

ARTICLE X

Sales Tax

Division 1 Interpretation

Sec. 1-10-1. Words and phrases defined.

When not clearly indicated otherwise by the context, the following words and phrases, as used in this Article, shall have the following meanings:

Access services means the services furnished by a local exchange company to its customers who provide telecommunications services which allow them to provide such telecommunications services.

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

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

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

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

Charitable organization means any entity 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. *Charitable organization* includes an organization possessing a current and valid exemption from federal taxation under Section 501(c) of the Internal Revenue Code, or its successor section.

Coin-operated device means any device operated by coins or currency.

Commercial packaging materials means containers, labels and shipping cases sold to 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:

a. Is used by the manufacturer, compounder, wholesaler, jobber, retailer, packager, distributor or bottler to contain or label the finished product;

b. Is transferred by said person along with and as a part of the finished product to the purchaser; and

c. Is not returnable to said person for reuse.

Construction equipment means any equipment used by a person in making improvements or building structures.

Construction materials means tangible personal property which, when combined with other tangible personal property, loses its identity to become an integral and inseparable part of a completed structure or project, whether intended for public or private use. Construction materials include, but are not limited to, such things as: asphalt, bricks, builder's hardware, caulking material, cement, concrete, conduit, electric wiring and connections, fireplace inserts, electrical heating and cooling equipment, flooring, glass, gravel, insulation, lathe, 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. Such materials, forms or other items, when used, which do not remain as an integral or inseparable part of a completed structure or project are not *construction materials*.

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

Consumption means the act or process of consuming: it includes waste, destruction or use. Consumption is the normal use of property for the purpose for which it was intended.

Distribution means the act of distributing any article of tangible personal property purchased at retail for use or consumption, which may include, but not be limited to, the distribution of advertising gifts, shoppers' guides, catalogues, directories or other property given as prizes, premiums or for goodwill or in conjunction with the sales of other commodities or services.

Drugs dispensed in accordance with a prescription means drugs dispensed in accordance with any order in writing, dated and signed by a licensed practitioner of the healing arts, or given orally by a practitioner, and immediately reduced to writing by the pharmacist, assistant pharmacist or pharmacy intern, specifying the name and address of the person for whom the medicine, drug or poison is offered and directions, if any, to be placed on the label.

Employee means any person working for pay under the control and direction of an employer.

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

a. Directly, indirectly or by a subsidiary maintains a building, store, office, salesroom, warehouse or other place of business within the taxing jurisdiction;

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

c. Maintains one (1) or more employees, agents or commissioned sales persons on duty at a location within the taxing jurisdiction;

d. Owns, leases, rents or otherwise exercises control over real or personal property within the taxing jurisdiction;

e. Makes more than one (1) delivery into the taxing jurisdiction within a twelve-month period.

Excess tax means that amount of tax collected during a reporting period that is in excess of two percent (2%) of Town net taxable sales and services, and which excessive collection must be remitted to the Town using the method prescribed herein.

Exemptions means those deductions from adjusted gross sales and services in order to arrive at a taxable base, which exemptions may include exempt transactions (in whole or in part), sale or purchase of exempt commodities, articles or services, or sale to exempt "persons" who may either be exempt on their direct purchase or exempt on the type of commodity, articles or services purchased, all as set forth in Section 1-10-89.

Farm close-out sale means full and final disposition of all tangible personal property previously used by a farmer or rancher in farming or ranching operations which are being abandoned.

General Government Director means the Finance Director of the Town or his or her designee.

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

License means a Town business and sales tax license.

License officer means the General Government Director of the Town.

Linen services means services involving provision and cleaning of linens, including but not limited to rags, uniforms, coveralls and diapers.

Lodging services means the short-term (less than thirty [30] consecutive days) leasing or rental of any hotel room, motel room, apartment hotel, lodging house, motor hotel, guest house, trailer coach, mobile home, auto camp, trailer court, condominium unit, townhome, time-share unit, private residence or other accommodation.

Manufacturing means the application of manual labor or machinery time to materials to produce a usable item of tangible personal property to provide a service. Sales to and purchases of tangible personal property by a person engaged in the business of manufacturing, compounding for sale, profit or use, any article, substance or commodity, which tangible personal property enters into the processing of or becomes an ingredient or component part of the product or service which is

manufactured, compounded or furnished, and the container, label or the furnished shipping case thereof, shall be deemed to be wholesale sales and shall be exempt from sales tax.

Medical supplies means drugs dispensed in accordance with a prescription; insulin in all its forms dispensed pursuant to the direction of a licensed physician; glucose useable for treatment of insulin reactions; urine- and blood-testing kits and materials; insulin measuring and injecting devices, including hypodermic syringes and needles; prosthetic devices; wheelchairs and hospital beds; drugs or materials when furnished by a doctor as part of professional services provided to a patient; and corrective eyeglasses, contact lenses or hearing aids.

Municipality means any municipal corporation or similar form of local government including any town, city and county, whether organized pursuant to charter, constitution, or statute, in Colorado or another state, except counties, school districts or special districts, and the Town of Silverthorne.

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

Newspaper means a publication, printed on newsprint, intended for general circulation, and published regularly at short intervals, containing information and editorials on current events and news of general interest. The term *newspaper* does not include: magazines, trade publications or journals, credit bulletins, advertising inserts, circulars, directories, maps, racing programs, reprints, newspaper clipping and mailing services or listings, publications that include an updating or revision service, or books or pocket editions of books.

Open to the public means any place, event or activity to which the admission or access is open to members of the public, whether upon payment of a charge or fee or not.

Pay television shall include, but not be limited to, cable, microwave or other television service for which a charge is imposed.

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

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

Prescription drugs for animals means drugs dispensed in accordance with any order in writing, dated and signed by a practitioner, or given orally by a practitioner, specifying the animal for which the medicine or drug is offered and directions, if any, to be placed on the label.

Pre-written computer programs means systems programs or application programs that are not written specifically for the user.

Price or purchase price means the price to the consumer, exclusive of any direct tax imposed by the federal government or by this Article, and, in the case of all retail sales involving the exchange of property, also exclusive of the fair market value of the property exchanged at the same 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. Any money or other consideration paid over and above the value of the exchanged property is subject to tax.

Price or purchase price includes:

a. The amount of money received or due in cash and credits.

b. Property at fair market value taken in exchange but not for resale in the usual course of the retailer's business.

c. Any consideration valued in money, such as trading stamps or coupons whereby the manufacturer or someone else reimburses the retailer for part of the purchase price and other media of exchange.

d. The total price charged on credit sales including finance charges which are not separately stated. An amount charged as interest on the unpaid balance of the purchase price is not part of the purchase price unless the amount added to the purchase price is included in the principal amount of a promissory note; except the interest or carrying charge set out separately from the unpaid balance of the purchase price. An amount charged for insurance on the property sold and separately stated is not part of the purchase price.

e. Installation, deliver and wheeling-in charges included in the purchase price and not separately stated.

f. Transportation and other charges to effect delivery of tangible personal property to the purchaser.

g. Indirect federal manufacturers' excise taxes, such as taxes on automobiles, tires and floor stock.

h. The gross purchase price of articles sold after manufacturing or after having been made to order, including the gross value of all the materials used, labor and service performed and the profit thereon.

i. Any consideration valued in money, such as trading stamps, coupons and other media of exchange, and any labor and services rendered in exchange for any tangible personal property and taxable services, as defined herein.

Price or purchase price shall not include:

a. Any sales or use tax imposed by the State or by any political subdivision thereof.

b. The fair market value of property exchanged if such property is to be sold thereafter in the retailer's usual course of business. This is not limited to exchanges in Colorado. Out-of-state trade-ins are an allowable adjustment to the purchase price.

c. Discounts from the original price if such discount and the corresponding decrease in sales tax due is actually passed on to the purchaser. An anticipated discount to be allowed for payment on or before a given date is not an allowable adjustment to the price in reporting gross sales.

Prosthetic devices means any artificial limb, part, device or appliance for human use which aids or replaces a bodily function; is designed, manufactured, altered or adjusted to fit a particular individual; and is prescribed by a licensed practitioner of the healing arts. *Prosthetic devices* include but are not limited to prescribed auditory, ophthalmic or ocular, cardiac, dental or orthopedic devices or appliances, oxygen concentrators and oxygen with related accessories.

Public means any individual, firm, co-partnership, joint venture, corporation, society, club, league, association, joint stock company, estate or trust, receiver, trustee, assignee, lessee or any person acting in a fiduciary or representative capacity, whether appointed by court or otherwise, or any group or combination acting as a unit, and the plural as well as the singular number.

Purchase or *sale* means the acquisition for any consideration by any person or tangible personal property or taxable services that are purchased, leased, rented, sold, used, stored, distributed or consumed, but excludes a bona fide gift of property or services. These terms include capital leases, installments and credit sales, and property and services acquired by:

a. Transfer, either conditionally or absolutely, of title or possession or both to tangible personal property;

b. A lease, lease-purchase agreement, rental or grant of a license, including royalty agreements, to use tangible personal property or taxable services; the utilization of coin operated devices, except coin-operated telephones, which do not vend articles of tangible personal property shall be considered short term rentals of tangible personal property;

c. Performance of taxable services;

d. Barter or exchange for other property or services including coupons; or

e. The right to continuous possession or use of tangible personal property is granted under a lease or contract.

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

a. A division of partnership assets among the partners according to their interests in the partnership;

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

- c. The transfer of assets of shareholders in the formation or dissolution of professional corporations;
- d. The dissolution and the pro rata distribution of the corporation's assets to its stockholders;
- e. A transfer of a partnership interest;
- f. The transfer in a reorganization qualifying under section 368(a)(1.) of the "Internal Revenue Code of 1952", as amended, or any successor section on the same subject;
- g. The formation of a partnership by the transfer of assets to the partnership or transfers to a partnership in exchange for proportionate interests in the partnership;
- h. The repossession of personal property by a chattel mortgage holder or foreclosure by a lienholder;
- i. The transfer of assets from a parent corporation to a subsidiary corporation or corporations which are owned at least eighty percent (80%) by the parent corporation, which transfer is solely in exchange for stock or securities of the subsidiary corporation;
- j. The transfer of assets from a subsidiary corporation or corporations which are owned at least eighty percent (80%) by the parent corporation to a parent corporation or to another subsidiary which is owned at least eighty percent (80%) by the parent corporation, which transfer is solely in exchange for stock or securities of the parent corporation or the subsidiary which received the assets;
- k. 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 Article was paid by the transferor corporation at the time it acquired such assets, except to the extent that there is an increase in the fair market value of such assets resulting from the manufacturing, fabricating or physical changing of the assets by the transferor corporation. Any transfer referred to in this paragraph (k) as a transfer to a closely held subsidiary corporation is one in which the parent corporation owns stock possessing at least eighty percent (80%) of the total combined voting power of all classes of stock entitled to vote and owns at least eighty percent (80%) of the total number of shares of all other classes of stock.

Purchaser or consumer means any person to whom taxable service has been rendered or who shall have leased, rented or purchased at retail, taxable services or tangible personal property which is purchased, delivered, used, stored, distributed or consumed in the Town upon which a tax is imposed hereby.

Resident means for the purposes of the taxation provisions herein, a person who resides or maintains his domicile within the Town or who maintains one (1) or more places of business within the Town at the time of a taxable transaction as defined herein. A person may have dual residency, or other places of residence or domicile, or place of business outside the Town prior to, during or after the occurrence of the taxable transaction and be a *resident* according to the terms of this definition.

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

Retailer or *vendor* means any person selling, leasing or renting tangible personal property or services at retail. Retailer shall include any:

a. Auctioneer;

b. Salesperson, representative, peddler or canvasser, who makes sales as a direct or indirect agent of or obtains such property or services sold from a dealer, distributor, supervisor or employer;

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

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

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

Security system services means electronic security system services. Such term does not include nonelectronic security services such as consulting or human or guard dog patrol services.

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

Tangible personal property or *personal property* means corporeal personal property, including but not limited to automotive vehicles as herein defined, which may be seen, weighted, measured or felt or touched, or is in any manner perceptible to the senses and for the purpose of the sales tax and where referred to throughout this Code, shall also mean and does include the specific services set out as taxable in Section 1-10-88 of this Code.

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

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

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

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

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

Telecommunications services means the transmission of any two-way interactive electromagnetic communications including but not limited to voice, image, data and any other information, by the use of any means but not limited to wire, cable, fiber optical cable, microwave, radio wave or any combinations of such media. *Telecommunications service* includes but is not limited to basic local exchange telephone service, toll telephone service and teletypewriter service,

including but not limited to residential and business service, directory assistance, cellular mobile telephone or telecommunication service, specialized mobile radio and two-way pagers and paging service, including any form of mobile two-way communication. *Telecommunications service* does not include separately stated nontransmission services which constitute computer processing applications used to act on the information to be transmitted.

Therapeutic device means devices, appliances or related accessories that are sold to correct or treat a human physical disability or surgically created abnormality; if such device, appliance or related accessory has a retail value of more than one hundred dollars (\$100.00), it must be sold in accordance with a written recommendation from a licensed doctor to qualify as a *therapeutic device* for purposes of this Code.

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

Town Manager means the Town Manager of the Town or any duly authorized agent or representative acting in his or her stead or behalf.

Transient/temporary vendor means any person who engages in a temporary business of selling and delivering goods within the Town, and who, in furtherance of such purpose, leases, uses or occupies any physical space within the Town for the exhibition and sale of such goods for a period of thirty (30) days or less.

Vendor. See Retailer.

Wholesale sale means sales to licensed retailers, jobbers, dealers or wholesalers for resale. Sales by wholesalers to consumers are not wholesale sales. Sales by wholesalers to nonlicensed retailers are not wholesale sales.

Wholesaler means any person selling to retailers, jobbers, dealers or other wholesalers for resale, and not for storage, use, consumption or distribution. (Ord. 1994-30 §2; Ord. 1996-11 §3; Ord. 1998-32 §1; Ord. 2002-2 §§1—3)

Sec. 1-10-2. Exemption; burden of proof.

The burden of proving that any retailer is exempt from collecting or paying tax shall be on the retailer under such reasonable requirements of proof as the General Government Director may prescribe. (Ord. 1994-30 §2)

Sec. 1-10-3. Deductions and credits.

(a) Deductions from gross sales. If included in reported gross sales, the following are deductible from gross sales:

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

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

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

(b) Credits from tax due.

(1) Vendor's fee. A retailer's collection and remittance expenses equal to two and three tenths percent (2.3%) of the sum of the sales tax computed and any excess tax collected with a maximum monthly vendor fee cap of two hundred dollars (\$200) per vendor may be taken as a credit against tax paid on or before the due date. Such vendor's fee shall be forfeited for any tax that is not reported and paid by the due date. Forfeiture of the vendor's fee shall be prima facie evidence that the taxpayer was in violation of this Article.

(2) Amounts previously paid pursuant to a tax levied by the Town may be credited against the tax due on transactions or items when the present owner or user has previously paid a legally imposed sales tax on the transaction or item computed at the rate established by Section 1-10-86. (Ord. 1994-30 §2; Ord. 2003-14 §1)

Sec. 1-10-4. Acquisition, inception or cessation of business.

(a) Purchase of an existing business.

(1) Seller's responsibilities. Any person engaged in business in the Town who sells such business shall file a final return. The reporting period for such return shall end on the date of the transfer of ownership of the business.

(2) Purchaser's responsibilities. Any person who purchases an existing business shall be responsible for determining the total tax liability from that business and shall withhold from the initial purchase payment an amount sufficient to cover all such total tax liability, unless the former owner produces a receipt from the Town showing that the total tax liability has been paid or a certificate from the Town that there is no total tax liability.

(b) Acquisition of an existing business by means other than purchase. Any person who acquires or takes control of an existing business or the assets of an existing business by means other than purchase shall be responsible for payment of any total tax liability from that business.

(c) Cessation of business. Every person engaged in business in the Town who ceases doing business in the Town shall file a final return. The reporting period for such return shall end on the last day of the business in the Town. (Ord. 1994-30 §2)

*Division 2
Taxpayer's Responsibilities*

Sec. 1-10-10. Retailer responsible for collection and payment of tax.

Every retailer engaged in business in the Town shall be liable and responsible for payment of an amount equivalent to the taxable sales multiplied by the specified rate.

(1) Tax added to price. Retailers shall add the tax imposed, or the average equivalent thereof, to the price, showing such tax as a separate and distinct item. Except as provided in this Subsection, no retailer shall advertise or hold out or state to the public or to any consumer, directly or indirectly, that the tax or any part thereof shall be assumed or absorbed by the retailer, or that it will not be added to the price, or if added, that it or any part thereof shall be refunded.

a. Sales tax may be included in the price of any malt, vinous or spirituous liquor sold by the drink.

b. Sales tax may be included in the price of items sold from coin operated devices or the price of utilizing such devices.

c. Sales tax may be included in the price of an admissions charge.

(2) Tax constitutes debt. Any tax added to the price by a retailer shall constitute a debt from the purchaser to the retailer until paid and shall be recoverable at law in the same manner as other debts.

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

(4) Disputed tax. When a dispute arises between a retailer and a purchaser who claims that the sale is exempt from the tax, the retailer shall collect and the purchaser shall pay such tax. The purchaser may then submit a claim for refund to the Town within sixty (60) days of the date of purchase. Any such tax refunded by the Town will be paid directly to the purchaser. (Ord. 1994-30 §2)

Sec. 1-10-11. Trust status of tax in possession of retailer.

All tax collected by a retailer shall be the property of the Town and remain public money in the hands of such retailer, who shall hold the same in trust for the sole use and benefit of the Town until paid to the Town. (Ord. 1994-30 §2)

Sec. 1-10-12. Filing returns; due date.

(a) Every taxpayer shall file a return, whether or not tax is due, and remit any tax due to the Town on or before the twentieth day following the end of the reporting period.

(b) A retailer engaged in business in the Town at two (2) or more locations, whether inside or outside the Town, who collects tax, may file a single return encompassing all locations when accompanied by a supplemental schedule showing the gross sales and net taxable sales for each location.

(c) For good cause shown in a written request of a taxpayer, the General Government Director may extend the time for making returns and paying any tax due.

(d) No person shall make any false statement in connection with a return. (Ord. 1994-30 §2)

Sec. 1-10-13. Reporting periods.

(a) Unless otherwise required or approved, taxpayers shall file returns and pay taxes as follows:

(1) A taxpayer whose monthly tax due to the Town is less than ten dollars (\$10.00) may file returns and pay sales tax annually at the end of the calendar year.

(2) A taxpayer who in any month has a monthly tax due to the Town of ten dollars (\$10.00) or more shall file returns and pay tax monthly and continue to pay monthly for each month for the remainder of the calendar year.

(b) The reporting period for a final return shall end on the date of the transfer of ownership of the business, or the last day of business.

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

(d) In order to ensure collection of tax, the General Government Director may require a taxpayer to remit tax and file returns on a more frequent basis than set forth in this Section.

(e) If the accounting methods employed by the taxpayer, or other conditions are such that returns made on a calendar month basis will impose unnecessary hardship, the General Government Director may, upon written request of the taxpayer, accept returns at such intervals as will, in the opinion of the General Government Director, better suit the convenience of the taxpayer, but not jeopardize the collection of the tax.

(f) If any taxpayer who has been granted permission to file returns and pay tax on other than a monthly basis become delinquent, authorization for such alternative method of reporting may be revoked by the General Government Director immediately following notice of such revocation, and the taxpayer shall file returns and pay tax on a monthly basis as if the alternate method of reporting and paying the tax had never been granted. (Ord. 1994-30 §2)

Sec. 1-10-14. Duty to keep books and records.

Every person engaged in business in the Town shall keep and preserve for at least three (3) years after the date of the taxable transaction suitable records which will allow the accurate determination of any tax due. (Ord. 1994-30 §2)

*Division 3
Administration*

Sec. 1-10-21. Authority of the General Government Director.

The administration of this Article is hereby vested in the General Government Director.

(1) Forms and procedures. The General Government Director shall prescribe forms and administrative procedures for the ascertainment, assessment and collection of the tax not inconsistent with this Article.

(2) Regulations. The General Government Director may formulate and promulgate appropriate regulations to effectuate the purpose of this Article as provided by this Code.

(3) Additional information. The General Government Director may require any person to make additional returns, render statements, furnish records or make informational reports to determine whether or not such person is liable for payment of the tax.

(4) Subpoenas. The General Government Director may issue a subpoena to command a person to attend and give testimony or to produce books, accounts and records.

a. Any subpoena issued under the terms of this Article shall be served as set forth in the Colorado Rules of Civil Procedure or Municipal Court Rules, including the payment of witness fees. When the witness is subpoenaed at the insistence of the Town, such fees will be paid by the Town. When the witness is subpoenaed at the insistence of the taxpayer, the General Government Director may require that the cost of service of the subpoena and the fee be paid by the taxpayer. In the discretion of the General Government Director, a deposit to cover the cost of the subpoena and witness fees may be required.

b. If a subpoena issued by the General Government Director is duly served and the respondent fails to attend, give testimony or to produce books, accounts and records as commanded, the General Government Director may request the Town Attorney to file a motion with the Municipal Court of the Town for an order enforcing the subpoena.

(5) Oaths. The General Government Director is authorized to administer oaths and take testimony at the hearing.

(6) Agents. The General Government Director may designate agents to assist in the performance of the duties and responsibilities set forth in this Article.

(7) Liquor licenses. Prior to the renewal, transfer or issuance of a license to sell any malt, vinous or spirituous liquor, the General Government Director shall certify that all returns have been filed and taxes paid.

(8) Partial payments. The General Government Director may accept any partial payment made and apply such payments towards the tax due. Deposit of such payments shall not in any way imply that the remaining balance is or has been abated.

(9) Motor vehicle registrations. If the General Government Director determines that a person has registered or caused to be registered a motor vehicle outside the Town and that such motor vehicle should have been registered at an address in the Town, the General Government Director is authorized to assess a civil penalty of five hundred dollars (\$500.00) against the person. A written notice of the penalty assessment shall be issued, paid and protested in the same manner as a notice of assessment. The General Government Director may enforce collection of the penalty assessment in the same manner as provided in this Article for the collection of tax due. Assessment and collection of this penalty shall not preclude the collection of any tax due or fee on the imposition of any other civil or criminal penalty provided by law.

(10) Notices. Notices required by this Article shall be in writing and delivered in person or sent post paid by first class mail, to the last known address of the taxpayer. (Ord. 1994-30 §2)

Sec. 1-10-22. Audit of records.

(a) For the purpose of ascertaining the correct amount of total tax liability from any person engaged in business in the Town, the General Government Director may conduct an audit by examining any relevant books, accounts and records of such person.

(b) All books, accounts and records shall be open at any time during regular business hours for examination by the General Government Director. If any taxpayer refuses to voluntarily furnish any of the foregoing information when requested by the General Government Director, the General Government Director may issue a subpoena to require that taxpayer or their representative attend a hearing or produce any such books, accounts and records for examination.

(c) Any tax deficiency or overpayment ascertained through audit shall be computed by one (1) or more of the following methods as the General Government Director deems appropriate:

(1) By identifying transactions on which the tax was not properly or accurately collected or paid.

(2) By identifying other irregularities in the calculation of tax due.

(3) By using either of the above methods on a representative sample of the taxpayer's records, and using the results to project the amount of tax deficiency or overpayment, if any.

(d) Any charitable organization claiming exemption under the provisions of this Article is subject to audit in the same manner as any other person engaged in business in the Town. (Ord. 1994-30 §2; Ord. 1995-1 §1; Ord. 2002-2 §4)

Sec. 1-10-23. Tax information confidential.

All specific information gained under the provisions of this Article which is used to determine the total tax liability from a taxpayer, whether furnished by the taxpayer or obtained through audit, shall be treated by the Town and its officers, employees or legal representatives as confidential.

(1) Except in accordance with judicial order or as otherwise provided by law, the Town Manager, General Government Director and agents, clerks and employees thereof shall not divulge or make known in any way any information disclosed in any document, report or return filed under this Article except such information as is displayed on the tax license. The officials charged with the custody of documents, reports and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding under the provisions of this Article when the report of a fact shown thereby is directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit into the evidence, so much of said reports or of the facts shown thereby as are pertinent to the action or proceeding, and no more.

(2) Nothing contained in this Section shall be construed to prohibit the delivery to a person or a duly authorized representative thereof of a copy of any return or report filed in connection with such person's tax. Copies of such records may be certified by the Town Manager or an agent

thereof and when so certified shall be evidence equally with originals and may be received as evidence of their contents.

(3) Nothing in this Section shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof or the inspection of returns by the Town Attorney or other legal representatives of the Town.

(4) Notwithstanding the provisions of this Section, the Town Manager may furnish to the taxing official of the State, its political subdivisions, any other state, or political subdivision, or the United States, any information contained in tax returns and related documents filed pursuant to this Article or in the report of an audit or investigation made with respect to a return, if the recipient jurisdiction agrees with the Town Manager to grant similar privileges to the Town and provided further that such information shall be used by the recipient jurisdiction only for tax purposes. (Ord. 1994-30 §2)

Sec. 1-10-24. Timely payment; computation of dates.

(a) Timely payment shall be evidenced by the postmark date if mailed; otherwise timely payment shall be evidenced by the Town cashier's reception date.

(b) Any due date, payment date or deadline for paying the total tax liability or providing information or taking other action, which falls on a Saturday, Sunday or legal holiday recognized by either the federal government, the State or the Town, shall be extended to the first business day following such weekend or holiday. (Ord. 1994-30 §2)

*Division 4
Tax Overpayments*

Sec. 1-10-31. Overpayment from returns.

If the amount remitted with the return is more than the total tax liability as computed from information in such return, a notice of overpayment will be issued. After examining such notice, the taxpayer may either submit a claim for refund or report the correct total tax liability by filing an amended return. No refund of such overpayment shall be paid unless a signed claim for refund is submitted on or before the thirtieth day after the date of the notice of overpayment. (Ord. 1994-30 §2)

Sec. 1-10-32. Tax overpayment determined through audit.

If the Town ascertains through an audit of a taxpayer's records that the total tax liability is less than the full amount paid, a notice of overpayment will be issued. Such notice will serve as documentation for a claim for refund, if such claim is signed and submitted by the taxpayer within thirty (30) days of the date of the notice of overpayment. (Ord. 1994-30 §2)

Sec. 1-10-33. Refunds of disputed tax.

Refunds of tax paid to a retailer by a purchaser who claims that the sale is exempt from the tax may be requested by such purchaser by signing and submitting a claim for refund on or before sixty (60) days from the date of such purchase. (Ord. 1994-30 §2)

Sec. 1-10-34. Claim for refund.

No tax overpayment shall be refunded unless a claim for refund is signed and submitted to the Town by the taxpayer.

(1) Application. An application for refund of tax shall:

- a. Be made on a claim for refund form furnished by the Town;
- b. Be signed by the taxpayer; and
- c. Include adequate documentation of the claim.

(2) Decision. The General Government Director shall examine the claim for refund and give written notice to the taxpayer of the amount to be refunded or denied.

(3) Refunds not assignable. The right of any person to obtain a refund pursuant to this Article shall not be assignable.

(4) False statements. No person shall make any false statements in connection with a claim for refund. (Ord. 1994-30 §2)

*Division 5
Tax Deficiencies*

Sec. 1-10-41. Underpayments from returns.

If the amount remitted with a return is less than the tax computed from information in such return, a notice of assessment shall be issued. (Ord. 1994-30 §2)

Sec. 1-10-42. Tax deficiencies from failure to file or failure to provide records for audit.

(a) If any taxpayer neglects or refuses to obtain a retail sales tax license, the amount of the total tax liability shall be estimated, based upon such information as may be available and a notice of assessment shall be issued.

(b) If any taxpayer neglects or refuses to file a return by the due date, the total tax liability shall be estimated, based upon such information as may be available, and a notice of assessment shall be issued.

(c) If any taxpayer neglects or refuses to provide adequate books, accounts and records requested for audit, the total tax liability shall be estimated, based upon such information as may be available, and a notice of assessment shall be issued.

(d) Estimated total tax liability shall be adjusted if a return reporting actual total tax liability is filed. (Ord. 1994-30 §2)

Sec. 1-10-43. Tax deficiencies determined through audit.

If the Town ascertains through an audit of the taxpayer's records, that the tax due has not been fully reported or paid by the applicable due date, a notice of assessment shall be issued. (Ord. 1994-30 §2)

Sec. 1-10-44. Penalties.

(a) Penalty for late payment of sales tax. A penalty of fifteen dollars (\$15.00) or ten percent (10%) of the tax deficiency, whichever is greater, shall be levied on any tax deficiency.

(b) Penalty for fraud. If any tax deficiency is due to fraud or the intent to evade the tax, the penalty shall be fifty percent (50%) of the total tax deficiency.

(c) Penalty for repeated enforcement. If three (3) notices of assessment have been issued to the same taxpayer within thirty-six (36) consecutive months, a special penalty of fifteen percent (15%) of the total tax liability, or twenty-five dollars (\$25.00), whichever is greater, shall be levied in addition to the penalties levied in Subsection (a) above.

(d) Abatement of penalty. Any penalty assessed in this Article may be abated by the General Government Director if the General Government Director finds good cause therefor, and the taxpayer submits a written request for such abatement on or before the payment due date of the applicable notice of assessment (or If no assessment was issued, within sixty [60] days after payment of the tax). (Ord. 1994-30 §2)

Sec. 1-10-45. Interest.

(a) Interest shall be levied on any tax deficiency at the rate of one and one-half percent (1.5%) per month.

(b) Interest shall be calculated for each month or portion of a month from the due date that a tax deficiency remains unpaid.

(c) When a timely protest is made to a notice of assessment, no additional interest shall be assessed on any tax upheld by the General Government Director for the period between the interest date of such assessment and the payment date established in an informal meeting or thirty (30) days after the date of a findings of fact, conclusion and decision issued after a hearing.

(d) Any interest properly assessed on a tax deficiency may be abated by the Director of General Government as provided above for the abatement of penalties. (Ord. 1994-30 §2)

Sec. 1-10-46. Notice of assessment.

The General Government Director or specifically authorized agent shall issue a notice of assessment for any tax deficiency, penalties or interest due.

(1) Notices of assessment shall be in writing and delivered in person or sent postpaid by first class mail to the last known address of the taxpayer.

(2) The payment due date for the total tax liability pursuant to a notice of assessment shall be twenty (20) days after the date of the notice of assessment. (Ord. 1994-30 §2)

Sec. 1-10-47. Abatement of deficiency.

The General Government Director shall promulgate policies and procedures for processing tax deficiency abatements which shall include a provision that all abatements in excess of five thousand dollars (\$5,000.00) shall require the prior approval of the Town Manager and that all abatements in excess of five hundred dollars (\$500.00) shall be reported to the Town Manager. All tax deficiency abatements shall only be made in accordance with said policies and procedures. (Ord. 1994-30 §2)

*Division 6
Taxpayer's Remedies*

Sec. 1-10-51. Protest of notice of assessment or denial of refund.

(a) Any notice of assessment may be protested by the taxpayer to whom issued.

(1) A protest of a notice of assessment issued to a vender or taxpayer for failure to file a return, for underpayment of tax owed or as a result of an audit shall be submitted in writing to the General Government Director within twenty (20) calendar days from the date of the notice of assessment. Any such protest shall identify the amount of tax disputed and the basis for the protest.

(2) When a timely protest is made, no further enforcement action will be instituted by the Town for the portion of the assessment being protested unless the taxpayer fails to pursue the protest in a timely manner.

(b) A protest of a denial of a refund shall be submitted in writing to the General Government Director within (20) calendar days from the date of the denial of the refund and shall identify the amount of the refund requested and the basis for the protest.

(c) Any timely protest entitles a taxpayer to a hearing under the provisions of this Article. (Ord. 1994-30 §2)

Sec. 1-10-52. Hearings.

(a) The Town shall commence a hearing within sixty (60) days after the Town's receipt of the taxpayer's written protest; except the Town may extend such period if the delay is requested by the taxpayer. The General Government Director shall notify the taxpayer in writing of the time and place of such hearing.

(b) Every hearing shall be held in the Town before the General Government Director or his or her designated representative.

(c) The taxpayer may assert any facts, make any arguments and file any briefs and affidavits which, in the opinion of the taxpayer, are pertinent to the protest. The filing of briefs shall not be required.

(d) Based on the evidence presented at the hearing, the General Government Director or his or her designated representative shall issue a findings of fact, conclusions and decision which may modify or abate the tax, penalties and interest protested at the hearing, approve a refund or uphold the assessment.

(e) After such hearing, the taxpayer shall not be entitled to a second hearing on the same notice of assessment or denial of refund.

(f) Unless the decision of the General Government Director is appealed as provided in this Article, the remaining total tax liability, if any, shall be paid on or before thirty (30) days after the date of the findings of fact, conclusion and decision. (Ord. 1994-30 §2)

Sec. 1-10-53. Appeals.

(a) Subsequent to a hearing the taxpayer may appeal the decision of the General Government Director to the County District Court pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

(b) An appeal of a final decision of the General Government Director in a hearing held pursuant to this Section shall be commenced within thirty (30) days of such decision.

(c) Upon the appeal to the District Court the taxpayer shall either file with the General Government Director a bond for twice the unpaid amount or deposit the unpaid amount with the General Government Director. (Ord. 1994-30 §2)

*Division 7
Enforcement*

Sec. 1-10-61. Lien for tax due.

(a) Issuance. If any tax liability is not paid by the payment date of a notice of assessment, the General Government Director may issue a notice of lien on the real and personal property of the taxpayer. Such lien shall specify the name of the taxpayer, the total tax liability, the date of the accrual thereof, the location of the property and shall be certified by the General Government Director.

(b) Filing. The notice of lien shall be filed in the office of the clerk and recorder of any county in the State in which the real or personal property of the taxpayer is located. Such filing shall create a lien on such property in that county and constitute a notice thereof.

(c) Priority. The attachment and property of such lien shall be as follows.

(1) Such lien shall be a first prior lien upon the goods, stock in trade and business fixtures owned or used by any taxpayer, including those under lease, installment sale, or other contract agreement, and shall take precedence on all property over all other liens or claims of whatsoever kind or nature.

(2) Such lien on the real and tangible personal property of the taxpayer that is not goods, stock in trade and business fixtures shall be a first and prior lien except as to pre-existing claims or liens of a bona fide mortgagee, pledge, judgment creditor or purchaser whose rights have attached and been perfected prior to the filing of the notice of lien.

(3) The personal property of an owner who has made a bona fide lease to a taxpayer shall be exempt from the lien created in this subsection if such property can reasonably be identified from the lease description and if the lessee is given no right to become the owner of the property leased.

This exemption shall be effective from the date the lease is recorded with the county clerk and recorder of the county where the property is located or based.

(4) Motor vehicles which are properly registered in the State, showing the lessor as owner thereof, shall be exempt from such lien except that such lien shall apply to the extent that the lessee has earned reserve, allowance for depreciation not to exceed the fair market value or similar interest which is or may be credited to the lessee.

(5) Where a lessor and lessee are blood relatives by law or have twenty-five percent (25%) or more common ownership, a lease between such lessee and such lessor shall not be considered as bona fide for purpose of this Section.

(d) Enforcement against real property. If a notice of lien is filed against property, the General Government Director may request the Town Attorney to file a civil action to enforce such lien. The court may determine the interest in the property of each party, decree a sale of the real property and distribute the proceeds accordingly to such findings. Procedures for the action and the manner of sale, the period for and manner of redemption from the sale and the execution of deed of conveyance shall be in accordance with the law and practice relating to foreclosures of mortgages upon real property. In any such action, the court may appoint a receiver of the real property involved in such action if equity so requires. (Ord. 1994-30 §2)

Sec. 1-10-62. Perpetuance of lien.

(a) Any lien for total tax liability shall continue until release of lien is filed by the General Government Director.

(b) Any person who purchases or repossesses real or personal property upon which a lien has been filed by the General Government Director for total tax liability shall be liable for the payment of such tax liability up to the value of the property taken or acquired. (Ord. 1994-30 §2)

Sec. 1-10-63. Release of lien.

Upon payment of the total tax liability or enforcement of the lien, the General Government Director shall file a release of lien with the county clerk and recorder of the county in which the lien was filed. (Ord. 1994-30 §2)

Sec. 1-10-64. Civil action to recover tax due.

(a) Any unpaid total tax liability shall constitute a debt of the taxpayer to the Town and the General Government Director may request the Town Attorney to file a civil action to collect such total tax liability.

(b) The return filed by a taxpayer or the notice of assessment issued by the General Government Director shall be prima facie proof of the total tax liability.

(c) If a judgment is obtained by the Town, collection of the total tax liability may be made by attachment, garnishment or other means of authorized law. When attachment is sought, no bond shall be required of the General Government Director nor shall any sheriff require of the General Government Director an indemnity bond for executing the writ of attachment or writ of execution upon any judgment. (Ord. 1994-30 §2)

Sec. 1-10-65. Jeopardy assessment.

(a) Issuance. If collection of any total tax liability from a taxpayer, whether or not previously assessed, will be jeopardized by delay, the General Government Director may declare the taxable period immediately terminated, determine the total tax liability and issue a jeopardy assessment and demand for payment. Any total tax liability so assessed shall be due and payable immediately.

(b) Security for payment. Enforcement of a jeopardy assessment and demand for payment may be stayed if the taxpayer gives security for payment which is satisfactory to the General Government Director.

(c) Dispute of jeopardy assessment. If, in the opinion of the taxpayer, the jeopardy assessment is not for the correct amount of total tax liability, the taxpayer shall pay the total tax liability as assessed and submit a claim for refund to the Town. (Ord. 1994-30 §2)

Sec. 1-10-66. Seizure and sale.

(a) Unless property is exempt by the Colorado Revised Statute from seizure and sale, the General Government Director may sign and issue a warrant directed to any employee or agent of the Town, or any sheriff of any county in the State, commanding the seizure and sale of personal property of the taxpayer on which a lien has attached for the payment of the total tax liability.

(1) Such warrant may be issued if the total tax liability is not paid on or before twenty (20) days from the payment date of a notice of assessment and no protest of such assessment has been timely filed.

(2) Such warrant may be issued immediately if a jeopardy assessment and demand for payment have been issued.

(b) If the taxpayer does not volunteer entry to the premises, the General Government Director may apply to the Municipal Court of the Town for a warrant authorizing any employee or agent of the Town to search for and seize property located inside the Town to enforce the collection of total tax liability.

(1) The General Government Director shall demonstrate to the court that the premises to which entry is sought contains property that is subject to seizure and sale for total tax liability.

(2) If a jeopardy assessment and demand for payment has been issued, the General Government Director shall specify to the court why collection of the total tax liability will be jeopardized.

(3) The procedures to be followed in issuing and executing a warrant pursuant to this subsection shall comply with Rule 241 of the Colorado Municipal Court Rules of Procedure.

(c) Disposal of seized property.

(1) A signed inventory of the property seized shall be made by the Town or its agent. Prior to the sale the owner or possessor shall be served with a copy of said inventory, a notice of the sum of the total tax liability and related expenses incurred to date and the time and place of sale.

(2) A notice of the time and place of sale, together with a description of the property to be sold, shall be published in a newspaper of general circulation within the county where seizure is made or, in lieu thereof and in the discretion of the General Government Director, the notice shall be posted at the courthouse of the county where seizure is made, and in at least two (2) other places in the county.

(3) The time fixed for the sale shall not be less than ten (10) days nor more than sixty (60) days from the date of the seizure. The sale may be postponed by the Town or agent for no more than ninety (90) days from the originally fixed for the sale.

(4) The property shall be sold at public auction for not less than a fair minimum price, and if the amount bid for the property is less than the fair minimum price so fixed, the property may be declared to be purchased by the Town and the Town shall file a release of lien thereof. If the property is purchased by the Town, such property may be disposed of in the same manner as other Town property.

(5) The property may be offered first by bulk bid, then subsequently for bid singularly or by lots, and the Town or the agent may accept the higher bid.

(6) The property offered for sale may be redeemed if the owner or possessor or other person holding an unperfected chattel mortgage or other right of possession pays the total tax liability and all collection costs no less than twenty-four (24) hours before the sale.

(7) The Town or its agent shall issue to each purchaser a certificate of sale which shall be prima facie evidence of its right to make the sale and transfer to the purchaser all right, title and interest of the taxpayer in and to the property sold.

a. When the property sold consists of certificates of stock, the certificate of sale shall be notice to any corporation, company or association to record the transfer on its books and records.

b. When the property sold consists of securities or other evidences of debt, the certificate of sale shall be good and valid evidence of title.

(8) Any surplus remaining after satisfaction of total tax liability plus any costs of making the seizure and advertising the sale may be distributed by the Town first to other jurisdictions which have filed liens or claims of sales and use or personal property ad valorem taxes, and second to the owner, or such other person having a legal right thereto.

(9) The General Government Director shall submit a written account of the sale to Town Manager.

(d) Exempt property. Property of the taxpayer subject to seizure shall include the personal property of the taxpayer and the goods, stock in trade and business fixtures owned or used by any taxpayer including those used under lease, installment sale or other contract arrangement. Property exempt from seizure and sale shall include the personal property described as such in Section 1-10-61.

(e) Return of the property. The taxpayer or any person who claims ownership interest or right of possession in the seized property may petition the Municipal Court, if the property was seized pursuant to a warrant issued by the court, for the return of the property.

(1) The grounds for return of the property shall be that the person has a perfected interest in such property which is superior to the Town's interest or that the property is exempt from the Town's lien.

(2) The finder of fact shall receive evidence on any issue of fact necessary to the decision of the petition. If the finder of fact determines, by a preponderance of the evidence, in favor of the taxpayer or other petitioner, the property shall be returned. (Ord. 1994-30 §2)

Sec. 1-10-67. Status of tax due in bankruptcy and receivership.

Whenever the business or property of any taxpayer is subject to receivership, bankruptcy or assignment for the benefit of creditors, or seized for property taxes, the total tax liability shall be a prior and preferred lien against all the property of the taxpayer. No sheriff, receiver, assignee nor other officer shall sell the property of any such taxpayer under process or order of any court, without first ascertaining from the General Government Director the amount of the total tax liability before making payment to any judgment creditor or other claimants. (Ord. 1994-30 §2)

Sec. 1-10-68. Violations, summons and complaint; penalty.

(a) It shall be a violation of this Article to fail to perform any applicable affirmative duty specified in this Article including, but not limited to:

(1) The failure of any person engaged in business in the Town to obtain a sales tax license, as required by this Article;

(2) The failure of any taxpayer to file a timely return or to make timely payment of any tax liability;

(3) The failure of any resident individual or business to comply with the registration requirements for automotive vehicles;

(4) The making of any false or fraudulent statement by any person in any return, claim for refund or hearing; or

(5) The evasion of collection of any tax by any person or the aiding or abetting of any other person in an attempt to evade the timely payment of tax due.

(b) The General Government Director may direct the issuance of a complaint and summons to appear before the Municipal Court of the Town to any person who the General Government Director reasonably believes has violated any portion of this Article or of the rules and regulations promulgated by the General Government Director to enforce this Article.

(c) Violations of this Article shall be punished by a fine or imprisonment or both, as provided in this Code. Each and every twenty-four-hour continuation of any violation shall constitute a distinct and separate offense. (Ord. 1994-30 §2)

Sec. 1-10-69. Statute of limitations.

Unless the limitation period has been extended as provided in this Section, the statute of limitations for provisions contained in this Article shall be as follows:

(1) Refunds.

a. Any claim for refund for disputed total tax liability shall be submitted to the Town on or before sixty (60) days from the date of such purchase.

b. Any claim for refund resulting from a notice of overpayment shall be submitted to the Town on or before thirty (30) days after the date of such notice of overpayment.

c. Any other claim for refund shall be filed on or before three (3) years after the date such overpayment was paid to the Town.

(2) Assessments. No notice of assessment shall be issued more than three (3) years after:

a. The due date of such total tax liability;

b. For a construction project which requires a Town building permit, the date the final certificate of occupancy was issued for such project; or

c. For a construction project not requiring a Town building permit, the date of completion of the project.

(3) Liens. No notice of lien shall be issued more than three (3) years after the due date of the total tax liability. If the limitation period is extended, a notice of lien may be filed on or before thirty (30) days from the date of the notice of assessment issued for such extended period.

(4) Returns.

a. When a taxpayer fails or refuses to file a return, the total liability may be assessed and collected at any time without limitation.

b. In the case of a false or fraudulent return filed with intent to evade tax, the total tax liability may be assessed, or proceedings for the collection of such total tax liability may be begun at any time without limitation.

(5) Protests. No protests of a notice of assessment or denial of a claim for refund shall be valid if submitted to the General Government Director in other than written form, or if submitted after the period allowed in this Article.

(6) Limitation period extension. The limitation period may be extended only before its expiration, and if:

a. The taxpayer and the General Government Director agree in writing to extend the period; or

b. The Town provides written notice to the taxpayer prior to the expiration of the period of limitation that the latter's records will be audited pursuant to this Article, such period of limitation that the latter's records will be extended for the audit period until thirty (30) days after the date of the notice of assessment of overpayment issued as a result of such audit. *Audit period* includes all reporting periods with due dates which fall within the thirty-six-month period preceding the date of the notice of audit, or, if a Town building permit is required, the

period between the issuance of such building permit and the issuance of a final certificate of occupancy. (Ord. 1994-30 §2)

*Division 8
General*

Sec. 1-10-81. Legislative intent.

H.B. 1007, enacted by the Fifty-fifth Colorado General Assembly and approved by the Governor on June 6, 1985, sets forth the collection of sales and use taxes by home rule cities. This Article contains provisions which are consistent with some of those set forth in H.B. 1007. The Town Council finds that Article XX of the Colorado Constitution grants plenary power to home rule cities to levy and collect taxes within the Town limits. The Town Council does not endorse restrictions on the taxing power of home rule cities. It is the intent of the Town Council in enacting provisions consistent with H.B. 1007 to assist the business community, but not in any way to prejudice the Town's right to fully exercise its constitutional authority to levy and collect taxes within its boundaries. (Ord. 1994-30 §2)

Sec. 1-10-82. Sales tax licenses; application and content.

(a) It shall be unlawful for any person to engage in the business of selling retail within the Town without having first obtained a Town sales tax license.

(b) Persons for whom a license is required shall first submit an application stating the name and address of the person requesting such license; the name of the business being licensed and the character thereof; the location, including the street number of such business; and such other information as may be required by the General Government Director.

(c) Licenses shall be in effect through the end of the period for which they were issued; they shall be conditionally renewed upon renewal of the Town business license and the attendant payment of any and all appropriate Town business occupation taxes and Town sales taxes.

(d) Each sales tax license shall be numbered and shall show the name, location, mailing address and character of business of the licensee and shall be posted in a conspicuous place at the business location for which it is issued.

(e) No sales tax license shall be transferable. The new owner shall apply for a new license within thirty (30) days after any sales of a business. (Ord. 1994-30 §2; Ord. 1996-11 §4)

Sec. 1-10-83. Sales tax licenses; cancellation.

(a) The General Government Director may cancel any license:

(1) Upon receipt of a written notice that the taxpayer is no longer engaged in business in the Town;

(2) Upon the taxpayer's failure to respond to three (3) consecutive notices of delinquency. The General Government Director shall give notice to the taxpayer that the license has been canceled.

(3) After a reasonable notice and a full hearing, the General Government Director may issue a finding and order to cancel the license of any taxpayer found to have violated any provision of this Article.

(b) Appeal. Any person may appeal a finding and order canceling their license to the County District Court, pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

(c) No taxpayer shall continue to engage in business in the Town after their license has been canceled. (Ord. 1994-30 §2)

Sec. 1-10-84. Transient/temporary vendors.

(a) Transient/temporary vendors are subject to and shall comply with the Town business license and shall pay the appropriate Town business occupation taxes as provided for elsewhere in this Code, in addition to obtaining a Town sales tax license as provided in Sections 1-10-82 through 1-10-84.

(1) Its provision may not be relieved by a temporary association with another licensed entity unless that entity is a charitable organization based within the Town which wishes to sponsor the transient/temporary vendor and thereby exempt the vendor from the provisions of this Section for sales which are infrequently conducted for which the charitable organization collects sales tax due in accordance with the provisions of this Article.

(2) Issuance of a license under this Article does not in any way relieve a transient/temporary vendor from responsibility for obtaining permission from respective property owners to set up displays and sell goods on private property; nor does it relieve such a vendor from paying required fees to charitable organizations which are conducting a special event when the vendor wishes to conduct sales in association with that event.

(3) Transient/temporary vendors will not be issued a sales tax license to sell unless application is received in the General Government Department at least twenty-four (24) hours in advance of selling in the Town; the issuance of a sales tax license by the Town does not relieve the applicant from any of the requirements of the Town business license. The review process required by the Town prior to issuing a business license will require a longer period of time than that required to issue a sales tax license.

(b) Any charitable organization which organizes or sponsors an event where transient/temporary vendors are expected to conduct sales, shall be required to distribute to all participation vendors, a packet of information furnished by the Town which shall inform said vendors of requirements and procedures to be met before sales in the Town may be conducted.

(c) Tax deposit required. Unless waived or reduced by the General Government Director, transient/temporary vendors shall deposit with the General Government Director a minimum of one hundred dollars (\$100.00), or such greater amount as the General Government Director may direct. The deposit shall be in cash or equivalent acceptable to the General Government Director which can be applied toward any imposed retail sales tax due on sales within the Town limits. Tax returns reflecting actual tax due must be completed within ten (10) days from the final date of sale. In no event shall the vendor be relieved of his or her obligation to remit sales tax due under this Article. The vendor may apply the deposit toward any tax owed. In the event that the signed return is not received by the General Government Director within ten (10) days from the final date of sale, the vendor shall

waive the right to apply the deposit to the tax owed, and the deposit shall become nonrefundable. (Ord. 1994-30 §2; Ord. 1995-1 §1; Ord. 1996-11 §5)

Sec. 1-10-84.5. Special events sales tax license and collections.

(a) No special event may be conducted without the issuance of a special events license to the organizer of the event. The individual vendors participating in a special event need not individually obtain a license if a special events license has been issued to the organizer of the special event. If there is no special events organizer, the vendors at the special event must obtain their own sales tax license and collect and remit the tax to the Town pursuant to this Article X. The organizer shall remit all taxes collected by the vendors who have a license but who elect to have the organizer remit the tax.

(b) No later than ten (10) days after the end of the special event, the special event organizer shall provide the Finance Director with a list of the names and addresses of all vendors of the special event, and a list of all tax license numbers of vendors who have obtained their own licenses for the event and are remitting the tax to the Town independently.

(c) Vendors or organizers of a special event must remit the sales tax they collect pursuant to Section 1-10-10 and complete a tax schedule on a form provided by the Finance Director. (Ord. 2002-2 §5)

Sec. 1-10-85. Sales by charitable organizations.

Charitable organizations making taxable sales or performing taxable services as defined in this Article shall collect sales tax and consumers shall pay sales tax on such sales or services, subject to the conditions set forth in this Article. (Ord. 1994-30 §2)

Sec. 1-10-86. Rate; imposition and collection; distribution.

(a) Sales tax. There is hereby levied a tax or excise upon all sales of tangible personal property and services specified in Section 1-10-88 at a rate of two percent (2%).

(b) Imposition and collection. The tax specified in this Section is imposed upon the purchaser. Any seller engaged in business in the Town shall collect the tax and remit it to the Town pursuant to the schedule set forth in this Article.

(c) Distribution. The distribution of all retail sales taxes shall be in the Town's Governmental Fund. The Town shall pay for all costs of administration and collection of sales taxes levied in accordance with this Article from all sources of revenue. (Ord. 1994-30 §2; Ord. 1996-11 §6)

Sec. 1-10-87. Map, location or electronic guide of Town boundaries.

(a) The General Government Department shall make available to any requesting vendor a map or location guide showing the boundaries of the Town. The requesting vendor may rely on such map or location guide and any update thereof available to such vendor in determining whether to collect a sales tax.

(b) Any vendor that collects and remits sales tax to the Town may use an electronic database of state addresses that is certified by the Colorado Department of Revenue pursuant to Section 39-26-105.3, C.R.S. to determine the jurisdictions to which tax is owed.

(c) Any vendor that uses the data contained in an electronic database certified by the Colorado Department of Revenue pursuant to Section 39-26-105.3, C.R.S. to determine the jurisdictions to which tax is owed; or map or location guides provided by the Town and any update thereof available to such vendor in determining whether to collect a sales tax; shall be held harmless for any tax, penalty or interest owed the Town that otherwise would be due solely as a result of an error in the map, location or electronic database guide, provided that the vendor demonstrate that it used the most current information available in such map, location or electronic database guide on the date that the sale occurred. Each vendor shall keep and preserve such records as prescribed by the General Government Department to demonstrate that it used the most current information available on the date that the sale occurred. Notwithstanding the above, if error in collecting and remitting is a result of a deceptive representation, a false representation or fraud, the provisions of this Section shall not apply. (Ord. 1994-30 §2; Ord. 2007-14 §1)

Sec. 1-10-88. Transactions and items subject to tax.

The tax levied by Section 1-10-86 shall apply to the following:

- (1) All sales of tangible personal property at retail.
- (2) Installation in the Town of equipment required to receive or transmit telecommunication service.
- (3) Meals sold to the public or employees.
- (4) All sales of food, including but not limited to:
 - a. The amount paid for food or drink served or furnished in or by restaurants, cafes, lunch counters, cafeterias, hotels, drugstores, social clubs, nightclubs, cabarets, resorts, snack bars, caterers, carry-out shops, delicatessens, grocery stores, counters, and other like places of business at which prepared food or drink is regularly sold, including sales from pushcarts, motor vehicles and other mobile facilities.
 - b. The total amount paid as a cover charge or for admission to an establishment that charges a single price for admission and food service.
 - c. The amount paid for sales of meals by any of the employees of the aforementioned establishments, whether at full price or at reduced price, shall be included herein.
- (5) Gas, electricity, steam, coal, wood, fuel oil or coke furnished for domestic, commercial or industrial consumption.
- (6) Pay cable, or subscription television, including charges for service, installation, connection or other similar charge.
- (7) Automotive vehicles sold, leased or rented in the Town.
- (8) Services of an operator when furnished with the lease or rental of tangible personal property if such services are not separately stated.
- (9) Coin-operated devices that dispense tangible personal property.

(10) Lodging services.

(11) The rental fee, price or other consideration paid for the rental of any tangible personal property within the boundaries of the Town. Rentals shall include, but not be limited to, ski rentals, car rentals, bicycle rentals, skate rentals, snowboard rentals, other sporting goods rentals, VCR rentals and video cassette tape rentals. Such rentals for all purposes of this Article, shall be deemed to be taxable.

(12) Telecommunications services. (Ord. 1994-30 §2; Ord. 1996-11 §7; Ord. 2000-13 §1)

Sec. 1-10-89. Exemptions from sales tax.

(a) The tax levied by Section 1-10-86 shall not apply to the following:

(1) Automotive vehicles sold to nonresidents of the Town for registration outside the Town.

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

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

(4) All sales of therapeutic devices, appliances or related accessories.

(5) All sales of medical supplies.

(6) Cigarettes.

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

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

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

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

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

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

(13) All wholesale sales.

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

(15) Commercial packaging materials.

(16) Napkins, straws or eating utensils sold to a retailer when the following conditions are met:

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

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

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

(17) Newsprint and printer's ink for use by publishers, newspapers and commercial printers.

(18) Newspapers.

(19) Tangible personal property sold for rental or leasing inventory, including but not limited to coin operated devices, provided that such property is not otherwise used except for customer demonstration or display.

(20) Labor sold with tangible personal property, if such labor is stated separately on the invoice from the tangible personal property sold; except that manufacturing or fabricating or other processing labor shall not be exempt.

(21) Tangible personal property sold through coin-operated devices for a price of fifteen cents (\$0.15) or less.

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

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

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

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

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

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

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

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

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

(24) Access services.

(25) Modified or customized computer programs, but not including pre-written computer programs.

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

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

(28) Lodging services are exempt when they apply to:

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

b. All sales to the United States of America, to the State, their departments, institutions or political subdivisions, which are acting in their governmental capacity, and to all sales to the

Town or its departments, provided that such sales are supported by requisition on official government purchase orders and paid for directly to the seller by draft or warrant drawn on the funds of that government entity.

c. All sales to any occupant who is a permanent resident of a hotel, apartment hotel, lodging house, motel, guest house, guest ranch or other place which provides sleeping rooms or facilities and who enters into or has entered into a written agreement for occupancy of a room or rooms or accommodations for a period of at least thirty (30) consecutive days.

(b) The list of exemptions shall not be increased by implication or similarity. (Ord. 1994-30 §2)

Sec. 1-10-90. Installment sales transactions.

Whenever taxable tangible personal property is sold under a conditional sales contract whereby the seller retains title as security for all or part of the price, or whenever the seller takes a chattel mortgage on such tangible personal property to secure all or part of the price, the full price of such property shall be reported for the period in which the sale was made. No refund or credit shall be allowed to either party to the transaction in case of repossession. (Ord. 1994-30 §2)

Sec. 1-10-91. Nonresident retailers.

Any retailer engaged in business in the Town, but not maintaining an office in the Town, who sells tangible personal property or taxable services may petition the General Government Director to establish an alternate method of determining tax due. If the General Government Director finds that the imposition of the tax on an individual sales basis will impose an unnecessary hardship on the retailer, and if the type and occasion of sale so warrants, the General Government Director may establish such alternate method. (Ord. 1994-30 §2)

Sec. 1-10-92. Intercity claims for recovery.

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

(1) As used herein, *claim for recover* means a claim for reimbursement of sales tax from another jurisdiction.

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

(3) The Town may make a written claim for recover directly to the municipality that received a tax or penalty and interest owed to the Town; or, in the alternative, may institute procedures for collection of the tax from the taxpayer or vendor. The decision to make a claim for recover lies in the sole discretion of the Town. Any claim for recover shall include a properly executed release of claim, from the taxpayer and vendor releasing its claim to the taxes paid to the wrong taxing jurisdiction, evidence to substantiate the claim, and a request that the taxing jurisdiction approve or deny in whole or in part, the claim within ninety (90) days of its receipt. The taxing jurisdiction to which the Town submits a claim for recover may, for good cause, request an extension of time to

investigate the claim, and approval of such extension by the Town shall not be unreasonably withheld.

(4) Within ninety (90) days after receipt of a claim for recover, the Town shall verify to its satisfaction whether or not all or a portion of the tax claimed was improperly received, and shall notify the taxing jurisdiction submitting the claim in writing that the claim is either approved or denied in whole or in part, the Town shall remit the undisputed amount within the thirty (30) days of approval. If a claim is submitted jointly by another taxing jurisdiction and a vendor or taxpayer, the check shall be made to the parties jointly. Denial of a claim for recovery may only be made for good cause.

(5) The Town may deny a claim on the grounds that it has previously paid a claim for recover arising out of an audit of the same taxpayer.

(6) The period subject to a claim for recover shall be limited to the thirty-six-month period prior to the date the taxing jurisdiction that was wrongly paid receives the claim for recovery. (Ord. 1994-30 §2)

Sec. 1-10-93. Effective date.

This Article X shall be effective on and after July 1, 1995. Prior to that date, the provisions of Chapter 175 of the Silverthorne Town Code in force and effect prior to its recodification by Ordinance 1995-1 shall apply, notwithstanding the provisions of Section 1-1-5. On July 1, 1995, former Silverthorne Town Code Chapter 175 shall be deemed repealed in its entirety, and the provisions of this Article X shall then and thereafter apply. (Ord. 1995-1 §1)

*Division 9
Enhanced Sales Tax Incentive Program*

Sec. 1-10-101. Program established; purpose.

There is hereby established within the Town an enhanced sales tax incentive program ("ESTIP"). The purpose of the enhanced sales tax incentive program is to encourage establishment and/or substantial expansion of retail-sales-tax-generating businesses within the Town, thereby stimulating the economy of and within the Town, providing employment for the residents of the Town and others, expanding the goods available for purchase and consumption by residents of the Town, and increasing the sales taxes collected by the Town. These increased sales tax collections will enable the Town to provide expanded and improved municipal services while at the same time providing public or public-related improvements at no cost, or at deferred cost, to the Town and its taxpayers and residents. (Ord. 2001-08 §1)

Sec. 1-10-102. Definitions.

The following words, terms and phrases, when used in this Division, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning.

Enhanced sales tax shall mean the amount of sales tax collected by the Town, and available to the Town after the deduction of sixty percent (60%) of the two-percent Town sales taxes required by election, over and above a base amount negotiated and agreed upon by the applicant and the

Town, and which amount is approved by the Town Council. This base amount shall never be lower than the amount of sales taxes collected by the Town at the property in question in the twelve (12) months prior to the date the ESTIP Agreement is executed plus a reasonable and agreed-upon percentage of anticipated increase in sales taxes, or, in the case of a newly established business, an amount which represents the good faith determination by the applicant and the Town as to the amount of sales taxes which could be generated from the new business without the participation by the applicant in the ESTIP. *As an illustration only:*

Total sales during a one-month period:	\$100,000	
Sales tax available to Town:		
Town	2% of sales	\$ 2,000
County	<u>2% of sales</u>	<u>\$ 2,000</u>
Town sales tax (gross)	<u>4% of sales</u>	<u>\$ 4,000</u>
Less:		
Restricted portion of sales tax	<u>1.2% of sales</u>	<u>\$ (1,200)</u>
Total sales tax (net)	<u>2.8% of sales</u>	<u>\$ 2,800</u>
Less:		
Agreed sales tax base (existing taxes Town receives, i.e. 10% of gross)		\$ (400)
Total amount of Enhanced Sales Tax		<u>\$ 2,400</u>
Up to 50% available to share under ESTIP		<u>\$ 1,200</u>

ESTIP means the enhanced sales tax incentive program created by this Division.

ESTIP Agreement means the signed agreement between the applicant and the Town, which implements the ESTIP for a specific project or property.

Owner shall mean the record owner of the real property upon which one (1) or more businesses is operated.

Tenant shall mean the record operator of a business located in a commercial district in the Town. (Ord. 2001-08 §1; Ord. 2011-12 §1)

Sec. 1-10-103. Participation.

Participation in ESTIP shall be based upon approval by the Town Council exercising its sole and exclusive discretion. Any owner of a newly established retail-sales-tax-generating business or location, or the owner of an existing retail-sales-tax-generating business or location which wishes to expand substantially, which newly established or substantial expansion is accomplished subsequent to the effective date of this Division, may apply to the Town for inclusion within the ESTIP, provided that the new or expanded business is reasonably likely to generate enhanced sales taxes of at least five thousand dollars (\$5,000.00) in the first year of operation. (Ord. 2001-08 §1; Ord. 2011-12 §1)

Sec. 1-10-104. Approval of agreement; use of funds generally.

Approval by the Town Council of an ESTIP Agreement entitles the applicant to share in enhanced sales taxes derived from the applicant's property or business in an amount which shall not in any event

exceed fifty percent (50%) of the enhanced sales taxes. The applicant may use such amount solely for public and/or public-related purposes such as those specified herein and which are expressly approved by the Town Council as a part of the ESTIP Agreement. The time period in which the enhanced sales taxes may be shared shall not commence until all public or public-related improvements are completed, and may be limited to a specified time, or until a specified amount is reached. (Ord. 2001-08 §1)

Sec. 1-10-105. Eligible uses.

The uses eligible for the shared enhanced sales taxes shall be strictly limited to those which are public or public-related in nature. For the purposes of this Division, but not by way of limitation, *public or public-related purposes* shall mean environmental remediation improvements such as streets, sidewalks, curbs, gutters, pedestrian malls, street lights, drainage facilities, snow storage areas, demolition and site restoration for redevelopment, landscaping, decorative structures, enhanced architectural features, public transportation improvements, road and street improvements including traffic control signals, statuary, fountains, identification signs, traffic safety devices, bicycle paths, off-street parking facilities, benches, public restrooms, information booths, public meeting facilities and all necessary, incidental and appurtenant structures and improvements, installation of utility lines and facilities and relocation extension and improvement of existing utility lines and facilities and any other improvements of a similar nature which are specifically approved by the Town Council upon a finding that said improvements are public or public-related improvements. Public or public-related purposes shall also include redevelopment of existing properties, occupancy of existing vacant space and expansion or creation of jobs in the Town. In the event the applicant is reimbursed for the cost of such improvements from other public funds and/or grants, the amount eligible under the ESTIP program shall be decreased by the amount of such reimbursement. (Ord. 2001-08 §1; Ord. 2011-12 §1)

Sec. 1-10-106. Increments; sharing of funds.

The base figure for sales taxes shall be divided into twelve (12) monthly increments, which shall be reasonably related to the average monthly performance of the business or property in question or similar businesses in the area (i.e., adjusted for seasonal variations). If in any month the agreed-upon figure is not met by the applicant so as to create enhanced sales tax for that month, no funds shall be shared with the applicant for that month, and no increment shall be shared until that deficit, and any other cumulative deficit, has been met, so that at the end of any twelve-month cycle, funds in excess of those enhanced sales taxes agreed to be shared shall not have been shared by any applicant. The Town reserves the right to select larger increments of time, including but not limited to quarterly, biannual and annual, in lieu of the monthly increments provided for in this Section. (Ord. 2001-08 §1; Ord. 2011-12 §1)

Sec. 1-10-107. Revenues restricted.

It is an overriding consideration and determination of the Town Council that existing sources of Town sales tax revenues shall not be used, impaired or otherwise affected by this enhanced sales tax incentive program. Therefore, it is hereby conclusively determined that only enhanced sales taxes generated by the properties or tenants described in an application shall be subject to division under this ESTIP. The Town shall collect and hold all such enhanced sales taxes in a separate account apart from the sales taxes generated by and collected from the other sales-tax-generating uses and businesses within the Town and to provide an accounting system which accomplishes the overriding purpose of this Section. (Ord. 2001-08 §1; Ord. 2011-12 §1)

Sec. 1-10-108. Criteria for approval of application.

(a) Participation in ESTIP shall be based upon approval by the Town Council exercising its sole and exclusive discretion. The Town Council may permit such participation based in part upon the following criteria, as a general guide.

(1) The amount of enhanced sales taxes which are reasonably to be anticipated to be derived by the Town through the expanded or new retail-sales-tax-generating business;

(2) The public benefits which are provided by the applicant through public works, public improvements, additional employment for Town residents, redevelopment of existing properties, occupancy of existing vacant space, etc.;

(3) The amount of estimated expenditures which may be deferred by the Town based upon public improvements to be completed by the applicant;

(4) The conformance of the applicant's property or project with the comprehensive plan and zoning ordinances of the Town; and

(5) The agreement required by Section 1-10-109 below having been reached, which agreement shall contain and conform to all requirements of Section 1-10-109.

(b) Approval shall be by motion adopted by a majority of the entire Town Council. (Ord. 2001-08 §1; Ord. 2011-12 §1)

Sec. 1-10-109. Agreement required.

Each application for participation in ESTIP shall be subject to approval by the Town Council solely on its own merits and in the sole and exclusive discretion of the Town Council. Approval of an application shall require that an agreement be executed by the owner or tenant and the Town, which agreement shall at a minimum contain:

(1) A list of those public or public-related improvements which justify the applicant's approval and the estimated amount which shall be spent on such improvements.

(2) The maximum amount of enhanced sales taxes to be shared and the maximum time during which the agreement shall continue, it being expressly understood that any such agreement shall expire and be of no further force and effect upon the occurrence of the earlier to be reached of the maximum time of the agreement (whether or not the maximum amount to be shared has been reached) or the maximum amount to be shared (whether or not the maximum time set forth has expired).

(3) A statement that the agreement is personal to the applicant, is not transferable and does not run with the land or subsequent tenant.

(4) That the agreement shall never constitute a debt or obligation of the Town within any constitutional or statutory provision.

(5) The base amount of enhanced sales taxes agreed upon by month, or other formally agreed upon time increment as noted in Section 1-10-106 of this Chapter, and the fact that if, in any month

as specified, sales taxes received from the property do not at least equal such amount, there shall be no sharing of funds for such month.

(6) The base amount shall consider the historic level of sales at the property in question or a similar property within the area in the event of a new business, and a reasonable allowance for increased sales due to the improvements and upgrades completed as a result of inclusion within this program.

(7) That any enhanced sales taxes subject to sharing shall be escrowed in the event there is a legal challenge to this ESTIP or the approval of any application therefor.

(8) A statement that the obligations, benefits and/or provisions of this agreement may not be assigned in whole or in any part without the express authorization of the Town Council, acting in its sole and exclusive discretion, and further that no third party shall be entitled to rely upon or enforce any provision hereof.

(9) That the agreement shall be subject to the annual appropriation of sufficient funds for payments as provided in this Chapter pursuant to Section 20, Article X of the Colorado Constitution.

(10) That the agreement shall provide that the successful applicant shall have no right, claim, lien or priority in or to the Town's sales tax revenue superior to or on parity with the rights, claims or liens of the holders as any sales tax revenue bonds, notes, certificates or debentures payable from or secured by the Town outstanding as of the effective date of the agreement provided for by this Section; and that all rights of the successful applicant are, and at all times shall be, subordinate and inferior to the rights, claims and liens of the holders of any and all such sales tax revenue bonds, notes, certificates or debentures, payable from or secured by any sales taxes issued by the Town.

(11) Any other provisions agreed upon by the parties and approved by the Town Council. (Ord. 2001-08 §1; Ord. 2011-12 §1)

Sec. 1-10-110. No joint venture; liability.

The Town Council has enacted this ESTIP as a joint benefit to the public at large and to private owners and tenants for the purposes of providing the Town with increased sales tax revenues generated upon and by properties improved as a result of this program. The Town Council further finds that the public benefits of this ESTIP include public improvements and public-related improvements being completed by private owners or tenants through no debt obligation being incurred on the part of the Town, and allowing the applicant an opportunity to improve properties which generate sales activities, which improvements make those properties more competitive in the marketplace and further provide to the applicant additional contingent sources of revenues for upgrading such properties. The Town Council specifically finds and determines that creation of this ESTIP is consistent with the Town's powers as a home rule municipal corporation and that exercise of such powers in the manner set forth herein is in furtherance of the public health, safety and welfare. Notwithstanding any provision hereof, the Town shall never be a joint venturer in any private entity or activity which participates in this ESTIP, and the Town shall never be liable or responsible for any debt or obligation of any participant in this ESTIP. (Ord. 2001-08 §1; Ord. 2011-12 §1)