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<sup>1</sup> **Charter reference**—Levying of taxes to be done by ordinance, § 4.8; ordinance levying yes not to be passed as emergency ordinance, § 4.11; taxation generally, § 12.1.

<sup>2</sup> **Cross reference**—Tax levy and assessment for sale of alcoholic beverages, § 5.12.010 et seq.; licenses and permits generally, Title 14.

<sup>3</sup> **State law reference**—Taxation, Sections 31-20-101, 39-1-101 et seq., C.R.S.

## Chapter 23.04

### GENERAL PROVISIONS<sup>1, 2, 3</sup>

<sup>1</sup> **Editor's note**—Ord. No. 26-1992, repealed the provisions of former Art. III, relative to licenses and tax for retail sales and services and enacted new Arts. I and II [Ch. 23.04 through 23.32] to read as herein set out subsequently renumbering former Art. II as Art. III [Ch. 23.36]. The provisions of former Art. III derived from Ord. No. 16-1970; Ord. No. 28-1970; and Ord. No. 15-A-1972.

<sup>2</sup> **Charter reference**—Taxation, Art. XII.

<sup>3</sup> **Cross reference**—Administration generally, Title 2; licenses and permits generally, Title 14.

#### **Sec. 23.04.010. Words and phrases defined.**

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

*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.

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

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

*Business* means all activities engaged in or caused to be engaged in with the object of gain, benefit or advantage, direct or indirect. It shall include any business, trade, occupation, profession or calling of any kind and all other kinds of activities and matters, together with all devices, machines, vehicles and appurtenances used therein, any of which are conducted for private profit or benefit, either directly or indirectly, within the City.

*Business License* means an Aspen City sales tax license required pursuant to Section 23.32.030.

*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.

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

*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 obtained tax exempt status as a charitable not-for-profit organization pursuant to Section 501(c)(3) of the Internal Revenue Code; and
- (2) Is a religious organization or an organization which exclusively, and in a manner consistent with existing laws and for the benefit of an indefinite number of persons, freely and voluntarily ministers to the physical, mental or spiritual needs of persons and which thereby lessens the burdens of government.

*City* means the municipality of Aspen.

*Code* means the Aspen Municipal Code.

*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.

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

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

*Commercial packaging materials* means containers, labels and/or cases, that become part of the finished product to the purchaser, used by or sold to a person engaged in manufacturing, compounding, wholesaling, jobbing, retailing, packaging, distributing or bottling for sale, profit or use, and is not returnable to said person for reuse. Commercial Packaging Materials does not include Commercial Shipping Materials.

*Commercial Shipping Materials* means materials that do not become part of the finished product to the purchaser which are used exclusively in the shipping process. Commercial Shipping Materials include but are not limited to containers, labels, pallets, banding material and fasteners, shipping cases, shrink wrap, bubble wrap or other forms of binding, padding or protection.

*Community Organization* means a nonprofit entity organized and operated exclusively for the promotion of social welfare, primarily engaged in promoting the common good and general welfare of the community, so long as:

- (1) No part of the net earnings of which inures to the benefit of any private shareholder or individual;
- (2) No substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; and
- (3) Which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

*Construction equipment* means any equipment including mobile machinery and mobile equipment, which is used to erect, install, alter, demolish, repair, remodel, 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. This term includes, but is not limited to such things as: asphalt, bricks, builders' hardware, caulking material, cement, concrete, conduit, electric wiring and connections, fireplace inserts, electrical heating and cooling equipment, flooring, glass, gravel, insulation, lath, lead, lime, lumber, macadam, millwork, mortar, oil, paint, piping, pipe valves

and pipe fittings, plaster, plumbing fixtures, putty, reinforcing mesh, road base, roofing, sand, sanitary sewer pipe, sheet metal site lighting, steel, stone stucco, tile, trees, shrubs and other landscaping materials, wallboard, wall coping, wallpaper, weather stripping, wire netting and screen, water mains and meters and wood preserver. The above materials, when used for forms, or other items which do not remain as an integral or inseparable part of a completed structure or project, are not construction materials.

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

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

*Cover Charge* means a charge paid to a club or similar entertainment establishment which may, or may not, entitle the patron paying such charge to receive tangible personal property, such as food and/or beverages.

*Data Processing Equipment* means any equipment or system of equipment used in the storage, manipulation, management, display, reception or transmission of information.

*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”.

*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.

*Dual Residency* means those situations including, but not limited to, where a person maintains a residence, place of business or business presence, both within and outside the City. A person shall be deemed to have established a legitimate residence, place of business or business presence outside of the City for purposes of dual residency if the person has a physical structure owned, leased or rented by such person which is designated by street number or road location outside of the City, has within it a telephone or telephones in the name of such person and conducts business operations on a regular basis at such location in a manner that includes the type of business activities for which the business (person), as defined in this Code, is organized.

*Dwelling Unit* means a building or any portion of a building designed for occupancy as complete, independent living quarters for one (1) or more persons, having direct access from the outside of the building or through a common hall and having living, sleeping, kitchen and sanitary facilities for the exclusive use of the occupants.

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

*Engaged in business in the City* means performing or providing services, or selling, leasing, renting, delivering or installing tangible personal property for storage, use or consumption within the City. This term includes, but is not limited to, any one 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 City;
- (2) Sends one (1) or more employees, agents or commissioned sales persons into the City 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 (1) or more employees, agents or commissioned sales persons on duty at a location within the City;
- (4) Owns, leases, rents or otherwise exercises control over real or personal property within the City; or Makes more than one (1) delivery into the City within a twelve (12) month period.

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

*Finance Director* means the *Finance Director* of the City or such other person designated by the City. The term shall also include such person's designee.

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

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

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

*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.

*Internet Subscription Service* means software programs, systems, data and applications available online through rental, lease or subscription, that provide information and services including, but not limited to, data linking, data research, data analysis, data filtering or record compiling.

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

*License officer* means the Finance Director of the City.

*Lodging services* means the furnishing of rooms or accommodations by any person, partnership, association, corporation, estate or any other combination of individuals by whatever name known to a person who, for a consideration, uses, possesses or has the right to use or possess any room in a hotel, inn, bed and breakfast residence, apartment hotel, lodging house, motor hotel, guest house, guest ranch,

trailer coach, mobile home, auto camp, trailer court and park or similar establishment, for a period of less than thirty (30) days under any concession, permit, right of access, license to use or other agreement or otherwise.

*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 pre-constructed building unit or combination of pre-constructed 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.

*Medical Marijuana* means marijuana acquired, possessed, cultivated, manufactured, delivered, transported, supplied, sold, or dispensed to a person who qualifies as a patient with a debilitating medical condition(s) under Article XVIII, Section 14, of the Colorado Constitution, and which person holds a valid "registry identification card" issued by the State of Colorado pursuant to Colorado Constitution, Article XVIII, Section 14.

*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 Fuel* means gasoline, casing head or natural gasoline, benzol, benzene and naphtha, gasohol and any other liquid prepared, advertised, offered for sale, sold for use or used or commercially usable in internal combustion engines for the generation of power for the propulsion of motor vehicles upon the public highways. The term does not include fuel used for the propulsion or drawing of aircraft or railroad cars or railroad locomotives.

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



*Mini storage or mini-warehouse* means a building or group of buildings containing individual storage units rented or leased to individuals for the storage of merchandise, commodities or private property.

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

*Newspaper*. A publication, printed on newsprint, intended for general circulation and published regularly at short intervals, containing information and editorials on current events and news of general interest. The term newspaper does not include: magazines, trade publications or journals, credit bulletins, advertising inserts, circulars, directories, maps, racing programs, reprints, newspaper clipping and mailing services or listings, publications that include an updating or revision service, books nor pocket editions of books.

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

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

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

*Photovoltaic System* means a power system designed to supply usable solar power by means of photovoltaics, a method of converting solar energy into direct current electricity using semiconducting materials that create voltage or electric current in a material upon exposure to light. It consists of an arrangement of several components, including solar panels to absorb and convert sunlight into electricity, a solar inverter to change the electric current from DC to AC, as well as mounting, cabling, metering systems and other electrical accessories to set up a working system.

*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.

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

*Preprinted Newspaper Supplements* shall mean inserts, attachments or supplements circulated in newspapers that:

- (1) are primarily devoted to advertising; and
- (2) the distribution, insertion, or attachment of which is commonly paid for by the advertiser.

*Pre-written computer programs.* Systems, programs or application programs that are not written specifically for the user.

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

*Price or purchase price.*

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

a. Such exchanged property is to be sold thereafter in the usual course of the retailer's business; or

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

(2) The terms *price* or *purchase price* include:

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

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

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

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

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

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

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

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

(3) The terms *price* or *purchase price* do not include:

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

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

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

*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.

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

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

*Purchase or sale.*

(1) The acquisition for any consideration by any person of tangible personal property or taxable services that are purchased, leased, rented, sold, used, stored, distributed or consumed, but excludes a bonafide gift of property or services. These terms include capital leases, installment and credit sales and property and services acquired by:

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

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

c. Performance of taxable services; or

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

(2) The terms *purchase* and *sale* do not include:

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

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

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

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

e. A transfer of a partnership interest;

f. The transfer in a reorganization qualifying under Section 368(a)(1) of the Internal Revenue Code of 1954, as amended;

g. The formation of a partnership by the transfer of assets to the partnership or transfers to a partnership in exchange for proportionate interests in the partnership;

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

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

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

k. The transfer of assets between parent and closely held subsidiary corporations, or between subsidiary corporations closely held by the same parent corporation or between corporations which are owned by the same shareholders in identical percentage of stock ownership amounts, computed on a share-by-share basis, when a tax imposed by this Title was paid by the transferor corporation at the time it acquired such assets, except to the extent that there is an increase in the fair market value of such assets resulting from the manufacturing, fabricating or physical changing of the assets by the transfer or corporation. To such an extent any transfer referred to in this Subsection (k) shall constitute a sale. For the purpose of this Subsection (k), a closely held subsidiary corporation is one in which the parent corporation owns stock possessing at least eighty percent (80%) of the total combined voting power of all classes of stock entitled to vote and owns at least eighty percent (80%) of the total number of shares of all other classes of stock.

*Recreation Services* means all services relating to athletic or entertainment participation events and/or activities including but not limited to pool, golf, billiards, skating, tennis, bowling, health/athletic club memberships, coin operated amusement devices, video games and video club memberships.

*Renewable Energy* means any energy resource that is naturally regenerated over a short time scale and derived directly from the sun (such as thermal, photochemical, and photoelectric), indirectly from the sun (such as wind, hydropower, and photosynthetic energy stored in biomass), or from other natural movements and mechanisms of the environment (such as geothermal and tidal energy). Renewable Energy does not include energy resources derived from fossil fuels, waste products from fossil sources, or waste products from inorganic sources.

*Retail sales.* All sales made within the City except wholesale sales.

*Retailer.* Any person selling, leasing or renting tangible personal property or service at retail.

*Retailer* shall include 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.

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

*Return.* The sales tax reporting form used to report sales tax.

*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 Code, are donated to a school or a school-approved student organization.

*Sales tax.* The tax to be collected and remitted by a retailer on sales taxes under this Title.

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

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

*Soft Drink* means a nonalcoholic beverage that contains natural or artificial sweeteners. "Soft drink" does not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume.

*Software Program* means a sequence of instructions that can be measured, interpreted and executed by an electronic device (e.g. a computer, tablets, smart phones) regardless of the means by which it is accessed or the medium of conveyance. Software program includes:

- (1) Custom software program, which is a software program prepared to the special order or specifications of a single customer;
- (2) Pre-written software program, which is a software program prepared for sale or license to multiple users, and not to the special order or specifications of a single customer. Pre-written software is commonly referred to as "canned," "off-the-shelf ("COTS")," "mass produced" or "standardized;"
- (3) Modified software, which means pre-written software that is altered or enhanced by someone other than the purchaser to create a program for a particular user; and
- (4) The generic term "software," "software application," as well as "updates," "upgrades," "patches," "user exits," and any items which add or extend functionality to existing software programs.

*Software as a Service* means software that is rented, leased or subscribed to from a provider and used at the consumer's location, including but not limited to applications, systems or programs.

*Software License Fee* means a fee charged for the right to use, access, or maintain software programs.

*Software Maintenance Agreement* means an agreement, typically with a software provider, that may include

- (1) provisions to maintain the right to use the software;
- (2) provisions for software upgrades including code updates, version updates, code fix modifications, enhancements, and added or new functional capabilities loaded into existing software, or
- (3) technical support

*Solar Thermal Systems* means a system whose primary purpose is to use energy from the sun to produce heat or cold for:

- (1) Heating or cooling a residential or commercial building;
- (2) Heating or cooling water; or
- (3) Any industrial, commercial, or manufacturing process

*Sound System Services* means the provision of broadcast or pre-recorded audio programming to a building or portion thereof. Such term does not include installation of sound systems where the entire system becomes the property of the building owner or the sound system service is for presentation of live performances.

*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.

*State.* The State of Colorado.

*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 City from any person or vendor.

*Student* means any person enrolled in a school.

*Tangible Personal Property* means personal property that can be one 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.* The sales tax due from a retailer.

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

*Taxable sales.* Gross sales less any exemptions and deductions specified in this Title.

*Taxable services.* Services subject to the tax pursuant to this Title.

*Taxpayer.* Any person obligated to collect and/or pay tax under the terms of this Title.

*Telecommunications services.* The transmission of any two-way interactive electromagnetic communications including, but not limited to voice, image, data and any other information, by the use of any means, but not limited to wire, cable, fiber optical cable, microwave, radio wave or any combinations of such media. This term includes, but is not limited to basic local exchange telephone service, toll telephone service and teletypewriter service, including but not limited to residential and business service, directory assistance, cellular mobile telephone, or telecommunication service, specialized mobile radio and two-way pagers and paging service, including any form of mobile two-way communication. This term does not include separately stated non-transmission services which constitute computer-processing applications used to act on the information to be transmitted.

*Television & Entertainment Services* means audio or visual content, that can be transmitted

electronically by any means, for which a charge is imposed.

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

*Toll Free Telecommunications Service* means a Telecommunications Service that allows a caller to dial a number without incurring an additional charge for the call.

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

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

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

*Wholesale sales* mean sales to licensed retailers, jobbers, dealers or wholesalers for resale. Sales by wholesalers to consumers are not *wholesale sales*. Sales by wholesalers to non-licensed retailers are not *wholesale sales*.

*Wholesaler.* Any person selling to retailers, jobbers, dealers or other wholesalers, for resale and not for storage, use, consumption or distribution. (Code 1971, § 21-1.1;§ 3; Ord. No. 11-2000, § 1, [Ord. No. 24-2017](#))

#### **Sec. 23.04.020. Exemption; burden of proof.**

The burden of proving that any retailer is exempt from collecting or paying tax shall be on the retailer under such reasonable requirements of proof as the Finance Director may prescribe. (Code 1971, § 21-1.2; [Ord. No. 26-1992](#), § 3)

#### **Sec. 23.04.030. Deductions and credits.**

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

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

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

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

(b) Credits from tax due.

(1) Vendor's fee. A retailer's collection and remittance expense equal to three and three tenths percent (3.3%) of the sum of the sales tax computed and any excess tax collected may be taken as a credit against tax paid on or before the due date, except that such credit shall not exceed fifty dollars (\$50.00) for any regular or periodic return. Such vendor's fee shall be forfeited for any tax that is not reported and paid by the due date. Forfeiture of the vendor's fee shall be prima facie evidence that the taxpayer was in violation of this Title.

(2) Application of credit. Amounts previously paid pursuant to a tax levied by the City may be credited against the tax due on transactions or items when the present owner or user has previously paid a legally imposed sales tax on the transaction or item; except that the amount of such credit shall not exceed the amount of tax on such transaction or item computed at the rate established by Section 23.32.060. (Code 1971, § 21-1.3; [Ord. No. 26-1992](#), § 3)

**Sec. 23.04.040. Acquisition, inception or cessation of business.**

(a) Purchase of an existing business.

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

(2) Purchaser's responsibilities.

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

b. Any amount so withheld shall be paid to the City within ten (10) days of the date of the sale of the business.

c. Any purchaser who fails to withhold such total tax liability or fails to pay to the City the amount so withheld within the ten (10) day period allowed shall, as well as the seller, be liable for any unpaid total tax liability.

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

(c) Cessation of business. Every person engaged in business in the City who quits doing business in the City shall file a final return. The reporting period for such return shall end on the last day of the business in the City. (Code 1971, § 21-1.4; [Ord. No. 26-1992](#), § 3)

**Chapter 23.08**

**TAXPAYER'S RESPONSIBILITIES**

**Sec. 23.08.010. Retailer responsible for collection and payment of tax.**

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



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

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

(2) Sales tax may be included in the price of items sold from coin-operated devices or the price of utilizing such devices.

(3) Sales tax may be included in the price of an admissions charge.

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

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

(d) Disputed tax. When a dispute arises between a retailer and a purchaser who claims that the sale is exempt from the tax, the retailer shall collect and the purchaser shall pay such tax. The purchaser may then submit a claim for refund to the City within sixty (60) days of the date of purchase. Any such tax refunded by the City will be paid directly to the purchaser. (Code 1971, § 21-2.1; [Ord. No. 26-1992](#), § 3)

#### **Sec. 23.08.020. Trust status of tax in possession of retailer.**

All tax collected by a retailer shall be the property of the City and remain public money in the hands of such retailer, who shall hold the same in trust for the sole use and benefit of the City until paid to the City. (Code 1971, § 21-2.2; [Ord. No. 26-1992](#), § 3)

#### **Sec. 23.08.030. Filing returns; due date.**

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

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

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

(d) No person shall make any false statement in connection with a return. (Code 1971, § 21-2.3; [Ord. No. 26-1992](#), § 3)

#### **Sec. 23.08.040. Reporting periods.**

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

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

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

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

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

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

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

(f) If any taxpayer who has been granted permission to file returns and pay tax on other than a monthly basis becomes delinquent, authorization for such alternative method of reporting may be revoked by the Finance Director immediately following notice of such revocation, and the taxpayer shall file returns and pay tax on a monthly basis as if the alternate method of reporting and paying the tax had never been granted. (Code 1971, § 21-2.4; [Ord. No. 26-1992](#), § 3)

#### **Sec. 23.08.050. Duty to keep books and records.**

Every person engaged in business in the City shall keep and preserve for at least three (3) years after the date of the taxable transaction suitable records which will allow the accurate determination of any tax due. (Code 1971, § 21-2.5)

### **Chapter 23.12**

#### **ADMINISTRATION**

#### **Sec. 23.12.010. Authority of the Finance Director.**

The administration of this Title is hereby vested in the Finance Director.

(a) Forms and procedures. The Finance Director shall prescribe forms and administrative procedures for the ascertainment, assessment and collection of the tax not inconsistent with this Title.

(b) Regulations. The Finance Director may formulate and promulgate appropriate regulations to effectuate the purpose of this Title as provided by this Code.

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

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

(1) Any subpoena issued under the terms of this Title shall be served as set forth in the Colorado Rules of Civil Procedure or Municipal Court Rules, including the payment of witness fees. When the witness is subpoenaed at the insistence of the City, such fees shall be

paid by the City. When a witness is subpoenaed at the insistence of the taxpayer, the Finance Director may require that the cost of service of the subpoena and the fee be paid by the taxpayer. In the discretion of the Finance Director, a deposit to cover the cost of the subpoena and witness fees may be required.

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

(e) Oaths. The Finance Director is authorized to administer oaths and take testimony at the hearing.

(f) Agents. The Finance Director may designate agents to assist in the performance of the duties and responsibilities set forth in this Title.

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

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

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

(j) Notices. Notices required by this Title shall be in writing and delivered in person or sent post paid by first class mail to the last known address of the taxpayer. (Code 1971, § 21-3.1; [Ord. No. 26-1992](#), § 3)

### **Sec. 23.12.020. Audit of records.**

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

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

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

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

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

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

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

(e) Coordinated audit. Any taxpayer licensed in this City pursuant to Section 23.32.020, 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.

(1) Within fourteen (14) days of receipt of notice of an intended audit by any municipality that administers its own sales tax collection, the taxpayer may provide to the Finance Director of this City, by certified mail return receipt requested, a written request for a coordinated audit indicating the municipality from which the notice of intended audit was received and the name of the official who issued such notice. Such request shall include a list of those Colorado municipalities using 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 this City's right to recover tax owed by the taxpayer for the audit period.

(2) Except as provided in Paragraph (6) below, any taxpayer that submits a completed request for a coordinated audit and promptly signs a waiver of the statute of limitations may be audited by this City during the twelve (12) months after such request is submitted only through a coordinated audit involving all municipalities electing to participate in such an audit.

(3) If this City desires to participate in the audit of a taxpayer that submits a completed request for a coordinated audit pursuant to Paragraph (2) above, the Finance 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 Finance Director shall then cooperate with other participating municipalities in the development of arrangements for the coordinated audit, including arrangement of the time during which the coordinated audit will be conducted, the period of time to be covered by the audit and a coordinated notice to the taxpayer of those records most likely to be required for completion of the coordinated audit.

(4) If the taxpayer's request for a coordinated audit was in response to a notice of audit issued by this City, this City's finance director shall facilitate arrangements between this City and other municipalities participating in the coordinated audit unless and until an official from some other participating municipality agrees to assume this responsibility. The Finance 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.

(5) If the taxpayer's request for a coordinated audit was in response to a notice of audit issued by this City, this City's finance director shall, once arrangements for the coordinated audit between this City and other participating municipalities are completed, provide written notice to the taxpayer of which municipalities will be participating, the period to be audited and the records

most likely to be required by participating municipalities for completion of the coordinated audit. The Finance Director shall also propose a schedule for the coordinated audit.

- (6) The coordinated audit procedure set forth in this Section shall not apply:
  - a. When the proposed audit is a jeopardy audit;
  - b. To audits for which a notice of audit was given prior to the effective date of this Section;
  - c. When a taxpayer refuses to promptly sign a waiver of the statute of limitations; or
  - d. When a taxpayer fails to provide a timely and complete request for a coordinated audit as provided in Paragraph (1) of this Subsection. (Code 1971, § 21-3.2; [Ord. No. 26-1992](#), § 3)

**Sec. 23.12.030. Tax information confidential.**

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

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

(b) Nothing contained in this Section shall be construed to prohibit the delivery to a person or a duly authorized representative thereof of a copy of any return or report filed in connection with such person's tax. Copies of such records may be certified by the City Manager or an agent thereof and when so certified shall be evidence equally with the originals and may be received as evidence of their contents.

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

(d) Notwithstanding the provisions of this Section, the City Manager may furnish to the taxing official of the State, its political subdivisions, any other state, or political subdivision or the United States, any information contained in tax returns and related documents filed pursuant to this Title or in the report of an audit or investigation made with respect to a return, if the recipient jurisdiction agrees with the City Manager to grant similar privileges to the City and provided further that such information shall be used by the recipient jurisdiction only for tax purposes. (Code 1971, § 21-3.3; [Ord. No. 26-1992](#), § 3)

**Sec. 23.12.040. Timely payment; computation of dates.**

(a) Timely payment shall be evidenced by the postmark date if mailed; otherwise timely payment shall be evidenced by the City Cashier validation date.

(b) Any due date, payment date or deadline for paying the total tax liability or providing information or taking other action, which falls on a Saturday, Sunday or legal holiday recognized by either the Federal government, the State or the City, shall be extended to the first business day following such weekend or holiday. (Code 1971, § 21-3.4; [Ord. No. 26-1992](#), § 3)

## **Chapter 23.16**

### **TAX OVERPAYMENTS**

#### **Sec. 23.16.010. Overpayment from returns.**

If the amount remitted with the return is more than the total tax liability as computed from information in such return, a notice of overpayment will be issued. After examining such notice, the taxpayer may either submit a claim for refund or report the correct total tax liability by filing an amended return. No refund of such overpayment shall be paid unless a signed claim for refund is submitted on or before the thirtieth day after the date of the notice of overpayment. (Code 1971, § 21-4.1; [Ord. No. 26-1992](#), § 3)

#### **Sec. 23.16.020. Tax overpayment determined through audit.**

If the City ascertains through an audit of a taxpayer's records that the total tax liability is less than the full amount paid, a notice of overpayment shall be issued. Such notice will serve as documentation for a claim for refund, if such claim is signed and submitted by the taxpayer within thirty (30) days of the date of the notice of overpayment. (Code 1971, § 21-4.2; [Ord. No. 26-1992](#), § 3)

#### **Sec. 23.16.030. Refunds of disputed tax.**

Refunds of tax paid to a retailer by a purchaser who claims that the sale is exempt from the tax may be requested by such purchaser by signing and submitting a claim for refund on or before sixty (60) days from the date of such purchase. (Code 1971, § 21-4.3; [Ord. No. 26-1992](#), § 3)

#### **Sec. 23.16.040 Claim for refund.**

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

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

- (1) Be made on a claim for refund form furnished by the City;
- (2) Be signed by the taxpayer; and
- (3) Include adequate documentation of the claim.

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

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

(d) False statements. No person shall make any false statements in connection with a claim for refund. (Code 1971, § 21-4.4)

## Chapter 23.20

### TAX DEFICIENCIES

#### **Sec. 23.20.010. Underpayments from returns.**

If the amount remitted with a return is less than the tax computed from information in such return, a notice of assessment shall be issued. (Code 1971, § 21-5.1; [Ord. No. 26-1992](#), § 3)

#### **Sec. 23.20.020. Tax deficiencies from failure to file or failure to provide records for audit.**

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

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

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

(d) Estimated total tax liability shall be adjusted if a return reporting actual total tax liability is filed. (Code 1971, § 21-5.2; [Ord. No. 26-1992](#), § 3)

#### **Sec. 23.20.030. Tax deficiencies determined through audit.**

If the City ascertains through an audit of the taxpayer's records that the tax due has not been fully reported or paid by the applicable due date, a notice of assessment shall be issued. (Code 1971, § 21-5.3; [Ord. No. 26-1992](#), § 3)

#### **Sec. 23.20.040. Penalties.**

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

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

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

(d) Abatement of penalty. Any penalty assessed in this Title may be abated by the Finance Director if the Finance Director finds good cause therefore and:

(1) If the taxpayer submits a written request for such abatement on or before the payment due date of the applicable notice of assessment; or

(2) If no assessment was issued within sixty (60) days after payment of the tax. (Code 1971, § 21-5.4; [Ord. No. 26-1992](#), § 3)

#### **Sec. 23.20.050. Interest.**

(a) Interest shall be levied on any tax deficiency at the rate of one and one half percent (1½%) per month.

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

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

(d) Any interest properly assessed on a tax deficiency may be abated by the Director of Finance as provided above for the abatement of penalties. (Code 1971, § 21-5.5; [Ord. No. 26-1992](#), § 3)

**Sec. 23.20.060. Notice of assessment.**

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

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

(b) The payment due date for the total tax liability pursuant to a notice of assessment shall be twenty (20) days after the date of the notice of assessment. (Code 1971, § 21-5.6; [Ord. No. 26-1992, § 3](#))

**Sec. 23.20.070. Abatement of deficiency.**

The Finance Director shall promulgate policies and procedures for processing tax deficiency abatements, which shall include a provision that all abatements in excess of five thousand dollars (\$5,000.00) shall require the prior approval of the City Manager and that all abatements in excess of five hundred dollars (\$500.00) shall be reported to the City Manager. All tax deficiency abatements shall only be made in accordance with said policies and procedures. (Code 1971, § 21-5.7)

**Chapter 23.24**

**TAXPAYER'S REMEDIES**

**Sec. 23.24.010. Protest of notice of assessment or denial of refund.**

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

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

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

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



(c) Any timely protest entitles a taxpayer to a hearing under the provisions of this Title. (Code 1971, § 21-6.1; [Ord. No. 26-1992](#), § 3)

#### **Sec. 23.24.020. Hearings.**

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

(b) Every hearing shall be held in the City before the Finance Director or his designated representative.

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

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

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

(f) Unless the decision of the Finance Director is appealed as provided in this Title, the remaining total tax liability, if any, shall be paid on or before thirty (30) days after the date of the findings of fact, conclusions and decision. (Code 1971, § 21-6.2; [Ord. No. 26-1992](#), § 3)

#### **Sec. 23.24.030. Appeals.**

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

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

(c) Upon the appeal to the District Court the taxpayer shall either file with the Finance Director a bond for twice the unpaid amount or deposit the unpaid amount with the Finance Director. (Code 1971, § 21-6.3; [Ord. No. 26-1992](#), § 3)

### **Chapter 23.28**

#### **ENFORCEMENT**

#### **Sec. 23.28.010. Lien for tax due.**

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

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

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

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

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

(3) The personal property of an owner who has made a bona fide lease to a taxpayer shall be exempt from the lien created in this Subsection if such property can reasonably be identified from the lease description, and if the lessee is given no right to become the owner of the property leased. This exemption shall be effective from the date of the execution of the lease if the lease is recorded with the county clerk and recorder of the county where the property is located or based.

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

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

(d) Enforcement against real property. If a notice of lien is filed against real property, the Finance Director may request the City Attorney to file a civil action to enforce such lien. The court may determine the interest in the property of each party, decree a sale of the real property and distribute the proceeds according to such findings. Procedures for the action and the manner of sale, the period for and manner of redemption from the sale and the execution of deed of conveyance shall be in accordance with the law and practice relating to foreclosures of mortgages upon real property. In any such action, the court may appoint a receiver of the real property involved in such action if equity so requires. (Code 1971, § 21-7.1; [Ord. No. 26-1992](#), § 3)

#### **Sec. 23.28.020. Perpetuance of lien.**

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

(b) Any person who purchases or repossesses real or personal property upon which a lien has been filed by the Finance Director for total tax liability shall be liable for the payment of such total tax liability up to the value of the property taken or acquired. (Code 1971, § 21-7.2; [Ord. No. 26-1992](#), § 3)

#### **Sec. 23.28.030. Release of lien.**

Upon payment of the total tax liability or enforcement of the lien, the Finance Director shall file a release of lien with the county clerk and recorder of the county in which the lien was filed. (Code 1971, § 21-7.3; [Ord. No. 26-1992](#), § 3)

#### **Sec. 23.28.040. Civil action to recover tax due.**

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

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

(c) If a judgment is obtained by the City, collection of the total tax liability may be made by attachment, garnishment or other means authorized by law. When attachment is sought, no bond shall be required of the Finance Director nor shall any sheriff require of the Finance Director an indemnity bond for executing the writ of attachment or writ of execution upon any judgment. (Code 1971, § 21-7.4: [Ord. No. 26-1992](#), § 3)

**Sec. 23.28.050. Jeopardy assessment.**

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

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

(c) Dispute of jeopardy assessment. If, in the opinion of the taxpayer, the jeopardy assessment is not for the correct amount of total tax liability, the taxpayer shall pay the total tax liability as assessed and submit a claim for refund to the City. (Code 1971, § 21-7.5; [Ord. No. 26-1992](#), § 3)

**Sec. 23.28.060. Distrain and sale.**

(a) Unless such property is exempt by state statute from distraint and sale, the Finance Director may sign and issue a warrant directed to any employee or agent of the City, or any sheriff of any county in Colorado, commanding the distraint and sale of personal property of the taxpayer on which a lien has attached for the payment of the total tax liability.

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

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

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

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

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

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

(c) Disposal of distrained property.

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

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

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

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

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

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

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

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

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

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

(9) The Finance Director shall submit a written account of the sale to the City Manager.

(d) Exempt property. Property of the taxpayer subject to distraint shall include the personal property of the taxpayer and the goods, stock in trade and business fixtures owned or used by any taxpayer including those used under lease, installment sale or other contract arrangement. Property exempt from distraint and sale shall include the personal property described as such in Subsection 23.28.010(c) above.

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

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

(2) The finder of fact shall receive evidence on any issue of fact necessary to the decision of the petition. If the finder of fact determines, by a preponderance of the evidence, in favor of the taxpayer or other petitioner, the property shall be returned. (Code 1971, § 21-7.6; [Ord. No. 26-1992](#), § 3)

**Sec. 23.28.070. Status of tax due in bankruptcy and receivership.**

Whenever the business or property of any taxpayer is subject to receivership, bankruptcy, or assignment for the benefit of creditors or distrained for property taxes, the total tax liability shall be a prior and preferred lien against all the property of the taxpayer. No sheriff, receiver, assignee, nor other officer shall sell the property of any such taxpayer under process or order of any court, without first ascertaining from the Finance Director the amount of the total tax liability. The officer shall pay any total tax liability before making payment to any judgment creditor or other claimants. (Code 1971, § 21-7.7; [Ord. No. 26-1992](#), § 3)

**Sec. 23.28.080. Violations, summons and complaint; penalty.**

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

- (1) The failure of any person engaged in business in the City to obtain a sales tax license;
- (2) The failure of any taxpayer to file a timely return or to make timely payment of any total tax liability;
- (3) The failure of any resident individual or business to comply with the registration requirements for automotive vehicles;
- (4) The making of any false or fraudulent statement by any person in any return, claim for refund or hearing; or
- (5) The evasion of collection of any tax by any person or the aiding or abetting of any other person in an attempt to evade the timely payment of tax due.

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

(c) Violations of this Title shall be punished by a fine, or imprisonment or both, as provided in Section 1.04.080 of this Code. Each and every twenty-four (24) hour continuation of any violation shall constitute a distinct and separate offense. (Code 1971, § 21-7.8; [Ord. No. 26-1992](#), § 3)

**Sec. 23.28.090. Statute of limitations.**

Unless the limitation period has been extended as provided in this Section, the Statute of Limitations for provisions contained in this Title shall be as follows:

- (a) Refunds.
  - (1) Any claim for refund for disputed total tax liability shall be submitted to the City on or before sixty (60) days from the date of such purchase.
  - (2) Any claim for refund resulting from a notice of overpayment shall be submitted to the City on or before thirty (30) days after the date of such notice of overpayment.

(3) Any other claim for refund shall be filed on or before one (1) year after the date such overpayment was paid to the City.

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

(1) The due date of such total tax liability; or

(2) For a construction project which requires a city building permit, the date the Final Certificate of Occupancy was issued for such project; or

(3) For a construction project not requiring a city building permit, the date of completion of the project.

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

(d) Returns.

(1) When a taxpayer fails or refuses to file a return, the total tax liability may be assessed and collected at any time.

(2) In the case of a false or fraudulent return filed with intent to evade tax, the total tax liability may be assessed, or proceedings for the collection of such total tax liability may be begun at any time.

(e) Protests. No protest of a notice of assessment or denial of a claim for refund shall be valid if submitted to the Finance Director in other than written form or after the period allowed in this Title.

(f) Limitation period; extension. The limitation period may be extended before its expiration.

(1) The taxpayer and the Finance Director may agree in writing to extend the period.

(2) If the City provides written notice to the taxpayer prior to the expiration of the period of limitation that the latter's records will be audited pursuant to this Title, such period of limitation shall be extended for the audit period until thirty (30) days after the date of the notice of assessment or overpayment issued as a result of such audit. *Audit period* includes all reporting periods with due dates which fall within the thirty-six (36) month period preceding the date of the notice of audit, or, if a city building permit is required, the period between the issuance of such building permit and the issuance of a final certificate of occupancy. (Code 1971, § 21-7.9; [Ord. No. 26-1992](#), § 3; [Ord. No. 46-2000](#), § 1)

## **Chapter 23.32**

### **SALES TAX**

#### **Sec. 23.32.010. Legislative intent.**

H.B. 1007, enacted by the fifty-fifth Colorado General Assembly and approved by the Governor on June 6, 1985, sets forth procedures for the collection of sales and use taxes by home rule cities. This Title contains provisions which are consistent with some of those set forth in H.B. 1007. The City Council finds that Article XX of the Colorado Constitution grants plenary power to home rule cities to levy and collect taxes within the city limits. The City Council does not endorse restrictions on the taxing power of

home rule cities. Thus it is the intent of the City Council in enacting provisions consistent with H.B. 1007 to assist the business community, but not in any way to prejudice the City's right to fully exercise its constitutional authority to levy and collect taxes within its boundaries. (Code 1971, § 21-10.1; [Ord. No. 26-1992](#), § 3)

**Sec. 23.32.020. Sales tax licenses; application and content.**

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

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

(c) Licenses which are granted shall be issued without fee by the Finance Director.

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

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

(f) No sales tax license shall be transferable. After any sale of a business, the new owner shall apply for a new license. (Code 1971, § 21-10.2; [Ord. No. 26-1992](#), § 3)

**Sec. 23.32.030. Sales tax licenses; cancellation and revocation.**

(a) Cancellation. The Finance Director may cancel any license:

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

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

(b) Revocation. The Finance Director may, after a reasonable notice and after a full hearing, issue a finding and order to revoke the license of any person found to have violated any provision of this Title.

(c) Appeal. Any person may appeal a finding and order revoking their license to the District Court, pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedures.

(d) No taxpayer shall continue to engage in business in the City after their license has been canceled or revoked. (Code 1971, § 21-10.3; [Ord. No. 26-1992](#), § 3)

**Sec. 23.32.040. Transient/temporary vendors.**

(a) Transient/temporary vendors are subject to and shall comply with the requirements of the City business license and shall pay the appropriate City business occupation taxes as provided for elsewhere in this Title in addition to obtaining a City sales tax license as provided in Section 23.32.020.

(1) This provision may not be relieved by a temporary association with another licensed entity unless that entity is a charitable organization based within the City which wishes to sponsor

the transient/temporary vendor and thereby exempt the vendor from the provisions of this Section for sales which are infrequently conducted and for which the charitable organization collects sales taxes due in accordance with the provisions of this Title.

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

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

(b) Any charitable organization which organizes or sponsors an event where transient/temporary vendors are expected to conduct sales, as provided in Paragraph 23.32.040(a)(1), shall be required to hand out to all participating vendors a packet of information furnished by the City which shall inform said vendors of requirements and procedures to be met before sales in the City may be conducted.

(c) Tax deposit required. Except as provided in Section 23.32.050, herein, or unless waived or reduced by the Finance Director, transient/temporary vendors shall deposit with the Finance Director a minimum of one hundred dollars (\$100.00), or such greater amount as the Finance Director may direct. The deposit shall be in cash or equivalent acceptable to the Finance Director which can be applied toward any city imposed retail sales tax due on sales within the City limits. Tax returns reflecting actual tax due must be completed within ten (10) days from the final date of sale. In no event shall the vendor be relieved of his obligation to remit sales tax due under this Title. The vendor may apply the deposit toward any tax owed. In the event that a signed return is not received by the Finance Director within ten (10) days from the final date of sale, the vendor shall waive the right to apply the deposit and the deposit shall become nonrefundable. (Code 1971, § 21-10.4; [Ord. No. 26-1992](#), § 3)

#### **Sec. 23.32.050. Sales by charitable organizations.**

Charitable organizations making taxable sales or performing taxable services as defined in this Title shall collect sales taxes and consumers shall pay sales taxes on such sales or services, subject to the conditions set forth at Paragraphs 23.32.100(a)(7) and (8). (Code 1971, § 21-10.5; [Ord. No. 26-1992](#), § 3)

#### **Sec. 23.32.060. Rate; imposition and collection; distribution.**

(a) Sales tax. There is hereby levied a tax or excise upon all sales of tangible personal property and services specified in Section 23.32.090 at a rate of two and four tenths of a percent (2.4%) for all transactions consummated or contracts entered into as defined by Section 23.32.090.

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

(c) Distribution. The distribution of all retail sales taxes shall be in accordance with the following:

(1) The City shall pay for all costs of administration and collection of sales taxes levied in accordance with this Title from all sources of revenue.



(2) Sales tax receipts derived on or after July 1, 1990, from the one percent (1.0%) tax levied pursuant to Ordinance No. 16, Series of 1970, shall be set aside in a separate fund entitled "Parks and Open Space Fund," and expended by the City Council solely for the acquisition of parks, trails and open space real property, for the construction of improvements on any real property, owned or purchased by the City for parks, trails and open space purposes, for maintenance of real property owned by the City and used for parks, trails and open space and for payment of indebtedness incurred for acquisition or improvement of parks, trails and open space real property, food tax refunds payable by the City and for such expenditures as may be necessary to protect real property or the improvements thereon owned by the City for parks, trails and open space purposes, and for the payment of sales tax revenue bonds issued by the City; and

(3) Sales tax receipts derived from the fifteen-one hundredths of one percent (0.15%) additional sales tax levied pursuant to the ballot question approved by City Council in Ordinance 55, Series 2007, shall be set aside in a separate fund designated as the "City Transportation Fund," and shall be expended by the City Council solely for the payment of services, facilities and programs with regard to the City transportation system.

(4) Sales tax receipts derived from the forty-five one hundredths of one percent (0.45%) additional sales tax levied pursuant to Ordinance No. 81, Series of 1989, shall be set aside in a separate fund designated as the "Affordable Housing Fund and the Day Care Fund". The City Council will allocate the .45% sales tax between the funds as it shall from time to time designate. The sales tax from the .45% sales tax shall be expended by the City Council for the purpose of creating public or private affordable housing and day care opportunities within the city and county, including but not by way of limitation, capital improvements and capital expenditures therefor, land acquisition, payment of indebtedness incurred in connection with any affordable housing or day care expenditures, reserves and for expenditures necessary to protect any such property acquired or capital improvements constructed or purchased from any and all threatened or actual damages, loss, destruction or impairment from any such cause or occurrences.

(5) All sales taxes collected by and paid by the County to the City in accordance with Ordinance No. 25, Series of 1985, shall be spent solely for those purposes set forth at Section 1 of said Ordinance.

(6) Sales tax receipts derived from the one-half percent (0.5%) sales tax levied pursuant to Ordinance No. 7, Series of 2001, shall be set aside in the separate fund referenced in Paragraph 23.32.060(c)(3) and expended by the City Council solely for the purpose of buying, improving and maintaining trail, recreation and open space properties and ancillary facilities.

(7) Sales tax receipts derived from the thirty one hundredths of one percent (0.30%) additional sales tax levied pursuant to the ballot question approved by City Council in Resolution 84, Series 2012 and approved by the City of Aspen qualified electors on November 6<sup>th</sup>, 2012, shall be set aside in a separate fund designated and the "Education Fund" and shall be expended by the City Council solely for educational purposes providing support to the Aspen School District No. 1 (RE).

(d) The taxes imposed in this Title shall be in addition to all other taxes imposed by law. (Code 1971, § 21-10.6; [Ord. No. 26-1992](#), § 3; [Ord. No. 7-2001](#), §§ 1, 2; [Ord. No. 35-2012](#) §1,2)

#### **Sec. 23.32.070. Tax schedule.**

(a) The tax imposed by this Title shall be payable on each ten dollar (\$10.00) increment in accordance with the following schedule:

<b>Price</b>	<b>Tax</b>
\$ 0.01 including \$ 0.20	\$0.00
\$ 0.21 including \$ 0.62	\$ 0.01
\$ 0.63 including \$ 1.04	\$ 0.02
\$ 1.05 including \$ 1.45	\$ 0.03
\$ 1.46 including \$ 1.87	\$ 0.04
\$ 1.88 including \$ 2.29	\$ 0.05
\$ 2.30 including \$ 2.70	\$ 0.06
\$ 2.71 including \$ 3.12	\$ 0.07
\$ 3.13 including \$ 3.54	\$ 0.08
\$ 3.55 including \$ 3.95	\$ 0.09
\$ 3.96 including \$ 4.37	\$ 0.10
\$ 4.38 including \$ 4.79	\$ 0.11
\$ 4.80 including \$ 5.20	\$ 0.12
\$ 5.21 including \$ 5.62	\$ 0.13
\$ 5.63 including \$ 6.04	\$ 0.14
\$ 6.05 including \$ 6.45	\$ 0.15
\$ 6.46 including \$ 6.87	\$ 0.16
\$ 6.88 including \$ 7.29	\$ 0.17
\$ 7.30 including \$ 7.70	\$ 0.18
\$ 7.71 including \$ 8.12	\$ 0.19
\$ 8.13 including \$ 8.54	\$ 0.20
\$ 8.55 including \$ 8.95	\$0.21
\$ 8.96 including \$ 9.37	\$ 0.22
\$ 9.38 including \$9.79	\$ 0.23
\$ 9.80 including \$ 10.00	\$ 0.24

When the price exceeds ten dollars (\$10.00), the tax shall be twenty-four cents (\$0.24) on each ten dollar (\$10.00) increment of the price, plus the tax shown above for the applicable fractional part of a ten dollar (\$10.00) increment of each price.

(b) Use of the schedule set forth in this Section shall not result in computation of a tax liability that is less than the amount which equals taxable sales multiplied by the specified rate. (Code 1971, § 21-10.7; [Ord. No. 26-1992](#), § 3; [Ord. No. 7-2001](#), § 3; [Ord No. 35-2012](#) §3)

**Sec. 23.32.080. Map or location guide of City boundaries.**

The Finance Department shall make available to any requesting vendor a map or location guide showing the boundaries of the City. The requesting vendor may rely on such map or location guide and any update thereof available to such vendor in determining whether to collect a sales tax. No penalty shall be imposed or action for deficiency maintained against a vendor who in good faith complies with the most recent map or location guide available to such vendor. (Code 1971, § 21-10.8; [Ord. No. 26-1992](#), § 3)

**Sec. 23.32.090. Transactions and items subject to tax.**

(a) The tax levied by Section 23.32.070 shall apply to the prices of the following:

(1) Tangible personal property that is sold, leased, or rented, whether or not such property has been included in a previous taxable transaction.

(2) Installation in the City of equipment required to receive or transmit telecommunication service.

(3) Meals sold to the public or to employees.

(4) All sales of food including, but not limited to:

(a) The amount paid for food or drink served or furnished in or by restaurants, cafes, lunch counters, cafeterias, hotels, drugstores, social clubs, nightclubs, cabarets, resorts, snack bars, caterers, carry-out shops, delicatessens, grocery stores, counters and other like places of business at which prepared food or drink is regularly sold, including sales from pushcarts, motor vehicles and other mobile facilities.

(b) The total amount paid as a cover charge or for admission to an establishment that charges a single price for admission and food service.

(c) The amount paid for sales of meals by any of the employees of the aforementioned establishments, whether at full price or at reduced price, shall be included herein.

(5) Gas, electricity, steam, coal, wood, fuel oil, or coke furnished for domestic, commercial or industrial consumption.

(6) Pay, cable or subscription television, including charges for service, installation, connection or other similar charge.

(7) Automotive vehicles sold, leased or rented in the City.

(8) Services of an operator when furnished with the lease or rental of tangible personal property if such services are not separately stated.

(9) Coin operated devices that dispense tangible personal property.

(10) Rentals of storage space within the City.

(11) Lodging services.

(12) The rental fee, price, or other consideration paid for the rental of any tangible personal property within the boundaries of the City. Rentals shall include, but not be limited to, ski rentals, car rentals, bicycle rentals, skate rentals, other sporting goods rentals, VCR rentals and video cassette tape rentals. Such rentals, for all purposes of this Title, shall be deemed to be "sales" as defined in Section 23.04.010.

(13) Telecommunication services for all intrastate telecommunication services originating from or received on telecommunication equipment in the City if the charge for the service is billed to an apparatus, telephone, or account in this City, or to a person residing in the City without regard to where the bill for such services is actually received. (Code 1971, § 21-10.9; [Ord. No. 26-1992](#), § 3; [Ord. No. 20-1995](#), § 1)

**Sec. 23.32.100. Exemptions from sales tax.**

- (a) The tax levied by Section 23.32.070 shall not apply to the following:
- (1) Automotive vehicles sold to nonresidents of the City for registration outside the City.
  - (2) Tangible personal property that is to be used, stored, or consumed outside the City by persons who reside or businesses located outside the City when the property is to be delivered to the purchaser outside the City by mail; by common, contract or commercial carrier that is employed to effect delivery by the vendor; or by the vendor's conveyance.
  - (3) Prosthetic devices and drugs dispensed in accordance with a prescription, but not including prescription drugs for animals.
  - (4) All sales of therapeutic devices, appliances or related accessories.
  - (5) All sales of medical supplies.
  - (6) Cigarettes.
  - (7) All direct sales to charitable organizations in the conduct of their regular exempt organizational functions and activities, when billed to and paid for by the charitable organization.
  - (8) All individual sales of twenty-five dollars (\$25.00) or less by charitable organizations in the conduct of events or sales to generate funds for charitable purposes; provided that the sales shall not be conducted for more than three (3) consecutive days or more than nine (9) total days in any calendar year.
  - (9) All direct sales to the United States Government, the State, its departments or institutions and the political subdivisions thereof in their governmental capacities only, when billed to and paid for by the governmental entity.
  - (10) All sales which the City is prohibited from taxing under the Constitution or laws of the United States, or of the State.
  - (11) Tangible personal property sold to a public utility company or railroad doing business both inside and outside the City, for use in its business operations outside the City, even though delivery thereof is made inside the City.
  - (12) Motor fuel upon which there has been accrued or paid either the gasoline tax or special fuel tax, required by Article 27 of Title 39, C.R.S., and which is not subject to refund.
  - (13) All wholesale sales.
  - (14) Tangible personal property sold to a person engaged in manufacturing or processing for sale when the product being manufactured or processed is transformed in fact by the addition of the property, and such property becomes a constituent part of the finished product.
  - (15) Commercial packaging materials.
  - (16) Napkins, straws or eating utensils sold to a retailer when the following conditions are met:
    - a. The property is used in the consumption of food purchased;

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

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

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

(18) Newspapers.

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

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

(21) Tangible personal property sold through coin-operated devices for a price of fifteen cents (\$.15) or less.

(22) Food purchased with federal food stamps or with funds provided by the Special Supplemental Food Program for Women, Infants and Children (42 U.S.C. § 1786), from retailers who qualify as follows:

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

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

(23) Meals purchased with federal food stamps or with funds provided by the Special Supplemental Food Program for Women, Infants and Children (42 U.S.C. § 1786), in the following instances:

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

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

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

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

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

(24) [\(Repealed by Ord. 42-1995\)](#)

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

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

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

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

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

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

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

(b) The list of exemptions shall not be increased by implication or similarity. (Code 1971, § 21-10.10; [Ord. No. 26-1992](#), § 3; [Ord. No. 42-1995](#), § 1)

#### **Sec. 23.32.110. Installment sales transactions.**

Whenever taxable tangible personal property is sold under a conditional sales contract whereby the seller retains title as security for all or part of the price, or whenever the seller takes a chattel mortgage on such tangible personal property to secure all or part of the price, the full price of such property shall be reported for the period in which the sale was made. No refund or credit shall be allowed to either party to the transaction in case of repossession. (Code 1971, § 21-10.11; [Ord. No. 26-1992](#), § 3)

#### **Sec. 23.32.120. Nonresident retailers.**

Any retailer engaged in business in the City, but not maintaining an office in the City, who sells taxable tangible personal property or taxable services may petition the Finance Director to establish an alternate method of determining tax due. If the Finance Director finds that the imposition of the tax on an individual sales basis will impose an unnecessary hardship on the retailer, and if the type and occasion of sale so warrants, the Finance Director may establish such alternate method. (Code 1971, § 21-10.12; Ord. [No. 26-1992](#), § 3)

**Sec. 23.32.130. Intercity claims for recovery.**

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

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

(b) When it is determined by the Director of Finance of the City that sales tax owed to the City has been reported and paid to another municipality, the City 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.

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

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

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

(f) The period subject to a claim for recovery shall be limited to the thirty-six (36) month period prior to the date the municipality that was wrongly paid the tax receives the claim for recovery. (Code 1971, § 21-10.13; [Ord. No. 26-1992](#), § 3)

**Sec. 23.32.140. Administration.**

This Chapter 23.32 shall all be administered in accordance with Chapters 23.04 through 23.28 of this Title. (Code 1971, § 21-10.14; [Ord. No. 26-1992](#), § 3)

**Sec. 23.32.150. Food sales tax returns.**

(a) For purposes of this Chapter, and the refund of food sales tax collected, the term *resident of the City* shall mean any person who is over the age of sixteen (16) years and who has resided in the City for the entire calendar year for which a food sales tax refund is sought.

(b) Any *resident of the City*, as herein defined, may, not later than April 15th of every year and so long as this Code shall be in force, apply, on such forms as provided by the Director of Finance, for an annual food sales tax refund from the City in the amount of fifty dollars (\$50.00) for himself and, in addition, for every person who is a member of his household and for whom he or she is entitled to claim a personal exemption under and pursuant to the federal income tax laws. Any resident who is over the age of sixty-five (65) years shall be entitled to receive an additional food tax refund in the amount of fifty dollars (\$50.00), and any resident who is blind shall be entitled to receive an additional food tax refund in the amount of fifty dollars (\$50.00).

(c) No person who may be claimed as a personal exemption on another resident's application for refund shall be entitled to a food tax refund. If a food tax refund is claimed on more than one (1) application for the same person, the Director of Finance is authorized to determine the person entitled to claim the refund provided for in this Section.

(d) The application for refund shall be reviewed or examined by the Director of Finance. All applicants may prove their resident status by evidence that they were registered voters of the City for the full calendar year for which the refund applies. Any resident who is barred from registering to vote due to noncitizenship or due to a felony conviction shall provide alternative proof of residency, as may be required by the Finance Director for the full calendar year. If the Finance Director is satisfied that the information provided on the refund application entitles the applicant to a food tax refund, either in the amount claimed or in any amount determined by the Director of Finance, the refund shall be paid. Otherwise the application for refund shall be denied and a notice of denial sent to the applicant at the address furnished by the applicant. (Code 1971, § 21-13.1; [Ord. No. 26-1992](#), § 3; [Ord. No. 19-2000](#) § 1)

## Chapter 23.36

### REAL PROPERTY TAX RELIEF<sup>1</sup>

<sup>1</sup> **Editor's note**—Ord. No. 26-1992, repealed the provisions of former Art. III, relative to licenses and tax for retail sales and services, and enacted new Arts. I and II [Ch. 23.04 through 23.32] to read as herein set out subsequently renumbering former Art. II as Art. III [Ch. 23.36]. The provisions of former Art. III derived from Ord. No. 16-19070; Ord. No. 28-1970; and Ord. No. 15-A-1972.

#### **Sec. 23.36.010. Low-income senior citizen rebate.**

(1) **Applicability.** All qualified persons aged sixty-five (65) years or older who own or rent taxable real property within the municipal boundaries of the City shall receive a rebate on the municipal portion of their real property taxes equal to the tax generated and paid on three (3) mills of assessed valuation or a tax-equivalent in accordance with the provisions of this Section 23.36.010.

(2) **Qualifications.**

(a) Except as provided below for a surviving spouse in Paragraph (e) of this Subsection, persons aged sixty-five (65) years or older or who will attain the age of sixty-five (65) years during the tax year for which a rebate is sought, shall be eligible for a rebate.

(b) Any person applying for a rebate must have resided within the City for a period of not less than one (1) year immediately prior to the date of their rebate application.

(c) Only property occupied by the rebate applicant as a full-time residence shall qualify for a rebate. Any residence occupied or used in whole or in part by the applicant for professional or business purposes shall be ineligible.



(d) If the rebate applicant resides in a multi-unit residential structure that the applicant owns, any rebate allowed the applicant shall not exceed that percentage of taxes paid equal to the portion of the residential structure occupied by the applicant as his or her individual residence.

(e) A husband and wife shall be treated as jointly qualifying for a rebate if either meets the age requirements as set forth herein and they jointly meet all other requirements as contained in this Section. A surviving spouse aged sixty (60) years or older shall continue to be eligible to receive a rebate so long as he or she meets all of the other requirements of this Section.

(f) Where two (2) or more persons, other than husband and wife, own a residence jointly or in common, each may receive a rebate equal to the percentage of their ownership interest as determined by the Finance Director so long as they meet all of the other requirements contained in this Section.

(g) No rebate applicant shall receive a rebate if their annual income from all sources exceeds the following limits:

(i) \$17,580.00 for an individual living alone.

(ii) \$21,972.00 for a household containing two (2) or more persons.

Income shall include, but not be limited to, employment or investment income, interest payments, rental income, alimony, cash public assistance, pension or annuity benefits, federal social security or supplemental security payments, veteran's benefits, workers compensation, unemployment compensation and any other regularly paid cash support, but shall not include outright bona fide gifts.

(h) Persons otherwise qualified to receive a rebate under this Section but who do not own the residence in which they live may receive a tax-equivalent rebate equal to one (1) percent of their actual rent paid during the taxable year. Rent paid shall not include utility charges, maintenance fees, association fees or food charges. To qualify as a tax-equivalent payment, rent must have been paid as part of a bona fide tenancy or leasing agreement and shall not include any payments made to institutions or facilities commonly known as nursing homes, but shall include rent paid for use of a mobile home or trailer space. No person may receive both a tax-equivalent rebate and a property tax rebate for any single tax year.

### (3) Application procedures.

(a) Rebates as authorized by this Section 23.36.010 shall commence with the 1991 tax year and must be claimed by written application signed under oath on forms prescribed by the Director of Finance. All rebate applications must be completed and submitted no later than December 31st of the tax year for which a rebate is sought.

(b) Any person making application for a rebate must provide proof satisfactory to the Director of Finance of age, ownership, occupancy, income, residency and payment of real property taxes or a tax-equivalent (rent).

(c) When two (2) or more persons claim a rebate for the same residence, the Finance Director shall determine the proper rebate allocation, if any.

(d) No person shall be eligible or receive more than one (1) rebate for any tax year.

(e) The burden of proving eligibility and entitlement to a rebate under this Section shall be on the applicant.

(f) If a guardian, conservator or attorney-in-fact has been appointed for a rebate applicant otherwise qualified to claim a rebate under this Section, the guardian, conservator or attorney-in-fact may act for such applicant in claiming the rebate.

(4) Administration.

(a) The Director of Finance shall administer the rebate program as established in this Section 23.36.010 and shall prepare such forms and adopt such regulations consistent with this Section as he or she deems necessary to implement same. The Director of Finance shall also make known the provisions of this Section by annual written notice to County Senior Services, the County Department of Social Services and such other agencies serving the elderly as he or she may deem appropriate.

(b) The Director of Finance shall review the income eligibility limits as specified in this Section 23.36.010 on an annual basis and report to the City Council at the time of the adoption of the municipal budget as to whether such limits should be increased, decreased or otherwise modified.

(5) Rebate program termination. Unless otherwise provided by affirmative legislative action of the City Council, the rebate program as provided in Section 23.36.010 shall automatically terminate upon the repeal or nonrenewal of the three (3) mill levy for municipal capital improvements as first adopted by the City pursuant to Ordinance No. 51 (Series of 1990). Any application for rebate pending at the time of termination of the program and not acted upon shall be processed to completion in accordance with Section 23.36.010 and all persons subsequently found eligible for a rebate shall receive same. (Code 1971, § 21-16; [Ord. No. 1-1991](#), § 1)

## Chapter 23.40

### TELEPHONE COMPANIES<sup>1</sup>

<sup>1</sup> **Editor's note**—Article IV [Ch. 23.40], §§ 21-86—21-93, is derived from Ord. No. 75-1979, §§ 1—8, which ordinance was nonamendatory of this Code.

#### **Sec. 23.40.010. Tax imposed; amount.**

There is hereby levied on and against each telephone utility company operating within the City (hereinafter called the "City") a tax on the occupation and business of maintaining a telephone exchange and lines connected therewith in the City and of supplying local exchange telephone service to the inhabitants of the City. The annual amount of tax levied hereby shall be equal to six dollars (\$6.00) per telephone account for which local exchange telephone service is provided within the corporate limits of the City on the effective date as provided in Section 23.40.020 below and upon each anniversary of the effective date. The annual amount of tax levied may be amended yearly prior to the anniversary of the effective date hereof by the adoption of an ordinance of the City Council of the City. (Code 1971, § 21-86; [Ord. No. 75-1979](#), § 1)

#### **Sec. 23.40.020. When tax due and payable.**

The tax levied by this Chapter shall commence on December 1, 1979, and shall be due and payable in four (4) equal quarterly installments with the first such installment due ninety (90) days after the effective date. (Code 1971, § 21-87; [Ord. No. 75-1979](#), § 2)

#### **Sec. 23.40.030. Filing of statement of accounts required.**

Within thirty (30) days after the effective date as provided in Section 23.40.020, each telephone utility company subject to this Chapter shall file with the City Clerk, in such form as the Clerk may require, a statement showing the total telephone accounts for which local exchange telephone service was provided within the corporate limits of the City on the effective date. Such statement shall be filed within thirty (30) days after each anniversary of the effective date showing such accounts on the anniversary date. (Code 1971, § 21-88; [Ord. No. 75-1979](#), § 3)

**Sec. 23.40.040. Failure to pay tax.**

If any telephone utility company subject to the provisions of this Chapter shall fail to pay the taxes as herein provided, the full amount thereof shall be due and collected from such company, and the same together with an addition of eighteen percent (18%) of the amount of taxes due shall be and hereby is declared to be a debt due and owing from such company to the City. The City Attorney of the City upon direction of the City Council shall commence and prosecute to final judgment and determination in any court of competent jurisdiction an action at law to collect the said debt in the name of the people of the State. (Code 1971, § 21-89; [Ord. No. 75-1979](#), § 4)

**Sec. 23.40.050. Failure to file statement of accounts.**

If any officer, agent or manager of a telephone utility company which is subject to the provisions of this Chapter shall fail, neglect or refuse to make or file the annual statement of accounts provided in Section 23.40.030 above, the said officer, agent, manager or person shall, on conviction thereof, be punished by a fine not less than twenty-five dollars (\$25.00) nor more than three hundred dollars (\$300.00); provided that each day after said statement shall become delinquent during which the said officer, agent, manager or person shall so fail, neglect or refuse to make and file such statement shall be considered a separate and distinct offense. (Code 1971, § 21-90; [Ord. No. 75-1979](#), § 5)

**Sec. 23.40.060. Examination of books, records.**

The City, its officers, agents or representatives shall have the right, at all reasonable hours and times, to examine the books and records of the telephone utility company, which are subject to the provisions of this Chapter and to make copies of the entries or contents thereof. (Code 1971, § 21-91; [Ord. No. 75-1979](#), § 6)

**Sec. 23.40.070. Tax not upon those functions relating to interstate commerce.**

The tax herein provided is upon occupations and businesses in the performance of local functions and is not a tax upon those functions relating to interstate commerce. It is expressly understood that none of the terms of this Chapter be construed to mean that any telephone utility company is issued a franchise by the City. (Code 1971, § 21-92; [Ord. No. 75-1979](#), § 7)

**Sec. 23.40.080. Tax in lieu of other payments other than ad valorem taxes.**

The tax herein provided shall be in lieu of all other payments by or fees and taxes on any telephone utility subject to the provisions of this Chapter, other than ad valorem taxes, and in addition shall be in lieu of any free service furnished the City by any said telephone utility. (Code 1971, § 21-93; [Ord. No. 75-1979](#), § 8)

**Sec. 23.40.090. Administration.**

The Director of Finance shall administer this Chapter 23.40 and shall prepare such forms and adopt such regulations consistent with this Chapter, as he or she deems necessary to implement the same. This Chapter 23.40 shall be administered in accordance with Chapters 23.04 through 23.28 of this Title to the

extent that they do not conflict with the provisions of this Chapter, for all taxes due or paid after November 1, 2000. ([Ord. No. 46-2000](#), § 2)

**Chapter 23.44**  
**OCCUPATION TAX**

**Sec. 23.44.010. Definitions.**

Whenever in this Chapter the words hereinafter defined or construed in this Section are used, they shall, unless the context requires otherwise, be deemed to have the following meaning:

(a) *Business* shall mean any business, trade, occupation, profession or calling of any kind.

(b) *Engaged in business* shall mean to carry on or take part in the operation of a business as owner, operator or agent.

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

(d) *Person* includes any individual, partnership, association, organization or corporation. (Code 1971, § 21-100; [Ord. No. 62-1981](#), § 1)

**Sec. 23.44.020. Legislative intent.**

The City Council finds and determines that the businesses and occupations in the City depend for their welfare to a large extent on municipal expenditures. Desiring to have a proper, just and equitable distribution of the tax burdens within the City and considering all matters proper in relation thereto, the City Council finds that the tax imposed on each business herein defined is reasonable, proper, uniform and nondiscriminatory and necessary for a just and proper distribution of the tax burdens within the City. (Code 1971, § 21-101; [Ord. No. 62-1981](#), § 1)

**Sec. 23.44.030. Tax levy.**

There is hereby levied and assessed for the period of January 1 to December 31 of each year, commencing January 1, 1992, an occupation tax upon every business not exempt from the provisions of this Chapter, based on the number of employees of said business performing within the City, as follows:

<b>Employees</b>	<b>Tax</b>
Less than 6	\$150.00
More than 5, but less than 16	200.00
More than 15, but less than 51	400.00
More than 50	750.00

The number of employees shall be computed on a monthly average during the preceding year. In the event that a business ceases operation during the year, the number of employees shall be computed on the monthly average during the time it was in operation. The number of employees for a new business shall be computed on the estimated monthly average for the ensuing twelve (12) months. For the purpose of this Section, an owner shall be counted as an employee. The tax herein provided is upon business in the performance of local functions and is not a tax upon the functions related to interstate commerce. (Code 1971, § 21-102; [Ord. No. 62-1981](#), § 1; [Ord. No. 49-1988](#), § 1; [Ord. No. 44-1991](#), § 13)

**Sec. 23.44.040. Exemptions.**

The following are exempt from the payment of an occupation tax:

- (a) An employee;
- (b) Any business exempted by federal or state law;
- (c) Any business subject to the liquor occupation tax assessed under Title 5 of this Code;
- (d) Any business or enterprise specifically described in Section 14.08.050 of this Code as being exempt from the requirement of procuring a business license. (Code 1971, § 21-103; Ord. [No. 62-1981](#), § 1)

**Sec. 23.44.050. Business tax return.**

Every person engaged in business in the City, unless exempt from the occupation tax by law, shall make and file a business tax return with the Finance Director on a form provided by the City. The return shall show the name and address of the place of business, the number of employees and persons engaged in the operation of the business, together with such other information as may be required by the Finance Director. The return shall be filed and the tax paid on or before January 1st of each year. However, a new business shall file its first return prior to the starting of the business and thereafter on or prior to January 1st of each year. (Code 1971, § 21-104; [Ord. No. 62-1981](#), § 1)

**Sec. 23.44.060. Tax payment.**

If not paid on or before the first day of January of each year, the tax shall become delinquent on January 2nd of the same year as to all persons engaged in business. All persons engaged in business for a period of less than one (1) year shall have the tax become due and payable prior to the time the person engages in the business, and shall pay the full amount of the tax for each year or any portion thereof. Upon receipt of the tax, it shall be the duty of the Finance Director to execute and deliver to the person paying the tax a revenue receipt showing the name of the person paying the tax, the date of payment, the business paying the tax, the period for which the tax is paid and the place in which the person conducts his business. No refund shall be made to any person who discontinues business during the taxable year. Interest shall accrue on all delinquent taxes from the day of delinquency until paid or collected at the rate of one-and-one-half percent (1½%) per month. (Code 1971, § 21-105; [Ord. No. 62-1981](#), § 1)

**Sec. 23.44.070. Fees cumulative.**

The payment of the tax imposed by this Chapter shall not relieve the person paying the same from the payment of any other tax now or hereinafter imposed by any ordinance for any business he or she may carry on unless so provided by the ordinance imposing the tax, it being the intent of this Chapter that the occupation tax prescribed in this Chapter applicable to any business shall be cumulative except where otherwise specifically provided. (Code 1971, § 21-106; [Ord. No. 62-1981](#), § 1)

**Sec. 23.44.080. Separate tax for separate place of business.**

Every person doing business in more than one (1) store, stand or other place of business shall pay a separate tax for each place of business unless such places of business are contiguous to each other. The business may be transferred from one (1) location to another without the payment of additional tax, after giving written notice to the Finance Director. (Code 1971, § 21-107; [Ord. No. 62-1981](#), § 1)

**Sec. 23.44.090. Unlawful procedure.**

It shall be unlawful for any person or his agent to engage in or carry on a business within the City for which an occupation tax is required without first having paid the tax and obtained a revenue receipt as herein provided. For the purpose of this Section, the opening of a place of business or offering to sell followed by a single sale or the doing of any act or thing in the furtherance of the business shall be construed to be engaging in or carrying on such business. (Code 1971, § 21-108; [Ord. No. 62-1981](#), § 1)

**Sec. 23.44.100. Civil action for recovery tax due.**

The City shall have the right to recover all sums due under the terms of this Chapter by judgment and execution thereon in a civil action in any court of competent jurisdiction. Such remedies shall be cumulative with all other remedies provided herein for the enforcement of this Chapter. (Code 1971, § 21-109; [Ord. No. 62-1981](#), § 1)

**Sec. 23.44.110. Violation; penalty.**

Failure to comply with the terms of this Chapter by payment of taxes, filing of a return and otherwise complying with the terms of this Chapter shall constitute an offense in violation thereof, punishable, upon conviction, by a fine, imprisonment or both a fine and imprisonment, as set forth in Section 1.04.080 of this Code. Each day that any person shall carry on or engage in any business without payment of the tax shall be deemed a separate offense. (Code 1971, § 21-110; [Ord. No. 62-1981](#), § 1; [Ord. No. 12-1996](#), § 14)

**Sec. 23.44.120. Administration.**

The Director of Finance shall administer this Chapter 23.44 and shall prepare such forms and adopt such regulations consistent with this Chapter, as he or she deems necessary to implement the same. This Chapter 23.44 shall be administered in accordance with Chapters 23.04 through 23.28 of this Title, to the extent that they do not conflict with the provisions of this Chapter, for all taxes due or paid after November 1, 2000. ([Ord. No. 46-2000](#), § 3)

**Chapter 23.48**

**REAL ESTATE TRANSFER TAX**

**Sec. 23.48.010. Definitions.**

For the purposes of this Chapter, certain words are defined as follows:

(a) *Document* means and includes any deed, instrument or writing by which real property located within the City is transferred.

(b) *Transfer* means and includes any conveyance of the ownership of a title to real property and is evidenced by any deed or instrument or writing wherein or whereby title to real property situated in the City is granted or conveyed, subject to the exclusions provided in this Chapter. *Conveyance of ownership*, for the purpose of this Chapter, means and includes the transfer of more than fifty percent (50%) of the authorized and issued shares of a corporation which has as its principal asset real property situated in the City.

(c) *Real property* means and includes all lands or interests in lands within the City to which title or the right to title has been acquired from or ratified by the government of the United States or the State, and shall be construed as coextensive in meaning with the terms "land," "tenements" and "hereditaments" and as embracing all mining claims and other claims and chattels real.

(d) *Consideration* means and includes the actual cash paid and/or value of the property delivered, or contracted to be paid or delivered, in return for the transfer of ownership or title to real property and shall include the amount of any lien, mortgage, contract indebtedness, or other encumbrance, either given to secure the purchase price or any part thereof, or remaining unpaid on the property at the time of sale. The term does not include the amount of any outstanding lien or encumbrance in favor of the United States, the State or of a municipal or quasi-municipal governmental corporation or district for taxes, special benefits or improvements.

(e) *Deed In Lieu of Foreclosure*: A conveyance by a property owner to a secured party or wholly owned subsidiary of the secured party of property which is the subject of a mortgage, deed of trust, or other security instrument in consideration of the cancellation of all or part of the indebtedness secured by such security instrument or release of the debtor or guarantor from any personal liability on account of such indebtedness. (code 1971 § 21-120; [Ord. No. 67-1994](#), § 1 [part]; [Ord. No. 37-2001](#), § 1; [Ord. No. 8-2010](#))

#### **Sec. 23.48.020. Lands affected.**

When a document subject to this Chapter includes property located within the City and property located within another City or in the County or other counties, the tax imposed under the authority of this Chapter shall be computed only with respect to property located within the City and the tax shall be assessed on that part of the consideration fairly attributable to the part of such property located within this City. (Code 1971, § 21-121; [Ord. No. 67-1994](#), § 1 [part])

#### **Sec. 23.48.030. Director of Finance to enforce.**

(a) The Director of Finance of the City is charged with the enforcement of the provisions of this Chapter and is hereby authorized and empowered to prescribe, adopt and promulgate and enforce rules and regulations pertaining thereto.

(b) At the time of any transfer upon which a tax is imposed by this Chapter there shall be made a report to the Director of Finance on forms prescribed by him, setting forth the true, complete and actual consideration for the transfer, the names of the parties thereto, the location of the real estate transferred and such other information as he or she may require.

(c) For the purpose of collection of the taxes imposed by this Chapter, the office of the County Clerk and Recorder, together with all banks, title companies, escrow companies, building and loan institutions and real estate agencies permitted as such to do business under the laws of the State and maintaining offices within the City are hereby appointed as authorized agents for the City for the collection of said tax. The Director of Finance is authorized to negotiate with such appointed agents to allow them to retain a reasonable amount of the sum collected to cover their expense in the collection and remittance of said tax.

(d) Notwithstanding the provisions of Section 2.48.040, if an artifice or device is employed in connection with the transfer of real property, which term “artifice or device” means a transaction or transactions a substantial purpose of which was to evade the provisions of this Chapter and the imposition of the tax hereunder, then such transfer will nevertheless be subject to the real estate transfer tax. “Artifice or device” includes but is not limited to (1) a transfer to a corporation, partnership, limited partnership, joint venture, business trust, or other association or organization followed within three (3) years by an assignment of the controlling interest in such

association or organization, or (2) such a transfer plus the intent to ultimately assign the controlling interest in such association or organization.

(Code 1971, § 21-122; [Ord. No. 67-1994](#), § 1 [part]; [Ord. 8-2010](#))

**Sec. 23.48.040. Exemptions.**

The real estate transfer tax imposed by this Chapter shall not apply to:

(a) Any document wherein the United States, or any agency or instrumentality thereof, the State, any county, city and county, municipality, district or other political subdivision of this State is either the grantor or grantee;

(b) Any document wherein the grantee corporation, association or trust has been organized, operated and maintained solely and exclusively for charitable or religious purposes;

(c) Any document granting or conveying title to real property in consequence of a gift of such property, where no consideration other than love and affection, charitable donation or nominal compensation is evidenced by the terms of the instrument of transfer;

(d) Any document terminating or evidencing termination of a joint tenancy in real property except where additional consideration of value is paid in connection with such termination, or a decree or agreement partitioning real property held under common ownership unless a consideration of value is paid in connection therewith;

(e) The transfer of title or change of interest in real property by reason of death, will or decree of distribution;

(f) Transfers made pursuant to mergers or consolidations of corporations, or by a subsidiary to a parent corporation for no consideration other than cancellation or surrender of the subsidiary's stock;

(g) Any deed or conveyance made and delivered without consideration for the purpose of confirming, correcting, modifying or supplementing a transfer previously recorded; making minor boundary adjustments, removing clouds on titles or granting easements, rights-of-way or licenses;

(h) Any decree or order of a court of record determining or resting title, including a final order awarding title pursuant to a condemnation proceeding;

(i) Any deed granting or conveying title to cemetery lots;

(j) Any lease of any real property (or assignment or transfer of any interest in any such lease) provided such lease by its terms does not constitute a de facto conveyance of the subject property. In the latter event the real estate transfer tax shall be based upon the capitalization at five percent (5%) of the average annual rental over the entire term of the lease, including any renewal term, plus the actual consideration, other than rent, paid or to be paid. When the average annual rental cannot be determined, or at the election of the Director of Finance, the tax shall be based upon the assessed value of the property covered by the lease;



(k) Any mineral deed or royalty deed;

(l) Transfers to secure a debt or other obligation, or transfers or release of property which is security for a debt or other obligation;

(m) Any executory contract for the sale of real property under which the vendee is entitled to or does take possession thereof without acquiring title thereto, or any assignment or cancellation of any such contract;

(n) Any deed or conveyance under execution, sale, or foreclosure sale under a power sale or court decree of lien foreclosure; sheriff's deed; public trustee deed or treasurer's deed or deed in lieu of foreclosure provided that the person holding the obligation or instrument upon which the proceeding or sale is based intends, as market conditions will allow, to resell the property in order to satisfy the obligation. If the property is not sold within two years, or within any extension of such time beyond two years as the Finance Director shall allow for good cause shown, then the transfer shall be considered an "artifice" as provided for in this chapter and taxable as provided for in this chapter. The Finance Director may place a lien on the subject property equal to the amount of tax that may be levied or other form of security acceptable to the Finance Director.

(Code 1971, § 21-123; [Ord. No. 67-1994](#), § 1 [part]; [Ord. No. 8-2010](#))

**Sec. 23.48.050. Application for exemption.**

In the event any document which is exempt from the real estate transfer tax herein imposed does not contain language clearly showing its exempt character, the grantor or grantee may apply for and obtain from the Director of Finance a Certificate of Exemption, which may be affixed to such deed or instrument of transfer. The Certificate of Exemption shall be in substantially the following form:

EXEMPTION FROM REAL ESTATE TRANSFER TAX

STATE OF \_\_\_\_\_ )  
 ) ss.  
County of \_\_\_\_\_ )

The undersigned, as grantor or grantee of a deed or instrument of conveyance from \_\_\_\_\_ (grantor) to \_\_\_\_\_ (grantee) dated \_\_\_\_\_ transferring the following described property situated in the State of Colorado, County of Pitkin and City of Aspen:

(Legal Description)

hereby does apply for an exemption from the payment of the Real Estate Transfer Tax imposed by Section \_\_\_\_\_ of this Code of the City. The basis of such exemption is as follows:

(State briefly grounds for exemption, including applicable section and subdivision of Municipal Code.)

(Signature) \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_.

(Signature) \_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

CERTIFICATE OF EXEMPTION

I hereby certify that the above-described transfer of real property is exempt from the payment of a Real Estate Transfer Tax under Section \_\_\_\_\_ of the Aspen Municipal Code.

(Signature) \_\_\_\_\_

Any person whose claim of exemption duly applied for under the provisions of this Section is denied by the Director of Finance may immediately appeal to the City Council for a determination of such exemption and such appeal shall be considered by the City Council at its next regular meeting. In the event of a determination by the City Council favorable to said grantor, any amount previously deposited, or so much thereof as may be allowed by the Council, shall be promptly refunded to said grantor. (Code 1971, § 21-124; [Ord. No. 67-1994](#), § 1 [part])

**Sec. 23.48.060. Wheeler Opera House real estate transfer tax.**

(a) Tax imposed. There is hereby imposed a real estate transfer tax on every document in writing, wherein or whereby title to real property situated in the City is transferred, which tax shall be measured by the consideration paid or to be paid for such grantor conveyance and shall be due and payable by the grantee at the time of transfer and contemporaneously therewith. No document shall be recorded whereby or wherein title to real property situated in the City is transferred until the real estate transfer tax has been paid.

(b) Amount of tax. The amount of real estate transfer tax payable shall be computed at the rate of one-half of one percent (.5%) of the consideration paid in return for the transfer of ownership or title.

(c) (c) Application of funds. All funds received by the City of Aspen pursuant to this section 23.48.060 shall be deposited in the Wheeler Opera House real estate transfer tax special revenue fund, which fund is hereby created. The account shall be subject to appropriation by the City Council of the City of Aspen only for the purpose of renovation, reconstruction and maintenance of the Wheeler Opera House or for the payment of principal and interest on bonds issued for such purposes and for the purpose of supporting the visual and performing arts. However, the City Council shall not appropriate in excess of one hundred thousand dollars (\$100,000.00) of real estate transfer tax funds in any single calendar year for the purpose of supporting the visual and performing arts without obtaining the approval of sixty (60) percent of the electors voting at a regular or special election on the same. . The City Council, pursuant to ordinance, and without an election, may borrow money, issue bonds, or otherwise extend the credit of the city for renovation and reconstruction of the Wheeler Opera House provided that the bonds or other obligations shall be made payable from the funds derived from this chapter. For purposes of this section, the following definitions shall apply: *“Renovation, Reconstruction and Maintenance” shall be defined as those activities, operations, or physical improvements necessary to ensure a performing arts venue that provides arts programming opportunities to the citizens of the community and an endowment fund in perpetuity. Funds available “for the purpose of supporting the visual and performing arts” in addition to the \$100,000 of real estate transfer tax funds shall include all revenues generated by the operation of the Wheeler Opera House to include gross revenues generated from lease agreements for space within the Wheeler Opera House, gross theater rental revenue, gross ticket processing fee and ticketing services revenue, and gross artist concessions revenue.*

(d) Effective date. The provisions of this Section 23.48.060 shall be effective on the first day of January 1980.

(e) Duration of ordinance. This Section 23.48.060 shall continue effective insofar as the levy of the real estate transfer tax is concerned through December 31, 2019; and insofar as the collection of the tax levied in the aforesaid period and actions or proceedings for collecting any tax so levied, including

interest and penalties thereon and enforcing any of the provisions of this Chapter are concerned, this Chapter shall continue effective until all of said taxes levied in the aforesaid period are fully paid and any and all suits and prosecutions for the collection of said taxes and for the punishment of violations of this Chapter shall have been fully terminated.

(f) Provisions irreplaceable or unamendable. Subsections (b) and (c) of this Section 23.48.060 providing for the amount of the tax and the application of funds shall be and remain irrevocable and unamendable without the approval of the electorate for the repeal or amendment pursuant to the requirements of Section 12.1 of the Charter of the City.

(g) Administration. The Director of Finance shall administer this section 23.48.060 and shall prepare such forms and adopt such regulations consistent with this chapter, as he or she deems necessary to implement the same. *The Arts and Non Profit Grant Review Committee for the City of Aspen shall submit a report to the City Council on an annual basis describing funding activities for the past year and the available funds for the support of the visual and performing arts for the next fiscal year.* This section 23.48.060 shall be administered in accordance with chapters 23.04 through 23.28 of this title, to the extent that they do not conflict with the provisions of this section, for all taxes due or paid after November 1, 2000. (Code 1971, § 21-125; [Ord. No. 67-1994](#), § 1 [part]; [Ord. No. 46-2000](#), § 4; [Ord. No. 11-2008](#))

### **Sec. 23.48.061. Wheeler Opera House Endowment Fund.**

(a) Purpose. There is hereby established the Wheeler Opera House Reserve Line Item as part of the Wheeler Opera House Fund into which are to be deposited so much of annual operating fund excess revenues as set forth in this Section. All monies deposited in the Wheeler Opera House Reserve Line Item shall be expended and/or invested so as to create a body of funds that may serve to complete the intent of the 1979 Wheeler RETT ballot question and the Master Plan for the Wheeler Opera House renovation and reconstruction, be used to fund principal and interest payments for the issuance of bonds or other debt instruments for this completion, and/or serve as a de facto endowment account for the purpose of funding Wheeler operations, capital improvements, and grants to local non-profit arts organizations consistent with the 1979 ballot question upon the expiration of the Wheeler Opera House Real Estate Transfer Tax.

(b) Funding. The Wheeler Opera House Reserve Line Item shall receive no less than 100% of all excess revenues (above and beyond Wheeler annual operating and capital improvement expenses, and necessary increases to the Wheeler operating and departmental reserve accounts) collected and paid to the Wheeler Opera House/City Of Aspen from the Wheeler Opera House Real Estate Transfer Tax and other earned revenue sources. City Council may authorize such additional funding from other sources, for deposit into the Wheeler Opera House Reserve Line Item, as it may deem necessary from time to time.

(c) Principal. All monies deposited into the Wheeler Opera House Reserve Line Item shall be available for expenditure solely for the purposes declared in the 1979 Real Estate Transfer Tax Ordinance. Unless used for such limited purposes, all monies will be considered as principal for investment and may not be extended or used for any other purpose.

(d) Interest – Other Income. All interest or other income earned and generated by monies in the Wheeler Opera House Reserve Line Item shall accrue exclusively to the Line Item and shall be considered as part of (c), as described above.

(e) Investments Authorized. The Director of Finance is authorized to invest Wheeler Opera House monies, without distinction between principal and income, in any security, bond, note, stock, debenture, mortgage or other investment as specified in C.R.S. Section 24-75-601.1, as may be amended. Investments may be made for such periods of time or dates of maturity as deemed prudent by the Director

of Finance, after input from the City Manager and/or Wheeler Executive Director. All investments of the Wheeler Opera House Holding Fund shall be governed by the standard for investments as described at C.R.S. Section 15-1-304.

(Ord. No. [46-2002](#), § 1; [Ord. No. 3-2010](#))

**Sec. 23.48.070. Affordable housing real estate transfer tax.**

(a) Tax imposed. There is hereby imposed a real estate transfer tax on every document in writing, whereby title to real property situated in the City is transferred, which tax shall be measured by the consideration paid or to be paid for such grant or conveyance and shall be due and payable by the grantee at the time of transfer contemporaneously therewith. The document shall not be recorded whereby or wherein title to real property situated in the City is transferred until the real estate transfer tax has been paid or exempted.

(b) Amount of tax. The amount of real estate transfer tax payable shall be computed at the rate of one percent (1%) of the consideration paid in return for the transfer of ownership or title.

(c) Additional exemptions from tax. In addition to the exemptions set forth at Section 23.48.040, the real estate transfer tax imposed by this Section 23.48.070 shall not apply to:

(i) All deed-restricted employee housing subject to the Aspen/Pitkin County Housing Authority Guidelines, as amended from time to time; and

(ii) The first one hundred thousand dollars (\$100,000.00) of all transactions.

(d) Application of funds.

(i) All funds received by the City pursuant to this Section 23.48.070 shall be deposited in a separate fund. The funds shall be subject to appropriation by City Council of the City, or its designee, only for the purpose of acquiring vacant land, acquiring buildings for the purpose of employee housing, for the construction, reconstruction of employee housing, maintenance of employee housing buildings and property, for the operation of employee/community housing projects, for the payment of principal and interest on the bonds issued for such purposes and incidental costs of issuing the bonds and the funding of any reserve therefore and for repayment to the Land Fund for open space acquisitions converted to employee housing purposes and for payment of all costs including, without limitation, legal fees associated therewith.

(ii) The City Council, pursuant to ordinance, and without an election, may borrow money, issue bonds, or otherwise extend the credit of the City for the acquisition of vacant land, acquisition of existing buildings for employee housing, construction and reconstruction of employee housing, maintenance of employee housing repayment to the Land Fund for open space acquisitions converted to employee housing purposes and operation of employee housing projects, providing that such bonds or other community obligations shall be made payable from the funds derived from this Section.

(e) Effective date. The provisions of this Section 23.48.070 shall be effective upon the last day of April, 1990.

(f) Duration of tax. This Section shall continue effective insofar as the levy of the real estate transfer tax is concerned through December 31, 2024, and insofar as the collection of the tax levied in the aforesaid period and actions for proceedings for collecting any tax so levied, including interest and penalties thereon, and enforcing any of the provisions in this Section are concerned, this Section shall continue effective until all of said taxes levied in the aforesaid period are fully paid and any and all suits

or prosecutions for the collection of said tax and for the punishment of violations of this Chapter shall have been fully terminated.

(g) Provisions irrevocable or unamendable. Subsections (b) and (d) of this Section 23.48.070 providing for the amount of the tax and the application of the funds shall be and remain irrevocable and unamendable without the approval of the electorate of the repeal or the amendment pursuant to the requirements of Section 12.1 of the Charter of the City.

(h) Administration. The Director of Finance shall administer this Section 23.48.070 and shall prepare such forms and adopt such regulations consistent with this Chapter, as he or she deems necessary to implement the same. This Section 23.48.070 shall be administered in accordance with Chapters 23.04 through 23.28 of this Title, to the extent that they do not conflict with the provisions of this Section, for all taxes due or paid after November 1, 2000. (Code 1971, § 21-126; [Ord. No. 67-1994](#), § 1 (part); [Ord. No. 46-2000](#), § 5; [Ord. No. 19-2001](#) § 1)

#### **Sec. 23.48.080. Penalties and liens.**

(a) All taxes imposed by this Chapter, if not paid when due, shall bear interest at the rate of eighteen percent (18%) per annum until so paid. The amount of the real estate transfer tax imposed by this Chapter and interest due thereon is hereby assessed against the property upon the transfer of which said tax is imposed, and if not paid when due, such tax and interest, if any, shall constitute a lien on the property for the amount thereof, which lien shall continue until the amount thereof is paid or until it is discharged of record by foreclosure or otherwise.

(b) Any person who shall fail or refuse to pay any tax due thereunder shall be punished by a fine not exceeding three hundred dollars (\$300.00), or imprisonment for a period of not more than ninety (90) days or both such fine and imprisonment.

(c) Any remedies provided for herein shall be cumulative, not exclusive and shall be in addition to any other remedies provided by law. (Code 1971, § 21-127; [Ord. No. 67-1994](#), § 1 [part])

### **Chapter 23.50**

#### **VISITOR BENEFIT TAX**

##### **Sec. 23.50.010. Legislative intent.**

The City Council declares that the enactment of a two percent (2.0%) visitor benefit tax and the expenditure of the receipts of such a tax for the promotion of tourism and transportation services within the Roaring Fork Valley will serve a public purpose, will promote the health, safety, prosperity, security and general welfare of the inhabitants and visitors of the City. It is the intent of the City Council to impose a tax upon the leasing or renting of rooms or other accommodations in commercial lodging accommodations by transient persons. The person to whom the accommodations are rented shall pay the tax and the person from whom the accommodations are rented shall be required to collect the tax. ([Ord. No. 45-2000](#), § 1; [Ord No. 31-2010](#) §2)

##### **Sec. 23.50.020. Definitions.**

As used in this Chapter, unless the context requires otherwise, the following words and phrases shall have the following meanings:

*Accommodation* means the providing of a room, space, lodging service or other accommodations at a taxable premises to any person who, for consideration, uses or possesses such

room, space, lodging service or other accommodation for a total continuous duration of less than thirty (30) consecutive calendar days.

*Fund* means the tourism promotion fund defined in Section 23.50.050 of this Code.

*Purchaser* means any natural person, or legal entity acting through a natural person, to who accommodations are provided.

*Rent* means the consideration received, or compensation charged, for the providing of accommodations.

*Taxable premises* means any hotel, apartment-hotel, motel, guest home, condominium, townhouse, townhome, lodge, motor lodge, trailer court, campground or bed and breakfast establishment.

*Tourism* means the guidance, management, promotion, encouragement or accommodation of tourists.

*Vendor* means any natural person or business entity that provides accommodations for rent at a taxable premises. ([Ord. No. 45-2000](#), § 1 [part])

#### **Sec. 23.50.030. Imposition of tax.**

There is hereby imposed a visitor benefit tax of two percent (2.0%) upon the rent paid or charged for accommodations provided by a vendor to a purchaser at a taxable premises. ([Ord. No. 45-2000](#), § 1; [Ord. No. 31-2010](#), §3)

#### **Sec. 23.50.040. Receipts, disposition.**

All monies collected or remitted in accordance with this Chapter shall be credited to the separate fund created by Section 23.50.050 below of this Code, and shall be kept separate and distinct from the general fund or any other separate funds maintained by the City. ([Ord. No. 45-2000](#), § 1 [part])

#### **Sec. 23.50.050. Tourism promotion fund.**

(a) There is hereby created a special separate fund to be known as the City Tourism Promotion Fund. Said fund shall be separate and distinct from any other funds or accounts used or maintained by the City for any other purposes. The monies of said fund shall be expended only for the purposes set forth herein and no others.

(b) The fund shall consist of:

(1) All monies deposited or transferred thereto in accordance with Section 23.50.040 above of this Chapter;

(2) Contributions of money, property or services received for use in carrying out the purposes of the fund from any person, corporation or association; and

(3) All monies otherwise made available to the fund from whatever source.

(c) Any monies not appropriated shall remain in the fund and shall not be transferred to or revert to the general fund of the City at the end of any fiscal year. Any interest earned on the investment or deposit of monies of the fund shall remain in the fund and shall not be credited to the general fund of the City.

(d) Twenty-five percent (25%) of all monies in the fund shall be dedicated to transportation services as described below and seventy-five percent (75%) of all monies in the fund shall be dedicated for tourism promotion activities as described below. All appropriations of monies from the fund shall be made by the City Council and only in accordance with the above-described dedication of those funds.

(e) Funds dedicated to transportation service in accordance with this Section shall be appropriated by the City Council only for the following purposes:

(1) To pay for regional transportation services as provided by the Roaring Fork Regional Transportation Authority or the Roaring Fork Transportation Agency;

(2) To contribute to local public transportation services within the City and its immediate environs; or

(3) To defray administrative and clerical costs of collecting and administering the tax, provided such expenditures do not exceed the actual costs of such administrative and clerical costs.

(f) Funds dedicated to tourism promotion in accordance with this Section shall be appropriated by the City Council to a professional marketing entity such as the Aspen Chamber Resort Association upon the submission and approval of a budget prepared by the Aspen Chamber Resort Association, or other similar organization, only for the following purposes:

(1) Planning and implementing the advertisement, promotion and development of tourism and special events in the City;

(2) Tourism advertising, written and graphic materials and cooperative and matching promotional materials;

(3) Gathering and disseminating information on the tourist industries and attractions of the City;

(4) Purchasing such equipment, materials and supplies as shall be necessary, to be used solely for tourist promotion;

(5) Contracting for those services and materials as may be incidental, necessary and appropriate to the accomplishment of the purposes of the fund, including but not limited to, administrative, secretarial, clerical or professional services deemed necessary;

(6) Attracting conferences, conventions and meetings of a commercial, cultural, educational or social nature to the City;

(7) Attracting sporting events and social and cultural events sponsored by nonprofit organizations;

(8) Defraying administrative and clerical costs of collecting and administering the tax, provided such expenses do not exceed the actual costs of such administrative and clerical costs. ([Ord. No. 45-2000](#), § 1; [Ord. No. 31-2010](#) §4)

#### **Sec. 23.50.060. Administration.**

The administration of this Chapter is hereby vested in the Finance Director. The Finance Director shall prescribe forms and administrative procedures for the ascertainment, assessment and collection of the tax not inconsistent with this Chapter, and for the enforcement of this Chapter. This Chapter 23.50 shall be administered in accordance with Chapters 23.04 through 23.28 of this Title, to the extent that they do not conflict with the provisions of this Chapter. ([Ord. No. 45-2000](#), § 1 [part])

**Sec. 23.50.070. Civil action for recovery of tax due.**

The City shall have the right to recover all sums due under the terms of this Chapter by judgment and execution thereon in a civil action in any court of competent jurisdiction. Such remedies shall be cumulative with all other remedies provided herein for the enforcement of this Chapter. ([Ord. No. 45-2000](#), § 1 [part])

**Sec. 23.50.080. Violation; penalty.**

Failure to comply with the terms of this Chapter by payment of taxes, filing of a return and otherwise complying with the terms of this Chapter shall constitute an offense in violation thereof, punishable, upon conviction, by a fine, imprisonment or both a fine and imprisonment, as set forth in Section 1.04.080 of this Code. ([Ord. No. 45-2000](#), § 1 [part])



## **Chapter 23.52**

### **Use Tax**

#### **Sec. 23.52.1 Legislative Intent.**

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

#### **Sec. 23.52.2 Words and Phrases Defined:**

Unless the context clearly indicates otherwise, the following words and phrases as used in this Chapter shall have the following meaning:

*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.

*Use Tax* means the tax paid or required to be paid by a consumer for using, storing, distributing or otherwise consuming inside the corporate limits of the City of Aspen construction materials as defined in this chapter that are acquired inside or outside of the corporate limits of the City of Aspen upon which a City of Aspen sales tax is not paid.

#### **Sec. 23.52.3 Rate; Imposition and Collection; Distribution; Effective date**

A. Use Tax Levy: There is hereby levied a tax or excise upon the privilege of using, storing, distributing, or otherwise consuming in the City construction materials as defined in this chapter from sources inside or outside the City, on which the City sales tax has not been paid. For sales transacted on or after January 10, 2008, the rate levied shall be two and one tenth percent (2.1%).

B. Imposition and Collection: The tax specified in this Section is imposed upon the owner and general contractor, jointly defined as the purchaser. Any seller shall collect the tax and remit it to the City pursuant to Chapter 23.08.

C. Application of funds: All funds received by the City pursuant to this Chapter (Use taxes) shall be deposited in a separate fund. The funds shall be subject to appropriation by City Council of the City, or its designee, only for the purposes to pay the cost of operation, maintenance, capital replacement, or improvement of the City transit service and pedestrian improvements; all in accordance with the purposes and limitations imposed by the ballot measure authorizing the collection of the use tax.

D. Effective date: The provisions of the Chapter shall be effective upon the tenth day of 2008 (January 10, 2008) and shall continue to be levied and collected until amended or repealed by ordinance. The tax imposed in this Chapter shall be in addition to all other taxes imposed by law.

**Sec. 23.52.4 Exemptions; Applicability.**

The following list of exemptions cannot be increased by implication or similarity. In all cases, the burden of proof is upon the taxpayer to establish an exemption. The following are exempt from the use tax imposed by this Chapter:

(A) The first one hundred thousand dollars (\$100,000.00) of master building permit valuation;

(B) The storage, use, or consumption of any tangible personal property the sale of which is subject to a retail sales tax imposed by the City;

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

(D) The storage, use, or consumption of tangible personal property brought into the City of Aspen by a nonresident thereof for his or her own storage, use, or consumption while temporarily within the City of Aspen; however, this exemption does not apply to the storage, use, or consumption of tangible personal property brought into this state by a nonresident to be used in the conduct of a business in this state;

(E) The storage, use, or consumption of tangible personal property by the United States government, or the State of Colorado, or its institutions, or its political subdivision in their governmental capacities only or by religious or charitable corporations in the conduct of their regular religious or charitable functions;

(F) 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 of 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;

(G) The use, storage, or consumption of any article of tangible personal property the sale or use of which has already been subjected to a legally imposed sales or use tax of another statutory or home rule town, city, or city and county equal to or in excess of the use tax imposed herein. A credit shall be granted against the town's use tax with respect to a person's use, storage, or consumption in the City of tangible personal property purchased by him in a previous statutory or home rule town, city, or city and county. The amount of the credit to equal the tax paid by him by reason of the imposition of a sales or use tax of the previous statutory or home rule town, city, or city and county on his purchase or use of the property. The amount of credit shall not exceed the amount of the Use Tax imposed herein.

(H) 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;

(I) The storage of construction and building materials; and

(J) Any transaction which the City of Aspen is prohibited from taxing under the Constitution and laws of the United States of America, or under the Constitution of the State of Colorado.

### **Sec. 23.52.5 Provisions Relative to Building Permits.**

(A) Every person who is required to obtain a City building permit shall remit use tax on construction materials used on that project, whether purchased from sources inside or outside the City, by one of the following methods:

1. Estimated prepayment. The estimated cost of construction materials shall be calculated by multiplying the total valuation of the construction project, entered on the building permit by the City Building Division, by fifty percent (50%). Use tax on such estimated cost of construction materials shall be paid at the time the building permit is issued. Use tax on the actual cost of materials may be subsequently determined through final reconciliation of actual tax paid to the amount of the initial deposit . Purchaser shall have 90 days beginning with the date of issuance of a Certificate of Occupancy to file a final use tax return or waive its right to final reconciliation. Purchaser's right to final reconciliation under this section shall be considered waived if a final use tax return is not so filed. If use tax is prepaid, interest on any tax deficiency related to construction materials shall be computed from the date of issuance of the certificate of occupancy. All projects permitted on or after January 10, 2008, shall be required to use this method of payment.

2. Actual cost. The actual cost of construction materials shall be reported and paid on monthly returns. If use tax is paid on an actual cost basis, interest on any tax deficiency shall be computed from the date on which tax is due.

3. Previously permitted projects: Purchasers of construction materials for projects permitted prior to the effective date of this ordinance shall have 90 days from the effective date of this ordinance to demonstrate compliance. Compliance shall be considered complete when the purchaser either provides an estimated prepayment of use taxes in accordance with paragraph (A).1 of this section, or purchaser submits an initial monthly use tax return in accordance with paragraph (A). 2. of this section.

(B) Nothing in this Section shall be interpreted to reallocate the responsibility for payment of use tax imposed by law.

[\(Ord. 55-2007\)](#)

Updated 11/13/2017