

CHAPTER 4
REVENUE AND FINANCE

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Article 1

FISCAL PROCEDURES

Sec. 4-1. Fiscal year.

The fiscal year of the town shall commence on the first day of January in each year. (Ord. 90-2 Sec. 1, 1990)

Sec. 4-2. Budget.

The board of trustees shall adopt, by resolution, an annual budget for each fiscal year in accordance with state law. (Ord. 90-2 Sec. 1, 1990)

Sec. 4-3. Rate of tax levy.

The board of trustees shall by resolution fix the rate of tax to be levied upon all the taxable property within the town for municipal purposes and, through the town clerk, shall officially certify the levy to the county commissioners pursuant to state law. (Ord. 90-2 Sec. 1, 1990)

Sec. 4-4. Annual appropriation.

The board of trustees shall pass a resolution within the last quarter of each fiscal year, to be termed the annual appropriation resolution for the next fiscal year. In such resolution the board shall appropriate such sums of money as are necessary to cover the items in its budget and to defray all necessary expenses and liabilities of the town, specifying the objects and purposes for which such appropriations are made and the amount appropriated for each object or purpose. The total amount appropriated shall not exceed the probable amount of revenue that will be collected during the fiscal year. (Ord. 90-2 Sec. 1, 1990)

Sec. 4-5. Publication of financial statements.

The board of trustees shall, within twenty (20) days after the adjournment of each regular or special meeting, publish such of its proceedings as relate to the payment of bills, stating for what the same are allowed, the name of the person to whom allowed and to whom paid. It shall also publish a statement concerning all contracts awarded and rebates allowed.

Sec. 4-6. Deposits--Investments.

The town treasurer shall deposit all of the funds and moneys which come into his or her possession by virtue of his or her office as town treasurer in one (1) or more responsible banks or financial institutions located in the state which have been designated by written resolution of the town board. The town board may also authorize the town treasurer, by written resolution, to invest all or any part of such funds in securities which are authorized for such investment by state law. (Ord. 90-2 Sec. 1, 1990)

Sec. 4-7. Warrants and checks signed--How.

All warrants or checks drawn upon the treasury must be signed by the mayor and countersigned by the clerk, stating the particular fund or appropriation to which the warrant or check is chargeable and the person to whom payable. No money shall be drawn except as provided in this section. (Ord. 90-2 Sec. 1, 1990)

Sec. 4-8. Treasurer's annual report.

The treasurer shall report to the town as often as required a full and detailed account of all receipts and expenditures of the town as shown by the treasurer's books up to the time of said report. Annually, by March 1 after the close of the fiscal year, the treasurer shall make out and file with the clerk a full and detailed account of all such receipts and expenditures and of all his or her transactions as such treasurer during the preceding fiscal year, and shall show in such account the state of the treasury at the close of the fiscal year, which account the clerk shall immediately cause to be published in a newspaper printed in the town. (Ord. 90-2 Sec. 1, 1990)

Sec. 4-9. Annual audit.

The board of trustees shall select a qualified person as auditor and cause to be made an annual audit of the financial affairs and transactions of the town in accordance with the requirements of state law. (Ord. 90-2 Sec. 1, 1990)

Secs. 4-10—4-19. Reserved.

Article 2

GENERAL FUND

Sec. 4-20. General fund created.

There is hereby created a fund, to be known as the general fund, which shall consist of the following:

(1) All cash balances of the town not specifically belonging to any existing special fund of the town.

(2) All fixed assets of the town (to be separately designated in an account known as the general fund fixed assets) not specifically belonging to any existing special fund of the town. (Ord. 90-2 Sec. 1, 1990)

Secs. 4-21—4-29. Reserved.

Article 3

SPECIAL FUNDS

Sec. 4-30. Capital reserve fund.

(a) Fund established. Beginning January 1, 1989, there shall be established a capital reserve fund for the purpose of designating monies of the town to be used only for expenditures to satisfy the capital purchases and capital improvement needs of the town.

(b) Funds deposited. No later than the last working day of each year, any unspent amounts budgeted for capital expenditures for that fiscal year in the respective funds shall be withdrawn from that fund of the town and placed in the capital reserve fund.

(c) Transactions journalized. A separate journal entry shall be established and maintained in order to provide accurate records of all financial transactions of this fund.

(d) Approval of expenditures. Monies may be expended from this fund only by a majority vote approval of the board of trustees at a regular or special meeting of the board.

(e) Carry-over clause. All monies in this fund remaining unobligated at the close of each fiscal year shall be carried over into the proceeding fiscal year.

(f) Dissolution of the fund. This fund shall continue in existence until the board of trustees, by ordinance, shall dissolve it. (Ord. No. 89-2 Secs. 1--6, 8, 1989; Ord. 90-2 Sec. 1, 1990; Ord. 92-14 Secs. 1--3, 1992)

Sec. 4-31. Conservation trust fund.

A conservation trust fund is hereby created pursuant to Article 21 of Title 29, C.R.S., for the town, and monies received from the state pursuant to said statutes shall be deposited in said fund and expended only for the purposes set for in said law. (Passed by resolution; Ord. 90-2 Sec. 1, 1990)

Sec. 4-32. Water fund.

(a) There is hereby created a special fund, to be known as the water fund.

(b) Assets in such fund shall be segregated into separate accounts, which shall describe the purpose for which such accounts were placed in the water fund. Each account shall be separately kept and maintained as if each account were a separate special fund. There shall be such additional accounts within such fund as are necessary to segregate and identify assets of such fund set aside for particular purposes by ordinances or other actions of the board of trustees.

(c) There shall be placed in said fund, from time to time, all earnings of the water utility of the town and such additional

amounts as may be appropriated to such fund by the board of trustees. In addition, there shall be placed in such fund any receipts from the sale of bonds issued by the town for the purpose of extending or bettering the water utility, any grants received from the federal or state government to be used for the extension or betterment of the water utility and any amounts earned through the investment of the assets of the fund.

(d) Expenditures shall be made from such fund for the purpose of operating the water utility, providing extensions and betterments to the water utility and for such other purposes relating to the water utility as may be authorized by law. Expenditures from accounts within such fund shall be made only for the purpose for which such account was created, provided that if the board of trustees finds and determines that there are amounts in any account in excess of the amount required to satisfy the purpose of such account, the board of trustees may, by ordinance, authorize the transfer of such excess amount to any other account or any other fund of the town. It shall further be proper for the board of trustees to authorize the lending of amounts in excess of the immediate needs of such fund to other funds of the town upon such terms and conditions as the board of trustees may prescribe. (Ord. 90-2 Sec. 1, 1990)

Sec. 4-33. Sales tax capital improvement fund.

There is hereby established a special fund to be known as the sales tax capital improvement fund for the

purpose of paying the cost of capital improvements in the town. Tax revenues generated by one-half percent (1/2%) of the total tax imposed on the sale of tangible personal property at retail or the furnishing of services where such personal property and services are taxable pursuant to Section 4, Article 5, Chapter 138, C.R.S., shall be allocated to the sales tax capital improvement fund and shall be used solely for the purpose of paying the cost of capital improvements. (Ord. ST 1-86 Sec. 7, 1986; Ord. 00-9 Sec. 1, 2000)

Sec. 4-34. Emergency reserve fund.

(a) There is hereby established a special fund to be known as the emergency reserve fund.

(b) As required by ordinance, state law or the state constitution, certain amounts of each year's fiscal spending shall be reserved for declared emergencies by depositing those amounts in the emergency reserve fund.

(c) Unused reserves shall apply to the next year's reserve. (Ord. 92-14 Sec. 4, 1992)

Secs. 4-35—4-39. Reserved.

Article 4

SALES TAX

Sec. 4-40. Sales tax purpose.

The purpose of this article is to impose a sales tax on the sale of tangible personal property at retail or the furnishing of services

in the town, pursuant to the authority granted to incorporated towns of the state by Article 2 of Title 29, C.R.S. This article shall be so construed and interpreted as to effectuate the general purpose of making it uniform with the sales tax of the state, levied by Article 26 of Title 39, C.R.S. (Ord. ST 1-86 Sec. 1, 1986)

Sec. 4-41. Definitions.

For the purpose of this article, the definition of words contained shall be as the words are defined in Section 39-26-102, C.R.S., and those definitions are incorporated herein by reference. (Ord. ST 1-86 Sec. 2, 1986)

Sec. 4-42. Collection, administration and enforcement.

(a) The collection, administration and enforcement of this sales tax shall be performed by the Director of Revenue of the state in the same manner as the collection, administration and enforcement of the state sales tax. The provisions of Section 29-2-106 and Article 26, Title 39, C.R.S., and all rules and regulations promulgated by the director of revenue pertaining to such collection, administration and enforcement, are incorporated herein by this reference.

(b) At the time of making his or her monthly return of the tax, as required by this article and by state statute, every retailer shall be entitled to subtract from the tax so remitted a sum equal to three and one-third percent (3 1/3%) vendor's fee of said tax as his or her fee, said fee to be known as the vendor's fee.

(c) If said retailer shall be delinquent in remitting said tax, unless good cause is shown for such delinquent remittance as determined by the executive director, the retailer shall forfeit the three and one-third percent (3¹/₃%) vendor's fee and instead, such amount shall be remitted to the executive director. (Ord. ST 1-86 Sec. 3, 1986)

Sec. 4-43. Licenses.

(a) It shall be unlawful for any person to engage in the business of selling tangible personal property at retail, or to furnish certain services as herein specified, without first having obtained a license therefor, which license shall be granted and issued by the town clerk, and shall be in force and effect until December 31 of the year in which it is issued, unless sooner revoked.

(b) Such license shall be granted and renewed only upon application stating the name and address of the person desiring such a license, the name and the location of the business of the applicant, and such other facts as the town clerk may require.

(c) It shall be the duty of each licensee on or before January 1 of each year during which this ordinance remains in effect, to obtain a renewal of such sales tax license if the licensee remains in retail business or liable to account for the tax provided herein, but nothing contained in this ordinance shall be construed to empower the town clerk to refuse such renewal except a revocation for cause of the licensee's prior license.

(d) In case business is transacted at one (1) or more separate premises by one (1) person, a separate license for each place of business shall be required

(e) For each license issued under this ordinance, a fee of five dollars (\$5.00) shall be paid, which fee shall accompany the application. A further fee of five dollars (\$5.00) shall be paid for each year or fraction thereof for which said license is renewed; provided that only two dollars and fifty cents (\$2.50) shall be charged on licenses issued on or after July 1 of any year.

(f) Each license shall be numbered, shall show the name, residence, place and character of business of the licensee and shall be posted in a conspicuous place in the place of business for which it is issued. No license shall be transferable.

(g) No license shall be required for any person engaged exclusively in the business of selling commodities which are exempt from taxation under this article.

(h) Any license may be revoked for cause as provided in Section 39-26-103, C.R.S., which provision is incorporated herein by this reference.

(i) Any person engaged in the business of selling personal property at retail or of furnishing services which are subject to taxation as provided in this article within the town, without having secured a license therefor, except as specifically provided herein, shall be guilty of a violation of this article. (Ord. ST 1-86 Sec. 4, 1986)

Sec. 4-44. Property and services taxed.

(a) There is hereby levied and there shall be collected and paid a sales tax equal to four percent (4%) of the gross receipts from the sale at retail of tangible personal property and the furnishing of certain services, as provided in Article 26 of Title 39, C.R.S., which provisions are incorporated herein by this reference. Tax revenues generated by one-half percent (1/2%) of the four percent (4%) sales tax shall be allocated to the sales tax capital improvement fund and shall be used for the purpose of paying the cost of capital improvements in the town, and tax revenues generated by two percent (2%) of the four percent (4%) sales tax shall be used solely for the paving of town streets, including curb and gutter, and the maintenance of town streets, including curb and gutter.

(b) The imposition of the tax on individual sales shall be in accordance with schedules set forth in the rules and regulations promulgated by the department of revenue.

(c) The amount subject to tax shall not include the amount of any sales or use tax imposed by Article 26 of Title 39, C.R.S. (Ord. ST 1-86 Sec. 5, 1986; Ord. 00-9 Sec. 1, 2000)

Sec. 4-45. General provisions and exemptions from taxation.

(a) For the purposes of this article, all retail sales shall be considered consummated at the place of business of the retailer, unless the tangible personal property sold is delivered by the retailer or his or her agent to a destination outside the limits of the town, or to a common carrier for delivery to a destination outside the limits of the town.

(b) In the event a retailer has no permanent place of business in the town, or more than one (1) place of business, the place or places at which the retail sales are consummated for purposes of this ordinance shall be determined by the provisions of Article 26 of Title 39, C.R.S., and by the rules and regulations promulgated by the state department of revenue.

(c) The gross receipts from sales shall include delivery charges, when such charges are subject to the state sales and use tax imposed by Article 26 of Title 39, C.R.S., regardless of the places to which delivery is made.

(d) There shall be exempt from taxation under the provisions of this article all of the tangible property and services which are exempt from state sales tax under the provisions of Article 26 of Title 39, C.R.S., which exemptions are incorporated by this reference. In addition, there is specifically exempted from sales tax under this article the sale of food as defined in Section 39-26-102(4.5), C.R.S.

(e) All sales of personal property on which a specific ownership tax has been paid or is payable shall be exempt from the town sales tax when such sales meet both of the following conditions:

(1) The purchaser is a nonresident of, or has its principal place of business outside of, the town; and

(2) Such tangible personal property is registered or required to be registered outside the limits of the town under the state laws.

(f) For transactions consummated on or after July 1, 2000, the tax imposed by this article shall not apply to the sale of tangible personal property at retail or the furnishing of services if the transaction was previously subjected to a sales or use tax lawfully imposed upon the purchaser or user by another statutory or home rule municipality equal to or in excess of four percent (4%). A credit shall be granted against the town's sales tax with respect to such transaction equal in amount to the lawfully imposed local sales or use tax previously paid by the purchaser or user to the previous statutory or home rule municipality. The amount of the credit shall not exceed four percent (4%). (Ord. ST 1-86 Sec. 6, 1986; Ord. 90-10 Sec. 1, 1990; Ord. 00-9 Sec. 1, 2000)

Sec. 4-46. Amendments.

The board of trustees, by a majority vote, may amend, alter or change this article except as to the four percent (4%) tax herein imposed. (Ord. ST 1-86 Sec. 9, 1986; Ord. 00-9 Sec. 1, 2000)

Secs. 4-47—4-59. Reserved.

Article 5

USE TAX

Sec. 4-60. Tax imposed; amount.

There is imposed a tax of four percent (4%) as a use tax to be imposed only for the privilege of storing, using or consuming within the town any construction and building materials. The tax imposed by this article shall be in addition to any and all sales taxes imposed by ordinance. (Ord. 01-07 Sec. 1, 2001)

Sec. 4-61. Exemptions.

The use tax shall not apply to:

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

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

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

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

(5) The storage, use or consumption of tangible personal property by a person engaged in the business of manufacturing or compounding for sale, profit or use any article, substance or commodity, which tangible personal property enters into the processing of or becomes an ingredient or component part of the product or service

which is manufactured, compounded or furnished, and the container, label or the furnished shipping case thereof.

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

b. With respect to the use tax of a statutory or home rule county, to the storage, use or consumption of any article of tangible personal property the sale or use of which has already been subjected to a legally imposed sales or use tax of another statutory or home rule county equal to or in excess of that imposed by this article. A credit shall be granted against the use tax imposed by this article with respect to a person's storage, use or consumption in the subsequent statutory or home rule county of tangible personal property purchased by him or her in a previous statutory or home rule county. The amount of the credit shall be equal to the tax paid by him or her by reason of the imposition of a sales or use tax of the previous statutory or home rule

county on his or her purchase or use of the property. The amount of the credit shall not exceed the tax imposed by this article.

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

(8) The storage, use or consumption of any construction and building materials if a written contract for the purchase thereof was entered into prior to January 1, 2002.

(9) The storage, use or consumption of any construction and building materials required or made necessary in the performance of any construction contract bid, let or entered into at any time prior to January 1, 2002.

(10) The storage of construction and building materials.

(11) The use or consumption of tangible personal property within the town which occurs more than three (3) years after the most recent sale of the property if, within the three (3) years following such sale, the property has been significantly used within the state for the principal purpose for which it was purchased.

(12) No use tax of any home rule city, town or city and county shall apply to the storage, use or consumption of any article of tangible personal property the sale or use of which has already been subjected to a sales or use tax of another statutory or home rule city, town or city and county legally imposed on the purchaser or user

equal to or in excess of that imposed by the subsequent home rule city, town or city and county. A credit shall be granted against the use tax of the home rule city, town or city and county with respect to the person's storage, use or consumption in the home rule city, town or city and county of tangible personal property, the amount of the credit to equal the tax paid by him or her by reason of the imposition of a sales or use tax of the previous statutory or home rule city, town or city and county on his or her purchase or use of the property. The amount of the credit shall not exceed the tax imposed by the subsequent home rule city, town or city and county. (Ord. 01-07 Sec. 1, 2001)

Sec. 4-62. Formulation of tax brackets.

The exact tax brackets for the use tax imposed by this article shall be identical to and correspond with the use tax brackets formulated by the state Department of Revenue. (Ord. 01-07 Sec. 1, 2001)

Sec. 4-63. Collection, administration and enforcement.

The collection of the use tax for construction and building materials shall be administered by the board of trustees. Tax on the retail purchase price of such materials stored, used or consumed within the town must be paid upon the storage, use or consumption of the materials within the town. In no event shall any certificate of occupancy be issued prior to the full payment to the town of all use tax due and owing pursuant to this article. (Ord. 01-07 Sec. 1, 2001)

Sec. 4-64. Calculation of use tax for storage, use or consumption of any construction and building material.

The amount of tax owed to the town shall be calculated as follows: the use tax of four percent (4%) shall be multiplied by the actual cost of the construction or building materials stored, used or consumed within the town. It shall be the burden of the taxpayer to provide all the receipts for the actual cost of the construction and building materials. If the taxpayer is unable to prove the actual cost of the construction and building materials, the town will make a good faith estimate of the cost of the construction and building materials. The good faith estimate shall be based upon one-half (1/2) of the total cost of construction. (Ord. 01-07 Sec. 1, 2001)

Sec. 4-65. Collection; limitation of actions.

For transactions consummated on or after January 1, 2002:

- (1) No use tax or interest thereon or penalties with respect thereto shall be assessed, nor shall any notice of lien be filed or distraint warrant issued, or suit for collection be instituted, nor any other action to collect the same be commenced, more than three (3) years after the date on which the tax was or is payable; nor shall any lien continue after such period, except for taxes assessed before the expiration of such period, notice of lien with respect to which has been filed prior to the expiration of such period, in which case such lien shall continue only for one (1) year after the filing of notice thereof. In the case of a

false or fraudulent return with intent to evade tax, the tax, together with interest and penalties thereon, may be assessed, and proceedings for the collection of such taxes may be begun at any time. Before the expiration of such period of limitation, the taxpayer and the town may agree in writing to an extension thereof, and the period so agreed on may be extended by subsequent agreements in writing.

(2) In the case of failure to file a return, the use tax may be assessed and collected at any time. (Ord. 01-07 Sec. 1, 2001)

Sec. 4-66. Refunds; limitation of actions.

(a) An application for refund of use tax paid under dispute by a purchaser or user who claims an exemption shall be made within sixty (60) days after the storage, use or consumption of the goods or services whereon an exemption is claimed.

(b) An application for refund of tax moneys paid in error or by mistake shall be made within three (3) years after the date of storage, use or consumption of the goods for which the refund is claimed. (Ord. 01-07 Sec. 1, 2001)

Sec. 4-67. Interest on underpayment, nonpayment or extensions of time for payment of tax.

(a) If any amount of use tax is not paid on or before the last date prescribed for payment, interest on such amount at the rate imposed under Section 4-71 of this article shall be paid for the period from such last date to the date paid. The last date prescribed for payment shall be determined without regard to any extension of time for payment and shall be determined without regard to any notice and

demand for payment issued, by reason of jeopardy, prior to the last date otherwise prescribed for such payment. In the case of a tax in which the last date for payment is not otherwise prescribed, the last date for payment shall be deemed to be the date the liability for the tax arises, and in no event shall it be later than the date notice and demand for the tax is made by the town.

(b) Interest prescribed under this section through Section 4-72 shall be paid upon notice and demand and shall be assessed, collected and paid in the same manner as the tax to which it is applicable.

(c) If any portion of a tax is satisfied by credit of an overpayment, then no interest shall be imposed under this section on the portion of the tax so satisfied for any period during which, if the credit had not been made, interest would have been allowed with respect to such overpayment.

(d) Interest prescribed under this section through Section 4-72 on any use tax may be assessed and collected at any time during the period within which the tax to which such interest relates may be assessed and collected. (Ord. 01-07 Sec. 1, 2001)

Sec. 4-68. Deficiency due to negligence.

If any part of the deficiency in payment of the use tax is due to negligence or intentional disregard of the ordinances or of authorized rules and regulations of the town with knowledge thereof, but without intent to defraud, there shall be added ten percent (10%) of the total amount of the deficiency, and interest in such case shall be collected at the rate imposed under Section 4-71, in addition to the interest provided by Section 4-69, on the

amount of such deficiency from the time the return was due, from the person required to file the return, which interest and addition shall become due and payable ten (10) days after written notice and demand to him or her by the town. If any part of the deficiency is due to fraud with the intent to evade the tax, then there shall be added one hundred percent (100%) of the total amount of the deficiency and in such case, the whole amount of the tax unpaid, including the additions, shall become due and payable ten (10) days after written notice and demand by the town, and an additional three percent (3%) per month on such amount shall be added from the date the return was due until paid. (Ord. 01-07 Sec. 1, 2001)

Sec. 4-69. Neglect or refusal to make return or to pay.

If a person neglects or refuses to make a return in payment of the use tax or to pay any use tax as required, the town shall make an estimate, based upon such information as may be available, of the amount of taxes due for the period for which the taxpayer is delinquent and shall add thereto a penalty equal to ten percent (10%) thereof and interest on such delinquent taxes at the rate imposed under Section 4-71, plus one-half of one percent (.5%) per month from the date when due. (Ord. 01-07 Sec. 1, 2001)

Sec. 4-70. Penalty interest on unpaid use tax.

Any use tax due and unpaid shall be a debt to the town, and shall draw interest at the rate imposed under Section 4-71, in addition to the interest provided by Section 4-69, from the time when due until paid. (Ord. 01-07 Sec. 1, 2001)

Sec. 4-71. Rate of interest.

When interest is required or permitted to be charged under any provisions of Sections 4-69 through 4-72 of this article, the annual rate of interest shall be that established by the state Commissioner of Banking pursuant to Section 39-21-110.5, C.R.S. (Ord. 01-07 Sec. 1, 2001)

Sec. 4-72. Other remedies.

Nothing in Sections 4-69 through 4-73 of this article shall preclude the town from utilizing any other applicable penalties or remedies for the collection or enforcement of use taxes. (Ord. 01-07 Sec. 1, 2001)

Sec. 4-73. Final decision of town; appeals; posting of bonds.

For transactions consummated on or after January 1, 2002:

(1) Within fifteen (15) days after filing a notice of appeal, the taxpayer shall file with the district court a surety bond in twice the amount of the taxes, interest and other charges stated in the final decision by the town which are contested on appeal. The taxpayer may, at his or her option, satisfy the surety bond requirement by a savings account deposit or a certificate of deposit issued by a state or national bank or by a state or federal savings and loan association, in accordance with the provisions of Section 11-35-101(1), C.R.S., equal to twice the amount of the taxes, interest and other charges stated in the final decision by the town.

(2) The taxpayer may, at his or her option, deposit the disputed amount with the district court in lieu of posting a surety

bond. If such amount is so deposited, no further interest shall accrue on the deficiency contested during the pendency of the action. At the conclusion of the action, after appeal to the Supreme Court or the Court of Appeals or after the time for such appeal has expired, the funds deposited shall be, at the direction of the court, either directed to the town and applied against the deficiency or returned in whole or in part to the taxpayer with interest at the rate imposed pursuant to Section 4-71 of this article. No claim for refund of amounts deposited with the town need be made by the taxpayer in order for such amounts to be repaid in accordance with the direction of the court. (Ord. 01-07 Sec. 1, 2001)

Sec. 4-74. Collection; map of municipal boundaries.

The town clerk shall make available to any requesting vendor a map showing the boundaries of the town. For transactions consummated on or after January 1, 2002, the requesting vendor may rely on such map and any update thereof available to such vendor in determining whether to collect a use tax. No penalty shall be imposed or action for deficiency maintained against such a vendor who in good faith complies with the most recent map available to it. (Ord. 01-07 Sec. 1, 2001)

Secs. 4-75—4-89. Reserved.

Article 6

ENHANCED SALES TAX INCENTIVE PROGRAM

Sec. 4-90. Established.

There is hereby established within the town an Enhanced Sales Tax Incentive Program (ESTIP). (Ord. 03-04 Sec. 1, 2003)

Sec. 4-91. General purpose of ESTIP.

The purpose of the ESTIP is to encourage the establishment and/or substantial expansion of retail sales tax generating businesses within the town, thereby stimulating the economy of and within the town, providing employment for residents of the town and others, further expanding the goods available for purchase and consumption by residents of the town and further increasing the sales tax collected by the town, which increased sales tax collections will enable the town to provide expanded and improved municipal services to and for the benefit of the residents of the town, while at the same time providing public or public-related improvements at no cost, or at deferred cost, to the town and its taxpayers and residents. (Ord. 03-04 Sec. 1, 2003)

Sec. 4-92. Definitions.

As used in this Article, the following phrases shall have the following meanings:

Enhanced sales tax shall mean the amount of sales tax collected by the town over and above a base amount negotiated by, and agreed upon by, the applicant and the town, and which amount is approved by the board of trustees, which base amount shall never be lower than the amount of sales tax collected by the town at the property in question in the previous twelve (12) months plus a reasonable and agreed upon percentage of anticipated increase in sales tax or, in the case of a newly established business, an amount of sales tax which could be generated from the new business without the participation by the applicant in the ESTIP created hereunder.

Owner or proprietor shall mean the record owner or operator of an individual business or, in the case of a shopping center, the owner of the real property upon which more than one (1) business is operated, provided that said owner (whether an individual, corporation, partnership or other entity) is the owner or lessor of the individual businesses operated thereon. (Ord. 03-04 Sec. 1, 2003)

Sec. 4-93. Application requirements.

Participation in ESTIP shall be based upon approval by the town, exercising its legislative discretion in good faith. Any owner or proprietor of a newly established or proposed retail sales tax generating business location, or the owner or proprietor of an existing retail sales tax generating business or location which wished to expand substantially, may apply to the town for inclusion within the ESTIP, provided that the new or expanded business is reasonably likely to generate enhanced sales tax of at least twenty thousand dollars (\$20,000.00) in the first year of operation. (Ord. 03-04 Sec. 1, 2003)

Sec. 4-94. Approval of agreement; conditions; effect.

Approval by the town of an agreement implementing the ESTIP shall entitle the successful applicant to share in enhanced sales tax derived from the applicant’s property or business in an amount which shall not in any event exceed fifty percent (50%) of the enhanced sales taxes; provided, however, that the applicant may use said amounts only for public/or public-related purposes such as those specified herein and which are expressly approved by the town at the time of consideration of the application. The time period in which said enhanced sales taxes may be shared shall not commence until all public or public-related improvements are completed, and shall be limited by the town, in its discretion, to a specified time, or until a specified amount is reached. (Ord. 03-04 Sec. 1, 2003)

Sec. 4-95. Permitted use of funds.

The uses to which said shared enhanced sales tax may be put by an applicant shall be strictly limited to those which are public or public-related in nature. For the purpose of this article, public or public-related purposes shall mean public improvements, including but not limited to streets, sidewalks, curbs, gutters, pedestrian malls, street lights, drainage facilities, landscaping, statuaries, fountains, identification signs, traffic safety devices, bicycle paths, off-street parking facilities, benches, off-site sewer lines, lift stations and all necessary incidental and appurtenant structures and improvements, together with the relocation and improvement of existing utility lines, and any other improvements of a similar nature which are specifically approved by the town upon the town’s findings that said improvements are public or public-related improvements, and that such improvements shall benefit the economic health of the town. (Ord. 03-04 Sec. 1, 2003)

Sec. 4-96. Incremental payments.

The base figure for sales taxes shall be divided into twelve (12) monthly increments, which increments are subject to agreement between the parties, and approval by the town, and which increments shall be reasonably related to the average monthly performance of the business or property in question, or similar businesses in the area (i.e., adjust for seasonal variations). If in any month the agreed-upon figure is not met by the applicant for said month, no increment shall be shared until that deficit, and any other cumulative deficit, has been met, so that at the end of any twelve-month cycle, funds in excess of those enhanced sales tax funds agreed to be shared shall not have been shared with any applicant. (Ord. 03-04 Sec. 1, 2003)

Sec. 4-97. Existing tax revenue sources unaffected.

It is an overriding consideration and determination of the town that existing sources of town sales tax revenues shall not be used, impaired or otherwise affected by this ESTIP. Therefore, it is hereby conclusively determined that only enhanced sales taxes generated by the property described in an application shall be subject to division under this ESTIP. It shall be the affirmative duty of the town treasurer to collect and hold all such enhanced sales taxes in a separate account apart from the sales taxes generated by and collected from the town and to provide an accounting system which accomplishes the overriding purpose of this section. It is conclusively stated by the town that this article would not be adopted or implemented but for the provision of this section. (Ord. 03-04 Sec. 1, 2003)

Sec. 4-98. Criteria for approval.

Approval of an application for inclusion in this ESTIP shall be given by the town, at a

public hearing held as a portion of a regularly scheduled town meeting, based upon the following criteria:

- (1) The amount of enhanced sales tax which is reasonably to be anticipated to be derived by the town through the expanded or new retail sales tax generating business;
- (2) The public benefits which are provided by the applicant through public works, public improvements, additional employment for town residents, etc.;
- (3) The amount of expenditures which may be deferred by the town based upon public improvements to be completed by the applicant;
- (4) The conformance of the applicant's property or project with the comprehensive plan and zoning ordinances of the town;
- (5) The agreement required by Section 4-99 below having been reached, which agreement shall contain and conform to all requirements of said Section 4-99. (Ord. 03-04 Sec. 1, 2003)

Sec. 4-99. Agreement with town; required; contents.

Each application for approval submitted to the town shall be subject to approval by the town solely on its own merits. Approval of an application shall require that an agreement be executed by the owner and the town, which agreement shall, at a minimum, contain:

- (1) A list of those public or public-related improvements which justify the application's approval, and the amount which shall be spent on said improvements;
- (2) The maximum amount of enhanced sales taxes to be shared, and the

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

(3) A statement that this is a personal agreement which is not transferable and which does not run with the land;

(4) That this agreement shall never constitute a debt or obligation of the town within any constitutional or statutory provision;

(5) The base amount which is agreed upon by month, and the fact that if, in any month as specified, sales taxes received from the property do not at least equal said amount, that there shall be no sharing of funds for said month;

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

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

(8) An affirmative statement that the obligations, benefits and/or provisions of this agreement may not be assigned in whole or in any part without the expressed authorization of the town, and further that no third party shall be entitled to rely upon or enforce any provision hereof;

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

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

(11) Any other provisions agreed upon by the parties and approved by the town. (Ord. 03-04 Sec. 1, 2003)

Sec. 4-100. Findings.

(a) The town has enacted this ESTIP for the purpose of:

(1) Providing the town with increased sales tax revenues generated upon and by properties as a result of this ESTIP; and

(2) Public improvements being completed by the private owners through no debt obligation being incurred on the part of the town.

(b) The town specifically finds and determines that creation of this ESTIP is consistent with the town's powers as a municipal corporation, and that exercise of said powers in the manner set forth herein is in furtherance of the public health, safety and welfare. Notwithstanding any provision hereof, the town shall never be a joint venturer in any private entity or activity which participates in this ESTIP, and the town shall never be liable or responsible for any debt or obligation of any participant in ESTIP. (Ord. 03-04 Sec. 1, 2003)

Secs. 4-101—4-109. Reserved.

Article 7

DEVELOPMENT IMPACT FEES

Sec. 4-110. Legislative findings.

The board of trustees finds that:

(1) The protection of the health, safety and general welfare of the citizens of the town requires that the town's park facilities, public facilities and streets and related appurtenances be expanded and improved to accommodate continuing growth within the town.

(2) New residential and nonresidential development imposes increasing demands upon the town-wide park facilities, the town's public capital facilities, existing town streets and related appurtenances; and often overburdens such facilities and systems.

(3) The tax revenues currently generated from new development do not generate sufficient funds to provide the town-wide park facilities, public facilities and streets and related appurtenances expansions necessary to serve the new development.

(4) New development is expected to continue and will place ever-increasing demands on the town to provide such capital facilities to serve new development.

(5) All types of development that are not expressly exempt from the provisions of this article will generate demand for town-wide park facilities, public capital facilities and streets and related appurtenances.

(6) The *Impact Fee Study*, prepared by BBC, dated October 29, 2008, sets forth a reasonable methodology and analysis for determining and quantifying the reasonable impacts of various types of proposed residential and nonresidential development on the town's capital facilities and streets system; quantified the reasonable impact of proposed development on the capital facilities addressed therein; determined the costs necessary to meet the demands created by new development; and determined impact fees as set forth in this article that are at a level no greater than necessary to defray such impacts of proposed new development on the town's existing capital facilities. The town hereby establishes as town standards the assumptions and level of service standards referenced in the *Impact Fee Study* as part of its current plans for future expansions to the town's capital facilities addressed in such study.

(7) The impact fees set forth in this article are based on the *Impact Fee Study* and are intended to defray the projected impacts on the town's park capital facilities, public capital facilities and streets and related appurtenances directly related to and caused by proposed development.

(8) All capital facilities and improvements financed with the impact fees set forth herein will benefit all development in the town, and it is therefore appropriate to treat the entire town as a single service area for purposes of calculating, collecting and spending the impact fees provided for in this article.

(9) The impact fees set forth in this article are based on the *Impact Fee Study* and do not and will not be used to remedy any deficiencies in capital facilities or improvements that exist without regard to the proposed development.

(10) This article includes provisions to ensure that no individual landowner is required to provide any site specific dedication or improvement to meet the same need for capital facilities or improvements for which an impact fee is imposed.

(11) Except as described in Section 4-114(i) concerning optional independent fee calculation studies, each category of impact fee created by this article is a standardized fee to be applied uniformly to a broad class of property and is not a discretionary fee to be determined on a case-by-case basis, except as provided in Section 4-122(f). (Ord. 08-13 Sec. 1, 2008)

Sec. 4-111. Authority, applicability and effective date.

(a) This article is enacted pursuant to the town's general police powers pursuant to the authority granted to the town by Section 31-15-101, et seq., C.R.S. and pursuant to the authority granted to the town by Section 29-20-101, et seq., C.R.S.

(b) The provisions of this article shall apply to all of the territory within the limits of the town.

(c) This article shall be effective January 1, 2009.

(d) The provisions of this article shall not apply to any development for which the applicant has submitted a complete application prior to the effective date of this article, as the term *complete application* is defined in Section 4-113 below. (Ord. 08-13 Sec. 1, 2008)

Sec. 4-112. Intent.

(a) The intent of this article is to comply with the provisions set forth in Section 29-20-101, et seq., C.R.S., and the provisions of this article shall be interpreted, construed and enforced in accordance with the provisions set forth in Section 29-20-101, et seq., C.R.S.

(b) The intent of this article is to ensure that new development bears a proportionate share of the cost of capital facilities and improvements, to ensure that such proportionate share does not exceed the cost of the capital facilities and improvements required to serve such new development and to ensure

that the funds collected from new developments are used to construct capital facilities and improvements that benefit such new developments.

(c) It is the further intent of this article that new development pay for its proportionate share of town-wide parks, public facilities and streets and related appurtenances and improvements through the imposition of an impact fee for each of such categories of capital needs, which fees will be used to finance, defray or reimburse all or a portion of the costs incurred by the town to construct or acquire the capital facilities and improvements that will serve or benefit such new development.

(d) It is the intent of this article to collect from new development only that amount of money directly related to the impacts of new development and necessary to offset new demand for capital facilities and improvements generated by that new development.

(e) It is not the intent of this article that the impact fees be used to remedy any deficiency in capital facilities or improvements existing on the effective date of this article.

(f) It is not the intent of this article that any monies collected from any impact fee deposited in an impact fee fund ever be commingled with monies from a different impact fee fund, or ever be used for capital facilities that are different from that for which the fee was paid. (Ord. 08-13 Sec. 1, 2008)

Sec. 4-113. Definitions.

Applicant means any person or entity who files an application with the town for a building permit for land development or for a building permit for the installation of a mobile home.

Capital facility means any improvement or facility that: (1) is directly related to any service that the town is authorized to provide; (2) has an estimated useful life of five (5) years or longer; and (3) is required by the general policy of the town pursuant to a resolution or ordinance.

Complete application means an application for development for which: (1) all of the required information and submittal material, in the amount and dimensions required by the town, have been submitted to and received by the town; and (2) the town planner in writing has certified the application as complete. The decision of the town planner with respect to completeness and applicability of submittal requirements shall be final.

Impact fee study means the *Impact Fee Study*, prepared by BBC, dated October 29, 2008.

Independent fee calculation study means a study prepared by an applicant for a permit or extension calculating the cost of expansions or improvements to one (1) or more of the town's capital facilities required to serve the applicant's proposed development, that is performed on the same methodology, uses the same units, unit costs, staffing, building sizes, improvements and construction costs stated in the *Impact Fee Study* and is performed in compliance with any criteria for such studies established by this article or by the town.

Land development means any construction, reconstruction, expansion or conversion of a building, structure or use, or any change in the use of any land, building or structure, which creates additional demand for public services.

Parks facilities and improvements means planning, land acquisition, engineering design, construction inspection, on-site construction,

off-site construction and park equipment purchases associated with new or expanded park capital facilities or equipment that expand the capacity of the town's parks system and that have an average useful life of at least five (5) years, but not including maintenance, operations or improvements that do not expand capacity, and not including neighborhood parks and related improvements. The costs of parks improvements shall include any financing costs associated with such improvements.

Parks impact fee means the parks impact fee established by this article.

Parks impact fee fund means the parks impact fee fund established by this article.

Public facilities and improvements means planning, land acquisition, engineering design, construction inspection, on-site construction, off-site construction and public capital facility purchases associated with new or expanded public facilities, including but not limited to additional municipal office space, municipal office equipment, municipal office space parking, public works building and storage space and other municipal capital facilities that expand the capacity of the town's public facilities and that have an average useful life of at least five (5) years, but not including maintenance, operations or improvements that do not expand capacity, and not including site specific dedications or improvements to meet the same need for public capital facilities for which the public facilities impact fee is imposed. The costs of public facility improvements shall include any financing costs associated with such improvements.

Public facilities impact fee means the public facilities impact fee established by this article.

Public facilities impact fee fund means the Public Facilities Impact Fee Fund established by this article.

Site-related or site specific improvements include, without limitation:

(1) With respect to the parks impact fee set forth herein, all neighborhood and local park facilities and equipment located within the boundaries of the proposed development and designed and intended to provide neighborhood and local park facilities and equipment only within the boundaries of the proposed development, or located outside the boundaries of the development and designed and intended to provide connections from existing parks facilities to only the applicant's development;

(2) With respect to the public facilities impact fees set forth herein, respectively, all public facilities located within the boundaries of the proposed development and designed and intended to provide such facilities only within the boundaries of the proposed development, or located outside the boundaries of the development and designed and intended to provide such facilities to only the applicant's development;

(3) With respect to the streets impact fee, all access streets adjacent to the proposed development and/or leading only to the proposed development; all roads and driveways within the development; all acceleration, deceleration, right or left turn lanes leading to any streets and driveways within the development; and all traffic control devices and signals for streets and driveways within the development.

Streets and related appurtenances means those capital improvements needed to construct and expand arterial and collector streets, excluding local street portions of such streets. Streets and related appurtenances shall include, without limitation, right-of-way acquisition, planning, land acquisition, engineering design, construction inspection, on-site construction and off-site construction associated with new or expanded streets, traffic control devices and signals; medians and median landscaping, curbs, gutters and other drainage structures that expand the capacity of the town's street system and that have an average useful life of at least five (5) years, but not including maintenance, operations or improvements that do not expand capacity, and not including site specific dedications or street improvements to meet the same need for streets and related appurtenances for which the streets impact fee is imposed. The costs of the new improvements for streets and related appurtenances shall include any financing costs associated with such improvements.

Streets impact fee means the streets impact fee established by this article.

Streets impact fee fund means the streets impact fee fund established by this article. (Ord. 08-13 Sec. 1, 2008)

Sec. 4-114. Imposition and computation of impact fees.

(a) There is hereby established a parks impact fee, a public facilities impact fee and a streets impact fee which shall be imposed in the amounts and pursuant to the provisions of this article.

(b) Each such fee shall be required as a condition of approval of all development in the town for which a building permit is required pursuant to subsection (c) of this

section and payable prior to the issuance of any building permit for a residential or nonresidential structure.

(c) Each such fee shall be imposed and calculated in accordance with this section upon approval of the following type of development applications:

(1) Subdivision approval, whether such subdivision approval is a final plat approval, a minor development plat approval or the approval of a replat;

(2) Approval of a rezoning, including approval of a planned unit development, only in the event the board of trustees determines that the rezoning approval generates demand for new capital facilities and improvements in excess of what the previous entitlements had allowed for on an application for which approval of a subdivision is not necessary.

(d) Except for such fee as may be calculated, paid and accepted pursuant to an independent fee calculation study, the amount of each fee shall be as is set forth in the schedule attached to the ordinance codified herein, a copy of which is available at the office of the Town Clerk.

(e) After the effective date of the ordinance codified herein, no building permit shall be issued until the impact fees described in this article have been paid, unless the development for which the permit is sought is exempted by Section 4-118 below or approved credits are used to cover the impact fee, as set forth in Section 4-120 below. The obligation to pay impact fees shall run with the land.

(f) The impact fees shall be in addition to any public land dedication and school site dedication requirements imposed by the town code.

(g) An applicant required by this article to pay an impact fee may choose to have the amount of such fee determined pursuant to either subsection (h) or (i) below. Regardless of whether the applicant calculates the amount of the fee pursuant to subsection (h) or (i), such fee shall be subject to the adjustment described in Section 4-120 below, if applicable.

(h) Unless an applicant requests that the town determine the amount of such fee pursuant to subsection (i) below, the town shall determine the amount of the required impact fee pursuant to the schedule set forth in said Exhibit A.

(1) If the applicant's development is of a type not listed in subsection (b) above, then the town shall use the fee applicable to the most nearly comparable type of land use in subsection (b).

(2) If the applicant's development includes a mix of those uses listed in subsection (b), then the fee shall be determined by adding up the fees that would be payable for each use if it was a freestanding use pursuant to subsection (b).

(3) If the applicant is applying for a permit to allow (1) a change of use, or (2) the expansion or modification of an existing nonresidential building by more than one thousand (1,000) square feet, the fee shall be based on the net positive increase in the fee for the new use or structure as compared to the impact fee, if any, that would have been due under this article for the previous use or structure, whether or not such fee was actually paid. If necessary to determine such net increase for purposes of the streets impact fee, the town shall be guided by *The ITE Trip Generation Manual*, 6th Edition, 1997,

published by the Institute of Traffic Engineers, as amended. In the event that the proposed change of use, expansion, redevelopment or modification results in a net decrease in the fee for the new use or development as compared to the previous use or development, there shall be no refund of impact fees previously paid.

The provisions of paragraphs (1) through (3) of this subsection shall not apply to the parks impact fee.

(i) An applicant may request that the town determine the amount of the required impact fee by reference to an independent fee calculation study for the applicant's development prepared at the applicant's cost by qualified professional engineers and/or economists and submitted to the town's engineer or its designee. Any such study shall be based on the same methodology and the same levels of service standards, units, unit costs, staffing, building sizes, improvements and construction costs used in the *Impact Fee Study* for the capital facilities fee category at issue, and must document the economic methodologies and assumptions used. The town may hire professional engineers or other consultants to review any independent fee calculation study on behalf of the town, and may charge the costs of such review to the applicant. Any independent fee calculation study submitted by an applicant may be accepted, rejected or accepted with modifications by the town as the basis for calculating impact fees. The town shall not be required to accept any such study or documentation the town deems to be inaccurate or unreliable, and shall have the authority to request that the applicant submit additional or different documentation for consideration in connection with review of any study. If such study is accepted or accepted with modifications as a more accurate measure of the demand for capital facilities created by

the applicant's proposed development than the applicable fee set forth in said Exhibit A, then the impact fee due under this article may be calculated according to such study.

(1) With respect to any independent fee calculation for streets or related appurtenances, such study shall show all traffic engineering and economic methodologies and assumptions used, including but not limited to those forms of documentation listed in subparagraphs a. and b. below, and must be acceptable to the town pursuant to subsection (g) above.

a. Traffic engineering studies shall include documentation for trip generation rates, trip lengths and percentage of trips from the site that represent net additions to current trips from the site, the percentage of trips that are new trips as opposed to pass-by or divert-link trips and any other trip data for the proposed land use.

b. Economic studies shall include documentation of any special factors that the applicant believes will reduce the traffic volumes otherwise attributable to the proposed land use. (Ord. 08-13 Sec. 1, 2008)

Sec. 4-115. Payment of impact fees.

(a) After the effective date of the ordinance codified herein, all applicants shall pay the impact fees required by this article to the town prior to the issuance of any building permit for a residential or nonresidential structure.

(b) All monies paid by an applicant pursuant to this article shall be identified as a fee paid under the applicable fee category and

shall be promptly deposited in the applicable impact fee fund described in Section 4-116 below. (Ord. 08-13 Sec. 1, 2008)

Sec. 4-116. Impact fee funds.

(a) There are hereby established the following funds for the purpose of ensuring impact fees collected pursuant to this article are designated for the accommodation of capital facility impacts reasonably attributable to new development that paid the fee:

(1) A parks impact fee fund, into which shall be deposited all park impact fees;

(2) A public facilities impact fee fund, into which shall be deposited all public facilities impact fees; and

(3) A streets impact fee fund, into which shall be deposited all streets impact fees.

(b) Each fund shall be an interest-bearing account which shall be accounted for separately from other funds. Any interest or other income earned on monies deposited in each such fund shall be credited to such fund.

(c) Each fund shall contain only those impact fees collected pursuant to this article which are to be deposited in accordance with subsection (a) above, and any interest which may accrue from time to time on such fund. (Ord. 08-13 Sec. 1, 2008)

Sec. 4-117. Use of impact fees.

(a) The monies in the parks impact fee fund shall be used only: (1) to acquire land for or acquire, develop or construct parks and recreation facilities and improvements; or (2) as described in Section 4-119 below.

(b) The monies in the Public Facilities Impact Fee Fund shall be used only: (1) to acquire land for or acquire, develop or construct public facility improvements; or (2) as described in Section 4-119 below.

(c) The monies in the streets impact fee fund shall be used only: (1) to acquire land for or acquire, develop or construct streets and related appurtenances or (2) as described in Section 4-119.

(d) No monies from the impact fee funds shall be spent for periodic or routine maintenance, rehabilitation or replacement of any town capital facilities.

(e) No monies from the impact fee funds shall be spent to remedy deficiencies in capital facilities existing on the effective date of the ordinance codified herein. The expansion of an existing street or capital facility or improvement to provide additional capacity shall not be considered to be curing a deficiency in that improvement. (Ord. 08-13 Sec. 1, 2008)

Sec. 4-118. Exemptions from impact fees.

(a) Except where expressly stated for a particular impact fee, the following types of land development shall be exempted from payment of the impact fees imposed by this article:

(1) Reconstruction, expansion or replacement of a residential unit existing on the effective date of the ordinance codified herein, provided that the reconstructed, expanded or replacement residential unit is within the same residential size category as the current residential unit.

(2) Reconstruction, expansion or replacement of a nonresidential building existing on the effective date of the

ordinance codified herein, provided that no more than one thousand (1,000) square feet of additional usable nonresidential space is created.

(3) Construction of an unoccupied, detached accessory structure, related to a residential unit; provided, however, that, with respect to the streets impact fee, this exemption may be applied to construction of any unoccupied, detached accessory structure, provided that such structure will not produce additional vehicle trips over and above those produced by the primary building or land use.

(4) The replacement of a destroyed or partially destroyed nonresidential building or structure with a new nonresidential building or structure of the same size as the original structure and which does not exceed the size of the original structure by more than one thousand (1,000) square feet of usable nonresidential space.

(5) The replacement of a destroyed or partially destroyed building or structure with a new building or structure of the same size and use, where no additional vehicle trips will be produced over and above those produced by the original building or structure.

(6) The installation or replacement of a mobile home on a lot or a mobile home site when an impact fee for such lot or site has previously been paid pursuant to this article or where a mobile home legally existed on such site on or prior to the effective date of the ordinance codified herein.

(7) Any type of development for which an impact fee is not otherwise due and payable pursuant to subsection 4-114(c).

(8) Any other type of development for which the applicant can demonstrate that the proposed land use and development will produce no greater demand for the capital facility for which the fee is imposed, or produce no more vehicle trips from such site over and above the trips from such site prior to the proposed development, or for which the applicant can show that an impact fee for such site has previously been paid in an amount that equals or exceeds the impact fee that would be required by this article. The burden shall be on the applicant to demonstrate that such a fee was previously paid.

(b) Any such claim for exemption must be made no later than the time when the applicant applies for the first building permit for the proposed development that creates the obligation to pay the impact fee, and any claim for exemption not made at or before that time shall have been waived.

(c) The town administrator or the town administrator's designee shall determine the validity of any claim for exemption pursuant to the criteria set forth in subsection (a) above.

(d) The board of trustees may, pursuant to Section 29-20-104.5(5), C.R.S., exempt from payment or reduce the amount of the payment of the impact fees imposed by this article for any portion of a development which includes low or moderate income housing or affordable employee housing as the same may be defined by the board of trustees. (Ord. 08-13 Sec. 1, 2008)

Sec. 4-119. Refunds of impact fees paid.

(a) Fees deposited in each fund shall be appropriated and expended within ten (10) years from the date on which such fee was paid. Any fees not so appropriated or

expended shall be refunded, upon application to the town, to the record owner of the property for which the impact fee was paid, together with interest calculated at the two-year treasury rate adjusted annually on the last business day of the year for each year from the date of collection to the date of refund; provided, however, that the town shall retain an additional two percent (2%) of the fee to offset the cost of the refund.

(b) Any application for a refund under the provisions of this article shall be required to be made to the town treasurer within six (6) months of the expiration of such ten-year period following the date of payment of such fee. If a refund is due hereunder, the amount of such refund shall be divided proportionately among all applicants for refunds who have filed applications during said six-month period; provided, however, that in no event shall the amount of any refund exceed the amount of the fee paid on behalf of the property for which the refund is sought, plus interest as calculated above.

(c) After an impact fee has been paid pursuant to this article, no refund of any part of such fee shall be made if the project for which the fee was paid is later demolished or destroyed or is altered, reconstructed or reconfigured so as to reduce the size of the project, the number of units in the project or the use of any building or structure. (Ord. 08-13 Sec. 1, 2008)

Sec. 4-120. Credits against impact fees.

(a) No applicant shall be required to provide any site specific dedication or improvement to meet the same need for capital facilities for which an impact fee is imposed. Therefore, after the effective date of the ordinance codified herein, all land dedications and improvements for a capital need for which

an impact fee is imposed, over and above those required by the town in connection with a proposed development, shall result in a credit against the impact fee otherwise due for such development. However, no credit shall be awarded for: (1) any land dedications for or acquisition or construction of site-related or site specific improvements; (2) any land dedications not accepted by the town; (3) any acquisition or construction of facilities and improvements not approved in writing by the town prior to commencement of the acquisition, development or construction; or (4) any dedication, construction or acquisition of a type of facilities or improvements not included in the calculation of the applicable capital facilities impact fee in the *Impact Fee Study*. No credit shall exceed the amount of the applicable impact fee due from the applicant or property owner; provided, however, that, if the amount of the credit due from the dedication or construction of a capital facility or improvement is calculated to be greater than the amount of the fee due, nothing herein shall be construed as preventing the town from entering into a reimbursement agreement with the applicant under other applicable provisions of the town code, whereby said applicant may be reimbursed by subsequent property owners benefiting from the dedication or construction.

(b) In order to obtain a credit against impact fees otherwise due, an applicant must submit a written offer to dedicate to the town specific parcels of land over and above those regularly required by the town or to acquire or construct specific facilities and improvements in accordance with all applicable state or town codes, ordinance and design and construction standards, and must specifically request a credit against the applicable impact fee. Such written request must be made on a form provided by the town, must contain a statement under oath of the facts that qualify the applicant to receive a credit, must be accompanied

by documents evidencing those facts and must be filed not later than the time when an applicant applies for the first building permit that includes the obligation to pay the impact fee against which the credit is requested. Failure by the applicant to follow the above procedures waives the claim for credit.

(c) The credit due to an applicant shall be calculated and documented as follows:

(1) Credit for qualifying land dedications shall, at the applicant's option, be valued at: (a) one hundred percent (100%) of the most recent estimated actual value for such land as shown in the records of the County Assessor, or (b) that fair market value established by an MAI or Colorado Certified General Real Estate Appraiser acceptable to the town in an appraisal paid for by the applicant.

(2) In order to receive credit for qualifying acquisition or construction of capital facility improvements, the applicant shall submit completed engineering drawings, specifications and construction cost estimates to the town. The town shall determine the amount of credit due based on the information submitted or, if it determines that such information is inaccurate or unreliable, then on alternative engineering or construction costs acceptable to the town.

(d) Approved credits shall become effective at the following times:

(1) Approved credits for land dedications shall become effective when the land has been conveyed to the town in a form acceptable to the town at no cost to the town, and accepted by the town. When such conditions have been met, the town shall note that fact in its records. Upon

written request from the applicant, the town shall issue a letter stating the amount of credit available.

(2) Approved credits for the acquisition or construction of capital facilities and improvements shall generally become effective when: (a) all required construction has been completed and has been accepted by the town; (b) a suitable maintenance and warranty bond has been received and approved by the town; and (c) all design, construction, inspection, testing, bonding and acceptance procedures have been completed in compliance with all applicable town and state procedures. However, approved credits for the construction of capital facilities and improvements may become effective at an earlier date if the applicant posts security in the form of a performance bond, irrevocable letter of credit or escrow agreement and the amount and terms of such security are accepted by the town. At a minimum, such security must be in the amount of one hundred twenty-five percent (125%) of the approved credit or one hundred twenty-five percent (125%) of the amount determined to be adequate to allow the town to construct the capital facilities and improvements for which the credit was given, whichever is higher. When such conditions have been met, the town shall note that fact in its records. Upon request of the applicant, the town shall issue a letter stating the amount of credit available.

(e) Approved credits may be used to reduce the amount of impact fees due from any proposed development until the amount of the credit is exhausted. A credit may only be applied to the same category of impact fee for which the credit was obtained. Each time a request to use approved credits is presented to the town, the town shall reduce the amount of the applicable impact fee otherwise due from

the applicant and shall note in the town records the amount of credit remaining, if any. Upon request of the applicant, the town shall send the applicant a letter stating the number of credits available.

(f) Approved credits shall only be used to reduce the amount of the impact fee otherwise due under this article and shall not be paid to the applicant in cash or in credits against any other monies due from the applicant to the town. If the credit has not been exhausted within ten (10) years of the date of issuance of the first building permit for which a fee was due and payable under the provisions of this article, or within such other period as may be designated in writing by the town, such credit shall lapse. (Ord. 08-13 Sec. 1, 2008)

Sec. 4-121. Appeals.

(a) Any property owner or applicant may appeal the following decisions to the town administrator pursuant to such administrative hearing process as may be established by the town administrator:

- (1) The applicability of an impact fee to the development;
- (2) The amount of an impact fee to be paid for the development;
- (3) The availability, amount or application of any credit; or
- (4) The amount of any refund, as determined by the town.

(b) The burden of proof in any such hearing shall be on the applicant to demonstrate that the amount of the impact fee, credit or refund was not properly calculated by the town. In the event of an appeal of the amount of the impact fee, the fee payer shall, at his or

her expense, prepare and submit to the town administrator an independent fee calculation study for the impact fee in question. The independent fee calculation study shall follow the methodologies used in the *Impact Fee Study* and the applicable provisions set forth in Subsection 4-114(g) above. The independent fee calculation study shall be conducted by a professional in impact fee analysis. The burden shall be on the fee payer to provide to the town administrator all relevant data, analysis and reports which would assist the town administrator in determining whether the impact fee should be adjusted.

(c) All appeals must state with specificity the reasons for the appeal and shall contain such data and documentation upon which the applicant seeks to rely. The town administrator, as applicable, shall notify the applicant of the hearing date on the application, which notice shall be given no less than fifteen (15) working days prior to the date of the hearing. At the hearing, the town administrator shall provide the applicant and town staff an opportunity to present testimony and evidence regarding the fee, credit or refund being appealed. The town administrator shall modify said amount only if there is substantial competent evidence in the record that the town erred, based upon the methodologies contained in the *Impact Fee Study*. The decision of the town administrator shall be final.

(d) The town administrator is hereby authorized to delegate any of the functions or authorities in this Section to the administrator's designee. (Ord. 08-13 Sec. 1, 2008)

Sec. 4-122. Miscellaneous provisions.

(a) Interest earned on monies in each of the impact fee funds shall be considered part of each such fund and shall be subject to the

same restrictions on use applicable to the impact fees deposited in such fund.

(b) Monies in each of the impact fee funds shall be considered to be spent in the order collected, on a first-in/first-out basis.

(c) Nothing in this article shall restrict the town from requiring an applicant to construct improvements required to serve the applicant's project and otherwise permitted under applicable law, whether or not such improvements are of a type for which credits are available under Section 4-120 above.

(d) Any monies, including any accrued interest, not assigned to specific projects in any year and not expended pursuant to Section 4-117 above shall be retained in the impact fee fund until the next fiscal year.

(e) If an impact fee has been calculated and incurred based on a mistake or misrepresentation, it shall be recalculated. Any amounts overpaid by an applicant shall be refunded by the town to the applicant within thirty (30) days after the town's acceptance of the recalculated amount or the date of a final decision in any appeal for the recalculation pursuant to Section 4-121 above, whichever is later, with interest at the rate of two percent (2%) per annum since the date of such overpayment. Any amounts underpaid by the applicant shall be paid to the town within thirty (30) days after the town's acceptance of the recalculated amount, from the date of a final decision in any appeal of the recalculation pursuant to Section 4-121, whichever is later, with interest at the rate of two percent (2%) per annum since the date of such underpayment. In the case of an underpayment to the town, the town shall not issue any additional permits or approvals for the project for which the impact fee was previously paid until such underpayment is corrected.

(f) The board of trustees may agree to pay some or all of an impact fee imposed on a proposed development by this article from other funds of the town that are not restricted to other uses. Any such decision to pay impact fees on behalf of an applicant shall be at the discretion of the board of trustees and shall be made pursuant to goals and objectives previously adopted by the board of trustees to promote any legally permitted purpose.

(g) The impact fees described in this article and the administrative procedures of this article shall be reviewed at least once every five (5) years to ensure that: (1) the demand and cost assumptions and other assumptions underlying such fees are still valid; (2) the resulting fees do not exceed the actual costs of constructing capital facilities and improvements required to serve new development; (3) the monies collected in the impact fee funds have been and are expected to be spent for capital facilities and improvements; and (4) such capital facilities and improvements will benefit those developments for which the fees were paid. Failure to perform such review within such time shall not invalidate any portion of this article or restrict the town from collecting the fees described in this article.

(h) Violation of this article shall be subject to those remedies provided in this code. Knowingly furnishing false information to any official of the town charged with the administration of this article on any matter relating to the administration of this article, including without limitation the furnishing of false information regarding the expected size or use of a proposed development, shall be a violation of this article.

(i) The subsection titles used in this article are for convenience only and shall not affect the interpretation of any portion of the text of this article.

(j) On January 1, 2010, and on January 1st of each year thereafter in which an impact fee is in effect, the amount of the impact fee per dwelling unit for residential development and the per square footage of gross floor area for nonresidential development shall be automatically adjusted to account for inflation increases in the cost of providing capital facilities, utilizing the most recent data from the Engineering News Record construction cost index for the Denver metropolitan area. In lieu of this automatic annual adjustment, the town may, at its option, determine the appropriate annual inflation factor. Moreover, nothing herein shall prevent the town from electing to maintain a then-existing capital facilities impact fee or from electing to waive the inflation adjustment for any given fiscal year or years. Any such action to determine an inflation factor other than that set forth above shall be by board resolution.

(k) Authority is hereby granted for each of the impact fee funds established hereby to borrow funds from and lend funds to each of the other impact fee funds established hereby, to the extent permissible by law and in compliance with Section 29-1-801, et seq., C.R.S., and Section 29-20-101, et seq., C.R.S., and provided that all funds so borrowed or lent are repaid accordingly. (Ord. 08-13 Sec. 1, 2008)

