

Title 3

REVENUE AND FINANCE

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Chapter 3.04

FINANCE ADMINISTRATION*

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* For statutory provisions regarding local government budgets, see CRS 1973 § 29-1-101 et seq.; for statutory provisions regarding appropriations, see CRS 1973 § 31-20-201; for provisions authorizing the governing body of the city to control the finances and property of the corporation, see CRS 1973 § 31-12-101(1).

3.04.010 Fiscal year.

The fiscal year of the city shall commence on the first day of January in each year. (Prior code § 6.1)

3.04.020 Budget.

The city council shall adopt an annual budget for each fiscal year in accordance with the procedure set forth in the Local Government Budget Law of Colorado, except as otherwise provided in this code or the City Charter (Ord. 4927 §1 2004)

3.04.025 Fees, rates and charges.

The city council shall by resolution fix the fees, rates and charges to be collected by the city for goods and services furnished by the city. Whenever any such fee, rate or charge is inconsistent with any fee, rate or charge previously adopted, whether by ordinance or resolution, the more recently adopted fee, rate or charge shall control. (Ord. 3779 § 2, 1991)

3.04.030 Rate of tax levy.

The city council shall by resolution fix the rate of tax to be levied upon all the taxable property within the city for municipal purposes and, through the city clerk, shall officially certify the levy to the county commissioners of Larimer County prior to the 15th day of December of each year. Such resolution may be adopted prior to the City Council's adoption of its annual budget and appropriation ordinances. (Ord. 4927 §2, 2004)

3.04.040 Annual appropriation.

- A. The city council shall pass an ordinance, within the last quarter of each fiscal year, to be termed the annual appropriation bill for the next fiscal year, in which such council may appropriate such sums of money as may be deemed necessary to defray all necessary expenses and liabilities of the city, and in such ordinance shall specify the objects and purposes for which such appropriations are made, and the amount appropriated for each object or purpose. No further appropriations shall be made at any other time within such fiscal year, unless the proposition to make each appropriation has been first sanctioned by a majority of the legal voters of the city, either by a petition signed by them, or at a general election or special election duly called therefor. The total amount appropriated shall not exceed the probable amount of revenue that will be collected during the fiscal year.
- B. Nothing in this section shall prevent the city council from making supplemental appropriations during any fiscal year for any proper object and purposes of the city, provided that the city does not thereby exceed the total amount available for appropriation for the year. (Ord. 1349 § 1, 1973; prior code § 6.4)

3.04.050 Outlays not to exceed appropriation.

Neither the city council nor any department or officer of the city, shall add to the corporation expenditures in any one year anything over and above the amount provided for in the annual appropriation bill of that year, except as is otherwise specifically provided in this section. No expenditure for an improvement, to be paid for out of the general fund of the city, shall exceed in any one year the amount provided for such improvement in the annual appropriation bill. Nothing contained in this section shall prevent the city council from ordering, by a two-thirds vote, any improvement the necessity of which is caused by any casualty or accident happening after such annual appropriation is made. (Prior code § 6.5)

3.04.060 Appropriation precedent to contracts.

No contract shall be made by the city council, and no expense shall be incurred by any officer or department of the city, whether the object of the expenditure shall have been ordered by the city council or not, unless an appropriation shall have been previously made concerning such expense, except as otherwise provided in Section 3.04.050. (Prior code § 6.6)

3.04.070 Deposits--Investments.

The city council may from time to time designate by resolution those banks, savings and loan associations, and other such institutions, which meet the qualifications required by the laws of the state

for depositories of municipal funds, in which funds and moneys of the city may be deposited. All city funds shall be deposited in the name of the city in one or more of such institutions as may from time to time be directed by the city council. The city council shall by ordinance authorize investment of all or any part of such funds and moneys in securities and other investments which are authorized by the ordinances of the city or by state law. (Ord. 5650 § 1, 2011)

3.04.080 Warrants.

All warrants drawn upon the treasury must be signed by the mayor and countersigned by the clerk, stating the particular fund or appropriation to which the same is chargeable and the person to whom payable. (Ord. 1412 § 3(q), 1975; prior code § 6.8)

3.04.090 Appropriations for public purpose.

The city council may appropriate money for all corporate, municipal and public purposes to the full extent authorized by the Colorado Constitution and the city's Charter, which purposes shall include, without limitation, the following:

- A. to provide public concerts and entertainment;
- B. to advertise and market the business, social and educational advantages, the natural resources and the scenic attractions of the city;
- C. to aid and foster, by all lawful measures, charitable organizations, by appropriations and by granting the use of suitable rooms in the city buildings, provided no money so appropriated shall be given or loaned to any society, corporation, association or institution which may be wholly or in part under sectarian or denominational control; and
- D. to acquire any interest in real property, including for annexation if the property is located within the city's growth management area, in order to: (1) provide for the orderly urban planning and development of such land under the city's comprehensive land use master plan and other development standards; (2) preserve and facilitate the orderly development of the city's entryway transportation corridors; (3) encourage and facilitate economic development within the city; or (4) accomplish any other corporate, municipal or public purpose. (Ord. 4927 § 3, 2004; Ord. 5249 § 1, 2007)

3.04.100 Annual audits.

The city council shall appoint a certified public accountant to serve as the city auditor and he shall serve at the pleasure of the council. He shall audit the books and records of the city and its financial affairs and transactions at least once each year, in the form provided by state law, and shall make a written report to the council after each audit of the condition of the city's finances and the results of his examination. He shall also make recommendations to the council concerning the system of keeping the books, records and accounts of the city. (Ord. 1080 § 3, 1970; prior code § 6.11)

3.04.110 Notice for supplemental appropriations.

- A. Except as set forth in subsection C. below, prior to any public hearing concerning a proposed transfer, supplemental appropriation, or revised appropriation, the city clerk shall publish a notice containing the following information:
 1. the date and time of the hearing at which the adoption of the proposed transfer, supplemental appropriation, or revised appropriation will be considered;
 2. a statement that the proposed transfer, supplemental appropriation, or revised appropriation is available for inspection by the public at the city clerk's office; and
 3. a statement that any interested elector of the city may file with the city clerk any objections to the proposed transfer, supplemental appropriation, or revised appropriation at any time

prior to final adoption of the transfer, supplemental appropriation, or revised appropriation by the city council.

- B. The notice required by this section shall be published one time in a newspaper having general circulation within the city.
- C. The city clerk shall not be required to publish a notice prior to any public hearing concerning a proposed transfer, supplemental appropriation, or revised appropriation when the proposed transfer, supplemental appropriation, or revised appropriation is adopted by emergency ordinance.(Ord. 5371 § 1, 2008; Ord. 5346 §1, 2008)

Chapter 3.08

FUNDS*

Sections:

- 3.08.010 Capital improvement fund.**
- 3.08.020 General fund - Reserve account.**

*For statutory provisions regarding deposits and investments of city funds, see CRSA § 31-20-303.

3.08.010 Capital improvement fund.

- A. There is created and established a capital improvement fund in which all moneys from the sale of the Loveland Municipal Airport and any other improvements which may be sold by the city shall be placed.
- B. Expenditures from the fund shall be made only for capital improvements and by order of the city council.
- C. The moneys in the fund, except as needed, shall be kept invested by the city treasurer in such securities as are approved by the state for fiduciary and trust funds. (Ord. 762 § 1, 1962; prior code § 6.12)

3.08.020 General Fund – Reserve Account

For each fiscal year commencing on January 1, 2012, two and one half percent (2.5%) of all general fund revenues which are derived from any sales tax, use tax or ad valorem property tax and which are within the annual revenue limitations of Article X, Section 20 of the Colorado Constitution shall be placed in the general fund reserve account. Expenditures from the reserve account shall be made for operating programs, special projects or capital improvements, following appropriation by ordinance of the city council. (Ord. 5640 § 1, 2011; Ord. 5530 § 1, 2010; Ord. 5466 §1, 2009; Ord. 4942 § 1 (Part) 2004; Ord. 4410 § 1, 1999)

Chapter 3.12

PROCUREMENT

Sections:

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3.12.020	Purpose.
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3.12.010 Application.

- A. This chapter shall apply to the procurement of all services and supplies required or used by the city, including businesses and enterprises operated by the city, regardless of the source of the funds. This chapter shall not apply to: (i) the procurement of legal services, litigation services, fine art, artistic, musical, and dramatic performances; (ii) employment contracts; (iii) intergovernmental agreements; or (iv) purchases or leases of any interest in real property.
- B. Nothing in this chapter or any regulations promulgated thereunder shall prevent the city from complying with all mandatory applicable federal or state laws or regulations when a procurement is funded, in whole or in part, with federal or state monies to the extent such laws or regulations conflict with this chapter.
- C. Nothing in this chapter or any regulations promulgated thereunder shall prevent the city from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement to the extent such terms and conditions conflict with this chapter.
- D. Nothing in this chapter or any regulations promulgated thereunder shall create or confer any right or entitlement upon any person or entity to bid on or receive an award of any city contract.
- E. The city manager may suspend application of this chapter when the emergency operations center is in effect.

3.12.020 Purpose.

The purposes of this chapter are to maximize the purchasing value of public funds, foster effective competition within the free enterprise system, provide safeguards for maintaining a

procurement system of quality and integrity, and codify the city's procurement policies for the orderly and efficient administration thereof.

3.12.030 Definitions.

When used in this chapter, the following words, terms, and phrases shall have the meanings set forth in this section:

“Bid” shall mean the written, sealed response of a bidder to an invitation to bid.

“Change order” shall mean any written modification to an existing contract authorizing changes, additions, or deletions to the scope of work or any other provision of the contract.

“Construction” shall mean the process of building, altering, repairing, improving, or demolishing any building, structure, or improvement on real property.

“Contract” shall mean an agreement enforceable by law between the city and a contractor for services or supplies.

“Contractor” shall mean a person or entity having a contract with the city, whether for services or supplies.

“Incidental services” shall mean those services and supplies that cost the city less than \$5,000 to procure.

“Improvement” shall mean any structure, building, street, utility, or other valuable addition to real property amounting to more than mere repairs or partial replacement intended to enhance the value or utility of the real property or to adapt the real property to a new or further purpose.

“Maintenance” shall mean all acts of repair or replacement necessary to keep any improvement or personal property in proper condition and good working order to prevent decline in, failure, or cessation of the existing condition of the improvement or personal property.

“Professional or technical services” shall mean those services provided by a contractor that are of a specialized nature, including, without limitation, accounting, appraisal, design, engineering, surveying, laboratory testing, medical services, writing, and training.

“Public notice” shall mean publication in a local newspaper of general circulation. Where public notice is required, the city may choose to provide additional notice reasonably calculated to inform potential bidders of an invitation to bid, including, without limitation, other print publications, electronic mail or website publication, television, radio, postings, and other broadcasting and electronic media.

“Purchase order” shall mean the written instrument issued by the city authorizing the expenditure of city funds.

“Quote” shall mean the response of a bidder to a request for quotes.

“Responsive bidder” shall mean a bidder whose bid or quote conforms in all material respects to the requirements set forth in the invitation to bid or request for quotes.

“Services” shall mean the furnishing of labor, time, or effort by a contractor, including, without limitation, construction, maintenance, and professional and technical services.

“Supplies” shall mean all personal property, including, without limitation, equipment, materials, and goods, to be utilized, placed in service, or consumed in city operations.

(Ord.5338 §1, 2008)

3.12.040 Public access to procurement information; records retention.

Information obtained by the city during the procurement process shall be a public record and available to the public to the extent required under Colorado law. All procurement records shall be retained and disposed of in accordance with records retention guidelines and schedules approved by city council.

3.12.050 Appropriation; multi-year contracts.

The city shall not enter into any contract that, by its terms, involves the expenditure of funds in excess of amounts appropriated by city council. Notwithstanding anything herein to the contrary, the city may enter into a multiple-year contract if: (1) the contract is made expressly contingent upon annual appropriation by city council; or (2) one of the city's enterprises, as defined in Section 20, Article X of the Colorado Constitution, is a party to the contract for the purpose of the enterprise entering into a multiple-year fiscal obligation, and city council, sitting as the board of the enterprise, has approved such contract by ordinance.

3.12.060 Procurement authority.

- A. All contracts of \$500,000 or more shall be submitted to city council for approval. If sufficient funds for any such contract have previously been budgeted and appropriated by city council in the water and power department budget, such contract may be submitted to the Loveland utilities commission for approval. All contracts of \$499,999 or less may be approved by the city manager or his designee.
- B. Any change order that causes a contract to equal or exceed \$500,000 and which, when combined with all previous change orders, equals or exceeds twenty percent of the original contract amount shall be submitted to city council for approval. If sufficient funds for any such change order have previously been budgeted and appropriated by city council in the water and power department budget, such change order may be submitted to the Loveland utilities commission for approval. All other change orders may be approved by the city manager or his designee.
- C. Notwithstanding anything herein to the contrary, all contracts for construction in local improvement districts of which city council is the governing board shall be submitted to city council for approval as required in Section 3.12.160. (Ord. 5401 § 2, 2009)

3.12.070 Procurement methods.

- A. Unless otherwise set forth in this section, the city shall procure services and supplies as follows:
 - 1. For services or supplies estimated to cost \$30,000 or more, the city shall solicit bids.
 - 2. For services or supplies estimated to cost between \$10,000 and \$29,999, the city shall solicit at least three written quotes.
 - 3. For services and supplies estimated to cost between \$5,000 and \$9,999, the city shall solicit at least three verbal quotes. (Ord.5338 §2, 2008)
- B. The city shall not be required to procure professional, technical, or incidental services other than by direct negotiation with the contractor. The city shall negotiate contracts for said services on the basis of demonstrated competence and qualifications for the type of service required at fair and reasonable prices.
- C. Notwithstanding anything herein to the contrary, the city manager or his designee may make or authorize a sole source procurement of services or supplies, regardless of cost, if: (1) there is only one source of the services or supplies; (2) a particular service or supply is required to maintain interchangeability or compatibility as part of an existing integrated system; (3) a particular service or supply is required in order to standardize or maintain standardization for the purpose of reducing financial investment or simplifying administration; or (4) a particular service or supply is required to match materials in use so as to produce visual harmony. A written determination of the basis for the sole source procurement shall be included in the contract file. Services or supplies for which the manufacturer or one Colorado factory-authorized supplier is the only source of such services or supplies shall be deemed to be a sole source without further justification.

- D. Notwithstanding anything herein to the contrary, the city manager or his designee may make or authorize an emergency procurement of services or supplies when there exists a threat to public health, welfare, or safety under emergency conditions, regardless of cost, provided that such emergency procurements shall be made using the appropriate method of public procurement set forth in this section as is practicable under the circumstances. A written determination of the basis for the emergency and the selection of the particular contractor shall be included in the contract file.

3.12.080 Notice.

The city shall provide for public notice of all invitations to bid. Such notice shall include, without limitation, the subject of the bid, the place, date, and time of any pre-bid meeting and whether or not such meeting is mandatory, and the place, date, and time of bid opening. If the city decides to pre-qualify bidders by requesting statements of qualifications, the city shall provide for public notice at the time the statement of qualifications is requested. Public notice shall occur for a reasonable period of time prior to the date set for bid opening.

3.12.090 Cancellation of solicitations.

The city may cancel an invitation to bid or request for quotes when in the best interests of the city. A written determination of the reasons for such cancellation shall be made a part of the procuring department's file.

3.12.100 Responsible bidders.

- A. In addition to any other factors or qualifications that may be set forth in the invitation to bid or request for quotes, the following shall be considered by the city when determining whether a bidder is responsible:
1. the ability, capacity, and skill of the bidder to perform the contract;
 2. whether the bidder can perform the contract promptly and within the time specified without delay or interference;
 3. the character, integrity, reputation, judgment, experience, and efficiency of the bidder;
 4. the quality of the bidder's performance of previous contracts;
 5. the bidder's compliance with laws and ordinances relating to the contract;
 6. the quality, availability, and adaptability of the services or supplies to the particular use required;
 7. the ability of the bidder to provide future maintenance and service for the use of the subject of the contract; and
 8. any other circumstance which may affect the bidder's performance of the contract.
- B. No bidder shall be in default on the performance of any other contract with the city or in the payment of any taxes, licenses, or other monies due to the city.

3.12.110 Suspension and debarment.

- A. After reasonable notice to the person or entity involved and reasonable opportunity for that person or entity to be heard, the city manager, after consultation with the city attorney, shall have the authority to suspend or debar a person or entity for cause from consideration for award of contracts. The city manager shall issue a written decision to suspend or debar. The decision shall state the reasons for the action taken. A copy of the decision shall be mailed or otherwise furnished immediately to the suspended or debarred person or entity. All suspensions and debarments shall be city-wide.
- B. Suspensions.

1. Cause for suspension shall include, without limitation, the following:
 - a. Documented breach or default of any city contract, as determined within the city manager's sole discretion.
 - b. Any other cause the city manager determines to be so serious and compelling as to affect the person's or entity's responsibility as a potential contractor, including suspension or debarment by another governmental entity for cause.
 2. Suspensions shall be for a period of not less than six months or more than three years.
- C. Debarment.
1. Causes for debarment shall include, without limitation, the following:
 - a. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.
 - b. Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification, or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a contractor.
 - c. Conviction under state or federal antitrust statutes arising out of the submission of a bid.
 - d. One or more suspensions by the city as set forth herein.
 - e. Any other cause the city manager determines to be so serious and compelling as to affect the person's or entity's responsibility as a potential city contractor, including suspension or debarment by another governmental entity for cause.
 2. Debarments shall be for a period of not less than three years or more than ten years.

3.12.120 Contract award.

All contracts subject to bid or quote pursuant to Section 3.12.070A. shall be awarded to the lowest responsive and responsible bidder. If said bidder fails to enter into the contract, the bid bond, if required, shall be forfeited to the city. The city may then accept the bid or quote of the next lowest responsive and responsible bidder. Notwithstanding anything herein to the contrary, the city may reject any or all bids or quotes when in the best interests of the city. A written determination of the reasons for such rejection shall be made a part of the procuring department's file.

3.12.130 Form of contract.

All contracts shall be in a form approved by the city attorney.

3.12.140 Bonds.

- A. For all construction contracts of \$100,000 or more, the following security shall be required:
 1. Security to ensure performance of the contract in the form of: (i) a bond provided by a surety company authorized to do business in the State of Colorado; (ii) the equivalent in certified funds; or (iii) otherwise supplied in a form satisfactory to the city attorney. Said security shall be in an amount equal to one hundred percent of the total contract price.
 2. Security to ensure payment of all subcontractors in the form of: (i) a bond provided by a surety company authorized to do business in the State of Colorado; (ii) the equivalent in certified funds; or (iii) otherwise supplied in a form satisfactory to the city attorney. Said security shall be in an amount equal to one hundred percent of the total contract price.

- B. All bonds shall be in a form approved by the city attorney.
- C. Nothing in this section shall be construed to limit the authority of the city to require security in addition to that set forth herein or to prevent the city from requiring such bonds on contracts of less than \$100,000 as may be deemed necessary within the city's sole discretion. (Ord. 5614 § 1, 2011)

3.12.150 Retainage.

The city shall hold retainage on all construction contracts of \$100,000 or more. Unless otherwise required by special funding sources, including, without limitation, federal and state grants, the city shall hold retainage at a rate of five percent of each progress payment. The city shall hold retainage until the contract is completed satisfactorily and finally accepted by the city. The city shall release retainage in accordance with state law. (Ord. 5614 § 2, 2011)

3.12.160 Construction in local improvement districts.

The city or its designated representative shall solicit bids for all local improvements, the cost of which is to be assessed against property located in the affected local improvement district; provided, however, that if city council determines that the proposed local improvement can be made by the city for less than the bid of the lowest responsive, responsible bidder, the city, with city council's approval, may provide the work by hiring labor by the day or otherwise and purchasing the supplies necessary to complete the local improvements.

3.12.170 Cooperative procurement.

Notwithstanding anything in this chapter to the contrary, the city manager or his designee shall have the authority to join with other governmental entities, including, without limitation, the State of Colorado, the Multiple Assembly of Procurement Officials, and Western States Contracting Alliance, to cooperatively procure services and supplies in the best interest of the city.

3.12.180 Procurement contrary to this chapter.

Except as may be otherwise provided by law, any procurement made by the city or contract entered into on behalf of the city that is contrary to the provisions of this chapter shall be void and wholly without effect and shall not be binding on the city in any manner.

3.12.190 Violations.

Failure to comply with this chapter shall not be deemed a violation of the Loveland Municipal Code for purposes of municipal prosecution.

3.12.200 Procurement regulations.

The city manager may promulgate procurement regulations consistent with this chapter. (Ord. 5184 § 2, 2007)

Chapter 3.16

SALES AND USE TAX

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3.16.010 Sales tax definitions.

For the purposes of this Chapter 3.16, the words contained herein shall have the meanings set forth in Section 39-26-102, Colorado Revised Statutes, as it currently exists or may hereafter be amended, and the definitions are incorporated in this chapter by this specific reference. (Ord. 4263 § 1, 1997; Ord. 3094 § 1 (part), 1984)

3.16.020 General provisions.

- A. There is imposed on the sale of tangible personal property at retail or the furnishing of services as provided in § 29-2-105(1)(d), Colorado Revised Statutes, a sales tax equal to three percent of the gross receipts (the "sales tax"). The tangible personal property and services taxable under this chapter shall be the same as the tangible personal property and services taxable pursuant to § 39-26-104, Colorado Revised Statutes, and subject to the same exemptions as those specified in § 39-26-114, Colorado Revised Statutes; provided that the exemption for the sales of food pursuant to § 39-26-114(1)(a)(XX), Colorado Revised Statutes, exemption for sales of electricity, coal, wood, gas, fuel oil or coke sold to occupants of residences pursuant to § 39-26-114(1)(a)(XXI), Colorado Revised Statutes, and the exemption for sales of machinery or machine tools pursuant to § 39-26-114(11), Colorado Revised Statutes, shall not apply to the sales tax, and the sale of such items is expressly made taxable under this chapter. The imposition of the sales tax on individual sales shall be in accordance with schedules set forth in the rules and regulations promulgated by the city manager.
- B. For the purpose of the sales tax, all retail sales shall be considered consummated at the place of business of the retailer, unless the tangible personal property sold is delivered by the retailer or his agent to a destination outside the limits of the city or to a common carrier for delivery to a destination outside the limits of the city and except that for transactions consummated on or after January 1, 1986, the sales tax shall not apply to the sale of construction and building materials if such materials are picked up by the purchaser and if the purchaser of such materials presents to the retailer a building permit or other documentation acceptable to the city evidencing that a local use tax has been paid or is required to be paid. The gross receipts from such sales shall include delivery charges when such charges are subject to the state sales and use tax imposed by Article 26 of Title 39, Colorado Revised Statutes, regardless of the place to which delivery is

made. If a retailer has no permanent place of business in the city, or has more than one place of business, the place at which the retail sales are consummated for the purpose of the sales tax shall be determined by the provisions of Article 26 of Title 39, Colorado Revised Statutes, and by rules and regulations promulgated by the Department of Revenue.

- C. The amount subject to the sales tax shall not include the amount of any sales or use tax imposed by Article 26 of Title 39, Colorado Revised Statutes.
- D. All sales of personal property on which a specific ownership tax has been paid or is payable shall be exempt from the sales tax when such sales meet both of the following conditions:
 - 1. The purchaser is a nonresident of, or has his principal place of business outside the limits of the city; and
 - 2. Such personal property is registered or required to be registered outside the limits of the city under the laws of the state. (Ord. 4263 § 3, 1997; Ord. 3222 §§ 1, 2, 3, 1985; Ord. 3094 § 1 (part), 1984)

3.16.030 Use tax definitions.

For the purposes of Sections 3.16.040, 3.16.050, 3.16.150 and 3.16.160 of this chapter 3.16, the words therein contained shall have the meanings set forth in Section 39-26-201, Colorado Revised Statutes, as it currently exists or may hereafter be amended, and the definitions are incorporated in this chapter by this specific reference. Ord. 4263 § 4, 1997; Ord. 3094 § 1 (part), 1984)

3.16.040 Use tax imposed.

There is imposed and there shall be paid and collected a use tax upon the privilege of storing, using or consuming within the city any construction and building materials and motor and other vehicles on which registration is required, purchased at retail, such use tax to be in the amount of three percent of the retail cost thereof (the "use tax"). The use tax shall be collected in accordance with the schedules set forth in the rules and regulations promulgated by the city manager. (Ord. 4263 § 5, 1997; Ord. 3094 § 1 (part), 1984)

3.16.050 Use tax exemptions.

In no event shall the use tax apply:

- A. To the storage, use or consumption of any tangible property the sale of which is subject to a retail sales tax imposed by the city;
- B. To the storage, use or consumption of any tangible personal property purchased for resale in the city, either in its original form or as an ingredient of a manufactured or compounded product, in the regular course of a business;
- C. To the storage, use or consumption of tangible personal property brought into the city by a nonresident thereof for his own storage, use or consumption while temporarily within the city; however, this exemption does not apply to the storage, use or consumption of tangible personal property brought into the state by a nonresident to be used in the conduct of a business in this state;
- D. To the storage, use or consumption of tangible personal property by the United States government or the state, or its institutions or political subdivisions, in their governmental capacities only or by religious or charitable corporations in the conduct of their religious or charitable functions;
- E. To the storage, use or consumption of tangible personal property by a person engaged in the business of manufacturing or compounding for sale, profit or use any article, substance or commodity, which 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;

- F. To the storage, use or consumption of any article of tangible personal property the sale or use of which has already been subjected to a sales and use tax of another town, city or county equal to or in excess of the use tax. A credit shall be granted against the use tax with respect to a person's storage, use or consumption in the city of tangible personal property purchased by him elsewhere. The amount of the credit shall be equal to the tax paid by him by reason of the imposition of a sales or use tax of another town, city or county on his purchase or use of the property. The amount of the credit shall not exceed the amount of the use tax;
- G. To the storage, use or consumption of tangible personal property and household effects acquired outside of the city and brought into it by a nonresident acquiring residency;
- H. To the storage or use of a motor vehicle if the owner is or was, at the time of purchase, a nonresident of the city and he purchased the vehicle outside of the city for use outside of the city and actually so used it for a substantial and primary purpose for which it was acquired and he registered, titled and licensed the motor vehicle outside of the city;
- I. To the storage, use or consumption of any construction and building materials and motor and other vehicles on which registration is required if a written contract for the purchase thereof was entered into prior to the effective date of the use tax;
- J. To the storage, use or consumption of any construction and building materials required or made necessary in the performance of any construction contract bid, let or entered into at any time prior to the effective date of the use tax;
- K. To the storage of construction and building materials after January 1, 1986;
- L. To the storage, use or consumption of any article of tangible personal property the sale or use of which has already been subjected to a legally imposed sales or use tax of another statutory or home rule municipality equal to or in excess of the rate provided in this chapter, after January 1, 1986. A credit shall be granted against the use tax with respect to a person's storage, use or consumption in the city of tangible personal property purchased by him in a previous statutory or home rule municipality. The amount of the credit shall be equal to the tax paid by him by reason of the imposition of a sales or use tax of the previous statutory or home rule municipality on his purchase or use of the property. The amount of the credit shall not exceed the rate provided in this chapter. (Ord. 4263 § 6, 1997; Ord. 3222 § 4, 1985; Ord. 3094 § 1 (part), 1984)

3.16.060 Licenses; fees; revocation.

- A. A sales tax license shall be required for any person to engage in the business of selling at retail in the City tangible personal property or services that are taxable hereunder which are purchased in the City and are subject to sales tax pursuant to this chapter. Such sales tax licenses shall be granted and issued by the City manager and shall be in force and effect until the earlier of: (i) revocation of such license; or (ii) sale or termination of the business, if any, relating to such license.
- B. Such license shall be granted only upon application stating the name and address of the person desiring such license, the name of such business, if any, and the location, including the street number of such business, if any, and such other facts as the City manager requires. No license issued pursuant to this section shall be transferable.
- C. For each sales tax license application submitted, a fee, as established by resolution of the City Council, shall accompany such application, which fee is nonrefundable.
- D. In case business is transacted at two (2) or more separate places by one (1) person, a separate license for each place of business shall be required.
- E. Each license shall be numbered and shall show the name of the licensee and the place of business of the licensee and shall be posted in a conspicuous place at the place of business for which it is issued. If the licensee does not have a place of business, then the license shall show the mailing address of such licensee.

- F. If an application for a license is submitted by an individual or a business which previously held a license, the City manager may require that any taxes, penalties and interest due under the previous license be paid and a bond posted in an amount set by the City manager to ensure payment of taxes under the new license prior to issuance of such new license.
- G. The City manager, after reasonable notice and a full hearing, may revoke the license of any person found by the City manager to have violated any provision of this chapter.
- H. Any finding and order of the City manager revoking the license of any person shall be subject to review by the Larimer County District Court upon application of the aggrieved party. The procedure for review shall be in accordance with Rule 106 of the Colorado Rules of Civil Procedure. (Ord. 4263 § 8 (part), 1997)

3.16.070 Collection of sales tax.

- A. Every retailer, also in this chapter called "vendor," shall be liable and responsible for the payment of an amount equal to three percent (3%) of all sales made by the retailer of commodities or services as specified in Section 3.16.020 and shall, before the twentieth (20th) day of each month, make a return to the City manager for the preceding calendar month and remit an amount equal to said three percent (3%) on such sales to said City manager. The vendor shall be entitled to withhold an amount equal to the lesser of two percent (2%) of the amount of the tax to be remitted by him or her under this chapter, or one hundred fifty dollars (\$150), to cover the vendor's expense in the collection and remittance of said tax. If any vendor is delinquent in remitting said tax, other than in unusual circumstances shown to the satisfaction of the City manager, the vendor shall not be allowed to retain any amount to cover his expense in collecting and remitting said tax, and an amount equal to the full three percent (3%) shall be remitted to the City manager by any such delinquent vendor. (Ord. 5529 § 1, 2010)
- B. If the accounting methods regularly employed by the vendor in the transaction of his business or other conditions are such that returns of sales made on a calendar month basis shall impose unnecessary hardship, the City manager, upon written request of the vendor, may accept returns at such intervals as shall, in his opinion, better suit the convenience of the taxpayer and shall not jeopardize the collection of the tax. The City manager may permit taxpayers whose monthly collected tax is less than three hundred dollars (\$300) to make returns and pay taxes at intervals not greater than every three (3) months.
- C. The City manager may extend the date for making a return and paying the taxes due under such reasonable rules and regulations as may be prescribed therefore, but no such extension shall be for a greater period than three months.
- D. The burden of proving that any retailer is exempt from collecting the tax on any goods or services sold and paying the same to the City manager or from making such returns, shall be on the retailer or vendor.
- E. The City's sales tax shall not apply to the sale of tangible personal property at retail or the furnishing of services if the transaction was previously subjected to a sales or use tax lawfully imposed on the purchaser or user by another statutory or home rule municipality equal to or in excess of the sales tax required to be paid pursuant to Section 3.16.020. A credit shall be granted against the City's sales tax with respect to such transaction equal in amount to the lawfully imposed local sales or use tax previously paid by the purchaser or user to the previous statutory or home rule municipality. The amount of the credit shall not exceed the amount of the sales tax required to be paid pursuant to Section 3.16.020. (Ord. 4263 § 8 (part), 1997)

3.16.080 License and tax additional.

The license and tax imposed by this chapter shall be in addition to all other licenses and taxes imposed by law, except as otherwise provided in this chapter. (Ord. 4263 § 8 (part), 1997)

3.16.090 Retailer; multiple locations.

A retailer doing business in two or more places or locations may file a single return covering all such business activities engaged within the City. (Ord. 4263 § 8 (part), 1997)

3.16.100 Designation of tax on receipt.

- A. Except as provided in paragraph B. below, retailers shall add the tax imposed to the sale price or charge, showing such tax as a separate and distinct item, and when added, such tax shall constitute a part of such price or charge and shall be a debt from the consumer or user to the retailer until paid and shall be recoverable at law in the same manner as other debts. The tax shall be paid by the purchaser to the retailer as trustee for and on account of the City, and the retailer shall be liable for the collection thereof for and on account of the City.
- B. Any retailer selling malt, vinous or spirituous liquors by the drink may include in the sales price the tax levied under this chapter, except that no retailer shall advertise or hold out to the public in any manner, directly or indirectly, that such tax is not included as part of the sales price to the consumer. The tax schedules designated in Section 3.16.020(A) shall be used by such retailer in determining amounts to be included in such sales price. The use of the schedules referred to in Section 3.16.020(A) shall not relieve such retailer from liability for payment of the full amount of the tax imposed pursuant to this chapter. (Ord. 4263 § 8 (part), 1997)

3.16.110 Excess tax; remittance.

If any vendor, during any reporting period, collects as a tax an amount in excess of three percent (3%) of his total taxable sales, then he shall remit to the City manager the full net amount of the tax imposed in this chapter and also such excess amount. The retention by the retailer or vendor of any excess amount of tax collections over the three percent (3%) of the total taxable sales of such retailer or vendor or the intentional failure to remit punctually to the City manager the full amount required to be remitted by the provisions of this chapter is declared to be a violation of this chapter and shall be recovered, together with interest, penalties and costs, as provided in Section 3.16.310. (Ord. 4263 § 8 (part), 1997)

3.16.120 Credit sales.

- A. Whenever tangible personal property is sold under a conditional sales contract or lease-purchase agreement whereby the retailer retains title as security for all or part of the purchase price or whenever the retailer takes a purchase money security interest on such tangible personal property to secure all or part of the purchase price, the total tax based on the total purchase price shall become immediately due and payable. This tax shall be charged and collected by the retailer. No refund or credit shall be allowed to either party to the transaction in case of repossession.
- B. If a retailer transfers, sells, assigns or otherwise disposes of an account receivable, then he shall be deemed to have received the full balance of the consideration for the original sale and shall be liable for the remittance of the sales tax on the balance of the total sale price not previously reported, except that such transfer, sale, assignment or other disposition of an account receivable by a retailer to a closely held subsidiary, shall not be deemed to require the retailer to pay the sales tax on the credit sale represented by the account transferred prior to the time that the customer makes payment on said account. (Ord. 4263 § 8 (part), 1997)

3.16.130 Bad debt charge-offs.

Taxes paid on gross taxable sales represented by accounts found to be worthless and actually charged off for income tax purposes may be credited upon a subsequent payment of the tax provided in

this chapter, but if any such accounts are thereafter collected by the taxpayer, then a tax shall be paid upon the amounts so collected. (Ord. 4263 § 8 (part), 1997)

3.16.140 Reserved.
(Ord. 4263 § 8 (part), 1997)

3.16.150 Motor and other vehicle use tax.

If the owner of an automotive vehicle for which registration, licensing or titling is required by the state pursuant to Section 42-6-137(2), Colorado Revised Statutes, is required to register, license or obtain a certificate of title for such automotive vehicle at an address located within the City, then the use tax imposed pursuant to Section 3.16.040 shall be collected by the authorized agent of the Department of Revenue in the County pursuant to an agreement or agreements entered into between the City and the authorized agent of the Department of Revenue in the County. The proceeds of such use tax shall be paid to the City periodically in accordance with such agreement or agreements. If the authorized agent of the Department of Revenue in the County fails to collect any use tax imposed pursuant to Section 3.16.040, then the City manager shall collect such use tax in the manner set forth in Section 3.16.310. (Ord. 4263 § 8 (part), 1997)

3.16.160 Collection of use tax on building materials.

- A. For construction and building materials, the use tax imposed pursuant to Section 3.16.040 shall be collected by the City manager as hereinafter provided in this section and shall be collected in the amount of three percent (3%) of the sale value of the construction and building materials. For purposes of this subsection, fifty percent (50%) of the estimated general contract costs and/or fifty percent (50%) of the estimated mechanical contract costs shall be deemed to be the sale value of such construction and building materials.
- B. Any person who shall build, construct or improve any building, dwelling or other structure or improvements to realty whatsoever, including underground improvements, within the City, and who shall purchase the necessary lumber, fixtures, materials or any other supplies needed therefore from any source inside or outside the corporate limits of the City shall keep and preserve all invoices and statements from both the general and subcontractors along with a summary sheet showing such purchases and shall on or before the tenth (10th) day of each succeeding month following the start of such construction file a return with the City manager to which he shall attach such statements and invoices from both the general and subcontractors along with a summary sheet for the lumber, fixtures, materials and other supplies purchased the previous month and shall thereupon pay to the City manager the full amount of the use tax due thereon for the preceding month or months. Any failure to preserve such statements and invoices and to make such return and payment of such use tax shall be deemed a violation of this chapter, and any offending persons shall be subject to the penalties and punishment provided in this chapter. It shall be the duty of the City's building inspector and the contractors and subcontractors who are hired to construct any such improvements to furnish the City manager with such information as the City manager may require as to any purchase of lumber, fixtures, materials and supplies for such improvements which were obtained from sources inside and outside the City. The full amount of any use tax due and not paid for lumber, fixtures, materials and supplies purchased from such inside or outside sources, together with penalties and interest thereon as herein provided, shall be and constitute a lien upon the real property benefited by such improvements, and the City manager is hereby authorized to file a notice of such lien with the County Clerk and Recorder.

C. Any person who shall build, construct or improve any building, dwelling or other structure or improvement to realty whatsoever, including underground improvements, within the City, and who shall purchase the necessary lumber, fixtures, materials or any other supplies needed therefore from any source either within or without the corporate limits of the City, may at such person's election remit a deposit to the City prior to the issuance of any building permit, such deposit to insure and indemnify the City for the amount of use tax due within three (3) years from the date of issuance of the certificate of occupancy for the project or the date of the final inspection of the project by the City. The amount of the deposit shall be based upon an estimate of the use tax to be payable on the lumber, fixtures, materials and supplies needed therefore at the time that the respective building permit is obtained. The estimate of the cost of such lumber, fixtures, materials and supplies for a particular project structure shall be determined by the City building official, and this estimate shall be subject to adjustment if the actual cost of such lumber, fixtures, materials or supplies needed for the project is either less than or greater than such estimate. If the taxpayer elects this basis for estimating the use tax and providing a deposit to insure the use tax payment when due, then the provisions of paragraph B. of this subsection which provide for the filing of a tax return supported by related invoices shall be waived. Upon payment of such deposit to the City manager, which is computed on the basis of three percent of fifty percent of the estimated general contract costs and/or the estimated mechanical contract costs, the taxpayer shall be issued a receipt identifying the property that is the subject of this deposit and the building permit number. Within three (3) years from the date of issuance of the certificate of occupancy for the project or the date of the final inspection by the City of the project, if it is determined by the City that the actual cost of the lumber, fixtures, materials and supplies needed for the project is greater than the estimate therefore and that the amount of the use tax deposit is not sufficient to provide for full payment of the use tax, then the additional use tax due must be received by the City manager within thirty (30) days of such determination. If it is determined by the city that the deposit is sufficient to pay for the use tax due, then the deposit shall be used to pay the amount of the use tax due, and any excess amount of the deposit shall be returned by mail to the person who made the deposit within thirty (30) days of such determination. If the taxpayer purchases such lumber, fixtures, materials or supplies from City vendors possessing a valid City retail sales tax license, then he may submit invoices or statements reflecting the purchase therefore and make application to the City manager within sixty (60) days directly following the determination by the City of the use tax due, which determination shall be made within three (3) years from the date of issuance of the certificate of occupancy for the project or date of the final inspection by the City of the project, for credit or refund of any amount paid as sales taxes to the City, in which event it shall be the duty of the person making such application to furnish all necessary bills and invoices evidencing the payment of the tax. If the City manager is satisfied that there has been such payment, then he shall either credit the account of the taxpayer if the use tax has not been levied or refund the amount if the use tax levy has been paid through such deposit within sixty (60) days after such application shall have been received by the City manager. The amount of any use tax due and not paid constitutes a lien upon the real property benefited by the use of such lumber, fixtures, materials or supplies. (Ord. 4263 § 8 (part), 1997)

3.16.170 Reserved.
(Ord. 4263 § 8 (part), 1997)

3.16.180 Tax disputes.

Retailers engaged in business in the City shall collect and purchasers and consumers shall pay the taxes levied by this chapter, notwithstanding the fact that either retailer, purchaser or consumer

disputes the tax liability or claims an exemption. If the application of the tax to any transaction is disputed, the retailer shall collect and the purchaser or consumer shall pay the tax, and the taxpayer may thereafter apply to the City manager for a refund of such taxes paid, as provided in this chapter. (Ord. 4263 § 8 (part), 1997)

3.16.190 Procedure for refund of disputed tax.

A refund shall be made or credit allowed for the tax paid under dispute by any person who claims that the transaction or item was not taxable or claims an exemption as provided in this chapter. Such refund shall be made by the City manager after compliance with the following:

- A. Application. An application for a refund of sales or use tax paid under dispute by a purchaser or user who claims an exemption under Section 3.16.020 or 3.16.050 shall be made within sixty (60) days after the date of purchase, storage, use or consumption of the goods or services upon which an exemption is claimed. An application for refund of taxes paid in error or by mistake shall be made within three (3) years after the date of purchase, storage, use or consumption of the goods for which the refund is claimed. Such applications must be accompanied by the original paid invoice or sales receipt and must be made upon such forms as shall be prescribed and furnished by the City manager.
- B. Burden of proof. The burden of proving that any transaction or item is not taxable or is exempt from the tax shall be upon the person asserting such claim under such reasonable requirements of proof as the City manager may prescribe.
- C. Decisions. Upon receipt of an application, the City manager shall examine the same with all due speed and shall give written notice to the applicant of his or her decision thereon.
- D. Hearing. An applicant whose application for a refund has been denied may, within twenty (20) days after such decision is mailed, petition the City manager for a hearing on the claim. The City manager shall notify the applicant in writing of the time and place of the hearing. After such hearing, the City manager shall make such order in the matter as he or she deems just and proper and shall furnish a copy of such final order to the applicant. The time period set forth in this section may, in the absolute discretion of the City manager, be waived for good cause on written application of the applicant. (Ord. 4263 § 8 (part), 1997)

3.16.200 Right of refund not assignable.

The right of any person to a refund under this chapter is not assignable. An application for a refund must be made by the individual who paid the tax, as shown on the sales receipt or invoice of the sale. (Ord. 4263 § 8 (part), 1997)

3.16.210 Action for recovery of refund.

If any such person obtains any refund unlawfully, the City manager is hereby empowered and directed to bring appropriate action for recovery of such refund. A conviction of a violation of Section 3.16.190 shall constitute prima facie evidence that all refunds received by such person pursuant to the application which contained the false statement were obtained unlawfully. (Ord. 4263 § 8 (part), 1997)

3.16.220 Taxes held as trust.

All sums of money paid by the purchaser to the retailer as taxes imposed by this chapter shall be and remain public money, the property of the City, in the hands of such retailer, and the retailer shall hold the same in trust for the sole use and benefit of the City until paid to the City manager, and for failure to so pay to the City manager such retailer shall be subject to such penalties as provided herein. (Ord. 4263 § 8 (part), 1997)

3.16.230 Confidential nature of returns.

- A. Except in accordance with judicial order or as otherwise provided by law, the City manager shall not divulge or make known in any way any financial information obtained from any investigation conducted by the City manager or the Administrative Services Department or disclosed in any document, report or return filed under the provisions of this chapter 3.16.
- B. The persons charged with the custody of such documents, report, investigation and returns filed pursuant to this chapter shall not be required to produce any of them or evidence of any matters contained therein in any action or proceeding in any court, except on behalf of the City manager in any action or proceeding under the provisions of this chapter to which the City manager or the City is a party, or on behalf of any party to an action or proceeding under the provisions of this chapter when the report of facts shown thereby is directly involved in such action or proceeding, or pursuant to any judicial order in which event the court may require the production of and may admit in evidence so much of such returns or of the facts shown thereby as are pertinent to the action or proceeding and no more.
- C. No provision of this section shall be construed to prohibit the delivery to a person or a duly authorized representative thereof a copy of any application, report, return or any other document kept, filed or maintained in connection with such person's tax liability. Copies of such documents may be certified by the City manager and when so certified shall be evidence equal with the originals and may be received as evidence of their contents.
- D. 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 contents thereof, nor to prohibit the inspection of any documents by the city attorney or any other legal representatives of the City.
- E. Notwithstanding the provisions of this section, the City manager may furnish to the taxing officials of the state or its political subdivisions, any other state or its political subdivisions or the United States any information contained in any application, report, return or any other document if the recipient jurisdiction agrees with the City manager to grant similar privileges to the city and if such information is to be used by the jurisdiction only for tax related purposes. (Ord. 4263 § 8 (part), 1997)

3.16.240 Duty to keep records.

It is the duty of every person engaged in business in this city for the transaction of which a license is required by this chapter to keep and preserve suitable records of all sales, purchases and leases made by such person, and such other books or accounts as may be necessary to determine the amount of tax for the collection of which such person is liable under this chapter. It is the duty of every such person to keep and preserve for a period of three (3) years all invoices of goods and merchandise purchased. All such books, invoices, and other records shall be open for examination and audit at any time by the City manager or his duly authorized agent. The taxpayer shall produce all such records, if required by the City manager, at the City of Loveland, 500 East Third Street, Loveland, Colorado 80537. (Ord. 4263 § 8 (part), 1997)

3.16.250 Examination of returns; recomputation, credits, deficiencies.

As soon as practicable after a return is filed, the City manager shall examine it. If it appears that the correct amount of tax to be remitted may be greater or less than that shown in the return, the tax shall be recomputed by the City manager. If the amount paid exceeds that which is due, the excess shall be refunded or credited against any subsequent remittance from the taxpayer. If the amount paid is less than the amount due and any part of the deficiency is due to negligence or intentional disregard of the provisions of this chapter or of authorized rules and regulations of the city with knowledge thereof but without intent to defraud, the amount of the deficiency, together with a penalty of ten (10) percent of the amount of the deficiency plus interest on both the deficiency and the penalty at the rate imposed under

Section 3.16.340 from the date the return and the tax was due, shall be due and payable by the taxpayer within twenty (20) days after written notice and demand is mailed to the taxpayer by the City manager. If any part of the deficiency is due to fraud with the intent to evade the tax, then there shall be added a penalty of one hundred (100) percent of the deficiency and in such case, the amount of the deficiency, the penalty and interest calculated as stated above shall be due and payable by the taxpayer within twenty (20) days after written notice and demand is mailed to the taxpayer by the City manager and an additional amount of three (3) percent per month on such amount shall be added from the date the return and tax was due until paid. (Ord. 4263 § 8 (part), 1997)

3.16.260 Receipts; disposition.

The revenues received by the City from the tax imposed and collected pursuant to this chapter shall be deposited in the general fund of the City; provided, however, that in no event shall less than five hundred thousand dollars of the revenues of the sales and use tax collected each year be set aside and devoted to street purposes. (Ord. 4263 § 8 (part), 1997)

3.16.270 Notice of sales and use tax ordinance amendment.

- A. In order to initiate a central register of sales and use tax ordinances for municipalities that administer local sales tax collection, the City manager of the City shall file with the Colorado Municipal League prior to the effective date of this section a copy of the City sales and use tax ordinance reflecting all provisions in effect on the effective date of this section.
- B. In order to keep current the central register of sales and use tax ordinances for municipalities that administer local sales tax collection, the City manager shall file with the Colorado Municipal League prior to the effective date of any amendment a copy of each sales and use tax ordinance amendment enacted by the City.
- C. Failure of the City to file such ordinance or ordinance amendment pursuant to the section shall not invalidate any provision of the sales and use tax ordinance or any amendment thereto. (Ord. 4263 § 8 (part), 1997)

3.16.280 Participation in simplification meetings.

The City manager shall cooperate with and participate on an as needed basis with a permanent statewide sales and use tax committee convened by the Colorado Municipal League, which is composed of state and municipal sales and use tax officials and business officials. Said committee will meet for the purpose of discussing and seeking resolution to sales and use tax problems which may arise. (Ord. 4263 § 8 (part), 1997)

3.16.290 Coordinated audit.

Taxpayers licensed with the City under this chapter, 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 for herein.

- A. 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 City manager, by certified mail, return receipt requested, a written request for a coordinated audit indicating the municipality from which the notice of intended audit was received and the name of the official who issued such notice. Such request shall include a list of those Colorado municipalities utilizing local collection of their sales tax in which the taxpayer holds a current sales tax license and a declaration that the taxpayer will sign a waiver of any passage-of-time based limitation upon the city's right to recover tax owed by the vendor for the audit period.
- B. Except as provided in paragraph F., any taxpayer that submits a complete request for a coordinated audit and promptly signs a waiver of thirty-six (36) months may be audited by the

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.

- C. If the city desires to participate in the audit of a taxpayer that submits a complete request for a coordinated audit pursuant to paragraph B., the City manager shall so notify the Financial Officer 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 City manager shall then cooperate with other participating municipalities in the development of arrangements for the coordinated audit, including arrangement of the time during which the coordinated audit will be conducted, the period of time to be covered by the audit, and a coordinated notice to the taxpayer of those records most likely to be required for completion of the coordinated audit.
- D. If the taxpayer's request for a coordinated audit was in response to a notice of audit issued by the City, the City manager shall facilitate arrangements between the City and other municipalities participating in the coordinated audit unless and until an official from some other participating municipality agrees to assume this responsibility. The City manager shall cooperate with other participating municipalities to minimize, whenever practicable, 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.
- E. If the taxpayer's request for a coordinated audit was in response to a notice of audit issued by the City, the City manager shall, once arrangements for the coordinated audit between the City and other participating municipalities are completed, provide written notice to the taxpayer of which municipalities will be participating, the period to be audited and the records most likely to be required by participating municipalities for completion of the coordinated audit. The City manager shall also propose a schedule for the coordinated audit.
- F. The coordinated audit procedure set forth in this section shall not apply:
 - 4. When the proposed audit is a jeopardy audit;
 - 5. To audits for which a notice of audit was given prior to the effective date of this section;
 - 6. When a taxpayer refuses to promptly sign a waiver of thirty-six (36) months. (Ord. 4263 § 8 (part), 1997)

3.16.300 Reserved.

(Ord. 4263 § 8 (part), 1997)

3.16.310 Failure to make return; estimate of taxes; interest and penalty.

- A. If any person fails, neglects or refuses to collect tax or to file a return and pay the tax as required by this chapter, the City manager shall make an estimate, based upon such information as may be available, of the amount of taxes due for the period for which the taxpayer is delinquent and shall add thereto a penalty equal to the sum of fifteen dollars (\$15) for such failure or ten percent (10%) thereof, whichever is greater, and interest on such delinquent taxes at the rate imposed under Section 3.16.340 plus one-half percent (1/2%) per month from the date when due, not exceeding eighteen percent (18%) in the aggregate.
- B. The City manager shall serve upon the delinquent taxpayer written notice of such estimated taxes, penalty, and interest, which notice shall be personally delivered or sent by first class mail directed to the last address of such person on file with the City. Such notice shall constitute a notice of determination, assessment and demand for payment and shall be due and payable within twenty (20) days from the date the notice is mailed. (Ord. 4263 § 8 (part), 1997)

3.16.320 Taxpayer protest of notice of determination.

- A. A protest of a notice of determination, assessment and demand for payment issued to a taxpayer for failure to file a return, underpayment of tax owed or as a result of an audit shall be submitted in writing to the City manager within thirty (30) days from the date the notice of assessment is mailed. Any such protest shall identify the amount of tax disputed and the basis for the protest. Such protest may include a request for a hearing and shall be given under oath of the taxpayer. The protest shall constitute a petition of the taxpayer.
- B. The City manager may conduct an audit of the books and records of the taxpayer to determine the exact amount of tax due and charge the taxpayer for any amount found to be due.
- C. In response to the written petition, if a hearing was requested, the City manager shall notify the petitioner in writing of the time and place of the hearing. After such hearing, or after a consideration of the facts and figures contained in the petition if no hearing is requested, the City manager shall make such order in the matter as he or she deems just and proper and shall furnish a copy of such order to the petitioner. Any hearing requested shall be held and a decision issued by the City Manager within ninety (90) days after the City's receipt of the taxpayer's written protest, or such additional time as may be permitted under C.R.S. §29-2-106.1, as amended.
- D. The City manager may, at any time within three (3) years of the date the tax was due, conduct an audit of the books and records of the taxpayer to determine the exact amount of tax due and charge the taxpayer for any amount found to be due in excess of the amount previously paid, whether such amount was paid pursuant to a return filed by the taxpayer or a notice of determination, assessment and demand for payment. (Ord. 4263 § 8 (part), 1997; Ord. 5480 § 1, 2010)

3.16.330 Assessment and recurring assessment penalty.

If any taxpayer has failed, neglected or refused to pay the tax imposed by this chapter within the time specified for payment, the City manager may assess the following penalties, in addition to the taxes, penalties and interest provided for elsewhere in this chapter, the additional amount being imposed to compensate the City for administrative and collection costs incurred in collecting such delinquent taxes:

- A. Upon the first or second issuance of a notice of determination, assessment and demand for payment within twelve (12) months, fifteen dollars (\$15) per notice;
- B. Upon the third, fourth or fifth issuance of a notice of determination, assessment and demand for payment within twelve (12) months, twenty-five dollars (\$25) or fifteen (15) percent of the delinquent taxes, penalties and interest, whichever is greater, per notice;
- C. Upon the sixth or more issuance of a notice of determination, assessment and demand for payment within twelve (12) months, fifty dollars (\$50) or thirty percent (30%) of the delinquent taxes, penalties and interest, whichever is greater, per notice. (Ord. 4263 § 8 (part), 1997)

3.16.340 Rate of interest; method of calculation.

When interest is required or permitted to be charged under any provision of this chapter, the annual rate of interest shall be calculated as follows:

- A. Interest at a rate of one percent (1%) per month shall be calculated for each month or portion of a month from the due date that a tax deficiency remains unpaid.
- B. Interest at a rate of one percent (1%) per month shall be calculated for each month or portion of a month on the total tax liability from the first installment date when a payment schedule is arranged. (Ord. 4263 § 8 (part), 1997)

3.16.350 Tax constitutes lien.

- A. The sales and use tax imposed by this chapter, together with all penalties and interest pertaining thereto, is a first and prior lien upon the goods, stock-in-trade, and business fixtures in which the

retailer has an ownership interest except for goods that have been purchased in the ordinary course of business by retail purchasers, and such lien takes priority over other liens or claims of whatsoever kind or nature on such property.

- B. The sales and use tax imposed by this chapter, together with all penalties and interest pertaining thereof, is a first and prior lien on the real and personal property of the taxpayer other than the goods, stock-in-trade, and business fixtures in which the taxpayer has an ownership interest, except as to preexisting liens or claims of a bona fide mortgagee, pledgee, judgment creditor or purchaser whose rights have attached prior to the filing of the notice of lien provided for in D. below, on the property of the taxpayer.
- C. Whenever the business or property of any taxpayer is placed in receivership, bankruptcy, seized under distraint for nonpayment of property taxes or an assignment is made for the benefit of creditors, all taxes, penalties and interest imposed by this chapter and for which the taxpayer is in any way liable under this chapter are a prior and preferred claim against all the property of the taxpayer, except as to preexisting claims or liens of a bona fide mortgagee, pledgee, judgment creditor or purchaser whose rights have attached prior to the filing of the notice of lien provided for in D. below, on the property of the taxpayer, other than the goods, stock-in-trade and business fixtures of such taxpayer. No sheriff, receiver, assignee or other officer shall sell the property of any taxpayer subject to the provisions of this chapter under process or order of any court without first ascertaining from the City manager the amount of any taxes, penalties or interest due and payable under this chapter. If there are any such taxes, penalties or interest due, owing or unpaid, it is the duty of such City manager to first pay the amount of the taxes, penalties or interest out of the proceeds of such sale before paying any monies to judgment creditors or other claimants, except that the City manager may pay costs of the proceedings and other preexisting liens or claims as provided in this subsection.
- D. If any tax, penalty or interest imposed by this chapter and shown due by returns filed by the taxpayer or by assessments made by the City as provided in this chapter is not paid within five (5) days after it is due, the City manager may issue a notice, setting forth the name of the taxpayer, the amount of the tax, penalties and interest, the date of its accrual, and the fact that the City claims a first and prior lien therefor on the real and personal property of the taxpayer, except as to preexisting liens or claims of a bona fide mortgagee, pledgee, judgment creditor or purchaser whose rights have attached prior to the filing of the notice on the property of the taxpayer, other than the goods, stock-in-trade and business fixtures in which the taxpayer has an ownership interest. The notice of lien shall be made on forms prescribed by the City manager and verified by the City manager and may be filed in the office of the Clerk and Recorder of any county in the state in which the taxpayer owns real or personal property or with any person in possession of any personal property or rights to property belonging to the taxpayer.
- E. The City manager shall release any lien as shown on the records of the county Clerk and Recorder as herein provided, upon payment of all taxes, penalties and interest covered thereby, in the same manner as mortgages and judgments are released. (Ord. 4263 § 8 (part), 1997)

3.16.360 Sale of business subject to lien.

- A. Any person who sells a business or stock of goods or closes a business shall complete and file the returns required under this chapter and pay the taxes, penalties and interest due within twenty (20) days of the date on which such person sold the business or stock of goods or closed the business and indicate that it is a final return, that the business is sold or closed, and the name and address of the purchaser of the business, if any.
- B. A purchaser of a business who has acquired the furniture, fixtures and/or equipment of the business shall withhold sufficient funds from the purchase money to cover the amount of taxes, penalties and interest imposed by this chapter due and unpaid until the seller provides a receipt

from the City manager showing that such taxes, penalties and interest have been paid. If taxes, penalties and interest imposed by this chapter are due and unpaid after the twenty-day period herein provided, such purchaser of the business is personally liable for the payment of the taxes, penalties and interest imposed by this chapter due and unpaid to the City to the same extent as the seller of the business or stock of goods. (Ord. 4263 § 8 (part), 1997)

3.16.370 Certificate of discharge of lien.

- A. If any real or personal property is subject to a lien for payment of tax due to the City under this chapter, the City manager may issue a certificate of discharge of any part of the property subject to the lien if the City manager finds that the fair market value of that part of such property remaining subject to the lien is at least twice the amount of the unsatisfied tax liability plus the value of any liens on the property that have priority over the City's lien.
- B. If any real or personal property is subject to a lien for payment of tax due to the City under this chapter, the City manager may issue a certificate of discharge of any part of the property subject to the lien if the City manager is paid in partial satisfaction of the tax liability an amount determined by the City manager to be not less than the value of the City's interest in the part of the property so discharged. In determining the value of the part of the property to be discharged, the City manager shall consider the fair market value of the property and the value of any liens on the property that have priority over the City's lien.
- C. A certificate of release of lien issued under this section is conclusive evidence that the City's lien upon the property is extinguished, but does not extinguish or release any portion of the lien on property not specified in the release. (Ord. 4263 § 8 (part), 1997)

3.16.380 Jeopardy assessment.

- A. If the City manager finds that collection of the tax will be jeopardized for any reason, the City manager may declare the taxable period immediately terminated, determine the tax, and issue a notice of determination, assessment and demand for payment. Notwithstanding the provisions of Section 3.16.310, the tax shall then be due and payable forthwith, and the City manager may proceed to collect the tax as provided in Section 3.16.390.
- B. If the taxpayer subject to a jeopardy assessment provides security for payment of the tax satisfactory to the City manager, the City manager may forego the jeopardy assessment collection proceedings. (Ord. 4263 § 8 (part), 1997)

3.16.390 Enforcing the collection of taxes due.

- A. The City manager may issue a warrant directed to any employee, agent or representative of the City or any sheriff of any county of the state, commanding such person to distrain, seize and sell any personal property in which the taxpayer has an ownership interest, except such property as is exempt from the execution and sale by any statute of the state, for the payment of tax due together with interest and penalties thereon and costs of execution in the following circumstances:
 - 1. When any deficiency in tax is not paid within twenty (20) days from the date of mailing of the notice of determination, assessment and demand for payment and no hearing or extension has been requested in a timely manner;
 - 2. When any deficiency in tax is not paid within thirty (30) days from the date of the notice of determination, assessment and demand for payment and no appeal from such notice has been docketed in the county District Court during such time, except that if the City manager finds that collection of the tax will be jeopardized during such period, the City manager may immediately issue a distraint warrant;

3. When any deficiency in tax is not paid within the time prescribed in judgment and order of court on any appeal to the county District Court;
 4. Immediately upon making a jeopardy assessment or issuing a demand for payment upon jeopardy assessment as provided in Section 3.16.380; or
 5. After or concurrently with the filing of a notice of lien as provided in 3.16.350.D.
- B. The City manager may apply to the Judge of the Municipal Court for a warrant authorizing the City manager to search for and seize property located within the city limits for the purpose of enforcing the collection of taxes under this chapter. The Municipal Judge shall issue such warrant after the City manager demonstrates that:
1. The premises to which entry is sought contain property that is subject to levy and sale for taxes due; and
 2. At least one (1) of the preconditions of A. above, have been satisfied; but if a jeopardy assessment has been declared under Section 3.16.380, the City manager must set forth the reasons that collection of the tax will be jeopardized.
- C. The procedures to be followed in issuing and executing a warrant pursuant to B. above, shall comply with the Colorado Municipal Rules of Procedure, Rule 241(c) and (d).
- D. The taxpayer may contest a warrant previously issued under the procedure provided by the Colorado Municipal Court Rules of Procedure, Rule 241(e), except that no proceeding to contest such warrant may be brought after five (5) days prior to the date fixed for sale of the distrained property.
- E. The agent charged with the collection shall make or cause to be made an account of the goods or effects distrained, and shall leave a copy of such account, signed by the agent making such distraint, with the owner or possessor of the property, at the owner's or possessor's usual place of abode with some family member over the age of eighteen (18) years, at the owner's or possessor's usual place of business with a stenographer, bookkeeper or chief clerk, or, if the taxpayer is a corporation, with any officer, manager, general agent, or agent for process, with a statement of the sum demanded and the time and place of sale. The agent charged with collection shall forthwith cause to be published a notice of the time and place of sale and a description of the property to be sold in a newspaper within the county wherein distraint is made or, in lieu thereof and in the discretion of the City manager, the agent or sheriff shall cause such notice to be publicly posted at the county courthouse wherein such distraint is made and copies thereof shall be posted in at least two (2) other public places within the county. The time fixed for the sale shall not be less than ten (10) days nor more than sixty (60) days from the date of such notification to the owner or possessor of the property and the publication or posting of such notices. The sale may be adjourned or postponed from time to time by the agent or sheriff, if the agent or sheriff deems it advisable, to a date certain but not for a time to exceed in all ninety (90) days from the date first fixed for the sale. When any personal property is advertised for sale under distraint, the agent or sheriff making the seizure shall proceed to sell such property at public auction, offering the property at not less than a fair minimum price that includes the expenses of making the seizure and of advertising the sale. If the amount bid for the property at the sale does not equal the fair minimum price so fixed, the agent or sheriff conducting the sale may declare the same to be purchased for the city. The property so purchased may then be sold by the agent or sheriff under such regulations as may be prescribed for disposing of city property. The goods, chattels or effects so distrained shall be restored to the owner or possessor, if, prior to the sale, the amount due is paid together with the fees and other charges, or they may be redeemed by any person holding a chattel mortgage or other evidence of right of possession.
- F. In all cases of sale, the agent or sheriff making the sale shall issue a certificate of sale to each purchaser, and such certificate is prima facie evidence of the right of the agent or sheriff to make such sale and conclusive evidence of the regularity of the proceedings in making the sale; it

transfers to the purchaser all right, title and interest of the delinquent taxpayer in and to the property sold. Where such property consists of certificates of securities or other evidence of indebtedness in the possession of the agent or sheriff, the taxpayer shall endorse such certificates to the purchaser thereof and supply the purchaser with proof of the taxpayer's authority to transfer the same or with any other requisite that may be necessary to obtain registration of the transfer of the certificate. Any surplus remaining above first the city's taxes, penalties, interest, costs and expenses of making the seizure and of advertising the sale and then the amounts distributed pro rata to other jurisdictions under recorded sales and use or personal property ad valorem tax liens shall be returned to the property owner or such person having a legal right to the property; and, on demand, the City manager shall render an accounting in writing of the sale.

- G. In the case where a taxpayer has refused or neglected to pay any tax due to the City under this chapter and a lien has been filed as provided in Section 3.16.350.D, the City manager may, in addition to pursuing other collection remedies, certify the amount of the tax, penalties and interest due, together with ten percent (10%) of the delinquent amount for costs of county collection, to the county Treasurer to be levied against the person's property for collection by the county in the same manner as delinquent general taxes upon such property are collected. Before certifying such amounts to the county for collection, the City manager shall provide to the property owner an opportunity for a hearing to contest the authority of the city to incur the tax, or the amount thereof. The City manager shall mail the notice to the property owner by first class mail addressed to the last known owner of the property on the records of the county Assessor. If the City manager's decision after a hearing affirms the imposition of charges, the decision shall include notice that the charges are due and payable within ten (10) days of the date of the decision and that, if not paid when due, they will be certified to the county Treasurer for collection, along with ten percent (10%) of the charges for the cost of county collection. Whenever the City manager certifies any such amounts to the county Treasurer for collection, the City manager shall record notice of such certification with the county Clerk and Recorder. (Ord. 4263 § 8 (part), 1997)

3.16.400 Recovery of unpaid tax by action at law.

- A. In addition to other remedies provided in this chapter, the City manager may treat any such taxes, penalties or interest due and unpaid as a debt due to the City from the taxpayer. If a taxpayer fails to pay the tax, or any portion thereof, or any penalty or interest thereon, when due, the City manager may recover at law the amount of such taxes, penalties and interest in any county or District Court wherein the taxpayer resides or has a principal place of business that has jurisdiction over the amounts sought to be collected. The return filed by the taxpayer or the notice of determination, assessment and demand for payment issued by the City manager is prima facie proof of the amount due.
- B. The City Attorney is hereby authorized upon request by the City manager to commence any legal action or suit for the recovery of the tax due under this chapter.
- C. Such actions may be actions in attachment, and writs of attachment may be issued to the sheriff. In any such proceedings no bonds shall be required of the City nor shall any sheriff require of the City manager any indemnifying bond for executing the writ of attachment or writ of execution upon any judgment entered in such proceedings. The City may also prosecute appeals or writs of error in such cases without the necessity of providing bond therefore.
- D. In any case in which a taxpayer has refused or neglected to pay any tax, penalty or interest due to the City under this chapter and a lien has been filed upon any real or personal property, the City manager may cause a civil action to be filed in the county District Court in which is situated any such property subject to such lien to enforce the lien and subject any real or personal property or any right, title or interest in such property to the payment of the amount due. The court shall

decree a sale of such real property and distribute the proceeds of such sale, according to the court's findings concerning the interest of the parties and of the City. The proceedings in such action, the manner of sale, the period for and manner of redemption from such sale, and the execution of deed of conveyance shall be in accordance with the law of foreclosures of mortgages upon real property. In any such action, the court may appoint a receiver of the property involved in such action if equity so requires. (Ord. 4263 § 8 (part), 1997)

3.16.410 City may be party in title actions.

In any action affecting the title to real property or the ownership or right to possession of personal property, the City may be made a party defendant for the purpose of obtaining an adjudication or determination of its lien upon the property involved therein. (Ord. 4263 § 8 (part), 1997)

3.16.420 Injunctive relief.

The City manager may seek injunctive or other equitable relief in any court of competent jurisdiction to enforce provisions of this chapter. (Ord. 4263 § 8 (part), 1997)

3.16.430 Waiver of penalties by City manager.

The City manager is hereby authorized to waive, for good cause shown, any interest, penalty or fee imposed under this chapter. (Ord. 4263 § 8 (part), 1997)

3.16.440 Obligations of fiduciaries and others.

- A. For the purpose of facilitating settlement and distribution of estates, trusts, receiverships, other fiduciary relationships and the assets of corporations in the process of dissolution or that have been dissolved, the City manager may agree with the fiduciary or surviving corporate directors upon an amount of taxes due from the decedent or from the decedent's estate, the trust, receivership or other fiduciary relationship, or corporation for any of the periods of tax liability under this chapter. Payment in accordance with such agreement fully satisfies the tax liability for the periods that the agreement covers, unless the taxpayer has committed fraud or malfeasance or misrepresented a material fact regarding the tax or liability therefore.
- B. Except as provided in D. below, any personal representative of a decedent or the estate of a decedent, any trustee, receiver or other person acting in a fiduciary capacity, or any director of a corporation in the process of dissolution or that has been dissolved who distributes the estate or fund under such person's control without having first paid any taxes covered by this chapter due from such decedent, decedent's estate, trust estate, receivership or corporation and that may be assessed within the periods authorized by this chapter is personally liable to the extent of the property distributed by such person for any unpaid taxes of the decedent, decedent's estate, trust estate, receivership or corporation imposed by or due under this chapter and assessed within the periods authorized by this chapter.
- C. The distributee of a decedent's estate, a trust estate, or fund and the stockholder of any dissolved corporation who receives any of the property of such decedent's estate, trust estate, fund or corporation is liable under this chapter to the same extent that the decedent, trust estate, fund or corporation is liable under this chapter.
- D. If a tax under this chapter is due from a decedent or the decedent's estate, personal liability of the persons set forth in this section remains in effect only if a determination of the tax due is made and notice and demand therefor issues within eighteen (18) months after the decedent's personal representative files with the City manager a written request for such determination, filed after he or she has filed the decedent's final return or the decedent's estate's return to which the request applies. A request for determination under this subsection does not extend the otherwise applicable period of limitation.

- E. If a tax under this chapter is due from a corporation that is in the process of dissolution or has been dissolved, personal liability of directors or stockholders as provided in this section remains in effect only if a determination of the tax due is made and notice and demand issues within eighteen (18) months after the corporation files with the City manager a written request for such determination, filed after it has filed the corporation's return, but only if the request states that the dissolution was begun in good faith before the expiration of the eighteen-month period and the dissolution is completed. A request for determination under this subsection does not extend the otherwise applicable period of limitation. (Ord. 4263 § 8 (part), 1997)

3.16.450 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 retailer to correctly pay, collect, and remit sales and use taxes to the City.

- A. As used herein, "claim for recovery" means a claim for reimbursement of sales and use taxes paid to the wrong taxing jurisdiction.
- B. When it is determined by the City manager of the City that sales and use tax owed to the City has been reported and paid to another municipality, the City shall promptly notify the retailer that taxes are being improperly collected and remitted, and that as of the date the notice is mailed, the retailer must cease improper tax collections and remittances.
- C. The City may make a written claim for recovery directly to the municipality that received tax and/or penalty and/or interest owed to the City, or, in the alternative, may institute procedures for collection of the tax from the taxpayer or retailer. The decision to make a claim for a recovery lies in the sole discretion of the City. Any claim for recovery shall include a properly executed release of claim from the taxpayer and/or retailer releasing its claim to the taxes paid to the wrong municipality, evidence to substantiate the claim and a request that the municipality approve or deny, in whole or in part, the claim within ninety (90) days of its receipt. The municipality to which the City submits a claim for recovery may, for good cause, request an extension of time to investigate the claim, and approval of such extension by the City shall not be unreasonably withheld.
- 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 retailer or taxpayer, the check shall be made to the parties jointly. Denial of a claim of recovery may only be made for good cause.
- 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 taxpayer.
- F. The period subject to a claim for recovery shall be limited to the thirty-six month period prior to the date the municipality that was wrongly paid the tax receives the claim for recovery. (Ord. 4263 § 8 (part), 1997)

3.16.460 Investigations, audits and hearings.

For the purpose of ascertaining the correctness of a return, or for the purpose of determining the amount of tax due from any person, whether licensed under this chapter or not, the City manager may hold investigations, including audits, and hearings concerning any matters covered by this chapter, and may examine any relevant books, papers, records or memoranda of any such person and may require the

attendance of such person, or any officer or employee of such person, or of any person having knowledge of transactions involved and may take testimony and proof of the information. The City manager shall have the power to administer oaths to such persons. (Ord. 4263 § 8 (part), 1997)

3.16.470 Subpoenas and witness fees.

All subpoenas issued under the terms of this chapter may be served by any person over the age of eighteen (18) years. The fees of witnesses for attendance in response to a subpoena shall be the same as the fees of witnesses before the District Court, such fees to be paid when the witness is excused from further attendance. When the witness is subpoenaed at the instance of the City manager, such fees shall be paid by the city but when a witness is subpoenaed at the instance of any other party to such proceeding, the City manager may require that the cost of service of the subpoena and the fee of the witness be borne by the party at whose instance the witness is summoned. In such case, the City manager, in his or her discretion, may require a deposit to cover the cost of such service and witness fees prior to issuing such subpoenas. A subpoena issued as aforesaid shall be served in the same manner as a subpoena issued out of a court of record. (Ord. 4263 § 8 (part), 1997)

3.16.480 Attendance of witnesses and production of evidence to be compelled by District Judge.

Any judge of the District Court, upon the application of the City manager, may compel the attendance of witnesses, the production of books, papers, records or memoranda and the giving of testimony before the City manager, by an action for contempt or otherwise in the same manner as the production of evidence may be compelled before such court. (Ord. 4263 § 8 (part), 1997)

3.16.490 Depositions.

The City manager, or any party to an investigation or hearing before the City manager, may cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for depositions in civil actions in courts of this state and to that end compel the attendance of witnesses and the production of books, papers, records or memoranda. (Ord. 4263 § 8 (part), 1997)

3.16.500 Review of decision of City manager.

The taxpayer may apply for a review of the decision of the City manager in any hearing held pursuant to Section 3.16.460 in the manner and within the time period required by C.R.S. §29-2-106.1, as amended. (Ord. 4263 § 8 (part), 1997; Ord. 5480 § 2, 2010)

3.16.510 Review bond required.

For transactions consummated on or after January 1, 1998, within fifteen (15) days after making application to the District Court for review of the decision of the City manager, the party making such application shall file with the District Court a surety bond in twice the amount of the taxes, penalties, interest and other charges stated in the final decision by the City manager which are contested on appeal. The taxpayer may, at his or her option, satisfy the surety bond requirement by a savings account or deposit in or a certificate of deposit issued by a state or national bank or by a state or federal savings and loan association, in accordance with the provisions of Section 11-35-101(1), C.R.S., equal to twice the amount of taxes, penalties, interest and other charges stated in the final decision by the City manager. The taxpayer may, at his or her option, deposit the disputed amount with the City manager in lieu of posting a surety bond. If such amount is so deposited, no further interest shall accrue on the contested amount during the pendency of the action. At the conclusion of the action, after appeal or after the time for such appeal has expired, the funds deposited shall be, at the direction of the court, either retained by the City manager and applied against the amount due or returned in whole or in part to the taxpayer with interest at the rate imposed by Section

3.16.340 from the date it was paid to the City manager. No claim for refund of amounts deposited with the City manager need be made by the taxpayer in order for such amounts to be repaid in accordance with the direction of the court. If the taxpayer requests a review of the City Manager's decision by the executive director of the Colorado Department of Revenue, the taxpayer shall provide a surety bond in accordance with the requirements of C.R.S. §29-2-106.1(3)(b), as amended. (Ord. 4263 § 8 (part), 1997; Ord. 5480 § 3, 2010)

3.16.520 Notices.

All written notices required to be mailed, served or given to any taxpayer under the provisions of this chapter shall be hand delivered or mailed, postage prepaid, addressed to such taxpayer at the last known address of the taxpayer on file with the City and shall be deemed to have been received by the taxpayer when so mailed or delivered. (Ord. 4263 § 8 (part), 1997)

3.16.530 Hearings to be held in City.

Every hearing before the City manager shall be held in the City and shall comply with the provisions of C.R.S. §29-2-106.1, as amended. (Ord. 4263 § 8 (part), 1997; Ord. 5480 § 4, 2010)

3.16.540 Administration by City manager; rules and regulations.

The administration of all provisions of this chapter is hereby vested in and shall be exercised by the City manager who shall prescribe forms and formulate and promulgate reasonable rules and regulations in conformity with this chapter for the making of returns, for the ascertainment, assessment and collection of taxes imposed and for the proper administration and enforcement thereof. (Ord. 4263 § 8 (part), 1997)

3.16.550 Violations.

- A. It shall be unlawful for any retailer to fail to collect or for any purchaser or consumer to fail to pay any tax, penalty or interest levied by this chapter, regardless of whether the tax liability is disputed or an exemption is claimed.
- B. It shall be unlawful for any retailer to retain any tax collected in excess of the rate stated in Section 3.16.020 or to fail to remit punctually to the City manager the full amount required by the provisions of this chapter, including taxes, penalties and interest.
- C. It shall be unlawful for any person to fail or refuse to make or file any return required to be made or filed by this chapter or to make any false or fraudulent return or any false or fraudulent statement in any return.
- D. It shall be unlawful for any person to do business without the license required by this chapter or to continue to do business after such license is revoked.
- E. It shall be unlawful for any applicant for a tax refund to make a false statement in connection with such application.
- F. Except as may be otherwise provided for by rule or regulation of the Executive Director of the Department of Revenue for the state, it is unlawful for any person who is a resident of the city to register any motor vehicle owned by such person or to obtain a license or to procure a certificate of title at any address other than:
 - 1. For a motor vehicle which is owned by a business and operated primarily for business purposes, the address from which such vehicle is principally operated and maintained; or
 - 2. For any motor vehicle for which the provisions of (1) above do not apply, the address of the owner's residence; except that, if a motor vehicle is permanently operated and maintained at an address other than the address of the owner's residence, such motor vehicle shall be registered at the address from which such motor vehicle is permanently operated and maintained.

For purposes of this subsection, a person's residence shall be his or her principal or primary home or place of abode, to be determined in the same manner as residency for voter registration purposes as provided in Sections 1-2-102 and 31-10-201, C.R.S. except that "voter registration" shall be substituted for "motor vehicle registration" as a circumstance to be taken into account in determining such principal or primary home or place of abode.

- G. It shall be unlawful for any retailer to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof imposed by this chapter will be assumed or absorbed by the retailer or that it will not be added to the purchase price of the property sold or the services tendered, or, if added, that it or any part thereof will be refunded.
- H. It shall be unlawful for any person other than the City to become enriched or to gain any benefit from the collection or payment of the taxes levied by this chapter.
- I. It shall be unlawful for any officer, agent or employee of the City to divulge or make known in any way any information classified herein as confidential, except in accordance with a court order or as otherwise provided by law.
- J. It shall be unlawful for any person to aid or abet another in any attempt to evade the payment of the tax imposed by this chapter.
- K. It shall be unlawful for any person to interfere with the actions of any employee or agent of the City relating to the distraint warrant procedures, such interference to include but not be limited to the removal of signs or tags placed on the premises or items of property which are to be sold by the City pursuant to such procedure.
- L. It shall be unlawful for any person to violate any other provision of this chapter. (Ord. 4263 § 8 (part), 1997)

3.16.570 Penalties.

- A. The penalty for violating any provision of this chapter shall be a fine or imprisonment or both in the amounts stated in Section 1.12.010.
- B. In addition to the penalties stated in (A) above, and in addition to the penalties and interest which may be payable under the provisions of § 3.16.310, any person who registers a motor vehicle in violation of § 3.16.550(F) shall be subject to a civil penalty of five hundred dollars (\$500). Such violation shall be determined by the City manager and shall be assessed by and paid to the City manager according to the provisions of §§ 3.16.310 and 3.16.550 if such motor vehicle should properly have been registered at an address within the city. (Ord. 4263 § 8 (part), 1997)

3.16.580 Limitations on actions to collect.

- A. Except as otherwise provided in this section, the taxes for any period, together with interest thereon and penalties with respect thereto, imposed by this chapter shall not be assessed, nor shall any notice of lien be filed, distraint warrant be issued, bond be collected upon, suit for collection be instituted, or any other action to collect the same be commenced, more than three (3) years after the date on which the tax was or is payable. In addition, no lien shall continue after such period, except for taxes assessed before the expiration of such period, when a notice of lien regarding such taxes was filed prior to the expiration of such period in which case the lien shall continue for only one (1) year after the filing of notice thereof.
- B. In the case of a false or fraudulent return filed with intent to evade the tax and in the case of failure to file a return, the tax, together with interest and penalties, may be assessed or proceedings for the collection of such taxes may be begun at any time.
- C. Before the expiration of such period of limitation, the taxpayer and the City manager may agree in writing to an extension thereof, and the period so agreed on may be extended by subsequent agreements in writing made before the expiration of the previously agreed upon time.

- D. Nothing in this section shall be construed to limit any right accrued or to revive any liability barred by any statute in effect on the effective date of the ordinance from which this chapter was derived. (Ord. 4263 § 8 (part), 1997)

3.16.590 Sales and Use Tax Credits.

Notwithstanding any other provision in this Chapter to the contrary, the City Council may grant by resolution to any person a sales tax and/or use tax credit against the collection of such taxes equal to the amount of tax credited. However, any such credit shall not exceed the amount of tax that would otherwise be collected under this Chapter. The Council may grant the credit on such terms and conditions as it determines is in the best interest of the City provided that it also determines and finds in the resolution that granting the credit will serve a public purpose, which purpose may include, without limitation, providing the public with significant social, economic or cultural benefits. (Ord. 5267 § 1, 2007; Ord. 4857 § 1, 2004)

3.16.600 City Manager – Authority.

For the purposes of this Chapter 3.16, all references to the city manager shall mean the city manager or his designee. (Ord. 5267 § 2, 2007)

3.16.610 Compromise and settlement.

The city manager may for good cause compromise and settle any claim to sales or use tax, penalties, and interest due to the city under this chapter. Whenever a settlement by the city manager results in a compromise of \$2,500 or more, there shall be placed on file in the office of the city's finance department the written opinion of the city manager stating the reasons for the settlement, which may include financial inability of the taxpayer to pay a greater amount, with a statement of: (i) the amount of the tax assessed; (ii) the amount of the interest and/or penalty assessed; and (iii) the amount paid by the taxpayer in accordance with the terms of the settlement. Notwithstanding anything herein to the contrary, no such opinion shall be required with respect to any compromise of less than \$2,500. (Ord. 5321 § 1, 2008)

3.16.620 Use of electronic database – retailer held harmless.

- A. Any retailer that collects and remits sales tax to the city as provided in this chapter may use an electronic database of state addresses that is certified by the Colorado Department of Revenue pursuant to § 39-26-105.3, C.R.S., to determine the jurisdictions to which tax is owed.
- B. Any retailer that uses the data contained in an electronic database certified by the Colorado Department of Revenue pursuant to § 39-26-105.3, C.R.S., to determine the jurisdictions to which tax is owed shall be held harmless for any tax, penalty, or interest owed the city that otherwise would be due solely as a result of an error in the electronic database, provided that the retailer demonstrate that it used the most current information available in such electronic database on the date that the sale occurred. Each retailer shall keep and preserve such records as prescribed by the city manager to demonstrate that it used the most current information available in the electronic database on the date that the sale occurred. Notwithstanding the above, if the error in collecting and remitting is a result of a deceptive representation, a false representation, or fraud, the provisions of this section shall not apply. (Ord. 5332 § 1, 2008)

Chapter 3.20

OCCUPATIONAL TAX ON LIQUOR AND BEER*

Sections:

3.20.010	Purpose.
3.20.020	Definitions.
3.20.030	Business classifications.
3.20.040	Levy.
3.20.050	Payment.
3.20.060	Delinquency not ground for revocation.
3.20.070	Tax recovered by suit.
3.20.080	Violations.

*For statutory provisions authorizing cities and towns to tax any and all occupations, see CRS § 139-78-3(c).

3.20.010 Purpose.

The city council finds, determines and declares that considering the nature of the business of selling at retail three and two-tenths percent beer, malt, vinous and spirituous liquors for beverage purposes, and the relation of such business to the municipal welfare, as well as the relation thereof to the expenditures required of the city and a proper, just and equitable distribution of tax burdens within the city, and all other matters proper to be considered in relation thereto, that the classification of the business as a separate occupation is reasonable, proper, uniform and nondiscriminatory and that the amount of tax imposed is reasonable, proper, uniform and nondiscriminatory and necessary for a just and proper distribution of tax burdens within the city. (Prior code § 27.2-3)

3.20.020 Definitions.

As used in this chapter, the following words or phrases shall have the following meanings:

- A. "Malt liquors" includes beer and means any beverage obtained by the alcoholic fermentation of any infusion or decoction of barley, malt, hops or any other similar products or any combination thereof in water, containing more than three and two-tenths percent of alcohol by weight.
- B. "Medicinal liquors" means any liquor sold by a duly licensed pharmacist or drug store solely on bona fide doctor's prescription.
- C. "Operator" means a person licensed by law to sell malt, vinous or spirituous liquors, other than medicinal liquors, for beverage purposes at retail and who is engaged at any time during the calendar year in such operation within the city.
- D. "Spirituous liquors" means any alcoholic beverage obtained by distillation, mixed with water and other substances in solution, and includes among other things brandy, rum, whiskey, gin, and every liquid or solid, patented or not, containing alcohol and which are fit for use for beverage purposes. Any liquid or solid containing beer or wine in combination with any other liquor except as above provided shall not be construed to be malt or vinous liquors but shall be construed to be spirituous liquor.
- E. "Three and two-tenths percent beer" means malt liquor, as herein defined, containing not more than three and two-tenths percent of alcohol by weight.
- F. "Vinous liquors" includes wine and fortified wines not exceeding twenty-one percent of alcohol by volume and means alcoholic beverages obtained by the fermentation of the natural sugar contents of fruits or other agricultural produce containing sugar. (Prior code § 27.2-1)

3.20.030 Business classifications.

The business of selling at retail, any malt, vinous or spirituous liquor other than medicinal liquors, or three and two-tenths percent beer, for beverage purposes is defined and separately classified as such occupation for the purposes of this chapter as follows:

- A. Class "A" Operators. All operators who are licensed to sell beer, wine and spirituous liquors for consumption on the premises either as hotels or restaurants are class "A" operators.
- B. Class "B" Operators. All operators who are licensed to sell beer, wine and spirituous liquors for consumption on the premises as a tavern are class "B" operators.
- C. Class "C" Operators. All operators who are licensed to sell malt or vinous liquors only by the drink for consumption on the premises are class "C" operators.
- D. Class "D" Operators. All operators who are licensed as retail liquor stores to sell in original containers malt, vinous or spirituous liquor for consumption off the premises are class "D" operators.
- E. Class "E" Operators. All operators licensed as drug stores to sell malt, vinous or spirituous liquors in original containers for consumption off the premises, are class "E" operators.
- F. Class "F" Operators. All operators licensed to sell malt, vinous or spirituous liquors as clubs are class "F" operators.
- G. Class "G-1" Operators. All operators licensed to sell only three and two-tenths percent beer and who sell the same for consumption on the premises are class "G-1" operators.
- H. Class "G-2" Operators. All operators licensed to sell only three and two-tenths percent beer and who sell the same solely in the original package or container for consumption off the premises are class "G-2" operators.
- I. Class "G-3" Operators. All operators licensed to sell three and two-tenths percent beer and who sell the same for consumption on or off the premises are class "G-3" operators.
- J. Class "H" Operators. All operators who are licensed as optional premises to sell malt, vinous or spirituous liquor by the drink for on-premises consumption. (Ord. 3862 § 1, 1992; Ord. 1525 § 1, 1976; prior code § 27.2-2)

3.20.040 Levy.

There is levied and assessed upon each person licensed to engage in the business of selling three and two-tenths percent beer, malt, vinous or spirituous liquor (except medicinal liquors), for each license held, an occupation tax in the amount provided by resolution of city council. (Ord. 3862 § 2, 1992; Ord. 3780 § 1, 1991; Ord. 3691 § 1, 1990; Ord. 1525 § 2, 1976; prior code § 27.2-4)

3.20.050 Payment.

- A. Such tax is due and payable to the city clerk on January 1st of each year and is delinquent on February 1st of the same year. Prepayment of the tax may be made in the month of December preceding the due date.
- B. Upon receipt of the tax payment, it shall be the duty of the city clerk to issue an occupational tax license, showing the name of the operator paying the tax, the date of payment, the annual period for which the tax is paid, and the place at which the operator conducts business.
- C. The operator shall, at all times during each year, keep the current license posted in a conspicuous place in his place of business.
- D. If any operator begins business subsequent to January 1st of any year, the tax required is prorated on a monthly basis for the remaining portion of the year. But no refund shall be made to any person who discontinues the business during the year. All prorated taxes provided for in this paragraph are due and payable upon the beginning of business and are delinquent ten days

thereafter. Interest accrues on all delinquent taxes from the day of delinquency until paid or collected, at the rate of one percent per month. (Ord. 1525 § 3, 1976; prior code § 27.2-5)

3.20.060 Delinquency not ground for revocation.

No delinquency in payment of the tax provided for in this chapter shall be grounds for suspension or revocation of any license granted to any such operator by any licensing authority pursuant to the statutes enacted by the General Assembly of Colorado, and in performance of any duties imposed upon the city council as a licensing authority by the statutes, the council shall exclude from consideration any delinquency in payment of the tax provided for in this chapter. (Prior code § 27.2-6)

3.20.070 Tax recovered by suit.

The city has the right to recover all sums due by the terms of this chapter, by judgment and execution thereon in a civil action in any court of competent jurisdiction. Such remedy shall be cumulative with all other remedies provided in this chapter for the enforcement of such payment. (Prior code § 27.2-7)

3.20.080 Violations.

Failure to comply with the terms of this chapter by payment of taxes, securing and posting a receipt therefore, and to otherwise comply with the terms of this chapter, constitutes an offense and violation of this code. A violation for each calendar month constitutes a separate offense. But no conviction for such violation shall work a revocation of the license of the defendant issued under the laws of the state. (Prior code § 27.2-8)

Chapter 3.24

LODGING TAX

Sections:

3.24.005	Purpose.
3.24.010	Definitions.
3.24.020	Tax levied.
3.24.030	Transactions exempt from tax.
3.24.040	License required for lodging providers.
3.24.050	Exception to licensing requirement.
3.24.060	Application.
3.24.070	Form of license; nontransferability.
3.24.080	Revocation of license.
3.24.090	Appeal of revocation; procedure.
3.24.100	Engaging in business without license to be a violation.
3.24.105	Use of Lodging Tax.
3.24.110	Payment of tax.
3.24.120	Formulation and promulgation of rules and regulations.
3.24.130	Advertisement of assumption or absorption of tax prohibited.
3.24.140	Remittance of tax on other than monthly basis.
3.24.150	Consolidation of returns.
3.24.160	Excess collections; failure to remit collections.
3.24.170	Bad debts.
3.24.180	Disputes over exemption from tax; application for refund.
3.24.190	Procedure for refund of disputed tax.
3.24.200	Right of refund not assignable.
3.24.210	False statements to be a violation.
3.24.220	Conviction to be evidence of fraudulent intent.
3.24.230	Information to be confidential.
3.24.240	Keeping of records and accounts.
3.24.250	Divulging of confidential information to be a violation.
3.24.260	Examination of returns; recomputations; credits; deficiencies.
3.24.270	Penalty for deficiencies due to negligence.
3.24.280	Penalty for deficiencies with intent to defraud.
3.24.290	Investigation of tax records.
3.24.300	Subpoenas and witness fees.
3.24.310	Attendance of witnesses and production of evidence.
3.24.320	Depositions.
3.24.330	Unpaid tax a prior lien; satisfaction of liens.
3.24.340	Settlement of taxes after sale of business.
3.24.350	Purchase of business subject to tax lien.
3.24.360	Unpaid taxes in cases of bankruptcy or receivership.
3.24.370	Tax money to be held in trust.
3.24.380	Failure to make return; estimate of taxes; penalty; notice; appeal.
3.24.390	Notice of tax lien.
3.24.395	Distrain, Seizure and Sale.
3.24.396	Chief of Police to act in aid of distraint.
3.24.400	Release of lien.

- 3.24.410 Recovery of unpaid taxes by action at law.**
- 3.24.420 City may be party in title actions.**
- 3.24.430 Waiver of penalties by city manager.**
- 3.24.440 Petition and hearing of aggrieved taxpayer.**
- 3.24.450 Decision of city manager.**
- 3.24.460 Review of decisions.**
- 3.24.470 Review bond required.**
- 3.24.480 Notices to be sent by certified and first class mail.**
- 3.24.500 Tax in addition to other taxes.**
- 3.24.510 Hearings to be held in City.**
- 3.24.520 Administrative officer designated.**
- 3.24.540 Compromise and settlement.**
- 3.24.550 Statute of limitations.**
- 3.24.560 Violations**

3.24.005 Purpose.

The city council declares that the purpose of the levy of the tax imposed by this chapter is for the raising of funds to promote tourism, conventions and related activities within the city by marketing the city and sponsoring community events, both in support of this purpose.

3.24.010 Definitions.

Unless the context requires otherwise, the following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section:

- A. City manager shall mean the City Manager of the City of Loveland, or his or her designee.
- B. Finance department shall mean the duly constituted finance department of the City of Loveland.
- C. Lodging services shall mean the providing of rooms or accommodations, except meeting rooms, by any person to any other person who for consideration uses, possesses, or has the right to use or possess any room, except a meeting room, in a hotel, inn, bed and breakfast residence, apartment, lodging house, motor hotel, guest house, guest ranch, trailer coach, mobile home, automobile camper trailer court and park, or similar establishment, for a period of less than thirty consecutive days under any concession, permit, right of access, license to use or other agreement, or otherwise.
- D. Lodging customer shall mean any person who, through a taxable lodging transaction, acquires lodging services from a lodging provider.
- E. Lodging price shall mean the gross price paid or value given, exclusive of other taxes paid, by the lodging customer for the provision of lodging services.
- F. Lodging provider shall mean any person providing lodging services or such provider's authorized agent.
- G. Lodging tax or tax shall mean the excise tax imposed by this chapter payable by the purchaser of lodging services or the aggregate amount of taxes due from a lodging provider during the period for which such person is required to report the collections of this tax as herein specified.
- H. Lodging transaction shall mean the providing of lodging services.
- I. Person shall mean any individual, entity, firm, partnership, joint venture, corporation, estate or trust, receiver, trustee, assignee, lessee, limited liability company, or any person or entity acting in a fiduciary or representative capacity for any individual or entity, whether appointed by the court or otherwise, or any group or combination acting as a unit, and includes the plural as well as the singular number.
- J. State shall mean the State of Colorado.

- K. Taxpayer shall mean any person obligated to account to the city for taxes collected or to be collected under the terms of this chapter.

3.24.020 Tax levied.

On and after 12:00 a.m. January 1, 2010, there is levied and shall be paid and collected an excise tax of three (3%) percent on the lodging price paid for any lodging services provided in the city. This tax shall be in addition to the sales and use tax as established pursuant to Chapter 3.16 of this Title. It shall be a violation of this Code for any lodging customer provided lodging services in the city to fail to pay, or for any lodging provider of such lodging services to fail to collect, the tax levied pursuant to this section.

3.24.030 Transactions exempt from tax.

The following lodging transactions are exempt from taxation under this chapter:

- A. All lodging services provided to the United States Government; to the state, its departments or institutions and political subdivisions in their governmental capacities only, including the city and any department thereof;
- B. All lodging services provided to religious and charitable non-profit corporations and associations, provided the corporation or association holds a tax exempt status under Internal Revenue Code Section 501(c), but only in the conduct of their religious and charitable functions and activities;
- C. All lodging services provided to persons which the city is prohibited from taxing under the United States Constitution or laws of the United States or under state law;
- D. All lodging services provided to any person for a period of at least thirty (30) consecutive days; and
- E. Any lodging transaction, if the price of such lodging services are paid in advance on a weekly basis and does not exceed the total sum of seventy-five dollars per week.

3.24.040 License required for lodging providers.

- A. It shall be unlawful for any person to engage in the business of providing lodging services without first having obtained a license from the city as provided in this chapter, which license shall be granted and issued without fee by the city manager and shall be in force and effect until revoked.
- B. In case business is transacted at two or more separate places by one person, a separate license for each place of business shall be required.

3.24.050 Exception to licensing requirement.

No license shall be required for any person engaged exclusively in the business of providing lodging services that are exempt from taxation under this chapter.

3.24.060 Application.

A lodging license shall be granted only upon application stating the name and address of the person desiring such license, the name of such business, the location, including the street number of such business and such other facts as may be reasonably required by the city manager for collection and enforcement of the lodging tax under this chapter.

3.24.070 Form of license; nontransferability.

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

3.24.080 Revocation of license.

The city manager, after giving reasonable notice and after full hearing, may revoke the lodging license of any person found by the city manager to have violated any provision of this chapter.

3.24.090 Appeal of revocation; procedure.

Any finding and order of the city manager revoking the lodging license of any person shall be subject to review by the District Court of Larimer County upon petition of the aggrieved party. The procedure of the review shall be in accordance with Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

3.24.100 Engaging in business without license to be a violation.

Any person engaged in the business of providing lodging services in the city without having secured the lodging license required by this chapter, except as specifically provided herein, shall be guilty of a violation of this chapter and upon conviction shall be punished pursuant to Code Section 1.12.010.

3.24.105 Use of Lodging Tax.

All revenues received by the city from the lodging tax established by this chapter shall be placed in a separate lodging tax fund and used by the city only for the following purpose: to promote tourism, conventions and related activities within the city by marketing the city and sponsoring community events, both in support of this purpose. None of the revenue shall be allocated to the general fund or to any other separate city fund. In addition, the city council shall not budget, appropriate or spend any funds from this lodging tax fund without first receiving a recommendation from the community marketing commission established pursuant to Code Section 2.60.075 concerning the proposed use of such funds. The city council shall not, however, be bound by the commission's recommendation and may spend the funds in any way consistent with the purpose authorized in this section. However, nothing in this chapter shall prohibit the city council from approving the use of any other available city funds to fund, in whole or part, the purpose set forth in this section.

3.24.110 Payment of tax.

- A. Every lodging provider shall be liable and responsible for the payment of an amount equal to three (3%) percent of all proceeds derived from the providing of lodging services as established pursuant to Section 3.24.020 and any such lodging provider shall file a return each month with the finance department on or before the twentieth day of each month for the preceding month and remit an amount equivalent to the lodging tax collected to the finance department. Every lodging provider shall be entitled to withhold each month an amount equal to the lesser of three and one-third percent (3 1/3%) of the amount of the tax to be paid by such lodging provider under this chapter or three hundred dollars (\$300) to cover the expense of collection and remittance of the tax to the finance department.
- B. The returns to be filed by the lodging provider shall contain such information and be made in such manner upon any such forms as the city manager may prescribe. The city manager may extend the time for making returns and paying the taxes due under such reasonable rules and regulations as the city manager may prescribe, but no such extension shall be for a greater period than is provided in Section 3.24.140.
- C. The burden of proving that any lodging provider is exempt from collection of the lodging tax and paying the same to the finance department or from filing the returns required by this section shall be on the lodging provider under such reasonable requirements of proof as the city manager may prescribe.

- D. Except as provided in subsection (f) below, the lodging provider shall add the tax imposed to the lodging price, showing such tax as a separate and distinct item and when added such tax shall constitute a part of such price and shall be a debt from the lodging customer to the lodging provider until paid and shall be recoverable at law in the same manner as other debts.
- E. The lodging provider shall be entitled, as the city's collecting agent, to apply and credit the amount authorized to be withheld by the lodging provider pursuant to subsection (a) above, remitting the excess of collections over that amount to the finance department in the lodging provider's next monthly lodging tax return. If, however, the lodging provider is delinquent in remitting the tax collected, other than in unusual circumstances shown to the satisfaction of the city manager, the lodging provider shall not be entitled to apply this credit and shall pay to the finance department the full three percent (3%) of tax collected.
- F. No person other than the city may take enrichment from the collection or payment of such tax or from liability for payment of the full amount of the tax as levied by Section 3.24.020 as such amount is adjusted pursuant to subsection (e) above.

3.24.120 Formulation and promulgation of rules and regulations.

To provide uniform methods of adding the lodging tax to the lodging price, for collecting the tax, and for enforcing the tax, the city manager may formulate and promulgate appropriate rules and regulations to effectuate the purposes of this chapter.

3.24.130 Advertisement of assumption or absorption of tax prohibited.

It shall be unlawful for any lodging provider to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof imposed by this chapter will be assumed or absorbed by the lodging provider or that it will not be added to the lodging price of the lodging services provided or, if added, that it or any part will be refunded.

3.24.140 Remittance of tax on other than monthly basis.

If the accounting method regularly employed by the lodging provider in the transaction of business, or other conditions, is such that reports of sales made on a calendar month basis will impose unnecessary hardship, the city manager may, upon written request of the lodging provider, accept reports at such intervals as will, in the city manager's opinion, better suit the convenience of the lodging provider and will not jeopardize the city's collection of the tax. The city manager may by rule permit a taxpayer whose monthly tax collected is less than twenty dollars to make returns and pay taxes at intervals greater than one month.

3.24.150 Consolidation of returns.

A lodging provider doing business in two or more places or locations taxable under this chapter may file one return covering all such business activities.

3.24.160 Excess collections; failure to remit collections.

If any lodging provider during any reporting period collects as a tax an amount in excess of three (3%) percent of the total sales on lodging services, the lodging provider shall remit to the city the full amount of the tax collected less the amount retained as a collection expense under Section 3.24.110(e). The retention by the lodging provider of any excess tax collections over three (3%) percent of the total taxable sales of such lodging provider or the intentional failure to remit promptly to the finance department the full amount required to be remitted by this section is hereby declared to be a violation of this chapter.

3.24.170 Bad debts.

Lodging taxes paid on the amount of lodging price which are represented by accounts that are found to be worthless and are actually and properly charged off as bad debts for the purpose of the income tax imposed by the laws of the state, may be credited upon a subsequent payment of the tax as provided in this chapter, but if any such accounts are thereafter collected by the lodging provider, a lodging tax shall be paid upon the amounts so collected.

3.24.180 Disputes over exemption from tax; application for refund.

If a dispute arises between the lodging customer and lodging provider as to whether or not any lodging transaction is exempt from taxation, the lodging provider shall collect and the lodging customer shall pay such tax, and the lodging provider shall issue to the lodging customer a receipt or certificate on forms prescribed by the city manager showing the names of the lodging customer and lodging provider, the lodging services furnished, the date, the price, the amount of tax paid and a brief statement of the claim of exemption. The lodging customer may apply to the finance department for a refund of such taxes. It shall be the duty of the city manager to determine the question of exemption subject to review by the courts as herein provided. It shall be a violation of this chapter for any lodging provider to fail to collect, or for any lodging customer to fail to pay, a tax levied by this chapter on the provision of lodging services on which an exemption is disputed.

3.24.190 Procedure for refund of disputed tax.

- A. A refund shall be made or credit allowed for the tax paid under dispute by any person who claims one or more exemptions as provided by this chapter and who proves, in the manner set forth in this section, that the person is entitled to the claimed exemption. Such refund shall be made by the city manager after compliance with all of the following conditions in subsections (b), (c), (d) and (e) below.
- B. Applications for refunds must be filed with the finance department within sixty days after the lodging transaction on which the exemption is claimed and must be supported by the affidavit of the person seeking the exemption, accompanied by the original paid invoice or sales receipt and a certificate issued by the lodging provider, and the application and the certificate must be made upon such forms as shall be furnished by the finance department, which forms shall contain such information as the city manager may prescribe.
- C. The burden of proving that any person is exempt from paying the lodging tax shall be upon the person asserting such claim for exemption under such reasonable requirements or proof as the city manager may prescribe.
- D. Upon receipt of such application, the city manager shall promptly examine and shall give notice to the applicant by order in writing of the decision.
- E. An aggrieved applicant may, within fifteen days after such decision is mailed, petition the city manager for a hearing on the claim in the manner provided in this chapter.

3.24.200 Right of refund not assignable.

The right of any person to a refund under this chapter shall not be assignable, and application for a refund must be made by the person who paid the tax as shown in the invoice of the sale.

3.24.210 False statements to be a violation.

Any person who applies for a refund under the provisions of this chapter or any other person who shall make any false statement in connection with an application for a refund of any tax shall be deemed guilty of a violation of this chapter and punished as provided in this chapter.

3.24.220 Conviction to be evidence of fraudulent intent.

If any person is convicted under the provisions of Section 3.24.210, such conviction shall be prima facie evidence that all refunds received by such person during the current year were obtained unlawfully, and the city manager is hereby empowered and directed to bring appropriate action for recovery of such refund. A brief summary of the above-mentioned penalties shall be printed on each application form for refund.

3.24.230 Information to be confidential.

- A. Except in accordance with judicial order, state law, or as otherwise provided in this chapter, the city manager and the city manager's employees and agents, shall not divulge any information gained from any return filed under the provisions of this chapter.
- B. The persons charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained therein in any action or proceeding in any court, except on behalf of the city or the city manager in an action under the provisions of this chapter to which the city or the city manager is a party or on behalf of any party to an action or proceeding under the provisions of this chapter or to punish a violator thereof when the report of facts shown by such report is directly involved in such action or proceeding, in either of which events the court may require the production of and may admit in evidence so much of the returns or of the facts shown thereby as are pertinent to the action or proceeding and no more.
- C. Nothing in this section shall be construed to prohibit the delivery to a person or his or her duly authorized representative of a copy of any return or report filed in connection with that person's tax nor to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, nor to prohibit the inspection by the city attorney, or any other legal counsel for the city, of the report or return of any person who brings an action to set aside or review the tax based thereon or against whom an action or proceeding is contemplated or has been instituted under this chapter.
- D. Reports and returns shall be preserved for three years and thereafter until the city manager orders them destroyed.

3.24.240 Keeping of records and accounts.

It shall be the duty of every person engaged or continuing in business in the city, for the transaction of which a lodging license is required hereunder, to keep and preserve suitable records of all lodging transactions made by such person and such other books or accounts as may be necessary to determine the amount of tax for the collection of which such person is liable under this chapter. All such books, invoices and other records shall be preserved for a period of three years and shall be open for examination at any time by the city manager.

3.24.250 Divulging of confidential information to be a violation.

Any city officer or employee, or any member of the office of, or officer or employee of, the city manager who shall divulge any information classified herein as confidential, in any manner, except in accordance with proper judicial order or as otherwise provided by law, shall be guilty of a violation of this chapter.

3.24.260 Examination of returns; recomputations; credits; deficiencies.

As soon as practicable after the return is filed, the city manager shall examine it. If it then appears that the correct amount of tax to be remitted is greater or less than that shown in the return, the tax shall be recomputed by the city manager. If the amount paid exceeds that which is due, the excess shall be refunded or credited against any subsequent remittance from the same person. If the amount paid is less than the amount due, the difference, together with interest thereon at the rate of one-half of

one percent per month from the time the return was due, shall be paid by the taxpayer to the finance department within ten days after written notice and demand to the taxpayer from the city manager.

3.24.270 Penalty for deficiencies due to negligence.

If any part of the deficiency in payment of the lodging tax is due to negligence, but without the intent to defraud, there shall be added ten percent of the total amount of the deficiency. Interest in such case shall be collected at the rate of one percent per month on the amount of such deficiency from the time the return was due from the person required to file the return. The deficiency interest and penalty shall become due and payable to the finance department within ten days after written notice and demand by the city manager.

3.24.280 Penalty for deficiencies with intent to defraud.

If any part of the deficiency in payment of lodging tax is due to the intent by the taxpayer to evade the tax, then there shall be added fifty percent of the total amount of the deficiency. Interest in such case shall be collected at the rate of one and one-half percent per month on the amount of the deficiency from the time the return was due from the person required to file the return. The deficiency interest and penalties shall be due and payable to the finance department within ten days after written notice and demand by the city manager.

3.24.290 Investigation of tax records.

For the purpose of ascertaining the correctness of a return or for the purpose of determining the amount of tax due from any person, the city manager may hold investigations and hearings concerning any matters covered by this chapter, and may examine any relevant books, papers, records or memoranda of any such person. The city manager may require the attendance of such person or any officer or employee of such person or of any person having knowledge of such transactions and may take testimony and proof for the information. The city manager shall have power to administer oaths to such persons.

3.24.300 Subpoenas and witness fees.

All subpoenas issued under the terms of this chapter may be served by any person of eighteen years of age or older. The fees of witnesses for attendance under the subpoenas shall be the same as the fees of witnesses before the state district court, such fees to be paid when the witness is excused from further attendance. When the witness is subpoenaed at the instance of the city manager, such fees shall be paid in the same manner as other expenses under the terms of this chapter. When a witness is subpoenaed at the instance of any party to any such proceeding, the city manager may require that the cost of service of the subpoena and the fee of the witness be borne by the party at whose instance the witness is summoned. In such case, the city manager may require a deposit to cover the cost of such service and witness fees. A subpoena issued as aforesaid shall be served in the same manner as a subpoena issued out of a court of record.

3.24.310 Attendance of witnesses and production of evidence.

Any district judge of the Larimer County District Court, upon the application of the city manager, may issue a subpoena to compel the attendance of witnesses, the production of books, papers, records and memoranda and the giving of testimony before the city manager, and to enforce those subpoenas as provided in the Colorado Rules of Civil Procedure. Alternatively, the city manager may issue subpoenas, enforceable in Loveland Municipal Court under C.R.S. §13-10-112(2) and Rule 217 of the Colorado Municipal Court Rules of Procedure, to compel the attendance of witnesses, the collection of books, papers, records and memorandum and the giving of testimony before the city manager.

3.24.320 Depositions.

The city manager or any party in an investigation or hearing before the city manager, may cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in courts of this state and to that end compel the attendance of witnesses and the production of books, papers, records and memoranda pursuant to the provisions of Sections 3.24.300 and 3.24.310.

3.24.330 Unpaid tax a prior lien; satisfaction of liens.

- A. The tax imposed by this chapter, together with the interest and penalties herein provided and the cost of collection which may be incurred by the city, including reasonable attorney's fees, shall be and until paid remain a first and prior lien superior to any other liens on all the real property and tangible personal property of the taxpayer, lodging customer or lodging provider that is located within the city and may be foreclosed by seizing under distraint warrant and selling so much thereof as may be necessary to discharge said lien. Such distraint warrant may be issued by the city manager whenever the taxpayer, lodging customer or lodging provider is in default in the payment of the tax, interest and penalty. Such warrant may be served and the goods subject to such lien seized by the city manager and may be sold by the city manager at a public auction to be held ten days after notice thereof has been published in a newspaper published in the city.
- B. The city manager shall forthwith levy upon sufficient real property and tangible personal property of the taxpayer, lodging customer or lodging provider as is necessary to satisfy the lien. The property so levied upon shall be sold in all respect with like effect and in the same manner as is prescribed by law in respect to executions against property upon judgment of a court of record, and the remedies of garnishment shall also apply.

3.24.340 Settlement of taxes after sale of business.

Any lodging provider who shall sell or quit the business providing lodging services shall be required to make out a return as provided in this chapter within ten days after the date the provider sold the business or quit the business, and the successor in business shall be required to withhold sufficient funds of the purchase money to cover the amount of the lodging tax due and unpaid to the city under this chapter until such time as the former owner shall produce a receipt from the finance department showing that the taxes have been paid or a certificate from the finance department that no taxes are due.

3.24.350 Purchase of business subject to tax lien.

If the purchaser of a business providing lodging services shall fail to withhold the amount of purchase money, as provided in Section 3.24.340, and the tax shall be due and unpaid after the ten-day period allowed, the purchaser, as well as the seller, shall be personally liable for the payment of the taxes unpaid by the former owner. Likewise, anyone who takes any tangible business assets of or used by any lodging provider under lease, title-retaining contract or otherwise takes the same subject to the lien for any delinquent lodging taxes owed by such provider, and shall be liable for the payment of all delinquent lodging taxes of such prior owner, not, however, to exceed the value of the property so taken or acquired.

3.24.360 Unpaid taxes in cases of bankruptcy or receivership.

Whenever the business or property of any taxpayer subject to the provisions of this chapter shall be placed in a receivership, bankruptcy or assignment for the benefit of creditors, or is seized under distraint for property taxes, all taxes, penalties and interest imposed by this chapter, for which any lodging provider is in any way liable under the terms of this chapter, shall constitute a prior and preferred lien against all the real and tangible personal property of the taxpayer except as to preexisting claims or liens of a bona fide mortgagee, pledgee, judgment creditor or purchaser whose rights shall

have attached prior to the filing of the notice as hereinafter provided on the property of the taxpayer, other than the tangible business assets of such taxpayer. No sheriff, receiver, assignee or other officer shall sell the property of any person subject to this chapter under process or order of any court without first ascertaining from the finance department the amount of any lodging taxes due and payable to the city. If there are any such taxes due, owing and unpaid, it shall be the duty of such officer to first pay the amount of the taxes out of the proceeds of such sale before making payment of any monies to any judgment creditor or other claimants of whatsoever kind or nature, except the costs of the proceedings and other preexisting claims or liens as above provided.

3.24.370 Tax money to be held in trust.

All sums of money paid by the lodging customer to the lodging provider as taxes imposed by this chapter shall be and remain public money and the property of the city in the hands of such lodging provider. The lodging provider shall hold the same in trust for the sole use and benefit of the city until paid to the finance department as herein provided. If the money is not paid to the finance department, such lodging provider shall be deemed in violation of this section.

3.24.380 Failure to make return; estimate of taxes; penalty; notice; appeal.

- A. If any person neglects or refuses to make a return in payment of the taxes as required by this chapter, the city manager shall make an estimate, based upon such information as may be available, of the amounts of the taxes due for the period or periods for which the taxpayer is delinquent and, upon the basis of such estimated amount, shall compute and assess in addition thereto a penalty equal to ten percent thereof together with interest on such delinquent taxes at the rate of one percent per month from the date when due.
- B. Promptly thereafter, the city manager shall give to the delinquent taxpayer written notice of such estimated taxes, penalty and interest, which notice must be served on the delinquent taxpayer either personally or by certified mail.
- C. Such estimate shall thereupon become an assessment and such assessment shall be final and due and payable from the taxpayer to the finance department ten days from the date of service of the notice or the date of mailing by certified mail. Within the ten-day period, such delinquent taxpayer may petition the city manager for a revision or modification of such assessment and shall within such ten-day period furnish the finance department the correct facts and figures showing the correct amount of such taxes.
- D. Such petition shall be in writing, and the facts and figures submitted shall be submitted either in writing or orally and shall be given under oath of the taxpayer. The city manager may modify such assessment in accordance with the facts submitted. Such assessment shall be considered the final order of the city manager and may be reviewed in Larimer County District Court under Rule 106(a)(4) of the Colorado Rules of Civil Procedure, as provided in this chapter provided that the taxpayer gives written notice to the city manager of the intent to seek review within five days after receipt of the final order of assessment.

3.24.390 Notice of tax lien.

- A. If any taxes, penalty or interest imposed by this chapter and shown by returns filed by a taxpayer, or as shown by assessments duly made as provided in this chapter, are not paid within five days after the same are due, the city manager shall issue a notice, setting forth the name of the taxpayer, the amount of the tax, penalties and interest, the date of the accrual and that the city claims a first and prior lien on the real and tangible personal property of the taxpayer, except as to preexisting claims or liens of a bona fide mortgagee, pledgee or judgment creditor prior to the filing of the notice as hereinafter provided on property of the taxpayer.

- B. Such notice shall be on forms prepared by the city manager and shall be verified by the city manager and may be filed in the office of the clerk and recorder of any county in this state in which the taxpayer owns real or tangible personal property. The filing of such notice shall create such lien on such property in that county and constitute a notice thereof.

3.24.395 Distraint, Seizure and Sale.

- A. In addition to any other collection remedies provided in this chapter, after the notice contemplated in Section 3.24.390 has been filed or at any time when taxes due are unpaid, whether such notice is filed or not, the city manager may issue a warrant under the city's official seal directly to any city employee or to the sheriff of any county of this state, commanding them or their designated agents to distraint, levy upon, seize and sell sufficient of the real and personal property of the taxpayer found within the city, within the county where the sheriff is situated, for the payment of the amount due, together with interest, penalties and costs of collection including, without limitation, the direct and indirect personnel costs of the city employee's time incurred in the collection and the city's reasonable attorney's fees.
- B. Such city employee, agent or representative or the sheriff of any county of the state, or their designated agents as have received a warrant as provided in subsection (a), shall levy upon sufficient property of the taxpayer, or any property used by such taxpayer in conducting his or her retail business, except property made exempt from lien under C.R.S. §39-26-117(1) and the property so levied upon shall be sold in all respects with like effect in the same manner as prescribed by law for executions against property upon judgment of a court of record. The remedies of garnishment shall also be available. The city employee, agent or representative, or the sheriff of any county, shall be entitled to such fees in executing such warrant as are allowed by law for similar services.
- C. In addition to publishing the notice of sale, as provided by state statutes for execution of sales, the notice of sale, specifying the name and address of the taxpayer, the property to be sold, the amount of the unpaid taxes, penalty, interest and costs of collection for which the property is to be sold, the name and address of the officer conducting the sale, and the time and place of the sale, shall be mailed or otherwise provided to the taxpayer and record holder of each outstanding interest in the property to be sold, according to the records of the clerk and recorder of the county where the property is located, the Colorado Secretary of State, the Colorado Department of Revenue, Motor Vehicles Division, or the successor to the recording functions of any of these offices. Such notice shall be mailed or otherwise given no later than ten days before the sale.
- D. If the taxpayer, before the beginning of the sale, pays to the finance department in cash or certified funds, acceptable to the city manager, the unpaid taxes, penalty, interest and the city's costs of collection, the taxpayer shall receive from the city manager a release of lien for the taxes and the sale shall abate. If any person other than the taxpayer pays, such person shall receive a quitclaim assignment of the city's interest in and to the property upon which a lien is claimed, and the sale shall abate, subject to reinstatement of proceedings executed upon such lien by the third party. Thereafter, no city employee or official shall be obligated to perform any further action to foreclose or execute upon the tax lien, but the purchaser of said lien shall have all of the rights and remedies provided hereunder at the purchaser's sole option and expense.

3.24.396 Chief of Police to act in aid of distraint.

The Loveland Chief of Police or his or her designee shall, upon request, assign necessary police officers to accompany authorized city officials and act in aid of distraint. Said officers shall be authorized, upon request of an authorized city official acting under a distraint warrant, to use all reasonable measures, including, without limitation, reasonable appropriate physical force, to distraint or levy upon property and preserve the peace

3.24.400 Release of lien.

Any lien for taxes as shown on the records of all county clerks and recorders as herein provided shall, upon the payment of all taxes, penalties and interest covered thereby be released by the city manager in the same manner as mortgages or judgments are released.

3.24.410 Recovery of unpaid taxes by action at law.

- A. The city manager may also treat any taxes, penalties, interest and costs of collection due and unpaid under this chapter as a debt due the city from the lodging provider.
- B. In case of failure to pay the taxes, or any portion thereof, and to pay any penalty, interest, and costs of collection due thereon, when due, the city manager may recover at law the amount of such taxes, penalties, interest and costs of collection in any county or district court of the county wherein the taxpayer resides or has his or her place of business.
- C. The return of the taxpayer or the assessment made by the city manager as herein provided shall be prima facie proof of the amount due.
- D. The city attorney is hereby authorized, upon request by the city manager, to commence any legal action or suit in the name of the city for the recovery of the tax, penalty, interest and costs of collection due pursuant to this chapter.

3.24.420 City may be party in title actions.

In any judicial or legal action affecting the title to real estate or the ownership or right to possession of personal property, the city may be made a party to such action for the purpose of obtaining a judgment or determination of its lien upon the property involved therein.

3.24.430 Waiver of penalties by city manager.

The city manager is hereby authorized to waive, for good cause shown, any penalty assessed as provided in this chapter. For this purpose, any interest imposed in excess of six percent (6%) per annum shall be deemed a penalty.

3.24.440 Petition and hearing of aggrieved taxpayer.

If any taxpayer, having made a return and paid the tax provided for in this chapter, deems himself or herself aggrieved by the assessment made upon him or her by the city manager, the taxpayer may apply to the city manager by petition, in writing, filed with the finance department within ten days after the notice is mailed to him or her for a hearing and a correction of the amount of the tax so assessed. The taxpayer shall set forth the reasons why such hearing should be granted and the amount by which such tax should be reduced. The city manager shall notify the petitioner, in writing, of the time and place fixed for such hearing. After such hearing, the city manager shall make such order in the matter as is just and proper and shall furnish a copy of such order to the petitioner.

3.24.450 Decision of city manager.

Every decision of the city manager shall be in writing, and the written decision shall be mailed to the taxpayer within ten days after issuance of the written decision. All such decisions shall become final upon the expiration of thirty days after issuance.

3.24.460 Review of decisions.

The taxpayer may apply for a review of the decision by the city manager in Larimer County District Court in accordance with Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

3.24.470 Review bond required.

Before making application to the District Court, the party making such application shall file with the finance department a bond in twice the amount of the taxes, penalty, interest and costs of collection as stated in the city manager's decision with good and sufficient surety, or at the city manager's option, may deposit lawful money with the finance department in the total amount owed under this chapter.

3.24.480 Notices to be sent by certified and first class mail.

All notices required to be given to any taxpayer under the provisions of this chapter shall be in writing and, if mailed, sent by certified mail, return receipt requested, and by regular first class mail, both to the taxpayer's last-known address, and such mailing of the notice shall be sufficient for the purposes of this chapter.

3.24.500 Tax in addition to other taxes.

The tax imposed by this chapter shall be in addition to all other taxes imposed by law except as otherwise provided in this chapter.

3.24.510 Hearings to be held in City.

Every hearing before the city manager shall be held in the city.

3.24.520 Administrative officer designated.

The administration of all provisions of this chapter is hereby vested in and shall be exercised by the city manager who shall prescribe forms and reasonable rules and regulations in conformity with this chapter for the making of returns, for the ascertainment, assessment and collection of taxes imposed under this chapter and for the proper administration and enforcement thereof.

3.24.540 Compromise and settlement.

The city manager may for good cause compromise or settle any claim to the lodging tax, penalties, interest and costs of collection due to the city under this chapter. Whenever a settlement by the city manager results in a compromise of twenty-five hundred dollars or more, there should be placed on file in the finance department the written opinion of the city manager stating the reasons for the settlement, which may include financial inability of the taxpayer to pay a greater amount, with a statement of: (i) the amount of the tax assessed; (ii) the amount of the penalty, interest and costs of collection assessed; and (iii) the amount paid by the taxpayer in accordance with the terms of the settlement. Notwithstanding anything herein to the contrary, no such opinion shall be required with respect to any compromise of less than twenty-five hundred dollars.

3.24.550 Statute of limitations.

- A. The taxes for any period, together with interest and penalties imposed by this chapter shall not be assessed nor shall any notice of lien be filed, or distraint warrant be issued or suit for collection be instituted or any other action to collect the same be commenced more than three years after the date on which the tax was or is payable. No lien shall continue after such period, except for taxes assessed before the expiration of such period, a notice of lien with respect to which has been filed prior to the expiration of such period, and in such cases, such lien shall continue only for two years after the filing of notice thereof.
- B. In case of false or fraudulent return with intent to evade the tax, the tax together with interest and penalties may be assessed or proceedings for the collection of such taxes may be begun at any time.

- C. Before the expiration of such period of limitation, the taxpayer and the city manager may agree in writing to an extension, and the period agreed on may be extended by subsequent agreement in writing.

3.24.560 Violations.

It shall be a violation of this chapter for any lodging provider or any other person subject to the tax levied herein to refuse to make any return required in this chapter or to make any false or fraudulent return or any false statements in any return; or to fail or refuse to make payment to the finance department of any taxes collected or due the city, or in any manner to evade the collection and payment of the tax; or to violate any other provision of this chapter. It shall be unlawful for any person or lodging customer to fail or refuse to pay such tax or evade the payment or to aid or abet another in any attempt to evade the payment of the tax imposed by this chapter. Any person making a false return or a return containing a false statement shall also be guilty of a violation of this chapter. The penalties for violations of this chapter shall be as provided in Code Section 1.12.010. (Ord. 5445 § 1, 2009)

Chapter 3.30

BUSINESS AND OCCUPATION TAX ON TELEPHONE UTILITY COMPANIES

Sections:

3.30.010	Levy of tax.
3.30.020	Time payment of tax.
3.30.030	Filing statement.
3.30.040	Failure to pay.
3.30.050	Penalty clause.
3.30.060	Inspection of records.
3.30.070	Local purpose.
3.30.080	Tax in lieu of other business and occupation taxes, etc.
3.30.090	Certain offenses and liabilities to continue.

3.30.010 Levy of tax.

There is levied on and against each telephone utility company operating within 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 amount of the tax levied shall be;

- A. For the portion of 1979 remaining after the date on which the tax begins to accrue as provided in Section 3.30.020, two dollars and ninety cents per telephone account for which local exchange telephone service is provided within the corporate limits of the city on said date; and
- B. For each subsequent calendar year, four dollars and twenty-five cents per telephone account for which local exchange telephone service is provided within the corporate limits of the city on January 1st of such calendar year on which the tax begins to accrue as provided in Section 3.30.020; provided, however, that the amount of such tax shall be adjusted annually as set forth in subsection C of this section;
- C. Beginning on January 1, 1981, there shall be an adjustment in the amount of tax to be paid pursuant to this chapter, as follows:
 1. As promptly as practical after October 1, 1980, and after each October 1st thereafter, the city clerk shall compute the increase, if any, in the cost of living for the preceding year, based upon the "Revised Consumer Price Index-Cities (1967 = 100)" (hereinafter called the "index"), published by the Bureau of Labor Statistics of the United States Department of Labor,
 2. The index number indicated in the column for the city of Denver, Colorado, entitled "All Items" for the month of October, 1979, shall be the base index number and the corresponding index number for the month of October, 1980, or the applicable index number for the month of October in each succeeding year shall be the current index number,
 3. The current index number shall be divided by the base index number; from the quotient thereof there shall be subtracted the integer one, and the resulting number, if positive, shall be deemed to be the increase in the cost of living,
 4. The percentage of increase, if any, multiplied by four dollars and twenty-five cents, shall be the change in the yearly tax per telephone account. Anything herein notwithstanding, however, said tax shall not be less than the tax per account paid in the preceding year,
 5. The city shall, within a reasonable time after obtaining the appropriate data necessary for computing such change in the tax, give all affected telephone utilities notice of any change so determined. Such determination shall not preclude any adjustment which may be required in the event of a published amendment of the index figures upon which the computation was

based, unless any affected utility, within sixty days after the giving of such notice by the city, notifies the city of any claimed error therein,

6. Any yearly increase in the tax as determined from such statistics shall become effective on January 1st following the October from which the current index number is derived and shall be due and payable to the city along with the base payments provided for in Section 3.30.020 below in equal quarterly installments. Any retroactive payments when due shall be payable within five days after the giving of written notice by city to the utility that such payments are due. In the event of any subsequent redetermination of the amount of such increase, the adjustment thus found to be necessary shall be made promptly between the city and the utility,
7. If publication of the Consumer's Price Index is discontinued, the parties shall thereafter accept comparable statistics on the cost of living for the City of Denver as they shall be computed and published by an agency of the United States or by a responsible financial periodical of recognized authority then to be selected by the parties hereto, or if the parties cannot agree upon a selection, by arbitration. In the event of use of comparable statistics in place of the Consumer's Price Index, or publication of the index figure at other than monthly intervals, there shall be made in the method of computation provided for in this chapter such revisions as the circumstances may require to carry out the intent of this chapter. (Ord. 1764 § 1 (part), 1979)

3.30.020 Time payment of tax.

The tax levied by this chapter shall begin to accrue on the first day of April, 1979, and shall be due and payable in three equal installments for the remaining portion of 1979, payable on June 30, September 30 and December 31, 1979, and in four equal quarterly installments for years subsequent to 1979, to be paid on the last business days of the months of March, June, September and December. (Ord. 1764 § 1 (part), 1979)

3.30.030 Filing statement.

Within thirty days after the date on which the tax begins to accrue as provided in Section 3.30.020, 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 said date. Such statement shall be filed within thirty days after each anniversary of the date on which the tax begins to accrue, showing such accounts on the anniversary date. (Ord. 1764 § 1 (part), 1979)

3.30.040 Failure to pay.

If any telephone utility company subject to the provisions of this chapter fails to pay the taxes as provided in this chapter, the full amount thereof shall be due and collected from such company, and the same, together with an addition of ten percent of the amount of taxes due, shall be a debt due and owing from such company to the city. The city attorney, 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. (Ord. 1764 § 1 (part), 1979)

3.30.050 Penalty clause.

If any officer, agent or manager of a telephone utility company which is subject to the provisions of this chapter fails, neglects or refuses to make or file the annual statement of accounts provided in Section 3.30.030, the officer, agent, manager or person shall, on conviction thereof, be punished by a fine not less than twenty-five dollars nor more than three hundred dollars; provided that each day after said statement becomes delinquent during which the said officer, agent, manager or person so fails,

neglects or refuses to make and file such statement shall be considered a separate and distinct offense. (Ord. 1764 § 1 (part), 1979)

3.30.060 Inspection of records.

The city, its officers, agents or representatives shall have the right at all reasonable hours and time to examine the books and records of the telephone utility companies which are subject to the provisions of this chapter and to make copies of the entries or contents thereof. (Ord. 1764 § 1 (part), 1979)

3.30.070 Local purpose.

The tax provided in this chapter 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 is construed to mean that any telephone utility company is issued a franchise by the city.

The method of calculation of the tax provided for in this chapter is for the sole purpose of determining the total tax payable by each telephone utility and does not determine or affect how, if at all, such payment is apportioned by the utility among its customers. (Ord. 1764 § 1 (part), 1979)

3.30.080 Tax in lieu of other business and occupation taxes, etc.

The tax herein provided shall be in lieu of all other occupation taxes or taxes on the privilege of doing business in the city on any telephone utility company subject to the provisions of this chapter and in addition shall be in lieu of any free service furnished the city by any said telephone utility. (Ord. 1764 § 1 (part), 1979)

3.30.090 Certain offenses and liabilities to continue.

All taxes or charges, the liability for which has been accrued under the terms and provisions of prior law, ordinance or agreement on or before the effective date of this chapter, shall be and remain unconditionally due and payable, and shall constitute a debt to the city, payable in conformity with the terms and provisions of said law, ordinance or contract, prior to the adoption of this chapter; and all of said terms and provisions of such law, ordinance, or contract shall be and remain in full force and effect for the purpose of the collection and payment of any and all such taxes due and payable thereunder, notwithstanding the provisions of this chapter. (Ord. 1764 § 1 (part), 1978)

Chapter 3.40

PASSENGER FACILITY CHARGES

Sections:

3.40.010	Definitions.
3.40.020	Findings and purpose.
3.40.030	Imposition of passenger facility charge.
3.40.040	Eligible projects.
3.40.050	Compliance with FAA requirements.
3.40.060	Violations.
3.40.070	Severability.

3.40.010 Definitions.

As used in this chapter, the following words and phrases are defined as follows:

- A. "Airport" means the area of the Fort Collins-Loveland Municipal Airport.
- B. "Charge effective date" means the date on which the passenger facility charge is effective as provided in Section 3.04.030 of this chapter.
- C. "Enplaned passenger" means a domestic, territorial or international revenue passenger enplaned at the airport in a scheduled or nonscheduled aircraft in interstate, intrastate, or foreign commerce, provided that "enplaned passenger" shall not include a passenger enplaning to a destination receiving essential air service compensation as provided by 14 C.F.R. 158.9 or a passenger both enplaning and deplaning at the airport.
- D. "Manager" means the airport manager for the airport.
- E. "FAA" means the Federal Aviation Administration, Department of Transportation, United States of America.
- F. "Passenger facility charge" means the charge imposed on enplaned passengers pursuant to Section 3.04.030 of this chapter.
- G. "Loveland" or "city" shall mean the city of Loveland, Colorado, a municipal corporation created pursuant to Colorado State law. (Ord. 3873 § 1 (part), 1993)

3.40.020 Findings and purpose.

The city makes the following findings:

- A. The city together with the city of Fort Collins owns and controls the airport which is an air navigation facility located in Larimer County, state of Colorado.
- B. The airport promotes a strong economic base for the community, assists and encourages world trade opportunities, and is of vital importance to the health, safety, and welfare of the city and the state of Colorado.
- C. The airport is a commercial service airport as that phrase is defined in 14 Code of Federal Regulations, Part 158, as adopted by the FAA, being a public airport enplaning two thousand five hundred or more scheduled air passengers per year.
- D. The deregulation of the airline industry, the restructuring of airline ownerships, and fluctuating market changes in the field of commercial aviation have placed new financial challenges on the city.
- E. The operation of the airport as a public facility attracting scheduled airline passenger service by airline carriers at the airport imposes financial responsibility of the city for airport facilities and operations.
- F. The city will require substantial expenditure for capital investment, operation, maintenance, and development of the airport facilities to meet the future demand for passenger air travel.

- G. The Congress of the United States has authorized the adoption of a passenger facility charge program by local airports pursuant to the Aviation Safety and Capacity Expansion Act of 1990 (pub.L. 101-508, Title IX, Subtitle B, November 5, 1990) ("Act").
- H. It is in the best interest of the city as well as the airline passengers that the city adopt a passenger facility charge program as identified in this chapter to maintain and further expand the transportation facilities of the city.
- I. In establishing and implementing the passenger facility charge program, the passengers using the airport should contribute to a greater degree toward the development of airport facilities used by passengers and continued development thereof.
- J. The fees implemented by this chapter are reasonable for the use of the airport and aviation facilities by the general public.
- K. This chapter is intended to enact a passenger facility charge program consistent with these findings and this chapter is to be liberally construed to effectuate the purposes express herein. (Ord. 3873 § 1 (part), 1993)

3.40.030 Imposition of passenger facility charge.

- A. Commencing not later than the first day of the second month thirty days after the approval by the FAA of the city's passenger facility charge program authorized by this chapter, or on such date thereafter as the passenger facility charge can be collected as determined by the manager, there shall be imposed at the airport a passenger facility charge of four dollars and fifty cents.
- B. The collection of the passenger facility charge authorized by this chapter shall terminate on the date determined pursuant to regulations adopted by the FAA.
- C. The manager or designee is authorized to execute the FAA application for authorization of the city's passenger facility charge program including the assurances contained therein, as well as all other documents necessary for implementation and operation of the program on behalf of the city. (Ord. 4854 § 1 (part), 2003; Ord. 3873 § 1 (part), 1993)

3.40.040 Eligible projects.

The passenger facility charge collected pursuant to this program shall be expended for projects approved by resolution of both the city councils of Loveland and Fort Collins and determined by the FAA to be eligible under the Act and rules and regulations adopted by the FAA pursuant thereto. (Ord. 3873 § 1 (part), 1993)

3.40.050 Compliance with FAA requirements.

The passenger facility charge authorized by this chapter shall be collected and distributed pursuant to the rules and regulations adopted by the FAA pursuant to the Act. (Ord. 3873 § 1 (part), 1993)

3.40.060 Violations.

In the event that any airline violates any term or condition of this chapter, the city may exercise any rights or remedies allowed by law or equity. (Ord. 3873 § 1 (part), 1993)

3.40.070 Severability.

In the event that any phrase, clause, sentence, paragraph, or section of this chapter is declared invalid for any reason, the remainder of this chapter shall not be invalidated, but shall remain in full force and effect, all parts of this chapter being declared separable and independent of all others. In the event that a judgment is entered, and all appeals exhausted, which judgment finds, concludes or declares this chapter is unconstitutional or is otherwise invalid, the passenger facility charge authorized by this

chapter shall be suspended and terminated as of the date of declaration of unconstitutionality. (Ord. 3873 § 1 (part), 1993)