

ORDINANCE OF THE CITY OF LONE TREE

Series of 2006

Ordinance No. 06-06

AN ORDINANCE IMPOSING A SALES TAX ON THE SALE OF TANGIBLE PERSONAL PROPERTY AT RETAIL AND THE FURNISHING OF TAXABLE SERVICES IN THE CITY OF LONE TREE, COLORADO, IMPOSING A USE TAX TO BE PAID BY EVERY PERSON OR ENTITY FOR EXERCISING THE TAXABLE PRIVILEGE OF STORING, USING, DISTRIBUTING OR CONSUMING TANGIBLE PERSONAL PROPERTY AT RETAIL IN THE CITY OF LONE TREE, COLORADO, AND REQUIRING A SALES AND USE TAX LICENSE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LONE TREE, COLORADO:

ARTICLE 1 – AUTHORITY

The City of Lone Tree (the “City”) is a home rule municipality operating under a Charter adopted May 5, 1998. Pursuant to the Charter, the Lone Tree Municipal Code (the “Code”) and the authority given to home rule cities, the City may adopt and amend Ordinances.

ARTICLE 2 – DECLARATIONS OF POLICY

A. Section 20(4) of Article X of the Constitution of Colorado (“TABOR”) requires any tax policy change of a district that results or would result in a net tax revenue gain to have voter approval in advance; and

B. The City is a “district” subject to the requirements of TABOR; and

C. At the May 2, 2006 City election, City qualified and registered electors voted to restate with amendment the City’s sales and use tax ordinance which will constitute a tax policy change resulting in a net tax revenue gain without, however, any tax rate increase, new tax, extension of an expiring tax, or property tax increase or mill levy increase above that of the prior year; and

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

ARTICLE 3 – REPEAL AND ADOPTION

City Ordinance No. 04-14 is hereby expressly repealed. Subject to Article 4 below, to the extent that any provisions of this Ordinance conflict with any previously adopted City ordinances, the provisions of this Ordinance shall prevail. The Code is hereby amended to repeal

Chapter 4, Article III and replace it with a new Chapter 4, Article III as provided herein. Chapter 4, Article III of the Code shall hereafter read as follows:

SEC. 4-3-10. Legislative Intent.

(A) The City declares that the purpose of the levy of the taxes imposed by this Article is for raising funds for the payment of expenses of operating and improving the City and its facilities and for the payment of the principal of and interest due upon any general obligation or special revenue bonds lawfully authorized and issued by or on behalf of the City, and, in accordance with this purpose, the proceeds of the taxes shall be placed in the sales and use tax fund, or other appropriate fund or funds, from which shall be allocated, apportioned, and transferred as therein provided such sums to the respective funds and accounts as are therein indicated and for the purposes therein stated.

(B) It is further declared to be the legislative intent of the City, acting through its duly elected representatives, that, for purposes of this Article, the taxes imposed hereunder be reduced by the amount of tax which the City is prohibited from collecting under the State and federal Constitutions and laws by reason of a tax legally imposed and paid in respect to a sale of services or tangible personal property taxable hereunder, to another State or local, including municipal, government.

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

(D) It is hereby further declared to be the legislative intent of the City, acting through its duly elected representatives, that, for the purposes of this Article, every vendor who is engaged in business in the City and who delivers or causes to be delivered to a purchaser in the City any property or service taxable hereunder shall collect the tax imposed by this Article upon the basis of an addition of the tax imposed by this Article to the purchase price of such property or service that is purchased at any one time by every such purchaser in the manner hereinafter set forth.

SEC. 4-3-20. Definitions.

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

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

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

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

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

(E) “Carrier access services” means the services furnished by a local exchange company to its customers who provide telecommunications services which allow them to provide such telecommunications services.

(F) “Charitable organization” means any entity organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office, or any veterans’ organization registered under section 501(c)(19) of the Internal Revenue Code of 1986, as amended, for the purpose of sponsoring a special event, meeting or other function in the state of Colorado so long as the event, meeting, or function is not part of such organization’s regular activities in the state.

(G) “City” means the home-rule municipality of the City of Lone Tree or the area within its territorial limits, depending on the context.

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

(I) "Construction materials" means tangible personal property which, when combined with other tangible property, loses its identity to become an integral and inseparable part of a structure or building project, and the term includes public and private improvements to real property. Construction and building materials include, but are not limited to, such things as: asphalt, bricks, builders' hardware, caulking material, cement, concrete, conduit, electric wiring and connections, fireplace inserts, electrical heating and cooling conduit, pipes, and equipment, flooring, glass, gravel, insulation, lath, lead, lime, lumber, macadam, millwork, mortar, oil, paint, piping, pipe valves and pipe fittings, plaster, plumbing fixtures, putty, reinforcing mesh, road base, roofing, sand, sanitary sewer pipe, sheet metal, site lighting, steel, stone, stucco, tile, trees, shrubs and other landscaping materials, wall board, wall coping, wall paper, weather stripping, wire netting and screen, water mains and meters, and wood preserver. The above materials, when used for forms or other items which do not remain as an integral or inseparable part of a structure or project are not construction materials.

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

(1) The maintaining within the City directly or indirectly or by a subsidiary of an office, distributing house, sales room or house, warehouse, or other place of business.

(2) The soliciting, either by direct representatives, indirect representatives, manufacturer's agent, or by distribution of catalogues or other advertising, or by use of any communication media, or by use of the newspaper, radio or television advertising media, or by any other means whatsoever of business from persons in the City.

(K) "Medical supplies" means drugs, prosthetic devices, and special beds for patients with neuromuscular or similar debilitating ailments, when sold for the direct, personal use of a specific individual in accordance with a prescription or other written directive issued by a licensed practitioner of medicine, dentistry or podiatry; corrective eyeglass lenses (including eyeglass frames), and corrective contact lenses, when sold for the direct, personal use of a specific individual in accordance with a prescription or other written directive issued by a licensed practitioner of medicine or optometry; wheelchairs and crutches, when sold for the direct, personal use of a specific individual; oxygen and hemodialysis products for use by a medical patient, hearing aids, hearing aid batteries, insulin, insulin measuring and injecting devices, glucose to be used for treatment of insulin reactions, and human whole blood, plasma, blood products and derivatives. This definition excludes items purchased for use by medical and dental practitioners or medical facilities in providing their services, even though certain of those items may be packaged for single use by individual patients after which the item would be discarded.

(L) "Modified or customized computer programs" means a computer program created or modified for a specific customer where the preparation, modification or selection of the program for the customer's use requires an analysis of the customer's requirements and system by the

program vendor or independent consultant, or the program requires adaptation by the vendor to be used in a specific computer hardware environment.

(M) "Newspaper" means a publication printed on newsprint, intended for general circulation, and published regularly at intervals of less than a month, containing information and editorials on current events and news of general interest. The word does not include magazines, trade publications or journals, credit bulletins, advertising inserts, preprinted newspaper supplements, circulars, directories, maps, racing programs, reprints, newspaper clipping and mailing services or listings, publications that include an updating or revising service, or books, or pocket and paperback editions of books.

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

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

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

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

(R) "Price" or "purchase price" means the aggregate value measured in currency of the United States paid or delivered or promised to be paid or delivered in consummation of a sale or purchase, without any discount on account of the cost of the property sold, cost of materials, labor or service used, profit margin, transportation and delivery charges, or any other expense whatsoever; and provided that when articles of tangible personal property are sold by the manufacturer after manufacture or after having been made to order, the gross value of all materials, labor and services, and the profit thereon shall be included in the purchase price; but said price shall be exclusive of any direct tax imposed by the federal government, by the State, or by this ordinance; and in the case of all retail sales involving the exchange of property, also exclusive of the fair market value of the property exchanged at the time and place of exchange; provided, however, that such exchanged property is to be sold thereafter in the usual course of the retailer's business.

"Price" and "purchase price" shall not include the following:

(1) The consideration received for labor or services used in installing, applying, refinishing, or repairing the property sold if the consideration for such services is separately stated from the consideration received for the tangible personal property in the retail sale; or

(2) The amount paid by any purchaser as, or in the nature of, interest or finance charges on account of credit extended in connection with the sale of any tangible personal

property if the interest or finance charges are separately stated from the consideration received for the tangible personal property transferred in the retail sale.

When tangible personal property is first used, stored, distributed, or consumed in the City more than one (1) year after its retail sale, “purchase price” and “price” shall mean market value in the City and within fifty (50) miles of its territorial boundaries.

(S) “Prosthetic device” means any artificial limb, device, or appliance for human use which aids or replaces a body function; is designed, manufactured, and altered or adjusted to fit a particular individual; and is prescribed by a licensed practitioner of the healing arts. Oxygen concentrators, oxygen, and related accessories are included in the term.

(T) “Retailer” or “vendor” means any person or agent thereof selling, leasing, renting or granting a license to use tangible personal property or services at retail. Retailer or vendor shall include, but is not limited to, any:

(1) Auctioneer;

(2) Salesman, representative, peddler or canvasser, who as agent, directly or indirectly, of the dealer, distributor, supervisor, employer or principal under whom he or she operates or from whom he or she obtains the tangible personal property or services sold by such agent, makes sales of tangible personal property or services subject to the tax imposed herein; and in such event such agent shall be responsible for the collection and payment of the tax imposed by this ordinance whenever the principal of such agent neglects or refuses to become licensed as a vendor hereunder.

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

(U) “Return” means the sales and use tax reporting forms used to report sales and use tax.

(V) “Security system services” means electronic security services engaged for the warning or protection of persons or property.

(W) “Sound system services” means sound system services providing broadcast or pre-recorded audio or video programming to a building or structure or a part of either, but the term does not include sound systems acquired and installed for live performances or systems that are acquired for ownership by the owner or manager of the building or structure.

(X) “Special fuel” means kerosene oil, kerosene distillate, diesel fuel, all liquefied petroleum gases, and all combustible gases and liquids for use in the generation of power for propulsion or drawing of automotive vehicles upon the public highways.

(Y) "Storage" means any keeping or retention of, or exercise of dominion or control over, or possession for any length of time of tangible personal property under a lease, license to use, or when purchased at retail within or without the City.

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

(AA) "Taxpayer" means any person, including retailers, obligated to account to the City Manager or other designated official of the City for taxes collected or to be collected or from whom a tax is due under the terms of this Article.

(BB) "Taxable services" or "services" means services subject to tax pursuant to this Article.

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

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

(EE) "WATS Service" means any interstate-wide area telecommunication's service or similar service, sometimes using prefixes of "1-800/866" or similar, which entitles the subscriber, upon payment of a periodic charge based on a fixed amount or usage, to place or receive telephonic communications to or from persons having a telephone or radio telephone station in specified areas that are outside the telephone system area in which the subscriber's station is located.

(FF) "Wholesale sales" means

(1) a sale by wholesalers to licensed retail merchants, jobbers, dealers, or other wholesalers for resale, and does not include (a) a sale by wholesalers to users or consumers not for resale; (b) the leasing, hiring or renting of, or granting of a license to use (including royalty agreements) tangible personal property to a user or consumer thereof; (c) sales of commercial packaging materials that are returnable or for which a “deposit,” cash refund, or other consideration is received for recycling; (d) sales of tangible personal property to persons for resale when there is a likelihood that the City will otherwise lose tax revenues due to the difficulty of policing the business operations because:

- (i) of the frequent replacement of independent contractors or agents;
- (ii) of the lack of a place of business in which to display a City retail sales license;
- (iii) of the lack of a place of business in which to keep records;
- (iv) of the lack of adequate records;
- (v) the persons engaged in selling, or in the chain of selling events, are minors or transients; or
- (vi) the persons selling, or in the chain of events leading to sale, are engaged essentially in providing services in transferring tangible personal property;

but the transactions set forth in items (a), (b), (c), and (d) above shall be deemed retail sales and subject to the provisions of this Article.

(2) Sales to and purchases of tangible personal property by a person engaged in the business of manufacturing or compounding for use, profit, or sale shall be deemed wholesale sales and shall be deemed exempt from taxation under this Article if said tangible personal property meets all of the following conditions: (1) it is actually and factually transformed by the process of manufacture; (2) it becomes by the manufacturing or compounding process a necessary ingredient, component, and constituent part of the finished product; and (3) its physical presence in the finished product is essential to the use thereof in the hands of the ultimate consumer.

(3) Sales to and purchases of tangible personal property for use as commercial packaging materials shall be deemed wholesale sales and shall be exempt from taxation under this ordinance.

SEC. 4-3-30. Rates, Imposition, and Collection.

A. SALES TAX. There is hereby levied and there shall be collected and paid a sales tax of one and one-half percent (1.5%) upon the sale of tangible personal property and the furnishing of services as follows, subject to the exemptions specified in this ordinance.

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

2. In the case of retail sales involving the exchange of property, on the purchase price paid or charged, including the fair market value of the property exchanged at the time and

place of the exchange, excluding, however, from the consideration or purchase price, the fair market value of the exchanged property if such exchanged property is to be sold thereafter in the usual course of the retailer's business;

3. Upon the purchase price or charge for telephone and telecommunications services, including in addition to audio and video transmission and reception, other two-way electronic or electromagnetic wave transmissions, receptions or communications of any sort, by or through any medium, whether such services are furnished by public or private persons, that, except as otherwise provided by this Article for mobile telecommunication services, both originate in and are charged to a telephone number or an account located within the City, excepting, however, carrier access services, WATS service, and interstate or international private communications service, but including all international, interstate, and intrastate telecommunications service originating from or received on telecommunications equipment in the City if the charge for the service is billed to an apparatus, telephone, or account in the City without regard to where the bill for such service is actually received. If a person presents to the City written proof of double or overlapping taxation of the particular service involved, the City shall credit against the tax imposed hereunder the amount of tax actually and required by law to be paid to the other taxing jurisdiction.

As the term "mobile telecommunication services" is used in this section, unless the context otherwise requires:

- i. "Act" means the Federal "Mobile Telecommunications Sourcing Act," 4 U.S.C. sections. 116 to 126, as amended.
- ii. "Customer" means customer as defined in section 124(2) of the Act.
- iii. "Home service provider" means home service provider as defined in section 124(5) of the Act.
- iv. "Mobile telecommunications service" means mobile telecommunications service as defined in section 124(7) of the Act.
- v. "Place of primary use" means the place of primary use as defined in section 124(8) of the Act.

All charges for mobile telecommunications services that are deemed to be provided by the customer's home service provider under sections 116 through 126 of the Act are subject to tax by the City within its territorial limits encompassing the person's place of primary use, regardless of where the mobile telecommunication services originate, terminate, or pass through, and no other taxing jurisdiction may impose taxes, charges, or fees on charges for such mobile telecommunications services. The tax shall be collected in accordance with the provisions of this Article and the Act.

The City Manager may require payment of the tax on any other basis permitted by this Article when a person fails to provide a place of primary use or the Act is determined to be inapplicable to the tax imposed by this Article on mobile telecommunication services.

4. For gas and electric service, whether furnished by municipal, public, or private corporations or enterprises; for gas, coal, fuel oil, coke, and electricity furnished and sold for

commercial or industrial consumption and not for resale, and upon steam furnished or sold by municipal, public, or private corporations or enterprises when consumed or used by commercial or industrial purchasers.

5. Upon the amount paid for food or drink served or furnished in or by restaurants, cafes, lunch counters, cafeterias, hotels, drugstores, social clubs, nightclubs, cabarets, resorts, snack bars, caterers, carryout shops, grocery delicatessens, and other like places of business at which prepared food or drink is sold, including sales from pushcarts, motor vehicles, and other mobile facilities. Cover charges, by whatever name known, required to be paid in order to obtain food or drink so furnished, and mandatory service charges, whether described as tips, gratuities, or otherwise, shall be included as part of the amount paid for such food or drink. However, meals provided to employees of the places mentioned in this subsection A.5 at no charge or at a reduced charge and which are considered as part of their salary, wages, or income shall be exempt from taxation under the provisions of this section.

6. In addition to other taxes imposed by the City, the sales tax on the entire amount charged to any person for rooms or accommodations as designated in Section 39-26-102 (11), C.R.S., when rented or hired for use for thirty-one (31) days or less.

7. Upon the purchase price or charge for the furnishing or sale to persons within the City of informational or entertainment service wherein the relay or transmission of electromagnetic waves through any medium, tangible or intangible, including cable, glass fiber and ambient air, is necessary for the service to be received, including, but not limited to, pay television and internet service, excepting however, telephone and telecommunications services taxable under other provisions of this section.

8. Upon the purchase price or charge for data processing equipment and pre-written computer programs, but not including modified or customized computer programs where the modification or customization charge represents more than fifty percent (50%) of the final purchase price or charge of the computer program.

B. USE TAX. There is hereby levied and there shall be collected and paid a use tax of one and one-half percent (1.5%) by every person exercising the taxable privilege of using, storing, distributing, or consuming in the City any article of tangible personal property or taxable service, purchased at retail, for said exercise of said privilege, as follows:

1. On the purchase price paid or charged upon all purchases of tangible personal property.

2. In the case of retail sales involving the exchange of property, on the purchase price paid or charged, including the fair market value of the property exchanged at the time and place of the exchange, excluding, however, from the consideration or purchase price, the fair market value of the exchanged property if such exchanged property is to be sold thereafter in the usual course of the retailer's business.

3. Upon the purchase price or charge for telephone and telecommunications services, including in addition to audio and video transmission and reception, other two-way electronic or electromagnetic wave transmissions, receptions or communications of any sort, by

or through any medium, whether such services are furnished by public or private persons, that, except as otherwise provided by this Article for mobile telecommunication services, both originate in and are charged to a telephone number or an account located within the City, excepting, however, carrier access services and interstate or international private communications service, but including all international, interstate and intrastate telecommunications service originating from or received on telecommunications equipment in the City if the charge for the service is billed to an apparatus, telephone, or account in the City without regard to where the bill for such service is actually received. If a person presents to the City written proof of double or overlapping taxation of the particular service involved, the City shall credit against the tax imposed hereunder the amount of tax actually and required by law to be paid to the other taxing jurisdiction.

As regards the term “mobile telecommunication services” used in this section, unless the context otherwise requires:

i. “Act” means the Federal “Mobile Telecommunications Sourcing Act,” 4 U.S.C. sections. 116 to 126, as amended.

ii. “Customer” means customer as defined in section 124(2) of the Act.

iii. “Home service provider” means home service provider as defined in section 124(5) of the Act.

iv. “Mobile telecommunications service” means mobile telecommunications service as defined in section 124(7) of the Act.

v. “Place of primary use” means the place of primary use as defined in section 124(8) of the Act.

All charges for mobile telecommunications services that are deemed to be provided by the customer's home service provider under sections 116 through 126 of the Act are subject to tax by the City within its territorial limits encompassing the person's place of primary use, regardless of where the mobile telecommunication services originate, terminate, or pass through, and no other taxing jurisdiction may impose taxes, charges, or fees on charges for such mobile telecommunications services. The tax shall be collected in accordance with the provisions of this Article and the Act.

The City Manager may require payment of the tax on any other basis permitted by this Article when a customer fails to provide its place of primary use or the Act is determined to be inapplicable to the tax imposed by this Article on mobile telecommunication services.

4. For gas and electric service, whether furnished by municipal, public, or private corporations or enterprises; for gas, coal, fuel oil, coke, and electricity furnished and sold for commercial or industrial consumption and not for resale, and upon steam furnished or sold by municipal, public, or private corporations or enterprises when consumed or used by commercial or industrial purchasers.

5. Upon the purchase price or charge for the furnishing or sale to persons within the City of informational or entertainment service wherein the relay or transmission of electromagnetic waves through any medium, tangible or intangible, including cable, glass fiber

and ambient air, is necessary for the service to be received, including, but not limited to, pay television and internet service, excepting however, telephone and telecommunications services taxable under other provisions of this section.

6. Upon the purchase price or charge for data processing equipment and pre-written computer programs, but not including modified or customized computer programs where the modification or customization charge represents more than fifty percent (50%) of the final purchase price or charge of the computer program.

SEC. 4-3-40. General Provisions and Limitations.

A. For purposes of this Article, all retail sales are consummated at the place that the tangible personal property or service sold is delivered by the vendor or the vendor's agent to a destination within the limits of the City or to a common carrier for delivery to a destination within the limits of the City

B. All retail sales are consummated at the time of the transaction or exercise of the privilege, which transaction or exercise shall be deemed to occur when possession of goods is transferred for first use, storage, distribution, or consumption in the City occurs or services are rendered, notwithstanding any arrangement between the purchaser and the vendor, any related entity, or third party regarding the terms of transfer of title, delivery, or payment therefor. All retail transactions which have occurred prior to the effective date of this Article, for which a tax levied by the City under ordinances in effect prior to the effective date of this Article which have not been collected and paid will be deemed to occur as of the effective date hereof and shall be due and be remitted in accordance with the terms of this Article.

C. The taxes levied are imposed, and the legal incidence of the taxes is, upon the retailer or vendor. The vendor engaged in business in the City shall collect and remit the applicable tax to the City in accordance with the requirements of this Article. Calculations of the tax resulting in fractions of a cent shall be rounded to the next whole cent, and no tax shall be imposed on the purchaser for purchases of items of tangible personal property priced at less than sixty-seven cents (\$0.67). Every retailer or vendor shall, irrespective of this provision regarding the collection of the applicable tax from purchasers, be liable and responsible for the payment of an amount equivalent to one and one-half (1.5) percent of gross taxable sales made by him or her of services and tangible personal property subject to the sales and use taxes imposed by this Article.

D. The taxes imposed by this Article shall continue to be levied and collected until this Article is amended or repealed by ordinance or Charter amendment.

E. The taxes imposed by this Article shall be in addition to all other taxes levied or imposed by law, including prior or existing ordinances of the City.

F. The burden of proving that any retailer or vendor is exempt or excluded from collecting and returning the tax on any tangible personal property or services sold or rendered by the retailer or vendor, and from paying over the same to the City Manager, shall be on the retailer or vendor, and such proof shall be made by clear and convincing evidence in the absence of a

different standard of proof being established by regulation duly adopted. The burden of proving that any item purchased or used by a consumer or purchaser is exempt, or that the consumer is exempt from paying the tax shall be on the consumer or purchaser as shown by proof of clear and convincing evidence in the absence of a different standard of proof being established by regulation duly adopted.

G. Every person in the City who purchases services or tangible personal property for use, storage, distribution, or consumption in the City in connection with his or her business who has not paid the sales tax imposed by this Article thereon to a vendor required and authorized to collect the same, shall make a return of and remit the use tax due to the City Manager on or before the twentieth day of each calendar month thereafter. Every vendor required or permitted to collect the tax shall collect the tax imposed by the provisions of this Article, notwithstanding the following:

1. That the purchaser's order or contract of sale is delivered, mailed or otherwise transmitted by the purchaser to the vendor at a point outside the City as a result of solicitation by the vendor having nexus with the City sufficient to meet the requirements of the constitution and laws of the United States, including nexus through the medium of a catalog or other advertisement; or

2. That the purchaser's order or contract of sale is made or closed by acceptance or approval outside of the City or before said tangible personal property enters the City; or

3. That the purchaser's order or contract of sale provides that the property shall be, or it is in fact, procured or manufactured at a point outside the City and shipped directly to the purchaser from the point of origin; or

4. That said property is mailed to the purchaser in the City from a point outside the City or delivered to a carrier at a point outside the City F.O.B., or otherwise, and directed to the vendor in the City for the use of the purchaser, regardless of whether the cost of transportation is paid by the vendor or by the purchaser; or

5. That said property is delivered directly to the purchaser at a point outside the City, if it is intended to be brought to the City for use, storage or consumption in the City.

H. Notwithstanding provisions hereinafter regarding the unlawful assumption or absorption of the tax, any retailer selling malt, vinous, or spirituous liquors by the drink or vending items or taxable services through coin-operated vending machines may include in the purchase price for the drink or the purchase price for the vended item or service the tax levied by this Article; but no such retailer shall advertise or hold out to the public in any manner, directly or indirectly, that such tax is not included as a part of the sales price to the consumer.

I. Except as provided in this Article, retailers shall add the tax imposed, or the average equivalent thereof, to the purchase price, showing such tax as a separate and distinctive item, and

when added, such tax shall constitute a part of such price and shall be a debt from the purchaser to the retailer until paid.

J. All sums of money paid by the purchaser to the retailer as taxes imposed by this Article shall be and remain public money, the property of the 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 returned and paid over to the City Manager as herein provided, and the failure to so pay over to the City Manager shall constitute a violation of this Article by the retailer.

K. It shall be a violation of this Article for any retailer to advertise or hold out or state directly or indirectly to any person that the tax or any part thereof levied by this Article will be assumed or absorbed by such retailer, or that the tax will not be added to the selling price of the property sold or, if added, that the tax or any part thereof will be refunded.

L. The tax on construction equipment shall be determined as follows:

1. Construction equipment for which the purchase price or market value is greater than five thousand dollars (\$5000.00) used or stored within the City for a period of thirty (30) consecutive days or more shall be subject to the tax.

2. Prior to or on the date that the taxable construction equipment comes within the City, the taxpayer shall file with the City Manager a declaration of construction equipment on a form provided by the City Manager. The taxpayer shall declare on the form the dates on which the taxpayer anticipates that the equipment will come within the City and leave the City, a description of each piece of construction equipment, the actual or estimated purchase price, the date of purchase, the current market value of the equipment, and such other information reasonably deemed necessary by the City Manager.

3. If applicable, the taxpayer shall file with the City Manager not less than once every ninety (90) consecutive days after the taxable construction equipment comes within the City or, for taxable construction equipment which is in the City for less than ninety (90) days, not later than ten (10) days following substantial completion of the work for which the taxable construction equipment was brought into the City, an amended declaration of construction equipment stating any changes to the information contained in any previously filed declaration.

4. The City Manager may identify and require an alternative means of payment than that provided in this subsection 4-3-40 L. at a rate and application consistent with the provisions of this Article.

M. In order to assist in the avoidance of unfair competition in the marketplace as a result of some competitors obtaining an advantage because of not otherwise being subject to the use tax on a similar basis to other competitors, the following shall apply:

1. The use or consumption of tangible personal property, including the installation into or the affixing to real property of another by a manufacturer of the tangible personal property for which there exists also a retail market and of a type that the manufacturer sells or

could sell to others shall be taxable under this Article, but the tax due hereunder in such case shall be levied only upon the gross value of all the materials, labor, and services used and employed in the manufacture of said property, and not upon any profit that would have been derived from the ordinary retail sale thereof by the manufacturer as, for example, to another consumer for installation in or affixing to the property of another.

2. The tax is levied upon the full purchase price of articles sold at retail after their manufacture or after having been made to order and includes the purchase price of materials used and service performed in connection with the manufacturing or making to order, excluding however, such articles as are otherwise exempted in this Article. The purchase price is the gross value of all the materials, labor, service, and the profit thereon included in the price charged for the tangible personal property to the user or consumer.

N. When the right to possession or use of any article of tangible personal property or service taxable under the terms of this Article is granted under a lease, hire, rental contract or grant of a license to use (including royalty agreements), the tax imposed by this Article shall be computed, collected and remitted by the vendor based on the rentals, fees, or royalties paid, unless the City Manager directs payment of the tax on another basis.

O. Whenever an article of tangible personal property is sold on time, installment payments, or credit to a person who thereby is obligated to the vendor on an account, chattel paper, contract right, or a writing which supports a right to the payment of a purchase price, or any part thereof, the tax shall be based on the total purchase price and shall become immediately due and payable upon transfer of possession of the article. No refund or credit shall be allowed to either party to a transaction in case of repossession by the vendor of collateral securing the purchase price or any part of the purchase price.

P. Every person who is a construction contractor or other person making improvements to real property may pay use tax on construction materials based either on the estimated total value of the construction project as entered on the building permit multiplied by fifty (50) percent of such value, payable at the time the building permit is issued, or on the actual cost of the construction materials as acquired. If the City Manager agrees, the contractor or other person may file monthly consumer use tax returns and remit the appropriate tax monthly.

SEC. 4-3-50. Exemptions.

A. SALES TAX. There shall be exempt from the sales tax levied under the provisions of this Article the following:

1. All sales to the United States government, to the State, its departments and institutions, and the political subdivisions thereof only when purchased in their governmental capacities.

2. All sales made to charitable organizations when purchased for their regular religious or charitable functions and activities. However, in determining whether an organization will be granted exempt status for City sales tax purposes, the City is not bound by the federal

Internal Revenue Service or State of Colorado Department of Revenue determination. Organizations granted exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code and from State sales tax under applicable provisions of the Colorado Revised Statutes will generally be granted sales tax exempt status in the City, unless the City chooses to conduct an independent review and make its own determination regarding an organization's qualifications.

3. All sales of cigarettes.

4. All sales of motor fuel and special fuel.

5. All sales of medical supplies and prosthetic devices.

6. All sales of food for domestic home consumption as defined in 7 U.S.C. section 2012(g), as amended, excluding carbonated water marketed in containers, chewing gum, seeds and plants to grow foods, prepared salads and salad bars, packaged and unpackaged cold sandwiches, deli trays, and hot or cold beverages served in unsealed containers or cups that are vended by or through machines or non-coin-operated coin-collecting food and snack devices on behalf of a vendor and excluding those sales of prepared food and drink described in section 4-3-30 A.5.

7. Sales of tangible personal property to purchasers residing or doing business outside the City, provided delivery thereof is made to the purchaser at such residence or business address of the purchaser outside the City by a common carrier, by the seller, or by mail.

8. All sales which the City is prohibited from taxing under the Constitution or laws of the United States or the Constitution of the State.

9. All sales or leases of automotive vehicles upon which a specific ownership tax is paid or required to be paid.

10. All sales of construction materials for use in improving real property outside the City if the purchaser presents to the retailer or vendor a building permit or similar documentation approved by the City Manager providing evidence that a locally imposed use tax has been paid or is required to be, and will be, paid to the locality in which the real property is located and on which the construction materials are to be used.

11. Sales and purchases of electricity, coal, wood, gas, fuel oil, or coke sold, but not for resale, to occupants of residences, whether owned, leased, or rented by said occupants, for the purpose of operating residential fixtures and appliances that provide light, heat, and power for such residences. "Gas" shall include natural, manufactured, and liquefied petroleum gas.

12. Subject to the provisions of subsection 4-3-50 A.2 above, occasional sales by a charitable organization as provided in Section 39-26-114(18), C.R.S.

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

14. Sales of security system services, but not equipment or devices sold or used in connection therewith.

15. Sales of sound system services.

16. Wholesale sales.

B. USE TAX. There shall be exempt from the use tax levied under the provisions of this Article the use, storage, distribution, or consumption of tangible personal property or taxable services, as follows:

1. Those upon which a sales tax has been imposed and paid under this Article or that are specifically exempted from the sales tax.

2. Those by the United States government, the State, its departments and institutions, and the political subdivisions thereof only when used, stored, distributed or consumed in their governmental capacities.

3. Those by religious or charitable corporations when property or services are purchased for their regular religious or charitable functions and activities. However, in determining whether an organization will be granted exempt status for City sales tax purposes, the City is not bound by the federal Internal Revenue Service or State of Colorado Department of Revenue determination. Organizations granted exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code and from State sales tax under applicable provisions of the Colorado Revised Statutes will generally be granted sales tax exempt status in the City, unless the City chooses to conduct an independent review and make its own determination regarding an organization's qualifications.

4. Those of cigarettes.

5. Those of tangible personal property purchased outside the City for use, storage, distribution or consumption outside the City by a nonresident of the City while the property is temporarily within the City for the purchaser's own personal, but not business, use, storage or consumption.

6. Those of tangible personal property purchased at retail or of taxable services if the transaction was previously subjected to a sales or use tax lawfully imposed on the purchaser

or user by another municipality or county equal to or in excess of that sought to be imposed by the City. A credit shall be granted against the use tax imposed by the City with respect to such transaction equal in amount to the lawfully imposed local sales or use tax previously paid by the purchaser or user to the previous municipality or county. The amount of the credit shall not exceed the sales or use tax imposed by the City.

7. Those of tangible personal property acquired outside the City and brought into the City by a non-resident purchaser acquiring residency in the City.

8. The temporary storage for ninety (90) days or less of construction materials intended for use outside the City, but any use, storage, distribution, or consumption beyond temporary storage shall be taxable.

SEC. 4-3-60. Collection, Administration and Enforcement.

A. Sales Tax License Required

1. No person shall engage in business within the City, including transactions or the exercise of privileges subject to sales or use tax, whether said business is in a fixed location or conducted door-to-door, from movable carts, wagons, vehicles or other mobile devices, or from locations used from time-to-time on street curbs, medians, sidewalks or otherwise, without having first obtained a retail sales tax license and paid an annual sales tax licensing fee to the City in the amount of ten dollars (\$10.00) on or before the first day business or the first day of January of each year.

2. Failure of a person to pay the stated sum by February 28 of each year shall result in loss of that person's privilege to operate a business within the City, including suspension or revocation of existing licensing. For those engaged in business who fail to comply with licensing requirements, the City Manager may issue an order to cease and desist business operations, to be enforced in accordance with the law in such case made and provided.

3. In instances in which the business of selling at retail is conducted or transacted at two or more separate locations by one person, separate licenses for each location of such business shall be required.

B. Remittance of Sales Tax Collected By Retailer

1. Retailers engaged in business shall remit to the City taxes collected or required to be paid pursuant to this Article.

2. Every retailer shall file a tax return each month with the City Manager on or before the twentieth day of each month for the preceding month and remit the tax due to the City Manager simultaneously therewith, except as may be otherwise permitted by the City Manager pursuant to this Article.

3. If any retailer shall, during any reporting period, or for any transaction, collect as a tax an amount in excess of the amount generated by the rate stated in Section 4-3-30, the retailer shall remit to the City Manager the full amount of the tax imposed and such excess. If the retailer collects less than the amount required on any sale, the retailer shall remit the full amount actually due in accordance with Sections 4-3-30 and 4-3-40. The retailer shall not offset excess collections with deficiencies in collections for reporting or remittance purposes.

C. Remittance of Use Tax

1. Every person in the City who purchases tangible personal property or taxable services for use, storage, distribution or consumption in the City in connection with the business and for which the exercise of such privilege of use, storage, distribution, or consumption by the purchaser is taxable hereunder, and who has not paid the tax imposed by this Article to a vendor required and authorized to collect and remit the same, shall monthly make a consumer use tax return and pay the tax due to the City Manager, on or before the twentieth day of each calendar month following the month in which such purchase was made or such later date as is approved by the City Manager.

2. Every person who exercises the privilege of use, storage, distribution or consumption in the City of tangible personal property or taxable service after its retail sale which is taxable hereunder and who has not paid the sales or use tax imposed thereon by this Article to a retailer required and authorized to collect the same, shall make a return and pay the tax due to the City Manager within thirty (30) days from the purchase or lease of such tangible personal property.

D. Improvements to Realty

1. Every person affixing or attaching to realty tangible personal property, or making improvements thereby to buildings or structures located thereon, in the City, which tangible personal property is acquired from sources within or outside the City, who has not paid the tax imposed by this Article thereon to a retailer required and authorized to collect the same, shall make a return and pay the tax due to the City Manager within thirty (30) days from the purchase of such tangible personal property.

2. The full amount of such unpaid taxes, arising as aforesaid, together with interest and penalties as hereinafter provided, shall constitute a first and paramount lien upon such realty and the improvements located thereon, so benefited by the attaching and affixing of such articles of tangible personal property thereto, which lien shall have precedence over all other liens of whatsoever kind or nature except as to liens for general taxes created by State law, and 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 of lien by the City Manager as hereinafter provided; and the City Manager is hereby authorized to file a notice of lien therefor against said benefited realty and the improvements and structures thereon with the clerk and recorder of the County of Douglas. Upon full payment of the amount of taxes, interest and penalties on account thereof, the City Manager may release and discharge said lien. Unless

so released and discharged, said lien shall continue for six (6) years from the date said notice of lien is filed, notwithstanding the general limitation-of-action clause contained in this Article.

E. Remittance of Tax on Other Than Monthly Basis. If the accounting method regularly employed by the retailer in the transaction of the retailer's business or other conditions are such that reports of sales made on a monthly basis will impose unnecessary hardship on the retailer, the City Manager may, upon written request of the retailer, accept returns at such intervals as will, in the City Managers' opinion, better suit the convenience of the retailer and will not jeopardize the collection of the tax. The City Manager may, by rule, permit a retailer whose monthly tax collections for the City are less than sixty dollars (\$60.00) to make returns and pay taxes at intervals greater than one month. The City Manager may require a bond or other financial guarantee to secure payment of the tax on such less frequent basis and may revoke permission to pay the tax on such basis if payment of the tax due becomes delinquent. Returns of the taxpayer or the taxpayer's agent shall contain such information and be made upon such forms as the City Manager may prescribe.

F. Consolidation of Returns. A retailer doing business in two or more places or locations, whether within or without the City, and collecting taxes hereunder, may file one return covering all such places or locations when accompanied by a supplemental report showing the gross and net taxable sales and the taxes collected thereon for each such place or location and the retail sales license number for the location.

G. Tax Disputes. Retailers engaged in business in the City shall collect and purchasers shall pay the taxes levied by this Article, notwithstanding the fact that either retailer or purchaser 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 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 Article.

H. Procedure for Refund of Disputed Tax

1. Any purchaser or retailer who claims that a transaction or item was not taxable or claims an exemption as provided in this Article may apply for a refund or credit of the tax paid and in dispute.

2. An application for a refund of sales tax paid under dispute by a purchaser who claims an exemption shall be made within sixty (60) days after the date of purchase, use, storage, distribution, or consumption of the goods or services for which an exemption is claimed. An application by a retailer for refund, or credit against future returns, of taxes collected and returned in error or by mistake shall be made within three (3) years after the date of the making of the return and remittance of the tax. Such applications shall be accompanied by the original paid invoices or sales receipts and shall be made upon forms prescribed and furnished by the City Manager.

3. 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 by clear and convincing evidence, provided that the City Manager by regulation duly adopted may set a different standard of proof.

4. Upon receipt of an application for refund or credit, the City Manager shall examine the same with all due speed and shall give written notice to the applicant of the City Manager's decision thereon.

I. Right to Refund Not Assignable

The right of any person to a refund or credit under this Article is not assignable. An application for a refund must be made by the person who paid or collected the tax, as shown on the sale's receipt or invoice of the sale.

J. Action for Recovery of Refund

If any person obtains any refund unlawfully, the City Manager is empowered and directed to bring appropriate action for recovery of such refund. A conviction for conduct made a violation of this Article shall constitute prima facie evidence that refunds obtained through such conduct were obtained unlawfully. Obtaining a refund unlawfully shall be an act of fraud against the City and shall be subject to applicable penalties.

K. Preservation of Returns and Other Records -- Confidentiality

1. Returns shall be preserved for a period of four (4) years from the date of filing with the City Manager, after which time the City Manager may order them destroyed.

2. Except in accordance with a court order or as otherwise provided by law, the City and its agents and employees shall not divulge or make known in any way information obtained from any investigation conducted by the City or its finance department or disclosed in any application, report, return or any other document kept, filed or maintained under the provisions of this Article except such information as is displayed on the retail sales tax license and license application. The persons charged with the custody of such applications, reports, returns, or other documents 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 Manager in an action or proceeding under the provisions of this Article or to which the City Manager or the City is a party to the action or proceeding under the provisions of this Article when the report of facts shown thereby is directly involved in such action or proceeding, in either of which events the court may require the production or disclosure of, or the City Manager may disclose, so much of the reports or the facts shown thereby as are pertinent to the action or proceeding.

3. Nothing in this section shall be construed to prohibit the delivery to the taxpayer or 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.

4. 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 contents thereof, or the inspection and copying of any documents by the City Attorney or other official representatives of the City.

5. 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.

L. Record-keeping. Every person who is required to obtain a retail sales tax license to do business in the City under this Article shall keep and preserve suitable records of all sales, purchases, leases, and licenses to use, made by such person, and such other books or accounts as may be necessary to determine the amount of tax for the collection or payment of which such person is liable hereunder. It is the duty of every such person to keep and preserve all such books, invoices and other records for a period of four (4) years following the date the taxes were due to the City. Such records shall be open for examination by the City Manager and agents of the City Manager in connection with the administration and enforcement of this Article. If the taxpayer has filed a tax return for any period after the due date for that period, then the records for the period must be preserved for four (4) years after the date the return was filed. If the taxpayer has not filed a tax return for a reporting period, then the records must be preserved indefinitely. Failure to preserve records as required herein shall be an act of fraud against the City and shall be subject to applicable penalties.

M. Examination of Returns; Re-computation, 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 without interest. If the amount paid is less than the amount due, the amount of the deficiency with a penalty of ten (10) percent of the amount of the deficiency plus interest on the deficiency shall be due and payable in accordance with the terms and procedures set forth in this Article. If any part of the deficiency is due to fraud with the intent to evade the tax, then there shall be added a fraud penalty as set forth in this Article.

N. Investigation of Records Relating To Taxes: Hearings

1. 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 Article or not, the City Manager may hold investigations, including audits, and hearings concerning any matters covered by this Article, and may examine any relevant books, papers, records or memoranda of any such person, or any officer or employee of such person, or of any person having knowledge of the transactions involved, and may take testimony and evidence relevant to proof of the information. The City Manager shall have the power to administer oaths to receive sworn testimony from such persons.

2. Based upon a deficiency in payment of the tax resulting from such investigation or audit, or if any person neglects or refuses to collect the tax or make a return in payment of the

taxes, or any portion of taxes, as required by this Article, the City Manager shall issue a determination or make an estimate, based upon such information as may be available to him, with or without employing investigative powers vested in the City Manager by this Article, of the amount of the taxes due for the period or periods for which the taxpayer is or may be delinquent and, upon the basis of such determination or estimated amount, compute and assess in addition thereto a penalty equal to ten (10) percent thereof, except in the case of fraud, together with interest on such delinquent taxes at the rate of one (1) percent each month, or fraction thereof, from the date when the return and tax were first due to the date paid, which interest, except in the case of fraud, shall not exceed eighteen (18) percent.

3. Promptly thereafter, the City Manager shall notify the delinquent taxpayer in writing, using due diligence to serve the notice, and issue a “notice of final determination, assessment, and demand for payment” of such taxes, penalty, and interest. Service by first class mail directed to the last known address of the taxpayer on file with the City shall be deemed an exercise of due diligence.

4. Such amounts shall thereupon become an assessment, and such assessment shall be final and due and payable from the taxpayer to the City twenty (20) days from either the date of personal service of the “notice of final determination, assessment, and demand for payment” or the date of mailing of such notice and demand, provided, however, that within said twenty-day period the delinquent taxpayer may petition the City Manager in writing for a revision, modification, or cancellation of such assessment, and, in such case, the taxpayer may also within such twenty-day period petition the City Manager for a hearing to be conducted either under the provisions of this Article or the provisions of Section 29-2-106.1(2)(c)(I), C.R.S. If the taxpayer elects to challenge the decision of the City Manager following the hearing, those proceedings shall be governed either by subsections 29-2-106.1(3) or (8), C.R.S., or by following the procedures set forth in this Article for review in the nature of certiorari of the City Manager’s decision (in accordance with subsection 29-2-106.1(9), C.R.S.). Failure to make an election at the time of the hearing shall be considered to be an election to be governed in further proceedings, if any, for review of the City Manager’s decision under the provisions of this Article. Further, the taxpayer shall, before the hearing, furnish the City Manager a summary written statement of facts, reasons for, and the amount of the requested changes in the assessment and otherwise comply with the applicable rules and regulations promulgated by the City Manager relating to petitions and hearings. The filing of a petition shall not toll the accrual of interest on the amount of taxes due.

5. If any retailer having filed a return of and paid over the tax levied by this Article feels that the amount of the tax was paid in error or incorrect, the retailer may apply to the City Manager by petition in writing within three (3) years after the payment of the tax, requesting a hearing and a correction of the amount. The City Manager may, if necessary, schedule a hearing within sixty (60) but at least thirty (30) days from receipt of the petition, and thereafter the procedures set forth in this Article for hearings and appeals shall apply.

6. Upon petition to the City Manager for a hearing, the City Manager shall schedule a hearing, notifying all interested parties by regular mail at least thirty (30) days prior to the date of the hearing. The City Manager is authorized to issue subpoenas to be enforced as

outlined in this Article. Unless the taxpayer elects the option of having the City Manager's final decision reviewed on the record under provisions of subsection 7 of this section, such hearings shall be informal and no transcript, rules of evidence, or filing of briefs shall be required; but the taxpayer may elect to submit a brief, in which case the City may submit a brief. The City Manager shall hold such hearing and issue a final decision thereon within ninety (90) days after receipt by the City Manager of the petition of the taxpayer; however, if the delay in holding the hearing or issuing the decision thereon is occasioned by the taxpayer, the City Manager's final decision shall be issued within one hundred eighty (180) days from the date the receipt of the petition. The decision shall be mailed by regular mail to the taxpayer. Upon the taxpayer's exhaustion of the City's remedies, the taxpayer may seek review of the decision of the City Manager as provided in Section 29-2-106.1, C.R.S. Appeals must be taken within thirty (30) days of the taxpayer's exhaustion of local remedies provided by the City.

7. If the taxpayer is aggrieved by the final decision of the City Manager, the taxpayer may, following the City's procedures under this Article, proceed to have the same reviewed under Colorado Rules of Civil Procedure 106(a)(4), or such similar procedure for the issuance of a writ in the nature of certiorari, only by the district court for the County of Douglas. The petition or complaint for review must be filed within thirty (30) days from the entry of the City Manager's decision and shall be the exclusive remedy for taxpayers electing, or deemed to have elected, to be governed by section 29-2-106.1(9), C.R.S. Court proceedings shall be governed by the Colorado Rules of Civil Procedure as amended from time to time. Any party, including the City, may appeal the decision of the City Manager and, also, the decision of the district court (or such other tribunal having jurisdiction), using all judicial, appellate, and extraordinary proceedings available.

O. Subpoenas and Witness Fees. The fees of witnesses for attendance in response to a subpoena shall be the same as the fees of witnesses before the Douglas County 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. When a witness is subpoenaed at the instance of the taxpayer, the City Manager may require that the cost of service of the subpoena and the fee of the witness be borne by the taxpayer. The City Manager may require a deposit to cover the cost of such service and witness fees prior to issuing subpoenas on behalf of the taxpayer. A subpoena issued as aforesaid shall be served and may be enforced in the same manner as a subpoena issued out of a court of record.

P. Attendance of Witness and Production of Evidence to Be Compelled By Municipal Court or By District Court. A judge either of the Douglas County District Court or the municipal court of the City, 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 evidence may be compelled before such court.

Q. 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.

R. Audit of Records

1. For the purpose of ascertaining the correct amount of tax due from any taxpayer engaged in business in the City, the City Manager may authorize an agent to conduct an audit by examining any relevant books, accounts and records of such person. The City Manager may authorize such an audit at any time the City Manager has reasonable cause to believe that taxes may be due to the City for transactions involving the taxpayer.

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

3. Any tax deficiency or overpayment ascertained through audit shall be computed by one or more of the following methods or any other method as the agent of the City Manager deems appropriate:

- a. By identifying transactions on which the tax was not properly or accurately collected or paid.
- b. By identifying other irregularities in the calculation of tax due; or
- c. By estimating taxes due based on the results of testing taxpayer's records on a statistical or other reasonable basis.

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

5. The City is authorized to audit a taxpayer's records for the thirty-six (36) calendar months preceding the date on the City's notice to the taxpayer that an audit is to be conducted. Upon receipt of the City's notice of audit, the taxpayer shall retain all of his or her records dating back thirty-six (36) months prior to the audit notice date and make them available for examination throughout the audit process and until conclusion of the audit. The audit period may be extended by mutual agreement of the City and the taxpayer. The three (3)-year statute of limitations period for determination and assessment of taxes may also be extended by mutual agreement of the City and the taxpayer. If the taxpayer fails to file returns, the City shall have the right to audit indefinitely for those periods for which returns were not filed. If a tax return is filed late, the City shall have the right to audit the late tax return for thirty-six (36) months from the date the return was filed.

6. All of taxpayer's records shall be made available to the City within a fifty-mile radius of the City's sales tax office. If the taxpayer does not wish to make records available

within this area, then the City Manager may assess the taxpayer for all expenses associated with sending auditors to the location selected by the taxpayer and for reasonable travel expenses, including food and lodging, incurred by the auditors during the period necessary to conduct the audit and until their return to the City of Lone Tree. Such liability shall be stated in the final audit and assessment and shall be treated as a debt owing to the City.

7. If the taxpayer does not provide files in an organized format and the auditors must go through the taxpayer's files, folders, boxes, and other documents in order to obtain records for audit, or if the taxpayer fails to provide information in a timely fashion, the City shall be entitled to charge an hourly fee for time spent organizing, gathering, or in any way assembling taxpayer records for audit. Such fee shall be determined by the City Manager.

8. The City may cooperate with other taxing jurisdictions in conducting coordinated audits of a taxpayer upon the approval of the City Manager, but engaging in a coordinated audit shall not affect the time periods set forth herein.

S. Duties of Enforcement Officer.

1. The tax enforcement officer shall be supervised by the City Manager or his designate in carrying out duties and responsibilities delegated to the tax enforcement officer relating to assessments, deficiencies in payment, posting of distraint warrants, jeopardy assessments, seizures, sales, closure and locking of premises, service of process and notices, issuing, serving, and filing summons and complaints, cease and desist orders, and such other duties and responsibilities as may be set forth or ordered by the City Manager in rules and regulations promulgated by the City Manager pursuant to the authority contained in this Article.

2. The tax enforcement officer may be commissioned and sworn as a peace officer of the City or the County of Douglas (in the discretion of the County) for the limited purpose of performing duties and carrying out responsibilities related to this Article, including violations of those provisions as governed and authorized pursuant to the Home Rule Charter of the City, ordinances enacted thereunder, and the Colorado Municipal Court Rules of Procedure, as amended. The tax enforcement officer shall also have other duties as outlined in rules and regulations promulgated by the City Manager.

T. Assessment and Recurring Assessment Penalty. If any taxpayer has failed, neglected or refused to pay the tax imposed by this Article 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 Article. The additional amount is imposed to compensate the City for administrative and collection costs incurred in conducting audits and hearings and performing related matters necessary for collecting such delinquent taxes:

1. Upon the second issuance of a notice of final determination, assessment and demand for payment within thirty-six (36) consecutive months from the time of the first such assessment, fifty dollars (\$50.00).

2. Upon the third, fourth or fifth issuance of a notice of final determination, assessment and demand for payment within twelve (12) consecutive months from the second assessment, seventy-five dollars (\$75.00) or fifteen (15) percent of the delinquent taxes, penalties and interest, whichever is greater, for each such notice.

U. Licensing Violations. It shall be a violation of this Article for a retailer to engage in business within the City from a location within the City without having first obtained from the City Manager by January 1 or the first day of operations a retail sales tax license and a renewal thereof by January 1 of each succeeding year. For each violation, a penalty of one hundred dollars (\$100.00) shall be imposed. This penalty shall be in addition to any other applicable penalties and interest imposed under the taxing power for tax deficiencies. Operating without a license for each twenty-four (24) hour period shall be considered a separate and distinct violation. The penalty shall not be imposed for renewals of the license if the annual fee is paid or before February 28 of each calendar year.

V. Fraud Penalty. In the event that the taxpayer commits an act of fraud upon the City, the City shall be entitled to assess a fraud penalty of one hundred dollars (\$100.00) or one hundred (100) percent of the taxes owed, whichever is greater. An additional three (3) percent per month penalty on the amount of fraud penalty shall be added from the date the fraud penalty becomes due until it is paid.

W. Tax Constitutes Lien

1. The sales and use tax imposed by this Article, along with all penalties and interest pertaining thereto, shall, and until paid, be a first and prior lien upon the goods (including money), stock-in-trade, tools, equipment, 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 shall take priority over other liens or claims of whatsoever kind or nature on such property.

2. The sales and use tax imposed by this Article, along with all penalties and interest pertaining thereto, constituting a first and prior lien as set forth in subsection W.1 above, may be foreclosed by seizing under distraint warrant and selling all of said property or so much thereof as may be necessary to discharge said lien and other governmental liens having priority and returning any excess to the owner thereof or as otherwise directed by court order.

3. All taxes, penalties and interest imposed by this Article and for which the taxpayer is in any way liable under this Article are a prior and preferred lien against all the property of the taxpayer and a lien and preferred claim against the business or property of any taxpayer placed in receivership, bankruptcy, seized under distraint for non-payment of property taxes or under an assignment made for the benefit of creditors. No sheriff, receiver, trustee, assignee, or other officer shall sell the property of any taxpayer subject to the provisions of this Article 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 Article. If there are any such taxes, penalties, or interest due, owing or unpaid, it is the duty of such officer to first pay the amount of the taxes, penalties or interest out of the proceeds of such sale before paying any

moneys to judgment creditors or other claimants, except that the officer may pay costs of the proceeding and other pre-existing liens or claims taking lawful precedence under the rules of bankruptcy or otherwise over the city's lien and claim.

4. In the event that the taxpayer seeks to discharge or discharges all or part of its debts through bankruptcy or other judicial means, the City shall be empowered to pursue collection of the unpaid taxes in such proceedings or from any officer, agent, trustee, or other official of the taxpayer. Depending on the means by which the taxpayer seeks to discharge all or part of its debts, the City may collect the taxes due through garnishment, attachment, foreclosure, or any other lawful methods, including but not limited to enforcement actions applicable to the taxpayer.

5. If any tax, penalty, or interest imposed by this Article and shown due by returns filed by the taxpayer or by assessments made by the City as provided in this Article 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. The notice of lien shall be made on forms prescribed by the City Manager and verified by the City Manager and may be filed and recorded 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. 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, deeds of trust, and judgments are released.

6. Under this section the preexisting right of lien and distress to goods, stock in trade, furniture and fixtures, tools and equipment of or used by the taxpayer shall apply to tax obligations in default at the time of the passage and adoption of this Article, and the existing liens created by prior City ordinance shall continue to apply, subject to any applicable limitations in this Article. A sale at retail from a stock of merchandise in the regular course of business shall release the item or items sold from the lien created by this Article, but goods, merchandise, and stock in trade acquired after notice of distraint or lien shall come and remain under such lien until the tax is paid.

X. Sale of Business Subject To Lien

1. Any person who sells a business or stock of goods or closes a business shall complete and file the returns required under this Article, pay the taxes, penalties and interest due within ten (10) days of the date on which such person sells the business or stock of goods or closes the business, and indicate that it is a final return, that the business is sold or closed, and state the name and address of the purchaser of business, if any.

2. A purchaser of a business who has acquired the real or personal property, goods, furniture, fixtures, equipment or inventory of a business shall withhold sufficient funds from the purchase money to cover the amount of taxes, penalties, and interest imposed by this Article 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 Article are due and unpaid after the ten-day period herein provided, such purchaser of the business shall be personally liable for the payment of the taxes, penalties and interest imposed by this Article due and unpaid to the City to the same extent as the seller of the business or stock of goods, who shall also remain liable until the taxes, penalty, and interest have been paid.

Y. Certificate of Discharge of Lien

1. If any real or personal property is subject to a lien for payment of tax due to the City under this Article, 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.

2. If any real or personal property is subject to a lien for payment of tax due to the City under this Article, 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.

3. A certificate of release or partial release of lien issued under this section is conclusive evidence that the City's lien upon the property is extinguished, but does not provide evidence of the extinguishment or release of any portion of the lien on property not specified in the release.

Z. Jeopardy Assessment

1. 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 final determination, assessment, and demand for payment. Notwithstanding any other provision of this ordinance, the tax shall then be due and payable forthwith, and the City Manager may proceed to collect the tax as provided in this Article.

2. The taxpayer or other person entitled to notice may request a hearing in writing before the City Manager regarding the jeopardy determination and the amount of the assessment. A request for hearing must be made within seven (7) days after the notice and demand for payment or distraint warrant is issued. The hearing shall be held within fifteen (15) days of the request. The hearing shall be informal and need not comply with the requirements of other provisions of this Article or the applicable rules and regulations promulgated by the City Manager relating to hearings. The burden of proof shall be on the taxpayer, and such proof shall be by a preponderance of evidence. The manager shall enter his decision within thirty (30) days after the hearing and shall furnish a copy to the taxpayer. If the taxpayer is aggrieved by the decision of the manager, the taxpayer may seek review pursuant to Section 29-2-106.1, C.R.S., the completion of the procedure described in this subsection Z.2 being considered to exhaust

local remedies only as to jeopardy assessments and the immediate threat of loss of property. A request for hearing under this subsection shall not stay collection proceedings unless such request is accompanied by a bond or other security as shall be satisfactory to the City Manager

3. 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.

AA. Enforcing the Collection of Taxes Due

1. 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 interest, except such property as is exempt from the execution and sale by any law of the United States, property held for sale on consignment, and leased property identified in a written lease recorded either with the State Department of Revenue or the clerk and recorder for Douglas County and to which the taxpayer has no right or option to become owner, for the payment of tax due together with interest and penalties thereon and costs of execution, for any of the following reasons:

a. When any deficiency in tax is not paid within twenty (20) days from the date of the notice of final determination, assessment and demand for the payment, and a hearing or extension has not been requested in a timely manner;

b. When any deficiency in tax is not paid within thirty (30) days from the date of the final decision of the City Manager upon a petition for review of a notice of final determination, assessment, and demand for payment and no appeal from such notice has been docketed in accordance with Section 29-2-106.1, C.R.S., 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;

c. When any deficiency in tax is not paid within the time prescribed in the judgment and order of court on any appeal to the Douglas County District Court;

d. Immediately upon making a jeopardy assessment; or

e. After or concurrently with the filing of a notice of lien as provided in this Article.

2. The City Manager may apply to a 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 Article. The City Manager may apply to a judge of the Douglas County District Court for a warrant outside the City limits. The judge may issue such warrant after the City Manager determines that:

a. The premises to which entry is sought contain property that is subject to levy and sale for taxes due; and

b. The collection of the taxes may be jeopardized and a jeopardy assessment has been made.

3. The procedures to be followed in issuing and executing a warrant in municipal or district court shall comply with the Colorado Municipal Court Rules of Procedure or Colorado Rules of Civil Procedure, as applicable.

4. Whether pursuant to a court-issued warrant or the authority of this Article, the agent charged with the search and seizure or distraint shall make or cause to be made an account of the goods or effects seized or distrained, and shall leave a copy of such account, signed by the agent, with the owner or possessor of the property; or if the owner or possessor of the property is unavailable, at the owner's or possessor's usual place of business or abode, with some family member over the age of eighteen years; or 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 or company, with any officer, manager, general agent, or agent for process; with a statement of the sum demanded and 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 and the agent or sheriff shall cause such notice and distraint warrant to be publicly posted on the business premises and at the county or municipal courthouse wherein such distraint is made. 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, advertising and conducting 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 expenses, fees and other charges, or they may be redeemed by any person holding a chattel mortgage or other evidence of right of possession. The City Manager may employ an auctioneer as agent to conduct the sale when in the judgment of the Manager it would be beneficial to the City.

5. In all cases of sale under distraint, 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. The certificate evidences the purchaser's unencumbered right, title and interest in and to the property sold. Where such property consists of certificates, 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 and conducting the sale, and then any amounts distributed pro rata to other jurisdictions under recorded sales, use, personal property, ad valorem, or other 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 account in writing of the sale.

6. In any case where a taxpayer has refused or neglected to pay any tax due to the City under this Article and a lien has been filed as provided herein, the City Manager may, in addition to pursuing other collection remedies, certify the amount of the tax, penalties and interest due, together with an appropriate amount for costs of county collection, to the county treasurer to be levied against the delinquent taxpayer'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 notice of an opportunity for a hearing to contest the authority of the City to impose 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 address of the 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 an appropriate amount 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.

BB. Recovery of Unpaid Taxes by Action at Law

1. In addition to other remedies provided in this Article, 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 municipal court or 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 final determination, assessment and demand for payment issued by the City Manager is prima facie evidence of the amount due.

2. 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 Article. The taxpayer shall be responsible for all costs, including but not limited to attorneys fees, incurred by the City in any such action.

3. Such actions may be actions seeking aid of attachment, garnishment in aid of attachment, or writs of garnishment against either judgment debtors other than natural person or natural persons, and writs of attachment or garnishment may be issued to the sheriff or garnishee. In any such proceedings no bonds shall be required of the City, nor shall any sheriff require of the City Manager an indemnifying bond for executing the writ of attachment or writ of execution

upon any judgment entered in such proceedings. The City may also prosecute appeals or writs of error in such cases without the necessity of providing bond therefor.

4. In any case in which a taxpayer has refused or neglected to pay any tax, penalty, or interest due to the City under this Article and a notice of lien has been filed regarding any real or personal property with the proper State or county officials, the City Manager may cause a civil action to be filed in the district court in which is situated any such property subject to such lien to enforce the lien by foreclosure 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 may order execution of judgment upon personal property and a sale of real property, distributing the proceeds of such sale according to the court's findings concerning the interest and priorities of the parties and of the City. The proceedings with regard to the redemption of real property from such sale, and the execution of any deed of conveyance shall be in accordance with the law of foreclosures of deeds of trust upon real property. In any such action, the court may appoint a receiver of the property involved in such action if equity so requires.

CC. 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.

DD. Injunctive Relief. The City Manager may seek injunctive or other equitable relief in any court of competent jurisdiction to enforce provisions of this Article.

EE. City Manager may waive penalty

The City Manager is hereby authorized to waive for good cause any penalty assessed under this Article. Any interest imposed in excess of eighteen (18) percent in the aggregate or in excess of one (1) percent each month, or fraction thereof, of the tax deficiency, from the date the tax is due to the date paid, shall be deemed a penalty for the purpose of this section.

FF. Obligations of Fiduciaries and Others

1. For the purpose of facilitating settlement and distribution of estates, trusts, receiverships, other assets controlled by fiduciaries and the assets of corporations, companies, or other entities, including organizations and associations, in the process of dissolution, distribution, or accounting, 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, corporation, company, or other entity for any of the periods of tax liability under this Article. 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 misrepresented a material fact regarding the tax or liability therefor.

2. Except as provided in subsections 5 and 6 of this section, 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 or manager of a company 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 all taxes covered by this Article due from such decedent, decedent's estate, trust estate, receivership, corporation, or company and that may be assessed within the periods authorized by this Article 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, corporation or company imposed by or due under this Article and assessed within the periods authorized by this Article.

3. The distributee of a decedent's estate, a trust estate or fund, and the stockholder of any dissolved corporation or company who receives any of the property of such decedent's estate, trust estate, fund, corporation, or company is personally liable under this Article to the same extent that the decedent, trust estate, fund, corporation or company is liable under this Article.

4. If a tax under this Article is due from a decedent or the decedent's estate, the personal liability of the persons enumerated in this section shall remain 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. The request shall be filed after the personal representative 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.

5. If a tax under this Article is due from a corporation or company that is in the process of dissolution or has been dissolved, the personal liability of directors or stockholders as provided in this section shall remain in effect only if a determination of the tax due is made and notice of final determination, assessment, and demand for payment issued within eighteen (18) months after the corporation or company files with the City Manager a written request for such determination, which request shall be 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.

GG. Notices. All notices or other information required to be given to the taxpayer in writing under the provisions of this Article, if mailed postpaid to the last known address of the taxpayer, either on file with the City or, after making reasonable inquiry of such address, to the address of the taxpayer based on the information available, shall be deemed complete and effective upon and as of the posting of same in the mails of the United States postal service unless returned within ten (10) days by the United States postal service to the City Manager. Filings by the taxpayer shall be deemed complete upon receipt by or personal service on the City Manager.

HH. Hearings to be Held in City. Every hearing before the City Manager shall be held in the City.

II. Administration by City Manager—Rules and Regulations. The administration of all provisions of this Article is vested in and shall be exercised by the City Manager, in consultation

with the City Attorney, who may prescribe forms, informational bulletins or pamphlets and formulate and promulgate reasonable rules and regulations in conformity with this Article for the making of returns, for the ascertainment, imposition, assessment, payment, and collection of taxes imposed by, and for the proper administration and enforcement of, this Article. The City Manager may delegate any of the powers, authority, duties, or responsibilities of the City Manager set forth herein to those under his supervision and control, but such delegation shall not relieve the City Manager from carrying out such functions in accordance with the terms of this Article.

JJ. Authority to Compromise Taxes. The City Manager shall have the authority to compromise or enter into a payment plan with respect to any liability for taxes, penalty, and interest where the total amount of the liability does not exceed ten thousand dollars (\$10,000.00). Where the total amount of the liability is in excess of ten thousand dollars, any compromise or payment plan must be approved by the City Council upon the recommendation of the City Manager. In any compromise or extension of payment dates involving the City Council, the taxpayer expressly waives the right to confidentiality and privilege.

KK. Violations and Fines

1. It is a violation of this Article for any person required to make a return and pay over taxes imposed hereunder to fail to make a return or to make any false or fraudulent return or any false or fraudulent statement in any return.

2. It is a violation of this Article for any applicant for a tax refund to make a false statement in connection with such application.

3. Except as expressly provided herein, it is a violation of this Article 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 Article will be assumed or absorbed by the retailer or that it will not be added to the purchase price of the property or services sold, or if added, that it or any part thereof will be refunded.

4. It is a violation of this Article for any person to aid or abet another in any attempt to evade the payment of the tax imposed by this Article.

5. Any person, officer, employee, agent, or other representative who violates any of the provisions stated to be a violation of this Article may be prosecuted for such violation in municipal court. Each day of continuing violation shall constitute a separate violation subject to a fine for each violation. Actions for fraudulent conversion, theft, or conversion may be brought in any district court having jurisdiction or in the City municipal court. Each violation is punishable by a fine of up to nine hundred ninety-nine dollars (\$999.00) or a term of incarceration of three (3) days in the county jail.

LL. Limitations on Actions to Collect

1. Except as otherwise provided in this Article, and unless time limitations are extended by waiver or consent, no assessment shall be made nor shall any notice of lien be filed, distraint warrant issued, bond be collected upon, suit for collection be instituted, or any other action to collect taxes be taken or commenced, more than three (3) years after the date on which the tax was due and payable unless the City Manager issues a notice of final determination, assessment, and demand for payment within such period or one (1) year after such period expires, but then only for taxes due during the three-year period. In addition, no lien shall continue after such period, except for taxes assessed before the expiration of such period or one year following the expiration of such period. When a notice of lien regarding such taxes has been filed, the lien shall continue for only one year after the filing of notice thereof unless otherwise specifically provided in this Article or a notice of extension of lien shall be filed during that one-year period, in which case the lien may be extended for six (6) years. For purposes of calculating limitation periods, a return filed before the last day on which it is due shall be considered as having been filed on the last day.

2. In the case of a false return, fraudulent act, or failure to file a return, the tax together with interest and penalties, may be assessed or proceedings for the collection of such taxes commenced at any time.

3. Before the expiration of such period of limitation, or during the year following, the taxpayer and the City Manager may agree in writing to an extension of the period of limitation, and the period so agreed on may be extended by subsequent agreements in writing made before the expiration of the previously agreed upon extension. In the event that the taxpayer refuses to extend the period of limitation, the City Manager may extend the period of limitation only after notice to the taxpayer and upon holding a hearing to determine whether, upon a preponderance of evidence, there is good cause for the extension as a result of delays caused by the taxpayer.

4. Nothing in this Article shall be construed to limit any right accrued under, or to revive any liability barred by, any statute or ordinance in effect prior to the effective date of the this Article.

MM. Claims for Recovery of Taxes Paid to the Wrong Taxing Jurisdiction. The intent of this subsection 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 pay, collect, and remit correctly sales and use taxes to the City.

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

2. When it is determined by the City Manager that sales and use taxes owed to the City have been reported and paid to another municipality, the City Manager shall promptly notify the taxpayer that taxes are being improperly paid, collected, and remitted, and that as of the date of the notice the taxpayer must cease improper tax collections and remittances.

3. The City may make a written claim for recovery directly to the municipality that received tax owed to the City, and, after the expiration of ninety (90) days following notice being given of the claim, may institute administrative or judicial procedures for collection of the tax from the taxpayer or the municipality. The decision to make a claim for a recovery lies in the sole discretion of the City Manager. Any claim for recovery from a municipality shall include a properly executed release of claim by the taxpayer, releasing the taxpayer's 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 receipt of the notice. 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.

4. In cases in which the City receives a claim for recovery by written notice of wrongly paid taxes from another municipality, the City shall, within ninety (90) days after receipt of the claim for recovery, verify to its satisfaction whether or not all or a portion of the tax claimed was improperly paid, and shall within ninety (90) days notify in writing the municipality submitting the claim that the claim is either approved or denied in whole or in part, including the reason 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 the City's written approval.

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

6. A claim for recovery shall be brought within thirty-six (36) months following the wrongful return and payment.

ARTICLE 4 - SEVERABILITY

If any part or provision of this Article or its application to any person or circumstance is held to be invalid or unenforceable by a final, non-appealable judgment, order, or decree of a court having jurisdiction, such judgment, order, or decree of invalidity or unenforceability shall not render the remaining parts of the Article invalid or unenforceable so long as the legislative intent of the Article is not frustrated and the substance of the Article or other parts thereof is of continuing validity. If such judgment, order, or decree of invalidity or unenforceability applies to the entire Article, or to enough of the Article as to frustrate the purpose, implementation, or enforcement thereof, City Ordinance No. 03-05 shall be automatically effective without further action, in full force and effect during any time of unenforceability of this Article, and its terms ratified in all particulars, ab initio.

ARTICLE 5 – EFFECTIVE DATE

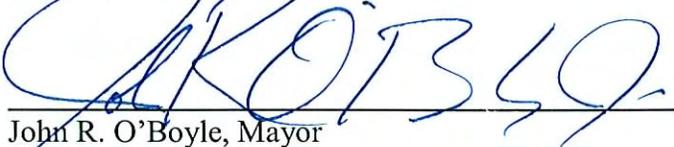
This Article shall become effective thirty (30) days following publication after first reading if no changes are made or twenty (20) days following publication after a second reading if changes are made upon second reading.

INTRODUCED, READ, AND ORDERED PUBLISHED ON JUNE 6TH, 2006.

PUBLISHED IN THE *DOUGLAS COUNTY NEWS PRESS* ON JUNE 15, 2006.

ADOPTED ON SECOND READING THIS 20TH DAY OF JUNE, 2006.

CITY OF LONE TREE


John R. O'Boyle, Mayor

ATTEST:


Jack W. L. Hidahl, City Clerk