases of tangible personal property (including any services that are part of the sale or lease) made in the

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.** When any person, firm or corporation subject to tax hereunder 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 City Manager for examination by the City Manager, or in lieu thereof, said person, firm or corporation shall pay in advance, or as approved by the City Manager, such travel, lodging, meal and related expenses as shall reasonably be incurred by the City Manager 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 tax license in at least four other Colorado municipalities that administer their own use tax collection, may request a coordinated audit as provided herein.

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

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

4. If this City desires to participate in the audit of a taxpayer that submits a complete request for a coordinated audit pursuant to paragraph (3), the City Manager shall so notify the Finance Manager of the municipality whose notice of audit prompted

the taxpayer's request within ten (10) calendar days after receipt of the taxpayer's request for a coordinated audit. The City Manager 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 this City, this City's Manager shall facilitate arrangements between this 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 City Manager 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, unless another provision of this ordinance or a provision of the coordinated audit agreement allows for additional jurisdictions to have access to the information.

6. If the taxpayer's request for a coordinated audit was in response to a notice of audit issued by this City, this City's Manager shall, once arrangements for the coordinated audit between this 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 City Manager 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 Article 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 Ordinance;
 - c. When a taxpayer refuses to promptly sign a waiver of limitation, or;
 - d. When a taxpayer fails to provide a timely and complete request for a coordinated audit as provided in paragraph (2).

ARTICLE VIII. TAX REPORTS AND RETURNS

A. City's Preservation of Records. All reports and returns of taxes received by the City covered by this Ordinance shall be preserved until the City Clerk orders them destroyed.

B. Confidential Nature of License Applications and Returns. Except in accordance with judicial order, consent of the Taxpayer, or as otherwise provided by law, the City Manager, the City Treasurer, and the City Attorney, and their authorized representatives, 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 Ordinance. The officials charged with the custody of such documents, reports, and returns shall not be required to produce them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the City Manager in an action or proceeding under the provisions of any such taxing or open record statutes when the report of facts shown thereby are directly involved in such action or proceeding. In either event 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 Article shall be construed to prohibit the delivery to a person or his/her duly authorized representative of a copy of any return or report filed in connection with his/her tax, and such copies may be certified by the City Manager, and when so certified shall be evidence equally with and in like manner as the originals and may be received by the courts of this State as evidence of the contents.

D. Publication of Statistics. Nothing in this Article 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 Article (VIII), the City Manager in his/her discretion may furnish to the Douglas County Finance Manager and his/her authorized personnel, to the State of Colorado Department of Revenue Executive Manager and his/her authorized personnel, to the taxing officials of the State of Colorado political subdivisions, to the taxing officials of any other state and its political subdivisions, and to the United States, any information contained in tax information and related schedules and documents filed pursuant to this Ordinance, or in the report of an audit or investigation made with respect thereto provided, provided that such information is to be used only for tax purposes.

ARTICLE IX. ASSESSMENT

A. Assessment. This Article shall apply if the City Manager determines that any person, taxpayer, or vendor has failed, neglected, or refused:

1. To make a return and pay all use taxes due; or
2. To remit the proper amount of use tax due; or
3. To pay in full all use taxes due because of negligence, fraud or on a regular basis; or

4. To remit use taxes due pursuant to an audit, special assessment, or special audit assessment; or
5. To remit the proper amount of penalties and/or interest due; or
6. To remit the proper amount of license fees due, including any licensing penalties or interest.

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

C. Estimated Assessment. If the City Manager is unable to audit the records of a taxpayer, either due to the taxpayer's refusal or lack of cooperation, due to time constraints, or due to other reasons which the City Manager may reasonably determine, the City Manager shall make an estimate based upon such information as may be available and shall issue an assessment as provided herein.

D. Penalty and Interest. Unless the taxpayer shows that its failure to comply fully with this Ordinance is due to reasonable cause, which the taxpayer may prove in a hearing requested pursuant to this Ordinance, there shall be added to all assessments under the purview of this Ordinance, a penalty of fifteen (15%) of the 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 deficiency from the time the return was due.

E. Penalty for Fraud. If any deficiency in use taxes paid is due to fraud with the intent to evade the tax, there shall be added, instead of the penalty prescribed in subsection (D) above, a penalty of one-hundred percent (100%) of the total amount of the deficiency to the assessment required by subsection (B) above. 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 deficiency from the time the return was due.

F. Special Penalty for Repeated Enforcement. In any assessment issued to a person or taxpayer against whom enforcement proceedings have been commenced in the past, a special penalty, in addition to all others provided in this Ordinance, shall also be assessed. This special penalty shall be equal to the greater of two hundred fifty dollars (\$250.00) or twenty-five percent (25%) of the tax deficiency. For purposes of this subsection, "enforcement proceedings" shall mean:

1. Issuance of a distraint warrant; or
2. Filing of a lawsuit in the district or county court; or

3. Issuance of a summons to municipal or county court

G. **Manager May Waive Penalty.** The City Manager is hereby authorized to waive, for good cause shown, any penalty assessed as provided in this Ordinance. Interest imposed in excess of nine percent (9%) per annum shall be deemed a penalty. If the City Manager finds that a taxpayer has, in good faith, paid tax to a vendor, then the City Manager is hereby authorized to abate the interest and penalty in its entirety.

H. **Interest and Penalty Assessment.** Interest and penalties prescribed under this Ordinance 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 Article on the portion of the tax so satisfied.

ARTICLE X. JEOPARDY ASSESSMENT

A. **Jeopardy Enforcement.** If the City Manager finds that collection of the tax will be jeopardized by delay, in his/her discretion, he/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 City Manager may proceed immediately to collect such tax.

B. **Immediate Enforcement Action.** In any other case wherein it appears that the revenue is in jeopardy, the City Manager may immediately issue demand for payment; and, the tax shall be due and payable forthwith and, in his/her discretion, the City Manager may proceed immediately to collect said tax.

C. **Security for Payment.** Collection under either Section (A) or (B) of this Article may be stayed if the taxpayer gives such security for payment as shall be satisfactory to the City Manager.

ARTICLE XI. NOTICE BY MAIL

The taxpayer shall at all times have the burden of ensuring that his or her correct mailing address, email address, and fax number is on file with the City Manager. In the event that a notice is sent to the taxpayer pursuant to this Ordinance, and said notice is not received by the taxpayer through no fault of the City, or the notice is returned by the post office as undeliverable or rejected by the taxpayer, such notice shall be deemed given on the date mailed and the City shall have no further obligation to complete service of the notice.

ARTICLE XII. HEARINGS

A. **Request for Hearing.** Any taxpayer may request a formal or informal hearing on any proposed tax by reason of issuance of a Notice of Final Determination--Assessment and

Demand for Payment or by reason of issuance of a Denial of Refund by submitting a written application to the City Manager within fifteen (15) days of the date that a Notice of Final Determination – Assessment and Demand for Payment or Denial of Refund is sent by the City Manager. The request for hearing shall set forth the taxpayer's reasons for and the amount of the requested changes in the Notice of Final Determination – Assessment and Demand for Payment or Denial of Refund.

B. Hearing Time and Place. The City Manager shall notify the taxpayer in writing of the time and place for such hearing thirty (30) calendar days prior thereto, unless the taxpayer requests shorter notice or an extension of time. In no event shall the hearing be held more than sixty (60) calendar days after the City Manager's receipt of request for a hearing. In all cases, the hearing shall be held at the office of the City Manager, unless otherwise agreed by the City and the taxpayer.

C. Informal Hearing. If the taxpayer elects to participate in an informal hearing, which hearing must be held within thirty (30) calendar days of the City Manager's receipt of the taxpayer's request for a hearing, additional informal hearings shall not be permitted except at the discretion of the City Manager. Informal hearings 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 taxpayer must request, in writing, a formal hearing within fifteen (15) calendar days after the informal hearing and the City Manager shall give notice of the formal hearing pursuant to subsection (B) above. If the taxpayer fails to request a formal hearing, all further rights to a hearing and appeal are waived and the taxpayer shall be bound by the Notice of Final Determination--Assessment and Demand for Payment or final Denial of Refund.

D. City Manager to Conduct Formal Hearing. The hearing shall be held before the City Manager, or a hearing officer designated by the City Manager. At the hearing, the taxpayer may assert any facts, make any arguments and file any briefs and affidavits he believes pertinent to his/her case. The taxpayer shall be notified of the name of the hearing officer fifteen (15) calendar days before the hearing date and any objection by the taxpayer to the hearing officer shall be filed in writing at least ten (10) days prior to the hearing. All reasonable costs to and of the City for a Hearing Officer must be paid by the taxpayer requesting the formal hearing when the Hearing Officer determines no change in the tax due.

E. Hearing Based on Written Brief. The taxpayer may also file a written brief and such other written materials or documents as he shall deem appropriate and request that the City Manager reconsider the deficiency or denial of refund without a hearing. The City Manager shall proceed to reconsider the deficiency or denial of refund in the same manner as if the written material submitted had been presented at a hearing pursuant to this Article. 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. **Time Limitation on a Request for Hearing.** After the expiration of fifteen (15) calendar days from the date that the Notice of Final Determination--Assessment and Demand for Payment or Denial of Refund is sent, if the tax has not been paid, or if no request for hearing has been requested, or no written brief has been filed by the taxpayer, then the Notice of Final Determination--Assessment and Demand for Payment previously mailed, faxed, or emailed 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 on the facts of its case.

G. **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 may modify or abate in part or in full the tax and the interest and penalty related to such tax questioned at the hearing or may approve a refund.

H. **Formal Hearing Determination Notices.** After a formal hearing, the City Manager shall send a Hearing Determination Notice to the taxpayer setting forth the tax amounts due and the grounds for allowance or rejection in whole or in part of the taxpayer's claims.

I. **Tax Due Date after Hearing.** Unless an appeal be taken, the tax and fee, together with interest thereon and penalties, if any, shall be paid within thirty (30) calendar days after the Hearing Determination Notice is sent by the City Manager to the taxpayer.

ARTICLE XIII. APPEALS

The taxpayer may appeal the Hearing Determination Notice of the City Manager within thirty (30) calendar days of the date that such Hearing Determination Notice is issued by the City Manager. Such appeal shall be conducted pursuant to the terms of Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

ARTICLE XIV. REFUNDS

A. **Refund of Excess Use Taxes.** Whenever the City Manager 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 City Manager shall issue a refund check for the excess taxes to the taxpayer, unless the overpayment is applied to offset other tax due. The City Manager shall keep a duplicate of said refund check and also a statement which sets forth the reason why such refund was ordered. If the refund totals less than fifteen (\$15.00) dollars, the refund amount shall be credited to the taxpayer's use tax account, unless the taxpayer requests payment of the refund.

B. **Taxpayer's Discovery of Overpayment of Use Tax.** A taxpayer may apply for a refund of payment of excess use taxes within sixty (60) calendar days after discovery of the overpayment. The City Manager may deny such refund if he finds the taxpayer did or

reasonably should have discovered the overpayment more than sixty (60) calendar days prior to the date of the application for a refund. When the City Manager denies a refund for any permissible reason under this Ordinance, the City Manager shall issue a written Denial of Refund stating the grounds therefor. The taxpayer may petition the City Manager for a hearing within fifteen (15) calendar days after the City Manager's Denial of Refund is sent to the taxpayer.

C. Statute of Limitations. With the exception of a written document that tolls the running of the statute of limitations, no refund shall be allowed or paid under any circumstances more than three (3) years after the City's receipt of use taxes in question.

D. Refund to Offset Previous Use Tax Due. Whenever it is established that any taxpayer has, for any period, overpaid a tax imposed by this Ordinance, and that there is an unpaid balance of use tax, accrued interest, or license fees according to the records of the City Manager, owing by such taxpayer for any other period, so much of the overpayment of tax plus interest allowable thereon as does not exceed the amount of such unpaid balance, shall be credited thereto and any excess of the overpayment shall be refunded.

E. Refund of Overpayment of Taxes paid by the Estimated Payment Basis. Application for refund by contractors prepaying on an estimated percentage payment basis, or actual tax basis, shall be made within three (3) years after the date of the Certificate of Occupancy or date of purchase, whichever is sooner. The City Manager may require any data to accompany the application and may require an audit to be done before refund is paid.

F. Refunds Not Assignable. The right of any person to a refund under this Ordinance shall not be assignable. The City Manager 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.

G. False or Fraudulent Refund Claims. Any person, including any applicant for refund under the provisions of this Ordinance, 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 Ordinance.

H. Action to Recover Fraudulent Claims. If any person be convicted of violation of subsection (G) of this Article, 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.

ARTICLE XV. INTEREST ON OVERPAYMENTS AND REFUNDS

A. Interest on Use Tax Overpayment. No interest shall be paid upon any overpayment of use 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) herein under protest shall be allowed at the rate of nine percent (9%) per annum.

3. Interest shall accrue only from the date of the taxpayer's application for a refund. If the refund is to be applied against other taxes owed by the taxpayer, interest shall not be paid on the refund for the period after the due date of the amount against which the credit is taken.

D. Refund Erroneously Made to Bear Interest. Any portion of a tax, or any interest, assessable penalty, additional amount, additional tax, or license fee, which has been erroneously refunded, shall bear interest at the rate of nine percent (9%) per annum from the date of the payment of the refund.

ARTICLE XVI. CITY MANAGER'S REMEDIES IN CASE OF NONPAYMENT

A. So long as a final assessment remains unpaid, the City Manager may take any or all of the following enforcement procedures against the defaulting taxpayer:

1. Revoke the taxpayer's business license and/or tax license.

2. Issue a summons to the person, vendor, or taxpayer to appear in the appropriate court on charges of violating this Ordinance.

3. File a complaint in County or District Court to collect all amounts owed.

B. Regardless of the collection or enforcement procedures invoked by the City Manager, all unpaid taxes, license fees, penalties, and interest shall be secured by a lien arising by operation of law as provided by this Ordinance. All lien costs incurred by the City Manager, including, but not limited to filing costs, notary costs, attorney costs, City Manager labor costs, and publication costs, are to be reimbursed by the taxpayer to the City before the lien discharge can be filed.

ARTICLE XVII. RECOVERY OF UNPAID TAX BY ACTION AT LAW

A. Action at Law. The City Manager may also treat any such taxes, license fees, penalties, or interest due and unpaid as a debt due the City from the taxpayer personally. In case of failure to pay the tax or license fee, or any portion thereof, or any penalty or interest thereon when due, the City Manager may receive at law the amount of such taxes, license fees, penalties, interest and collection costs in such municipal, county, or district court of the county, wherein venue may be proper under the applicable rules of civil procedure. The return of the taxpayer or the assessment made by the City Manager as herein provided, 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 and in any such proceedings, no bond shall be required of the City Manager nor shall any sheriff require of the City Manager an indemnifying bond for executing the writ of attachment, or writ of execution upon any judgment entered in such proceedings; and the City Manager may prosecute appeals or writs of error, in such cases without the necessity of providing bond therefore. The City Attorney, when requested by the City Manager, may commence action for the recovery of taxes due under this Ordinance, and this remedy shall be in addition to all other existing remedies or remedies provided in this Ordinance.

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 City Manager may cause a civil action to be filed in the district court of the county in which is situated any real property which is subject to said tax, to enforce the lien of the City for such tax upon the real property situated in that county or in any other county in the state which may be subject to such lien or to subject any real property or any right, title or interest in real property to the payment of such tax. The court shall decree a sale of such real property and distribute the proceeds of such sale, according to the findings of such court in respect to the interest of the parties and of the City; the proceedings in such action and the manner of sale, the period for and manner of redemption from such sale and the execution of deed of conveyance shall be in accordance with the law and practice relating to foreclosures of mortgages upon real property. In any such action, the court may appoint a receiver of the real property involved in such action if equity so requires.

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/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/her administrative remedies.

ARTICLE XVIII. SALES AND USE TAX CONSTITUTES LIEN

A. Any sales or use tax imposed by this Ordinance, together with the interest and penalties herein provided, and the cost of collection, shall be a first and prior lien upon:

1. The goods, stock-in-trade, and business fixtures of or used by any taxpayer under lease, title-retaining contract or other contractual arrangement; and/or

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 Ordinance shall be placed in receivership, bankruptcy or assignment for the benefit of creditors, or seized under distraint for property or other taxes, all taxes, penalties and interest imposed by this Ordinance and for which said person is in any way liable under the terms of this Ordinance, 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 Ordinance under process or order of any court, without first ascertaining from the City Manager the amount of any taxes due and payable under this Ordinance. If there be 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 City Manager may issue a notice of tax lien, setting forth the name of the taxpayer, the amount of the tax, penalties and interest, the date of the accrual thereof, and that the City claims a first and prior lien therefore 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 City Manager and shall not affect the priority or validity of the lien provided by this Ordinance, which arises by operation of law when the tax accrues and is payable.

E. Any lien for taxes as shown on the records of the County Clerks and Recorders as herein provided, upon payment of all taxes, penalties, and interest covered thereby, shall be released by the City Manager in the same manner as mortgages and judgments are released.

ARTICLE XIX. 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 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 be 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, 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, nor release, any portion of the lien nor property not specified in the release.

ARTICLE XX. COMPROMISE

A. Compromise Limitation. After an assessment has become final because the taxpayer has waived its right to a hearing or because the hearing officer has issued his or her Hearing Determination Notice, the City Manager may compromise to the extent of one thousand dollars (\$1,000.00) any collection proceeding arising under this Ordinance.

B. Compromise Record. Whenever a compromise, in value or valuation is made by the City Manager or his/her delegate in any case, there shall be placed on file in the office of the City Manager or his/her delegate, the opinion of the City Manager with his/her reasons therefore, 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 interest, additional amount, additional to the tax, or assessable penalty, imposed by law on the person, vendor or taxpayer against whom the tax is assessed; and
3. The amount paid in accordance with the terms of the compromise.

ARTICLE XXI. LICENSES

A. It shall be unlawful for any person to engage in the business of selling tangible personal property at retail, or to furnish certain services as herein specified, without first having obtained a license therefore, which license shall be granted and issued by the City Clerk, and shall be in force and effect until the thirty-first day of December of the year in which it is issued, unless sooner revoked. Such license shall be granted or renewed only upon application stating the name and address of the person desiring such license, the name of such business and location, and such other facts as the City Clerk may require.

B. It shall be the duty of each such licensee on or before January first of each year during which this Article remains in effect to obtain a renewal thereof if the licensee remains in retail business or is liable to account for the tax herein provided, but nothing herein contained shall be construed to empower the City Clerk to refuse such renewal except revocation for cause of licensee's prior license.

C. For each license issued, a fee of Ten Dollars (\$10.00) shall be paid, which fee shall accompany the application. A further fee of Ten Dollars (\$10.00) shall be paid for each year or fraction thereof for which said license is renewed, provided that only one-half of said Ten Dollar fee shall be charged on licenses issued after July first of any year.

D. In case business is transacted at two or more separate places by one person, a separate license for each place of business shall be required.

E. Each license shall be numbered and shall show the name and place of business of the licensee and shall be posted in a conspicuous place in the place of business for which it is issued. No license shall be transferable.

F. Any license may be revoked for cause as provided in Section 39-26-103, C.R.S., as amended, which provision is incorporated herein by this reference.

G. Any person engaged in the business of selling tangible personal property at retail, or the furnishing of certain services as herein specified, without having first secured a license, or renewing their license on time, therefore as provided in this Article, shall be guilty of a violation of this Ordinance.

ARTICLE XXII. SALES TAX

A. **Rate and Imposition of Sales Tax.** There is hereby levied and there shall be collected and paid a sales tax of two and three-fourths percent (2.75%) upon the sale of tangible personal property and the furnishing of services as follows, subject to the exemptions specified in this ordinance. The amount subject to tax shall not include the amount of any sales or use tax imposed by Article 26 of Title 39, Colorado Revised Statutes. The sales tax shall apply to the following:

1. On the purchase price paid or charged upon all sales of tangible personal property at retail. The tangible personal property and services taxable pursuant to this ordinance shall be the same as the tangible personal property and services taxable pursuant to Section 39-26-104, C.R.S., except as otherwise provided in this ordinance;

2. In the case of retail sales involving the exchange of property, on the purchase price paid or charged, including the fair market value of the property exchanged at the time and place of the exchange, except as otherwise provided in the definition of purchase price;

3. 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;

4. 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, resort, 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 subsection (A)(4) 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;

5. Upon telephone and telegraph services, whether furnished by public or private corporations or enterprises for all intrastate telephone and telegraph service. Mobile telecommunications service 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 of Castle Pines North and the service originates and terminates within the state of Colorado.

B. Location of Sale. For the purposes of this Ordinance, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to a destination outside the limits of the City or to a common carrier for delivery to a destination outside the limits of the City. The gross receipts from such sales shall include delivery charges when such charges are subject to the state sales and use tax imposed by Article 26 of Title 39, Colorado Revised Statutes, regardless of the place to which delivery is made. If a retailer has no permanent place of business in the City, or has more than one place of business, the place at which the retail sales are consummated for the purpose of a sales tax imposed by this ordinance shall be determined by the provisions of Article 26 of Title 39, Colorado Revised Statutes, and by rules and regulations promulgated by the Colorado Department of Revenue.

C. Sales Tax Collection, Administration, and Enforcement. The collection, administration, and enforcement of the sales tax imposed by this Article shall be performed by the Executive Director of the Department of Revenue of the State of Colorado in the same manner as the collection, administration, and enforcement of the Colorado State Sales Tax. Accordingly, the provisions of Articles 26 and 21 of Title 39 and Article 2 of Title 29, C.R.S., as amended, and all rules and regulations promulgated by the Executive Director of the Department of Revenue pertaining to such collection, administration, and enforcement, are incorporated herein by this reference.

D. Vendor Fee. At the time of making his return of the tax, as required by this Article, every retailer shall be entitled to subtract from the tax so remitted a sum equal to Three and Thirty Three-Hundredths percent (3.33%) of said tax as his fee, said fee to be known as the "Vendor's Fee."

E. Vendor's Fee for Delinquencies. If said retailer shall be delinquent in remitting said tax, he shall forfeit the "Vendor's Fee," unless good cause can be shown for such delinquent remittance.

ARTICLE XXIII. SALES TAX EXEMPTIONS

A. The tangible personal property and services taxable pursuant to this Ordinance are subject to the same sales tax exemptions as those specified in Part 7 of Article 26 of Title 39, Colorado Revised Statutes, except that the items set forth in Section 29-2-105(1)(d), Colorado Revised Statutes, are taxable unless the exemptions are explicitly set forth below. There shall be exempt from the sales tax levied under the provisions of this Ordinance the following:

1. 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.

2. All sales made to charitable organizations when purchased for their regular religious or charitable functions and activities as determined by the Colorado Department of Revenue.

3. All sales of cigarettes.

4. All sales of motor fuel and special fuel.

5. All sales of medical supplies and prosthetic devices.

6. All sales of food for domestic home consumption as defined in 7 U.S.C. Section 2012(g), 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.

7. Sales of tangible personal property to purchasers residing or doing business outside the City, provided 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.

8. 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 of Colorado.

9. 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 Treasurer 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.

10. 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.

11. Subject to the provisions above, occasional sales by a charitable organization as provided in Section 39-26-718(1)(b), C.R.S.

12. No sales tax shall apply to the sales of tangible personal property at retail or the furnishing of services if the transaction was previously subjected to a sales or use tax lawfully imposed on the purchaser or user by another municipality or county equal to or in excess of that sought to be imposed by the City. A credit shall be granted against the sales tax imposed by the City with respect to such transaction equal in amount to the lawfully imposed local sales or use tax previously paid by the purchaser or user to the previous statutory or home rule city and county, city, or town. The amount of the credit shall not exceed the sales tax imposed by the City.

13. 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 meet both of the following conditions:

- (I) The purchaser is a nonresident of or has his principal place of business outside of City; and
- (II) Such personal property is registered or required to be registered outside the limits of the City under the laws of the State of Colorado.

14. Wholesale sales.

15. Registered pesticides in agricultural use as defined in Title 35, Article 9, Colorado Revised Statutes.

ARTICLE XXIV. 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 C.R.S. § 29-2-109.

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. To 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 product, in the regular course of a business.

3. To the storage, use, or consumption of tangible personal property brought into the City by a nonresident thereof for his own storage, use, or consumption while temporarily within City; however, this exemption does not apply to the storage, use, or consumption of building and construction materials brought into this state by a nonresident to be used in the conduct of a business in this state.

4. To the storage, use, or consumption of tangible personal property by the United States government, or the state of Colorado, 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. To 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 enters into the processing of or becomes an ingredient or component part of the product or service which is manufactured, compounded, or furnished and the container, label, or the furnished shipping case thereof.

6. To the storage, use, or consumption of any article of tangible personal property the sale or use of which has already been subjected to a legally imposed sales or use tax of another statutory or home rule town, city, county, or city and county equal to or in excess of that imposed by this Ordinance. Except as provided in Section XXVII (C), a credit shall be granted against the use tax imposed by this Ordinance with respect to a person's storage, use, or consumption in the City of tangible personal property purchased by him in a previous statutory or home rule county. The amount of the credit shall be equal to the tax paid by him by reason of the imposition of a sales or use tax of the previous statutory or home rule town, city, county, or city and county on his purchase or use of the property. The amount of the credit shall not exceed the tax imposed by this Article.

7. To 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. To 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 purchased the vehicle outside the City and actually so used it for a substantial and primary purpose for which it was acquired and he registered, titled, and licensed said motor vehicle outside of the City.

9. To the use, or consumption of any construction and building materials and the storage, use and consumption of motor and other vehicles on which registration is required if a written contract for the purchase thereof was entered into prior to May 7, 2008.

10. To the use or consumption of any construction and building materials required or made necessary in the performance of any construction contract bid, let, or entered into at any time prior to May 7, 2008.

ARTICLE XXV. COLLECTION OF MOTOR AND OTHER VEHICLES USE TAX

A. The two and seventy-five one hundredths per cent (2.75 %) use tax provided for herein shall be applicable to every motor vehicle for which registration is required by the laws of the State of Colorado, and 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 Department of Revenue or its authorized agents, including the Douglas County Clerk and Recorder, until any tax due upon the use, storage, or consumption thereof pursuant to this Ordinance has been paid.

B. The use tax imposed by this Ordinance shall be collected by the authorized agent of the Douglas County Clerk and Recorder.

C. The proceeds of said use tax shall be paid to the City of Castle Pines North periodically in accordance with an agreement entered into by and between the City of Castle Pines North and the Douglas County Clerk and Recorder.

ARTICLE XXVI. INCORRECT REGISTRATION OF MOTOR VEHICLE

A. It is unlawful to register a motor vehicle in violation of the provisions of C.R.S. 42-6-137(2).

B. Any resident who registers a vehicle at an address other than his/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 Ordinance and subject to the penalties set forth herein.

C. Any person residing in the City, as specified by C.R.S. 42-6-137, who shall purchase any motor vehicle, whether new or used, from sources within or without this City, for use within the City and who has not paid the tax imposed thereon by this Ordinance to a vendor

required or authorized to collect such tax, shall immediately, and prior to registering the vehicle pursuant to C.R.S. 42-6-137, and obtaining the license therefore, make a return showing such transaction to the City Manager and thereupon pay to him the tax applicable thereto as provided in this Ordinance, and failure to do so shall constitute a violation of this Ordinance.

D. Definitions for this Article.

1. “Penalty Assessment” means a written notice of the City Manager's determination that a violation of C.R.S. § 42-6-137(2), has occurred and assessment and demand for the payment of the civil penalty provided for in subsection (E) of this Section.

2. “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.

E. Any person who causes a motor vehicle to be registered in violation of the provisions of C.R.S. § 42-6-137(2), shall be assessed a five hundred dollar (\$500.00) civil penalty pursuant to the authority granted in C.R.S. 42-6-137(4). The procedure for the assessment of such civil 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 C.R.S. § 42-6-137(2), 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 Article IX(B) of this Ordinance 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 Article IX(B) of this Ordinance for payment of any amount due on a notice of deficiency. The request for hearing shall also set forth the facts which show that a violation of C.R.S. 42-6-137(2), 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 Article XI of this Ordinance after a hearing on a notice of deficiency. If the decision affirms the penalty assessment, such person shall pay such civil penalty within the same time period as provided pursuant to Article XI of this Ordinance 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 Article.

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.

ARTICLE XXVII. COLLECTION AND ENFORCEMENT OF CONSTRUCTION AND BUILDING MATERIALS USE TAX

A. Every person or entity 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 this City, and who shall purchase lumber, fixtures, or any other construction and building materials, supplies, and other tangible personal property used, consumed, or stored therefore 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 the 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 building permit issuance is established at fifty (50%) percent of the job valuation as determined by the City. The use tax to be collected at the time of building permit issuance shall equal the City use tax rate, and shall include the Douglas 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 Ordinance 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 Ordinance 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 sub-contractor 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 includes an interest rate of nine (9%) percent 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 Douglas 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 Ordinance, 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 Ordinance.

ARTICLE XXVIII. 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 provisions of the use tax covered by this Ordinance 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 the subsection (D) of this Article, any personal representative of a decedent, or of the estate of a decedent, or any trustee, receiver, or other person acting in a fiduciary capacity, or any director of a corporation in the process of dissolution or which has been dissolved, who distributes the estate or fund in his/her control without having first paid any use tax covered by this Ordinance due from such decedent, decedent's estate, trust estate, receivership, or corporation, and which may be assessed within the time limited by this Ordinance, 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 Ordinance.

C. **Notification of Liability.** The distributee of a decedent's estate, or a trust estate or fund or the stockholder of any dissolved corporation who receives any of the property of such decedent's estate, trust estate, fund, or corporation, shall be liable to the extent of the decedent, trust estate, fund, or corporation, for any use tax covered by this Ordinance and which may be assessed within the time limited by this Ordinance. 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 Ordinance is due from a decedent, or of his/her estate, or by a corporation, in order for personal liability under subsection (B) of this Article to remain in effect, determination of the use tax due shall be made and notice and demand therefore 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 D will not apply in the case of a corporation unless:

a. Such request notifies the City Manager that the corporation contemplates dissolution at or before the expiration of such three (3) year period.

b. The dissolution is begun in good faith before the expiration of such three (3) year period; and

c. The dissolution is completed.

3. Upon the expiration of said three (3) 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) of this Article.

ARTICLE XXIX. LIMITATIONS

A. General Limitations.

1. **Statute of Limitations.** Except as provided in this Article, the taxes for any period, together with the interest thereon and penalties with respect thereto, imposed by this Ordinance shall not be assessed, nor credit taken, nor shall any notice of lien be filed, or distraint warrant issued, or suit for collection be instituted, or any other action to collect the same be commenced, more than three (3) years after the date on which the tax was or is payable. For purposes of the application of the statute of limitation to use tax paid on a building permit, tax shall not be assessed, nor credit taken, nor shall any notice of lien be filed, or distraint warrant issued, or suit for collection be instituted, or any other action to collect the same be commenced, more than three (3) years after the date of the Certificate of Occupancy. No lien shall continue after such period except that when taxes are assessed before the expiration of such period and notice of lien with respect thereto has been filed prior to the expiration of such period, such lien shall continue after the filing of notice thereof. 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.

2. Date Fixed. For purposes of this Article 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 Article for the assessment of tax, both the City Manager or his/her delegate 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 must be paid on payments at a rate of nine percent (9%) annum.

B. Taxes Held in Trust. All sums of money paid by the purchaser to the retailer as taxes imposed by this Ordinance shall be and remain public money, the property of the City, in the hands of such retailer and he shall hold the same in trust for the sole use and benefit of the City, until paid to the City Manager through the Colorado Department of Revenue as collection, administration and enforcement agent for the City, and for failure to so pay to the City Manager, such retailer shall be punished as provided by law. Thus, the Statute of Limitation provided herein does not apply to collections of public money in the possession of the retailer and such moneys are collectible at any time after their due date upon demand of the City Manager. Bankruptcy will not excuse unremitted taxes collected in trust.

ARTICLE XXX. VIOLATIONS AND PENALTY

A. Violations. It shall be unlawful for any person to violate any of the provisions of the Ordinance. Without limitation, it shall be also be a violation of this Ordinance for any retailer, vendor, consumer, purchaser, or any other person subject to the tax levied by this Ordinance to refuse to make any return provided to be made by this Ordinance, or to make any false or fraudulent return, 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 Ordinance, or for any person or purchaser to fail or refuse to pay such tax or evade the payment thereof, or to aid or abet another in any attempt to evade the payment of the tax imposed by making a false return or a return containing a false statement, or to fail or refuse to apply for a license, or to fail or refuse to pay the applicable licensing fees and penalties.

B. Penalty. Any violation of this Ordinance shall be punishable by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment for not more than one (1) year, or by both such fine and imprisonment.

C. Separate Violations. Each and every twenty-four (24) hour continuation of any violation shall constitute a distinct and separate offense.

D. Personal Liability. Any taxpayer, or person who executes any form or report required by this Ordinance to be submitted to the City, shall be personally responsible for the payment of any taxes required under this Ordinance. Additionally, any officer, director, partner, managing partner, or manager of a taxpayer shall be personally liable for any violations under this Ordinance.

ARTICLE XXXI. SEVERABILITY

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

INTRODUCED, READ, AND ORDERED PUBLISHED ON April 23, 2009.

PUBLISHED IN THE DOUGLAS COUNTY NEWS PRESS ON THURSDAY, April 30, 2009.


ADOPTED ON SECOND READING THIS 14th DAY OF May, 2009.

CITY OF CASTLE PINES NORTH



David Neely, Mayor Pro Tem

ATTEST:



Janie Berry, City Clerk


Approved as to form:



Maureen Herr Juran, Assistant City Attorney

CERTIFICATION OF PUBLICATION

I hereby attest and certify that the within and foregoing ordinance was introduced and read on first reading at a regular meeting of the Castle Pines North City Council on April 23, 2009; published in full in the Douglas County News-Press; and finally passed and adopted by the City Council on May 14, 2009.



Janie Berry, City Clerk