TOWN BOARD WORK SESSION

August 26, 2024 - 5:30 PM
1st Floor Conference Room, 301 Walnut Street, Windsor, CO 80550

To view Town Board meeting broadcasts, visit
www.windsorgov.com/MeetingsOnDemand.

AGENDA

GOAL of this Work Session is to have the Town Board receive information on topics of Town business from the Town Manager, Town Attorney and Town staff in order to exchange ideas and opinions regarding these topics.

Members of the Public in attendance are asked to be recognized by the Mayor before participating in any discussions of the Town Board

WORK SESSION AGENDA ITEMS

1. Review of the 2023 Safety Report & Intro to Roadway Safety Action Plan (VZ) - S. Pearson, Transportation Engineer
2. Windsor Municipal Sales Tax Code Update - D. Moyer, Director of Finance
3. Grocery Sales Tax Rebate Program - D. Moyer, Director of Finance
4. Future Meetings Agenda

The Town of Windsor will make reasonable accommodations for access to Town services, programs, and activities and will make special communication arrangements for persons with disabilities. Please call (970) 674-2400 by noon on the Thursday prior to the meeting to make arrangements.

MEMORANDUM

Date: August 26, 2024
To: Mayor and Town Board
From: Scott Pearson, Civil Engineer III
Re: Review of the 2023 Safety Report & Intro to Roadway Safety Action Plan (VZ) - S. Pearson, Transportation Engineer
Item #: 1.

Background / Discussion:
This report is our second annual report of monitoring crash trends and hazardous locations. This report will be the foundation for the upcoming SS4A Roadway Safety Action Plan (VZ) Program.

Financial Impact:
none at this time

Relationship to Strategic Plan:
Roadway Safety

Recommendation:

CC:

Attachments:

Executive Summary

Traffic crashes have a profound impact on those involved, their families, and the community.

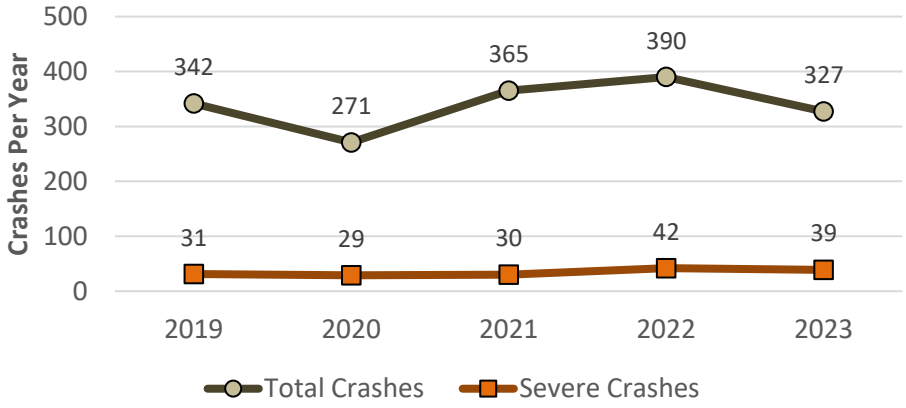
In 2022, the Town of Windsor began a Roadway Safety Program with the belief that a systematic, data driven, collaborative effort **can** result in a reduction in the number and severity of crashes. The original project involved:

- Gathering crash data, 'scrubbing' it for completeness and accuracy and entering it into new crash analysis software,
- Development of intersection screening tools, and reviewing trends and patterns, and
- Completion of the first annual Roadway Safety Summary.

In the spring of 2024, all the crash data and evaluation were updated to include 2023 numbers.

340
Average number of reported crashes on Windsor's roadways each year

34
Crashes each year involve an injury/fatality



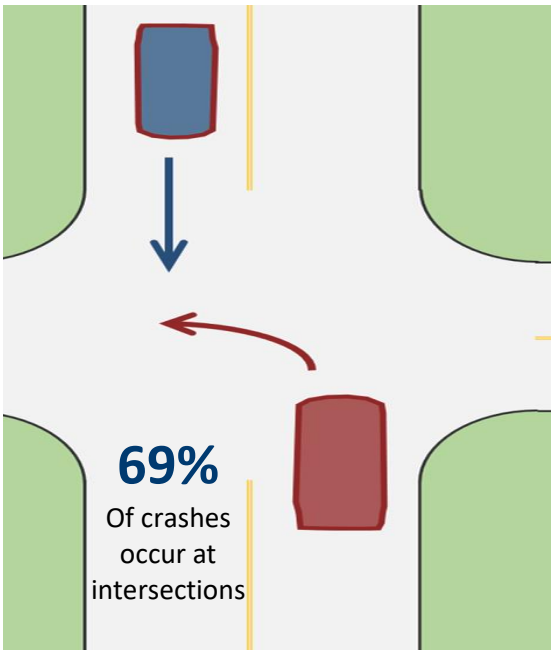
Crash numbers are relatively steady, despite an increase in population.

82%
Of all crashes do not involve an injury

10.1%
of crashes are considered 'severe' (involving a minor injury, major injury or fatality).

The total societal cost of traffic crashes each year in Windsor is approximately **$ 21 million**.

Teenagers represent **4%** of all drivers but are responsible for **17%** of all crashes.



Intersections are a priority for safety efforts.

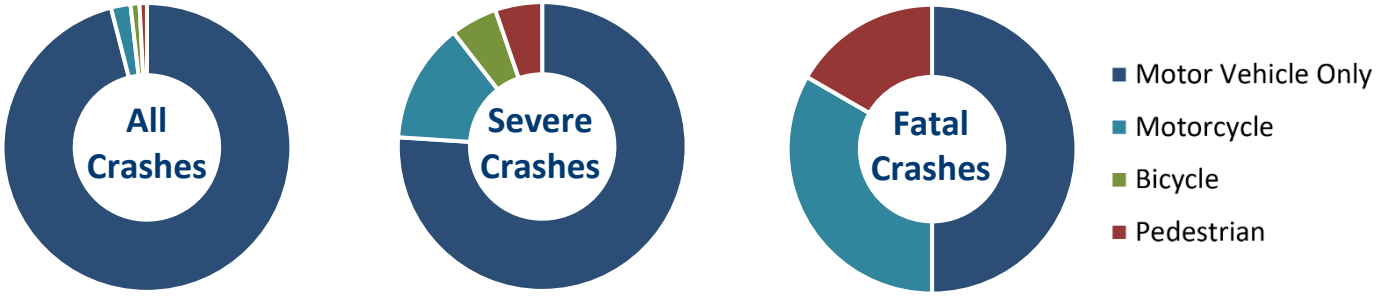
Windsor Compared to Others

When compared to other municipalities, Windsor's fatal crash rate is lower than most similar Colorado communities.

2.8
Windsor's fatal crashes / 100,000 population.

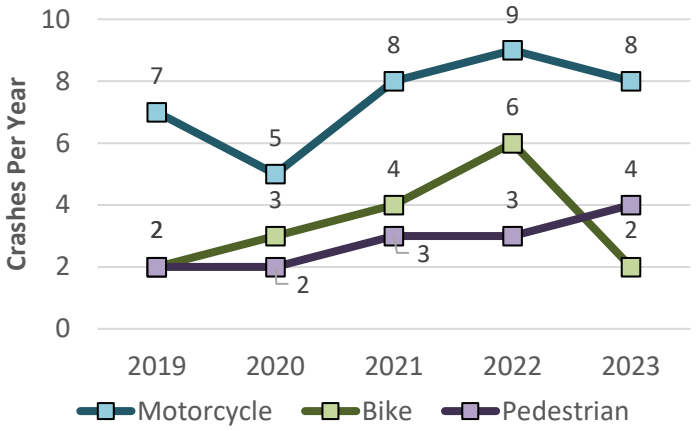
5.5
Average fatal crashes / 100,000 population for similar Colorado communities.

Vulnerable Road Users



Vulnerable road users (pedestrians, bicyclists, and motorcyclists) are involved in **4%** of all crashes but make up **50%** of fatal crashes. Motorcyclists have the highest number and severity of crashes among vulnerable users.

There have been **3** crashes in the last three years involving school aged students walking/biking to/from school.

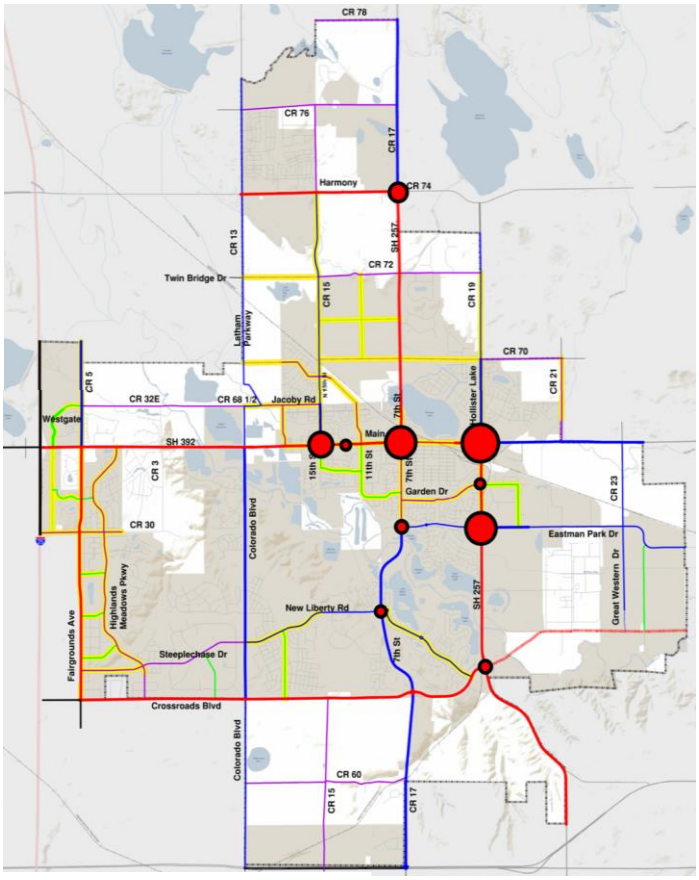


Intersections

Intersections were evaluated using a statistical model of crash numbers that accounts for intersection geometry, traffic volumes, and control type.

63% of intersections in Windsor have less crashes than predicted. The top ten intersections with potential for improvement safety are:

Location	# crashes (3 yrs.)
1. SH 257 / Eastman Park	37
2. SH 257 / SH 392 (West)	41
3. SH 257 / SH 392 (East)	43
4. SH 257 / Harmony Road	25
5. 7th St / Eastman Park	20
6. SH 257 / East Garden	14
7. 15th St / SH 392	33
8. 12th St / SH 392	13
9. SH 257 / Crossroads	21
10. 7th St / New Liberty	17



Size of dot reflects the number of crashes in the last three years.

Next Steps

The Town successfully obtained a federal grant to enhance roadway safety by creating a Safe Streets for All Action Plan, which will make the Town eligible for federal safety implementation funding. This 2024 effort involves public outreach, mapping, and a detailed action plan.

MEMORANDUM

Date: August 26, 2024
To: Mayor and Town Board Members
From: Dean Moyer, Director of Finance
Re: Municipal Sales Tax Code Update
Item #: #2

Background / Discussion:

The town began collecting its own sales tax in January 2005 following the establishment of the Home Rule Charter and the creation of our own Municipal Tax Code. On its initial creation the tax code largely followed the State statute language in place at the time, with a few exceptions specific to Windsor. As the years have passed, the State has made updates and changes to the Statutes. Windsor has changed a few sections as well but the code is largely the same document that has been in place since 2005. The changes and updates adopted since original inception have caused the current tax code to become hard to follow and not very user friendly. One of the Departmental goals for the Finance Department for 2024 was to work with a consultant to update and organize our Municipal Sales Tax Code. To that end, we hired Sophia Hassman of COSALT Consulting to help us tackle this project.

Sophia will be on hand for tonight's work session with a presentation describing the process and walking us through the changes we are proposing.

Financial Impact

No real impact as we did not propose any new items for exemption or taxability.

Relationship to Strategic Plan

Vibrant Local Economy and Economic Development

Attachments

Power Point Presentation from COSALT

Mark up copy of code with comments and revisions

Recommendation

None at this time as Board action will be required at a future meeting

Tax Ordinance Overview

- **Presenting for discussion**
  - **Repeal and reorganization of Chapter 4 Article III Sales and Use Tax,**
  - **Edits of Chapter 4 Article IV Sales and Use Tax Credits, Rebates, and Waivers**
  - **Reorganization of Chapter 6 Article III Business Licenses**

Ordinance Changes Summary

- **Repeal and Reorganize Tax and License Code**
- **Add in additional standardized definitions from the State and CML**
- **Clarify Taxable and Exempt Items**
- **Introduce Manual Return Filing Fee**
- **Reorganize Business License Requirements**
- **Financial Impact Analysis**

Chapter 4 Repeal and Reorganize Tax Code

- Streamline the code for clarity, benefiting both taxpayers and the finance department.
- Simplify taxpayer rights and administrative processes.
- Implement a streamlined sales/use tax hearings process.
- Make necessary edits for readability.

Chapter 4 – Standardized Definitions

1. **Standardize Definitions**
   - Adopt and integrate additional standardized definitions used by municipalities via Colorado Municipal League sales tax simplification.
   - Also add in related State definitions where necessary to clearly detail the taxable list and exemptions allowed.

Chapter 4 - **Clarify Taxable and Exempt Items**

- Clearly list all taxable items and exemptions instead of referring to the state statutes to ensure transparency and ease of understanding.
- Clarified the language around the Motor Vehicle Use Tax Exemption to address confusion among taxpayers, vendors, and the Department of Motor Vehicles regarding the Town resident exemption.

Chapter 4 – Add Manual Return Filing Fee

- Taxpayers can file directly through the Town's tax portal or the Colorado SUTS system.
- Manual returns are still received by the department despite the other options available.
- This initiative aims to reduce the volume of hardcopy returns, allowing the finance department to focus on improving the tax revenue program.
- Fee would be $25.00 per manually filed return.

Chapter 6 - Reorganize Business License Requirements

- Streamline licensing for special events, seasonal sales, remote vendors, and in-town businesses.
- Tie in reporting requirements for special events into special event license language.

Financial Impact Analysis

- Taxable and exempt items are not changing. Ordinance is only clearly identifying them instead of referring to the State Statutes.
- Manual return filing fee is setup to discourage paper returns and encourage tax portal usage.
  - This ideally would not be a significant revenue source, but rarely applied to those still filing paper after being provided the other portals.

TOWN OF WINDSOR

ORDINANCE NO. 2024-XXXX

AN ORDINANCE REPEALING AND REENACTING ARTICLE III OF CHAPTER 4 SALES AND USE TAX, AMENDING ARTICLE VI CHAPTER 4, AND AMENDING ARTICLE III OF CHAPTER 6 BUSINESS REGULATIONS OF THE WINDSOR MUNICIPAL CODE.

WHEREAS, the Town of Windsor ("Town") is a Colorado home rule municipality with all powers and authority vested by Colorado law; and

WHEREAS, Chapter 4 Articles III and VI, and Chapter 6 Article III of the Windsor Municipal Code ("Code") collectively constitute the Town's Sales and Use Tax Code, Credits, Rebates and Waivers, and Business Regulations; and

WHEREAS, Chapters 4 Article III currently addresses the Town's sales and use tax imposition, exemptions, and administration, while Chapter 6 Article III covers the Business Regulations license and reporting requirements; and

WHEREAS, there is a need to reorganize the sales and use tax code and business regulations to ensure clarity in tax imposition, exemptions, administration, and business regulations for the Town's administration, taxpayers, and the public; and

WHEREAS, there is a need to add in standardize definitions from the Colorado Municipal League and the Colorado Revised Statutes, and to provide a detailed list of items subject to tax and those exempted by the Town; and

WHEREAS, there is a need to clarify the exemption for Motor Vehicle Use Tax for residents of the Town of Windsor; and

WHEREAS, there is a need to standardized tax hearings and enforcement options that are regulated through the Colorado Revised Statutes; and

WHEREAS, there is a need correct language in the Article VI of Chapter 4; and

WHEREAS, there is a need to standardize regulations for business licenses including businesses in Town, remote sellers, seasonal sales and special events; and

WHEREAS, the Town Board chooses to repeal, reenactment, and amended the language to aim to provide an organized tax code and clarity on business regulations for the Town of Windsor taxpayers.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN BOARD OF THE TOWN OF WINDSOR, COLORADO, AS FOLLOWS:

Chapter 4 Article III and Chapter 6 Article III of the Code is hereby amended and shall read as follows:

ARTICLE III Sales and Use Tax

Division 1 General Provisions

Sec. 4-3-10. Title.

The provisions of this Article shall be known and cited as the "Sales and Use Tax Code." (Prior code 4-21; Ord. 2006-1236 §1)

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

(a) The provisions of this Article shall apply to the imposition as well as administration, enforcement and collection of sales and use taxes by the Town~~,~~ and shall apply to the administration of the Town license as described in this Code.

(b) As used in this Article, unless the context otherwise provides, the term *code* means and includes the provisions of this Article and the provisions of each, and every ordinance or code administered under the provisions of this Article.

(c) The provisions of this Article shall be construed to effect uniformity of administration, enforcement and collection of taxes, and to establish uniform procedures, but shall not be construed to extend or increase the application, rate or amount of any tax levied or imposed herein; provided, however, that the imposition of a penalty, interest or both penalty and interest shall be lawful and shall not be construed as an extension or increase of the application, rate or amount of tax. Wherever in this code reference is made to Title 39, Chapter 26, C.R.S., that reference shall mean the provisions of such article in title in effect as of December 31, 2004. Notwithstanding anything to the contrary herein, changes in state law and/or regulations or definitions after January 1, 2005, may be added to this Article by subsequent amendment to this Article.

(d) The purpose of this code is to provide the power necessary to exercise effectively the right to raise revenue that is essential to home rule and self-government. Any similarities to state law herein are adopted for the purpose of promoting efficiency in the collection of revenue. Regardless of any such similarities, the provisions contained herein are matters of solely local concern, except as provided in Subsection (c) above.

(Prior code 4-22; Ord. 2006-1236 §1)

Sec. 4-3-30. Definitions.

For the purpose of this Article, the definitions of words contained in this Article, whether capitalized or not in usage, shall be defined as follows:

Aircraft means a device that is used or intended to be used for flight in the air.

Aircraft Part means any tangible personal property that is intended to be permanently affixed or attached as a component part of an aircraft.

Airline Company means any operator who engages in the carriage by aircraft of persons or property as a common carrier for compensation or hire, or the carriage of mail, or any aircraft operator who operates regularly between two (2) or more points and publishes a flight schedule. *Airline Company* shall not include operators whose aircraft are all certified for a gross takeoff weight of twelve thousand five hundred (12,500)

pounds or less and who do not engage in scheduled service or mail carriage service. *Airline Company* shall have the same meaning as *Commercial Airline.*

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

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

Candy means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruit, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. Candy does not include any preparation containing flour, products that require refrigeration or marijuana infused products.

Carrier 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.

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

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

Coins means monetized bullion or other forms of money manufactured from gold, silver, platinum, palladium or other such metals now, in the future or heretofore designated as a medium of exchange under the laws of this State, the United States or any foreign nation.

Coins shall have the same meaning as *Bullion and Coins.*

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

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

~~*Construction Materials*~~*Construction equipment* means equipment used in the erection, installation, demolition, alteration, repair, remodeling, or landscaping of a building or structure upon real estate, or otherwise make improvements to any real property, building, structure or infrastructure.

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 including public and private improvements. Construction ~~*Materials*~~materials include, ~~but are not limited to~~without limitation, such things as: asphalt, bricks, builders' hardware, caulking material, cement, concrete, conduit, electric wiring and connections, fireplace inserts, electrical heating and cooling equipment, flooring, glass, gravel, insulation, lath, lead, lime, lumber, macadam, millwork, mortar, oil, paint, piping, pipe valves and pipe fittings, plaster, plumbing fixtures, putty~~,~~ reinforcing mesh, road base, roofing, sand, sanitary sewer pipe, sheet metal, site lighting, steel, stone, stucco, tile, trees, shrubs and other landscaping materials, wall board, wall coping, wallpaper, weather stripping, wire netting and screen, water mains and meters, and wood preserver. The above materials, when used for forms, or other items which do not remain as an integral ~~and inseparable~~or devoted part of a completed structure or project, are not ~~construction~~Construction materials.

Construction project means the erection, installation, alteration, repair, or remodeling of a building or structure upon real estate and any other activity for which a building permit is required under this code or any other ordinance of the Town.

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

Contractor means any person who shall build, construct, reconstruct, alter, expand, modify, or improve any building, dwelling, structure, infrastructure, or other improvement to real property for another party pursuant to an agreement. For purposes of this definition, *Contractor* also includes subcontractor.

~~*Deficiency* shall have the same meaning as "tax deficiency".~~

Digital Product means an electronic product including, but not limited to: (1) "digital images" which means works that include, but are not limited to, the following that are generally recognized in the ordinary and usual sense as "photographs," "logos," "cartoons," or "drawings." (2) "digital audio-visual works" which means a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any, (3) "digital audio works" which means works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones. For purposes of the definition of "digital audio works", "ringtones" means digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication, and (4) "digital books" which means works that are generally recognized in the ordinary and usual sense as "books".

Director means the Town's Finance Director or such person's designee. *Director* shall also have the same meaning as ~~means~~ the *Finance Director of the Town of Windsor.*

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

Economic Nexus means the connection between the Town and a person not having a physical nexus in the State of Colorado, which connection is established when the person makes retail sales into the Town, and:

(1) In the previous calendar year, the person has made retail sales into the State of Colorado exceeding the amount specified in C.R.S. § 39-26-102(3)(c), as amended; or

(2) In the current calendar year, ninety (90) days ~~has~~have passed following the month in which the person has made retail sales into the State of Colorado exceeding the amount specified in C.R.S. § 39-26-102(3)(c), as amended.

Engaged in Business in the Town means performing or providing services or selling, leasing, renting, delivering or installing tangible personal property, products, or services for storage, use or consumption, within the Town. Engaged in Business in the Town includes, but is not limited to, any one (1) of the following activities by a person: (1) Directly, indirectly, or by a subsidiary maintains a building, store, office, salesroom, warehouse, or other place of business within the taxing jurisdiction; (2) 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; (3) Maintains one or more employees, agents or commissioned sales persons on duty at a location within the taxing jurisdiction; (4) Owns, leases, rents or otherwise exercises control over real or personal property within the taxing jurisdiction; (5) retailer or vendor in the state of Colorado that makes more than one (1) delivery into the taxing jurisdiction within a twelve-month period; or (6) makes retail sales sufficient to meet the definitional requirements of economic nexus as set forth in Section 4-3-30 ~~below~~above.

~~*Factory Built Housing* means a manufactured home or modular home.~~

~~*Farm Equipment* means any farm tractor, as defined in Section 42-1-102(33), C.R.S., any implement of husbandry, as defined in Section 42-1-102(44), C.R.S., and irrigation equipment having a per unit purchase price of at least one thousand dollars ($1,000.00). Farm Equipment also includes, regardless of purchase price, attachments and bailing wire, binders twine and surface wrap used primarily and directly in any farm operation. *Farm Equipment* also includes, regardless of purchase price, parts that are used in the repair or maintenance of the Farm Equipment described in this Paragraph, all shipping pallets, crates, or aids paid for by a farm operation, and aircraft designed or adapted to undertake agricultural applications. *Farm Equipment* also includes, regardless of purchase price, dairy equipment. Except for shipping pallets, crates or aids used in the transfer or shipping of agricultural products, *Farm Equipment* does not include: (1) Vehicles subject to the registration requirements of Section 42-3-103, C.R.S., regardless of the purpose for which such~~

~~vehicles are used; (2) Machinery, equipment, materials, and supplies used in a manner that is incidental to a farm operation; (3) Maintenance and janitorial equipment and supplies; and (4) Tangible personal property used in any activity other than fanning, such as office equipment and supplies and equipment and supplies used in the sale or distribution of farm products, research, or transportation.~~

~~*Farm Operation* means the production of any of the following products for profit, including, but not limited to, a business that hires out to produce or harvest such products: (1) Agricultural, viticultural, fruit, and vegetable products; (2) Livestock; (3) Milk; (4) Honey; and (5) Poultry and eggs.~~

~~*Incidental Physical Presence* means, physical presence that occurs infrequently and is not regularly scheduled within the ordinary course of an individual or entity's business activities, and as further defined in §39-26-802.9, CRS.~~ *Essential Hygiene Products* means incontinence products and period products as defined under 39-26-717 (2)(m) C.R.S. and 39-26-717 (2)(n) C.R.S. respectively consisting of absorbent cloth or disposable products worn by humans who are incapable of, or have difficulty, controlling their bladder or bowel movements and consumer products used to manage menstruation.

Food For Home Consumption means food for domestic home consumption as defined in 7 U.S.C. sec. 2012 (k) (2014), as amended, for purposes of the supplemental nutrition assistance program, or any successor program, as defined in 7 U.S.C. sec. 2012 (t), as amended; except that "food" does not include carbonated water marketed in containers; chewing gum; seeds and plants to grow foods; prepared salads and salad bars; packaged and unpackaged cold sandwiches; deli trays; and hot or cold beverages served in unsealed containers or cups that are vended by or through machines or non-coin-operated coin-collecting food and snack devices on behalf of a vendor.

Internet Access Services means services that provide or enable computer access by multiple users to the Internet, but shall not include that portion of packaged or bundled services providing phone or television cable services when the package or bundle includes the sale of Internet Access Services.

License means a Town of Windsor ~~sales tax~~business license.

Lodging Services means the entire amount charged to any person for rooms or accommodations as designated in 39-23-102 (11) C.R.S.

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

Manufactured Home means any preconstructed building unit or combination of preconstructed building units, without motive power, where such unit or units are manufactured in a factory or at a location other than the residential site of the completed home, which is designed and commonly used for occupancy by persons for residential purposes, in either temporary or permanent locations, and which unit or units are not licensed as a vehicle.

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

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

Marketplace Facilitator means a person who:

(1) Contracts with a marketplace seller to facilitate for consideration, regardless of whether or not the consideration is deducted as fees from the transaction, the sale of the marketplace seller's tangible personal property, products, or services through the person's marketplace;

(2) Engages directly or indirectly, through one (1) or more affiliated persons, in transmitting or otherwise communicating the offer or acceptance between a purchaser and the marketplace seller; and

(3) Either directly or indirectly, through agreements or arrangements with third parties, collects the payment from the purchaser and transmits the payment to the marketplace seller.

Marketplace Facilitator does not include a person that exclusively provides internet advertising services or lists products for sale, and that does not otherwise meet this definition.

Marketplace Seller means a person, regardless of whether or not the person is engaged in business in the Town, which has an agreement with a marketplace facilitator and offers for sale tangible personal property, products, or services through a marketplace owned, operated, or controlled by a marketplace facilitator.

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

Mobile Machinery and Self-Propelled Construction Equipment means those vehicles, self-propelled or otherwise, which are not designed primarily for the transportation of persons or cargo over the public highways, and those motor vehicles which may have originally been designed for the transportation of persons or cargo over the public highways, and those motor vehicles which may have originally been designed for the transportation of persons or cargo but which have been redesigned or modified by the mounting thereon of special equipment or machinery, and which may be only incidentally operated or moved over the public highways. This definition includes but is not limited to wheeled vehicles commonly used in the construction, maintenance, and repair of roadways, the drilling of wells, and the digging of ditches.

Modular Home means any structure that consists of multiple sections fabricated, formed or assembled in manufacturing facilities for installation and assembly at the building site, and is constructed to the building codes adopted by the State Division of Housing, created in Section 24-32-706, C.R.S., and is designed to be installed on a permanent foundation.

Motor Vehicle shall mean any self-propelled vehicle that is designed primarily for travel on the public highways and that is generally and commonly used to transport persons and property over the public highways or a low-speed electric vehicle or a motorcycle as defined in Section 42-1-102(55), C.R.S

Occasional sales ~~means~~mean retail sales of tangible personal property, including concessions, for fund-raising purposes, if the funds raised by the charitable organization through these sales are retained by the organization to be used in the course of the organization's charitable service, and:

(1) The sale of tangible personal property by the charitable organization takes place for no more than twelve (12) days, whether consecutive or not, during any one (1) calendar year; or

(2) The funds raised by the charitable organization through these sales do not exceed twenty-five thousand dollars ($25,000.00) of gross profit during any one (1) calendar year.

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

~~*Physical Presence* means performing or providing services or selling, leasing, renting, delivering, or installing tangible personal property for storage, use, or consumption within the Town and as further defined in §39-26-802.9, CRS.~~

~~*Point of Sale.* For the purpose of this Article, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his or her agent to a destination outside the limits of the Town or to a common carrier for delivery to a destination outside the~~

~~Town. The gross receipts from such sales shall include delivery charges. If a retailer has no permanent place of business in the Town or has more than one (1) place of business, the place at which the retail sales are consummated for the purpose of this Article shall be determined by the provisions of Title 39, Article 26, C.R.S., and by rules and regulations promulgated by the Department of Revenue. Notwithstanding any other provision of this Article, the value of construction and building materials on which a use tax has previously been collected by an incorporated town, city or county shall be exempt from this sales tax if the materials are delivered by the retailer or his or her agent to a site within the limits of the Town.~~

Precious Metal Bullion means any precious metal, including but not limited to, gold, silver, platinum, palladium, that has been put through a process of refining and is in such a state or condition that its value depends upon its precious metal content and not its form.

Prescription Drugs for Humans means a drug which, prior to being dispensed or delivered, is required by the federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sect. 301, et. seq., as amended, to state at a minimum the symbol "Rx Only", and is dispensed in accordance with any written or electronic order 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 any required information of the patient for whom the medicine, drug or poison is offered and directions, if any, to be placed on the label.

Price or Purchase Price means the aggregate value measured in currency paid or delivered or promised to be paid or delivered in consummation of a sale, without any discount from the price on account of the cost of materials used, labor or service cost, and exclusive of any direct tax imposed by the federal government or by this article, and, in the case of all retail sales involving the exchange of property, also exclusive of the fair market value of the property exchanged at the same time and place of the exchange, if:

(1) Such exchanged property is to be sold thereafter in the usual course of the retailer's business, or

(2) Such exchanged property is a vehicle and is exchanged for another vehicle and both vehicles are subject to licensing, registration, or certification under the laws of this state, including, but not limited to, vehicles operating upon public highways, off-highway recreation vehicles, watercraft, and aircraft. Any money or other consideration paid over and above the value of the exchanged property is subject to tax.

Price or Purchase Price includes:

(1) The amount of money received or due in cash and credits.

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

(3) Any consideration valued in money, whereby the manufacturer or someone else reimburses the retailer for part of the purchase price and other media of exchange.

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

(5) Installation, applying, remodeling or repairing the property~~, delivery and wheeling-in charges~~ included in the purchase price and not separately stated.

(6) Transportation and other charges to ~~effect~~affect delivery of tangible personal property to the purchaser.

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

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

Price or Purchase Price shall not include:

(1) Any sales or use tax imposed by the State of Colorado or by any political subdivision thereof.

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

(3) Discounts from the original price if such discount and the corresponding decrease in sales tax due is actually passed on to the purchaser, and the seller is not reimbursed for the discount by the manufacturer or someone else. An anticipated discount to be allowed for payment on or before a given date is not an allowable adjustment to the price in reporting gross sales.

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

Purchase or *Sale* means the acquisition for any consideration by any person of tangible personal property, other taxable products or taxable services that are purchased, leased, rented, or sold. These terms include capital leases, installment and credit sales, and property and services acquired by:

(1) Transfer, either conditionally or absolutely, of title or possession or both to tangible personal property, other taxable products, or taxable services;

(2) A lease, lease-purchase agreement, rental or grant of a license, including royalty agreements, to use tangible personal property, other taxable products, or taxable services;

(3) Utilization of coin operated devices, except coin-operated telephones, which do not vend articles of tangible personal property;

(4) Performance of taxable services; or

(5) Barter or exchange for other tangible personal property, other taxable products, or services.

The terms *Purchase and Sale* do not include:

(1) A division of partnership assets among the partners according to their interests in the partnership;

(2) The transfer of assets of shareholders in the formation or dissolution of professional corporations, if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets;

(3) The dissolution and the pro rata distribution of the corporation's assets to its stockholders, if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets;

(4) A transfer of a partnership or limited liability company interest;

(5) The transfer of assets to a commencing or existing partnership or limited liability company, if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets;

(6) The repossession of personal property by a chattel mortgage holder or foreclosure by a lienholder;

(7) The transfer of assets from a parent company to a subsidiary company or companies which are owned at least eighty percent (80%) by the parent company, which transfer is solely in exchange for stock or securities of the subsidiary company;

(8) The transfer of assets from a subsidiary company or companies which are owned at least eighty percent (80%) by the parent company to a parent company or to another subsidiary which is owned at least eighty percent (80%) by the parent company, which transfer is solely in exchange for stock or securities of the parent corporation or the subsidiary which received the assets;

(9) The transfer of assets between parent and closely held subsidiary companies, or between subsidiary companies closely held by the same parent company, or between companies 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 company 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 company. To such an extent any transfer referred to in this paragraph (11) shall constitute a sale. For the purposes of this paragraph (11), a closely held subsidiary corporation is one in which the parent company owns stock possessing or membership interest 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.

Private Communications Services means telecommunications services furnished to a subscriber, which entitles the subscriber to exclusive or priority use of any communication channel or groups of channels, or to the exclusive or priority use of any interstate inter-communications system for the subscriber's stations.

Resident means a person who resides or maintains one (1) or more places of business within the Town, regardless of whether that person also resides or maintains a place of business outside of the Town. Any person who does not meet the definition of *Resident* shall be deemed a non-resident.

Responsible person means (a) the contractor responsible for the construction of a permitted project, or (b) the contractor responsible for construction for a federal, state or local government that is not required to get a permit from the Town, or (c) if no contractor is used for a permitted project, the property owner receiving a permit from the Town to build or make improvements to the property.

Retailer or *Vendor* means any person selling, leasing, renting, or granting a license to use tangible personal property or services at retail. The terms "retailer" shall include, but is not limited to, any:

(1) Auctioneer;

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

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

(4) Retailer-contractor, when acting in the capacity of a seller of building supplies, construction materials, and other tangible personal property;

(5) Marketplace facilitator or marketplace seller engaged in business in the Town.

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

Retail Sales means all sales except wholesale sales.

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

Sale that Benefits a Colorado School means a sale of a commodity or service from which all proceeds of the sale, less only the actual cost of the commodity or service to a person or entity as described in this Article, are donated to a school or a school-approved student organization.

School means a public school or Charter school as defined in Section 22-1-101, C.R.S, or a private school, providing education for students in kindergarten through 12th grade or any portion thereof.

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

Special Fuel means, notwithstanding any statutory definition otherwise, kerosene oil, kerosene distillate, diesel fuel, all liquefied petroleum gases, and all combustible gases and liquids for use in the generation of power for propulsion of motor vehicles upon the public highways. The term does not include fuel used for the propulsion or drawing of aircraft, railroad cars or railroad locomotives.

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

~~*Student* means any person enrolled in a school.~~

Tangible Personal Property means personal property that can be one (1) or more of the following: seen, weighed, measured, felt, touched, stored, transported, exchanged, or that is in any other manner perceptible to the senses.

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

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

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

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

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

Telecommunications Service means the service of which the object is the transmission of any two-way interactive electronic or 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, Voice over Internet Protocol (VoIP), or any combinations of such media, including any form of mobile two-way communication.

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

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

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

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

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

Editor's note(s)—Ord. 2018-1562, § 1, adopted July 9, 2018, repealed the former § 4-3-30 and enacted a new section as set out herein. The former § 4-3-30 pertained to similar subject matter and derived from Prior code, 4-23; Ord. 2005-1230, §§ 1, 2; and Ord. 2006-1236, § 1.

Sec. 4-3-40. ~~Severability; saving clause.~~

~~(a) As used in this Article, the term *provision* means and includes any part, division, subdivision, section, subsection, sentence, clause or phrase; the term *application* means and includes an application of an ordinance or any part thereof, whether considered or construed alone or together with another ordinance or ordinances, or part thereof, of the Town; and the term *this ordinance* means and includes the ordinance enacting this Article, together with any and all exhibits and schedules therein incorporated, and each article, chapter and section of this Code in which such ordinance is codified.~~

~~(b) If any provision of this Article, or the application of such provision to any person or circumstance, is for any reason held to be invalid, such invalidity shall not affect other provisions or applications of this Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are declared to be severable. The Town Board hereby declares that it would have passed the ordinance codified herein and each provision thereof, even though any one (1) of the provisions might be declared unconstitutional or invalid.~~

~~(c) The amendment, repeal or supersession of any ordinance or provision of any ordinance by this Article shall not release, extinguish, alter, modify or change, in whole or in part, any penalty, liability or right which may have been incurred or obtained under such ordinance or provision thereof; and such ordinance or provision thereof so amended, repealed or superseded shall be treated and held as remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions, for the enforcement of such penalty, liability or right and for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered or made in such actions, suits, proceedings or prosecutions imposing, inflicting or declaring such penalty or liability or enforcing such right, and shall be treated and held as remaining in force for the purpose of sustaining any and all proceedings, actions, hearings and appeals pending before any court or administrative tribunal.~~

~~(Prior code 4-24; Ord. 2006-1236 §1)~~

~~Sec. 4-3-50. Effective date.~~

~~The ordinance codified in this Article shall take effect January 1, 2005, and shall apply to transactions consummated after that date.~~

~~Division 2 Imposition of Tax~~

~~Sec. 4-3-110. **Imposition of sales tax.**~~

~~(a) *Sales Tax Rate.* There is imposed a sales tax of three and sixty-five hundredths percent (3.65%) on the sale of tangible personal property at retail or the furnishing of taxable services, as provided herein at Section 4-3-170 of this Code and at § 29-2-105(1)(d), C.R.S. (the "Statute").~~

~~(Ord. 2022-1670 §2)~~

~~Editor's note(s)—Ord. No. 2022-1670, § 2, adopted Nov. 28, 2022, repealed and reenacted § 4-3-110 to read as set out herein. The former § 4-3-110 pertained to similar subject matter and derived from Ord. 2015-1498, § 2; Ord. 2022-1666, § 1; and Ord. 2022-1669, § 2.~~

~~Sec. 4-3-120. Imposition of use tax.~~

~~(a) Use Tax Rate. There is imposed a use tax of three and sixty-five hundredths percent (3.65%), to be imposed only for the privilege of storing, using or consuming within the Town any~~

construction and building materials or construction equipment located within the boundaries of the Town for a period of more than thirty (30) consecutive days.
(Ord. 2022-1670 §3)

Editor's note(s)—Ord. No. 2022-1670, § 3, adopted Nov. 28, 2022, repealed and reenacted § 4-3-120 to read as set out herein. The former § 4-3-120 pertained to similar subject matter and derived from Ord. 2015-1498, § 3; Ord. 2022-1666, § 2; and Ord. 2022-1669, § 3.

Sec. 4-3-130. Sales; where consummated.

For the purpose of this Article, all retail sales are consummated at the place of business of the retailer, unless tangible personal property sold is delivered by the retailer or his or her agent to a destination outside the limits of the Town, or to a common carrier for delivery to a destination outside the limits of the Town. The gross receipts from such sales shall include delivery charges. If legal title to the property sold is transferred to the purchaser or his or her agent prior to delivery to a destination outside the limits of the Town, the place of taxation is deemed within the Town.

Sec. 4-3-140. Credit for taxes previously paid to another municipality.

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

Sec. 4-3-150. Tax as a separate and distinct item.

Except as provided in Section 4-3-160, retailers shall add the tax imposed hereby, or the average equivalent thereof, to the purchase price or charge of the item or service, and provide the customer with a receipt that shows the tax charged as a separate and distinct charge; and, when added, such tax shall constitute a part of such price or charge and shall be a debt from the consumer or user to the retailer until paid and shall be recoverable at law in the same manner as other debts.

Sec. 4-3-160. Tax included in selling price.

Only retailers selling malt, vinous or spirituous liquors by the drink, vending machine sales and special event vendor sales may include the tax levied by this Article in the sales price or charge. No retailer shall advertise or hold out to the public in any manner, directly or indirectly, that tax is not included as a part of the sales price to the consumer. No retailer shall gain any benefit from the collection or payment of such tax, nor shall the use of rates set forth in Sections 4-3-110 and 4-3-120 of this Article release such retailer from liability for payment of the full amount of the tax levied by this Article.

Sec. 4-3-170. Sales tax; taxable property and services.

(a) There is hereby levied and there shall be collected and paid a sales tax in the amount stated in Section 4-3-110 of this Article, upon the sale at retail of such tangible personal property and the furnishing of such certain services as are set forth in Title 39, Article 26, C.R.S., which provisions are incorporated herein by this reference; and upon the sale at retail of tangible personal property, on sales of food and purchases of machinery or machine tools, and the furnishing of services on sales and purchases of electricity, coal, gas, fuel oil and coke for domestic and commercial consumption.

(a) (b) It shall be a violation of this Article for any seller not to collect the sales tax levied by this Article. It shall also be a violation of this Article for any purchaser not to pay the sales tax levied by this Article or to pay the tax levied upon a sale where the status of exemption is disputed.

(Prior code 4-32; Ord. 2006-1236 §1)

Sec. 4-3-180. Sales tax; exempt property and services.

(a) There shall be exempt from sales taxation under the provisions of this Article all of the tangible personal property and services which are exempt under the provisions of Title 39, Article 26, C.R.S., as in effect on January 1, 2005, which exemptions are incorporated herein by this reference, except the exemption allowed by Section 39-26-114(11), C.R.S., for purchases of machinery or machine tools, and except the exemption for sales and purchases of electricity, coal, gas, fuel oil and coke as provided in Section 39-26-114(1)(a)(XXI), C.R.S., and except the exemption for sales of food.

(b) All "occasional sales" by charitable organizations of tangible personal property shall be exempt from the tax imposed by this Article.

(c) All sales of property and services made by public and private kindergarten through grade 12 (K-12) schools, K-12 school activity booster organizations, K-12 parent-teacher organizations, K-12 student classes and K-12 student organizations shall be exempt, provided that:

(1) All proceeds of such sales are for the benefit of a K-12 school or K-12 school-approved student organization; or

a. (2) In the case of a parent-teacher organization, all proceeds of such sales are used for the reasonable expense of the parent-teacher organization conducting such sales.

Nothing in this Subsection (c) shall be construed to amend or modify the definition of occasional sales or the exemption extended to occasional sales under Subsection (b) above

(d) All sales of motor vehicles from dealer inventory found on any licensed automobile dealer sales lot located within the Town, the purchaser of which is a Town of Windsor resident, shall be exempt from sales tax. For purposes of this Subsection, *motor vehicle* shall mean any self-propelled vehicle that is designed primarily for travel on the public highways and that is generally and commonly used to transport persons and property over the public highways or a low-speed electric vehicle or a motorcycle as defined in Section 42-1-102(55), C.R.S.; the term does not, however, include low-power scooters, wheelchairs, electrical assisted bicycles, electric personal assistive mobility devices or vehicles moved solely by human power.

(Ord. 2011-1396 §1; Ord. 2018-1562 §2)

Sec. 4-3-190. Use tax; taxable property and services.

There is hereby levied and there shall be paid a use tax in the amount stated in Section 4-3-120 of this Article, upon the following:

(1) Construction and building materials. All sales of construction and building materials, except for sales of construction and building materials to contractors and subcontractors for use in the building, erection, alteration or repair of structures, highways, roads, streets and other public works owned and used by:

(a) The United States government, the State, its departments and institutions, and the political subdivisions thereof in their governmental capacities only;

(b) Charitable organizations in the conduct of their regular charitable functions and activities; or

(c) Schools, other than schools held or conducted for private or corporate profit.

(2) Construction equipment. Construction equipment which is located within the boundaries of the Town for a period of more than thirty (30) consecutive days shall be subjected to the full applicable use tax of the Town.

(3) Construction equipment which is located within the boundaries of the Town for a period of thirty (30) consecutive days or less shall be subjected to Town use tax in an amount which does not exceed the

amount calculated as follows: The purchase price of the equipment shall be multiplied by a fraction, the numerator of which is one (1) and the denominator of which is twelve (12), and the result shall be multiplied by the Town use tax rate. Where the provisions of this subsection (3) are utilized, the credit provisions of subsection (6) of this Section shall apply at such time as the aggregate sales and use taxes legally imposed by and paid to other statutory and home rule cities, towns, and cities and counties on any such equipment equal the full use tax of the Town.

(4) In order for a taxpayer to avail itself of the provisions of subsection (3) of this Section, the taxpayer shall comply with the following procedure:

(a) Prior to or on the date the equipment is located within the boundaries of the Town, the taxpayer shall file with the Town an equipment declaration on a form provided by Town. Such declaration shall state the dates on which the taxpayer anticipates the equipment will be located within and removed from the boundaries of the Town, shall include a description of each such anticipated piece of equipment, shall state the actual or anticipated purchase price of each such anticipated piece of equipment, and shall include such other information as reasonably deemed necessary by the Town.

(b) The taxpayer shall file with the Town an amended equipment declaration reflecting any changes in the information contained in any previous equipment declaration no less than once every ninety (90) days after the equipment is brought into the boundaries of Town or, for equipment which is brought into the boundaries of the Town for a project of less than ninety (90) days' duration, no later than ten (10) days after substantial completion of the project.

(c) The taxpayer need not report on any equipment declaration any equipment for which the purchase price was under two thousand five hundred dollars ($2,500.00). If such equipment declaration is given, then as to any item of construction equipment for which the customary purchase price is under two thousand five hundred dollars ($2,500.00) which was brought into the boundaries of the Town temporarily for use on a construction project, it shall be presumed that the item was purchased in a jurisdiction having a local sales or use tax as high as that of the Town and that such sales or use tax was previously paid. In such case the burden of proof in any proceeding before the Town, the Executive Director of the Colorado Department of Revenue, or the district court, shall be on the Town to prove such local sales or use tax was not paid.

(5) If the taxpayer fails to comply with the provisions of subsection (4) of this Section, the taxpayer may not avail himself of the provisions of subsection (3) of this section. However, substantial compliance with the provisions of subsection (4) of this section shall allow the taxpayer to avail himself of the provisions of subsection (3) of this section.

(6) No Town use tax shall apply to the storage, use, or consumption of any article of tangible personal property the sale or use of which has already been subjected to a sales or use tax of another statutory or home rule city, town, or city and county legally imposed on the purchaser or user equal to or in excess of that imposed by the Town. A credit shall be granted against Town use tax with respect to the person's storage, use, or consumption in the Town of tangible personal property, the amount of the credit to equal the tax paid by the taxpayer by reason of the imposition of a sales or use tax of the previous statutory or home rule city, town, or city and county on the taxpayer's purchase or use of the property. The amount of the credit shall not exceed the tax imposed by the Town.

Editor's note(s)—Ord. No. 2022-1666, § 4, adopted Oct. 24, 2022, repealed and reenacted § 4-3-190 to read as set out herein. The former § 4-3-190 pertained to similar subject matter and derived from prior code, 4-34; Ord. 2006-1236, § 1; and Ord. 2017-1538, § 1.

Sec. 4-3-200. Use tax; exemptions.

The use tax shall not apply to:

(1) Storage, use or consumption. The storage, use or consumption of any tangible personal property, the sale of which is subject to a retail sales tax imposed by the Town.

(2) Resale items. The storage, use or consumption of any tangible personal property purchased for resale in the Town, either in its original form or as an ingredient of a manufactured or compounded product, in the regular course of a business.

(3) Nonresident temporary use. The storage, use or consumption of tangible personal property brought into the Town by a nonresident thereof for his or her own storage, use or consumption while temporarily within the Town; however, this exemption does not apply to the storage, use or consumption of tangible personal property brought into the State by a nonresident to be used in the conduct of a business in the State.

(4) Exempt organization use. The storage, use or consumption of tangible personal property by the United States government or the government of the State, or its institutions or political subdivisions, in their governmental capacities only, or by religious or charitable corporations in the conduct of their regular religious or charitable functions.

(5) Manufacturing products. The storage, use or consumption of tangible personal property by a person engaged in the business of manufacturing or compounding for sale, profit or use any article, substance or commodity, which 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;

(6) Credit for other tax. The storage, use or consumption of any article of tangible personal property, the sale or use of which has already been subjected to a sales or use tax of another town, city or county equal to or in excess of that imposed by this Article. A credit shall be granted against the use tax imposed by this Article with respect to a person's storage, use or consumption in the Town of tangible personal property purchased by him or her elsewhere. The amount of the credit shall be equal to the tax paid by him or her by reason of the imposition of a sales or use tax of another town, city or county on his or her purchase or use of the property. The amount of the credit shall not exceed the tax imposed by this Article.

(7) Previously purchased household items. The storage, use or consumption of tangible personal property and household effects acquired outside of the Town and brought into it by a nonresident acquiring residency.

Sec. 4-3-210. Taxpayer (vendor and consumer) liability.

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

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

(c) Vendor responsibility for collection of tax. Every retailer or vendor engaged in business and selling at retail shall be liable and responsible for the payment of an amount equivalent to the amount of the tax imposed by this Article computed on the total of all sales made by the retailer or vendor of commodities or services as specified in Section 4-3-170 above.

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

(e) Due date of returns. Every retailer or vendor engaged in business and selling at retail shall file a return as prescribed herein with the Director on or before the twentieth day of the month for the preceding month or months under report and remit the amount of tax imposed by this Article computed on the total of such sales, and also the amount of any excess tax collections, less two and one-third percent (2.33%) of the amount of taxes to be paid by him or her under this Article or two hundred dollars ($200.00), whichever is less, to cover the retailer's expense of collection and remittance of the tax for the reporting period; however, if any vendor is delinquent in remitting said tax other than in unusual circumstances shown to the satisfaction of the Director, the vendor shall not be allowed to retain any amounts to cover his or her expense in collecting and remitting said tax, and an amount equivalent to the full tax shall be remitted to the Director by any such delinquent vendor. Vendors not selling at retail may be required by the Director to file a return as prescribed herein.

(e) (f) Timely payment evidence; computation of dates.

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

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

(Prior code 4-36; Ord. 2006-1236 §1)**Sec. 4-3-220. Marketplace sales.**

(a) Rights and Obligations, generally.

(1) A marketplace facilitator engaged in business in the Town is required to collect and remit sales or use tax on all taxable sales made by the marketplace facilitator, or facilitated for marketplace sellers to customers in the Town, whether or not the marketplace seller for whom sales are facilitated would have been required to collect sales or use tax had the sale not been facilitated by the marketplace facilitator. A marketplace facilitator has all the liabilities, obligations, and rights of a retailer under this Article.

(2) The liabilities, obligations, and rights set forth under this article are in addition to any duties and responsibilities of the marketplace facilitator has under this article if it also offers for sale tangible personal property, products, or services through other means.

(3) Except as provided in subsection (b)(1) of this section, a marketplace seller, with respect to sales of tangible personal property, products, or services made in or through a marketplace facilitator's marketplace, does not have the liabilities, obligations, or rights of a retailer under this article if the marketplace seller can show that such sale was facilitated by a marketplace facilitator:

a. With whom the marketplace seller has a contract that explicitly provides that the marketplace facilitator will collect and remit sales tax on all sales subject to tax under this article; or

b. From whom the marketplace seller requested and received in good faith a certification that the marketplace facilitator is registered to collect sales tax and will collect sales tax on all sales subject to tax under this article made in or through the marketplace facilitator's marketplace.

(b) Marketplace facilitator excused.

(1) If a marketplace facilitator demonstrates to the satisfaction of the Finance Director that the marketplace facilitator made a reasonable effort to obtain accurate information regarding the obligation to collect tax from the marketplace seller and that the failure to collect tax on any tangible

personal property, products, or services sold was due to incorrect information provided to the marketplace facilitator by the marketplace seller, then the marketplace facilitator, but not the marketplace seller, is relieved of liability under this section for the amount of the tax the marketplace facilitator failed to collect, plus applicable penalties and interest. The Finance Director will determine the length of time that the marketplace facilitator is relieved of liability to remit tax hereunder.

(2) If a marketplace facilitator is relieved of liability under subsection (b)(1) of this section, the marketplace seller is liable under this section for tax the marketplace facilitator failed to collect, plus applicable penalties and interest.

(3) This subsection (b) does not apply to any sale by a marketplace facilitator that is not facilitated on behalf of a marketplace seller or that is facilitated on behalf of a marketplace seller that is an affiliate of the marketplace facilitator.

(c) If a marketplace seller makes a sale that is not facilitated by a licensed marketplace facilitator in a marketplace, the marketplace seller is subject to all of the same licensing, collection, remittance, filing and recordkeeping requirements as any other retailer.

(Ord. 2020-1611 §4)

Division 3 Licensing

Sec. 4-3-310. Licensing.

(a) It shall be unlawful for any person to engage in the business of selling at retail tangible personal property and services subject to the tax imposed by this Article without first having obtained a license.

(b) Every person who comes within the definition of *engaged in business in the Town*, as defined in section 4-3-30, shall obtain a license in order to do business in the Town.

(c) Application contents. The Town sales tax license shall be granted only upon application stating the name, address and date of birth of the person desiring such license, the name of such business and the character thereof, the applicable federal identification number and the state license number of the business, the physical location of the business, the physical location phone number and the applicable contact phone number, fax and e-mail address. Other facts may be required by the Director such as, but not limited to, the date of birth, driver's license number and Social Security number of an officer or owner of the business. The application must be signed and dated under penalty of perjury by an owner or officer of the business. A valid digital signature, or the equivalent thereof, on a license application transmitted electronically over the Internet or transmitted via other similar means is accepted and held as a written signature. A signature on a license application sent via fax is accepted and held as a written signature. Any person doing business as a wholesaler shall obtain a retailer's license if any sales are made at retail as defined herein. Applications for such licenses shall be made to the Director. The Director shall issue and renew such licenses. The license application by itself is not public record; however, the nonconfidential items on the application are public record. Confidential items on the application must be noted as confidential items.

(d) Each retail establishment to be licensed. In case business is transacted at two (2) or more separate places by one (l) person, a separate license for each place of business shall be required. Consolidated tax returns may be filed for those various locations as set forth in Subsection 4-3-510(b). Each owner of a different business located at the same location must obtain a separate license for each business. However, no business license shall be required for retailers with no physical presence or an incidental physical presence, who have a state standard retail license.

(e) License form. Each license shall be numbered and shall show the licensee name, physical location address, mailing address and expiration date of the license.

e. (f) License carrying or posting required. No licensee shall fail to carry any license issued in accordance with the provisions of this Article upon his or her person at all times when engaged in the operation, conduct or carrying on of any retail trade, profession or business for which the license was granted; except that where such trade or business is operated, conducted or carried on at a fixed place or establishment, such license shall be exhibited at all times in some conspicuous place in the place of business. Every licensee shall produce his or her license for examination when requested to do so by any person representing the Town.

(g) Nontransferable. No license shall be transferable.

(h) License fee. Each application for and renewal of a license issued pursuant to this Article shall be accompanied by payment of an annual fee in the amount of twenty-five dollars ($25.00), as may be modified from time to time by Town Board Resolution. An exempt institution shall be exempt from this license fee.

(i) Expiration, renewal and renewal fees. All licenses shall be issued by the Director of Finance or designee on an annual basis, and shall expire twelve (12) months after issuance. A license holder may apply to the Department of Finance for a renewal license for the next twelve-month period, by submitting the renewal application thirty (30) days prior to the expiration date. A license for a new business or for a transfer of ownership is subject to the renewal provisions of this Section. All applications for renewal licenses shall be made on forms prescribed and furnished by the Department of Finance. Failure to obtain a renewal license by the expiration date of the original license shall result in payment of an increased renewal fee, which may be modified from time to time by Town Board Resolution, according to the following schedule:

Renewal Date	Penalty	Total Due
After thirty (30) days	$ 5.00	$30.00
After sixty (60) days	10.00	35.00
After ninety (90) days	15.00	40.00

(Prior code 4-37; Ord. 2006-1236 §1; Ord. 2019-1588 §1; Ord. 2023-1680 §5)

Sec. 4-3-320. Engaged in business without a sales tax license.

Any person engaged in business in the Town as defined in this Article, without having secured a sales tax license therefor, except as specifically provided herein, shall be guilty of a violation of this Article.

Editor's note(s)—Ord. 2019-1588, § 2, adopted June 10, 2019, repealed the former § 4-3-320 and enacted a new section as set out herein. The former § 4-3-320 pertained to engaged in business without a license and derived from prior code 4-38; and Ord. 2006-1236, § 1.

Sec. 4-3-330. Revocation of license by Director.

(a) The Director may, on reasonable notice and after full hearing, revoke the license of any person found to have violated any provisions of this Article.

(b) Any findings and order of the Director revoking the license of any person shall be subject to review by the district court upon application of the aggrieved party, in accordance with Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

(Prior code 4-39; Ord. 2006-1236 §1)

Sec. 4-3-340. Special events.

(a) No special event shall occur without the issuance of a special events license to the organizer of the event, which license shall cost twenty-five dollars ($25.00) for each special event. The vendors of 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 licenses and collect and remit the tax to the Town pursuant to this Article. The organizer shall remit all taxes collected by the vendors who do not have a sales tax license for the event and for all vendors who have a license but who elect to have the organizer remit the tax.

(b) No later than two (2) days before the start of the special event, the special events organizer shall provide the 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 themselves.

(c) Vendors or organizers of a special event must remit the sales tax they collect and complete a tax schedule on a form provided by the Director. The tax schedule and tax remittance is due fifteen (15) days after the special event ends. Only the organizer will be permitted to take the deduction for the two and two-thirds percent (2.33%) of taxes remitted. This deduction is limited to two hundred dollars ($200.00). This deduction is not allowed if the schedule and tax remittance are not received by the Department of Finance by the due date.

(Prior code 4-40; Ord. 2006-1236 §1; Ord. No. 2019-1588)

Editor's note(s)—Ord. No. 2019-1588, adopted June 10, 2019, did not expressly amend § 4-3-340, but pertained to similar subject matter. § 4-3-340 has been amended at the request of the Town following the adoption of Ord. No. 2019-1588.

Sec. 4-3-350. Contractors.

Every contractor, owner of realty or lessee of realty who shall build, construct, reconstruct, alter, expand, modify or improve any building, dwelling or other structure, or improvement to real property, not including work performed on federal, state, county, Town and exempt institution job sites in the Town, and who shall purchase lumber, fixtures or any other building materials, supplies and other tangible personal property used, consumed or stored therefor on realty, improvements and/or attached or affixed structures situated in the Town, from sources within or without the Town, shall pay the Town sales and use tax by paying the tax on the "Estimated Percentage Basis," based on a percentage of the total valuation of the construction contract and paid, either through the owner, lessee or general contractor, or separately, if he or she is a subcontractor electing to do so, at the time a building permit is issued. The minimum valuation of material is established at fifty percent (50%) of the job valuation. The use tax collected totals three and ninety-five-hundredths percent (3.95%), until such time as the costs of paying the debt service on revenue bonds or refunding bonds issued for construction of the Windsor Community Recreation Center Expansion or equipping the Windsor Community Recreation Center Expansion have been paid in full, at which time the use tax rate shall be reduced to three and four-tenths percent (3.4%). The contractor, property owner/lessor and property lessee are held liable for any tax due in this Article, and all applicable parties may be required to provide adequate records as requested to the Director for the Director to ascertain that taxes were paid in full. Contractors are considered to be the end users of building materials in the Town. Owners, lessors, contractors and their subcontractors must not pay municipal sales tax to a vendor in another jurisdiction for building materials to be used, consumed or stored at a location in the Town, as it is the intent of this code for all Town taxes to be paid at the time a building permit is issued. No refund of another municipality's tax will be paid if a contractor or subcontractor pays another municipality's tax. The Director may enter into a payment agreement for the tax referenced in this Subsection, to be paid in installments that include an interest rate of nine percent (9%) per annum.

Editor's note(s)—Ord. 2018-1561, § 1, adopted June 25, 2018, repealed the former § 4-3-350 and enacted a new section as set out herein. The former § 4-3-350 pertained to similar subject matter and derived from Prior code 4-41; and Ord. 2006-1236, § 1.

Sec. 4-3-360. Seasonal sales tax licenses.

(a) Any seasonal sales or farmers markets, as defined by Section 16-2-20 of this Code, engaged in business in the Town shall first obtain a seasonal sales tax license in order to do business within the Town. A seasonal sales tax license shall be issued upon and subject to the all of the following conditions:

(1) Application and contents. The Town seasonal sales tax license shall be granted only upon an application, signed and dated under penalty of perjury, in person by an owner or officer of the business, and providing the following information:

a. The name, address and date of birth of the person desiring such license;

b. The name of such business, its character and proposed duration thereof;

c. The applicable federal identification number and the state license number of the business, if any;

d. The intended temporary physical location of the business;

e. The total retail value of the inventory intended for sale at the intended temporary physical location of the business;

f. The applicable contact phone number, fax and e-mail address of the applicant; and

g. The date of birth, driver's license number and Social Security number of an officer or owner of the business.

(2) License form. Each seasonal sales tax license shall be numbered and shall show the licensee name, physical location address, mailing address and expiration date of the license.

(3) License posting and presentation required. The seasonal sales tax license issued pursuant to this Section shall be displayed at all times in some conspicuous place within or upon each temporary place of business. Every licensee shall produce his or her license for examination when requested to do so by any person representing the Town.

(4) Nontransferable. Seasonal sales tax licenses are personal to the licensee and shall not be transferable.

(5) License fee. Each application for and renewal of a seasonal sales tax license shall be accompanied by payment of a nonrefundable licensing fee in the amount of the then-prevailing application fee or renewal fee for a seasonal sales tax license, respectively, at the time the application or renewal is submitted for review.

(6) Expiration, renewal and renewal fees. Notwithstanding any information submitted within the application required under Paragraph (1) above, all seasonal sales tax licenses shall expire upon expiration of the seasonal sales permit issued pursuant to Chapter 16, Article XXXII of this Code.

(7) Filing of returns, payment of tax due. The licensee under any seasonal sales tax license shall in person file a seasonal sales tax return in the form approved by the Director. The seasonal sales tax return shall be signed under penalty of perjury by the licensee and filed with payment in full of all tax due within forty-eight (48) hours of the conclusion of temporary sales at the physical location identified in the application.

Division 4 Collection

Sec. 4-3-410. **Refunds.**

(a) Disputed tax. Should a dispute arise between the purchaser and seller as to whether or not any sale, service or commodity is exempt from taxation under this Article, nevertheless the seller shall collect and the purchaser shall pay the tax and the seller shall issue to the purchaser a receipt or certificate, on forms prescribed by the Director, showing the names of the seller and the purchaser, the items purchased, the date, price, amount of tax paid and a brief statement of the claim of exemption.

(b) Refund allowed if exempt. A refund shall be made, or a credit allowed, for the tax so paid under dispute by any purchaser who has an exemption under this code; provided that such refund shall be made by the Director after compliance with the following conditions precedent: Applications for refund must be made within sixty (60) days after the purchase of the goods whereon an exemption is claimed and must be supported by the affidavit of the purchaser accompanied by the original paid invoice or sales receipt and certificate issued by the seller; and be made upon such forms as shall be prescribed and furnished by the Director, which forms shall contain such information as the Director shall prescribe.

(c) Refund disallowed. Upon receipt of such application, the Director shall examine the same with all due speed and shall give notice to the applicant by order in writing of his or her decision thereon. Aggrieved applicants, within fifteen (15) days after such decision is sent, may petition the Director for a hearing on the claim in the manner provided in Section 4-3-660.

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

(e) Taxpayer's discovery of overpayment of tax. A taxpayer may apply for a refund of payment of excess taxes within sixty (60) days after discovery of the overpayment. The Director may deny such refund if he or she finds the taxpayer did or reasonably should have discovered the overpayment more than sixty (60) days prior to the date of the application for a refund. The taxpayer may petition the Director for a hearing on the claim in the manner provided in Section 4-3-660 within fifteen (15) days after the Director's Denial of Refund is sent to the taxpayer.

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

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

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

(i) Refunds not assignable. The right of any person to a refund under this code shall not be assignable, and such application for refund must be made by the same person who purchased the goods and paid the tax thereon as shown in the invoice of the sale thereof, except as provided in Subsection (j) below. The Director may,

upon receiving a properly executed release of claim from the taxpayer and evidence to substantiate that the tax was remitted in error to another municipality, issue a joint refund check in the name of the taxpayer and the municipality, provided that the municipality has entered into an agreement to grant similar privileges to the Town.

(j) Burden of proof of exemption. The burden of proving that sales, services and commodities on which tax refunds are claimed are exempt from taxation or were not at retail, shall be on the one making such claim under such reasonable requirements of proof as the Director may prescribe.

(k) 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 and use taxes to the Town.

(1) As used herein, *claim for recovery* means a claim for reimbursement of sales and use taxes paid to the wrong taxing jurisdiction.

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

(3) The Town may make a written claim for recovery directly to the municipality that received tax and/or penalty and interest owed to the Town or, in the alternative, may institute procedures for collection of the tax from the taxpayer or vendor. The decision to make a claim for recovery lies in the sole discretion of the Town. Any claim for recovery shall include a properly executed release of claim from the taxpayer and/or vendor releasing his or her claim to the taxes paid to the wrong municipality, evidence to substantiate the claim, and a request that the municipality approve or deny, in whole or in part, the claim within ninety (90) days of its receipt. The municipality to which the Town submits a claim for recovery may, for good cause, request an extension of time to investigate the claim, and approval of such extension by the Town shall not be unreasonably withheld.

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

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

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

(Prior code 4-42; Ord. 2006-1236 §1)Sec. 4-3-420. Interest on overpayments and refunds.

(a) Interest allowance basis. No interest shall be paid upon any overpayment of sales or use tax unless:

(1) Such overpayment was made under protest; and

(2) The taxpayer has requested a refund in writing within sixty (60) days after the tax was paid.

(b) Payment of interest.

(1) Interest owed by the taxpayer on an audit may be applied against calculated interest that would be credited if allowed.

(2) Interest paid on an eligible overpayment of taxes pursuant to Subsection (a) above under protest shall be allowed at the rate of nine percent (9%) per annum.

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

(c) Refund erroneously made to bear interest. Any portion of a sales or use tax, or any interest, assessable penalty, additional amount or additional tax, which has been erroneously refunded, shall bear interest at the rate of nine percent (9%) per annum from the date of the payment of the refund.

(Prior code 4-43; Ord. 2006-1236 §1)

Sec. 4-3-430. **Sale or purchase of business or property.**

(a) New license required. Any sale, transfer or purchase of an interest in a business enterprise by any person, as defined, where the respective interest of the person purchasing or selling as a result of the transaction has changed in any degree, requires, in the case of a retailer or other person required to be licensed under this Article, the issuance of a new license.

(b) Final return. Any person, vendor or taxpayer who sells out his or her business or stock of goods or all the assets of a business to another person, or any person or taxpayer who quits business, shall make out the return as required by this Article and remit all taxes due within fifteen (15) days after the business or stock of goods is sold, or the taxpayer quits business.

(c) Tax due on business property. The Town tax shall be remitted on the purchase price paid for tangible personal property that is acquired with the purchase, transfer of title or transfer of possession of a business, with the exception of items to be resold in the ordinary course of business operations of the new business. The tax shall be based on the price paid for such chattels as recorded in the bill of sale or agreement and constituting a part of the total transaction at the time of the sale or transfer, provided that the valuation is as great as or greater than the fair market value of such merchandise or chattels. Where the transfer of ownership is a package deal made by a lump-sum transaction, the tax shall be paid on the book value if no determination has been made. When a business is taken over in return for the assumption of outstanding indebtedness owed by former owners, the tax shall be paid on the fair market value of all taxable tangible personal property acquired by the purchaser. The "sale" or "sale and purchase" of a business does not include the items under Section 39-26-102(10), C.R.S. A bona fide gift of tangible personal property is not a "sale."

(d) Prior taxes due. Taxes due upon the sale of a business or stock of goods include all sales taxes which were collected or should have been collected prior to the sale, and all use taxes accruing or payable prior to the sale.

(e) Purchaser to withhold payment until tax paid. The purchaser or successor to the business, stock of goods or assets shall withhold sufficient of the purchase money to cover all of said taxes until such time as the former owner produces a receipt from the Director showing that all taxes have been paid in full.

(f) Purchaser liable for prior owner's unpaid tax. The purchaser of a business is liable for any unpaid tax of a predecessor. Vendors or consumers having outstanding accounts on which sales or use tax has not been remitted must compute and pay the tax at the time of sale.

(g) Seller and seller's agent liable for tax. The seller or his or her agent will be held liable for tax remittance on the sale of business in the event the purchaser fails to remit the tax due on the purchase.

(h) Seller and purchaser both liable. Until all taxes due under this Section are paid in full, both the former owner and the purchaser shall remain personally liable thereon and subject to all collection proceedings available under this Article. Action by the Town against the former owner shall not prevent the exercise by the Town of all remedies provided herein against the successor owner.

(i) Delinquent taxes a lien on property. Any person who takes or purchases personal or real property under lease, title-retaining contract or other contract arrangement, by purchase, foreclosure sale or otherwise, takes the

same subject to the lien for any delinquent taxes owed by the original owner and shall be liable for the payment of all delinquent taxes, interest, penalty and collection costs of such prior owner, not however, exceeding the value of the property so taken or acquired. Any person who takes title to or possession of any real property upon which a tax is owed takes said property subject to the lien for said delinquent tax and shall be liable for the payment thereof to the extent of the tax, interest, penalties and collection costs.

(Prior code 4-44; Ord. 2006-1236 §1)

Sec. 4-3-440. No final inspection unless tax paid.

No final inspection shall be made by the Building Inspector, and no certificate of occupancy, temporary or otherwise, shall be issued unless all taxes due as provided in this Article have been paid or arrangements therefor made with the Director.

Sec. 4-3-450. **Certificate of discharge.**

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

(b) Certificate of discharge to part of property. If any property, real or personal, under the law, shall be subject to a lien for the payment of any tax due the Town, the Director may issue a certificate of discharge of any part of the property subject to the lien if there is paid over to the Director in part satisfaction of the liability in respect to such tax an amount determined by the Director, which shall not be less than the value, as determined by him or her, of the interest of the Town in the part to be so discharged.

(c) How values determined. In determining such values, the Director shall give consideration to the fair market value of the part to be so discharged and to such liens thereon as have priority to the lien of the Town.

(d) Certificate of release conclusive. A certificate of release or of partial discharge issued under Subsection (a) above shall be held conclusive that the lien of the Town upon the property released therein is extinguished, but shall not extinguish, nor release, any portion of the lien or property not specified in the release.

(Prior code 4-46; Ord. 2006-1236 §1)

Sec. 4-3-460. Closing agreements.

(a) Satisfaction of liability. For the purpose of facilitating the settlement and distribution of estates, trusts, receiverships, other fiduciary relationships and corporations in the process of dissolution or which have been dissolved, the Director may agree with the fiduciary or surviving directors upon the amount of taxes due from the decedent, or from the decedent's estate, trust, receivership or other fiduciary relationship, or corporation, for any of his, her or its taxable periods, under the provisions of the taxes covered by this Article and except upon a showing of fraud, malfeasance or misrepresentation of a material fact, payment in accordance with such agreement shall be full satisfaction of the taxes for the taxable periods to which the agreement related.

(b) Personal liability. Except as provided in Subsection (d) below, any personal representative of a decedent or of the estate of a decedent, any trustee, receiver or other person acting in a fiduciary capacity, or any director of a corporation in the process of dissolution or which has been dissolved, who distributes the estate or fund in his or her control without having first paid any taxes covered by this Article due from such decedent, decedent's estate, trust estate, receivership or corporation, covered by this Article and which may be assessed within the time limited by this Article, shall be personally liable to the extent of the property so distributed, for any unpaid taxes of the decedent, decedent's estate, trust estate, receivership or corporation, covered by this Article and which may be assessed within the time limited by this Article.

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

(d) Limitation of liability.

(1) In case a tax covered by this Article is due from a decedent or his or her estate, or by a corporation, in order for personal liability under Subsection (b) above to remain in effect, determination of the tax due shall be made and notice and demand therefor shall issue within three (3) years after written request for such determination, filed after the filing of the decedent's final return or filed after the filing of the return of the decedent's estate with respect to which such request is applicable, by any personal representative of such decedent, or by the corporation, filed after the filing of its return; but a request under this provision shall not extend the period of limitation otherwise applicable.

(2) This Subsection will not apply in the case of a corporation unless:

a. Such request notifies the Director that the corporation contemplates dissolution at or before the expiration of such three-year period;

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

c. The dissolution is completed.

(3) Upon the expiration of said three-year period, without determination being made and notice and demand being issued, the personal representative or representative of the decedent and the directors of the corporation no longer will be liable under the provisions of Subsection (b) of this Section.

(Prior code 4-47; Ord. 2006-1236 §1)

Sec. 4-3-470. **Limitations.**

(a) General limitations.

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

(2) Date fixed. For purposes of this Section, a tax return filed before the last day prescribed by law, or by regulation promulgated pursuant to law for the filing thereof, shall be considered as filed on such last day.

(3) Payment arrangement. Where, before the expiration of the time prescribed in this Section for the assessment of tax, both the Director and the taxpayer have consented in writing to any assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon or by the commencement of collection proceedings made before the expiration of the period previously agreed upon. Additional interest must be paid on payments at a rate of nine percent (9%) per annum.

(4) Revision qualification. Nothing in this Section shall be construed to limit any right accrued or to revive any liability barred by any statute at the date this code becomes effective.

(b) Taxes held in trust. All sums of money paid by the purchaser to the retailer as taxes imposed by this Article shall be and remain public money, the property of the Town, in the hands of such retailer. He or she shall hold the same in trust for the sole use and benefit of the Town, until paid to the Director; and, for failure to so pay to the Director, such retailer shall be punished as provided by law. Thus, the statute of limitation provided herein does not apply to collections of public money in the possession of the retailer, and such monies are collectable at any time after their due date upon demand of the Director. Bankruptcy will not excuse unremitted taxes collected in trust.

(Prior code 4-48; Ord. 2006-1236 §1)

Sec. 4-3-480. Tax on credit sales.

Whenever tangible personal property is sold, including that sold in conjunction with the sale of a business, which is taxable hereunder, under a conditional sales contract or rental purchase contract whereby the seller retains title as security for all or part of the purchase price, or whenever the seller takes a chattel mortgage on such tangible personal property to secure all or part of the purchase price, the total tax based on the total selling price shall become immediately due and payable. The tax shall be charged, or collected and remitted by, the vendor. No refund or credit shall be allowed to either party to the transaction in case of repossession.

Sec. 4-3-490. **Excess collections.**

If any vendor shall, during any reporting period, collect as a tax an amount in excess of the rates set forth in this Chapter, of his or her total taxable sales, he or she shall remit to the Director the full net amount of the tax herein imposed and also such excess. If records of Town and state tax collections are kept separately, the vendor will remit the excess of the Town tax collected over and above Town net taxable sales and service. If there is no separate record kept of Town and state tax collections and it is not possible to determine the excess to be remitted to each, the vendor shall remit forty-nine percent (49%) of such excess to the Town. The retention by the vendor of any excess collections, or the intentional failure to remit punctually to the Director the full amount required to be remitted by the provisions of this Article, is hereby declared to be a violation of this Article.

Editor's note(s)—Ord. 2018-1561, § 2, adopted June 25, 2018, repealed the former § 4-3-490 and enacted a new section as set out herein. The former § 4-3-490 pertained to similar subject matter and derived from Prior code 4-50; and Ord. 2006-1236, § 1.

Sec. 4-3-500. Unlawful to advertise absorption of tax.

It shall be unlawful for any taxpayer or vendor to advertise, hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof imposed by this Article will be assumed or absorbed by the vendor or taxpayer or that it will not be added to the selling price of the property sold, or, if added, that it or any part thereof will be refunded. Any person violating this provision of this Article shall be subject to the penalties herein provided.

~~**Sec. 4-3-510. Tax returns; content, consolidation and reporting periods.**~~

~~(a) Tax return: content, form. The returns to be filed by the taxpayer, or the taxpayer's trustee, manager, officer or director, shall contain such information and be completed in such manner and upon such forms as the Director may prescribe. When a return filed by a taxpayer does not include a signature, a correct Town account number or any other information required by the Director, the Director has the right to send back to the taxpayer the return and payment. The Director may consider an improperly filed return to be not filed with the Town. A valid digital signature, or the equivalent thereof, on a filed return transmitted electronically over the Internet or transmitted by other similar means is accepted and held as a written signature. Signing a return over the Internet can be done by any means acceptable to the Director. A signature on a return sent via fax is accepted and held as a written signature.~~

~~(b) Consolidation of returns. A vendor doing business in two (2) or more places or locations, whether in or without the Town, and collecting taxes hereunder, may file one (1) return covering all such places or locations, when accompanied by a supplemental report showing the gross sales and service and net taxable sales and service and taxes collected thereon for each such place or location.~~

~~(c) Reporting periods. Vendors must report and remit the tax on a monthly basis if the tax due per month, on average, is three hundred dollars ($300.00) or greater. The Director may permit a vendor or licensed consumer whose monthly tax collected is less than three hundred dollars ($300.00) to make returns and remit taxes at three-month intervals (i.e., on a quarterly basis). Nonretail businesses and home-based businesses that are required to file a return may be permitted by the Director to file yearly (on an annual basis). If any taxpayer who has been granted permission to file returns and pay tax on other than a monthly basis becomes delinquent, authorization for such alternate method of reporting may be revoked by the Director. Thereafter, following notice of such revocation, the taxpayer shall file returns and pay tax on a monthly basis. If the accounting methods regularly employed by the vendor or licensed consumer in the transaction of his or her business, or other conditions, are such that the returns aforesaid made on a calendar-month basis will impose unnecessary hardship, the Director may, upon request of the vendor or licensed consumer, accept returns at such intervals as will, in his or her opinion, better suit the convenience of the taxpayer and will not jeopardize the collection of the tax.~~

~~(Prior code 4-52; Ord. 2006-1236 §1)~~

~~*Division 5 Administration*~~

~~Sec. 4-3-610.~~ Duties and powers of Director.

The administration of the licensing provisions of this code is hereby vested in the Director; and the administration of all other provisions of the code and of the Town sales and use tax is hereby vested in and shall be exercised by the Director, who shall prescribe forms and formulate and promulgate, with the approval of the Town Manager, appropriate rules and regulations to effectuate the purpose of this code, in conformity with this code and subject to other provisions of law relating thereto, for the making of returns, for the ascertainment, assessment and collection of the taxes imposed and for the proper administration and enforcement thereof, and to provide uniform methods of adding the tax, or the average equivalent thereof, to the purchase price. The Director shall have power and authority to add, enact, promulgate, amend and rescind rules and regulations to this Article that are not inconsistent with the provisions of this code. Regulations adopted, amended or rescinded by the Director shall be effective in the manner and at the time prescribed by the Director, subject to the provisions of the code. The Director is authorized to delegate any duty or power to a subordinate unless otherwise provided herein.

(Prior code 4-53; Ord. 2006-1236 §1)

Commented [SH1]: Brought from 4-3-610

Sec. 4-3-50. ~~4-3-620. Director to examine returns.~~

~~For the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of the tax due from any taxpayer, the Director shall have power to examine or cause to be examined by an employee, agent or representative designated by him or her for that purpose, any books, papers,~~ **Town's records** ~~or memoranda bearing upon the matters required to be included in the return. Subject to the provisions of the code, the Director is authorized to prescribe the duties~~ **and** ~~powers of such officers, accountants, experts and other persons as may be necessary in the performance of his or her duty.~~

~~Sec. 4-3-630. Audits.~~

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

~~(b) Records to be made available for audit. All such books, accounts and records, together with all bills, receipts, invoices, cash register tapes or other documents of original entry supporting the entries in the books, shall be maintained by the ordinarily prudent business person and shall be open for examination at any reasonable time by the Director. The records should show:~~

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

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

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

~~(c) Travel required to perform audit. In the case of a person who does not keep the necessary books, accounts and records within the Town, it shall be sufficient if such person produces within the Town such books, accounts and records or such information as shall be reasonably required by the Director for examination by the Director, or, in lieu thereof, said person shall pay in advance, or as approved by the Director, such travel, lodging, meal and related expenses as shall reasonably be incurred by the Director in examination of said books, accounts and records at such place where said books, accounts and records are kept.~~

~~(d) Coordinated audit.~~

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

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

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

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

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

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

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

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

a. When the proposed audit is a jeopardy audit;

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

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

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

(Prior code 4-55; Ord. 2006-1236 §1)

Sec. 4-3-640. Tax reports and returns**confidentiality**.

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

(b) Confidential nature of returns. Except in accordance with judicial order, consent of the taxpayer or as otherwise provided by law, the Director, the Town Manager, Town Finance Staff and the Town Attorney shall not divulge or make known in any way financial information disclosed in any document, report or return filed in connection with any of the taxes covered by this code. The officials charged with the custody of such documents, reports and returns shall not be required to produce them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the Director in an action or proceeding under the provisions of any such taxing or open record statutes when the report of facts shown thereby are directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit into evidence, so much of said reports, or of the facts shown thereby, as are pertinent to the action or proceeding, and no more.

(c) Taxpayer request for records. Nothing contained in this Section shall be construed to prohibit the delivery to a person or his or her duly authorized representative of a copy of any return ~~or~~, report, or other record the Town may have filed in connection with his or her tax. ~~Such copies may be certified by the Director and, when so certified, shall be evidence equally with and in like manner as the originals and may be received by the courts of this State as evidence of the contents.~~

(d) Publication of statistics. Nothing in this Section shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof.

(e) Records available to authorized jurisdictions. Notwithstanding the provisions of this Section, the Director in his or her discretion may furnish to the County Finance Director or Treasurer and his or her authorized personnel, to the Colorado Department of Revenue Executive Director and his or her authorized personnel, to the taxing officials of any state political subdivisions, to the taxing officials of any other state and its political subdivisions, and to the United States, any financial information contained in tax returns and related schedules and documents filed pursuant to this code, or in the report of an audit or investigation made with respect thereto provided; provided that such financial information is to be used only for tax purposes.

(Prior code 4-56; Ord. 2006-1236 §1)

Commented [SH2]: Brought from 4-3-640

Sec. 4-3-60. Licensing.

(a) Any person *engaged in business in the town,* as defined in 6-3-10 is subject to tax pursuant to this chapter shall obtain and maintain a current business license.

(b) Retailers holding a state standard retail license that ensures payment of sales and use tax to the Town and who qualify for a general business license free of charge as allowed under certain conditions of section C.R.S. 39-26-802.9; do not need to obtain a sales and use tax license directly with the Town. They will be provided a Town specific license number for record keeping and tracking of the sales and use taxes paid from either the Town's electronic remittance system or the Colorado Sales and Tax System.

(c) Any person engaged in mobile food vending, seasonal sales, or special events is required to be licensed.

(c) License Form and Requirements. The license requirements are defined in Chapter 6, Article III Sec. 6-3-10 through Sec. 6-3-100.

(Prior code 4-37; Ord. 2006-1236 §1; Ord. 2019-1588 §1; Ord. 2023-1680 §5)

Commented [SH3]: Portions of revision brought from 4-3-310 current code

Division 2 Sales Tax

Sec. 4-3-100. Imposition of sales tax.

(a) *Sales Tax Rate.* There is imposed a sales tax of three and sixty-five hundredths percent (3.65%) on the sale of tangible personal property, products, and taxable services within boundaries of the Town, as provided herein at Section 4-3-150 of this Code.

(Ord. 2022-1670 §2)

Editor's note(s)—Ord. No. 2022-1670, § 2, adopted Nov. 28, 2022, repealed and reenacted § 4-3-110 to read as set out herein. The former § 4-3-110 pertained to similar subject matter and derived from Ord. 2015-1498, § 2; Ord. 2022-1666, § 1; and Ord. 2022-1669, § 2.

~~650. **Notice by mail.**~~

~~The taxpayer shall at all times have the burden of ensuring that his or her correct mailing address, e-mail address and fax number are on file with the Director.~~

Sec. 4-3- ~~In the event that a notice is sent to the taxpayer pursuant to this code and said notice is not received by the taxpayer through no fault of the Town, or the notice is returned by the post office as undeliverable or rejected by the taxpayer, such notice shall be deemed given on the date mailed, and the Town shall have no further obligation to complete service of the notice.~~

~~Sec. 4-3-~~120. Tax as a separate and distinct item.

Except as provided in Section 4-3-130, retailers shall add the tax imposed hereby, or the average equivalent thereof, to the purchase price or charge of the item or service, and provide the customer with a receipt that shows the tax charged as a separate and distinct charge; and, when added, such tax shall constitute a part of such price or charge and shall be a debt from the consumer or user to the retailer until paid and shall be recoverable at law in the same manner as other debts.

Sec. 4-3-130. Tax included in selling price.

Only retailers selling malt, vinous or spirituous liquors by the drink, vending machine sales and special event vendor sales may include the tax levied by this Article in the sales price or charge. No retailer shall advertise or hold out to the public in any manner, directly or indirectly, that tax is not included as a part of the sales price to the consumer. No retailer shall gain any benefit from the collection or payment of such tax, nor shall the use of rates set forth in Sections 4-3-110 and 4-3-120 of this Article release such retailer from liability for payment of the full amount of the tax levied by this Article.

~~660. Hearings.~~

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

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

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

~~(d) Director to conduct formal hearing. The hearing shall be held before the Director or a hearing officer designated by the Director. At the hearing, the taxpayer may assert any facts, make any arguments and file any briefs and affidavits he or she believes are pertinent to his or her case. The taxpayer shall be notified of the name of the hearing officer fifteen (15) days before the hearing date, and any objection by the taxpayer to the hearing officer shall be filed in writing at least forty-eight (48) hours prior to the hearing. All~~

reasonable costs to the Town for a hearing officer must be paid by the taxpayer requesting the formal hearing when the hearing officer determines no change in the tax due.

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

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

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

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

(i) Tax due date after hearing. Unless an appeal is taken as provided in Section 4-3-670 of this Article, the tax, together with interest thereon and penalties, if any, shall be paid within thirty (30) days after the hearing determination notice is sent by the Director to the taxpayer.

(Prior code 4-58; Ord. 2006-1236 §1)

Sec. 4-3-670. Appeals.

The taxpayer may appeal the hearing determination notice of the Director issued pursuant to Section 4-3-660 within thirty (30) days of the date that such determination is sent by the Director. Such appeal shall be conducted pursuant to the terms of Rule 106(a)(4) of the Colorado Rules of Civil Procedure or by the method of appeals set forth in Section 29-2-106, C.R.S.

Sec. 4-3-680. Notice of sales and use tax ordinance amendment.

(a) In order to initiate a central register of sales and use tax ordinances for municipalities that administer local sales tax collection, the Director shall file with the Colorado Municipal League, prior to the effective date of this code, a copy of the Town sales and use tax ordinance reflecting all provisions in effect**140. Tax on** the effective date of this Section.

(b) In order to keep current the central register of sales and use tax ordinances for municipalities that administer local**credit** **sales** tax collection, the Director shall file with the Colorado Municipal League prior to the effective date of any amendment a copy of each sales and use tax ordinance amendment enacted by the Town. **.**

(c) Failure of the Town to file such ordinance or ordinance amendment pursuant to this Section shall not invalidate any provision of the sales and use tax ordinance or any amendment thereto.

Whenever tangible personal property is sold, including that sold in conjunction under a conditional sales contract whereby the seller retains title as security for all or part of the purchase price, the total sales tax based on the total purchase price, including finance and insurance charges which are not separately stated at the time of sale, shall become immediately due and payable. No refund or credit shall be allowed to either party to a transaction in case of repossession by the vendor of collateral securing the purchase price or any part of the purchase price.
(Prior code 4-6049; Ord. 2006-1236 §1)

Commented [SH4]: Brought from 4-3-480

Sec. 4-3-690. Participation in simplification meetings.

The Director shall cooperate with and participate on an as-needed basis with a permanent statewide sales and use**150. Sales** **tax** committee convened by the Colorado Municipal League, which is composed of state and municipal sales and use tax and business officials. Said committee will meet for the purpose of discussing and seeking resolution to sales and use tax problems which may arise. **; taxable property and services.**

Sec. 4-3-700. Joint sales and use tax collection, administration and enforcement.

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

Division 6 Enforcement

Sec. 4-3-810. Assessment, penalties and interest.

(a) Assessment. Subsection (b) below shall apply if the Director determines that any person, taxpayer or vendor has failed, neglected or refused:

(1) To collect all taxes due;

(2) To make a return and pay all taxes due;

(3) To remit the proper amount of tax due;

(4) To pay in full all taxes due because of negligence, fraud or on a regular basis; or

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

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

(a) ~~(c) Estimated assessment. If the Director is unable to audit the records of a taxpayer, either due to the taxpayer's refusal or lack of cooperation, due to time constraints or due to other reasons which the Director may reasonably determine, the Director shall make an estimate based upon such information as may be available and shall issue an assessment~~There is hereby levied and there shall be collected and paid a sales tax in the amount stated in Section 4-3-100 of this Article as ~~provided herein. If a person, taxpayer or~~follows:

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

2) Upon all sales of food or drink including Candy, Food for Domestic Home Consumption, prepared food or food for immediate consumption, and drinks.

3) Upon the sales of Computer Software that meets the criteria under 39-26-102(15)(d)(I) C.R.S.

4) Upon the sales of Digital Products

5) Upon the sales of electricity, coal, wood, gas, fuel oil, or coke specified under 39-26-715 (1)(a)(II) C.R.S.

6) Upon the credit sales, leases, and rentals of Motor Vehicles to any person in the Town who thereby is obligated to the vendor ~~neglects~~on an account, chattel paper, contract right, general intangible, or ~~refuses~~a writing which supports a right to ~~make a return,~~ the payment of a purchase price, or any part thereof.

7) Upon the sales of Lodging Services.

8) Upon the sales of machinery or machine tools defined under 39-26-709 C.R.S.

9) Upon the sale of steam or other heating services furnished and sold for domestic or commercial use.

10) Upon the sale of Telecommunications Services: except Carrier Access Services, interstate or international WATS/800 service and interstate or international private communications service, for all international, interstate and intrastate telecommunications service originating from or received on telecommunications equipment in the town if the charge for the service is billed to an apparatus, telephone, or account in this town, without regard to where the bill for such services is actually received.

11) Upon all Marketplace Sales as defined in 4-3-170

(Prior code 4-32; Ord. 2006-1236 §1)

Sec. 4-3-160. Sales tax; exempt property and services.

The following classes of tangible personal property are exempt from taxation:

(a) Sales of tangible personal property shall be exempted if both the following conditions exist: (1) The sales are to those who are residents of or doing business in the state outside the Town; and, (2) The articles purchased are to be delivered to the purchaser outside the town by common carrier or by the conveyance of the seller or by mail.

(b) Delivery of the articles sold is to be made to the purchaser at a point outside the town or to a carrier for delivery of the articles to a purchaser at a point outside the town or the railroad, in case the railroad is the purchaser, or to a truck of the construction company in case of a sale to a construction company.

(c) Sale of all Cigarettes as defined under the State of Colorado Sales and Use Tax Regulation 26-114.1(a)(IV).

(d) Sales of computer software that does not meet all of the following criteria:

a. The computer software is prepackaged for repeated sale or license;

b. The use of the computer software is governed by a tear-open nonnegotiable license agreement; and

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

(e) Sales of Essential Hygiene Products

(f) Sales of Internet Access Services

(g) Sales of Medical Materials and Equipment exempted under 39-26-717 C.R.S.

(h) Sales of Motor fuel and sales of special fuel for use in operating farm vehicles on farms and ranches. All commodities which are taxed under the provisions of the Colorado Motor Fuel Tax of 1933

(i) Sales of Newspapers as defined by Section 24-70-102, C.R.S.,

(j) Sales of Prescription Drugs for Humans and Prosthetic Devices for Humans.

(h) Sales to the United States government; to the state, its departments or institutions and the political subdivisions thereof, in their governmental capacities only; and all sales to the town and any department thereof.

(i) Sales to religious, charitable and eleemosynary corporations, in the conduct of their regular religious, charitable and eleemosynary functions and activities.

(j) Sales which the town is prohibited from taxing under the Constitution or laws of the United States, or the State

~~(h)~~(k) All sales of property and services made by public and private kindergarten through grade 12 (K-12) schools, K-12 school activity booster organizations, K-12 parent-teacher organizations, K-12 student classes and K-12 student organizations shall be exempt, provided that:

b. All proceeds of such sales are for the benefit of a K-12 school or K-12 school-approved student organization; or

c. In the case of a parent-teacher organization, all proceeds of such sales are used for the reasonable expense of the parent-teacher organization conducting such sales.

(l) Sales and purchases of cattle, sheep, lambs, swine and goats; all sales and purchases of mares and stallions for breeding purposes; and all farm auction close-out sales.

(m) Sales and purchase of feed for commercial feeding of livestock or poultry, and all sales and purchases of commercial seeds

(n) Sales of tangible personal property to a public utility doing business both within and without the town, for use in its said business operations outside of the town, even though delivery is made within the town.

(o) Sales of Construction Materials, if such materials are picked up by the purchaser and if the purchaser of such materials presents to the retailer a building permit or other documentation acceptable to the town evidencing that the Town use tax has been paid or is required to be paid.

(p) Sales of Construction Materials when purchased by a contractor on behalf of an exempt institution, or governmental, religious, or charitable organization's project.

(q) The town's sales tax shall not apply to the sale of tangible personal property at retail or the furnishing of services if the transaction was previously subjected to a sales or use tax lawfully imposed on the purchaser or user by another statutory or home rule municipality equal to or in excess of three and sixty-fifths (3.65) percent. A credit shall be granted against the town's sales tax with respect to such transaction equal in amount to the lawfully imposed local sales or use tax previously paid by the purchaser or user to the previous statutory or home rule municipality. The amount of the credit shall not exceed three and sixty-fifths (3.65) percent.

(r) Sale or purchase of food purchased with food stamps or supplemental nutrition assistance program (SNAP) benefits.

(s) Sale or purchase of food purchased with vouchers, checks or WIC program benefits.

(t) Sales of Carrier Access Services.

(u) Sales of Private Communications Services.

(v) Sales of WATS/800 service.

(w) The fair market value of any exchanged or traded-in property shall be excluded from the consideration or purchase price under the following conditions:

a. When such exchanged property is to be resold thereafter in the usual course of the retailer's business, if included in the full resale price of an article sold.

b. When the transaction involves the purchase of a vehicle and the exchange or trade-in of another vehicle, both vehicles are subject to licensing, registration and certification under the laws of this state. For purposes of this section, the term vehicle shall include vehicles operating upon public highways, off-highway recreation vehicles, watercraft, and aircraft.

c. When there is no additional consideration involved in the transaction.

(x) Any money or other consideration paid which exceeds the value of the exchanged property is subject to town tax.

(y) Occasional sales of tangible personal property, including those made by a charitable organization for fund-raising purposes; provided, however, the net proceeds are retained and used for a charitable purpose.

(z) The Retail Delivery Fee consisting of the community access retail delivery fee imposed in C.R.S. § 24-38.5-303(7), the clean fleet retail delivery fee imposed in C.R.S. § 25-7.5-103(8), the clean transit retail delivery fee imposed in C.R.S. § 43-4-1203(7), the retail delivery fee imposed in C.R.S. § 43-4-218(3), the bridge and tunnel retail delivery fee imposed in C.R.S. § 43-4-805 (5)(g.7), and the air pollution mitigation retail delivery fee imposed in C.R.S. § 43-4-1303(8), as such sections existed on June 17, 2021.

(aa) The Carryout Bag Fee imposed in C.R.S. § 25-17-505, as such section existed on July 6, 2021.

(bb) All sales of rooms or accommodations to any natural person who resides continuously for a period of thirty (30) consecutive days or more in a room or accommodation or has the right to so reside pursuant to any written concession, permit, contract, license to use or other written arrangement;

(cc) Sales to and purchases of tangible personal property by a person engaged in the business of manufacturing or compounding for sale, profit or use, any article, substance or commodity, which 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.

(dd) To the storage, use or consumption of electricity, coal, coke, fuel oil or gas for use in processing, manufacturing, mining, refining, irrigation, telegraph, telephone and radio communication, street and railroad transportation services and all industrial uses, except that electricity, gas, coal, fuel oil or coke used for lighting or space heating in these operations shall not be exempt.

(ee) All non-conditional sales of Motor Vehicles made to a resident, who's residency is determined by C.R.S 42-6-139(1)(a), of the Town are exempt regardless of where the resident purchased the vehicle. The term does not, however, include: low-power scooters, wheelchairs, electrical assisted bicycles, electric personal assistive mobility devices or vehicles moved solely by human power or conditional credit sales, leases, or rentals of Motor Vehicles.

(ff) Forty-eight percent (48%) of the purchase price of a new Manufactured Home; except that the entire purchase price in any subsequent sale of such a manufactured home, after it has been once subject to the payment of sales or use tax under this Chapter, is exempt from taxation under this Chapter.

(Ord. 2011-1396 §1; Ord. 2018-1562 §2)

Sec. 4-3-170. Marketplace sales.

(a) Rights and Obligations, generally.

(1) A marketplace facilitator engaged in business in the Town is required to collect and remit sales or use tax on all taxable sales made by the marketplace facilitator, or facilitated by it for marketplace sellers or multichannel sellers to customers in the Town, whether or not the marketplace seller for whom sales are facilitated would have been required to collect sales or use tax had the sale not been facilitated by the marketplace facilitator.

(2) A marketplace facilitator has all the liabilities, obligations, and rights of a retailer under this Article. Marketplace facilitators shall be liable for the taxes collected from marketplace sellers or multichannel sellers. The Town may recover any unpaid taxes, penalties, and interest from the marketplace facilitator that is responsible for collecting on behalf of marketplace sellers or multichannel sellers.

(3) The liabilities, obligations, and rights set forth under this article are in addition to any duties and responsibilities of the marketplace facilitator has under this article if it also offers for sale tangible personal property, products, or services through other means.

(4) Except as provided in subsection (b)(1) of this section, a marketplace seller, with respect to sales of tangible personal property, products, or services made in or through a marketplace facilitator's marketplace, does not have the liabilities, obligations, or rights of a retailer under this article if the marketplace seller can show that such sale was facilitated by a marketplace facilitator:

a. With whom the marketplace seller has a contract that explicitly provides that the marketplace facilitator will collect and remit sales tax on all sales subject to tax under this article; or

b. From whom the marketplace seller requested and received in good faith a certification that the marketplace facilitator is registered to collect sales tax and will collect sales tax on all sales subject to tax under this article made in or through the marketplace facilitator's marketplace.

(5) If a marketplace seller makes a sale that is not facilitated by a licensed marketplace facilitator in a marketplace, the marketplace seller is subject to all of the same licensing, collection, remittance, filing and recordkeeping requirements as any other retailer.

(b) Auditing. With respect to any sale, the Town shall solely audit the marketplace facilitator for sales made by marketplace sellers or multichannel sellers but facilitated by the marketplace. The Town will not audit or otherwise assess tax against marketplace sellers or multichannel sellers for sales facilitated by a marketplace facilitator.

(Ord. 2020-1611 §4)

Division 3 Use Tax

Sec. 4-3-180. Imposition of use tax.

Use Tax Rate. There is imposed a use tax of three and sixty-five hundredths' percent (3.65%), to be imposed only for the privilege of storing, using or consuming within the Town any construction materials or

construction equipment located within the boundaries of the Town for a period of more than thirty (30) consecutive days.

(Ord. 2022-1670 §3)
Editor's note(s)—Ord. No. 2022-1670, § 3, adopted Nov. 28, 2022, repealed and reenacted § 4-3-120 to read as set out herein. The former § 4-3-120 pertained to similar subject matter and derived from Ord. 2015-1498, § 3; Ord. 2022-1666, § 2; and Ord. 2022-1669, § 3.

Commented [SH5]: Brought from 4-3-120

Sec. 4-3-190. Use tax, taxable property and services.

There is hereby levied and there shall be paid a use tax in the amount stated in Section 4-3-180 of this Article, upon the following:

(a) All sales of construction materials.,

(b) Construction equipment which is located within the boundaries of the Town for a period of more than thirty (30) consecutive days shall be subjected to the full applicable use tax of the Town.

(c) Construction equipment which is located within the boundaries of the Town for a period of thirty (30) consecutive days or less shall be subjected to Town use tax in an amount which does not exceed the amount calculated as follows:

1. The purchase price of the equipment shall be multiplied by a fraction, the numerator of which is one (1) and the denominator of which is twelve (12), and the result shall be multiplied by the Town use tax rate.

2. Where the provisions of this subsection (3) are utilized, the credit provisions of 4-3-200(c) shall apply at such time as the aggregate sales and use taxes legally imposed by and paid to other statutory and home rule cities, towns, and cities and counties on any such equipment equal the full use tax of the Town.

Editor's note(s)—Ord. No. 2022-1666, § 4, adopted Oct. 24, 2022, repealed and reenacted § 4-3-190 to read as set out herein. The former § 4-3-190 pertained to similar subject matter and derived from prior code, 4-34; Ord. 2006-1236, § 1; and Ord. 2017-1538, § 1.

Sec. 4-3-200. Use tax, exemptions.

The use tax shall not apply to:

(a) The sale of construction materials, if such materials are picked up by the purchaser and if the purchaser of such materials presents to the retailer a building permit or other documentation acceptable to the Town evidencing that the Town use tax has been paid or is required to be paid, or not required due to an exemption granted.

(b) The sales of construction materials to contractors and subcontractors for use in the building, erection, alteration or repair of structures, highways, roads, streets and other public works owned and used by:

(1) The United States government, the State, its departments and institutions, and the political subdivisions thereof in their governmental capacities only.

(2) Charitable organizations in the conduct of their regular charitable functions and activities; or

(3) Schools, other than schools held or conducted for private or corporate profit.

(c) The storage, use or consumption of any article of tangible personal property, the sale or use of which has already been subjected to a sales or use tax of another town, city or county equal to or in excess of that imposed by this Article. A credit shall be granted against the use tax imposed by this Article with respect to a person's storage, use or consumption in the Town of tangible personal property purchased by him or

her elsewhere. The amount of the credit shall be equal to the tax paid by him or her by reason of the imposition of a sales or use tax of another town, city or county on his or her purchase or use of the property. The amount of the credit shall not exceed the tax imposed by this Article.

(d) Temporary storage of construction materials less than thirty (30) consecutive days.

(e) All non-conditional purchases of Motor Vehicles made by a resident of the Town, who's residency is determined by 42-6-139(1)(a), regardless of where the resident purchased the Motor Vehicle.

Sec. 4-3-210. Use Tax payment requirements, exemption certificate, and overpayments.

(a) The use tax imposed on construction materials by Section 4-3-190 shall be paid is paid as a deposit from the taxpayer through payment to the Town of an amount equal to three and sixty-fifths percent (3.65%) of fifty percent (50%) of the total cost of the project as indicated on the application for the Town building permit or right-of-way permit. The Town shall, upon receipt of such payment, issue a permit noting exemption from payment of any further sales or use tax for the materials to be used, stored or consumed pursuant to such building permit.

(b) In all cases where the use tax estimate deposit required by the provisions of this Section is made, if it is determined at the time of the completion of the construction project from the invoices and statements reflecting the purchase therefor, that the deposit made as herein required, together with the actual payments to the Town as a sales tax, is in excess of the actual tax due therefor, the responsible person making said deposit or paying said tax may complete a reconciliation form for the Town to disclose any refund of any amount paid in excess of the actual taxes due, in which event it shall be the duty of the person making such application to furnish all necessary bills and invoices evidencing overpayment of the tax, and, if the said Town is satisfied that there has been such overpayment, it shall refund such overpayment to the taxpayer. The application for overpayment shall be filed within ninety (90) days from the issuance of certificate of occupancy or final inspection or whichever comes later.

(c) In order for a taxpayer to avail itself of the provisions of subsection (3) of Section 4-3-190, the taxpayer shall comply with the following procedure:

1) Prior to or on the date the equipment is located within the boundaries of the Town, the taxpayer shall file with the Town an equipment declaration on a form provided by the Town. Such declaration shall state the dates on which the taxpayer anticipates the equipment will be located within and removed from the boundaries of the Town, shall include a description of each such anticipated piece of equipment, shall state the actual or anticipated purchase price of each such anticipated piece of equipment, and shall include such other information as reasonably deemed necessary by the Town.

2) The taxpayer shall file with the Town an amended equipment declaration reflecting any changes in the information contained in any previous equipment declaration no less than once every ninety (90) days after the equipment is brought into the boundaries of Town or, for equipment which is brought into the boundaries of the Town for a project of less than ninety (90) days' duration, no later than ten (10) days after substantial completion of the project.

3) The taxpayer need not report on any equipment declaration any equipment for which the purchase price was under two thousand five hundred dollars ($2,500.00). If such equipment declaration is given, then as to any item of construction equipment for which the customary purchase price is under two thousand five hundred dollars ($2,500.00) which was brought into the boundaries of the Town temporarily for use on a construction project, it shall be presumed that the item was purchased in a jurisdiction having a local sales or use tax as high as that of the Town and that such sales or use tax was previously paid. In such a case the burden of proof in any proceeding before

the Town, the Executive Director of the Colorado Department of Revenue, or the district court, shall be on the Town to prove such local sales or use tax was not paid.

(d) If the taxpayer fails to comply with the provisions of subsection (c) of this Section, the taxpayer may not avail himself of the provisions of Section 4-3-190(3). However, substantial compliance with the provisions of subsection (c) of this section shall allow the taxpayer to avail himself of the provisions of section 4-3-190(3).

Sec. 4-3-220. No final inspection unless tax paid.

No final inspection shall be made by the Building Inspector, and no certificate of occupancy, temporary or otherwise, shall be issued unless the deposits due of 50% of the total cost of the project including any change orders for taxes due as provided in this Article have been paid or arrangements therefor made with the Director.

(Prior code 4-45; Ord. 2006-1236 §1)

Commented [SH6]: Brought from 4-3-440

Division 4 Procedures

Sec. 4-3-230. Taxpayer liability and Returns.

(d) It shall be a violation of this Article for any seller not to collect the sales tax levied by this Article. It shall also be a violation of this Article for any purchaser not to pay the sales tax levied by this Article or to pay the tax levied upon a sale where the status of exemption is disputed.

(e) It shall be a violation of this chapter for any taxpayer to:

i. Fail to file a return with the Director as required by this chapter;

ii. File a false or fraudulent return with the Director (Any legal entity making a false return or a return containing a false statement shall be guilty of a violation of this chapter, article, and such violation shall be applicable to officers, agents or members thereof who are responsible for the violation.); or

iii. Failure to remit the full amount due to the Director as required by this chapter.

(f) Burden of proof of exemption. The burden of proving that any retailer is exempt from collecting and remitting the tax upon any sales of tangible personal property, products or services subject to the provisions of this article, and from paying over the same to the Director, shall be on the retailer, and such proof shall be by a preponderance of evidence.

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

~~(f)~~(h) Unlawful to advertise absorption of tax. It shall be unlawful for any taxpayer or vendor to advertise, hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof imposed by this Article will be assumed or absorbed by the vendor or taxpayer or that it will not be added to the selling price of the property sold, or, if added, that it or any part thereof will be refunded. Any person violating this provision of this Article shall be subject to the penalties herein provided.

(i) Vendor responsibility for collection of tax. Every retailer or vendor engaged in business and selling at retail shall be liable and responsible for the payment of an amount equivalent to the amount of the tax imposed by this Article computed on the total of all sales made by the retailer or vendor of commodities or services as specified in Section 4-3-160 above.

(j) Vendor responsibility for remittance of tax. Every taxpayer obligated to collect and/or pay any of the tax imposed in article shall file a return and remit the total amount due to the Director in accordance with subsection (h) of the Section.

(k) Due date of returns. Returns shall be filed on or before the twentieth day of the month for the preceding month or months under report and remit the amount of tax imposed by this Article computed on the total of such sales, and also the amount of any excess tax collections, less two and one-third percent (2.33%) of the amount of taxes to be paid by him or her under this Article or two hundred dollars ($200.00), whichever is less, to cover the retailer's expense of collection and remittance of the tax for the reporting period; however, if any vendor is delinquent in remitting said tax other than in unusual circumstances shown to the satisfaction of the Director, the vendor shall not be allowed to retain any amounts to cover his or her expense in collecting and remitting said tax, and an amount equivalent to the full tax shall be remitted to the Director by any such delinquent vendor. The Director may, by rule or regulation, extend the time up to one (1) year for filing returns and remitting the tax due.

(l) The two and one-third percent (2.33%) discount of tax allowed in the provision above shall not apply to the tax return required upon the sale of a business related to the transfer of assets detailed in Section 4-3-270.

(m) Format of Returns. Every retailer or vendor engaged in business and selling at retail shall file a return and pay through the Town's electronic remittance system or through the Colorado Sales and Use Tax System (SUTS). Beginning January 1, 2025; all returns and payments required under this chapter received in paper format and/or requiring in-office processing outside that are available in the provided electronic portals shall be assessed an administrative fee of twenty-five ($25.00) dollars per filing.

~~(g)~~(n)Timely payment evidence; computation of dates.

i. ~~shall~~ Timely payment may be evidenced by the transaction processing date, postmark date if mailed; otherwise, timely payment may be evidenced by the Finance Department validation date.

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

~~(h)~~(o)If the return is not filed, or the taxes are not paid when due, the Town may make an estimate, based upon such information as may be available, of the amount of taxes due for the period ~~for which such person is delinquent~~or periods for which taxpayer is delinquent and shall add thereto a penalty in an amount equal to ten percent (15%) of the estimated tax, together with interest on the estimated tax at the rate of one percent (1%) per month from the due date thereof, and may assess said amount against the delinquent taxpayer by giving said taxpayer written notice thereof, which notice shall require the taxpayer either to pay the amount assessed by the Town or to petition him for a correction of said estimate within a period of thirty (30) calendar days thereafter. Any such petition for correction shall be in writing and any facts or figures in support thereof shall be submitted upon the oath of the taxpayer. The Town shall consider the matters submitted by the taxpayer and shall make a decision as to the proper amount of taxes, penalty and interest due, which decision shall be final and binding, except as modified by State statutes.

(Prior code 4-36; Ord. 2006-1236 §1)

Commented [SH7]: Language updated to account for both 4-3-120 and 4-3-130

Commented [SH8]: Brought from 4-3-210

Sec. 4-3-240 Remittance of tax; electronic database; retailer held harmless.

(a) All businesses reporting taxes and registering for business licenses must use the acceptable standard reporting forms and electronic portals provided by the Town or allowed for use by the Town to remit the taxes and fees owed to the Town.

(b) Any retailer that collects and remits sales tax to the Town as provided in this article may use an electronic database of state addresses and rates that is certified by the state department of revenue pursuant to C.R.S. §§ 39-26-105.2 or 39-26-105.3, to determine the jurisdictions to which tax is owed.

(c) Any retailer that uses the data contained in an electronic database certified by the state department of revenue pursuant to C.R.S. §§ 39-26-105.2 or 39-26-105.3, to determine the jurisdictions to which tax is owed and to determine the rates 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 electronic database, provided that the retailer demonstrate that it used the most current information available in such electronic database on the date that the sale occurred. Each retailer shall keep and preserve such records as prescribed by the finance director to demonstrate that it used the most current information available in the electronic database on the date that the sale occurred. Notwithstanding the above, if the 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.

Sec. 4-3-250. Excess collections.

If any vendor shall, during any reporting period, collect as a tax an amount in excess of the rates set forth in this Chapter, of his or her total taxable sales, he or she shall remit to the Director the full net amount of the tax herein imposed and also such excess. If records of Town and state tax collections are kept separately, the vendor will remit the excess of the Town tax collected over and above Town net taxable sales and service. If there is no separate record kept of Town and state tax collections and it is not possible to determine the excess to be remitted to each, the vendor shall remit fifty-six percent (56%) of such excess to the Town. The retention by the vendor of any excess collections, or the intentional failure to remit punctually to the Director the full amount required to be remitted by the provisions of this Article, is hereby declared to be a violation of this Article.

Editor's note(s)—Ord. 2018-1561 , § 2, adopted June 25, 2018, repealed the former § 4-3-490 and enacted a new section as set out herein. The former § 4-3-490 pertained to similar subject matter and derived from Prior code 4-50; and Ord. 2006-1236, § 1.

Commented [SH9]: Brought from 4-3-490

Sec. 4-3-260. Refunds.

(a) Generally. A refund shall be made for the tax so paid under dispute by any purchaser or if the amount paid through a tax return is greater than the amount due as provided in this chapter. Interest shall be paid on refunds for overpayments or withholdings made. Interest shall accrue from the time the overpayment is made. The rate of interest shall be calculated at nine (9%) percent per annum. Such refund shall be made by the Director upon entitlement thereto shown by the applicant and only after compliance with the following conditions.

(b) Applications:

i. Applications made for taxes paid by a purchaser shall be made within sixty (60) days after the purchase on which the exemption is claimed. Each application shall be supported by an affidavit of the purchaser, accompanied by the invoice or sale receipt and be made upon such forms and contain such information as shall be prescribed by the Director.

ii. Applications made for taxes paid through a tax return by a licensed vendor shall be made within three (3) years after the sale or purchase on which the exemption is claimed. An application for a refund by a vendor shall be made within three (3) years of the return filed in which the amount paid through the return is claimed to be paid in error. Each application shall be supported by the invoice or sale

receipt, evidence taxes collected have been refunded to the purchaser and support to the revised calculation of the tax return due and be made upon such forms and contain such information as shall be prescribed by the Director.

iii. Applications made for overpayment related to the use tax deposit paid through a building permit shall be filed within ninety (90) days from the issuance of certificate of occupancy or final inspection or whichever comes later.

(c) Decisions. Upon receipt of such affidavit, invoice or receipt, and application, the Director shall examine the same and shall give notice to the applicant by an order in writing of its decision thereon.

(d) Petition. An aggrieved applicant may, within thirty (30) days from the date of the decision to deny or reduce their claim for refund, petition the Director in writing for review of the decision in the manner provided in section 4-3-320 of the Code.

(e) Refunds not assignable. The right of any person to a refund under this chapter shall not be assignable, and application for refund must be made by the same person who purchased the goods and paid the tax thereon as shown in the invoice for the sale thereof.

(f) Penalty for violating refund provisions. Any applicant for a refund under the provisions hereinabove, or any other person, who shall make any false statement in connection with an application for a refund of any tax shall be deemed guilty of a violation of this chapter.

(g) Violations of refund provisions to be used as evidence of fraudulent intent. If any person be convicted under the provisions of this section, the proof of such conviction shall be prima facie evidence of fraud by that person in any appropriate action brought or taken for recovery of other refunds made by the Director to such person within the prior three (3) years to the conviction. A brief summary of the penalties available under this chapter for violations of it shall be printed on each form issued by the Director for application for refund.

(k) 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 and use taxes to the Town.

(1) As used herein, *claim for recovery* means a claim for reimbursement of sales and use taxes paid to the wrong taxing jurisdiction.

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

(3) The Town may make a written claim for recovery directly to the municipality that received tax and/or penalty and interest owed to the Town or, in the alternative, may institute procedures for collection of the tax from the taxpayer or vendor. The decision to make a claim for recovery lies in the sole discretion of the Town. Any claim for recovery shall include a properly executed release of claim from the taxpayer and/or vendor releasing his or her claim to the taxes paid to the wrong municipality, evidence to substantiate the claim, and a request that the municipality approve or deny, in whole or in part, the claim within ninety (90) days of its receipt. The municipality to which the Town submits a claim for recovery may, for good cause, request an extension of time to investigate the claim, and approval of such extension by the Town shall not be unreasonably withheld.

(4) Within ninety (90) days after receipt of a claim for recovery, the Town shall verify to its satisfaction whether or not all or a portion of the tax claimed was improperly received, and shall notify the municipality submitting the claim in writing that the claim is either approved or denied in whole or in part, including the reasons for the decision. If the claim is approved in whole or in part, the Town shall remit the undisputed amount to the municipality submitting the claim within thirty (30) days of approval.

If a claim is submitted jointly by a municipality and a vendor or taxpayer, the check shall be made to the parties jointly. Denial of a claim of recovery may only be made for good cause.

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

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

(Prior code 4-42; Ord. 2006-1236 §1)

Commented [SH10]: Brought from 4-3-410

Sec. 4-3-270. Sale or purchase of business or property.

(a) New license required. Any sale, transfer or purchase of an interest in a business enterprise by any person, as defined, where the respective interest of the person purchasing or selling as a result of the transaction has changed in any degree, requires, in the case of a retailer or other person required to be licensed under this Article, the issuance of a new license.

(b) Final return. Any person, vendor or taxpayer who sells out his or her business or stock of goods or all the assets of a business to another person, or any person or taxpayer who quits business, shall make out the return as required by this Article and remit all taxes due within twenty (20) days after the business or stock of goods is sold, or the taxpayer quits business.

(c) Tax due on business property. The Town tax shall be remitted on the purchase price paid for tangible personal property that is acquired with the purchase, transfer of title or transfer of possession of a business, with the exception of items to be resold in the ordinary course of business operations of the new business. The tax shall be based on the price paid for such chattels as recorded in the bill of sale or agreement and constituting a part of the total transaction at the time of the sale or transfer, provided that the valuation is as great as or greater than the fair market value of such merchandise or chattels. Where the transfer of ownership is a package deal made by a lump-sum transaction, the tax shall be paid on the book value if no determination has been made. When a business is taken over in return for the assumption of outstanding indebtedness owed by former owners, the tax shall be paid on the fair market value of all taxable tangible personal property acquired by the purchaser. The "sale" or "sale and purchase" of a business does not include the items under Section 39-26-102(10), C.R.S. A bona fide gift of tangible personal property is not a "sale."

(d) Prior taxes due. Taxes due upon the sale of a business or stock of goods include all sales taxes which were collected or should have been collected prior to the sale, and all use taxes accruing or payable prior to the sale.

(e) Purchaser to withhold payment until tax paid. The purchaser or successor to the business, stock of goods or assets shall withhold sufficient of the purchase money to cover all of said taxes until such time as the former owner produces a receipt from the Director showing that all taxes have been paid in full.

(f) Purchaser liable for prior owner's unpaid tax. The purchaser of a business is liable for any unpaid tax of a predecessor. Vendors or consumers having outstanding accounts on which sales or use tax has not been remitted must compute and pay the tax at the time of sale.

(g) Seller and seller's agent liable for tax. The seller or his or her agent will be held liable for tax remittance on the sale of business in the event the purchaser fails to remit the tax due on the purchase.

(h) Seller and purchaser both liable. Until all taxes due under this Section are paid in full, both the former owner and the purchaser shall remain personally liable thereon and subject to all collection proceedings available under this Article. Action by the Town against the former owner shall not prevent the exercise by the Town of all remedies provided herein against the successor owner.

(i) Delinquent taxes a lien on property. Any person who takes or purchases personal or real property under lease, title-retaining contract or other contract arrangement, by purchase, foreclosure sale or otherwise, takes the

same subject to the lien for any delinquent taxes owed by the original owner and shall be liable for the payment of all delinquent taxes, interest, penalty and collection costs of such prior owner, not however, exceeding the value of the property so taken or acquired. Any person who takes title to or possession of any real property upon which a tax is owed takes said property subject to the lien for said delinquent tax and shall be liable for the payment thereof to the extent of the tax, interest, penalties and collection costs.

(Prior code 4-44; Ord. 2006-1236 §1)

Commented [SH11]: Current section 4-3-430

Division 5 Administration

Sec. 4-3-280. Limitations.

(a) General limitations.

(1) Statute of limitations. Except as provided in this Section, the taxes for any period, together with the interest thereon and penalties with respect thereto, imposed by this Article shall not be assessed nor credit taken, nor shall any notice of lien be filed, distraint warrant be issued, suit for collection be instituted or any other action to collect the same be commenced, more than three (3) years after the date on which the tax was or is payable; nor shall any lien continue after such period, except for taxes assessed before the expiration of such period, notice of lien with respect to which has been filed prior to the expiration of such period.

(2) In the case of a failure to make a return or in the case of a false or fraudulent return with intent to evade tax, the tax, together with interest and penalties thereon, may be assessed, or proceedings for the collection of such taxes may be begun at any time.

(3) The commencement of collection proceedings, payment arrangements, or the mailing of a notice of audit shall toll the running of the statute of limitations. For purposes of the application of the statute of limitations to use tax paid on a building permit, tax shall not be assessed, nor shall any notice of lien be filed, distraint warrant be issued, suit for collection be instituted, or any other action to collect the same be commenced, more than three (3) years after the date of the certificate of occupancy.

(4) Taxpayer's retention of records. It shall be the duty of every person liable to the Town for any tax to keep and preserve for a period of at least four (4) years following the due date of the return or the payment of the tax all such books, invoices and other records necessary to determine the tax, and the same shall be open for examination by the Director. The taxpayer shall maintain its books, invoices, accounts or other records until the examination, inspection and audit is completed.

(5) Taxes held in trust. All sums of money paid by the purchaser to the retailer as taxes imposed by this Article shall be and remain public money, the property of the Town, in the hands of such retailer. He or she shall hold the same in trust for the sole use and benefit of the Town, until paid to the Director; and, for failure to so pay to the Director, such retailer shall be punished as provided by law. Thus, the statute of limitation provided herein does not apply to collections of public money in the possession of the retailer, and such monies are collectable at any time after their due date upon demand of the Director. Bankruptcy will not excuse unremitted taxes collected in trust.

Sec. 4-3-~~(d) Failure to file penalty. If a person, taxpayer or vendor neglects or refuses to make a return as required in this code or fails to pay any sales or use tax as required by this code, and/or unless the taxpayer shows that his or her failure to comply fully with this code is due to reasonable cause, which the taxpayer may prove in a hearing requested pursuant to this code~~**290. Director to examine returns, permits, and records.**

(a) The Director is authorized to examine, inspect and audit the books, invoices, accounts and other records kept or maintained by the taxpayer for the collection or payment of the taxes imposed by this chapter. If the Director determines that any taxpayer neglects or refuses to make a timely return in payment of the taxes or to pay or to correctly account for any taxes as required by this chapter, the Director shall make an estimate, based upon such information as may be available, with or without employing investigative powers vested in the Director by this chapter, of the amount of the taxes due for the period or periods for which the taxpayer is delinquent; and ~~shall add~~upon the basis of such estimated amount, compute and assess in addition thereto a penalty equal to fifteen (15) percent thereof, together with the interest on such delinquent taxes at the rate of one (1) percent each month, or a fraction thereof, from the date when due until the date paid.

(b) Promptly thereafter the Director shall notify the delinquent taxpayer in writing and demand payment thereof of such estimated taxes, penalty and interest.

(c) Such estimated amounts shall thereupon become an assessment, and such assessment shall be final and due and payable from the taxpayer to the town thirty (30) days from the date of the notice and demand; provided, however, that within said thirty-day period the delinquent taxpayer may petition the Director in writing for review of the assessment in the manner provided in section 4-3-320 of the Code. The filing of a petition shall not toll the accrual of interest on the amount of taxes due.

~~(a)~~(d) Interest and penalty assessment. Interest and penalties prescribed under this Article shall be paid upon notice and demand, and shall be assessed, collected and paid in the same manner as the tax to which it is applicable. If any portion of a tax is satisfied by credit of an overpayment, no interest or penalty shall be imposed under this Section on the portion of the tax so satisfied. A penalty equal to the greater of the sum of fifteen dollars ($15.00) or fifteen percent (15%) thereof, and interest is calculated on such delinquent taxes at the rate of one and one-half percent (1½%) from the date when due.

Penalty for fraud. If any deficiency in taxes paid is due to fraud with the intent to evade the tax, there shall be added, instead of the penalty prescribed in Subsection (d) above, a penalty of one hundred percent (100%) of the total amount of the deficiency to the assessment required by Subsection (a) above. ~~(e) Mathematical error on tax returns. In the event that the amount of tax is understated on the taxpayer's return due to a mathematical error, the Director shall notify the taxpayer by written Notice of Final Determination; Assessment and Demand for Payment of the amount of tax in excess of that shown in the return which is due and has been assessed. The taxpayer shall have no right of protest or appeal as in the matter of other assessments but shall pay the tax due and assessed or file an amended return to show the true amount of tax due within fifteen (15) days of the date that such assessment is sent by the Director.~~

~~(b)~~(c) ~~(f) Penalty for fraud. If any deficiency in taxes paid is due to fraud with the intent to evade the tax, there shall be added, instead of the penalty prescribed in Subsection (d) above, a penalty of one hundred percent (100%) of the total amount of the deficiency to the assessment required by Subsection (a) above.~~ Interest ~~on such deficiency~~ shall accrue and be collected at a rate of one and one-half percent (1½%) per month on the amount of such deficiency from the time the return was due.

~~(c)~~(f) ~~(g)~~ Special penalty for repeated enforcement. In any assessment issued to a person, vendor or taxpayer against whom enforcement proceedings have been commenced in the past, a special penalty, in addition to all others provided in this code, shall also be assessed. This special penalty shall be equal to the greater

of two hundred fifty dollars ($250.00) or twenty-five percent (25%) of the tax deficiency. For purposes of this Subsection, *enforcement proceedings* shall mean:

a. ~~(1)~~ Issuance of a distraint warrant;

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

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

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

~~(i) Interest and penalty assessment. Interest and penalties prescribed under this Article shall be paid upon notice and demand, and shall be assessed, collected and paid in the same manner as the tax to which it is applicable. If any portion of a tax is satisfied by credit of an overpayment, no interest or penalty shall be imposed under this Section on the portion of the tax so satisfied.~~ (Prior code 4-63; Ord. 2006-1236 §1)

Sec. 4-3-300. Audits.

(a) The Director, town staff or a contract auditor as designated by the Director, may, at any time within three years of the date the tax was due, for the purpose of ascertaining the correct amount of tax due from any return, construction permit or construction equipment declaration, conduct an audit by examining any relevant books, accounts, and records of such person the responsible party and by interviewing the taxpayer and the taxpayer's officers, agents, and employees.

(b) The Director may assess the taxpayer for all expenses associated with retrieving the documentation from the responsible person and sending auditors to the location selected by the taxpayer and for reasonable travel expenses, including food and lodging and travel costs, incurred by the auditors during the period necessary to conduct the audit from the time they depart the town and until their return to the town. Such liability, net of any deposit, shall be stated in the final audit and assessment and shall be treated as a debt owing to the town.

(d) Coordinated audits with other jurisdictions.

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

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

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

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

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

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

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

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

a. When the proposed audit is a jeopardy audit;

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

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

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

(Prior code 4-55; Ord. 2006-1236 §1)

Commented [SH12]: Current 4-3-630

Sec. 4-3-310. Notice by mail.

The taxpayer shall at all times have the burden of ensuring that his or her correct mailing address, e-mail address and fax number are on file with the Director. In the event that a notice is sent to the taxpayer pursuant to this code and said notice is not received by the taxpayer through no fault of the Town, , such notice shall be deemed given on the date mailed, and the Town shall have no further obligation to complete service of the notice.

(Prior code 4-57; Ord. 2006-1236 §1)

Commented [SH13]: Current 4-3-650

Sec. 4-3-320. Hearings and Appeals.

(a) Request for hearing. Any taxpayer may request an informal hearing on any proposed tax by reason of Notice of Final Determination; Assessment and Demand for Payment, or by reason of denial of his or her claim for refund, by application to the Director within thirty (30) calendar days of the date that a notice of deficiency, assessment or denial of refund is sent by the Director. The request for hearing shall set forth the taxpayer's reasons for and the amount of the requested changes in the deficiency, assessment or denial of refund.

(b) Hearing time and place. The Director shall notify the taxpayer in writing of the time and place for such hearing thirty (30) calendar days prior thereto, unless the taxpayer requests shorter notice or an extension of time.

1) In no event shall the hearing be held more than one hundred eighty (180) days after the Director's receipt of request for a hearing, unless the taxpayer and Director agree in writing: (1) that the hearing shall be held and a decision issued within such further agreed time or (2) that no hearing shall be held before the manager, in which case, the taxpayer may pursue further review in accordance with subsection (e) of the Code.

2) If none of the events described in subsection (b)(1) of this section have occurred, the Director may notify the taxpayer in writing that the Director does not intend to conduct a hearing, in which case, the taxpayer may pursue further review in accordance with subsection (e) of this Section.

3) If none of the events described in subsections (b)(1) or (b)(2) of this section have occurred, the taxpayer may pursue further review in accordance with subsection (e) of this Section any time after one hundred eighty (180) days or such further agreed time has passed.

(c) Time limitation on request for hearing. After the expiration of thirty (30) calendar days from the date that the Notice of Final Determination; Assessment and Demand for Payment or Denial of Refund is sent, if the tax has not been paid, or if no request for hearing has been requested or no written brief has been filed by the taxpayer, then the Notice of Final Determination; Assessment and Demand for Payment previously mailed, faxed or e-mailed shall constitute a final assessment of the amount of the tax specified, together with interest and penalty, or shall constitute a final Denial of Refund, as the case may be. The Director may promptly take necessary steps to collect all amounts owed. The taxpayer shall have no further right to a hearing, trial or appeal on the facts of the case.

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

(e) De novo review or appeal. The taxpayer may proceed to have a final order or decision of the Director involving the taxes imposed in article III of this chapter reviewed under the procedures set forth in C.R.S. § 29-2-302 within thirty (30 days) with the Executive Director at the Colorado Department of Revenue.

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

(Prior code 4-58; Ord. 2006-1236 §1)

Commented [SH14]: Current 4-3-660

Division 6 Enforcement

Sec. 4-3-330~~820~~. Jeopardy assessment.

(a) Jeopardy enforcement. If the Director finds that collection of the tax will be jeopardized by delay, in his or her discretion, he or she may declare the taxable period immediately terminated, determine the tax and issue notice and demand for payment thereof; and, having done so, the tax shall be due and payable forthwith, and the Director may proceed immediately to collect such tax as provided in Section 4-3-~~850~~350.

(b) Immediate enforcement action. In any other case wherein it appears that the revenue is in jeopardy, the Director may immediately issue demand for payment; and, regardless of the provisions of Sections 4-3-~~660 and 4-3-670~~320 of this Article, the tax shall be due and payable forthwith and, in his or her discretion, the Director may proceed immediately to collect said tax as provided in Section 4-3-~~850~~350.

(c) Security for payment. Collection under either Subsection (a) or (b) above may be stayed if the taxpayer gives such security for payment as shall be satisfactory to the Director.

(Prior code 4-64; Ord. 2006-1236 §1)

Commented [SH15]: Current 4-3-820

Sec. 4-3-~~830. False or fraudulent refund claim.~~

~~(a) Violation. Any applicant for refund under the provisions of this Article, or any other person who shall make any false statement in connection with an application for a refund of any taxes, shall be deemed guilty of a violation of this Article.~~

~~(b) Action to recover fraudulent claims. If any person is convicted of a violation of Subsection (a) above, such conviction shall be prima facie evidence that all refunds received by such person during the current year were obtained unlawfully, and the Director is hereby empowered and directed to bring appropriate collection proceedings for recovery of such refunds.~~

~~(Prior code 4-65; Ord. 2006-1236 §1)~~

~~Sec. 4-3-840~~340. Director's remedies in case of nonpayment.

(a) So long as a final assessment remains unpaid, the Director may take any of the following enforcement procedures against the defaulting taxpayer:

(1) Take such action as deemed necessary to revoke the taxpayer's sales tax license.

(2) Issue a summons to the person, vendor or taxpayer to appear in Municipal Court on charges of violating this Code.

(3) Issue a distraint warrant pursuant to this code.

(4) File a complaint in county or district court to collect all amounts owed.

(b) Regardless of the collection or enforcement procedures invoked by the Director, all unpaid taxes, penalties and interest shall be secured by a lien arising by operation of law as provided by this code.

(Prior code 4-66; Ord. 2006-1236 §1)

Commented [SH16]: Current location 4-3-840

Sec. 4-3-~~850~~350. Enforcing collection by distraint.

(a) Warrant. The Director may issue a warrant under his or her own hand directed to any representative of the Department of Finance, including the sheriff of any county of the State, commanding him or her to distraint, seize and sell the personal property of the taxpayer, except such personal property as is exempt from execution and sale by any provision of this Article, for the payment of the tax due, together with penalties and interest accrued thereon and collection costs:

(1) When any deficiency in tax is not paid within ~~fifteen (15~~thirty (30) days from the date of Notice of Final Determination; Assessment and Demand for Payment therefor and no hearing has been requested and no appeal from such deficiency assessment has been docketed with any district court of this State within said period;

(2) When any other amount of tax, penalty or interest is not paid within ~~fifteen (15~~thirty (30) days from the date of the assessment and demand for payment thereof; or

(3) Immediately upon making of a jeopardy assessment or of the issuance of a demand for payment, as provided in Section 4-3-~~820~~330.

(b) Distraint seizure.

(1) The agent charged with the collection shall make or cause to be made an account of the goods or effects distrained, a copy of which, signed by the agent making such distraint, shall be left with the owner or possessor, or at his or her usual place of abode with some member of his or her family over the age of eighteen (18) years, or at his or her usual place of business with his or her stenographer, bookkeeper or chief clerk; or, if the taxpayer is a corporation, shall be left with any officer, manager, general agent or agent for process, with a note of the sum demanded and the time and place of sale. If said notice cannot be served on the taxpayer within thirty (30) miles of the Town, it shall be mailed to the taxpayer's last known address, return receipt requested.

(2) The agent shall forthwith cause to be published a notice of the time and place of sale, together with a description of the property to be sold, in some newspaper within the county wherein distraint is made or, in lieu thereof and in the discretion of the Director, the agent or sheriff shall cause such notice to be publicly posted at the courthouse of the county wherein such distraint is made, and copies thereof to be posted in at least two (2) other public places within said county.

(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 such notification to the owner or possessor of the property and the publication or posting of such notices. Said sale may be adjourned from time to time by said agent or sheriff if he or she deems it advisable, but not for a time to exceed in all ninety (90) days from the date first fixed for the sale. When any personal property is advertised for sale under distraint as aforesaid, the agent or sheriff making the seizure shall proceed to sell such property at public auction, offering the same at not less than a fair minimum price, including the expenses of making the seizure and of advertising the sale. If the amount bid for the property at the sale is not equal to the fair minimum price so fixed, the agent or sheriff conducting the sale may declare the same to be purchased by him or her for the Town. The property ~~so~~ purchased may be sold by the agent or sheriff under such regulations as may be prescribed by the Director.

(4) In any case of distraint for the payment of taxes, the real property, goods, chattels or effects so distrained shall be restored to the owner or possessor if, prior to the sale, the amount due is paid, together with the fees and other charges, or may be redeemed by any person holding a chattel mortgage or other evidence of right of possession.

(c) Certificate of sale and evidence of purchase. In all cases of sale, the agent or sheriff making the sale shall issue a certificate of sale to each purchaser, and such certificate shall be prima facie evidence of the right of the agent or sheriff to make such sale and the conclusive evidence of the regularity of his or her proceedings in making the sale; and shall transfer to the purchaser all right, title and interest of such delinquent taxpayer in and to the property sold. Where such property consists of certificates of stock in the possession of the agent or sheriff, the certificate of sale shall be notice, when received, to any corporation, company or association of said transfer, and said certificate of such sale shall be authority for such corporation, company or association to record the transfer on its books and records. Where the subject of sale is securities or other ~~evidences~~evidence of debt in the possession of the agent or sheriff, the certificate of sale shall be good and valid evidence of title in the person holding the same, as against any other person. Any surplus remaining above the taxes, penalties, interest, all costs and all expenses of making the seizure and of advertising the sale shall be returned to the owner or such other person having a legal right thereto; and, on demand, the Director shall render an account in writing of the sale. Expenses of a seizure include all reasonable costs and expenses incurred by the Town in enforcing collection by distraint, including but not limited to attorney's fees and all personnel costs of the Town.

(Prior code 4-67; Ord. 2006-1236 §1)

Sec. 4-3-~~860~~360. Recovery of unpaid tax by action at law.

(a) Action at law. The Director may also treat any such taxes, penalties or interest due and unpaid as a debt due to the Town from the taxpayer personally. In case of failure to pay the tax or any portion thereof, or any penalty or interest thereon when due, the Director may receive at law the amount of such taxes, penalties, interest and

collection costs in such county or district court of the county wherein venue may be proper under the applicable rule of civil procedure. The return of the taxpayer or the assessment made by the Director as herein provided shall be prima facie proof of the amount due.

(b) Writs of attachment. Such actions may be actions in attachment, and writs of attachment may be issued to the sheriff. In any such proceedings, no bond shall be required of the Director, nor shall any sheriff require of the Director an indemnifying bond for executing the writ of attachment or writ of execution upon any judgment entered in such proceedings. The Director may prosecute appeals or writs of error in such cases without the necessity of providing a bond ~~therefor~~therefore. The Town Attorney, when requested by the Director, may commence action for the recovery of taxes due under this Article, and this remedy shall be in addition to all other existing remedies or remedies provided in this Article.

(c) Civil action to enforce a lien against real property. In any case where there has been a refusal or neglect to pay any tax due the Town, the Director may cause a civil action to be filed in the district court of the county in which is situated any real property which is subject to said tax, to enforce the lien of the Town for such tax upon the real property situated in that county or in any other county in the State which may be subject to such lien or to subject any real property or any right, title or interest in real property to the payment of such tax. The court shall decree ~~a~~the sale of such real property and distribute the proceeds of such sale, according to the findings of such court in respect to the interest of the parties and of the Town. The proceedings in such action and the manner of sale, the period for and manner of redemption from such sale and the execution of deed of conveyance shall be in accordance with the law and practice relating to foreclosures of mortgages upon real property. In any such action, the court may appoint a receiver of the real property involved in such action if equity so requires.

(d) Exhaustion of administrative remedies. No lawsuit may be filed by the Town until the time for the taxpayer to exercise his or her administrative remedies or to file an appeal has expired. This remedy shall be in addition to all other existing remedies available to the Town. No de novo trial of the facts shall be permitted if the taxpayer has had a hearing before the Director or has had the opportunity for such a hearing~~,~~ but failed to exhaust his or her administrative remedies.

(Prior code 4-68; Ord. 2006-1236 §1)

Commented [SH17]: Current location 4-3-860

Sec. 4-3-~~870~~370. Sales and use tax ~~constitutes~~constitute a lien.

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

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

(2) The real and personal property owned or leased by any such taxpayer, including personal property affixed to real property, ~~and~~ shall take precedence on all such property over other claims and mortgages.

(b) This lien shall arise upon the day the tax becomes due and payable and shall be extinguished by operation of law when the tax is paid in full, including any interest, penalty and collection costs.

(c) ~~Whenever~~In the ~~business or property of~~event that any taxpayer subject to the tax imposed by this ~~code~~chapter shall be ~~placed~~ in ~~receivership,~~ bankruptcy or ~~assignment for the benefit of creditors, or seized under distraint for property or other taxes~~debtorship, all taxes, penalties, and interest imposed by this ~~code, and for~~chapter, which ~~said person is in any way liable under~~ accrued prior to the ~~terms~~filing of ~~this code~~the bankruptcy, shall ~~be~~remain a prior and preferred claim and lien against all ~~the property of said~~ real property, goods, furniture and fixtures, tools and equipment used by the taxpayer~~. No sheriff, receiver, assignee or other officer shall sell the property of any person subject to this code under process or order of any court, without first ascertaining from the Director~~ in conducting the business. Similarly, all taxes, penalties, and interest imposed by this chapter which accrue after the ~~amount of any taxes due and payable under this code. If there are any such taxes due, owing or unpaid, it shall be~~ filing of the ~~duty of such officer to first pay~~bankruptcy shall remain a prior and preferred claim and lien against all real property, goods, furniture and fixtures, tools and equipment used by the ~~amount of said taxes out of~~taxpayer in conducting its business, during the ~~proceeds of said sale before making payment of any moneys~~course of the bankruptcy, except as otherwise provided by preemptive federal law. To the extent any of the Director's authority to pursue collection of taxes, penalty, or interest imposed by this chapter is stayed or otherwise impacted by preemptive federal law, the Director is authorized to ~~judgment creditors or other claims of whatsoever nature.~~ use procedural and substantive federal remedies to facilitate collection of the tax, penalty, or interest.

(d) At any time a tax has accrued but is unpaid, the Director may issue a notice of tax lien, setting forth the name of the taxpayer, the amount of the tax, penalties and interest, the date of the accrual thereof, and that the Town claims a first and prior lien therefor on the real and tangible personal property of the taxpayer. Said notice may be filed in the office of the clerk and recorder of any county in the state in which the taxpayer owns real or tangible personal property. Issuance of such notice and filing thereof shall be at the discretion of the Director and shall not affect the priority or validity of the lien provided by this code, which arises by operation of law when the tax accrues and is payable.

(e) Any representative of the Director to whom a distraint warrant has been issued may file a notice of lien on such forms as the Director may prescribe with the person in possession of any personal property or rights to property belonging to the taxpayer if not previously recorded with the county clerk and recorder. The Director may release said lien as to any part or all of the property or rights to property covered by such lien upon such terms as he or she may deem proper.

(f) Any lien for taxes as shown on the records of the county clerk and recorder as herein provided, upon payment of all taxes, penalties and interest covered thereby, shall be released by the Director in the same manner as mortgages and judgments are released.

(Prior code 4-69; Ord. 2006-1236 §1)

Commented [SH18]: Current location 4-3-870

Sec. 4-3-380. Certificate of discharge.

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

(b) Certificate of discharge to part of property. If any property, real or personal, under the law, shall be subject to a lien for the payment of any tax due the Town, the Director may issue a certificate of discharge of any part of the property subject to the lien if there is paid over to the Director in part satisfaction of the liability in respect to such tax an amount determined by the Director, which shall not be less than the value, as determined by him or her, of the interest of the Town in the part to be so discharged.

(c) How values are determined. In determining such values, the Director shall give consideration to the fair market value of the part to be so discharged and to such liens thereon as have priority to the lien of the Town.

(d) Certificate of release conclusive. A certificate of release or of partial discharge issued under Subsection (a) above shall be held conclusive that the lien of the Town upon the property released therein is extinguished, but shall not extinguish, nor release, any portion of the lien or property not specified in the release.

(Prior code 4-46; Ord. 2006-1236 §1)

Commented [SH19]: Current location 4-3-450

Sec. 4-3-880390. Compromise.

~~(a) Compromise limitation. After an assessment has become final because the taxpayer has waived his or her right to a hearing or because the hearing officer has issued his or her final decision, the~~ (a) The Director may compromise ~~to the extent of one thousand dollars ($1,000.00) any collection proceeding~~any assessment or claim for refund or credit arising under this ~~code.~~

~~(b) Compromise record. Whenever a compromise, in value or valuation, of one thousand dollars ($1,000.00) or less is made by the Director in any case, there shall be placed on file in the office of the Director the opinion of the Director with his or her reasons therefor, which may include financial inability of the taxpayer to pay a greater amount, with a statement of:~~

~~(1) The amount of tax assessed;~~

~~(2) The amount of interest, additional amount, additional to the tax or assessable penalty, imposed by law on the person, vendor or taxpayer against whom the tax is assessed; and~~

~~(3) The amount paid in accordance with the terms of the compromise.~~

chapter prior to referring the matter to the department of law. (Prior code 4-70; Ord. 2006-1236 §1)

Commented [SH20]: Current location 4-3-880

Sec. 4-3-890400. Evasion or avoidance of tax.

(a) It shall be a violation of this Article for any retailer, vendor, consumer, purchaser or any other person subject to the tax levied by this Article to refuse to make any return provided to be made by this Article; to make any false or fraudulent return or any false statements in any return; to fail or refuse to make payment to the Director of any taxes collected or due the Town; in any manner to evade the collection and payment of the tax or any part thereof imposed by this Article; or for any person or purchaser to fail or refuse to pay such tax, evade the payment thereof or aid or abet another in any attempt to evade the payment of the tax imposed by making a false return or a return containing a false statement. Such a person shall be subject to prosecution and the imposition of penalties as provided by law. Any person in violation of any Section of this Article shall be subject to these same penalties.

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

(c) Personal liability. Any taxpayer, or person who executes any form or report required by this Article to be submitted to the Town, shall be personally responsible for the payment of any taxes required under this Article.

(d) Summons to court for violations of code. The Town Manager or his or her duly authorized agents, including personnel of the Department of Finance, have the authority of peace officers, as that term is defined under the Colorado Municipal Court Rules, to summon into Municipal Court any person who may be in violation of this Article as set forth under Subsection (a) above.

(Prior code 4-71; Ord. 2006-1236 §1)

Commented [SH21]: Current location 4-3-890

Sec. 4-3-~~900~~410. Violations.

It shall be unlawful for any person to violate any of the provisions of the Article. Any violation of this Article shall be punishable under the penalty provisions of this Code.

ARTICLE VI Sales Tax and Use Tax Credits, Rebates and Waivers

(Business Assistance Agreement
Dated March 27, 2017)

Sec. 4-6-10. Definitions.

When used in this Article, the following words and phrases shall have the meaning set forth below:

Agreement. That certain Business Assistance Agreement dated March 27, 2017, between and among the Town of Windsor, Eagle Crossing Windsor, LLC, and Eagle Crossing Development, Inc.

Anchor grocer. A Retailer meeting the definition of Anchor Grocer under the terms of the Agreement.

Anchor retailer. Any Retailer meeting the definition of Anchor Retailer as set forth in the Agreement.

Developer. Eagle Crossing Windsor, LLC, or Eagle Crossing Development, Inc., or both.

Eligible sales tax. The revenue derived from the Town's sales tax rate, less any portion previously set aside for construction and expansion of the Windsor Community Recreation Center under Section 4-2-20 (2) and 4-2-20 (9) of this Code.

Eligible use tax. The revenue derived from the Town's use tax rate, less any portion previously set aside for construction and expansion of the Windsor Community Recreation Center under Section 4-2-20 (2) and 4-2-20 (9) of this Code.

Junior anchor retailer. Any Retailer meeting the definition of Junior Anchor Retailer as set forth in the Agreement.

Other retailer. Any Retailer doing business within The Brands East, but not meeting the definition of Anchor Retailer or Junior Anchor Retailer.

Retailer. Any sales tax licensee doing business at an address located within The Brands East.

The Brands East. That certain land area identified in Exhibit B to the Agreement~~,~~ and referred to in the Agreement as the "Site".

Sec. 4-6-20. Sales tax rebate authorized.

(a) Notwithstanding the imposition of sales tax and requirements for collection, remittance and administration thereof under Article III of this Chapter, the Eligible Sales Tax remitted to the Town by each Anchor Retailer shall be subject to rebate as provided in and as limited by Section 6.1 of the Agreement.

(b) Notwithstanding the imposition of sales tax and requirements for collection, remittance and administration thereof under Article III of this Chapter, the Eligible Sales Tax remitted to the Town by each Junior Anchor Retailer shall be subject to rebate as provided in and as limited by Section 6.2 of the Agreement.

(c) Notwithstanding the imposition of sales tax and requirements for collection, remittance and administration thereof under Article III of this Chapter, the Eligible Sales Tax remitted to the Town by each Other Retailer shall be subject to rebate as provided in and as limited by Section 6.3 of the Agreement.

(d) Nothing herein shall be construed to authorize a rebate of Eligible Sales Tax to any Retailer who becomes ineligible under Section 6.7 of the Agreement.

(e) The Director of Finance is hereby authorized to develop such rules and policies as are necessary to administer the rebate of Eligible Sales Tax collection as provided herein~~,~~ and shall be specifically authorized to assess a reasonable fee to defray the actual costs of administration of the provisions of this Section.

(Ord. 2017-1534 § 1)

Sec. 4-6-30. ~~(Ord. 2017-1534 § 1)~~

~~Sec. 4-6-30.~~ Eligible ~~use~~Use tax credit authorized.

(a) Notwithstanding the imposition of use tax and requirements for collection, remittance and administration thereof under Article III of this Chapter, each Anchor Retailer and Junior Anchor Retailer shall be granted a credit against Eligible Use Tax assessments as provided in and as limited by Section 5 (and all applicable sub-sections thereof) of the Agreement.

(b) Nothing herein shall be construed to authorize a credit for Eligible Use Tax for any Redevelopment (as that term is defined in the Agreement) under Section 7.2 of the Agreement.

(c) Nothing herein shall be construed to authorize a credit for Eligible Use Tax for any development subject to exclusions as provided in Section 7 of the Agreement, except as provided in sub-section 7.5.

(d) The Director of Finance is hereby authorized to develop such rules and policies as are necessary to administer the credit for Eligible Use Tax collection as provided herein~~,~~ and shall be specifically authorized to assess a reasonable fee to defray the actual costs of administration of the provisions of this Section.

(Ord. 2017-1534 § 1)

Sec. 4-6-40. Waiver of eligible sales tax.

For so long as an Eligible Sales Tax rebate is authorized under Section 4-6-20 of this Code:

(a) Each Anchor Retailer who assesses, collects and remits a fee imposed as a Credit PIF pursuant to Section 6.5 of the Agreement shall not be required to collect and remit Eligible Sales Tax to the extent such Anchor Retailer has in fact assessed, collected and remitted the revenue derived from the Credit PIF in accordance with the requirements of the Developer.

(b) Each Junior Anchor Retailer who assesses, collects and remits a fee imposed as a Credit PIF pursuant to Section 6.5 of the Agreement shall not be required to collect and remit Eligible Sales Tax to the extent such Anchor Retailer has in fact assessed, collected and remitted the revenue derived from the Credit PIF in accordance with the requirements of the Developer.

(c) Each Other Retailer who assesses, collects and remits a fee imposed as a Credit PIF pursuant to Section 6.5 of the Agreement shall not be required to collect and remit Eligible Sales Tax to the extent such Anchor Retailer has in fact assessed, collected and remitted the revenue derived from the Credit PIF in accordance with the requirements of the Developer.

(d) With respect to an Anchor Grocer only, any Developer waiver of Credit PIF imposition or collection applicable to such Anchor Retailer shall not affect the Eligible Sales Tax credit otherwise authorized under this Section, but only to the extent of such Developer waiver.

(e) Except as to the waiver of Eligible Sales Tax collection set forth in this Section, each Anchor Retailer, Junior Anchor Retailer and Other Retailer shall collect, and remit Town sales tax as otherwise required in this Chapter.

(f) The Director of Finance is hereby authorized to develop such rules and policies as are necessary to administer the waiver of Eligible ~~Use~~Sales Tax collection as provided herein~~,~~ and shall be specifically authorized to assess a reasonable fee to defray the actual costs of administration of the provisions of this Section.

Sec. 4-6-~~60~~50. Credit against eligible use tax.

(a) Each Anchor Retailer and Junior Anchor Retailer shall be excused from payment of Eligible Use Tax to the extent of any credit against Town Use Tax (as that term is defined in the Agreement) as provided in Section 5 of the Agreement, and as further specified in the sub-sections to Section 5 of the Agreement.

(b) Nothing herein shall be construed to excuse payment for Eligible Use Tax for any Redevelopment (as that term is defined in the Agreement) under Section 7.2 of the Agreement.

(c) Nothing herein shall be construed to excuse payment for Eligible Use Tax for any development subject to exclusions as provided in Section 7 of the Agreement, except as provided in sub-section 7.5.

(d) The Director of Finance is hereby authorized to develop such rules and policies as are necessary to administer the credits against Eligible Use Tax collection as provided herein~~,~~ and shall be specifically authorized to assess a reasonable fee to defray the actual costs of administration of the provisions of this Section.

(Ord. 2017-1534 § 1)

Sec. 4-6-~~70~~60. Rebates, credits and waivers revocable.

(a) No rebate, credit or waiver of Town sales and use tax collections as provided in this Article shall be deemed irrevocable. Nothing in the Agreement or this Article shall be construed to limit the legislative discretion and authority of the Windsor Town Board to in the future revoke, modify or amend the rebates, credits and waivers set forth in the Agreement or this Article.

(b) Notwithstanding the rebates, credits and waivers set forth in this Article, no imposition of the requirements of Article III of this Chapter upon Retailers shall be deemed a new tax, a tax rate increase, an extension of an expiring tax or a tax policy change, it being the Town's intention that each and every credit, rebate and waiver set forth in this Article and in the Agreement shall not be permanent.

(c) Notwithstanding the rebates, credits and waivers set forth in this Article, no re-imposition upon any Retailer of any tax subject to rebate, credit or waiver which expires or lapses as provided in the Agreement shall be deemed a new tax, a tax rate increase, an extension of an expiring tax or a tax policy change, it being the Town's intention that each and every credit, rebate and waiver set forth in this Article and in the Agreement shall not be permanent.

(Ord. 2017-1534 § 1)

Sec. 4-6-8070. Repeal or amendment by ordinance only.

Any repeal, modification or official action affecting the rebates, credits and waivers set forth in this Article shall only be taken by ordinance in accordance with the requirements of the Windsor Home Rule Charter.

ARTICLE III Business Licenses[1]

Sec. 6-3-10. Definitions.

The following words, terms and phrases when used in this Article shall have the meanings ascribed to them as set forth in this Section, except where the context clearly indicates a different meaning:

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

Employees means ~~persons~~people working within the Town for remuneration under the control and direction of an employer.

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

(a) Directly, indirectly or by a subsidiary maintaining a building, store, office, salesroom, warehouse or other place of business within the Town.

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

(c) Maintaining one (1) or more employees, agents or commissioned ~~sales persons~~salespersons on duty at a location within the Town.

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

~~(e~~(e) Participating in Seasonal Sales or Special Events in the Town.

(f) Mobile food vending as defined in Section 16-4-10~~-110(a).~~.

Sec. 6-3-20. License required~~.~~

(b) ~~(a)~~ It shall be unlawful for any person to establish any place of business in the Town, or engage in business within the Town, without first obtaining a license from the Town to conduct such business. ~~There will be no fee attached to this business license.~~ Except as provided in subsections (b), (c) (d) and (~~c~~e), only one (l) general business license shall be required for any establishment operating as a single enterprise. Separate general business licenses shall be required for each location of an enterprise operating at more than one (1) location within the Town. Business licenses cannot be transferred upon a change of ownership.

~~(b) Mobile Food Vendors as defined in Section 16-10-110, shall not engage in business within the Town without first obtaining a license from the Town to conduct such business. Only one (1) general business license shall be required for any mobile food vendor operating as a single enterprise, regardless of the number of vending~~

[1]Editor's note(s)—Ord. 2017-1532, § 12, adopted April 10, 2017, amended Art. III in its entirety to read as herein set out. Former Art. III, §§ 6-3-10—6-3-110, pertained to similar subject matter and derived from Ord. 2015-1503, § 9.

~~locations for such enterprise. Mobile Food Vendors must comply with the requirements of Section 6-3-40 and Section 16-10-110, in addition to any other applicable Code requirements. Each mobile food vending location must be reviewed by the Planning Department for verification of compliance with Section 16-10-110, to operate at each location. The business license requirements provided for in this Article shall not apply to federal, state or county offices, utility companies for which a franchise to operate has been granted pursuant to the provisions of the Home Rule Charter, or to the activity of telecommuting as defined in Section 16-2-20 of this Code.~~

~~(c) Retailers, who have a state standard retail license, with no physical presence or an incidental physical presence, shall not be required to obtain a Town business license.~~

~~(Ord. 2017-1532 §12; Ord. 2019-1588 §3; Ord. 2023-1680 §6)~~

~~Sec. 6-3-30.~~ Applications~~.~~

a. and contents. The application for every license required by and issued under the authority of the Town pursuant to this Article shall contain:

i. ~~(1)~~ The name of the person, firm or corporation seeking such license.

ii. ~~(2)~~ The residence address of such applicant, of each of the individual members of such firm or of each of the directing officers of such corporation and its principal place of business.

iii. ~~(3)~~ The street address, if any, where such business is to be carried on.

iv. ~~(4)~~ The ~~year~~period for which such a license is sought.

v. ~~(5)~~ Any other relevant information deemed to be necessary by the Director of Finance for the issuance of a business license.

~~Sec. 6-3-40. Mobile food vendors; insurance required.~~

b. ~~Every~~Term: All business licenses shall be issued by the Director of Finance or designee on an annual basis, and shall expire twelve (12) months after issuance.

c. License fee: There shall be no business license fee.

d. License form. Each business license shall be numbered and shall show the licensee name, physical location address, mailing address and expiration date of the license.

f. License posting and presentation required. The business license issued pursuant to this Section shall be displayed at all times in some conspicuous place within or upon each place of business. Every licensee shall produce his or her license for examination when requested to do so by any person representing the Town.

g. Nontransferable. Business licenses are personal to the licensee and shall not be transferable.

(c) Mobile Food Vendors, as defined in Section 16-4-10, shall not engage in business within the Town without first obtaining a license from the Town to conduct such business. Only one (1) general business license shall be required for any mobile food vendor operating as a single enterprise, regardless of the number of vending locations for such enterprise. Mobile Food Vendors must comply with the requirements this section and Section 16-4-10, in addition to any other applicable Code requirements. Each mobile food vending location must be reviewed by the Planning Department for verification of compliance with Section 16-4-10, to operate at each location.

1. Insurance required: every mobile food vendor engaged in business within Town-owned streets, alleys, and rights-of-way shall continuously maintain a policy of Commercial General Liability insurance with a combined single limit of no less than five hundred thousand dollars ($500,000.00) per occurrence and policy of Products Liability insurance with a combined single limit of no less than five hundred thousand dollars ($500,000.00) per occurrence. Each such policy of insurance shall name the Town as an Additional Insured.

2. License fee. Fees for mobile vendors shall be assessed at the rate of twenty-five ($25) dollars per event.

(d) Retailers holding a state standard retail license that ensures payment of sales and use tax to the Town and who qualify for a general business license free of charge as allowed under certain conditions of section C.R.S. 39-26-802.9; do not need to obtain a sales and use tax license directly with the Town. They will be provided a Town specific license number for record keeping and tracking of the sales and use taxes paid from either the Town's electronic remittance system or the Colorado Sales and Tax System.

~~(e)~~(e) Seasonal sales tax licenses, any seasonal sales or farmers markets, as defined by Section 16-4-30 of this Code, engaged in business in the Town shall first obtain a seasonal sales tax license in order to do business within the Town. A seasonal sales tax license shall be issued upon and subject to all of the following conditions:

(1) Application and contents. The Town seasonal sales tax license shall be granted only upon an application, signed and dated under penalty of perjury, in person by an owner or officer of the business, and providing the following information:

a. The name, address and date of birth of the person desiring such license.

b. The name of such business, its character and proposed duration thereof.

c. The applicable federal identification number and the state license number of the business, if any.

d. The intended temporary physical location of the business.

e. The total retail value of the inventory intended for sale at the intended temporary physical location of the business.

f. The applicable contact phone number, fax and e-mail address of the applicant; and

g. The date of birth, driver's license number and Social Security number of an officer or owner of the business.

(2) License form. Each seasonal sales tax license shall be numbered and shall show the licensee's name, physical location address, mailing address and expiration date of the license.

(3) License posting and presentation required. The seasonal sales tax license issued pursuant to this Section shall be displayed at all times in some conspicuous place within or upon each temporary place of business. Every licensee shall produce his or her license for examination when requested to do so by any person representing the Town.

(4) Nontransferable. Seasonal sales tax licenses are personal to the licensee and shall not be transferable.

(5) License fee. Each application for and renewal of a seasonal sales tax license shall be accompanied by payment of a nonrefundable licensing fee in the amount of the then-prevailing application fee or renewal fee for a seasonal sales tax license, respectively, at the time the application or renewal is submitted for review.

(6) Expiration, renewal and renewal fees. Notwithstanding any information submitted within the application required under Paragraph (1) above, all seasonal sales tax licenses shall expire upon expiration of the seasonal sales permit issued pursuant to Chapter 16, Article XXXII of this Code.

(7) Filing of returns, payment of tax due. The licensee under any seasonal sales tax license shall in person file a seasonal sales tax return in the form approved by the Director. The seasonal sales tax return shall be signed under penalty of perjury by the licensee and filed with payment in full of all tax due within forty-eight (48) hours of the conclusion of temporary sales at the physical location identified in the application.

(e) Special Events, no special event shall occur without the issuance of a special events license to the organizer of the event.

1) The vendors of 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 licenses and collect and remit the tax to the Town pursuant to this Article. The organizer shall remit all taxes collected by the vendors for the event regardless if the vendors have a separate license with the Town.

2) No later than two (2) days before the start of the special event, the special events organizer shall provide the Director with a list of the names and addresses of all vendors of the special event.

3) Organizers of a special event must remit the sales tax collected by all vendors and complete a tax schedule on a form provided by the Director. The tax schedule and tax remittance are due fifteen (15) days after the special event ends. The organizer will be permitted to take the deduction for the two and two-thirds percent (2.33%) of taxes remitted. This deduction is limited to two hundred dollars ($200.00). This deduction is not allowed if the schedule and tax remittance are not received by the Department of Finance by the due date.

4) License fee. Fees for special events shall be assessed at the rate of twenty-five ($25) dollars per event.

(f) The business license requirements provided for in this Article shall not apply to federal, state or county offices, utility companies for which a franchise to operate has been granted pursuant to the provisions of the Home Rule Charter, or to the activity of telecommuting as defined in Section 16-3-20 of this Code.

(Prior code 4-40; Ord. 2006-1236 §1; Ord. No. 2019-1588)

Editor's note(s)—Ord. No. 2019-1588, adopted June 10, 2019, did not expressly amend § 4-3-340, but pertained to similar subject matter. § 4-3-340 has been amended at the request of the Town following the adoption of Ord. No. 2019-1588.

(Ord. 2017-1532 §12; Ord. 2019-1588 §3; Ord. 2023-1680 §6)

Sec. 6-3-~~50~~30. Issuance.

All licenses will be issued by the Director of Finance upon receipt of the following:

(1) A proper application containing all applicable information required by this Article, together with such additional information as the Director of Finance may deem necessary.

(2) Proof of payment to the Town of the ~~annual fee~~any applicable fees.

(3) The fulfillment of all other specific license requirements that may be imposed by the Town ~~relating to the issuance of a business license, including satisfactory proof of the insurance~~as required under Section 6-3-~~40~~20 above.

~~**Sec. 6-3-60. License fee.**~~

~~There shall be no Town business license fee.~~

~~Editor's note(s)—Ord. No. 2019-1588, adopted June 10, 2019, did not expressly amend § 6-3-60, but pertained to similar subject matter. § 6-3-60 has been amended at the request of the Town following the adoption of Ord. No. 2019-1588.~~

~~**Sec. 6-3-70. Term.**~~

~~All licenses shall be issued by the Director of Finance or designee on an annual basis, and shall expire twelve (12) months after issuance.~~

~~Sec. 6-3-80~~Sec.6-3-40**. Records.**

The Director of Finance or designee shall keep a record of all business licenses issued, setting forth the name of every licensee and the registered place of business.

Sec. 6-3-~~90~~50. Revocation and suspension.

Any license issued pursuant to the provisions of this Article may be revoked or suspended upon the violation of any federal, state or municipal laws, rules and ordinances applicable in the Town, provided that no license shall be revoked or suspended except by action of the Town Board upon a verified complaint from the Town Manager specifying such violation. Prior to revocation or suspension, the Town Board shall conduct a hearing thereon and the licensee shall be entitled to be present and represented by counsel at such hearing and to present evidence at such hearing.

Sec. 6-3-~~100~~60. Inspections.

The Town shall be entitled at any time upon reasonable notice to the owner of any business to inspect the premises occupied by the business to ensure compliance with the provisions of this Article.

Sec. 6-3-~~110~~70. Violation and penalty.

Any person who violates a provision of this Article is guilty of a misdemeanor and, upon conviction thereof, shall be punished in accordance with the applicable provisions of this Code. Each day of operation of a business in violation of this Article shall constitute a separate offense. In addition to the foregoing, the Town shall be entitled to seek all other available relief at law or in equity with regard to violation of the provisions of this Article, including but not limited to injunctive relief.

MEMORANDUM

Date: August 26, 2024
To: Mayor and Town Board Members
From: Dean Moyer, Director of Finance
Re: Grocery Sales Tax Rebate Program
Item #: #3

Background / Discussion:

We are proposing a Grocery Sales Tax Rebate Program to be made available to the citizens of Windsor that may be struggling in light of increases in the cost of living in Colorado. A number of Colorado Municipalities have programs in place offering citizens rebates on sales taxes paid on grocery purchases. Windsor does not currently have such a program Tonight's discussion introduces a proposal aimed at benefitting Windsor citizens in need of a bit of relief.

Financial Impact

Unknown at this time depending on local participation. Research of local governments shows an average of roughly 1,000 participants annually at a cost of roughly $150,000 annually.

Relationship to Strategic Plan

Vibrant Local Economy and Economic Development

Attachments

Power Point Presentation from Finance
Proposed application package

Recommendation

None at this time as Board action will be required at a future meeting

Grocery Sales Tax Rebate Program

Who Qualifies? Applicant must:

- Meet financial Eligibility guidelines (See Chart Below);
- **And** have been a Town of Windsor resident in 2024. Eligible refunds will be pro-rated if residency was less than the full year.

Financial Eligibility guidelines:

Annual Income Limitation	$66,886/Household

Full Name:

_____

Residence Address:

_____

Mailing Address: _____

Phone Number: _____ **Email Address:** _____

Household Income Total: _____ **Lived in Windsor number of months in 2024**_____

Other Household members who lived with you the full year

Name	Age

Please provide photo Id, proof of residency, household income or sign the oath if you are not required to file federal tax returns.

Oath of Income: I declare that I am not required to file a federal tax return 2024.
Signature:_____

Signature:_____**Date:**_____

I Verify the information stated on this application is true.

DOCUMENT CHECKLIST: All Applicants

PLEASE ATTACH THE FOLLOWING DOCUMENTATION:

1. **Photo ID:** Valid U.S. or foreign government-issued photo ID including full name, date of birth, and photo.

   □Form of ID you are attaching (driver's license, passport, etc): __

2. **Proof of Residency:** Have lived in the Town of Windsor between Jan. 1, 2024 through Dec. 31, 2024. Proof of residency may include one or more of the following documents. Please check all that apply:

   □ lease, deed

   □ property tax receipt

   □ the attached "Landlord Affidavit" completed and signed by your landlord or housing provider, or other proof establishing residency.

3. **Proof of Income:** Check one:

   □ Copy of federal income tax return for 2023.

   □ "Oath of Income" If you were not required to file a federal income tax return for 2023.

4. **Grocery Sales Tax Receipts:** Receipts showing Town of Windsor Sales Tax paid on grocery purchases during the time period covered by this application. Refunds are limited to $250/household/year. Refunds will be pro-rated for part year residents based on number of months of residency/12 months.

Have you attached the required documentation to this application?

TOWN OF WINDSOR COLORADO

LANDLORD AFFIDAVIT

I declare that the following information is true and correct:

_____ am the landlord for the property located at
(Landlord's name)

_____
(Address of Property)

I hereby certify that _____ has been a
(Tenant's name)

resident of the property from _____to _____
(Start and end date: Month/Day/Year) Landlord's

Phone Number: _____

Landlord's Signature: _____

Today's Date: _____ __

This form is provided for applicants of the Food Tax Rebate Program as a convenient method to prove city residence solely for this program. Applicants who own their own home, or who have provided proof of residency for this program recently and have not moved do not have to file this form.

301 Walnut Street
Windsor, CO 80550

Office: 970-674-2400
Fax: 970-674-2456

www.windsorgov.com

FUTURE TOWN BOARD MEETINGS

September 2, 2024	Canceled for Labor Day Holiday
September 9, 2024 5:30 p.m.	Town Board Work Session Board/Manager/Attorney Monthly Meeting Budget: Staffing Needs Remodel Estimates for Old Police Department
September 9, 2024 6:45 p.m.	Kern Board Regular Meeting
September 9, 2024 7:00 p.m.	Town Board Regular Meeting
September 16, 2024 5:30 p.m.	Town Board Work Session Budget: Capital Improvement Projects
September 23, 2024 5:30 p.m.	Town Board Work Session Liquor Licensing Legislative Update Downtown Parking Plan Land Use Legislative Updates
September 23, 2024 7:00 p.m.	Town Board Regular Meeting
September 30, 2024	Canceled for the 5th Monday
October 5, 2024 (Saturday)	Budget: Operating Requests
October 7, 2024	Canceled for the 1st Monday
October14, 2024 5:30 p.m.	Town Board Work Session Board/Manager/Attorney Monthly Meeting Compensation Study Overview and Presentation
October 14, 2024 7:00 p.m.	Town Board Regular Meeting
October 21, 2024 5:30 p.m.	Town Board Work Session Budget: Utility Rates for 2025
October 28, 2024 5:30 p.m.	Town Board Work Session
October 28, 2024 7:00 p.m.	Town Board Regular Meeting

November 4, 2024 5:30 p.m.	Town Board Work Session Budget Follow-up Discussion
November 11, 2024	Canceled for Veteran's Day Holiday
November 18, 2024 5:30 p.m.	Town Board Work Session Budget Wrap-up/Revisions
November 25, 2024 5:30 p.m.	Town Board Work Session
November 25, 2024 7:00 p.m.	Town Board Regular Meeting
December 2, 2024 5:30 p.m.	Town Board Work Session
December 9, 2024 5:30 p.m.	Town Board Work Session Board/Manager/Attorney Monthly Meeting
December 9, 2024 7:00 p.m.	Town Board Regular Meeting
December 16, 2024	Canceled
December 23, 2024	Canceled
December 30, 2024	Canceled

Future Work Session Topics

- Metro/Special District 101 Discussion
- Water 101 (January)