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**Proposed Taxed Code**  
**Chapter 3.01**  
**Sales and Use Tax**

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**Proposed Tax Code**

**Chapter 3.01**

**SALES AND USE TAX**

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## **PART 1. GENERAL PROVISIONS**

### **3.01.110 Short Title**

This chapter 3.01 shall be known as the City of Lakewood Sales and Use Tax Code and may be cited herein as this "Tax Code."

### **3.01.120 Notice of Sales and Use Tax Ordinance Amendment**

- A. In order to initiate a central register of tax ordinances of municipalities that administer local sales tax collection, the Chief Financial Officer shall file with the Colorado Municipal League, prior to the effective date of this section, a copy of this Tax Code reflecting all provisions in effect on the effective date of this section.
- B. In order to keep current the central register of sales and use tax ordinances for municipalities that administer local sales tax collection, the Chief Financial Officer shall file with the Colorado Municipal League prior to the effective date of any amendment hereto a copy of each Tax Code amendment enacted by the City.
- C. Failure of the City to file a copy of this Tax Code or amendment to this Tax Code in accordance with this section shall not invalidate any provision of this Tax Code or any amendment thereto.

### **3.01.130 Sales and Use Tax Regulations**

The City Council shall adopt rules and regulations for the proper administration and enforcement of this Tax Code, which rules and regulations shall be known hereinafter as the "Sales and Use Tax Regulations."

### **3.01.140 General Administration**

The administration of this Tax Code is vested in and shall be exercised by the City Manager. The Chief Financial Officer shall assist the City Manager in the administration of this Tax Code to the extent provided herein and in the Sales and Use Tax Regulations.

### **3.01.150 Participation in Simplification Meetings**

The Chief Financial Officer shall cooperate with and participate on an as-needed basis with a permanent, statewide sales and use tax committee convened by the Colorado Municipal League, which is composed of state and municipal sales and use tax officials and business officials. Such committee will meet for the purpose of discussing and seeking resolution to sales and use tax problems that might arise.

### **3.01.160 Intercity Claims for Recovery**

The City will comply with Colorado state law with respect to intercity claims for the recovery of sales and use taxes paid to the wrong taxing jurisdiction. The intent and procedure for filing an intercity "claim for recovery" is set forth in the Sales and Use Tax Regulations.

### **3.01.170 Disposition of Sales and Use Tax Revenue**

The moneys received by the Chief Financial Officer from the tax imposed and collected pursuant to this Tax Code shall be deposited in the general fund of the City. One-half cent (\$0.005) of every dollar of such moneys shall be applied as follows:

- A. To the next maturing payment of the principal of, premium, if any, and interest on the City's outstanding general obligation bonds; and
- B. To the extent currently available after application to such purpose, to defray directly the cost of capital improvements of the City and the operation and maintenance of such capital improvements.

## **PART 2. ADMINISTRATIVE**

### **3.01.210 Map/Location Guide of City Boundaries; Electronic Database**

- A. Map/Location Guide. The Finance Department shall make available to any requesting Retailer a map or location guide showing the boundaries of the City. The requesting Retailer may rely on such map or location guide and any update thereof available to such Retailer in determining whether to collect a Sales or Use Tax or both. No penalty shall be imposed or action for Deficiency maintained against a Retailer who in good faith complies with the most recent map or location guide available to such Retailer.
- B. Electronic Database.
1. Any Retailer that collects and remits Sales Tax to the Chief Financial Officer as provided in this section may use an electronic database of state addresses that is certified by the Colorado Department of Revenue pursuant to C.R.S. § 39-26-105.3 to determine the jurisdictions to which tax is owed.
  2. Any Retailer that uses the data contained in an electronic database certified by the Colorado Department of Revenue pursuant to C.R.S. § 39-26-105.3 to determine the jurisdictions to which tax is owed shall be held harmless for any tax, penalty, or interest owed the City that otherwise would be due solely as a result of an error in the electronic database, provided that the Retailer demonstrate that it used the most current information available in such electronic database on the date that the Sale occurred.
  3. The provisions of this section shall not apply to Use Tax.
- C. Safe Harbor. Each Retailer shall keep and preserve such records as prescribed by the City's Revenue Manager to demonstrate that it used the most current information available in the map/location guide or electronic database on the date that the Sale occurred. Notwithstanding the above, if the error in collecting and remitting is a result of a deceptive representation, a false representation, or fraud, the provisions of this section shall not apply.

### **3.01.220 Applicability to Banks**

The provisions of this Tax Code shall apply to national banking associations and to banks organized and chartered under state law.

### **3.01.230 Definitions**

As used in this Tax Code, unless the context otherwise requires, the following terms shall have the following meanings:

"Agricultural Producer" means a Person regularly engaged in the business of using land for the production of commercial crops or commercial livestock. The term includes farmers, market gardeners, commercial fruit growers, livestock breeders, dairymen, poultrymen and other Persons similarly engaged, but does not include a Person who breeds or markets animals, birds or fish for domestic pets nor a Person who cultivates, grows or harvests plants or plant products exclusively for that Person's own consumption or casual Sale.

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

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

"Auction" means any Sale where Tangible Personal Property is sold by an auctioneer who is either the agent for the owner of such property or is in fact the owner thereof.

"Automotive Vehicle" means any vehicle or device in, upon or by which any Person or property is or may be transported or drawn upon a public highway, or any device used or designed for aviation or flight in the air. "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.

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

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

"Carrier Access Services" means the services furnished by a local exchange company to its customers who provide Telecommunications Services, which allow such customers to provide those Telecommunications Services.

"Charitable Organization" means any entity that:

- A. Has been certified as a nonprofit organization under Section 501(c)(3) of the Internal Revenue Code, and
- B. Is an organization which exclusively, and in a manner consistent with existing laws and for the benefit of an indefinite number of Persons or animals, freely and voluntarily ministers to the physical, mental or spiritual needs of Persons or animals, and thereby lessens the burden of government.

"Chief Financial Officer" or "CFO" means the Chief Financial Officer/City Treasurer of the City of Lakewood, or designee, or such other Person designated by the City.

"City" means the municipality of Lakewood, Colorado.

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

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

"Commercial Packaging Materials" means containers, labels and/or cases that become part of the finished product to the purchaser, used by or sold to a Person engaged in Manufacturing, compounding, wholesaling, jobbing, retailing, packaging, distributing or bottling for Sale, profit or Use, and are not returnable to said Person for reuse. Commercial Packaging Materials does not include Commercial Shipping Materials.

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

"Construction Equipment" means any equipment, including mobile machinery and mobile equipment, which is used to erect, install, alter, demolish, repair, remodel, or otherwise make improvements to any real property, building, structure or infrastructure.

"Construction Materials" means Tangible Personal Property which, when combined with other Tangible Personal Property, loses its identity to become an integral and inseparable part of a structure or project including public and private improvements. Construction 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 equipment, flooring, glass, gravel, insulation, lath, lead, lime, lumber, macadam, millwork, mortar, oil, paint, piping, pipe valves and pipe fittings, plaster, plumbing fixtures, putty, reinforcing mesh, road base, roofing, sand, sanitary sewer pipe, sheet metal, site lighting, steel, stone, stucco, tile, trees, shrubs and other landscaping materials, wall board, wall coping, wallpaper, weather stripping, wire netting and screen, water mains and meters, and wood preserver. The above materials, when used for forms, and other items which do not remain as an integral and inseparable part of a completed structure or project, are not Construction Materials.

“Consumer” means any Person in the City who Purchases, Uses, stores, distributes or otherwise consumes Tangible Personal Property or Taxable Services, Purchased from sources inside or outside the City.

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

“Cover Charge” means a charge paid to a club or similar entertainment establishment which may, or may not, entitle the patron paying such charge to receive Tangible Personal Property, such as food and/or beverages.

“Digital Product” means an electronic product including, but not limited to:

- A. “Digital images,” which are works generally recognized in the ordinary and usual sense as “photographs,” “logos,” “cartoons,” “drawings” or the like;
- B. “Digital audio-visual works,” which are a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any;
- C. “Digital audio works,” which are works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones. For purposes of the definition of “digital audio works”, “ringtones” means digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication; and
- D. “Digital books,” which are works that are generally recognized in the ordinary and usual sense as “books”.

“Distribution” means the act of distributing any article of Tangible Personal Property for Use or consumption, which may include, but not be limited to, the distribution of advertising gifts, shoppers guides, catalogs, directories, or other property given as prizes, premiums, or for goodwill or in conjunction with the Sales of other commodities or services the distribution of advertising gifts, shoppers’ guides, catalogs, directories, or other property given as prizes, premiums or for goodwill or in conjunction with the Sales of other commodities or services.

“Economic Nexus”

- A. Means the connection between the City and a Person not having a physical nexus in the State of Colorado, which connection is established when the Person makes retail sales into the City, and:
  - 1. In the previous calendar year, the Person has made retail sales into the State exceeding the amount specified in C.R.S. § 36-102(3)(c), as amended; or
  - 2. In the current calendar year, ninety (90) days has passed following the month in which the Person has made retail sales into the State exceeding the amount specified in C.R.S. § 36-102(3)(c), as amended.
- B. This definition does not apply to any Person who is doing business in this state but otherwise applies to any other Person.
- C. For the purpose of clarity, the definition of “Person” includes any Marketplace Facilitator.

“Engaged in Business in the City” means performing or providing services or selling, leasing, renting, delivering or installing Tangible Personal Property for Storage, Use or consumption, within the City. Engaged in Business in the City includes, but is not limited to, any one of the following activities by a Person:

- A. Directly, indirectly or by a subsidiary maintains a building, store, office, salesroom, warehouse or other place of Business within the City;
- B. Sends one or more employees, agents or commissioned salespersons into the City to solicit Business or to install, assemble, repair, service or assist in the use of its products or for demonstration or other reasons;

- C. Maintains one or more employees, agents or commissioned salespersons on duty at a location within the City;
- D. Owns, leases, rents or otherwise exercises control over real or personal property within the City;
- E. If the Person is a Retailer in the state of Colorado, the Person makes more than one (1) delivery into the City within a twelve (12) -month period; or
- F. Makes retail sales sufficient to meet the definitional requirements of “Economic Nexus” as set forth in this section.

“Factory-Built Housing” means a Manufactured Home or Modular Home.

“Farm Closeout Sale” means the full and final disposition of all Tangible Personal Property previously used by a farmer or rancher in farming or ranching operations which are being abandoned.

“Food for Home Consumption” means food for domestic home consumption as defined in 7 U.S.C. § 2012(k) (2014), as amended, for purposes of the supplemental nutrition assistance program, or any successor program, as defined in 7 U.S.C. § 2012(t), as amended; except that, for the purpose of this definition, “food” does not include:

- A. Carbonated water marketed in containers;
- B. Chewing gum;
- C. Seeds and plants to grow food;
- D. Prepared salads and salad bars;
- E. Packaged and unpackaged cold sandwiches;
- F. Deli trays; and
- G. Hot or cold beverages served in containers or cups that are vended by or through machines or non-coin-operated coin-collecting food and snack devices on behalf of a Retailer.

“Gross Sales” means the total amount received in money, credit, property or other consideration valued in money for all Sales, leases, or rentals of Tangible Personal Property or services.

“License” means a City of Lakewood Sales and/or Use Tax license.

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

“Lodging Services” means the furnishing of any rooms or accommodations by any Person, whether or not in a representative capacity, to another Person who, for consideration, possesses or has the right to Use or possess any room, including but not limited to, any portion of a hotel, inn, bed and breakfast, apartment, single family residence, lodging house, condominium, motor hotel, guesthouse, guest ranch, trailer coach, mobile home, auto camp, trailer court and park, dwelling unit, or other area that accommodates a guest, or any similar establishment, under any agreement, concession, permit, right of access, license to use or other arrangement.

“Machinery” means any apparatus consisting of interrelated parts used to produce an article of Tangible Personal Property. The term includes both the basic unit and any adjunct or attachment necessary for the basic unit to accomplish its intended function.

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

“Manufacturing” means the operation or performance of an integrated series of operations which places a product, article, substance, commodity or other Tangible Personal Property in a form, composition or character different from that in which it was acquired whether for Sale or for Use by a manufacturer. The change in form, composition or character must result in a different product having a distinctive name, character or Use from the raw or prepared materials.



“Marketplace” means a physical or electronic forum, including, but not limited to, a store, a booth, an internet website, a catalog or a dedicated sales software application where Tangible Personal Property or Taxable Services are offered for Sale.

“Marketplace Facilitator”

A. Means a Person who:

1. Contracts with a Marketplace Seller to facilitate for consideration, whether or not the consideration is deducted as fees from the transaction, the Sale of the Marketplace Seller’s Tangible Personal Property or Taxable Services through the Person’s Marketplace;
2. Engages directly or indirectly, through one or more affiliated Persons, in transmitting or otherwise communicating the offer or acceptance between a purchaser and the Marketplace Seller; and
3. Either directly or indirectly, through agreements or arrangements with third parties, collects the payment from the purchaser on behalf of the seller.

B. “Marketplace Facilitator” does not include a Person that exclusively provides internet advertising services or lists products for Sale, and that does not otherwise meet this definition.

“Marketplace Seller” means a Person, whether or not engaged in business in the City, which has an agreement with a Marketplace Facilitator and offers for Sale Tangible Personal Property or Services through a Marketplace owned, operated or controlled by a Marketplace Facilitator.

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

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

“Newspaper” means a publication, printed on newsprint, intended for general circulation, and published regularly at short intervals, containing information and editorials on current events and news of general interest. The term Newspaper does not include: magazines, trade publications or journals, credit bulletins, advertising inserts, circulars, directories, maps, racing programs, reprints, newspaper clipping and mailing services or listings, publications that include an updating or revision service, or books or pocket editions of books.

“Person” means any individual, firm, partnership, joint venture, corporation, limited liability company, estate or trust, receiver, trustee, assignee, lessee or any of the foregoing acting in a fiduciary or representative capacity, whether appointed by court or otherwise, or any group or combination acting as a unit, and includes a Marketplace Facilitator.

“Prescription Drugs for Animals” means a drug that, prior to being dispensed or delivered, is required by the federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301, et. Seq., as amended, to state at a minimum the symbol “Rx Only” and is dispensed in accordance with any order in writing, dated and signed by a licensed veterinarian specifying the animal for which the medicine or drug is offered and directions, if any, to be placed on the label.

“Prescription Drugs for Humans” means a drug that, prior to being dispensed or delivered, is required by the federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301, et. seq., as amended, to state at a minimum the symbol “Rx Only,” and is dispensed in accordance with any written or electronic order dated and signed by a licensed practitioner of the healing arts, or given orally by

a practitioner and immediately reduced to writing by the pharmacist, assistant pharmacist, or pharmacy intern, specifying the name and any required information of the patient for whom the medicine, drug or poison is offered and directions, if any, to be placed on the label.

“Price” or “Purchase Price:”

A. “Price” or “Purchase Price” means: the aggregate value measured in currency paid or delivered or promised to be paid or delivered in consummation of a Sale, without any discount from the Price on account of the cost of materials used, labor or service cost, and exclusive of any direct tax imposed by the federal government or by this Tax Code, and, in the case of Retail Sales involving the exchange of property, also exclusive of the fair market value of the property exchanged at the same time and place of the exchange, if:

1. Such exchanged property is to be sold thereafter in the usual course of the Retailer’s Business; or
2. Such exchanged property is a vehicle and is exchanged for another vehicle and both vehicles are subject to licensing, registration or certification under the laws of this state, including, but not limited to, vehicles operating upon public highways, off-highway recreation vehicles, watercraft and Aircraft.

Any money or other consideration paid over and above the value of the exchanged property is subject to tax.

B. “Price” or “Purchase Price” includes:

1. The amount of money received or due in cash and/or credits.
2. Property at fair market value taken in exchange but not for resale in the usual course of the Retailer’s Business.
3. Any consideration valued in money, such as trading stamps or coupons whereby the manufacturer or someone else reimburses the Retailer for part of the Purchase Price and other media of exchange.
4. The total Price charged on credit Sales including finance charges that are not separately stated. An amount charged as interest on the unpaid balance of the Purchase Price is not part of the Purchase Price unless the amount added to the Purchase Price is included in the principal amount of a promissory note; except the interest or carrying charge set out separately from the unpaid balance of the Purchase Price on the face of the note is not part of the Purchase Price. An amount charged for insurance on the property sold and separately stated is not part of the Purchase Price.
5. Installation, applying, remodeling or repairing the property, and delivery and wheeling-in charges, included in the Purchase Price and not separately stated.
6. Transportation and other charges to effect delivery of Tangible Personal Property to the purchaser.
7. Indirect federal manufacturers’ excise taxes, such as taxes on Automotive Vehicles, tires and floor stock.
8. The gross Purchase Price of articles sold after Manufacturing or after having been made to order, including the gross value of all the materials used, labor and service performed and the profit thereon.

C. “Price” or “Purchase Price” shall not include:

1. Any sales or use tax imposed by the State of Colorado or by any political subdivision thereof.
2. The fair market value of property exchanged if such property is to be sold thereafter in the Retailers’ usual course of Business. This is not limited to exchanges in Colorado. Out-of-state trade-ins are authorized by this Tax Code as adjustments to the Purchase Price.
3. Discounts from the original Price if such discount and the corresponding decrease in Sales Tax due is actually passed on to the purchaser, and the seller is not

reimbursed for the discount by the manufacturer or someone else. In reporting Gross Sales, an anticipated discount to be allowed for payment on or before a given date is not authorized under this Tax Code as an adjustment to the Price.

“Prosthetic Devices for Animals” means any artificial limb, part, device or appliance for animal use which replaces a body part or aids or replaces a bodily function; is designed, manufactured, altered or adjusted to fit a particular patient; and is prescribed by a licensed veterinarian. Prosthetic devices include, but are not limited to, prescribed auditory, ophthalmic or ocular, cardiac, dental, and orthopedic devices or appliances.

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

“Purchase” or “Sale”

- A. Inclusions. “Purchase” or “Sale” means the acquisition for any consideration by any Person of Tangible Personal Property or Taxable Services that are Purchased, leased, rented, sold, Used, stored, distributed or consumed. These terms include capital leases, installment and credit Sales, and property and services acquired by:
1. Transfer, either conditionally or absolutely, of title or possession or both to Tangible Personal Property or Taxable Services;
  2. A lease, lease-purchase agreement, rental or grant of a license, including royalty agreements, to Use Tangible Personal Property or Taxable Services;
  3. Performance of Taxable Services; or
  4. Barter or exchange for other Tangible Personal Property or services.
- B. Exclusions. “Purchase” and “Sale” does not mean or include:
1. A division of partnership assets among the partners according to their interests in the partnership;
  2. The transfer of assets of shareholders in the formation or dissolution of professional corporations, if no consideration, including, but not limited to, the assumption of a liability, is paid for the transfer of assets;
  3. The dissolution and the pro rata distribution of the corporation’s assets to its stockholders, if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets;
  4. A transfer of a partnership or limited liability company interest;
  5. The transfer of assets to a commencing or existing partnership or limited liability company, if no consideration, including, but not limited to, the assumption of a liability, is paid for the transfer of assets;
  6. The repossession of personal property by a chattel mortgage holder or foreclosure by a lienholder;
  7. The transfer of assets from a parent company to a subsidiary company or companies which are owned at least eighty percent (80%) by the parent company, which transfer is solely in exchange for stock or securities of the subsidiary company;
  8. The transfer of assets from a subsidiary company or companies which are owned at least eighty percent (80%) by the parent company to a parent company or to another subsidiary which is owned at least eighty percent (80%) by the parent company, which transfer is solely in exchange for stock or securities of the parent company or the subsidiary which received the assets;
  9. The transfer of assets between parent and closely held subsidiary companies, or between subsidiary companies closely held by the same parent company, or between companies which are owned by the same shareholders in identical percentage of stock ownership amounts, computed on a share-by-share basis,

when a tax imposed by this Tax Code was paid by the transferor company at the time it acquired such assets, except to the extent that there is an increase in the fair market value of such assets resulting from the Manufacturing, fabricating, or physical changing of the assets by the transferor company. To such an extent any transfer referred to in this paragraph (9) shall constitute a Sale. For the purposes of this paragraph (9), a closely held subsidiary company is one in which the parent company owns stock possessing or membership interest at least eighty percent (80%) of the total combined voting power of all classes of stock entitled to vote and owns at least eighty percent (80%) of the total number of shares of all other classes of stock.

“Qualified Hospital Organization” means any of the following:

- A. An organization that is exempt from federal income tax under Section 115 or Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, but only if the organization holds a license to operate a “general hospital” for people issued pursuant to C.R.S. § 25-3-101 and § 25-3-102, as amended, including any successor provisions to those sections, and operates a general hospital within the City of Lakewood; or
- B. A corporation or trust that:
  1. Is exempt from federal income tax under Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended; and
  2. Owns or employs personal property or improvements that are used in the operations of one or more organizations described in paragraph (A) of this definition; and
  3. Either: (i) directly controls, or is controlled by, one or more organizations described in paragraph (A) of this definition, (ii) is controlled by a management organization as defined in paragraph (C) of this definition in common with one or more organizations described in paragraph (A) of this definition, or (iii) owns a hospital that is licensed to operate as a “general hospital” for people pursuant to C.R.S. § 25-3-101 and § 25-3-102 (2012), as amended, including any successor provisions to those sections, and that is operated by an organization described in paragraph (1) of this definition; or
- C. An organization that is exempt from federal income tax under Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, and which organization’s principal function is to manage the property or operations, or both, of one or more organizations described in paragraphs (A) or (B) of this definition; or
- D. A partnership, limited partnership, limited liability limited partnership, limited liability partnership, limited liability company, or joint venture if all of the partners, members, joint ventures or other participants in such partnership, limited partnership, limited liability limited partnership, limited liability partnership, limited liability company or joint venture are organizations described in paragraphs (A), (B) or (C) of this definition.

“Resident” means a Person who resides or maintains one or more places of Business within the City, regardless of whether that Person also resides or maintains a place of Business outside of the City.

“Retail Sales” means all Sales except Wholesale Sales.

“Retailer” means any Person selling, leasing, renting or granting license to Use Tangible Personal Property or services at retail. Retailer shall include, but is not limited to, any:

- A. Auctioneer;
- B. Salesperson, representative, peddler or canvasser, who makes Sales as a direct or indirect agent of or obtains such property or services sold from a dealer, distributor, supervisor or employer;
- C. 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; or

D. Marketplace Facilitator or Marketplace Seller.

“Return” means any form prescribed by the City administration for computing and reporting a Total Tax Liability.

“Sales Tax” means the tax that is collected, or required to be collected, and remitted by a Retailer on Sales taxed under this Tax Code.

“School” means a public or nonpublic school for Students in kindergarten through 12<sup>th</sup> grade or any portion thereof.

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

“Soft Drink” means a nonalcoholic beverage that contains natural or artificial sweeteners. “Soft Drink” does not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than fifty percent (50%) of vegetable or fruit juice by volume.

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

“Software License Fee” means a fee charged for the right to Use, access, or maintain Software Programs.

“Software Maintenance Agreement” means an agreement, typically with a software provider, that may include:

- A. Provisions to maintain the right to Use the software;
- B. Provisions for software upgrades including code updates, version updates, code fix modifications, enhancements, and added or new functional capabilities loaded into existing software; or
- C. Technical support.

“Software Maintenance Agreement” does not include an agreement that provides only for technical support.

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

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

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

“Special 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 of motor vehicles upon the public highways. The term does not include fuel used for the propulsion or drawing of Aircraft, railroad cars or railroad locomotives.

“Storage” means any keeping or retention of, or exercising dominion or control over, or possession of, for any length of time, Tangible Personal Property not while in transit but on a stand still basis for future Use when leased, rented or Purchased at retail from sources either within or without the City from any Person or Retailer.

“Student” means any Person enrolled in a School.

“Tangible Personal Property” means personal property that can be, or is designed to be, one or more of the following: seen, weighed, measured, felt, touched, stored, transported or exchanged, or that is in any other manner perceptible to the senses with or without the aid of an instrument or device, and includes Digital Products.

“Tax” means the Use Tax due from a Consumer or the Sales Tax due from a Retailer or the sum of both due from a Retailer who also consumes.

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

“Taxable Sales” means Gross Sales less any exemptions and deductions specified in this Tax Code.

“Taxable Services” means services subject to tax pursuant to this Tax Code.

“Taxpayer” means any Person obligated to collect, pay and/or remit tax under the terms of this Tax Code.

“Telecommunications Service” means the service of which the object is the transmission of any two-way interactive electronic or electromagnetic communications including but not limited to voice, image, data and any other information, by the use of any means but not limited to wire, cable, fiber optical cable, microwave, radio wave, Voice Over Internet Protocol (VOIP), or any combinations of such media, including any form of mobile two-way communication. “Telecommunications Service” does not include separately stated non-transmission services that constitute computer processing applications used to act on the information to be transmitted.

“Television & Entertainment Services” means audio or visual content that can be transmitted electronically by any means, for which a charge is imposed.

“Total Tax Liability” means the total of all tax, penalties and/or interest owed by a Taxpayer and shall include Sales Tax collected in excess of such tax computed on total Sales.

“Use” means the exercise, for any length of time by any Person within the City of any right, power or dominion over Tangible Personal Property or services when rented, leased or Purchased at retail from sources either within or outside the City from any Person or Retailer or used in the performance of a contract in the City whether such Tangible Personal Property is owned or not owned by the Taxpayer. Use also includes the withdrawal of items from inventory for consumption.

“Use Tax” means the tax paid or required to be paid by a Consumer for using, storing, distributing or otherwise consuming Tangible Personal Property or Taxable Services inside the City.

“Wholesale Sale” means a Sale by Wholesalers to Retailers, jobbers, dealers or other Wholesalers for resale and does not include a Sale by Wholesalers to users or Consumers not for resale; the latter types of Sales shall be deemed to be Retail Sales and shall be subject to the provisions of this Tax Code.

“Wholesaler” means any Person doing an organized wholesale or jobbing Business and selling to Retailers, jobbers, dealers, or other Wholesalers, for the purpose of resale, and not for Storage, Use, consumption, or Distribution.

### **3.01.240 Tax Cannot be Absorbed; Tax Separately Stated; Exception Base**

A. Cannot Absorb Tax. Except as provided in subsection (B) of this Section 3.01.240, it is unlawful for any Retailer to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof imposed by this Tax Code shall be

assumed or absorbed by the Retailer or that it shall not be added to the Purchase Price of the property sold or the services tendered, or, if added, that it or any part thereof shall be refunded.

- B. Tax Must be Separately Stated; Exceptions. Except as provided in subsections (B)(1), (2) and (3), the Retailer shall provide to the purchaser a receipt that identifies the property and/or services taxed, the date such property and/or services were sold or ordered, the rate of the tax imposed, and the amount of tax collected or paid, all as separate and distinct items.
1. Liquor by the Drink. Any Retailer selling malt, vinous, or spirituous liquors by the drink may include in the Purchase Price the tax levied under this Tax Code, except that no such Retailer shall advertise or hold out to the public in any manner, directly or indirectly, that such tax is not included as part of the Purchase Price to the purchaser. The schedule referred to in section 3.01.410(E) of this Tax Code shall be used by such Retailer in determining amounts to be included in such Purchase Price. No such Retailer shall gain any benefit from the collection or payment of such tax, nor shall the use of the schedule referred to in Section 3.01.410(E) of this Tax Code relieve such Retailer from liability for payment of the full amount of the tax imposed pursuant to Section 3.01.410.
  2. Admission to Liquor Licensed Establishment. Any establishment licensed to serve malt, vinous or spirituous liquors that is open to the public upon payment of a Cover Charge or fee may incorporate into such charge or fee the tax levied under this Tax Code.
  3. Vending Devices. City Sales Tax may be incorporated into the Purchase Price of Tangible Personal Property sold through vending devices. The operator, owner or Person selling Tangible Personal Property through vending devices shall be liable additionally for the Sales and Use Tax on the Purchase or Use of the vending devices and on any subsequent lease, rental or Sale thereof on the full lease, rental or sale Price.

### **3.01.250 Collection, Payment and Remittance of Tax**

Every Retailer subject to the provisions of this chapter shall be liable and responsible for the collection and remittance of sales tax as set forth in this chapter. Except as otherwise provided in this section, every Taxpayer shall make a Return and payment or remittance of taxes to the City as provided for herein. The Taxpayer or its authorized agent shall sign any such Return under penalty of perjury. Sales and Use Tax Returns, and any payment of taxes to the City in accordance herewith, shall be made via the City's online tax filing system or by such other method as approved by the Chief Financial Officer.

#### **A. Marketplace Sales.**

##### **1. General.**

- a. A Marketplace Facilitator Engaged in Business in the City is required to collect and remit Sales Tax on all Taxable Sales made by the Marketplace Facilitator, or facilitated for Marketplace Sellers to customers in the City, whether or not the Marketplace Seller for whom sales are facilitated would have been required to collect Sales Tax had the Sale not been made in or through the Marketplace. A Marketplace Facilitator has all the liabilities, obligations and rights of a Retailer under this Tax Code.
- b. The liabilities, obligations and rights set forth under this Tax Code are in addition to any requirements the Marketplace Facilitator has under this Tax Code if it also offers for sale Tangible Personal Property or Taxable Services through other means.
- c. Except as provided in subsection (2) of this section, a Marketplace Seller, with respect to sales of Tangible Personal Property or taxable services made in or through a Marketplace Facilitator's Marketplace, does not have the liabilities, obligations or rights of a Retailer under this Tax Code if the Marketplace Seller can show that such Sale was facilitated by a Marketplace Facilitator:

- i. With whom the Marketplace Seller has a contract that explicitly provides that the Marketplace Facilitator will collect and remit Sales Tax on all Sales subject to tax under this Tax Code; or
    - ii. From whom the Marketplace Seller requested and received in good faith a certification that the Marketplace Facilitator is registered to collect Sales Tax and will collect Sales Tax on all Sales subject to tax under this Tax Code made in or through the Marketplace Facilitator's Marketplace.
  - 2. Auditing. The City shall audit only the Marketplace Facilitator for Sales made by Marketplace Sellers facilitated by the Marketplace Facilitator. The City will not audit or otherwise assess tax against Marketplace Sellers for Sales facilitated by a Marketplace Facilitator.
- B. Third-Party Collectors.
  - 1. Definition. "Third-Party Collector" means any Person, whether through a physical store or an online platform, which collects payments for Sales of Taxable Tangible Personal Property, products, Services, lodging, admissions or telecommunications services for a Retailer.
  - 2. Duties and Liabilities.
    - a. Third-Party Collectors are deemed to be collection agents for the City and shall assume the duties, responsibilities and liabilities of a Retailer with respect to the collection and remittance of the Taxes imposed under this Tax Code, including obtaining and maintaining a Sales and Use Tax License in accordance with Part 3 of this Tax Code. Third-Party Collectors and the Retailers for which Third-party Collectors collect, withhold and/or remit Taxes hereunder are jointly liable for the collection and remittance of the Taxes imposed by this Tax Code.
    - b. The Finance Department may recover unpaid taxes, penalties and interest from Third-Party Collectors, as well as each Retailer for which Third-party Collectors collect, withhold and/or remit Taxes hereunder, in the same manner authorized in this Tax Code for the recovery from Retailers of unpaid taxes, penalties and interest.
- C. Filing Frequencies.
  - 1. Standard Filing Frequency. Unless otherwise provided for herein, every Taxpayer shall make a Return and payment of taxes to the City before the twentieth (20<sup>th</sup>) day of each month for the preceding calendar month.
  - 2. Filing Frequencies – Hardship. If the accounting methods regularly employed by a Taxpayer in the transaction of its Business or other conditions are such that making Returns on a calendar month basis impose unnecessary hardship, the Chief Financial Officer, upon written request of the Taxpayer, may accept Returns at such intervals as shall, in the Chief Financial Officer's opinion, better suit the convenience of the Taxpayer and shall not jeopardize the collection of the tax.
  - 3. Other Filing Frequencies.
    - a. Quarterly. The Chief Financial Officer may permit Taxpayers whose monthly collected tax is less than three hundred dollars (\$300) to make Returns and pay taxes at intervals not greater than every three (3) months. Such Returns and payment of taxes shall be made before the twentieth (20<sup>th</sup>) day of the month immediately following the quarter during which such taxes were collected.
    - b. Seasonal. The Chief Financial Officer may permit Taxpayers engaged in a seasonal Business, which is not operated at all in the City during certain months of the year, to make Returns and pay taxes monthly only for the months of the year during which the Business is operated. Such Returns and payment of taxes shall be made before the twentieth (20<sup>th</sup>) day of the month immediately following the month during which such taxes were collected.



- c. Annual.
  - i. Taxpayers required to pay Use Tax under this Tax Code, which are not obligated under this Tax Code to collect and remit any Sales Tax, shall make a Return and remit such Use Tax to the City before the twentieth (20<sup>th</sup>) day of January each year for the preceding calendar year.
  - ii. Notwithstanding subsection (c)(i) above, Taxpayers located within areas of the City that are subject to public improvements fees (PIF) shall make a Return and remit such taxes to the City before the twentieth (20<sup>th</sup>) day of each month for the preceding calendar month, unless authorized by the City to make less-frequent Returns in accordance with applicable PIF collection agreements.
- D. Amended Returns. Taxpayers may submit amended Returns, subject to the limitations set forth in Section 3.01.560 hereof. If requested by the Finance Department, the Taxpayer shall provide documentation sufficient to support such amendment, as determined by the Finance Department its sole, reasonable discretion.
- E. Multiple Locations. Any Retailer Engaged in Business in the City in two (2) or more locations shall file a separate Return for each location.
- F. Exempt Sales. The burden of proving that a Sale of goods or Taxable Services is exempt from the collection of Sales Tax shall be on the Retailer under such reasonable requirements of proof as set forth in the Sales and Use Tax Regulations prescribed therefor.
- G. Disputed Exemptions. If a dispute arises between the purchaser and seller as to whether or not any Sale, service or commodity is exempt from taxation under Section 3.01.430, the seller shall collect, and the purchaser shall pay, the tax. The seller shall thereupon issue to the purchaser a receipt or certification showing the name of the seller, the items Purchased, the date, Price, and amount of tax paid. The purchaser may apply to the Chief Financial Officer for a refund of such taxes pursuant to Section 3.01.540.
- H. Collection of Tax by Department of Revenue – Automotive Vehicles. If the owner of an Automotive Vehicle is required to register, license or obtain a certificate of title for such Automotive Vehicle at an address located within the City, the Department of Revenue, through its authorized agent in the county, shall collect the Use Tax imposed under this Tax Code pursuant to one or more agreements entered into between the City and such authorized agent. Such authorized agent shall pay proceeds of such Use Tax to the City periodically in accordance with such agreement(s). If such authorized agent fails to collect the Use Tax imposed under this Tax Code, the Chief Financial Officer shall then collect such Use Tax in the manner set forth in Part 5 of this Tax Code.

### **3.01.260 Duty to Keep Records**

It is the duty of every Taxpayer to keep and preserve suitable records and such other books or accounts as may be necessary to determine the amount of tax the Taxpayer is liable for collecting, paying and/or remitting under this Tax Code. It is the duty of every such Taxpayer to keep and preserve for a period of three (3) years all invoices of goods and merchandise Purchased for Sale, Use, consumption or lease; provided, however, that any Person Engaged in Business in the City, which has not obtained a License hereunder, is obligated to keep and preserve, from the date such Person first became Engaged in Business in the City, all invoices of goods and merchandise Purchased for Sale, Use, consumption or lease without limitation. All such books, invoices, and other records shall be open for examination and audit at any time by the Chief Financial Officer or duly authorized agent. The Taxpayer shall produce all such records, if required by the Chief Financial Officer, at the Lakewood Civic Center, 480 South Allison Parkway, Lakewood, Colorado 80226.

### **3.01.270 Credit Sales**

- A. In the case of a Sale upon credit, or a contract for Sale where the Price is paid in installments, and title does not pass until a future date, or a Sale secured by a chattel mortgage or a

conditional Sale, there shall be paid upon each payment that portion of the total tax which the amount paid bears in relation to the total Purchase Price.

- B. If a Retailer transfers, sells, assigns or otherwise disposes of an account receivable, it shall be deemed to have received the full balance of the consideration for the original Sale and shall be liable for the remittance of the Sales Tax on the balance of the total Sale Price not previously reported. Except, however, that such transfer, Sale, assignment or other disposition of an account receivable by a Retailer to a closely held subsidiary, as defined in subsection (B)(9). Exclusions in the definition of "Purchase or Sale" in section 3.01.230 shall not be deemed to require the Retailer to pay the Sales Tax on the credit Sale represented by the account transferred prior to the time that the customer makes payment on said account.

**3.01.280      Bad Debt Charge-Offs**

Taxes paid on Taxable Sales represented by accounts found to be worthless and actually charged off for income tax purposes may be credited upon a subsequent payment of the tax provided in this Tax Code, but if any such accounts are thereafter collected by the Taxpayer, then a tax shall be paid upon the amounts so collected.

**PART 3.            SALES AND USE TAX LICENSE**

**3.01.310      License Required; Exceptions**

- A. Subject to the provisions of this Tax Code, a Sales and Use Tax License is required for the following:
  - 1. When a Person is Engaged in Business in the City and selling Tangible Personal Property or services that are:
    - a. Purchased in the City; and
    - b. Subject to Sales Tax pursuant to this Tax Code; or
  - 2. Tangible Personal Property that is stored, Used or consumed in the City and subject to Use Tax pursuant to this Tax Code.
- B. Every Person required to obtain a License hereunder shall make application to the City via the City's online tax filing system or, at the discretion of the Finance Department, on forms supplied by the Finance Department. Such application shall state the following:
  - 1. The legal name and mailing address of the Person applying for the License;
  - 2. The trade name of the Business, if any, for which the License is sought;
  - 3. The physical location, including the street number, of the place of Business, if different from the mailing address stated on the application; and
  - 4. Such other information as the City might require on the application.The Taxpayer shall notify the City of any changes to the information stated on the application.
- C. Approval of a License shall be conditioned upon the proposed Business and the location thereof meeting all applicable provisions of the Lakewood Municipal Code.
- D. No License is required for any Person engaged exclusively in the Business of selling, or who stores, Uses or consumes, Tangible Personal Property that is exempt from taxation under this Tax Code.
- E. A License issued by the City shall be in force and effect until the earlier of:
  - 1. The revocation of such License; or
  - 2. The sale or termination of the Business, if any, relating to such License.

**3.01.320      License Fee**

A nonrefundable fee, in an amount set by the City Council, shall accompany each License application.

### **3.01.330 Denial or Revocation; Review and Appeal**

- A. Denial. The Chief Financial Officer, upon notice of denial to the applicant, may deny a Sales and Use Tax License application for any one or more of the following reasons:
1. The proposed location for the applicant's Business is not zoned for the type of use proposed;
  2. Any person holding an ownership interest of 10% or more in the applicant is in arrears or delinquent with the City in any way;
  3. Any individual holding an ownership interest of 10% or more in the applicant also holds an ownership interest of 10% or more in a Business that is in arrears or delinquent with the City in any way;
  4. Any individual holding an ownership interest in the applicant who cannot provide legally acceptable proof of lawful presence in the United States as required under C.R.S. § 24-76.5-103, as amended; or
  5. Incomplete application.
- B. Revocation. The Chief Financial Officer may revoke the License of any Person found by the Chief Financial Officer to have violated any material provision of this Tax Code, as follows:
1. The Chief Financial Officer shall first provide to the Person written notice of intent to revoke the License, which notice of intent shall notify the Person of its right to request a hearing.
  2. The Person may make a written request for a hearing to the Chief Financial Officer not more than ten (10) days after the mailing date of such notice.
  3. If the Person requests a hearing, the Chief Financial Officer shall conduct the hearing within fourteen (14) days after receipt of the written request unless the Person has requested a later date, but in no event shall such hearing be held later than forty-five (45) days after the mailing date of such notice.
  4. The Chief Financial Officer's decision shall be in writing and, if revoking the License, shall set forth the bases for revocation.
- C. Review. Any final decision of the Chief Financial Officer pursuant to this section shall be subject to review in Colorado District Court in accordance with Colorado Rule of Civil Procedure 106 only.

### **3.01.340 License Non-Transferable**

No License issued pursuant to this Part 3 shall be transferred to any other Retailer, owner, Business or location, except as expressly provided for herein.

### **3.01.350 Multiple Locations – Separate Licenses Required**

A Retailer engaged in Business in two (2) or more places or locations within the City must obtain a separate License for each such place or location.

### **3.01.360 Posted in Conspicuous Location**

Each License shall be numbered and shall display the name of the licensee and the place of Business of the licensee and shall be posted in a conspicuous place at the place of Business for which it is issued. If the licensee does not have a place of Business, the License shall display the mailing address of such licensee.

### **3.01.370 License Additional**

The License shall be in addition to all other licenses required by law, except as otherwise provided in this Tax Code.

### **3.01.380 Certificate of Exemption**

Charitable Organizations, as defined in this Tax Code, desiring to be exempt from certain City Sales and/or Use Tax, as described in this Tax Code, must apply to the Finance Department for a Lakewood Certificate of Exemption.

## **PART 4 SALES AND USE TAX**

### **3.01.410 Imposition of Tax; Rate**

#### **A. Sales Tax.**

1. **Imposition; Rate.** Subject to the provisions of this Tax Code, Sales Tax at the rate of three percent (3%) is hereby levied, and shall be collected and paid to the City, upon the Purchase Price of:
  - a. All services identified in section 3.01.420 and provided within the City; and
  - b. All Tangible Personal Property, including Digital Products, software and similar items, sold within the City.
2. **Held in Trust.** All sums of money paid by purchasers to Retailers as Sales Taxes imposed by this Tax Code shall be and remain public money and the property of the City. Each Retailer shall hold such monies in trust for the sole use and benefit of the City until paid to the City. Any Retailer that fails to hold such monies in trust for, and pay such monies to, the City shall be subject to the penalties herein.

#### **B. Use Tax.** Subject to the provisions of this Tax Code, Use Tax at the rate of three percent (3%) is hereby levied, and shall be paid, upon the privilege of Using, storing or consuming Tangible Personal Property or services, whether Purchased inside or outside the City, where Sales Tax or Use Tax has not otherwise been lawfully imposed and paid. Tangible Personal Property initially exempt from the imposition of Sales Tax as a Wholesale Sale, but subsequently used by the initial purchaser, is subject to Use Tax. Any subsequent Sale of such Tangible Personal Property shall be subject to Sales Tax as set forth in section 3.01.420(P).

#### **C. Taxes Paid to Other Municipality.** With the exception of Construction Materials, which are addressed elsewhere in this Tax Code, where City Sales or Use Tax would otherwise be due under this Tax Code, but a sales or use tax has been lawfully imposed by and paid to a municipality other than the City, then City Sales or Use Tax, as applicable, shall be imposed and paid only on the difference between: (a) the sales or use tax legally imposed by and paid to such other municipality; and (b) the amount of Sales or Use Tax imposed by the City. In the event the amount of the City's Sales or Use Tax imposed is less than the amount of sales or use tax legally imposed by and paid to such other municipality, no City Sales or Use Tax would be due on such transaction.

#### **D. Taxes Not Paid.** In the event a purchase is reflected on the financial records of a Person located in the City, and no legally imposed sales or use tax was paid or remitted to another municipality, the Person shall pay or remit such tax to the City.

#### **E. Taxes Additional.** The taxes imposed by this Tax Code shall be in addition to all other taxes imposed by law, except as otherwise provided in this Tax Code.

#### **F. Schedules/Systems.** The Sales and Use Taxes imposed herein shall be computed in accordance with the schedules or systems set forth in the Sales and Use Tax Regulations prescribed therefor. Such schedules or systems shall be designed so that no tax is charged on any Sale of sixteen cents (\$0.16) or less.

#### **G. Specific Uses – Voter-Approved Increase.** On November 1, 2005, the voters of the City of Lakewood approved an increase in the Lakewood Sales and Use Tax rate from two percent (2%) to three percent (3%). In accordance with such approval, and notwithstanding section 3.01.170 of this Tax Code, the City shall apply the revenue generated from such one percent (1%) Sales and Use Tax increase as follows:

1. At least fifty percent (50%) of such revenue shall be used for the following:
  - a. public safety purposes;
  - b. maintenance and construction of streets; and
  - c. parks and recreation purposes.
2. The balance of such revenue shall be used to maintain City services and the emergency fund balance.

H. Belmar – Temporary Partial Waiver of Sales Tax; Expiration.

1. Pursuant to Ordinance O-2002-7, the City temporarily waived, only within the geographic areas specifically described in Exhibit A to Ordinance O-2002-7, one percent (1%) of the Sales Tax imposed under this Tax Code. Pursuant to Ordinance O-2005-26, the Sales Tax increase addressed in subsection (F) of this section is also temporarily waived within the geographic areas specifically described in Exhibit A to Ordinance O-2002-7. The geographic areas described in Exhibit A to Ordinance O-2002-7 are therefore temporarily subject to a Sales Tax rate of one percent (1%).
2. The temporary Sales Tax waivers described above shall expire or terminate as set forth in Ordinances O-2002-7 and O-2005-26, as the case may be, at which time the Sales Tax rate for the areas specifically described in Exhibit A to Ordinance O-2002-7 shall increase as appropriate.
3. The temporary Sales Tax waivers described in this subsection (G) do not and shall not apply to any Use Tax imposed under this Tax Code.

**3.01.420 Transactions, Services and Tangible Personal Property – Taxability**

Sales or Use Tax, as applicable, shall be imposed upon the Purchase Price of the transactions, services and Tangible Personal Property enumerated in this section, except as otherwise set forth herein. With the exception of “lump sum” construction transactions, any transaction involving services or Tangible Personal Property that would otherwise be exempt or nontaxable under this Tax Code shall be subject to Tax hereunder if such services or Tangible Personal Property are not stated separately from any taxable services or Tangible Personal Property that are part of the same transaction. The enumeration of the transactions and Tangible Personal Property herein is not intended, and shall not be construed, as limiting the taxability of any transactions or Tangible Personal Property subject to taxation under section 3.01.410 of this Tax Code.

- A. Admissions. The Price, fee or Cover Charge paid to gain admission or access to a performance of a motion picture, or to a Retailer licensed to serve malt, vinous or spirituous liquors that is open to the public upon payment of a charge or fee.
- B. Auctions. Tangible Personal Property sold at Auction.
- C. Automotive Vehicles. The Sale, lease or lease-purchase of an Automotive Vehicle if the owner of the Automotive Vehicle for which registration, licensing or titling is required by the state pursuant to Article 6 of Title 42, C.R.S., as amended, is required to register, license or obtain a certificate of title for such Automotive Vehicle at an address located within the City.
- D. Commercial Shipping Materials. Commercial Shipping Materials when sold at retail, except as set forth in section 3.01.430(J)(3) hereof.
- E. Construction Equipment.
  1. Construction Equipment located within the boundaries of the City for a period of more than thirty (30) consecutive days shall be subjected to the full applicable Use Tax of the City.
  2. Construction Equipment located within the boundaries of the City for thirty (30) consecutive days or less may be prorated as set forth in Section 3.01.440.
- E. Construction Materials. Construction Materials in accordance with Section 3.01.450;
- F. Custom Orders. Articles sold after manufacture or after having been made to order, including the cost of material used, the service performed in connection therewith, overhead and profit.
- G. Food, Beverages and Candy.
  1. Except as exempt pursuant to section 3.01.430(G) of this Tax Code, food and drink served or furnished in or by restaurants, cafes, lunch counters, cafeterias, hotels, social clubs, nightclubs, cabarets, resorts, snack bars, caterers, carryout shops and other like places of Business at which prepared food or drink is regularly sold, including Sales from pushcarts, motor vehicles and other mobile facilities;
  2. Upon all other Sales of Candy, Soft Drinks and food, except as exempt pursuant to Section 3.01.430(G).

- H. Freight, Shipping, Transportation and Delivery. Transportation and other charges to effect delivery of Tangible Personal Property to the purchaser, including:
1. Freight, shipping, transportation or delivery charges paid by a Retailer to obtain Tangible Personal Property before resale, which is passed on to the purchaser in the Price of the property or through a separate invoice;
  2. Charges to the purchaser for delivery, including fuel surcharges, where the Retailer transports the property being sold; and
  3. Freight, shipping, transportation or delivery charges included in the Price of the property being delivered, whether or not billed separately or included as a separate charge on the Retailer's invoice for common carrier, postal or other third-party delivery services.
- I. Gas, Electricity and Other Fuel.
1. Gas and electric service, whether furnished by municipal, public or private corporations or enterprises;
  2. Gas and electricity furnished and sold for commercial consumption and not for resale;
  3. Electricity, coal, wood, gas, fuel oil or coke sold, 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 or power for such residences. For the purposes of this subsection (I), "gas" includes natural, manufactured and liquefied petroleum gas.
- J. Lease, Contract, License or Subscription.
1. When the right to possession or Use of any Tangible Personal Property is granted under a lease, contract, license or subscription, and such Use or transfer of possession would be taxable under this Tax Code if an outright Sale were made, then such lease, contract, license or subscription shall be considered the Sale of such article, and the tax shall be computed and imposed on each individual lease, contract, license or subscription payment as it occurs, as though an outright Sale taxable under this Tax Code were occurring upon each payment.
  2. When the right to possession or Use of any Tangible Personal Property is granted under a lease, contract, license or subscription where the lessor, contracting party, licensor or subscription offeror is located outside the City and such Tangible Personal Property is not delivered to a location within the City by the lessor, contracting party, licensor or subscription offeror, but is picked up by the lessee, other contracting party, licensee or subscriber and Used within the City for a period exceeding thirty (30) days, and such transfer of possession would be taxable under this Tax Code if an outright Sale were made by a lessor, contracting party, licensor or subscription offeror located within the City, then such lease, contract, license or subscription shall be taxed as follows:
    - a. Sales tax shall be imposed on the first thirty (30) days of such lease, contract, license or subscription and shall be payable to the taxing jurisdiction, through the lessor, contracting party, licensor or subscription offeror, in which such lessor, contracting party, licensor or subscription offeror is located and Sales Tax shall be imposed on the remaining term of such lease, contract, license or subscription and shall be payable to the City through the lessor, contracting party, licensor or subscription offeror.
    - b. Such Sales Tax shall be computed and imposed on each individual lease, contract, license or subscription payment as it occurs, as though an outright Sale taxable under this Tax Code were occurring upon each payment. The payment of the Sales Tax shall be made to the lessor, contracting party, licensor or subscription offeror by the lessee, other contracting party, licensee or subscriber. Except as hereinabove otherwise provided, the lessor, contracting party, licensor or subscription offeror, as trustee, shall make payment of any Sales Tax obligation to the City in the manner provided by Section 3.01.250.
- K. Linen Services. Linen Services.
- L. Lodging Services. Lodging Services.

- M. Security System Services. Security System Services, including monitoring, whether Purchased, leased or rented.
- N. Software Services – Modified or Custom. Modified software program services or custom software program services.
- O. Sound System Services. Sound system services, whether Purchased, leased or rented.
- P. Subsequent Sale. Except as may be otherwise provided herein, the resale of Tangible Personal Property.
- Q. Tangible Personal Property. Tangible Personal Property, including Digital Products, software and similar items.
- R. Telecommunications Services.
  - 1. Telecommunication Services, whether furnished by public or private corporations or enterprises, for all intrastate Telecommunication Services originating from or received on telecommunication equipment in the City if the charge for the service is billed to (i) a Person in the City; or (ii) an affiliate or division of such Person in the City on behalf of a Person in the City;
  - 2. Mobile Telecommunications to the fullest extent allowed by the Mobile Telecommunication Sourcing Act, 4 U.S.C. §§ 116 to 126.
  - 3. Carrier Access Services, whether furnished by public or private corporations or enterprises, for all interstate or intrastate Telecommunication Services originating from or received on telecommunication equipment in the City if the charge for the service is billed to: (i) a Person in the City; or (ii) an affiliate or division of such Person in the City on behalf of a Person in the City.
- S. Television and Entertainment Services. Television and Entertainment Services sold, Purchased, leased, rented, furnished, streamed or Used.
- T. Vending Devices. Tangible Personal Property, including food and beverages, dispensed by a vending device.
- U. Warranty and Maintenance Service Contracts. Any warranty or maintenance service contract relating to Tangible Personal Property, including Software Maintenance Agreements, whether included in the cost of the Tangible Personal Property relating thereto or sold separately as part of a warranty contract, extended warranty contract, service contract or maintenance contract.

### **3.01.430 Exemptions.**

This section sets forth the only exemptions from the City Sales and Use Tax. The exemptions set forth in this section shall not be expanded by implication or similarity. In all cases, the burden of proof shall be on the Taxpayer to establish the applicability of an exemption by the presentation of clear and convincing evidence. The following are exempt from imposition of City Sales and Use Tax, unless stated otherwise:

- A. Cigarettes. All cigarettes.
- B. Constitutional Preclusion from City Sales and Use Tax. All Sales the City is prohibited from taxing under the constitution or laws of the United States, the State or the City's home rule charter.
- C. Construction Materials.
  - 1. Railroad tracks. Construction Materials to a common carrier by rail operating in interstate or foreign commerce for use by such common carrier in construction and maintenance of its railroad tracks.
  - 2. Delivered outside City. Construction Materials if delivered to a location outside the City.
  - 3. Tax prepaid on building permit. Construction Materials if the purchaser of such materials presents to the Retailer a building permit where Use Tax has been prepaid.
  - 4. Certain exempt entities. Construction Materials to be used on a project for an exempt entity identified in subsection (D) below, if the purchaser of such materials presents to the Retailer documentation from the City evidencing that tax is not required to be paid. This

exemption shall not apply to Construction Materials used by contractors who perform contracts for a Qualified Hospital Organization.

5. Storage. The Storage of Construction Materials.

D. Exempt Entities.

1. Government - United States, State of Colorado, and their subdivisions. All Sales to the United States government and the State of Colorado, and their respective departments, agencies, institutions, and political subdivisions, in their governmental capacities only, when billed to and paid for by the governmental entity;

2. Schools. All Sales to Schools, including pre-Schools and post-secondary Schools, other than Schools held or conducted for private or corporate profit; when billed to and paid for by the School;

3. Charitable Organizations.

a. All Sales to Charitable Organizations, which have been granted a Lakewood Certificate of Exemption, in the conduct of their regular charitable functions and activities, when billed to and paid for by the Charitable Organization;

b. Individual Sales made by Charitable Organizations of five thousand dollars (\$5,000.00) or less under the following conditions:

i. The Charitable Organization has been granted a Lakewood Certificate of Exemption;

ii. The funds raised by the Charitable Organization through such Sales in Lakewood do not exceed \$250,000.00 in a calendar year; and

iii. The Sale of Tangible Personal Property is not the principal use of any premises from or at which such Sales are made, if such premises are owned, leased or otherwise controlled by the Charitable Organization.

4. Qualified Hospital Organizations.

a. All Sales made to, billed directly to, and paid for directly by, a Qualified Hospital Organization as defined in Section 3.01.230, provided the Tangible Personal Property or service Purchased by the Qualified Hospital Organization is employed in furtherance of an exempt function. As used in this section, "employed in furtherance of an exempt function" means employed by a Qualified Hospital Organization in an activity from which none of the proceeds are treated as unrelated Business income. As used in this section, "unrelated Business income" means gross income derived from any unrelated trade or Business within the meaning of Section 512 of the United States Internal Revenue Code of 1986, as amended.

b. Notwithstanding any other exemption granted to a Qualified Hospital Organization pursuant to this Tax Code, Construction Materials, as set forth in subsection (C)(4) of this section, used by contractors who perform contracts for the Qualified Hospital Organization are not exempt from taxation hereunder.

c. If the Purchase and Sale of any Tangible Personal Property or service would be exempt under this subsection but for the fact that the Tangible Personal Property or service is employed in an activity from which a portion of the proceeds is treated as unrelated Business income, the Chief Financial Officer is authorized to approve written formulas or methods (including formulas or methods of individual Qualified Hospital Organizations) as may be appropriate and reasonable to determine, based on the evidence available, the percentage of the proceeds from such activity that is not treated as unrelated Business income. This calculated percentage shall be the percentage of the cost of such property or service that will be exempt under this section. The Chief Financial Officer may condition approval of formulas and methods on receipt of such information as is reasonably deemed necessary for proper implementation of such formulas and methods.

E. Factory-Built Housing not Requiring a City Building Permit. For Factory-Built housing for which a City building permit (other than for utility hook-ups such as electrical, plumbing, natural



gas and the like) is not required, forty-eight percent (48%) of the Purchase Price on the initial Sale of Factory-Built Housing and the entire Purchase Price in any subsequent Sale.

F. Farms and Agricultural.

1. Farm Closeout Sales. All Farm Closeout Sales;
2. Fertilizer for use in the production of agricultural commodities, not including commercial fertilizer distributed primarily for nonfarm use, such as home gardens, lawns, shrubbery, flowers, golf courses, parks and cemeteries.
3. Livestock. Cattle, sheep, lambs, poultry, swine and goats; mares and stallions for breeding purposes; and live fish for stocking purposes in a commercial fishery or fish hatchery;
4. Livestock bedding. Straw and other bedding for use in the care of livestock or poultry;
5. Livestock feed. Feed for consumption by livestock, including horses, or poultry;
6. Seeds and orchard trees. Seeds Purchased by an Agricultural Producer, whether or not food-producing, and orchard trees;
7. Packaging and shipping materials. Packaging materials and shipping materials Purchased by Agricultural Producers for use in the Agricultural Producers' Business.

G. Food.

1. Food for Home Consumption. Food for Home Consumption, as defined in Section 3.01.230;
2. Food Purchased under Supplemental Nutrition Assistance Program. Food, as specified in 7 U.S.C. § 2012(k), as amended, Purchased with benefits pursuant to the federal Supplemental Nutrition Assistance Program;
3. Food Purchased with a WIC food instrument. Food, as specified in 42 U.S.C. § 1786, as amended, Purchased with a WIC food instrument pursuant to the federal special supplemental nutrition program for women, infants and children;
4. Articles furnished with food. Any article to be furnished by a Retailer to a Consumer or user, together with food, meals or beverages Purchased for human consumption, if: a separate charge is not made for the article to the Consumer or user; such article becomes the property of the Consumer or user, together with the food, meals or beverages Purchased; and a tax is paid on the Retail Sale as required by Section 3.01.420(G);
5. Containers or bags furnished by food Retailers. Any container or bag furnished by a Retailer of food, meals or beverages for human consumption to a Consumer or user for the purpose of packaging or bagging Tangible Personal Property Purchased at retail, if: a separate charge is not made for the container or bag to the Consumer or user; such container or bag becomes the property of the Consumer or user, together with the food, meals or beverages Purchased; and a tax is paid on the Retail Sale as required by Section 3.01.420(G);
6. Employee meals. Meals provided to employees of the places described in Section 3.01.420(G)(1) at no charge or at a reduced charge and which are considered as part of their salary, wages or income;
7. Food for Residents of a retirement community. Food, food products, beverages and meals provided for consumption by Residents on the premises of a retirement community, as defined by C.R.S. § 39-26-707(2.5);

H. Fuel and Power.

1. Gasoline and Special Fuel. Gasoline and Special Fuel subject to the State gasoline and Special Fuel tax under C.R.S. §§ 39-27-101, et seq.;
2. Electricity and other fuels. Electricity, coal, gas, fuel oil, coke or nuclear fuel for use in mining, refining, irrigation, construction, Telecommunication Services and street and railroad transportation services;

I. Lodging Services. Lodging Services provided to a Person, pursuant to a written agreement, for a period of thirty (30) consecutive days or more;

J. Manufacturing.

1. Testing, modification, inspection or similar for Manufacturing. Tangible Personal Property for testing, modification, inspection or similar type of activities in the City if the ultimate use of such property in Manufacturing or similar type of activities occurs outside the City, and if the test, modification or inspection period does not exceed ninety (90) days;
2. Manufacturing or compounding. Tangible Personal Property sold to or Purchased by a Person engaged in Manufacturing or compounding for Use, profit or Sale, which Tangible Personal Property meets all of the following conditions:
  - a. Is actually and factually transformed by the process of Manufacturing;
  - b. Becomes, by the Manufacturing processes, a necessary and recognizable ingredient component and constituent part of the finished product; and
  - c. Is, by its physical presence in the finished product, essential to the Use thereof in the hands of the ultimate Consumer; or
  - d. Such Tangible Personal Property, whether or not it becomes an integral or constituent part of a food product, is a chemical, solvent, agent, mold skin casing, or other material used for the purpose of producing or inducing a chemical or physical change in a food product or for the purpose of placing a food product in a more marketable condition and is directly utilized and consumed, dissipated or destroyed, to the extent it is rendered unfit for further use, in the processing of a food product that is intended to be sold ultimately at retail for human consumption.
3. Shipping and Packaging Materials. Commercial Shipping Materials used by or sold to a Person engaged in Manufacturing, compounding, wholesaling, jobbing, retailing, packaging, distributing or bottling for Sale, profit or Use, and Commercial Packaging Materials.

K. Medical.

1. Medical supplies. The following medical supplies for humans:
  - a. Wheelchairs and hospital beds;
  - b. Prescription eyeglasses and contact lenses;
  - c. Prescription hearing aids;
  - d. Urine- and blood-testing kits and materials;
  - e. Drugs or medical materials when furnished by a licensed medical or dental practitioner of the healing arts as part of professional services provided to a patient (the foregoing exemptions shall not include items used or consumed at a medical or dental office/facility in providing medical services, even though certain of those items might be packaged for single use by individual patients after which the item would be discarded, unless the item leaves the medical or dental office/facility with the patient);
  - f. The following items for treatment and testing relating to diabetic conditions:
    - i. insulin in all its forms dispensed pursuant to the direction of a licensed medical practitioner of the healing arts;
    - ii. glucose to be used for the treatment of insulin reactions;
    - iii. insulin measuring and injecting devices, including hypodermic syringes and needles;
  - g. Batteries, including replacement materials and parts, required for the operation and maintenance of the foregoing items.
2. Prescription drugs. Prescription drugs for Humans and Animals.
3. Prosthetic devices. Prosthetic Devices for Humans and Animals.
4. Oxygen concentrators with related accessories.

- L. Mobile Communications. In accordance with the Mobile Telecommunications Sourcing Act, 4 U.S.C. §§ 116 to 126, as amended, on or after August 1, 2002, mobile Telecommunications Service provided to a customer whose place of primary use is outside the boundaries of the City.

- M. Newsprint, Printer's Ink and Newspapers. Newsprint and printer's ink for Use by publishers of Newspapers and commercial printers of Newspapers.
- N. Non-Residents. Tangible Personal Property, not including Construction Equipment or Construction Materials, brought into the City by a non-Resident: (i) for the non-Resident's own Storage, Use or consumption while temporarily within the City; or (ii) where the non-Resident acquires residency within 30 days from the date such Tangible Personal Property is brought into the City.
- O. Packaging Materials. Commercial Packaging Materials shall be deemed to be Wholesale Sales and shall be exempt.
- P. Payment of Other Municipal Tax. Tangible Personal Property, excluding Construction Materials, or Taxable Services if the transaction was previously subjected to a municipal sales or Use Tax lawfully imposed on the purchaser equal to or greater than the applicable City Sales Tax.
- Q. Tangible Personal Property outside the City.
  - 1. Deliveries outside the City. All Sales of Tangible Personal Property, made by a Retailer located within the City, where the Tangible Personal Property is delivered, and title thereto is transferred at the point of delivery, to a purchaser outside of the City.
  - 2. Samples transferred outside the City without consideration. The transfer of Tangible Personal Property for no consideration, other than the Purchase, Sale or promotion of the transferor's product, to a Retailer located outside the City for use outside the City in selling products normally sold at wholesale by the transferor.
- R. Transportation.
  - 1. Aircraft. Aircraft for Use in interstate commerce by an Airline Company;
  - 2. Automotive vehicles registered outside the City. Automotive vehicles as defined in this Tax Code that are registered and required by state law to be registered outside the City;
  - 3. Electric-powered Automotive Vehicles. Electric-powered automotive vehicles, including both the original and all subsequent Purchases of such vehicles, and batteries and controls required for the operation and maintenance of such vehicles.
- S. Vending. Individual items of Tangible Personal Property sold through vending machines at sixteen cents (\$0.16) or less or the price paid to operate vending machine games of chance where the acquisition of Tangible Personal Property is not guaranteed.
- T. Wholesale Sales. Tangible Personal Property Purchased in the City for resale, either in its original form or as an ingredient of a manufactured or compounded product, in the regular course of Business.

### **3.01.440 Provisions Related to Construction Equipment**

- A. Equipment Declaration; Amendment.
  - 1. Prior to or on the date Construction Equipment is located within the boundaries of the City, the Taxpayer shall file with the City an equipment declaration form provided by the City for any Construction Equipment with a Purchase Price of two thousand five hundred dollars (\$2,500) or more. Such declaration shall state: the dates on which the Taxpayer anticipates that the equipment shall be located within, and removed from, the boundaries of the City; a description of each such anticipated piece of equipment; the actual or anticipated Purchase Price of each piece of equipment; and other information as reasonably deemed necessary by the City.
  - 2. The Taxpayer shall file an amended equipment declaration with the City reflecting any changes in the information contained in any previous equipment declaration no less than once every ninety (90) days after the equipment is brought into the boundaries of the City or, for equipment that is brought into the boundaries of the City for a project of less than ninety (90) days' duration, no later than ten (10) days after substantial completion of such project.
- B. Taxation.

1. Construction Equipment located within the boundaries of the City for a period of thirty (30) consecutive days or fewer shall be subject to the City's Use Tax, the amount of which is calculated as follows: the Purchase Price of the equipment shall be multiplied by one-twelfth ( $\frac{1}{12}$ ), and the resulting product shall be multiplied by the amount of the Use Tax imposed pursuant to Section 3.01.410.
2. Construction Equipment located within the boundaries of the City for a period of more than thirty (30) consecutive days, or equipment for which a declaration has not been properly filed, shall be subject to Use Tax on the full Price of such equipment.
3. Where the provisions of subsection (B)(1) above are employed, the provisions of section 3.01.430(P) shall apply.

**3.01.450 Provisions Related to Construction Materials**

A. Construction Work Requiring a Building Permit. Any Contractor who Purchases or acquires Construction Materials for work to be performed on real property located within the City and the owner of such real property shall be jointly and severally responsible for paying the Tax set out in this Tax Code.

1. The owner or Contractor shall remit a deposit to the City prior to the issuance of any building permit. For purposes of this subsection, Use Tax shall be calculated on fifty (50%) percent of the total valuation of the construction contract. Upon payment of such deposit, the City shall issue a Tax receipt identifying the address of the permitted project and the City building permit number.
2. The building permit must be presented when Construction Materials are Purchased, whether inside or outside of the City, for the Purchase to be exempt from Tax hereunder. Credit will not be given for taxes paid on Purchases of Construction Materials in another municipality.
3. Upon demand made by the Finance Department, the owner and/or Contractor hired to do the above-stated work, or any portion thereof, to submit to the City, within one hundred eighty (180) days after the issuance of a Certificate of Occupancy, the final costs of the project, including any supporting documentation reasonably required by the City, including, but not limited to, a project cost report, an application and certificate for payment, and final bill for the project. Project cost reports and other documentation shall be submitted on forms approved by the Finance Department and shall state the actual amounts of any Purchases of Construction Materials for such work, including materials Purchased by the owner.
  - a. The owner and/or Contractor shall remit to the City any Use Taxes and City fees due in excess of Use Taxes and City fees previously paid.
  - b. In the event the City determines that the deposit remitted by the owner and/or Contractor pursuant to this subsection A exceeds the amount of Use Taxes and City fees due, the City will refund the amount of such excess to the Person who paid the initial Use Tax deposit.
4. The owner and/or Contractor shall be held liable for the payment of all Taxes on such Construction Materials and the amount of any Use Tax due and not paid shall constitute a lien upon the real property benefited by the use of such Construction Materials.
5. The Finance Department, in its discretion, may choose to perform an Audit of the project pursuant to Part 6 of this Tax Code. In such event, the owner or contractor shall comply with the applicable requirements of such Part 6.
6. The owner and/or Contractor shall keep and preserve all invoices, receipts and statements, along with a summary sheet, showing such Purchases of Construction Materials and supplies and Tangible Personal Property for a period of three (3) years after the issuance of Certificate of Occupancy.

B. Construction Work Not Requiring a Building Permit. Any Contractor who Purchases or acquires Construction Materials for work to be performed on real property located within the

City for which a building permit is not required is responsible for paying the Tax set out in this Tax Code.

- a. Time and materials billing. When a Contractor bills or invoices its customer on a time and materials basis, the Contractor shall collect Sales Tax on the Construction Materials from the Purchaser and remit such Sales Tax to the City.
- b. Lump sum billing. When a Contractor bills or invoices its customer on lump sum basis, the Contractor shall pay Sales Tax on the Construction Materials at the time the Contractor acquires the Construction Materials.
- c. Failure to pay or collect and remit Sales Tax. In the event the Contractor fails to pay or collect and remit the Sales Tax as set forth in this subsection B, the Contractor shall be liable for payment to the City of Use Tax on such Construction Materials.

## **PART 5. COLLECTION AND ENFORCEMENT; REFUNDS**

### **3.01.510 Recovery of Taxes; Penalty and Interest**

#### **A. Deficiency; Notice.**

1. Estimate. When a Person fails to make a Return in payment of Sales or Use Tax within the timeframe required under this Tax Code, the Finance Department shall make an estimate, based upon such information as may be available, of the amount of taxes due for the period for which the tax is deficient and shall add thereto the amount of fees, penalties and interest calculated as set forth in subsection B below.
2. Assessment. When the Finance Department determines through an audit that the amount of taxes paid is less than the amount owed hereunder, the Finance Department may make an assessment as set forth in this Tax Code.
3. Notice. Promptly after making an estimate or assessment hereunder, the Finance Department shall deliver to the Taxpayer a written notice of Deficiency with an estimate or assessment of the amount of taxes, penalty and interest due, the time limit to file a protest to such notice, and that the Taxpayer has the right to elect a hearing on the Deficiency. The Finance Department shall send such notice to the last address of the Taxpayer on file with the Finance Department. Not more than thirty (30) days after such notice is sent, the Taxpayer may petition the Chief Financial Officer for a hearing in the manner set forth in Section 3.01.710. The Taxpayer may appeal any adverse decision from such hearing as provided for in this Tax Code.

#### **B. Penalties and Interest.**

1. Any Deficiency without intent to defraud shall be a debt to the City and there shall be added thereto the greater of an administrative fee of fifteen dollars (\$15) or a penalty equal to ten percent (10%) of the deficient taxes, plus interest on such delinquent or deficient taxes at the rate established by the State Commissioner of Banking pursuant to C.R.S. § 39-21-110.5 plus one-half percent (0.5%) per month, not exceeding one and one-half percent (1.5%) per month, from the date when due.
2. If any part of a Deficiency is the result of fraud with the intent to evade the tax, a penalty of one hundred percent (100%) of the total amount of the Deficiency shall be added to the amount due, and an additional three percent (3%) per month on such amount shall be added from the date the Return was due until paid.
3. If any portion of a tax is satisfied by credit of an overpayment, no interest shall be imposed hereunder Tax Code 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.
4. Interest and penalties imposed hereunder may be assessed and collected at any time after the tax, to which such interest and penalties relate, is due and shall be assessed, collected and paid, upon notice and demand, as set forth in this Tax Code.

- C. Extension and Waiver.
1. Extensions. The Chief Financial Officer is hereby authorized to grant, for good cause shown, extensions of time to make payment of taxes due hereunder; provided, however, that interest and penalties shall continue to accrue on such unpaid taxes until all such taxes, interest and penalties are paid in full.
  2. Waivers. The Chief Financial Officer is hereby authorized to waive, for good cause shown, any penalty assessed as provided in this Tax Code and any interest imposed in excess of the rate established by the State Commissioner of Banking, which excess interest is hereby deemed to be a penalty.
- D. Insufficient Funds – Fees; Alternate Payment. If a Person pays any tax imposed hereunder by a check for which there are insufficient funds, the Finance Department may assess a fee, and the Chief Financial Officer may further require such Taxpayer to make all current and future tax payments by certified funds, cashier's check or cash.
- E. Lien – Notice; Warrant and Seizure.
1. In the event of any Deficiency, if the amount of taxes, penalty or interest imposed by this Tax Code is not paid within thirty (30) days after the same are due, the Finance Department may issue a notice of lien, setting forth the name of the Taxpayer; the amount of the tax, penalties and interest owing; the date of the accrual thereof; and that the City claims a first and prior lien therefor on the real and Tangible Personal Property of the Taxpayer, except as to preexisting claims or liens of a bona fide mortgagee, pledgee, judgment creditor or purchaser whose rights have attached prior to the filing of the notice of lien as provided in this section on property of the Taxpayer; provided, however, that the goods, stock in trade, and Business fixtures of such Taxpayer shall be subject to such lien.
  2. The notice of lien shall be verified by the Chief Financial Officer, or any duly qualified agent of the Chief Financial Officer whose duties are the collection of such tax, and may be filed in the office of the county clerk and recorder in which the Taxpayer owns real or Tangible Personal Property. The filing of such notice of lien shall create a lien on such property in that county and constitute notice thereof.
  3. Any Person who takes any stock of goods or Business fixtures of, or used by, any seller under lease, title-retaining contract or other contract arrangement, by Purchase, foreclosure Sale or otherwise, takes the same subject to the lien for any deficient Sales Taxes owed by such seller and shall be liable for the payment of all delinquent or deficient Sales Taxes of such seller, not, however, exceeding the value of property so taken or acquired.
- F. Business Seizure – Tax Sale.
1. After the Finance Department has filed a notice of lien as authorized in subsection (E) of this section, or concurrently therewith, or at any time when taxes due are unpaid, whether or not such notice has been filed, the Chief Financial Officer may issue a warrant directed to any duly authorized revenue collector or the sheriff of the county commanding such Person to seize and sell the real and personal property of the Taxpayer to pay the amount due, together with interest, penalties and Collection Costs, as may be provided by law, subject to valid preexisting claims or liens.
  2. The revenue collector or sheriff commanded to seize and sell the real and personal property of the Taxpayer shall forthwith sell such property or any other property used by such Taxpayer in conducting its retail Business, except property made exempt from the tax lien pursuant to Section 3.01.520, to pay the amount due. Such property shall be sold in such manner and method as determined by the Chief Financial Officer, and the remedies of garnishment shall apply. The sheriff shall be entitled to such fees in executing such warrants as are allowed by law for similar services.
- G. Bankruptcy, Receivership, Assignment.

1. Whenever the Business or property of any Taxpayer is placed in receivership, bankruptcy or assignment for the benefit of creditors, or seized under distraint for property taxes, then all City taxes, penalties and interest imposed under this Tax Code, and for which such Taxpayer is in any way liable under the requirements of this Tax Code, shall be a prior and preferred claim in favor of the City against all the property of such Taxpayer, except as to preexisting claims or liens of a bona fide mortgagee, pledgee, judgment creditor or purchaser whose rights shall have attached prior to the filing of the notice as provided in Section 3.01.510(E) on the property of the Taxpayer, but the goods, stock in trade and Business fixtures of such Taxpayer shall not be excepted from the City's lien.
2. No sheriff, receiver, assignee or other officer shall sell the property of any Person subject to this Tax Code under process or order of any court without first ascertaining from the Finance Department the amount of any taxes due and payable under this Tax Code, and if any such taxes are due, owing or unpaid, it is the duty of such officer to first pay the amount of such taxes out of the proceeds of the Sale before making payment of any moneys to any judgment creditor or other claims of whatsoever kind or nature, except the costs of the proceedings and other preexisting claims or liens as provided in this section.

H. Additional Remedies.

1. Notwithstanding the foregoing, the Chief Financial Officer may treat any such taxes, penalties or interest due and unpaid as a debt due the City from the Taxpayer. The Taxpayer's Return, or any estimate or assessment made by the Finance Department, as provided in this Tax Code, shall be prima facie proof of the amount due.
2. To recover such taxes, penalties or interest due, the Chief Financial Officer may bring an action in attachment, and a writ of attachment may be issued to the sheriff. In any such proceedings, no bond shall be required of the City, nor shall any sheriff require of the City an indemnifying bond for executing the writ of attachment or writ of execution upon any judgment entered in such proceedings. The Chief Financial Officer may prosecute appeals in such cases without the necessity of providing bond therefor. When requested by the Chief Financial Officer, the City Attorney or designee shall commence action for the recovery of taxes due under this Tax Code, and this remedy shall be in addition to all other existing remedies or remedies provided in this Tax Code.
3. The Chief Financial Officer may issue summons and complaints for violations of this Tax Code as set forth in the Lakewood Municipal Code.

**3.01.520 Tax Lien Imposed; Exemptions**

A. Lien.

1. Sales Tax. The Sales Tax imposed hereunder shall be a first and prior lien upon the Tangible Personal Property and Business fixtures of, or used by, any Retailer under lease, title retaining contract or other contract arrangement, including stock of goods sold or for Sale in the ordinary course of Business, and shall take precedence over other liens or claims of any kind or nature of whatsoever.
2. Use Tax. The Use Tax imposed by hereunder shall be a first and prior lien on the Tangible Personal Property stored, used or consumed, subject only to any valid mortgage or other liens of record on and prior to the recording of notice as set forth in Section 3.01.510(E), which lien shall have precedence over all other liens of any kind or nature whatsoever, except as to preexisting claims or liens of a bona fide mortgagee, pledgee, judgment creditor or purchaser whose rights have attached prior to the filing of the notice on such Tangible Personal Property.
3. Release. Any lien for taxes as shown on the records of the county clerks and recorders as provided in this section, upon payment of all taxes, penalties, and interest covered thereby shall be released by the Chief Financial Officer in the same manner as mortgages and judgments are released.

B. Exemption – Certain Leases.

1. General. The real or personal property of an owner who has made a bona fide lease to a Retailer, or to any Person owing a Use Tax, shall be exempt from the lien created in subsection (A) of this section if: (a) such property can reasonably be identified from the lease description; and (b) the lessee is given no right to become the owner of the leased property. This exemption shall be effective from the date of the execution of the lease if the lease is recorded with the county clerk and recorder of the county where the property is located or if a memorandum of the lease is filed with the Finance Department within ten (10) days after the execution of the lease.
  2. Automotive Vehicles. Automotive vehicles properly registered in the City, showing a lessor as the owner thereof, are exempt from the lien created in subsection (A) of this section, except that such lien shall apply to the extent the lessee has an earned reserve, allowance for depreciation not to exceed fair market value, or similar interest that is or may be credited to the lessee.
  3. Exception – Certain Relationships. Where the lessor and the lessee are blood relatives or relatives by law or have twenty-five percent (25%) or more common ownership in the Taxpayer, a lease between such lessee and such lessor shall not be exempt from the lien created in subsection (A) of this section.
  4. Filing Frequency. Any Retailer in possession of property under the terms of a lease, which property is exempt from the tax lien as provided in this section, may be required by the Chief Financial Officer to remit taxes collected at more frequent intervals than monthly, but not more frequently than semimonthly, or may be required to furnish security for the proper payment of taxes whenever the collection of taxes appears to be in jeopardy.
- C. Adjudication of Lien – City as Defendant. In any action affecting the title to real estate or the ownership or rights 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. In any such action, service of summons upon the City in accordance with the Colorado Rules of Civil Procedure shall be required.

### **3.01.530 Sale/Purchase of Business**

- A. Any Taxpayer that sells out its Business or stock of goods or quits Business (hereinafter, the “seller”) shall be required to make a Return, as required in this Tax Code, within ten (10) days after the date such seller sold its Business or stock of goods or quit Business. The purchaser of any such Business shall withhold sufficient Purchase money to cover the amount of any taxes due and unpaid until such time as the seller or the purchaser produces a receipt from the Finance Department showing that the taxes have been paid or a certificate that no taxes are due.
- B. If a purchaser fails to withhold the Purchase money as provided in subsection (A) of this section, and the taxes are due and unpaid after the ten (10) -day period allowed, such purchaser, as well as the seller, shall be liable for the payment of the taxes unpaid by the seller.

### **3.01.540 Refunds/Credits**

- A. Bases for Refunds/Credits. The City shall make a refund or allow a credit for City sales or Use Tax paid only in the event of one of the following:
  1. Tax, fees, penalties or interest were overpaid or paid when not due; or
  2. Tax was paid on a Purchase made by or on behalf of a Person entitled to an exemption under this Tax Code.
- B. Conditions. The City will approve a refund request or give a credit only upon satisfaction of the following conditions, as applicable:
  1. An application for refund or credit is made upon the forms prescribed therefor;
  2. The application for refund or credit is made within the Limitations Period set forth in section 3.01.560;



3. The application for refund or credit is made by the Person that Purchased the goods or services and paid the tax thereon as shown on the invoice of the Sale thereof or other documentation satisfactory to the City;
4. The application for refund or credit is supported by the original paid invoice or Sales receipt issued by the seller;
5. Neither a refund nor a credit has been previously granted on the goods or services for which the refund or credit is claimed;
6. The refund or credit applied for is not in an amount greater than the tax paid.

The burden of proving that a transaction for which a refund or credit is claimed is exempt from taxation under this Tax Code shall be on the Person making such claim, under such reasonable requirements of proof as set forth in the Sales and Use Tax Regulations prescribed therefor.

C. Procedure.

1. Upon receipt of an application for a refund or credit, the Finance Department shall examine the application with due speed and shall notify the claimant of a decision thereon in writing.
2. An aggrieved claimant, within thirty (30) days after such decision is mailed to it, may petition the Chief Financial Officer for a local hearing on the claim in the manner provided in Section 3.01.710 and may appeal such decision as set forth in Part 7 of this Tax Code.

D. No Assignment. The right of any Person to a refund under this Tax Code shall not be assignable.

E. False Statements. Any Person who makes any false statement in connection with an application for a refund or credit under this section is guilty of a violation of this Tax Code and shall be punished in the manner provided by state law. If any Person is convicted under the provisions of this section, such conviction shall be prima facie evidence that all refunds received by such Person during the current year were obtained unlawfully, and the Chief Financial Officer is empowered to bring appropriate action for recovery of such refunds. A brief summary statement of the above-described penalties shall be printed on each form application for a refund.

F. Certain Refund Claims.

1. Claims for tax moneys paid in error shall be processed for refund in accordance with the Sales and Use Tax Regulations, with the following exceptions:
  - a. The Finance Department may first apply the proceeds from any claim for refund to any preexisting tax deficiencies or liabilities existing against the claimant.
  - b. In the event excess payment of tax moneys in any period is discovered by an Audit, and deficiencies are discovered and assessed against the Taxpayer as a result of such Audit, then such excess moneys may be first applied against such deficiencies outstanding to the date of the assessment but shall not be applied to any future tax liabilities.
2. In accordance with the Mobile Telecommunications Sourcing Act, all refunds for charges of mobile Telecommunications Service shall be made in accordance with the Sales and Use Tax Regulations adopted in conformity with this Tax Code.

**3.01.550 Confidential Nature of Returns**

- A. Except in accordance with judicial order or as otherwise provided herein, the City Manager, the Chief Financial Officer, and their agents, clerks and employees shall not divulge any information gained from any Return filed under the provisions of this Tax Code.
- B. The City officials charged with the custody of Returns filed pursuant to this Tax Code shall not be required to produce such Returns or evidence of any matters contained therein in any action or proceeding in any court, except on behalf of the Chief Financial Officer in an action under the provisions of this Tax Code to which the Chief Financial Officer is a party, or on behalf of any party to an action or proceeding under the provisions of this Tax Code or to punish a violator thereof or pursuant to any judicial order in which event the court may require

the production of and may admit in evidence so much of such Returns or of the facts shown thereby as are pertinent to the action or proceeding and no more.

- C. No provision of this section shall be construed to prohibit the delivery to a Taxpayer or to its duly authorized representative of a copy of any Return or report filed in connection with its tax, nor to prohibit the publication of statistics so classified as to prevent the identification of particular reports or Returns and the information contained therein, nor to prohibit the inspection of the City Attorney or any other legal representative of the City of the report or Return of any Taxpayer who shall bring an action to set aside or review the tax based thereon or against whom an action or proceeding is contemplated or has been instituted under this Tax Code.
- D. The provisions of this section shall not preclude the City Manager or the Chief Financial Officer, or any of their respective agents, clerks or employees, from divulging any information gained from any Return or audit to the federal government, the State, the Colorado Department of Revenue, the City or any other municipality, the City Attorney, the City Manager or the Chief Financial Officer, nor shall the City Manager, the Chief Financial Officer or their respective agents, clerks or employees be liable to any Person for such disclosure made for the purpose of computing or collecting the tax due and owing from any Person, or for the purpose of verifying compliance with this Tax Code or for the purpose of investigating any criminal or illegal activity.
- E. Any City officer or employee, or any agent thereof, who shall divulge any information classified by this Tax Code as confidential in any manner except in accordance with proper judicial order or as otherwise provided herein or by other law shall be guilty of a violation of this Tax Code and shall be punished in the manner provided by state law.

### **3.01.560 Limitations Period**

- A. Limitations Period Established; Automatic Tolling. The "Limitations Period" under this Tax Code shall be three (3) years.
  - 1. Except as expressly set forth in this Tax Code, once the Limitations Period has run, no Person shall engage in any of the following actions:
    - a. initiating the recovery of unpaid taxes, interest or penalties, which shall include:
      - i. engaging an Audit pursuant to Part VI hereof;
      - ii. issuing a notice of Deficiency; or
      - iii. issuing a distraint warrant.
    - b. applying for a refund hereunder; or
    - c. seeking an intercity claim for recovery.
  - 2. Once any action identified in subsection 1 above has been initiated, the Limitations Period shall be tolled, and shall not continue to run, until the action, including any final payment flowing therefrom, has been completed or is abandoned. No tolling of refunds or intercity claims shall be effective until receipt by the City of an application therefor that is complete in every detail.
- B. Application.
  - 1. Return Filed; Underpayment. Except as otherwise set forth herein, the Limitations Period for each of the following actions shall begin to run on the date upon which the respective tax is or was payable:
    - a. The assessment of taxes for any period, including the imposition of interest and/or penalties thereon;
    - b. The filing of any notice of lien;
    - c. The issuance of any distraint warrant; and
    - d. Any suit or other action for collection of such tax, interest and penalties;
  - 2. Construction Materials. The Limitations Period for a construction project for which the City has issued a building permit or construction permit shall begin on the date of issuance of

- a certificate of occupancy for the construction project or the date of the City's final inspection of the construction project, whichever occurs later.
3. Refunds/Credits. The Limitations Period for refunds and credits under section 3.01.540 shall begin to run upon the date the taxes for which the refund or credit is claimed became due and payable.
  4. Intercity Claims for Recovery. Subject to the provisions of C.R.S. 29-2-106.1(5), the Limitations Period for intercity claims shall begin upon payment to the City of the tax or taxes at issue.
- C. Exceptions. The Limitations Period shall not apply or run under any of the following circumstances:
1. Return Not Filed. When a Person, whether or not licensed, fails to file a Return. In such instance, the taxes due, together with interest and penalties thereon, may be assessed, and proceedings for the collection of such taxes may be commenced, at any time.
  2. False or Fraudulent Return. Notwithstanding anything herein to the contrary, when a Person files a false or fraudulent return.
- D. Extension. Prior to the expiration of a limitations period, the Taxpayer and the City may agree in writing to an extension thereof, and the period so agreed upon may be extended by subsequent agreements in writing.

### **3.01.570 Excess Tax; Remittance**

If any Retailer, during any reporting period, collects as a tax an amount in excess of the tax rate imposed under section 3.01.410 of its total taxable Sales, then it shall remit to the Chief Financial Officer the full net amount of the tax imposed in this Tax Code and also such excess amount. The retention by the Retailer of any excess amount of tax collections the tax rate imposed under section 3.01.410 on the total taxable Sales of such Retailer or the intentional failure to remit punctually to the Finance Department the full amount required to be remitted by the provisions of this Tax Code is declared to be a violation of this Tax Code and shall be recovered, together with interest, penalties and costs, as provided in Section 3.01.510.

### **3.01.580 Other Remedies**

- A. No provision of this Tax Code shall preclude the City from using any other lawful penalties or other remedies applicable to the collection of Sales or Use Taxes. If the City must use other lawful penalties or other remedies for the collection of the Sales or Use Taxes, the City shall be entitled to recover its attorney fees, costs of litigation and any other legal fees associated with any legal action undertaken to collect the Sales and/or Use Taxes due. The Chief Financial Officer is authorized to make a compromise settlement of any claim for Sales or Use Tax due under this Tax Code.
- B. The Chief Financial Officer is authorized to issue subpoenas to require the presence of Persons and the production of papers, books and records necessary to the determination of any matter the Chief Financial Officer is authorized to determine. It is unlawful for any Person to fail to comply with any subpoena issued by the Chief Financial Officer.
- C. A subpoena shall be served in the same manner as a subpoena issued by the District Court of the state. Upon failure of any witness to comply with such subpoena, the City Attorney shall, at the direction of the Chief Financial Officer:
  1. Petition any judge of the Municipal Court of the City, setting forth that due notice has been given of the time and place of attendance of the witness and the service of the subpoena, that the court after hearing evidence in support of or contrary to the petition, enter its order compelling the witness to attend and testify or produce books, records or other evidence, under penalty of punishment for contempt in case of willful failure to comply with such order of court; or
  2. Petition the District Court in and for the county, setting forth that due notice has been given of the time and place of attendance of the witness and the service of the subpoena, that

the court after hearing evidence in support of or contrary to the petition, enter its order as in other civil actions, compelling the witness to attend and testify or produce books, records or other evidence, under penalty of punishment for contempt in case of willful failure to comply with such order of court.

### **3.01.590 Jeopardy Assessment**

- A. Jeopardy Determination. If, at any time, the Chief Financial Officer determines that collection of any City tax, whether or not previously assessed, will be jeopardized for any reason, the Chief Financial Officer may, in his or her discretion, declare the taxable period immediately terminated, determine the tax, and issue a notice of lien and notice of Deficiency, and demand immediate payment thereof.
- B. Collection. Upon the Chief Financial Officer's jeopardy determination, the tax, along with any interest and penalties thereon, shall be due and payable forthwith, and the Chief Financial Officer may immediately proceed to collect such tax as provided in this Tax Code.
- C. Security. Collection of the tax under this section may be stayed if the Taxpayer provides security for payment satisfactory to the Chief Financial Officer.

## **PART 6. AUDIT AND ASSESSMENT**

### **3.01.610 Audit of Records**

The Finance Department may, for the purpose of ascertaining the total correct tax liability from any Person Engaged in Business in the City, conduct an "Audit" by examining all books, accounts and records of such Person to determine the Person's tax liability to the City and/or the amount of any credit due to the Person. In lieu of a full audit of all such books, accounts and records, the Chief Financial Officer, in his or her sole and absolute discretion, may authorize the use of a test-period Audit or other appropriate sampling techniques to compute the tax liability of any Person under Audit.

### **3.01.620 Duty to Keep Records; Availability**

It is the duty of every Person liable to the City for any tax imposed under this Tax Code to keep and preserve suitable records and make them available for examination and Audit at any time, as provided in Section 3.01.260.

### **3.01.630 Engagement; Time and Location**

- A. Engagement Letter. The Finance Department shall engage an Audit by sending notice to the Taxpayer in the form of an "Audit Engagement Letter." The Audit Engagement Letter shall:
  - 1. Notify the Taxpayer of the Audit;
  - 2. Provide detailed instructions about the audit process, including the nature of the documents, papers and records to be produced; and
  - 3. Notify the Taxpayer that the Finance Department and the Taxpayer will attempt to come to a mutual agreement on one or more dates and times for the Audit.
- B. Time and Location.
  - 1. In the event the parties are unable to agree on one or more dates and times for the Audit, the Chief Financial Officer shall designate the time and location of the Audit.
  - 2. Any Person under Audit may request to have the Audit conducted at a location outside of the Denver metropolitan area. If the Chief Financial Officer, in the exercise of his/her reasonable discretion, grants such request, the Person shall pay all reasonable costs and expenses incurred by the Finance Department to conduct the Audit at such location.

**3.01.640 Subpoena to Obtain Records**

If any Person refuses to voluntarily produce any of the foregoing information, the Chief Financial Officer is authorized to issue subpoenas to require the presence of Persons and the production of papers, books and records, as provided in section 3.01.580.

**3.01.650 Exempt Organizations**

Any exempt organization claiming exemption under the provisions of this Title is subject to audit in the same manner as any other Person Engaged in Business in the City.

**3.01.660 Coordinated Audit**

Taxpayers licensed with the City under this Tax Code and holding a similar Sales Tax license in at least four (4) other Colorado municipalities that administer their own Sales Tax collection, may request a coordinated audit as provided for in the City Sales and Use Tax Regulations.

**3.01.670 Estimated Audit Assessment**

If the Finance Department is unable to audit the records of a Person due to the Person's failure or refusal to provide sufficient records necessary to complete the audit, the Chief Financial Officer shall make an estimate of tax due based upon or reasonably inferred from such information as may be available and shall issue to the Person a notice of Deficiency based on such estimate.

**PART 7. HEARINGS AND APPEALS**

**3.01.710 Local Hearing**

A. Request for Hearing. If any Taxpayer contests any Deficiency notice or denial of refund, the Taxpayer may make a written request to the Chief Financial Officer for a hearing and a correction of the amount of the tax so assessed or refund requested. If protesting any amount in a Deficiency notice, the Taxpayer shall pay any unprotested tax, penalty and interest, in full, within the time period specified in the Deficiency notice.

1. Timing of Request. The request for hearing must be postmarked, emailed or hand-delivered to the Finance Department within thirty (30) days after such Deficiency notice or denial of refund is sent to the Taxpayer.
2. Content of Request. Such application for hearing shall contain the following information:
  - a. The Taxpayer's name, address and account number;
  - b. The taxable period(s) involved;
  - c. The type and amount of tax in dispute;
  - d. An itemized schedule of the findings with which the Taxpayer disagrees; and
  - e. A summary statement of the grounds upon which the Taxpayer relies for the purpose of showing the tax is not due.
3. Time and Location of Hearing. If an administrative hearing is granted, the Chief Financial Officer shall notify the Taxpayer in writing, within one hundred fifty (150) days after receipt of the Taxpayer's request for hearing, of the time and location for the hearing; provided, however, that the City and the Taxpayer shall have the option to extend the hearing date by mutual written agreement.

B. Hearing.

1. A hearing officer chosen by the City shall hold a hearing on the merits of the application in accordance with the provisions hereof.
2. The hearing shall be informal in nature, and no transcript, rules of evidence or filing of briefs shall be required. However, the Taxpayer may elect to submit a brief, in which case the City may also submit a brief. Any brief submitted by the Taxpayer shall be submitted to the hearing officer not less than thirty (30) days prior to the date set for the hearing.

Any brief filed by the City in response shall be submitted to the hearing officer not less than fifteen (15) days prior to the date set for the hearing.

3. At the request of the Taxpayer and upon the agreement by the Chief Financial Officer, the hearing officer may hold the hearing solely on the briefs filed by the parties.

C. Decision.

1. The hearing officer shall make such decision in the matter as is just and lawful and shall furnish a copy of such decision to both the Taxpayer and the Chief Financial Officer in the form of a written order. The hearing shall be held and the order rendered within one hundred and eighty (180) days after the City's receipt of the Taxpayer's request for a hearing.
2. The order shall state the grounds for the hearing officer's decision and shall set forth the amount of the claim for refund that is denied, and/or the amount of taxes found still due and owing, if any.
3. The hearing officer's decision shall become final, and all amounts due shall be paid to the City, including accrued interest and penalties, within thirty (30) days after the date of the order, unless an appeal is timely filed pursuant to Section 3.01.620.
4. If the hearing officer finds in favor of the Taxpayer, all interest and penalties imposed or assessed upon the amounts to be refunded or the taxes found not to be due shall be eliminated. Any interest and/or penalties assessed or imposed upon taxes due shall continue to accrue until such amounts are paid in full.

D. Exhaustion of Local Remedies.

1. Failure to strictly comply with the requirements of subsections (A)(1) and (A)(2) of this section shall result in denial of the request for hearing and shall constitute a failure to exhaust local remedies. In such event, the City shall respond to the request for hearing in writing, setting forth the reasons for denial.
2. Failure by the Taxpayer to appear at the hearing shall constitute a failure by the Taxpayer to exhaust local remedies.
3. If a Taxpayer protested a notice of final determination, assessment and demand for payment, but elects to pay the assessment in lieu of proceeding to a protest hearing, such Taxpayer shall be deemed to have exhausted local remedies and cannot subsequently submit an application for a refund of amounts paid under the notice of final determination.
4. Conclusion of the hearing provided for herein shall constitute exhaustion of local remedies for purposes of C.R.S. § 29-2-106.1, as amended.

**3.01.720 Appeal**

Upon exhaustion of local remedies, the Taxpayer may appeal in accordance with the provisions of C.R.S. § 29-2-106.1, as amended, or Colorado Rules of Civil Procedure 106, as amended.