AGENDA
REGULAR MEETING OF THE CITY COUNCIL
CITY OF LAKEWOOD, COLORADO
VIRTUAL MEETING
DECEMBER 14, 2020
7:00 P.M.

To watch the Council meeting live, please use either one of the following links:

City of Lakewood Website:  https://www.Lakewood.org/CouncilVideos
or
Lakewood Speaks:  https://lakewoodspeaks.org/

Phone Number for Public Comment:  (will be provided)
Webinar ID:  (will be provided)

(press # after entering the webinar id then press # once more to join the meeting)

Press *9 to Request to Speak
(You will be prompted when to speak. After speaking, you can hang up or hold to speak on a different agenda item)

Press *6 to Unmute

The City of Lakewood does not discriminate on the basis of race, age, national origin, color, creed, religion, sex, sexual orientation or disability in the provision of services. People with disabilities needing reasonable accommodation to attend or participate in a City service program, can call 303-987-7080 or TDD 303-987-7057. Please give notice as far in advance as possible so we can accommodate your request.

ITEM 1 – CALL TO ORDER

ITEM 2 – ROLL CALL

ITEM 3 – PLEDGE OF ALLEGIANCE

ITEM 4 – PUBLIC COMMENT

ITEM 5 – EXECUTIVE REPORT

CITY MANAGER

CONSENT AGENDA

ORDINANCES ON FIRST READING

(Ordinances are on first reading for notice and publication only; public hearings are held on second reading)
ITEM 6 – RESOLUTION 2020-48 – ESTABLISHING CERTAIN FEES FOR THE CITY OF LAKEWOOD FOR FLAT FEE BUILDING PERMITS, BUILDING PLAN REVIEW AND INSPECTIONS


ITEM 8 – ACCEPTING MINUTES OF THE BOARDS AND COMMISSIONS

<table>
<thead>
<tr>
<th>Lakewood Advisory Commission</th>
<th>May 13, 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Executive Committee Meeting</td>
<td></td>
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<tr>
<td>Lakewood Advisory Commission</td>
<td>August 4, 2020</td>
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<tr>
<td>Executive Committee Meeting</td>
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<tr>
<td>Lakewood Advisory Commission</td>
<td>September 2, 2020</td>
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<td>Executive Committee Meeting</td>
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<tr>
<td>Lakewood Advisory Commission</td>
<td>June 17, 2020</td>
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<tr>
<td>Full Commission Meeting</td>
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<tr>
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<td>August 19, 2020</td>
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</tr>
<tr>
<td>Lakewood Advisory Commission</td>
<td>September 16, 2020</td>
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<td>Full Commission Meeting</td>
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</tbody>
</table>

END OF CONSENT AGENDA

RESOLUTIONS

ITEM 9 – RESOLUTION 2020-49 – ADOPTING 2020 SALES & USE TAX RULES AND REGULATIONS

ITEM 10 – CONTINUED RESOLUTION 2020-45 – AUTHORIZING ALLOCATIONS FOR 533 VAN GORDON STREET, LAKEWOOD, CO

ORDINANCES ON SECOND READING AND PUBLIC HEARINGS

ITEM 11– ORDINANCE O-2020-28 – AUTHORIZING A SUPPLEMENTAL APPROPRIATION TO THE 2020 CITY OF LAKEWOOD ANNUAL BUDGET IN THE AMOUNT OF $60,000 AND AUTHORIZING THE EXPENDITURE OF GRANT FUNDS FROM THE PEACE OFFICER STANDARDS AND TRAINING BOARD ON BEHALF OF THE ROONEY VALLEY LAW ENFORCEMENT TRAINING FACILITY FOR INSTALLATION OF A PRE-CAST CONCRETE BALLISTIC WALL AT THE TRAINING FACILITY
ITEM 12 – ORDINANCE O-2020-29 – DECLARING THE INTENT OF THE CITY OF LAKEWOOD TO ACQUIRE INTERESTS IN PROPERTY FOR PUBLIC PURPOSES FOR THE CONSTRUCTION OF A SIDEWALK ALONG THE SOUTH SIDE OF 1ST AVENUE FROM GARRISON STREET TO CREIGHTON MIDDLE SCHOOL AND AUTHORIZING NEGOTIATIONS WITH PROPERTY OWNERS, ACCEPTANCE OF CONVEYANCE INSTRUMENTS AND, SUBJECT TO FURTHER CITY COUNCIL APPROVAL, CONDEMNATION OF REAL PROPERTY INTERESTS

ITEM 13 – ORDINANCE O-2020-30 – DECLARING THE INTENT OF THE CITY OF LAKEWOOD TO ACQUIRE INTERESTS IN PROPERTY FOR PUBLIC PURPOSES FOR THE CONSTRUCTION OF A SIDEWALK ALONG THE WEST SIDE OF INDEPENDENCE STREET FROM 6TH AVENUE FRONTAGE ROAD TO LAKEWOOD HIGH SCHOOL AND AUTHORIZING NEGOTIATIONS WITH PROPERTY OWNERS, ACCEPTANCE OF CONVEYANCE INSTRUMENTS AND, SUBJECT TO FURTHER CITY COUNCIL APPROVAL, CONDEMNATION OF REAL PROPERTY INTERESTS

ITEM 14 – ORDINANCE O-2020-31 – DECLARING THE INTENT OF THE CITY OF LAKEWOOD TO ACQUIRE INTERESTS IN PROPERTY FOR PUBLIC PURPOSES FOR THE REPLACEMENT OF TRAFFIC SIGNALS AND INTERSECTION IMPROVEMENTS ALONG KIPLING STREET AND AUTHORIZING NEGOTIATIONS WITH PROPERTY OWNERS, ACCEPTANCE OF CONVEYANCE INSTRUMENTS AND, SUBJECT TO FURTHER CITY COUNCIL APPROVAL, CONDEMNATION OF REAL PROPERTY INTERESTS

ITEM 15 – ORDINANCE O-2020-32 – ADOPTING A REVISED CHAPTER 3.01 AND ANCILLARY MUNICIPAL CODE CHANGES

ITEM 16 – GENERAL BUSINESS

MOTION TO EXTEND EMERGENCY DECLARATION – I MOVE TO EXTEND THE DECLARATION OF DISASTER IN THE CITY OF LAKEWOOD COLORADO RESULTING FROM THE CORONAVIRUS/COVID-19 PANDEMIC, PURSUANT TO SECTION 1.27 OF THE LAKEWOOD MUNICIPAL CODE, ORIGINALLY DECLARED BY PROCLAMATION OF THE LAKEWOOD CITY MANAGER ON MARCH 17, 2020, EXTENDED BY MAJORITY VOTE OF THE CITY COUNCIL ON MULTIPLE OCCASIONS, AND BY THIS MOTION EXTENDED AGAIN UNTIL DECEMBER 28, 2020, UNLESS EARLIER EXTENDED OR TERMINATED BY THE CITY COUNCIL

ITEM 17 – MAYOR AND CITY COUNCIL REPORTS

A. MAYOR
B. MAYOR PRO TEM
C. COUNCIL MEMBERS

ITEM 18 – ADJOURNMENT
A RESOLUTION

ESTABLISHING CERTAIN FEES FOR THE CITY OF LAKEWOOD FOR FLAT FEE BUILDING PERMITS, BUILDING PLAN REVIEW, AND INSPECTIONS

WHEREAS, Title 14 of the Lakewood Municipal Code directs the City Council to establish by resolution fees for building permits, building plan review, and inspections;

WHEREAS, City staff has proposed various adjustments in the flat fee amounts to cover the cost of staff time and resources related to the inspection and plan review for various building permits; and

WHEREAS, the City Council hereby finds and determines that approving the revised schedule of fees is and shall be in the best interest of the residents of the City.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lakewood, Colorado, that:

SECTION 1. The following fees are hereby established for flat fee permits, building plan review and inspections, effective on January 1, 2021:

<table>
<thead>
<tr>
<th>FLAT FEE PERMITS</th>
<th>FEES</th>
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<tbody>
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<td>Water heater/boiler</td>
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<td>Demolition</td>
<td></td>
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<td>Interior demolition or interior asbestos abatement</td>
<td>$80.00</td>
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<tr>
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</tr>
<tr>
<td>buildings</td>
<td></td>
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<tr>
<td>All other structures</td>
<td>$255.00</td>
</tr>
<tr>
<td>Move and Set: Pre-move inspection fee plus mileage charge for buildings located beyond city limits.</td>
<td>$200.00 plus mileage if outside city limits</td>
</tr>
<tr>
<td>Building permit fee to be calculated per schedule with valuation based on cost of the moving operation plus the cost of the building to be moved, foundation and additional construction proposed</td>
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### BUILDING PLAN REVIEW

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### OTHER BUILDING INSPECTIONS AND PLAN REVIEWS

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*Or the total hourly cost to the city, whichever is greatest. This cost shall include supervision, overhead, equipment, hourly wages and benefits of the employees involved.

SECTION 2. The fees established hereby shall not be refunded in whole or in part unless the application was accepted due to an error on the part of the City staff.

INTRODUCED, READ AND ADOPTED by a vote of ____ for and ____ against at a virtual regular meeting of the Lakewood City Council held on December 14, 2020, at 7 o'clock p.m.

Adam Paul, Mayor

ATTEST:

______________________________
Bruce Roome, City Clerk

APPROVED AS TO FORM:

______________________________
Timothy P. Cox, City Attorney
DATE OF COUNCIL MEETING: DECEMBER 14, 2020 / AGENDA ITEM NO. 6

To: Mayor and City Council

From: Jay N. Hutchison, Director of Public Works, 303-987-7901

Subject: RESOLUTION UPDATING FLAT FEES RELATED TO BUILDING PERMITS, BUILDING PLAN REVIEW AND INSPECTIONS

SUMMARY STATEMENT: This resolution would update fees charged for certain building permits based on flat fees rather than fees based on project valuation.

BACKGROUND INFORMATION: Building permit fees are generally calculated based on the valuation of the project. Building permit fees increase as the project valuation increases.

In 2014 City Council approved a series of flat fees for permits for several smaller projects such as replacement furnaces or water heaters in residences, re-roof permits for residences, fences and other similar projects. These projects have a predictable number of inspections and administrative tasks, which do not change as the valuation changes. The flat fees approximate the city’s cost for staff and resources needed to issue the permits and perform the inspections. The flat fees for these permits tend to be lower than if based on the project valuation.

The flat fees, as well as hourly rates for some plan review and inspections, have not be updated since 2014. Salary adjustments, changes in benefits and increased costs for resources such as vehicles and fuel have resulted in the flat fees and hourly rates no longer covering the city’s costs.

Public Works staff is recommending the flat fees and hourly rates be updated according to the following tables.

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</table>
Temporary construction trailer | $140.00
---|---
Demolition | 
Interior demolition or interior asbestos abatement | $80.00
Single-family or duplex building and related accessory buildings | $140.00
All other structures | $255.00
Move and Set: Pre-move inspection fee plus mileage charge for buildings located beyond city limits. | $200.00 plus mileage if outside city limits
Building permit fee to be calculated per schedule with valuation based on cost of the moving operation plus the cost of the building to be moved, foundation and additional construction proposed | 

**FLAT FEE PERMITS (continued)**

**BUILDING PLAN REVIEW**

| Plan review fee for all building permits except Flat Fee Permits | 65% of permit fee |
| Masterplan for single-family home construction | 
| Initial plan review for first use of masterplan | 65% of permit fee $325.00 each use |
| Second and subsequent use of masterplan | |
| Temporary Certificate of Occupancy - initial issuance or extension ($500.00 refunded if TCO converted to Final Certificate before TCO expiration) | $1,000.00 |

**OTHER BUILDING INSPECTIONS AND PLAN REVIEWS**

| Inspections outside of normal business hours (minimum charge: two hours) | $110.00 per hour* |
| Reinspection fees (minimum charge: one hour) | $80.00 per hour* |
| Inspections for which no fee is specifically indicated (minimum charge: one hour) | $80.00 per hour* |
| Additional plan review required by changes, additions or revisions to approved plans (minimum charge: four hours) | $65.00 per hour* |
| Reopen expired permit | $60.00 |

*Or the total hourly cost to the city, whichever is greatest. This cost shall include supervision, overhead, equipment, hourly wages and benefits of the employees involved.

**BUDGETARY IMPACTS:** The updated fees will result in additional permit, plan review and inspection revenue to the general fund.

**STAFF RECOMMENDATION:** Approval of the Resolution.
**ALTERNATIVES:** City Council could choose to not approve this Resolution and the flat fees for permits, and hourly rates for plan reviews and miscellaneous inspections will remain unchanged. City Council could make adjustments to the recommended fees; however, these fees are limited to no more than the estimated cost of providing the service for which the fee is charged.

**PUBLIC OUTREACH:** Notification has been made through the City Council agenda process and through Lakewood Speaks.

**NEXT STEPS:** If the City Council approves the resolution, the fees will be included in the published fee schedule and the updated fees will become effective January 1, 2021.

**ATTACHMENTS:** Resolution 2020-48
Resolution with redlines showing proposed changes from current fees

**REVIEWED BY:** Kathleen E. Hodgson, City Manager
Benjamin B. Goldstein, Deputy City Manager
Timothy P. Cox, City Attorney
A RESOLUTION

ESTABLISHING CERTAIN FEES FOR THE CITY OF LAKEWOOD FOR FLAT FEE BUILDING PERMITS, BUILDING PLAN REVIEW AND INSPECTIONS

WHEREAS, Title 14 of the Lakewood Municipal Code directs the City Council to establish by resolution fees for building permits, building plan review and inspections; and

WHEREAS, City staff has proposed various adjustments in the flat fee amounts to cover the cost of staff time and resources related to the inspection and plan review for various building permits; and

WHEREAS, the City Council wishes to approve the revised schedule of fees.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lakewood, Colorado, that:

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*Or the total hourly cost to the city, whichever is greatest. This cost shall include supervision, overhead, equipment, hourly wages and benefits of the employees involved.

SECTION 2. The preceding fees shall not be refunded in whole or in part, unless the application was accepted due to an error on the part of the City staff.

INTRODUCED, READ AND ADOPTED by a vote of __ for and __ against at a regular meeting of the City Council December 14, 2020, at 7 o'clock p.m. at Lakewood Civic Center, South Building, 480 South Allison Parkway, Lakewood, Colorado.
AN ORDINANCE


WHEREAS, in the early 1990s, the Westland Mall, located on the north side of Colfax Avenue between Miller and Owens Streets in Lakewood, Colorado (the “Westland Mall”), was suffering from declining sales, high vacancy rates and building deterioration;

WHEREAS, the City of Lakewood (the “City”) worked with the then-owners of the Westland Mall (the “Westland Owners”) to convert the retail center into the “Westland Town Center” by redeveloping the property;

WHEREAS, to support the redevelopment process, the Lakewood City Council agreed to infuse approximately $5,000,000 into the project by acquiring the parking lot of the Westland Mall/Westland Town Center (the “Westland Parking Lot”) via a “friendly” condemnation and compensating the Westland Owners in that amount;

WHEREAS, as part of the City’s acquisition of the Westland Parking Lot, the City and the Westland Owners entered into various agreements, including a contract executed June 16, 1992, attached hereto as Exhibit A (the “Option Contract”), which provided the Westland Owners with the option to re-acquire the Westland Parking Lot for $1,000,000;

WHEREAS, the current owner of the Westland Town Center, RCG Ventures, I, LLC (“RCG”), has notified the City that it has chosen to exercise its option to re-acquire the Westland Parking Lot in accordance with the provisions of the Option Contract;

WHEREAS, pursuant to the City’s home rule charter, the sale of City-owned real property must be accomplished by ordinance;

WHEREAS, approval of this ordinance on first reading is intended only to confirm that the City Council desires to comply with the Lakewood Municipal Code by setting a public hearing to provide City staff and the public an opportunity to present evidence and testimony regarding the proposal; and

WHEREAS, approval of this ordinance on first reading does not constitute a representation that the City Council, or any member of the City Council, supports, approves, rejects or denies the proposal.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Lakewood, Colorado, that:

SECTION 1. The sale of the Westland Parking Lot to RCG in accordance with the provisions of the Option Contract is hereby approved.
SECTION 2. The City Manager is hereby authorized to take all actions necessary to complete the sale of the Westland Parking Lot to RCG.

SECTION 3. This ordinance shall take effect thirty (30) days after final publication.

SECTION 4. If any provision of this Ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remaining portions or applications of this Ordinance that can be given effect without the invalid portion, provided that such remaining portions or application of this Ordinance are not determined by the court to be inoperable.

I hereby attest and certify that the within and foregoing ordinance was introduced and read on first reading at a virtual regular meeting of the Lakewood City Council on the 14th day of December, 2020; published by title in the Denver Post and in full on the City of Lakewood's website, www.lakewood.org, on the 17th day of December, 2020; set for public hearing to be held on the 28th day of December, 2020; read, finally passed and adopted by the City Council on the day of December, 2020; and signed by the Mayor on the day of December, 2020.

______________________________
Adam Paul, Mayor

ATTEST:

______________________________
Bruce Roome, City Clerk

APPROVED AS TO FORM:

______________________________
Timothy P. Cox, City Attorney
STAFF MEMO

DATE OF COUNCIL MEETING: DECEMBER 14, 2020 / AGENDA ITEM NO. 7

To: Mayor and City Council

From: Robert Smith, Economic Development Director, 303-987-7732
Greg Graham, Deputy City Attorney, 303-987-7461

Subject: ORDINANCE O-2020-33 SALE OF THE CITY-OWNED WESTLAND TOWN CENTER PARKING LOT TO RCG VENTURES I, LLC PER EXISTING OPTION CONTRACT

SUMMARY STATEMENT: RCG Ventures, I, LLC (“RCG”), the current owner of the Westland Town Center and successor in interest to an Option Contract, is wishing to exercise their option to purchase the City-owned Westland Town Center parking lot (“Parking Lot”) for the pre-determined price of one million dollars ($1,000,000).

BACKGROUND INFORMATION: The City of Lakewood (the “City”) owns the 21.54-acre Parking Lot at the Westland Town Center located at 10425-10755 West Colfax Avenue (identified by Parcel ID 39-333-11-002 & 39-334-11-026). In 2016, RCG acquired the Westland Town Center property (identified by Parcel ID 39-334-11-021 & 027), which includes the Lowe’s building and retail strip. The adjacent former Sears property (identified by Parcel ID 39-333-11-003), is now owned by Seritage Growth Properties.

- In the 1960s, the above properties, generally between Colfax & 17th Avenues and Owens & Miller Streets, were developed into the Westland Mall and included some additional retail pad sites.
- For the better part of three decades, the Westland Mall played a top tier role in the commercial success of Lakewood. By the late 1980s/early 1990s, the properties were caught up in a rapid downturn in the economy.
- In the early 1990s, with greatly declining sales, high vacancy and the deterioration of buildings, the City worked with the owner of the retail center to convert the Westland Mall into the Westland Town Center. In the process, the City acquired ownership of the Parking Lot for public parking through a “friendly” condemnation that infused approximately $5M into the project. Since that time, responsibilities for the maintenance and insurance of the Parking Lot have been with the owners of the adjacent retail property.
- For the two decades following, the Westland Town Center again played a significant role in Lakewood’s commercial success. However, by the late 2010s, the property was struggling to maintain commercial viability.

The City entered into numerous agreements (approved by City Council Ordinances and Resolutions) with the owners of the retail center to facilitate the redevelopment in the 1990s. Some of those agreements strictly limit the use of the City-owned parcel to a parking lot for the use of the adjacent retail properties. Another one of those agreements was an Option Contract, which gave the owners of the Westland Town Center the option to buy back the Parking Lot from the City for the greater of the remaining balance of the Sales Tax and Revenue Bonds (“Bonds”) or one million dollars ($1,000,000), whichever is greater. The Bonds (which were issued to finance the acquisition and improvement of the Parking Lot) were paid off in 2012, so therefore, since then, the pre-determined price of the Parking Lot has been the one million dollars ($1,000,000). The City has executed
various estoppel certificates over the years representing to successors in ownership, including RCG, that the Option Contract was and remains valid.

With their purchase of the Westland Town Center, RCG are the successors in interest to all of the previously executed agreements. RCG has notified the City that it wishes to exercise their rights under Option Contract and purchase the Parking Lot, reuniting it with their property and greatly enhancing the opportunities for re-use or redevelopment of the whole area. Despite the commitments made under the Option Contract, sale of City-owned property requires the approval of the City Council via Ordinance.

**BUDGETARY IMPACTS:** In alignment with the Option Contract, the City will receive one million dollars ($1,000,000) as the pre-determined purchase price for the Parking Lot. Additionally, the currently tax-exempt, city-owned property, will be subject to property tax.

**STAFF RECOMMENDATIONS:** Staff recommends approving Ordinance O-2020-33

**ALTERNATIVES:** If this Ordinance is not approved, the sale would not take place, and the City would retain ownership of the Parking Lot under the various agreements, requiring the property to be used solely for pedestrian and vehicular access and parking for the Westland Town Center. According to RCG, this would make redevelopment or reuse of the Westland Town Center impractical, and RCG would have to decide whether to accept the Council’s decision or take other action.

**PUBLIC OUTREACH:** Proper notice of this Council consideration of Ordinance O-2020-33 was given.

**ATTACHMENTS:** Ordinance O-2020-33
Property Map

**REVIEWED BY:** Kathleen E. Hodgson, City Manager
Benjamin B. Goldstein, Deputy City Manager
Timothy P. Cox, City Attorney
FULL COMMISSION SPECIAL MEETING
LAKEWOOD ADVISORY COMMISSION
June 17, 2020, 5:00 p.m.
Virtual Meeting

MINUTES

CALL TO ORDER

Chair Laurence Leiber called the virtual meeting to order at 5:00 p.m.

ROLL CALL

Commissioners Present: Ash, Baschiera, Bernard Barthel, Heide Barthel, Bunch, Cornell, Freeman, Gelfuso-Goetz, Gordey, Gurza, Hensley, Johnson, Leiber, McBride, Nowak, Osborn, Ralph, Rein, Rivard, and Rosebrook

Commissioners Absent: Nguyen, Stamps

A total of 21 members were present and 2 members were absent. A quorum was present.

Staff Present: City Clerk Michele Millard and LAC Coordinator Everett Abegg.

CORRESPONDENCE

There was no correspondence presented.

PUBLIC COMMENT

Guests Sean and Rachel Garcia introduced themselves and stated that they were interested in learning more about the LAC.

NEW BUSINESS

1) Ambassador Program Discussion – Laurence Leiber

Chair Laurence Leiber provided an overview of the LAC Ambassador Program. He stated that LAC members could serve as City ambassadors to several programs and file reports for City Council that detailed their meetings. He provided an overview and meeting details for several organizations which included Jefferson County Parks-Open Space Advisory Committee, Jefferson County Board of Commissioners, Foothills Animal Shelter, Regional Air Quality Council, and Jefferson Public Schools Board of Education.

Commissioners Rick Ash and Lynn Nowak expressed interest in becoming Ambassadors for the Foothills Animal Shelter. Commissioner Jamie Cornell expressed interest in becoming an Ambassador for the Jefferson County Public Schools Board of Education. Commissioner Andrea Gelfuso-Goetz expressed interest in becoming an Ambassador for the Regional Air Quality Council.
2) Full Commission Assignment Brainstorming - Laurence Leiber

The Full Commission brainstormed ideas for Grassroots Assignment Proposals for 2020. Ideas for Grassroots Assignments included:

- Civility and community proposed by Roger Freeman.
- Bicycle paths and improving transit options proposed by Laurence Leiber.
- LAC promotion to communities proposed by Roberto Gurza.
- Fishing Line Disposal proposed by Andrea Gelfuso-Goetz.
- Small business and the economic effects of COVID proposed by Jaime Cornell.

ADJOURN

There being no further business to come before the Full Commission, Chair Laurence Leiber adjourned the meeting at 6:36 p.m.

Respectfully submitted,

Peggy Ralph, Secretary
CALL TO ORDER

Chair Laurence Leiber called the virtual meeting to order at 4:31 p.m.

ROLL CALL

Commissioners Present: Ash, Hensley, McBride, Ralph, Malandri and Leiber were present.

A total of 6 commissioners were present. A quorum was present.

Commissioners Absent: None.

Staff Present: City Clerk Michele Millard and LAC Coordinator Everett Abegg were in attendance.

CORRESPONDENCE

None.

PUBLIC COMMENT

None.

NEW BUSINESS

1) COVID-19 Update

City Clerk Michele Millard provided an update on the status of the City and LAC. She stated that the City remains closed and that under the State’s Safer-at-Home Order, gatherings of 10 or more people are discouraged.

Chair Laurence Leiber stated that he desired to use the next LAC Full Commission meeting on May 20, 2020 to finalize the Sustainability Committee’s Renewable Energy Mitigation Program Proposal. He explained that with the cancellation of LAC’s Annual Planning session that Full Commission should decide the next meeting to hold the brainstorming sessions that otherwise would have taken place at the planning session.

Commissioner’s Ash, Hensley, and McBride expressed interest in obtaining City Council direction as to what ways LAC might be able to help during the COVID-19 crisis.
ADJOURNMENT

There being no further business to come before the Executive Committee, Chair Laurence Leiber adjourned the meeting at 5:09 p.m.

Respectfully submitted,

Peggy Ralph, Secretary
CALL TO ORDER

Vice Chair Nicole Malandri called the virtual meeting to order at 3:33 p.m.

ROLL CALL

Commissioners Present: Hensley, McBride, Ralph, and Malandri were present.

Commissioner Roger Freeman was also in attendance.

Commissioners Absent: Commissioners Ash, Leiber.

A total of 4 commissioners were present. A quorum was present.

Staff Present: City Clerk Michele Millard and LAC Coordinator Everett Abegg were in attendance.

CORRESPONDENCE

None.

PUBLIC COMMENT

None.

NEW BUSINESS

1) Civility in Lakewood Grassroots Proposal

Commissioner Roger Freeman presented the assignment wording for Civility in Lakewood During Challenging Times Due to the COVID-19 Pandemic. He stated that the assignment is intended to empower residents to have productive conversations in a time of uncertainty and instability. There was consensus from the Executive Committee to send the assignment wording to City Council for approval.
2) Fishing Line Grassroots Proposal

Commissioner Casey Hensley presented the draft assignment Fishing Line Disposal. She stated that a concerned citizen approached the Sustainability Committee with concerns with an increase of fishing line waste in City parks. She stated that as more residents sought outdoor recreation during the COVID-19 pandemic that fishing line waste was appearing far more in City parks and that the assignment would primarily be focused on educating citizens on how to properly dispose of fishing line. There was consensus from the Executive Committee to send the assignment wording to City Council for approval.

3) Civic Awareness Grassroots Proposal

The draft assignment COVID-19 Small Business Impacts was presented on behalf of Commissioner Rick Ash. The assignment will focus on researching the financial and social impacts of COVID-19 on small businesses in Lakewood. There was consensus from the Executive Committee to send the assignment wording to City Council for approval.

4) City Council and LAC Check-in

City Clerk Michele Millard provided an update on the status of the City, City Council, and LAC. She stated that the City is operating on reduced hours and with limited staff. She stated that City Council was beginning to address regular business once again at its meetings. She stated that she believed that Council may have an assignment for LAC in the coming months.

ADJOURNMENT

There being no further business to come before the Executive Committee, Vice Chair Nicole Malandri adjourned the meeting at 4:09 p.m.

Respectfully submitted,

[Signature]

Peggy Ralph, Secretary
CALL TO ORDER

Chair Laurence Leiber called the virtual meeting to order at 5:32 p.m.

ROLL CALL

Commissioners Present: Ash, Hensley, Leiber, McBride, Malandri, and Ralph were present.

Commissioners Absent: None.

A total of 6 commissioners were present. A quorum was present.

Staff Present: LAC Coordinator Everett Abegg was in attendance.

CORRESPONDENCE

None.

PUBLIC COMMENT

None.

APPROVAL OF MINUTES

Casey Hensley motioned to approve the minutes of the February 5, 2020 Executive Committee Meeting. It was seconded by Peggy Ralph. Vote: All Ayes, 0 Nays. The motion passed.

Rick Ash motioned to approve the minutes of the March 4, 2020 Executive Committee Meeting. It was seconded by Casey Hensley. Vote: All Ayes, 0 Nays. The motion passed.

Rick Ash motioned to approve the minutes of the May 13, 2020 Executive Committee Meeting. It was seconded by Kate McBride. Vote: All Ayes, 0 Nays. The motion passed.

Peggy Ralph motioned to approve the minutes of the August 4, 2020 Executive Committee Meeting. It was seconded by Rick Ash. Vote: All Ayes, 0 Nays. The motion passed.

NEW BUSINESS
NEW BUSINESS

1) Assignment 2020-01: COVID-19 Civility in Lakewood

There was consensus from the Executive Committee to assign the grassroots assignment to the Neighborhoods Committee. The Executive Committee invited Commissioner Roger Freeman to continue to work with the Neighborhoods Committee on the assignment.

2) Assignment 2020-02: Fishing Line Disposal

Sustainability Committee Chair Casey Hensley shared the draft proposal for Assignment 2020-02: Fishing Line Disposal. Executive Committee recommended changes to the draft proposal which included alterations to the introduction of the proposal, identifying the language barriers associated with disposal signage, and adding more research on other communities' efforts to address the issue. There was consensus from the Executive Committee to send the assignment back to the Sustainability Committee for further research.

3) Neighborhood Links Grassroots Assignment Wording

Neighborhoods Committee Chair Kate McBride shared the draft language for the Neighborhoods Links grassroots assignment. There was consensus to send the wording to City Council with several recommended changes.

4) City Council and LAC Check-in

LAC Coordinator Everett Abegg reminded the Executive Committee that City Clerk Michele Millard's last day with the City would be September 25, 2020. He stated that staff is still working to schedule all completed LAC assignments for presentation to City Council.

ADJOURNMENT

There being no further business to come before the Executive Committee, Chair Laurence Leiber adjourned the meeting at 6:40 p.m.

Respectfully submitted,

Peggy Ralph, Secretary
CALL TO ORDER

Chair Laurence Leiber called the virtual meeting to order at 6:34 p.m.

ROLL CALL

Commissioners Present: Ash, Baschiera, Bernard Barthel, Heide Barthel, Cornell, Gelfuso-Goetz, Gordey, Gurza, Hensley, Leiber, Malandri, McBride, Nowak, Osborn, Ralph, Rein, and Rivard

Commissioner Johnson arrived at the meeting at 7:25 p.m.

Commissioners Absent: Bunch, Freeman, Nguyen, Rosebrook, Stamps

A total of 18 members were present and 5 members were absent. A quorum was present.

Staff Present: City Clerk Michele Millard and LAC Coordinator Everett Abegg were in attendance.

CORRESPONDENCE

None.

PUBLIC COMMENT

Guest Joshua Oliver introduced himself. He stated that he was invited to the meeting by Commissioner Gelfuso-Goetz and was interested in joining LAC.

NEW BUSINESS

1) Assignment 2019-04 – Vehicle Anti Idling – Andrea Gelfuso Goetz

Commissioner Andrea Gelfuso-Goetz presented the proposal for Assignment 2019-04: Vehicle Anti-Idling. She stated that the motivation for the assignment was derived from the worsening air quality conditions caused by motor vehicles in the Denver Metro Area. She stated that the recommendations in the proposal included creating signs to discourage idling, encourage City vehicles to not idle, engaging Lakewood school groups to discourage idling, encourage cooperation with businesses to address the issue, and share the message at City Council ward meetings.
A motion was made by Marsha Osborn to approve Assignment 2019-04 Vehicle Anti-Idling. It was seconded by Casey Hensley. Vote: All Ayes. Zero Nays. The motion carried.

2) Pending Grassroots Assignments Update – Michele Millard

City Clerk Michele Millard stated that three grassroots proposals were approved by City Council. Grassroots Assignment 2020-02: Fishing Line Disposal was assigned to the Sustainability Committee. Grassroots Assignment 2020-03: COVID-19 and Small Business Impacts was assigned to the Civic Awareness Committee. The Full Commission reached consensus to review grassroots Assignment 2020-01: COVID-19 Civility at an Executive Committee meeting for further context before assigning it to a committee.

AMBASSADOR REPORTS

1) Commissioners Ash and Judson stated that they attended the Foothills Animal Shelter meeting in July. Commissioner Ash stated that Foothills Animal Shelter is celebrating its 10th anniversary and will host a series of events in the community through August to celebrate.

2) Commissioner Heidi Barthel stated that the Jefferson County Open Space Committee did not meet in August, but she did attend their meeting in July. She stated that Heritage Square will not be turned into open space and that the County would pursue selling the property for recreation-centric development.

ADJOURNMENT

There being no further business to come before the Full Commission, Chair Laurence Leiber adjourned the meeting at 8:09 p.m.

Respectfully submitted,

Peggy Ralph, Secretary
FULL COMMISSION SPECIAL MEETING
LAKEWOOD ADVISORY COMMISSION
September 16, 2020, 6:30 p.m.
Virtual Meeting

MINUTES

CALL TO ORDER

Chair Laurence Leiber called the virtual meeting to order at 6:34 p.m.

ROLL CALL

Commissioners Present: Ash, Bernie Barthel, Heidi Barthel, Bunch, Cornell, Gelfuso-Goetz, Gordey, Hensley, Johnson, Lieber, Malandri, Nowak, Stamps, Carina Weadock, Glenn Weadock.

Commissioner Roger Freeman arrived at the meeting at 6:47 p.m. Commissioners Kate McBride and Peggy Ralph arrived at 7:30 p.m.

Commissioners Absent: Baschiera, Gurza, Morgan, Nguyen, Osborn, Rein, Rivard, Rosebrook

A total of 18 members were present and 8 members were absent. A quorum was present.

Staff Present: City Clerk Michele Millard and LAC Coordinator Everett Abegg.

PUBLIC COMMENT

There was no public comment.

CORRESPONDENCE

There was no correspondence presented.

APPROVAL OF MINUTES

A motion was made by Rick Ash to approve the February 19, 2020 Full Commission Minutes. It was seconded by Andrea Gelfuso-Goetz. Vote: All Ayes, No Nays. The motion carried.

A motion was made by Rick Ash to approve the May 20, 2020 Full Commission Minutes. It was seconded by Bernie Barthel. Vote: All Ayes, No Nays. The motion carried.

A motion was made by Bernie Barthel to approve the June 17, 2020 Full Commission Minutes. It was seconded by Andrea Gelfuso-Goetz. Vote: All Ayes, No Nays. The motion carried.

A motion was made by Bernie Barthel to approve the August 19, 2020 Full Commission Minutes. It was seconded by Casey Hensley. Vote: All Ayes, No Nays. The motion carried.
NEW BUSINESS

1) Review of LAC procedure and process – Laurence Leiber

Chair Laurence Leiber discussed the LAC Officer election process. He stated that Officers are elected annually at the November LAC Full Commission meeting and serve one-year terms. He stated that any commissioner was eligible to serve an officer if they were not currently term limited or were on LAC for less than six months at the time of the elections.

LAC Coordinator Everett Abegg stated that the Nominating Committee would be created at the October LAC Full Commission meeting. He detailed the responsibilities of the Nominating Committee and stated that Commissioners that were interested in joining should contact him.

2) LAC Communication Suggestions – Everett Abegg

LAC Coordinator Everett Abegg asked the Full Commission if there was anything staff could do to better address communication challenges now that all LAC meetings would be virtual for the near future. He stated that he had reached out to City staff to create a LAC calendar on the City website. Commissioner Casey Hensley stated that she was interested in finding a way for the City to save the committee’s shared data.

REPORTS

- Sustainability – Chair Casey Hensley

Chair Casey Hensley introduced the two newest members serving on the Sustainability Committee, Carina and Glenn Weadock. She stated that Assignment 2020-02: Fishing Line Disposal was anticipated to be ready for Executive Committee review in October.

- Neighborhoods – Chair Kate McBride

Commissioner Rigby Johnson gave the Neighborhoods Committee report on behalf of Chair Kate McBride. He stated that the Committee planned to meet on September 21, 2020 with Commissioner Roger Freeman to discuss Assignment 2020-01: COVID Civility. He stated that the Committee is still waiting for City Council to approve the wording for the Neighborhood Links grassroots assignment.

- Civic Awareness – Chair Rick Ash

Chair Rick Ash stated that Karen Morgan joined Civic Awareness. He stated that the Committee held its first virtual meeting prior to the Full Commission meeting and discussed Assignment 2020-03: COVID Small Business Impacts. Josh Stamps asked if the assignment was focused on researching the effects of remote work. Chair Rick Ash stated that the Committee was still defining the scope of the assignment.
NEW BUSINESS

1) Assignment 2020-01: COVID-19 Civility in Lakewood

There was consensus from the Executive Committee to assign the grassroots assignment to the Neighborhoods Committee. The Executive Committee invited Commissioner Roger Freeman to continue to work with the Neighborhoods Committee on the assignment.

2) Assignment 2020-02: Fishing Line Disposal

Sustainability Committee Chair Casey Hensley shared the draft proposal for Assignment 2020-02: Fishing Line Disposal. Executive Committee recommended changes to the draft proposal which included alterations to the introduction of the proposal, identifying the language barriers associated with disposal signage, and adding more research on other communities' efforts to address the issue. There was consensus from the Executive Committee to send the assignment back to the Sustainability Committee for further research.

3) Neighborhood Links Grassroots Assignment Wording

Neighborhoods Committee Chair Kate McBride shared the draft language for the Neighborhoods Links grassroots assignment. There was consensus to send the wording to City Council with several recommended changes.

4) City Council and LAC Check-in

LAC Coordinator Everett Abegg reminded the Executive Committee that City Clerk Michele Millard's last day with the City would be September 25, 2020. He stated that staff is still working to schedule all completed LAC assignments for presentation to City Council.

ADJOURNMENT

There being no further business to come before the Executive Committee, Chair Laurence Leiber adjourned the meeting at 6:40 p.m.

Respectfully submitted,

Peggy Ralph, Secretary
A RESOLUTION
ADOPTING 2020 SALES & USE TAX RULES AND REGULATIONS

WHEREAS, on December 14, 2020, the Lakewood City Council will hold a public hearing on second reading of a newly revised City of Lakewood Tax Code (the “New Tax Code”);

WHEREAS, City staff have drafted, and the City Council has reviewed, the rules and regulations attached hereto (the “2020 Sales & Use Tax Rules and Regulations”) to accompany the New Tax Code for the purpose of providing the City’s sales and use taxpayers a guide to understanding and complying with the New Tax Code; and

WHEREAS, the City Council hereby finds and determines that adopting the 2020 Sales & Use Tax Rules and Regulations is and shall be in the best interest of the residents of the City.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lakewood, Colorado, that:

SECTION 1. The 2020 Sales & Use Tax Rules and Regulations attached hereto are hereby approved.

SECTION 2. This Resolution shall become effective upon the effective date of the New Tax Code. In the event the Lakewood City Council does not adopt the New Tax Code, this Resolution shall be null and void and be of no effect.

INTRODUCED, READ AND ADOPTED by a vote of ____ for and ____ against at a virtual regular meeting of the Lakewood City Council held on December 14, 2020 at 7 o’clock p.m.

________________________________________
Adam Paul, Mayor

ATTEST:

________________________________________
Bruce Roome, City Clerk

APPROVED AS TO FORM:

________________________________________
Timothy P. Cox, City Attorney
DATE OF COUNCIL MEETING: DECEMBER 14, 2020 / AGENDA ITEM NO. 9

To: Mayor and City Council

From: Holly Björklund, Chief Financial Officer, 303-987-7601

Subject: A RESOLUTION ADOPTING SALES & USE TAX RULES AND REGULATIONS FOR CHAPTER 3.01

SUMMARY STATEMENT: Staff rewrote the Sales & Use Tax Code to incorporate standardized definitions and simplified language, as discussed in the Staff Memo for Ordinance O-2020-32. Staff has also drafted the attached Sales & Use Tax Rules and Regulations (the “Regulations”) to accompany the rewritten Sales & Use Tax Code, which provides the City’s taxpayers with a guide to understanding and complying with rewritten Tax Code.

BACKGROUND INFORMATION: The Regulations have been revised to reflect the changes made to the Tax Code to incorporate the standardized definitions, as well as other modifications to make the Tax Code more user (business) friendly and to more clearly articulate current processes and tax determinations.

BUDGETARY IMPACTS: It is anticipated that the revised Regulations will result in better compliance and therefore increased revenue.

STAFF RECOMMENDATIONS: Staff recommends that City Council adopt the Resolution.

ALTERNATIVES: Leave the sales and use tax code and regulations as they currently exist.

PUBLIC OUTREACH: This item was promoted through the regular communication channels for items that come before the City Council, and staff sought input from local business groups and two other municipalities.

NEXT STEPS: N/A

ATTACHMENTS: Resolution 2020-49
Revised Regulations

REVIEWED BY: Kathleen E. Hodgson, City Manager
Benjamin B. Goldstein, Deputy City Manager
Timothy P. Cox, City Attorney
Proposed Rules and Regulations
Sales and Use Tax
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**PART 4. SALES AND USE TAX**

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Unless otherwise noted, all references herein to Chapter 3.01 or to any Section or subsection shall refer to Chapter 3.01 of the City of Lakewood Municipal Code.

PART 1. GENERAL PROVISIONS

Regulation 3.01.160 Intercity Claims for Recovery

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

(1) **Defined.** As used herein, "Claim for Recovery" means a claim for reimbursement of sales and use taxes paid to the wrong taxing jurisdiction.

(2) **Limitation Period.** The period subject to a Claim for Recovery shall be limited to the thirty-six (36) month period prior to the date the municipality that was wrongly paid the tax receives the Claim for Recovery, subject to the provisions of C.R.S. 29-2-106.1(5).

(3) **Claims for Recovery made by the City.**

   (a) When it is determined by the Chief Financial Officer that sales and use tax owed to the City has been reported and paid to another municipality, the City shall promptly notify the retailer that taxes are being improperly collected and remitted, and that as of the date of the notice the retailer must cease improper tax collections and remittances.

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

   (c) A municipality may deny a Claim on the grounds that it has previously paid a Claim for Recovery arising out of an audit of the same taxpayer. In such event, the City shall seek recovery from such taxpayer, which shall be responsible for paying or remitting the tax to the City and seeking a refund from the municipality to which the taxpayer incorrectly paid or remitted the tax.

(4) **Claims for Recovery made against the City.**

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

PART 2. ADMINISTRATIVE

Regulation 3.01.230 Definitions: Purchase or Sale

"Purchase" or "Sale" shall mean any transaction whereby a person, in exchange for any consideration, such as money or its equivalent, property, the rendering of a service, or any promise thereof: (i) transfers or agrees to transfer all or part of its interest, or the interest of any other for whom it is acting as an agent, in any tangible personal property to any other person; or (ii) performs or furnishes, or agrees to perform or furnish, or contracts to have another perform or furnish, any service taxable under Chapter 3.01 for any other person. Whether the transaction is absolute or conditional, it shall be considered a sale if it transfers from a seller to a buyer the ownership or possession of tangible personal property or specified services.

A bona fide gift of tangible personal property is not a "sale."

Regulation 3.01.230 Definitions: Tangible Personal Property

"Tangible personal property" embraces all goods, wares, merchandise, products and commodities, and all tangible or corporeal things and substances, including “digital products,” which are dealt in and capable of being possessed and exchanged.

“Digital products” include, but are not limited to, digital images, digital audio-visual works, digital audio works and digital books. “Digital audio-visual works” include, but are not limited to, television programs, movies, video games and any similar works.

“Tangible personal property” does not include any of the following:

1. Real property, such as land and buildings;
2. Tangible personal property that loses its identity when it becomes an integral and inseparable part of the realty, irremovable without substantial damage to the premises. Property severed from real estate becomes tangible personal property.
3. Intangible personal property constituting mere rights of action and having no intrinsic value, such as most contracts (not including maintenance contracts and warranty agreements), deeds, mortgages, stocks, bonds, certificates of deposit or certificates of membership, or redeemable United States postage or revenue stamps sold for postage or revenue purposes.
4. Water in pipes, conduits, ditches or reservoirs, but does include water in bottles, wagons, tanks or other containers.
"Taxable sales" means gross sales less any exemptions and deductions during any given reporting period.

(1) “Taxable sales” excludes:

(a) The sales price of any property returned during the period after the sales price has been included in taxable sales, but only after the full sales price including the tax has been refunded by cash or credit;

(b) Sales exempt from the sales tax;

(c) The fair market value of property taken in exchange by a retailer for resale in the usual course of its business;

(d) Deposits on returnable containers;

(e) Any worthless account actually charged off for income tax purposes during the reporting period, to the extent that such account has been included in taxable sales, except that a loss from a worthless check in excess of the taxable sale is not allowed as a bad debt deduction for the excess (See Section 3.01.280); and

(2) “Taxable sales” includes:

(a) Any recovery of a bad debt previously deducted from gross sales to determine taxable sales. See Regulation 3.01.270 for Credit Sales.

(b) Authorized adjustments in a sales price, such as discounts and credits. The tax must be based upon the original price unless the adjustments actually have been made prior to the filing of the return wherein such sale is reported. If the price upon which the tax was computed and paid to the City by the retailer is subsequently adjusted prior to payment of the tax by the purchaser, a proper credit may be taken by the retailer against the tax due on the next return.

No credit for discount shall be allowed to a retailer unless the related decrease in sales tax is actually passed on to the purchaser.

A cash discount allowed for payment on or before a given date is not an allowable adjustment to the selling price in determining taxable sales.

If any sold article is returned to the retailer for adjustment, replacement or exchange under a guarantee as to quality or service, and if another article is substituted pursuant to the guarantee free or at a reduced price, then the tax shall be recomputed on the actual amount paid to the retailer for the substituted article, taking into consideration any other adjustments made at the time of the replacement.

(c) Any sales of tangible personal property, including otherwise taxable sales of food, where all or part of the proceeds of such sales are donated to an organization that is exempt from taxation under the Tax Code.
Regulation 3.01.240(B)(1)  Tax Must be Separately Stated; Liquor by the Drink

A retailer who sells malt, vinous or spirituous liquors by the drink shall at the time of making the first retail sale of such beverage, elect either of the following methods to impose the tax:

1. The tax may be included in the price of the drink; or
2. The tax may be separately stated and added to the price of the drink.

The retailer may elect to operate under method (1) for drinks sold at the bar and method (2) for drinks sold at the tables, or it may elect to operate under the same method for drinks sold at the bar and tables. Once having made the election, the retailer must continue to collect the tax in the manner elected, unless permission to change the election is first obtained from the Finance Department. If the retailer elects to use different methods on bar and table sales, tax must continue to be collected in the manner elected, unless permission to change the election is first obtained from the Finance Department. The retailer must keep adequate records if using different methods on bar and table sales.

If the retailer elects to include the tax in the price of the drink, the following method must be used to determine taxable sales: exempt sales are deducted from gross sales, and the difference is divided by the total of one (1) plus the applicable sales tax percentage. Example: taxable sales = \( \frac{\text{gross sales} - \text{deductions}}{1+0.075} \), where 7.5% is the combined state and city sales tax percentage.

Retailers dispensing liquor, wine or beer by the drink, who purchase ingredients which they use in mixing the drink, are not required to pay sales tax on the purchase of such ingredients.

Regulation 3.01.250  Collection and Remittance of Tax

All purchases subject to sales or use tax must be reported on the City of Lakewood Sales and Use Tax Return form found on the city’s online tax filing system. Completed forms may be submitted via the online system or printed and mailed to the City.

If any retailer makes overpayment of the tax or is entitled to a credit on its tax payments because of mistake, errors or canceled sales, credit for the amount of overpayment may be taken by the retailer on a subsequent return or returns. All credits are subject to review by the Chief Financial Officer. If the retailer is no longer engaged in business, then it should apply for a refund. (See Regulation 3.01.540.)

Regulation 3.01.250(A)  Collection and Remittance of Tax: Filing Frequencies

Approval of requests for thirteen four-week, quarterly, or seasonal reporting periods shall be granted only if, in the opinion of the Chief Financial Officer, such approval shall not jeopardize the collection of the tax. Permission to change the time or interval for filing reports and paying tax shall not be granted to a retailer who is delinquent.

If any retailer has been granted permission to file reports and pay tax on other than a monthly basis, and such retailer becomes delinquent, then such permission may be revoked by the Chief Financial Officer at any time. Immediately following notice of such revocation, such retailer shall be required to file reports and pay tax, interest and penalties on a monthly basis.
Requests for permission to file reports and pay tax on a quarterly basis, if approved, shall take effect on the first (1st) day of the next calendar quarter which begins at least fifteen (15) days after the date of approval.

Regulation 3.01.250(A)(3)(b) Collection of Tax: Filing Frequencies – Seasonal

The applicant shall state on its sales tax license application the months during which it expects to operate the business in the City and the place or places where the business shall be operated and must notify the Finance Department of any changes thereof.

Regulation 3.01.250(A)(3)(c) Collection of Tax: Filing Frequencies – Annual

Retailers who provide non-taxable services and do not sell at retail must still file use tax returns with the City, even if the tax liability is zero. Such retailers may make a request to the Finance Department to make returns and pay taxes annually. Annual filers are encouraged to review contact information, business address, and phone numbers of the business when filing the annual return.

Regulation 3.01.250(D) Collection of Tax; Exempt Sales

Some transactions are exempt from Lakewood sales tax. To show that a sale qualifies as exempt under the Lakewood code, the retailer is responsible for ensuring it has the proper documentation from the purchaser. Purchasers must be able to prove to the satisfaction of the retailer that they are exempt from Lakewood sales tax. In the event that the purchaser does not have the appropriate documentation, the retailer must assess tax on the transaction and should suggest that the purchaser follow-up with the Lakewood Finance Department.

The purchaser must, at the time of transaction, provide to the seller a completed Home Rule Affidavit of Exempt Sale. The Affidavit is to be used for each exempt purchasing transaction by: resellers/wholesalers, Lakewood-qualified charitable entities, government entities (federal, state, or local), foreign and diplomat officials, and construction permit holders. By signing the Affidavit, the purchaser is swearing, under penalty of perjury, to the accuracy of the statements on the Affidavit. A single Affidavit may be used for exemption from both State and Lakewood tax with the appropriate supporting documentation for each taxing entity. A purchase exempt under State law does not automatically result in exemption of the Lakewood tax.

Purchases must be made for official business purposes. Items purchased by a charitable organization must be for the regular charitable function or purpose. Items purchased by a wholesaler must be purchased for sale in the wholesaler’s ordinary course of business.

Purchases must be billed to and paid directly by the funds of the organization or agency in order to qualify for exemption. Purchases do not qualify for tax exemption when: payment is made with cash (without a purchase order), personal check, or personal credit card; or the purchase is made with the exempt organization’s credit card, but the bill for such credit card is paid out of non-organization funds. A purchase is not exempt if made by an exempt organization on behalf of either an individual or a non-exempt organization where: (i) the individual or non-exempt organization reimburses the exempt organization for the full purchase price of the good or service; and (ii) the purchased good, or right to the
taxable service purchased, is transferred to the individual or non-exempt organization for its use, consumption or benefit.

The retailer must verify the information on the Affidavit and complete the lower portion of the form. Supporting documentation, as well as the Affidavit, must be retained by the retailer. Supporting documentation varies by purchaser:

(1) Reseller/Wholesaler – A copy of its business or sales tax license (does not need to be located in Lakewood)

(2) Charitable Organization – A copy of its Lakewood-issued Certificate of Exemption

(3) Government – A copy of its State-issued Certificate of Exemption

(4) Foreign and Diplomat Officials – A state department issued card with the name/photo of the bearer on the card

(5) Construction permit holder – A copy of a valid permit issued by the City of Lakewood or another municipality where a local use tax has been paid.

Regulation 3.01.260 Duty to Keep Records

(1) **General.** It is the duty of every Taxpayer to keep adequate and complete records. These records must show the following:

(a) Gross receipts from all sales, or from rental payments from leases, of tangible personal property (including any services that are a part of the sale or lease), irrespective of whether the seller or lessor regards the sale(s) or lease(s) to be taxable or nontaxable.

(b) All deductions and exemptions allowed by law and claimed in filing returns.

(c) Total purchase price of all tangible personal property purchased for sale, use, consumption or lease in the City.

Records shall also include the books of account maintained by or on behalf of the Taxpayer, together with all bills, receipts, invoices, cash register tapes, general ledgers, depreciation schedules or fixed assets listings, invoices for expenses and fixed assets, purchase contracts, or other documents supporting the entries in the books of accounts together with all schedules or working papers used in connection with the preparation of tax returns.

(2) **Records Formats.** Taxpayers must comply with applicable standards for legibility, reproducibility, access, maintenance and retention regardless of the format on or in which such records are kept. Such records shall not require the City to use any special or unique apparatus, software, process or handling in order to examine such records without unreasonable delay or undue burden on the City.

(3) **Records prepared by automated data processing systems.** An automated data processing (ADP) tax accounting system must be capable of producing visible and legible records for verification of the Taxpayer’s tax liability.

(a) **Recorded or re-constructible data.** ADP records must provide an opportunity to trace any transaction back to the original source or forward to a final total. If detail printouts
are not made of transactions at the time that they are processed, then the system must have the ability to reconstruct these transactions.

(b) **General and Subsidiary Books of Account.** General ledgers and subsidiary ledgers, with source references, shall coincide with financial reports for tax reporting periods.

(c) **Supporting Documents and Audit Trail.** The audit trail should be designed so that the details underlying the summary accounting data may be identified and made available to the Finance Department upon request. The system should be designed so that supporting documents, such as sales invoices, purchase invoices, credit memoranda, and similar items are readily available.

(d) **Program Documentation.** A description of the ADP portion of the accounting system should be available. The statements and illustrations as to the scope of operations should be sufficiently detailed to indicate: (A) the application being performed; (B) the procedures employed in each application (which, for example, might be supported by flow charts, block diagrams, or other satisfactory description of the input or output procedures); and (C) the controls used to ensure accurate and reliable processing. Important changes, together with their effective dates, should be noted in order to preserve an accurate chronological record.

(4) **Record Retention.** All records pertaining to transactions involving sales or use tax liability must be preserved for a period of not less than three (3) years from the date of the transaction.

(5) **Examination of Records.** All of the foregoing records must be made available for examination on request by the Finance Department.

**Regulation 3.01.270 Credit Sales**

For the purpose of this Regulation, a "credit sale" is a retail sale that is created by a time payment plan, a conditional sale, or a sale secured by a chattel mortgage whereby the remittance of the full selling price is to be paid at a future date. Credit sales do not include credit card sales. Credit card sales are cash sales and must be reported currently.

If the retailer elects to report the credit sales on the cash basis, it must keep adequate and complete records to show separately the sales price of the tangible personal property, the sales tax applicable to each credit sale, and any interest, insurance or carrying charges that have been added to the sale. No deduction for bad debts is allowable when the retailer is reporting its taxable sales on the cash basis.

If the retailer reports the credit sale on the accrual basis, it shall include the selling price in the return for the month in which the sale was made and remit the entire applicable sales tax. The retailer on the accrual basis is allowed a deduction for bad debts on the taxable portion of worthless credit sales.

A cash discount, also known as a sales discount or purchase discount or early payment discount, allowed for payment made on or before a given date is not an allowable adjustment to the selling price in determining taxable sales (see Regulation 3.01.230 “Taxable Sales”).

When a repossessed article is resold, the transaction constitutes an entirely new, separate and distinct sale upon which the sales tax shall be collected in the regular manner.
PART 4. SALES AND USE TAX

Regulation 3.01.410 Imposition of Tax

A sale by a licensed or unlicensed retailer to a user or consumer and which is not for resale is a retail sale. The amount of the tax is measured by the purchase price of the property or service.

Where tangible personal property is traded or exchanged between unlicensed persons, the sales or use tax is based on the fair market value of each article. Each person owes the tax on the fair market value of the tangible personal property received in exchange, except as addressed in 3.01.230 under the definition of “Price or Purchase Price.”

Regulation 3.01.410(A)(2) Imposition of Tax; Sales Tax – Trusteeship

The use of recognized accounting procedures to segregate and account for the sales tax collected shall be considered proper trusteeship of the funds. No statute of limitations applies to funds of the City in the possession of the retailer, and such moneys are collectible at any time after their due date upon demand of the Chief Financial Officer.

Regulation 3.01.410(B) Imposition of Tax; Use Tax

The primary purpose of the use tax is to impose a tax upon the privilege of storing, using, or consuming any tangible personal property purchased at retail. “Consuming” means the act or process of consumption and includes waste, destruction, or using up. The use tax is complementary to the sales tax in those situations where a sales tax cannot, as a practical matter, be collected, or has not, for any reason, been collected in the course of the retail transaction. The obligation for the payment of the tax is upon the user whether the tax is a sales tax or a use tax. However, in the event that a retailer fails to collect the appropriate sales tax, the Chief Financial Officer may assess the tax due against either the retailer or the purchaser.

The use to which property is put, in order to bring about imposition of the use tax, is not necessarily the actual and ultimate use, but may be only such use as is made by the owner or purchaser in exercising control. Use shall be deemed sufficient for the imposition of the use tax when the article purchased is actually used or made available for use after delivery is completed, as well as when keeping, storing, withdrawing from storage, moving, installing, or performing any other act by which dominion or control over the property is assumed by the purchaser.

Tangible personal property withdrawn from inventory for use by the business where sales tax was not lawfully imposed shall be subject to use tax.
Regulation 3.01.410(E)  Imposition of Tax; Schedules/Systems

The tax imposed pursuant to Section 3.01.410 shall be imposed in accordance with the following schedule:

<table>
<thead>
<tr>
<th>Purchase Price</th>
<th>Lakewood Tax (3%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>$0.00 - 0.16</td>
<td>$.00</td>
</tr>
<tr>
<td>0.17 - 0.49</td>
<td>.01</td>
</tr>
<tr>
<td>0.50 - 0.83</td>
<td>.02</td>
</tr>
<tr>
<td>0.84 - 1.16</td>
<td>.03</td>
</tr>
<tr>
<td>1.17 - 1.49</td>
<td>.04</td>
</tr>
<tr>
<td>1.50 - 1.83</td>
<td>.05</td>
</tr>
<tr>
<td>1.84 - 2.16</td>
<td>.06</td>
</tr>
<tr>
<td>2.17 - 2.49</td>
<td>.07</td>
</tr>
<tr>
<td>2.50 - 2.83</td>
<td>.08</td>
</tr>
<tr>
<td>2.84 - 3.16</td>
<td>.09</td>
</tr>
<tr>
<td>3.17 - 3.49</td>
<td>.10</td>
</tr>
</tbody>
</table>

On all sales in excess of three dollars and forty-nine cents ($3.49), the tax shall continue to be imposed at three percent (3%). Fractional amounts equal to or greater than one-half cent ($.005) shall be rounded upward to the next highest cent. If the sale consists of a number of items, each of which has a sales price less than the minimum taxable sale, then tax must be collected on the combined total sales prices of all the items.

Use tax at the rate of three percent (3%) shall be paid where sales tax or use tax has not otherwise been lawfully imposed and paid.

Regulation 3.01.420  Transactions, Services and Tangible Personal Property - Taxability

Except in the case of specific statutory exemptions, tax is imposed upon the sale of tangible personal property to the user or consumer in this City and also upon the sale of those services specifically enumerated in Chapter 3.01 as taxable.

Services taxable under Chapter 3.01 include: (i) admissions to motion pictures and establishments which are licensed to serve malt, vinous or spirituous liquors; (ii) gas, electric and steam services; (iii) linen services; (iv) lodging services (v) security system services; (vi) software services – modified or custom; (vii) sound system services; (viii) telecommunication services; (ix) television and entertainment services; and (x) warranty and maintenance service contracts. All such sales are subject to the tax imposed by Chapter 3.01. This tax is imposed upon the transaction called the sale and is applicable whether the transaction is between a retailer and a purchaser or between private parties.
Regulation 3.01.420(B)  Transactions, Services and Tangible Personal Property - Taxability; Auctions

The auctioneer of any sale of tangible personal property, whether or not in possession of such property and regardless of how the property might have been acquired, must collect the tax, file a return, and remit the tax thereon.

Regulation 3.01.420(C)  Transactions, Services and Tangible Personal Property - Taxability; Automotive Vehicles

The collection of sales tax as provided in Section 3.01.420(C) does not apply to the registration, licensing or titling of automotive vehicles transferred by gift or operation of law or where the transaction is otherwise exempt from the imposition of sales tax. A bona fide gift of tangible personal property is not a “sale.” (Refer to Special Regulation: Gifts, Premiums and Prizes)

Regulation 3.01.420(F)  Transactions, Services and Tangible Personal Property – Taxability; Custom Orders

Sales and use tax applies to charges for manufacturing, producing, fabricating and processing tangible personal property made-to-order or tailor-made for the customer.

Manufacturing, producing, fabricating or processing is usually deemed to have occurred when tangible personal property is created, transformed or reduced to a different state, quality, form, property or thing. Transformation may occur by hand, machine, art, chemical action or natural means.

An operation that restores a used or worn item of tangible personal property to its essentially original form and use is not considered made-to-order or tailor-made.

Tailoring and alterations are not considered taxable.

The amount charged by the purchaser for labor or services rendered in installing and applying purchased tangible personal property is not subject to tax, provided that such amount is separately stated, and such separate statement is not to avoid the tax upon the actual sales price of tangible personal property.

Any person making a sale subject to this regulation must be licensed and may purchase tax-free all articles of tangible personal property which enter into and become a component part of the article sold. Purchases of all other articles of tangible personal property not becoming an ingredient or component part of the finished product are taxable.

Regulation 3.01.420(G)  Transactions, Services and Tangible Personal Property - Taxability; Food, Beverages and Candy

Any food or drink not purchased with federal food stamps or WIC vouchers or WIC checks is subject to tax, unless exempted by §3.01.430(F) or the related Regulation.
Food and drink sold to or purchased by offices and commercial establishments are subject to sales tax. If sales tax is not charged at the point of purchase, use tax shall be due.

In determining whether a product is food for domestic home consumption, unless the retailer is described in section 3.01.420(G)(1) of the Tax Code, no inference is drawn from the type of retailer selling the product, the location of the product within a store, or the manner in which the product is marketed.

Regulation 3.01.420(I)(2) Transactions, Services and Tangible Personal Property – Taxability; Gas, Electricity and Other Fuel - Commercial Consumption

Gas and electric service furnished within the City is subject to the tax imposed by Section 3.01.420, whether furnished by public, private, mutual, cooperative, or governmental corporations or enterprises for commercial use. The tax attaches to all amounts paid by the user or consumer for gas and electric service, whether or not there is actual consumption, and regardless of the manner in which the payment is made.

(See Regulation 3.01.430(H) for certain limited exemptions.)

Regulation 3.01.420(I)(3) Transactions, Services and Tangible Personal Property - Taxability; Gas, Electricity and Other Fuel - Residential Consumption

Gas and electricity are used by occupants of residences if exclusively for domestic purposes, such as lighting, refrigeration, cooking, water, heating, space heating and air conditioning in a private home or individual living unit served through a single meter or a master metered multi-unit apartment, condominium, townhouse or mobile/trailer home used exclusively for domestic purposes. Residential use of gas and electricity includes service to a building appurtenant to the residence, including garages, barns, and other minor buildings for use of the residents served through the residential meter.

Users in a private home or individual living unit, such as apartments, condominiums, townhomes, and mobile/trailer homes, who are served through a single meter and whose rate has been classified by statute or PUC regulations as residential are subject to sales tax.

Users in multi-unit apartments, mobile/trailer home parks or condominium and townhouse associations who are billed through a master meter and are taking service under a commercial rate are subject to sales tax if the gas or electricity is used for residential use as defined herein.

Sales of butane, propane, fuel oils, coal, coke or wood are subject to sales tax if used for residential use as defined above.

Regulation 3.01.420(L) Transactions, Services and Tangible Personal Property – Taxability; Lodging Services - Lodging Payments or Deposit

Amounts paid for lodging services, as defined under Section 3.01.230, are subject to the tax imposed under Section 3.01.410 unless the rental period is for a term of thirty (30) consecutive days or more, in which case the rental paid is exempt. (See also Section 3.01.430(I) and Regulation 3.01.430(I).)
Deposits paid for lodging services are not taxable when paid in advance. When lodging services are provided, then any deposits previously paid are taxable. If lodging services are not provided, then any deposits previously paid are taxable to the extent that such deposits are not refunded to the customer.

**Regulation 3.01.420(M) Transactions, Services and Tangible Personal Property – Taxability; Security System Services**

Security system services includes the amount paid or charged for electronic monitoring, whether the system is leased, rented or owned. Any amount paid or charged for installation of such a security system would not be subject to sales tax, if separately stated.

All materials and equipment used in providing such services that are located inside the City are subject to use tax, if the requisite sales tax has not been paid. If title of the material or equipment is transferred to the customer, then the material or equipment is deemed a retail sale and subject to the City sales tax. Sales of material and equipment are considered separate and distinct retail transactions from the charges for security and/or monitoring system services.

**Regulation 3.01.420(N) Transactions, Services and Tangible Personal Property - Taxability; Software Services – Modified or Custom**

Modified software or custom software program services include, but are not limited to, analysis of the customer's requirements, consulting, programming, testing, and updates, regardless of which retailer supplies each of the services.

The internalized instruction code that controls the basic operations (i.e., arithmetic and logic) of the computer causing it to execute instructions contained in system programs is an integral part of the computer. It is not normally accessible or modifiable by the user. Such internal code systems are considered part of the hardware and are subject to sales tax. It is immaterial that the retailer does or does not charge separately for such internal code systems.

A software program is one in which instructions and routines (programs) are determined necessary to program the customer's electronic data processing equipment to enable the customer to accomplish specific functions with his electronic data processing system. The software program may be in the form of:

1. System software programs (except for the instruction codes that are considered tangible personal property, as described above, which control the hardware itself and allow it to compile, assemble, and process application programs).
2. Applications software programs created to perform business functions or to control or to monitor processes.
3. Pre-written software programs (canned programs) that are either systems programs or application programs and are not written specifically for the user.
4. Custom software programs: programs created specifically for the user. Section 3.01.230 defines a "modified or customized computer program" as meeting the following elements:
(a) The preparation or selection of a program for the customer's use requires a retailer to analyze the customer’s requirements; and

(b) The program must be created, or requires adaptation, by a retailer in order to be used by a specific output device.

For the purposes of this subsection 4, "retailer" includes, but is not limited to, a retailer from whom the program is acquired, or who provides consulting or programming.

Programs meeting the criteria in (a) and (b) above, whether on machine-readable media, downloaded over the Internet, accessed via a web browser or web-based application or entered into a computer directly, are considered modified or customized programs and are subject to tax pursuant to Section 3.01.410(N).

Programs not meeting the criteria in (a) and (b) above are subject to sales tax pursuant to Section 3.01.410(Q). For example, a retailer that sells prepackaged or “off-the-shelf” programs, when such programs are fully usable by the customer without modification, is considered to be a sale of tangible personal property subject to sales tax on the purchase price of such property pursuant to Section 3.01.410(Q).

Consulting service or analysis time charges are not subject to sales or use tax if a program is not purchased.

**Regulation 3.01.420(Q) Transactions, Services and Tangible Personal Property - Taxability; Tangible Personal Property**

Unless otherwise exempt, all sales of tangible personal property, including digital products, at retail in the City, whether between a licensed retailer and a purchaser or between private parties, are subject to the imposition of the sales tax. “Tangible Personal Property” is defined in Section 3.01.230.

Failure to separately state taxable and non-taxable purchases shall subject the entire purchase price to sales tax except where a contractor has billed “lump sum.”

**Digital Products – Digital Audio-Visual Works.** The method of delivery does not impact the taxability of a sale of tangible personal property. Examples of methods used to deliver tangible personal property under current technology include, but are not limited to, the following: DVD, electronic download and internet streaming.

The purchase of a subscription that provides the purchaser with access to any tangible personal property that can be streamed, downloaded or delivered by any other method constitutes a sale of tangible personal property. The purchase price paid for a periodic subscription is subject to tax if the property accessed or received via the subscription is subject to tax. Each periodic payment is a separate sale.

**Examples (non-exhaustive list):**

(1) Purchaser buys a movie or video game on a DVD, Blu-Ray or other electronically readable disc. Sales tax is due on the purchase price of the movie.
(3) Purchaser buys a movie or video game through the internet, and then downloads the movie or video game to the purchaser’s computer or other device. Sales tax is due on the purchase price of the movie or video game.

(4) Purchaser buys a movie or video game, which purchaser accesses through an internet browser or other platform. Purchaser does not save a copy of the movie or video game to purchaser’s computer. Sales tax is due on the purchase price of the movie or video game.

(5) Purchaser pays a monthly fee, which allows purchaser to stream movies and/or television shows or play video games from a library of available titles. Sales tax is due on the monthly fee.

Regulation 3.01.420(R) Transactions, Services and Tangible Personal Property – Taxability; Telecommunication Services - Intrastate, Mobile & Data

Intrastate telecommunication service furnished within the City is subject to the tax imposed by Section 3.01.410, whether furnished by public, private, mutual, cooperative or governmental corporations or agencies. The term "service" includes carrier access services, additional listings, joint-user service, nontalking circuits, leased circuits and facilities, local exchange service (whether on a flat or measured basis), information charges, and any other charges assessed or passed on to the consumer.

Regulation 3.01.420(U) Transactions, Services and Tangible Personal Property - Taxability; Warranty & Maintenance Contracts

If a separate warranty or maintenance contract is purchased at the time of acquiring tangible personal property, or subsequent to the purchase of tangible personal property, regardless of whether the tangible personal property is rented, leased or purchased, then the entire sales price of the warranty or maintenance contract is subject to sales tax. Parts and other goods or services, if provided in performance of such separate warranty or maintenance contract on which tax was paid hereunder, are not taxable under this section.

For the purposes of this Regulation, “a separate warranty or maintenance contract” shall mean and include any agreement between a purchaser and a retailer whereby the purchaser pays, whether up front or over time, for the privilege of receiving, at a future date, repair or maintenance services on or for the tangible personal property at a reduced cost or no cost, and regardless of whether the amount paid for such privilege was included in the transaction for purchase of the tangible personal property.

When an item of tangible personal property is rented or leased with a warranty or other contract for the maintenance, repair or servicing of the tangible personal property for a given period of time, then the sales tax shall be imposed, collected and paid upon the rented or leased items, including the value of the warranty or other contract, if the rental or lease is subject to the sales tax under the provisions of Section 3.01.120(9).
Regulation 3.01.430(A) Exemptions; Cigarettes

"Cigarette" is defined as a well-known, recognized, and definite article consisting of tobacco of a peculiar kind distinguished by its light color and mildness and rolled in a paper wrapper. "Cigarette" does not include an article consisting of a cylindrical roll of cigar-leaf tobacco.

The sale of any tobacco product that is not a cigarette is subject to sales tax.

Regulation 3.01.430(B) Exemptions; 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 charter are exempt.

(1) Diplomatic tax exemption. Sales to ambassadors, consuls, and their employees who are citizens of the nation that they are representing are exempt. Retailers must obtain from purchasers a completed Affidavit of Exempt Sale and a U.S. Department of State issued card with the name and photo of the bearer on the card.

(2) Interstate commerce. Sales involving interstate commerce are exempt only in cases where the tax would be unconstitutional. Retailers’ must retain shipping records, bills of lading, or other proof satisfactory to the Chief Financial Officer to substantiate any exemption allowed for sales in interstate commerce.

(a) Sales involving construction materials for the construction and maintenance of railroad tracks operating in interstate or foreign commerce are exempt.

(b) Sales of merchandise ordered for delivery from a location outside the City to a location in the City are not necessarily exempt even though the merchandise may be shipped from outside the City directly to the purchaser or indirectly through the retailer. Contact the City to determine taxability.

(3) Satellite television and radio. Pay satellite television services and pay satellite radio services are exempt from tax under 3.01.430(B) of the Tax Code.

(4) Internet access services. Providers of internet access services, as defined in the Tax Code, shall collect from their customers, and remit to the City, City sales tax imposed on such services. Note: On June 30, 2020, the Internet Tax Freedom Act will sunset. At such time, internet access services will no longer be taxable, and providers will no longer be obligated to collect and remit such taxes.

Regulation 3.01.430(D)(1-2) Exemptions; Exempt Entities – Governments and Schools

No sales or use tax is imposed on the purchase, storage, use or consumption by the United States government, the State of Colorado, or any department, institution or subdivision of either, when the purchase, storage, use or consumption is executed in such entity’s governmental capacity. No sales or use tax is imposed on the purchase, storage, use or consumption by schools, as set forth in 3.01.440(D)(2).

To secure exemption from sales and use tax, the goods must be paid for directly to the seller by warrant, credit card or check drawn on governmental or school funds.
Regulation 3.01.430(D)(3)(a) Exemptions; Exempt Entities - Sales to Charitable Organizations

There is no sales tax on articles sold to a charitable organization holding a Lakewood-issued certificate of exemption, if purchased by the charitable organization in the conduct of its regular charitable functions and activities and purchased using the charitable organization’s funds.

For the City to determine whether an organization qualifies for the exemption, the organization must submit the following information to the Finance Department:

1. A copy of the organization’s federal exemption letter;
2. A copy of the organization’s articles of incorporation;
3. A copy of the organization’s bylaws;
4. A list of the organization’s officers and directors (if not contained within the organization’s bylaws or articles of incorporation);
5. The organization’s financial statements showing the source of funds and its expenditures; and
6. A detailed list of all fundraising and sales activities taking place within Lakewood.

Whenever a charitable organization not holding a State store license or a City sales tax license purchases tangible personal property (such as cards, cookies, candies, food, religious articles, and similar items) which is to be transferred to anyone else for personal use and all or part of the price of the goods is recouped from the user through direct payment, donation or games of chance, then the organization's exempt status does not apply, and the exempt organization must pay sales tax to the retailer. If such purchases are made outside the City or in the City without payment of the City sales tax, then the organization must pay the tax directly to the City.

Purchases by a nonprofit organization or association are subject to the tax if the organization does not present a Lakewood certificate of exemption.

Regulation 3.01.430(D)(3)(b) Exemptions; Exempt Entities - Sales by Charitable Organizations

A charitable organization that makes repeated sales of tangible personal property to the public, where the principal use of the premises from or at which such sales are made is to make such sales, must have a sales tax license and collect and remit tax in the same manner as any other retailer. The fact that the merchandise sold was acquired by gift or donation or that the proceeds are to be used for charitable purposes does not make the sale exempt from tax.

Regulation 3.01.430(F)(1) Exemptions; Farm - Farm Closeout Sale

In a farm closeout sale, a farmer or rancher may retain ownership of his improved and unimproved real property and his personal property not used in the farming or ranching operations and still be eligible for this exemption if he is abandoning his farming or ranching operations.
Regulation 3.01.430(F)(2-4)  Exemptions; Farm - Livestock and Poultry

"Livestock" means domestic animals as found on a farm or ranch such as cattle, sheep, swine, goats, mares and stallions. "Livestock" does not include animals kept as pets for pleasure and recreation.

"Poultry" means domesticated birds kept for eggs or meat.

Regulation 3.01.430(G)  Exemptions; Food: Food for Home Consumption, SNAP and WIC

The City follows the State of Colorado’s Regulations for taxation of food pursuant to C.R.S. § 39-26-102(4.5).

The following items might qualify for exemption as food under the Supplemental Nutrition Assistance Program (SNAP) or the federal special supplemental nutrition program, but do not qualify for exemption as “Food for Home Consumption” (unless purchased with federal food stamps or a WIC instrument):

(1) Carbonated water marketed in containers (e.g., sparkling or seltzer water, tonic water, soft drinks and other sugar or sugar substitute carbonated beverages);

(2) Chewing gum and candy;

(3) Seeds to grow food and plants to grow food;

(4) Prepared salads, other than frozen salads, requiring refrigeration sold in any size or type of container (e.g. egg salad, potato salad, fruit salad, pasta salad, gelatin salad, bean salad, fish salad, poultry salad, meat salad, etc.,) whether prepared by the retailer on site or at a warehouse, or by a manufacturer for sale to and by a retailer;

(5) Salad bars (i.e., cut up fruits and vegetables sold in various sized servings, usually by the pound or plate, along with accessory foods and condiments, such as soup, rolls, crackers, and salad dressings);

(6) Cold sandwiches other than frozen sandwiches;

(7) Deli trays (e.g., meats, fish, cheeses, fruits or vegetables, etc., sold on trays prepared by or for the retailer); and

(8) Food and beverages sold by or through vending machines.

Prepared food or food marketed for immediate consumption do not qualify for tax exemption under “Food for Home Consumption,” as defined in Section 3.01.230, or SNAP. This includes all hot foods and food marketed to be heated on the premises.

Regulation 3.01.430(H)  Exemptions; Fuel and Power

Electricity, coal, gas, fuel oil, coke, or nuclear fuel are exempt when used for any of the following purposes: mining (including oil and gas exploration and production), refining, irrigation, construction, telecommunication services, and street and railroad transportation services.
The use of electricity, coal, gas, fuel oil, coke or nuclear fuel in a continuing business activity of manufacturing or producing tangible personal property or services as set forth in Section 3.01.420(I) is subject to sales tax.

Regulation 3.01.430(I) Exemptions; Lodging Services

The written agreement must provide for occupancy of thirty (30) or more consecutive days. A written agreement includes a hotel registration, rent receipt, or similar document. A canceled check by itself shall not qualify as a written agreement. In the event the initial occupancy was for less than thirty (30) days, but is extended for a total of thirty (30) consecutive days or more, the lodging services become exempt for the entire period of occupancy.

Additional fees or charges separately stated on the invoice for specific hotel room services are taxable, such as pet fees, room service fees, telephone fees, movie/game rentals, cancellation fees, and forfeited deposits. The taxability of other purchases or services charged to the room, such as massages, laundry, salon and similar services, or purchases made at a hotel store, is determined by whether the purchases or services would otherwise be taxable.

Regulation 3.01.430(J) Exemptions; Manufacturing

Licensed persons engaged in manufacturing or compounding for use, profit or sale may purchase tax-free all articles of tangible personal property that enter into and become a component part of the article sold. Such tangible personal property that becomes a physical part of such product or service shall be deemed to have been sold at wholesale and shall be exempt from taxation. Any container, label or shipping case used to encase or enclose such product may be purchased tax-free by the manufacturer or compounder. Purchases of all other articles of tangible personal property not becoming an ingredient or component part of the finished product are taxable.

Sales tax applies to the sale of tangible personal property to the manufacturer or compounder that purchases it for use as an aid in manufacturing, producing or processing tangible personal property and not for the purpose of physically incorporating it into the manufactured article to be sold. Examples of such property are machinery, tools, furniture, office equipment and chemicals used as catalysts or otherwise to produce a chemical or physical reaction such as the production of heat or the removal of impurities.

An operation that changes the form or state of tangible personal property is one of fabrication. Persons regularly engaged in the fabrication or production of articles for sale at retail shall collect and remit the tax on the sales price of the article. If the fabricator converts such property to its own use, it shall remit the tax based on its acquisition cost.

Examples of tangible personal property used as an aid in manufacturing, fabricating, producing or processing tangible personal property that are not exempt include, but are not limited to, the following:

(1) Sales of carbon dioxide gas for use in the sale of draft beer shall be taxable to the retailer of the beer because the retailer buys the gas for use in forcing the draft beer through the pipes rather than for the purpose of reselling the gas.
If the gas is purchased for the sole purpose of incorporating it into a product to be sold and is so incorporated into a product to be sold, as in soda water or other beverages, then the sale of the gas is exempt as a sale for resale.

(2) Phosphoric and sulfuric acids used in a process known as anodizing aluminum are primarily used as electrolytes, acting as a catalyst, and do not become a component part of the aluminum objects that are processed. Accordingly, the processor is the consumer of such acids, which are taxable to the processor at the time of purchase of such items.

(3) Flux, if used as a cleaning agent or as means of reducing oxidation, is taxable to the manufacturer at the time of purchase. It may also be used for transmitting desirable alloys to the deposited metal. To the extent it is used for the latter purpose, it is not subject to sales tax to the manufacturer at the time of purchase. Because the different functions are not mutually exclusive, exempt and nonexempt purposes may be served simultaneously, and in such cases the tax shall have to be apportioned between the various uses.

(4) Sulphur used in drying and curing fruit is regarded as used by the manufacturer, not as incorporated and resold, and the tax is to be paid by the manufacturer when he purchases the sulphur.

(5) Forged steel balls used in a ball mill to grind silica sand to a desired fineness. In the course of the grinding, the balls wear out, and they become incorporated into the finished product which is sold. The steel balls are purchased for the purpose of using them in the manufacturing processes and not primarily for the purpose of incorporating steel into a finished product. Accordingly, the manufacturer must pay sales tax on the steel balls at the time of purchase.

(6) If ice is in fact used for the sole purpose of becoming an ingredient of the finished product, as where it is used solely to supply all or a part of the water content of sausage and luncheon meats, then the sale of the ice may be regarded as a sale for resale, and the processor is not required to pay tax at the time of purchase of the ice.

If the ice or dry ice is used for any purpose other than to become an ingredient or component part of the finished product, then it is purchased for a purpose other than for resale and is subject to tax to be paid at the time of purchase by the processor.

(7) A rubber chemical used as a lubricant to facilitate mold release of rubber products, such as tires, and that might remain as a film on the finished rubber product is a manufacturing aid used as a lubricant by the manufacturer, which is required to pay the sales tax at the time of purchase.

(8) Cleaners purchased for use in preparing metal part surfaces prior to rustproofing do not become incorporated in the product, and, therefore, the manufacturer is the user and must pay sales tax at the time of purchase.

(9) When paint thinner, abrasives, cleaning compounds, masking tape and similar items are used by a person in painting tangible personal property, that person is the user of such items and must pay sales tax at the time of purchase.

(10) Talc used as an anti-adhesive or lubricant in the manufacture of rubber products is a manufacturing aid, and sales tax is imposed on the manufacturer at the time of purchase.
Regulation 3.01.430(K)(1)  Exemptions; Medical - Medical Supplies

Physicians, surgeons, dentists, veterinarians and other licensed practitioners of the healing arts, as well as hospitals, nursing homes, clinics and the like, shall pay tax on their purchases of any equipment, instruments, furniture, fixtures and medical and surgical supplies used or consumed in the ordinary and usual course of business.

Medical care providers (i.e. hospitals, medical clinics, nursing homes, physicians in private practice) use a variety of medical goods in the course of performing services for which they are paid. If not specifically exempt under the Code, such goods are taxable to the purchaser at cost. Nutrition supplements, vitamins, personal hygiene products, and over the counter medicinal substances are taxable to the purchaser.

Purchases of medical supplies that would otherwise be taxable (i.e., nonexempt) are not rendered exempt if the provider is reimbursed under any government program or by any charitable organization. Purchases of such medical supplies remain taxable regardless of source of the funds unless purchased by an exempt entity.

Sales of prescription eyeglasses, including lenses and frames, are exempt from the imposition of sales tax; provided, however, that any additions to the lenses, such as anti-fog, scratch-resistant, anti-glare or anti-UV coatings, and coloring/tinting, are taxable and shall be separately stated on the customer’s invoice. If such additions are not separately stated, the retailer shall collect from the purchaser and remit to the City sales tax on the entire Purchase Price.

If a transaction involves both exempt and nonexempt tangible personal property, and the nonexempt tangible personal property is not itemized on the patient’s bill or invoice, the total purchase price of all tangible personal property in the transaction is subject to Sales Tax. The provider must charge, collect and remit the Sales Tax to the City. If the tangible personal property is consumed by the provider in the rendition of the service and not separately stated on the patient’s bill or invoice, then the tangible personal property is subject to Use Tax at the provider’s cost.

Regulation 3.01.430(K)(2)  Exemptions; Medical - Prescription Drugs and Prosthetic Devices

Prescription drugs do not include medicinal substances that can be purchased over the counter, whether or not the substance is prescribed by a physician, or food. All sales and purchases of non-prescription drugs are taxable.

Regulation 3.01.430(M)  Exemptions; Newsprint, Printer’s Ink and Newspapers

Sales of newsprint and printer’s ink to publishers of newspapers or commercial printers are exempt, but retailers must collect tax on all sales of equipment and other materials.

"Newsprint" is defined as inexpensive, machine-finished paper, chiefly from wood pulp, and used mostly for newspapers.
Regulation 3.01.430(N)  Exemptions; Non-Residents

The purpose of this exemption is to exempt tools, equipment and similar tangible personal property, other than construction materials and construction equipment, from the imposition of City use tax on non-residents. Where a non-resident engaged in business within the City purchases tangible personal property for use or consumption in the business, such tangible personal property is subject to sales or use tax as set forth in the tax code.

Regulation 3.01.430(Q)(1)  Exemptions; Tangible Personal Property Outside the City - Deliveries

Sales of tangible personal property located within the City at the time of sale and delivered within the City are taxable, irrespective of: (i) the ultimate destination of the property sold; (ii) where the parties to the contract of sale are located; or (iii) where the contract was made or accepted or the funds paid.

Regulation 3.01.430(S)  Exemptions; Vending

When the selling price of the item is more than sixteen cents ($0.16), tax applies to the selling price, not only the amount in excess of sixteen cents ($0.16).

A retailer making vending machine sales of individual items of merchandise at a selling price of sixteen cents ($0.16) or less and also making vending machine sales at a price of more than sixteen cents ($0.16) must include the sales price of all vended items in the gross sales on its sales tax return but may deduct the tax-exempt sales of sixteen cents ($0.16) or less to determine taxable sales.

Vending machine games of chance means vending machines that vend tangible personal property based on random chance or the operator’s skill, such as “claw games” and similar machines.

Regulation 3.01.430(T)  Exemptions; Wholesale Sales

Use tax is a complement to sales tax. Because sales tax is imposed on retail sales, which are all sales other than wholesale sales, as defined in section 3.01.230, use tax shall not apply to the storage, use or consumption of tangible personal property purchased by a retailer for resale within the regular course of business.

Tangible personal property purchased tax-free for resale, or as an ingredient of a manufactured or compounded product, and subsequently withdrawn from stock for the purchaser's own use or consumption is not exempt from use tax and shall be taxed at the acquisition cost of all materials. The tax liability attaches at the time that the tangible personal property is withdrawn from stock.

To be exempt from the operation of the sales tax and use tax, tangible personal property purchases by a manufacturer, which property enters into the processing of the manufactured article, must become a necessary and desirable constituent part thereof, wholly or partially, either by chemical or mechanical means. (See Regulation 3.01.430(J)).

It is the duty of the wholesaler to collect the tax unless the purchaser furnishes the wholesaler with satisfactory proof that the sale is exempt under Chapter 3.01, such as the purchaser’s tax license number.
or a building permit. In case of doubt, the wholesaler should contact the Finance Department or collect the tax. (See also Regulation 3.01.250(D).)

It shall be presumed that any purchaser not having a valid sales and/or use tax license is the ultimate user or consumer of any property that is purchased. Any sale to such a person shall be a taxable retail sale regardless of the disposition of the property sold, unless the retailer can establish that the purchase was for resale in the ordinary course of the purchaser’s business.

PART 5. COLLECTION AND ENFORCEMENT; REFUNDS

Regulation 3.01.530 Sale of Business

Sales tax shall be remitted by the purchaser of the business on the price paid for tangible personal property, other than inventory, acquired with the purchase of business and for use or consumption in the operation of the business. The tax shall be based on the price paid for such chattels as are recorded in the bill of sale or purchase agreement and which constitute part of the total transaction at the time of sale or transfer. Where the transfer of ownership is a "package deal" in a lump sum transaction, then the sales tax shall be based on the book value set up by the purchaser for income tax depreciation purposes or, if no such value is established, then the fair market value.

Regulation 3.01.540 Refunds

(1) Process.

(a) Claims for refund shall be executed and submitted to the Finance Department through the City’s online system or on forms furnished by the Finance Department in accordance with instructions accompanying such forms or appearing thereon.

(b) Claims shall be signed by the claimant or its authorized officer or employee.

(c) Claims for refund must be submitted within three (3) years after the applicable return is filed; provided, however, that if the three-year limitation period for assessment of tax has been extended, then a claim for refund or credit may be made within such extended period.

(d) The Finance Department may require such additional information as may be deemed necessary to properly verify the contents of a claim for refund before any refund payment will be authorized.

(2) Third Parties. A purchaser who paid tax to a Lakewood retailer but asserts that a sale is exempt from or not subject to tax must submit a claim for refund along with all invoices showing where tax was collected and documentation showing the basis for exemption.

(3) Refunds – Exempt Entity – Building Permits. In addition to the requirements of section 3.01.450(A), claims for refund by a tax-exempt entity involving a building permit shall be supported by such documentation the Finance Department may reasonably require, including, but not limited to, proof of payment by the tax-exempt entity to the contractor for the project.
(4) **Taxes Remitted by Retailers.** If, after a retailer has submitted a sales or use tax return to the City, it is determined that the amount paid exceeds what is due, the City, upon a claim for refund submitted in accordance with this regulation, shall refund the excess to the retailer or credit such amount against a subsequent remittance by the retailer.

(5) **Taxes Erroneously Paid to Another Jurisdiction.** When the Chief Financial Officer determines that sales and/or use taxes owed to the City were paid to another municipality, the City will promptly notify the taxpayer and direct that improper collection and remittance cease. In order to recover such taxes, the City may either:

(a) Make a written claim for recovery directly to the municipality that received the tax, penalty and/or interest owed to Lakewood; or

(b) Institute procedures for collection of the tax, penalty and/or interest from the taxpayer or retailer.

(6) **Inter-period Credits Not Permitted**

A retailer who refunds tax to a purchaser that was paid to the City on a previously filed tax return must amend the return and request a refund by submitting a refund in the city’s online system, or on forms furnished by the Finance Department, to obtain a refund of the claimed overpayment.

Retailers are not permitted to take a credit against future liabilities for such tax by, for example, taking a deduction for the amount of the sale or reporting no tax due. Retailers taking inter-period credits will be assessed for the actual tax due plus penalties and interest.

Similarly, retailers are not permitted to take deductions for returned goods or bad debts if the deduction exceeds the current period’s gross sales. If this occurs, the retailer must submit a claim for refund. The City does not consider issuing a refund or a credit for the tax invoiced on an exempt sale a “returned good” eligible for deduction on a subsequent return.

**PART 6. AUDIT AND ASSESSMENT**

**Regulation 3.01.660 Coordinated Audit**

(1) Any taxpayer licensed in the City pursuant to Chapter 3.01.310 and holding a similar sales tax license in at least four (4) other Colorado municipalities that administer their own sales tax collection, may request a coordinated audit as provided herein.

(2) Within 14 days of receipt of notice of an intended audit by any municipality that administers its own sales tax collection, the taxpayer may provide to the Lakewood Finance Department, by certified mail, return receipt requested, a written request for a coordinated audit indicating the municipality from which the notice of intended audit was received and the name of the official who issued such notice. Such request shall include a list of those Colorado municipalities utilizing local collection of their sales tax in which the retailer holds a current sales tax license and a declaration that the retailer will sign a waiver of any limitations period on the City's right to recover tax owed by the taxpayer for the audit period.

(3) Except as provided in paragraph (7) below, any taxpayer that submits a complete request for a coordinated audit and promptly signs a waiver of the three (3) year limitations period may
be audited by this City during the succeeding twelve (12) month period only through a coordinated audit involving all municipalities electing to participate in such an audit.

(4) If the City desires to participate in the audit of a taxpayer that submits a complete request for a coordinated audit pursuant to paragraph (3), the Chief Financial Officer shall so notify the Chief Financial Officer of the municipality whose notice of audit prompted the taxpayer's request within ten (10) days after receipt of the taxpayer's request for a coordinated audit. The Chief Financial Officer shall then cooperate with other participating municipalities in the development of arrangements for the coordinated audit, including arrangement of the time during which the coordinated audit will be conducted, the period of time to be covered by the audit, and a coordinated notice to the taxpayer of those records most likely to be required for completion of the coordinated audit.

(5) If the taxpayer's request for a coordinated audit was in response to a notice of audit issued by this City, the City's Finance Department shall facilitate arrangements between this City and other municipalities participating in the coordinated audit unless and until an official from some other participating municipality agrees to assume this responsibility. The Finance Department shall cooperate with other participating municipalities to, whenever practical, minimize the number of auditors that will be present on the retailer's premises to conduct the coordinated audit on behalf of the participating municipalities.

(6) If the taxpayer's request for a coordinated audit was in response to a notice of audit issued by the City, the City's Finance Department shall, once arrangements for the coordinated audit between the City and other participating municipalities are completed, provide written notice to the taxpayer of which municipalities will be participating, the period to be audited and the records most likely to be required by participating municipalities for completion of the coordinated audit. The Finance Department shall also propose a schedule for the coordinated audit.

(7) The coordinated audit procedure set forth in this section shall not apply:

(a) When the proposed audit is a jeopardy assessment.

(b) To audits for which a notice of audit was given prior to the effective date of this section.

(c) When a taxpayer refuses to promptly sign a waiver of the three (3)-year limitations period.

(d) When a taxpayer fails to request a coordinated audit within the specified time.
SALES AND USE TAX SPECIAL REGULATIONS

These special regulations are promulgated for specific businesses and special circumstances. They shall apply in addition to and have the same effect as the numbered sales and use tax rules and regulations. Unless otherwise noted, all references herein to chapter 3.01 or any section or subsection shall refer to chapter 3.01 of the city of lakewood municipal code, and all references herein to rules or regulations shall refer to the numbered sales and use tax rules and regulations.

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ADVERTISING AGENCIES, COMMERCIAL ARTISTS AND DESIGNERS

Advertising agencies primarily furnish a service for their clients and, in connection with furnishing such service, acquire items of tangible personal property which are used by the agencies to perform a service or which go to their clients in connection with the performance of the service.

(1) **Tangible personal property used by advertising agency and not for resale to clients.** If the advertising agency is primarily performing a service and does not sell tangible personal property, it does not need a sales tax license. Purchases by advertising agencies of articles delivered to a location in the City are subject to sales tax imposed by the retailer. If the retailer fails to collect sales tax, the advertising agency must remit use tax to the City. Invoices must be retained for all purchases of tangible personal property, including those for service contracts, to determine whether tax was appropriately paid.

(2) **Tangible personal property sold to clients of advertising agency.**

   (a) Sales tax also applies to the entire amount charged to customers or clients, including fabrication labor, for items of tangible personal property including, but not limited to, drawings, paintings, films, designs, photographs, lettering, assemblies, and printed matter, as well as tapes, CDs and DVDs (visual and audio). The format in which the items are delivered to the customer is irrelevant. These items are taxable whether they are delivered in electronic or hard copy formats. It is also irrelevant whether the items are used for reproduction or display purposes only.

   (b) If an agency acquires articles for resale to its clients, then the agency must have a sales tax license in order to purchase such property tax-free for resale. The sales tax to be charged by the agency applies to the total amount of the retail sale of property, whether prepared by its employees or acquired from outside sources. Sales by an advertising agency, including direct mail advertising pieces, handouts, throwaways, and similar articles, are subject to sales tax if delivered to clients in the City. If the agency fails to collect sales tax, the client must remit use tax to the City. Records must be maintained to account for retail sales to customers.

(3) **Flat rate for service.** If an advertising agency charges one flat fee for both the non-taxable service and the taxable tangible personal property, then the entire amount is taxable.

(4) **Non-taxable services.** Non-taxable services, if separately stated, include, but are not limited to:

   - Writing copy for use in advertising to be broadcast on television or radio;
   - Writing copy for use directly in magazines or newspapers (does not include inserts. Inserts are taxable.)
   - Typesetting, color separation, and design;
   - Compiling statistical and other information;
   - Placing, or arranging for the placing, of advertising in print media, on billboards, and other forms of outdoor advertising, including on or in cars, buses, trains, or other facilities used in public advertising;
   - Charges for supervision, consultation, and research.

AGRICULTURAL PRODUCERS

"Agricultural producer" has the meaning as set forth in Section 3.01.230 of the Code.
Agricultural producers are likened to manufacturers. As such, commercial packaging materials and commercial shipping materials purchased by an agricultural producer to deliver its products to its customers are not subject to tax. "Containers" and "shipping cases" include wire, twine, rope, tape and similar binding materials, together with any other material or product used to wrap, bag, bundle, or similarly contain products. Containers not used to deliver a product, or which are used for any purpose whatsoever prior to use in delivering a product to a customer, are subject to tax at the time of acquisition.

Fertilizer purchased by an agricultural producer is not subject to tax. "Fertilizer" includes compounds of nitrogen, phosphorus, potassium, trace elements or similar materials or substances which provide essential plant food elements and which become ingredients of the growing plant. "Fertilizer" does not include soil, sand, peat moss, limestone, disinfectants, mulches and similar materials primarily used to condition the soil or the preserve or facilitate plant growth, regardless of incidental nutritive value. Therefore, purchases of such materials are taxable. Similarly, the purchases of insecticides, fungicides, germicides, herbicides, and similar materials or substances are taxable.

AUTOMOBILE DEALERS AND DEMONSTRATION VEHICLES

Any motor vehicle purchased and offered for sale by a licensed motor vehicle dealer or wholesaler, as defined in C.R.S. § 44-20-102, which has received a full-use dealer plate or demonstration plate in accordance with C.R.S. § 42-3-116 and/or Colo. Code Regs. § 204-10:48, shall not be subject to use tax.

AUTOMOTIVE REPAIRS

Parts and accessories installed in automotive vehicles are of the same nature as other sales of tangible personal property and, therefore, are taxable, unless provided in performance of a separate warranty, service or maintenance contract on which tax was paid. The taxable amount is the total charge made to the customer, with deductions therefrom allowed for service or labor charges if separately stated.

If a repair shop subcontracts a portion of the repair job to another repair shop, the total amount charged to the end customer is taxable, unless the charges for parts and labor are separately stated on both the subcontractor’s invoice and on the invoice to the end customer. If separately stated, only the parts are subject to sales tax on the invoice to the end user.

Automotive vehicle dealers, garages, repairmen, and the like may purchase tax-free only tangible personal property for resale. These items must be separately stated on the invoice at the time of purchase. This exemption does not apply to service vehicles, machinery, equipment, supplies, tools, and similar items which they purchase for their own use or consumption and not for resale. Supplies consumed in the performance of a job (such as sandpaper and masking tape), and not separately stated on the invoice to the customer, are taxable to the repairman.

Automotive repair shops may also invoice for delivery and other miscellaneous fees, charges and overhead recoveries. These fees and charges include, but are not limited to, delivery fees, freight fees, waste fees, environmental fees, handling fees, and “shop supply” charges. These fees and charges are subject to City sales tax and must be included in the taxable selling price.

BROADCASTING STATIONS AND OTHER MEDIA

The purchase of tangible personal property by broadcasting stations for use in their operations inside the City is subject to City sales tax. Personal property includes, but is not limited to, satellite dishes, transmitting towers and other electronic receiving or transmitting equipment; records, tapes, compact
discs and other recording or playback media; and equipment used in the studio, business office and general station facilities.

Tax must also be paid on the purchase price of promotional and advertising items. The purchase of items for resale would be exempt from City sales tax, provided that sales tax is collected on the price charged to the end user. The sale of on-air advertising spots is not subject to sales/use tax.

Advertisements for a City retailer making retail sales of tangible personal property to City residents through a broadcasting station or by direct orders to the advertiser must state that sales tax must be added to the sales price remitted by City residents.

CEMETERIES

Cemeteries must charge sales tax on the selling prices of cement vaults, liners, markers, sod and similar items.

Persons constructing above ground burial structures or below ground concrete foundations are deemed to be constructing improvements to real property and must follow the rules set forth herein under "Contractors."

COINS AND BULLION

If any coin or currency is exchanged in the open market at the current exchange rate, then the transaction is not subject to sales tax. If coins, however, are commemorative or otherwise, and the coins, although legal tender in the issuing country and also acceptable as legal tender in other countries, are purchased at rates not reflecting actual currency value (as for numismatic or coin collecting purposes or where the previous metal content of the coins determine their value), then the transaction is the sale of tangible personal property and is subject to sales tax.

Sales of bullion are subject to sales tax. Bullion sold within the City and physically or constructively transferred into the City is subject to the sales tax. If the purchaser, however, paid a sales tax in the city or state in which he took delivery, then he is liable to the City for the difference between the sales tax paid and the City sales tax. Sales of gold and silver commodity contracts are not subject to sales tax unless delivery of the commodity is taken in the City.

CONSIGNED MERCHANDISE SALES

Sales tax must be collected on the retail sale of consigned inventory. The consignee must collect and remit the sales tax to the City. While consigned inventory is owned by the consignor, it is the consignee that actually makes the retail sale and is therefore accountable for tax collection and remittance.

CONTRACTOR BILLING – APPLICATION OF TAX

This section does not apply to Contractors operating under a City of Lakewood building permit where Tax has been prepaid.

1 Types of billing and types of contracts can affect the way tax is imposed on a Contractor and/or its customer. The following applies to Contractors that bill their customers on a lump sum and/or time and material basis.
(a) **Time and Materials.** A Contractor that invoices separately for labor and materials must have a Sales and Use Tax License and charge applicable City tax on the marked-up price of all materials sold at retail. Labor separately stated on the invoice is exempt from taxation under the Tax Code. The Contractor is liable for Use Tax on the cost of all materials and supplies not separately billed to the customer, as well as on tools and equipment.

(b) **Lump Sum.** A lump sum contract does not distinguish between labor and materials; rather, the amount is invoiced together as one total. The Contractor must either pay Sales Tax upon the purchase of all materials, including supplies, prefabricated materials and rentals, used to complete the lump sum contract or, if all such materials are purchased tax-free (wholesale), pay Use Tax directly to the City for all such materials used to complete the contract. The Contractor does not charge to its customer Tax on the lump sum price.

(c) **Completed Units.** Completed units, not made-to-order, are tangible personal property that can be purchased at retail as standalone items and do not require significant on-site fabrication labor at the installation location. Examples of completed units include stoves, refrigerators, furnaces, air conditioners, washing machines, dryers, carpets, electrical fixtures, ready-made cabinets, storm doors, garage doors, storm windows, screens, sod and similar items.

Contractors selling/installing completed units are considered Retailers and must bill their customers on a time and materials basis and collect from the customer, and remit to the City, Sales Tax on all tangible personal property used to complete the contract, including all materials, supplies, prefabricated materials and rentals.

Repairs and maintenance of completed units are not repairs to real property and must be billed on a time and materials basis.

1) **Governments, Schools and Charitable Organizations.** Construction materials purchased by Contractors for construction work on property owned by the United States Government, State of Colorado, charitable organizations having a Lakewood Certificate of Exemption, schools not held or conducted for private or corporate profit, and political subdivisions are exempt from sales or use tax. For charitable organizations, only those construction materials purchased after receiving a Certificate of Exemption will be exempt. The City will provide an exemption letter to the Contractor for a qualifying project upon request.

3) **Sales and Use Tax Returns.**
   (a) **Lump Sum Billers.** Contractors that invoice on a lump sum basis are not required to file Sales Tax returns, but may be liable to the City for Use Tax. Such Contractors located within the City must remit Use Tax to the City on materials and supplies upon use in a job or in fulfillment of a contract, when initially purchased tax-free (wholesale) and for which an exemption certificate has not been obtained.
   
   (b) **Time and Materials Billers.** Contractors that invoice on a time and materials basis must file Sales Tax returns and may also have Use Tax liability to the City. Such Contractors located within the City must remit Use Tax to the City on materials and supplies not separately billed to the customer unless an exemption certificate for the customer has been obtained.

4) **Licenses.** Contractors that invoice on a time and materials basis must have a Lakewood Sales and Use Tax license. Contractors located within the City that invoice on a lump sum basis must have a Lakewood Sales and Use Tax license.
(5) **Subcontractors.** Subcontractors are treated as Contractors for the purposes of this Special Regulation.

**COUPONS**

Retailers accept coupons from their customers for a reduction in the regular selling price of an article. These coupons are classified as either manufacturer's coupons or store coupons.

A manufacturer coupon is issued by the manufacturer and allows the customer a reduction in the sales price of the product upon presentation of the coupon to the retailer. Because the retailer is reimbursed by the manufacturer for the amount of the reduction, sales tax applies to the full selling price before the deduction of the manufacturer coupon.

A store coupon is issued by the retailer for a reduction in the price of an article when the coupon is presented to the retailer by the customer. Because there is no reimbursement to the retailer for such reduction, the sales tax applies to the reduced selling price of the article.

When a coupon, gift card or similar instrument provided to a customer for in-store use is a form of payment, such instrument is deemed to be a manufacturer coupon. “Form of payment” means the instrument is not a discount to or for any specific item, is not redeemable for cash, and when items purchased with such instrument are returned to the store, the dollar amount of the purchase made with such instrument is returned to the customer only as in-store credit, store gift card or similar.

The sale of coupon books or cards to the general public is not a taxable transaction. The publisher of the book must pay sales/use tax to the printer based on the cost of the books or cards.

**DENTAL LABORATORIES AND DENTISTS**

Dental laboratories and dentists engaged in business in the City must obtain a sales and use tax license. Dentists who have monthly retail sales of less than three hundred dollars ($300) may request to make returns and pay taxes at intervals not greater than every three (3) months. Dentists who do not have retail sales may request to submit use tax returns on an annual basis, covering all purchases of equipment and supplies upon which sales tax has not been paid. Annual use tax returns must be filed even if the use tax liability is zero.

Prosthetic devices are replacements for lost or missing natural parts or are the addition of devices through prosthetic dentistry to aid dental bodily functions. Prosthetic dentistry consists of the replacement of lost teeth, and the use of inlays, crowns, bands, brackets and other band attachments, wires, intraoral and/or extraoral traction devices, and retaining or holding appliances and other devices that aid in dental bodily functions.

Items subject to tax include, but are not limited to:

- general business equipment
- hand instruments and other items used for patient care
- dental equipment and furnishings
- supplies used for patient diagnostic records
- supplies and materials that do not become constituent parts of a prosthetic device
- samples purchased by the dentist and provided to patients
Items exempt from tax include, but are not limited to:
- supplies and materials that become a constituent part of a prosthetic device to be resold to a dentist
- prosthetic devices sold to a dentist
- gold, silver and other materials used for fillings
- orthopedic dental devices or appliances intended to treat or reconstruct skeletal or dental issues, including mouth guards and night guards, when manufactured, altered or adjusted to fit a particular patient and prescribed by a licensed practitioner of the healing arts.

DONATIONS

A retailer or manufacturer who purchases tangible personal property for the purpose of donating it to a charitable organization must pay sales or use tax on the purchase (and cannot claim the charitable organization's exemption). Such retailer or manufacturer cannot claim a resale exemption by asserting that the property was donated, and not resold, to the charitable organization.

A retailer or manufacturer who initially makes a wholesale (exempt) purchase of an item for resale (e.g., retailer buys an item for its inventory it plans to resell it) and later withdraws the item from inventory and donates it to a charitable organization is subject to use tax on the withdrawal from inventory.

EATING AND DRINKING ESTABLISHMENTS

Tax must be collected by eating and drinking establishments whether the food is eaten at the establishment or off its premises. Sales tax must be separately stated on the bill or invoice of the service establishment, with the exception of vending machines and drinking establishments selling drinks by the glass which may include tax in the selling price.

Caterers. Caterers and other persons similarly engaged are liable for sales tax on the total selling price for items sold and/or charges for services essential to providing meals and beverages. If tables, chairs, linens or similar items are leased, such items are subject to tax pursuant to section 3.01.420(J) of the Tax Code. Where catering services, including food, are sold as a package, the entire purchase price of the services is taxable.

Delivery charges. Delivery charges to deliver taxable items are taxable, even if separately stated.

Employee meals. Private enterprises, such as commercial and manufacturing companies, and public agencies, such as governmental organizations, regularly serving and charging their employees or the public for meals and beverages are liable for sales tax based upon the selling price of such meals and beverages. Meals provided to employees at no charge and are considered as part of their salary, wages, or income are exempt from sales and use tax.

Fundraisers. When an eating and drinking establishment donates to charity any portion of the price charged to the customer for a meal, tax is imposed, and shall be collected and remitted to the City, on such price charged. Eating and drinking establishments serving fund-raising meals priced in excess of the regular purchase price are liable for sales tax on the regular selling price.

Disposable and non-disposable products. The retailer of meals and drinks must pay the tax on purchases of most products used or consumed in the operation of its business, including fixtures, linens, silverware and glassware. Plastic and paper products such as towelettes, napkins, soda straws, plates, knives, forks, spoons and cups are specifically exempt from sales tax if: such items become the property
of the consumer along with the food, no charge for such items is made and sales tax is paid on the food. (Sections 3.01.430(G)(4) and (5)).

**Coupons.** When a customer purchases one meal and receives another meal free as a result of presenting a coupon issued by the restaurant, sales tax applies only to the actual amount charged. However, tax applies to the full (non-discounted) price of the meal when an entity other than the restaurant issues a coupon or similar chit for a price reduction or free meal.

**Complimentary food and drink.** Food and drink provided by the establishment at no charge to the customer is subject to use tax on the cost to the establishment. This shall include promotional items or items provided as reparation for sub-standard food or service.

**Gratuity.** The following gratuities are not subject to sales tax if the total amount of the gratuity is distributed by the vendor to persons who actually render the service: cash tips (money left by the patrons for use of those providing the service), charge tips (amounts added to sales check by the patrons for use of those providing the service), banquet tips, and tips separately stated and added to the sales check by the vendor at a flat rate.

**FABRICATING, PRODUCING AND PROCESSING**

"Fabricating, producing, and processing" includes any operation which results in the creation or production of an article of tangible personal property, or which is a step in a process or series of operations resulting in the creation or production of such an article, excluding operations not so related for the creation or production of such an article.

Fabrication/manufacturing labor is subject to sales/use tax. The Lakewood Municipal Code (Code) includes fabrication/manufacturing labor in the definition of "Price" or "Purchase Price" at section 3.01.230: "The gross purchase price of articles sold after manufacturing or after having been made to order, including the gross value of all of the materials used, labor and service performed, and the profit thereon."

An operation that changes the form or state of tangible personal property is one of fabrication. Persons regularly engaged in the fabrication or production of articles of sale at retail shall collect and remit the tax on the sales price. If the fabricator converts such property to its own use, then it shall remit the tax based on his acquisition cost.

The tax applies to the total charges for the fabrication or production of an article of tangible personal property made to order. For example, if a manufacturer orders a machine part from a machine shop for the purpose of completing a custom order, then the tax shall be paid on the total charge for the part, including labor, even if charges for labor are segregated from the cost of the materials. Similarly, the total charges for making drapes are subject to sales tax.

**FACTORY-BUILT HOUSING**

(1) Any Factory-Built Housing where a Lakewood building permit is required shall be subject to section 3.01.450 of the Tax Code.

(2) Any Factory-Built Housing for which a Lakewood building permit is not required (other than for utility hook-ups, etc.) shall be subject to the following:

(a) **Lump Sum Contracts.** A lump-sum contract for the construction of fixtures to real property is treated as a contract for services, and the contractor providing those services is treated as the end user and consumer of the tangible personal property used to construct such fixtures. This means that a builder who uses a lump-sum contract
with the homeowner must pay sales tax to the manufacturer on fifty-two percent (52\%) of the purchase price the builder paid to the manufacturer. If, after the builder purchases the manufactured home from the manufacturer, the builder purchases additional materials to perform finish work on the manufactured home, then the builder pays sales tax (or use tax) on the entire purchase price for those materials. The homeowner is not liable for any sales or use tax.

(b) **Time and Materials Contracts.** If the builder uses a time and materials contract with the homeowner, then the builder is not treated as the ultimate consumer of the manufactured home but, instead, is treated as a retailer who resells the home to the homebuyer. The builder's purchase of the manufactured home charged by the manufacturer is an exempt wholesale purchase for resale and the subsequent sale by the builder to the homeowner is subject to sales tax. The tax paid by the homeowner is calculated on fifty-two percent (52\%) of both the price charged by the manufacturer to the builder and the markup, if any, on the manufacturer's price charged by the builder to the homeowner. For materials that were not purchased from the manufacturer but purchased by the builder to complete the finish work (e.g., plaster to finish drywall seams), sales tax is calculated on the full price charged by the builder to the homeowner for such materials.

(3) **Materials Not Part of the Factory-Built Housing.** Materials that are not part of the manufactured home are taxed on one hundred percent (100\%) of the price for such materials. For example, sales tax (whether paid by the builder that uses a lump-sum contract or paid by the homeowner under a time and materials contract) applies to the entire purchase price of materials to construct the foundation, to bring electricity and other utilities to the home, kitchen appliances and window coverings are not considered part of the Factory-Built Housing.

**FEDERAL AREAS, SALES ON**

Sales on federally owned land are subject to City sales tax, except when made to the U.S. government, as set forth in 3.01.430(d)(1); provided, however, sales to authorized persons as defined in 4 U.S.C. 107 are not subject to sales tax.

**FIDUCIARIES**

Trustees, receivers, executors, or administrators who, by virtue of their appointment by a State or Federal court, operate, manage, or control a business engaged in buying and selling tangible personal property, including the liquidation of assets of a bankrupt, insolvent, or deceased person, must acquire a sales tax license in the fiduciary's name and otherwise meet the collection and reporting requirements of Chapter 3.01.

**FINANCIAL INSTITUTIONS**

Banks, savings and loan associations, and similar financial organizations who offer gifts or premiums of tangible personal property as an inducement for opening an account, making a deposit or adding to an account are, for purposes of Chapter 3.01, making sales of tangible personal property (see (1) below) or are making taxable purchases (see (2) below).

These gifts and premiums are purchased by the financial institution and given to the customer or offered to the customer at a reduced price when a deposit is made to the customer's account. The purchase of these gifts and premiums or sales thereof are to be reported in the following manner:
(1) The sales of these premiums and gifts at their reduced price are treated as retail sales and the financial institutions must collect the sales tax from the depositor.

(2) The difference between the bank's purchase price and the cash price paid by the depositor shall be taxable to the financial institutions.

(3) If an item is given to the depositor in consideration of depositing funds or using other financial services from which the bank may profit, the item's purchase price (cost) will be reported as a taxable sale on the appropriate line of the sales tax return.

**FREIGHT, DELIVERY AND TRANSPORTATION**

Transportation or delivery charges are subject to tax. This includes, but is not limited to, freight charges, delivery charges and other like charges to transport tangible personal property. When other charges are not separately stated on the invoice and are commingled with delivery charges, such as set-up and handling charges, they would also be subject to tax. The Code includes these charges in the definition of "Price" or "Purchase Price" in section 3.01.230.

The freight charges are considered a part of the negotiated purchase price to the vendor. Therefore, freight, delivery or transportation charges billed by the vendor are subject to tax.

A contract between a delivery company and the purchaser of tangible personal property would be exempt from tax, provided that the purchaser pays the delivery company directly and the delivery charges do not appear on the seller's invoice. The freight charges would not be considered part of the negotiated purchase price. This would be considered a non-taxable service contract.

**GAS AND ELECTRIC SERVICES**

Gas and electric services, whether furnished by municipal, public or private corporations or enterprises, are taxable when furnished for domestic and commercial consumption, but are not taxable when sold for resale or for any of the uses set out in Section 3.01.430(H) or when subject to any of the general exemptions of Chapter 3.01.

The tax applies to all amounts paid for taxable gas or electrical services, irrespective of whether there is an actual consumption. The tax is imposed on all payments, whether in the form of a minimum charge, a flat rate, or otherwise.

**GIFT CERTIFICATES**

Sales of gift certificates and similar documents, as well as their redemption for cash, are not subject to tax. If the gift certificates or similar documents are redeemed for merchandise and not cash, then sales tax is due on the total selling price of the merchandise.

**GIFTS, PREMIUMS AND PRIZES**

Purchases of tangible personal property for use as gifts, premiums or prizes for which no valuable consideration is received from the recipient are subject to sales tax on the total purchase price. The purchaser is deemed to be the user and consumer of such property. Examples would be gifts given to all individuals who attend a time-share real estate presentation, regardless of whether the individual buys or invests in the proposals. If the property is purchased from a licensed City retailer, all applicable sales tax should be paid to the retailer upon such purchase.
Any person purchasing tangible personal property to give away in any manner without contingencies is a user or consumer and is liable for the tax thereon. Such property includes advertising gifts and articles given as prizes, premiums, or for goodwill.

If a legally imposed municipal sales tax was not collected at the time of purchase, then use tax is due.

Vehicles claimed as gifts between family members that are truly gifts without consideration are not subject to sales tax. However, assumption of a debt (lien) between family members is consideration and subjects the transaction to sales tax. The taxable value of the vehicle would be the debt plus any other consideration given. See also Regulation 3.01.420(C).

The donor and the recipient are considered family members if one of the following relationships exists: spouse, parents, grandparents, child, grandchild, brother or sister. Claimed gifts between parties not included in these family relationships are presumed to be with consideration and subject to sales tax. The exchange of a vehicle is taxed at fair market value as determined using the Kelly Blue Book average wholesale value. If unrelated parties insist the change of ownership is a bona fide gift, without consideration, the new owner may appeal to the Sales Tax Division for review and evaluation. If the claimed gift is in fact a gift without consideration, the transaction is not subject to tax.

HOTELS, MOTELS AND OTHER LODGING SERVICES

Such supplies as toilet tissue, soap, shoeshine cloths, clothes bags, matches, facial tissue, coffee and other items available for guests in their room are considered part of the purchase price of the lodging service and are not subject to sales or use tax at the time of purchase by the hotel or motel. This exemption is based on resale of these consumables in a taxable transaction and does not apply to rooms rented continuously for over thirty days that are not subject to sales tax under Chapter 3.01.

Linens, furniture, pool equipment and supplies, and similar items are subject to sales or use tax at the time of purchase by the hotel or motel. Any items offered to guests outside of their rooms, including but not limited to continental breakfast, coffee, drinks, snacks, etc., is subject to sales tax at the time of purchase by the hotel or motel. If a legally imposed municipal sales tax was not collected at the time of purchase, then use tax is due.

If a hotel or motel operates a restaurant or lounge, see the rules set forth herein under "Eating and Drinking Establishments."

Banquet and Meeting Rooms. A room used exclusively for a banquet, meeting or sales/display room is not subject to sales or accommodations tax on charges for these uses. A room or suite with beds cannot qualify as exclusively used for any of the above exempt purposes.

Fees. Cancellation charges, forfeited deposits and similar charges for cancelling a reservation or failing to check-in on time or at all are subject to sales tax. Other taxable fees include, but are not limited to, pet, early or late departure, rollaway bed, and additional persons.

ICE

Ice sold for home consumption is exempt from sales tax.

Sales of ice to other sellers of ice or to sellers of soft drinks for use as a component part of a drink are wholesale sales and, therefore, are not subject to sales tax. If ice is used for the sole purpose of becoming an ingredient or component of the finished product, as when it is used solely to supply all or a
part of the water content of the sausage and luncheon meats, the sale of the ice is a sale for resale and is not subject to sales tax. If not purchased for these purposes, and the purchase is not otherwise exempt, as in the case of a purchase for resale, then the purchase is subject to tax.

Persons selling ice to manufacturers, carriers, or any other consumer for the purpose of cooling or keeping perishable items or property or for other uses are making taxable sales.

**INITIAL USE OF PROPERTY**

Any item purchased for use or consumption by the purchaser is subject to sales or use tax at the time of purchase, even though the item might be resold later in either its original or altered form. A tax-free purchase is taxable in full at the first time it is used by the purchaser for a nonexempt purpose.

Examples:

1. Electronic devices such as television sets, audio equipment, mobile phones, gaming systems, computers and similar items available for customers to handle, use, play, experience, experiment with, test, try out, etc., whether or not eventually sold, are subject to sales or use tax on the initial purchase.
2. Ceiling fans, light fixtures, doorbells and similar items when affixed to walls, ceilings, overhangs, displays, etc., for purposes of use or display at a retailer’s business, whether or not eventually sold, are subject to sales or use tax on the initial purchase.
3. A junkman may not buy a new car tax-free under the theory that the car is going to be junked someday and resold through his business for scrap.

**INSURANCE COMPANIES**

Insurance companies are not exempt from sales tax on purchases of tangible personal property for their consumption.

Purchases of articles by an insurance company to replace insured damaged property are subject to tax. Articles purchased by the insured with the proceeds of a damage claim settlement received from an insurance company are subject to tax.

**JANITORIAL SERVICES**

Items such as hand soaps, paper towels, toilet tissue, and disinfectants which are furnished under service contract and which are billed to the customer as a separate and distinct item from the service that is performed are considered retail sales of tangible personal property. Sales tax shall be collected from the customer and remitted by the janitorial service.

If such consumable items are not separately stated but are included in the janitorial service contract, then the janitorial service shall be deemed to be the user or consumer of the products and shall pay sales tax at the time of purchase.

No sales or use tax is applicable to the charge for service rendered.

**LEASED DEPARTMENTS IN RETAIL STORES**

Leased departments in retail stores are separate and distinct stores, just the same as if the various businesses conducted in such departments were conducted in separate and distinct buildings. The fact
that the various departments are in one building or on one floor of a building does not alter the fact that ownership and control of merchandise is different in each leased department. Where a store has leased departments to persons for retail sales of tangible personal property, each leased department shall make separate monthly sales tax returns. The lessee shall keep his own books and make his own sales tax collections on retail sales. If the lessor store keeps the books for the lessee departments and makes collections for their sales, then the lessor store shall make separate sales tax returns for such departments and shall pay the taxes due thereon, but the lessee is not relieved of his ultimate liability under Chapter 3.01 if the lessor store fails to make the proper sales tax returns or to remit the taxes to the Chief Financial Officer.

**LINEN SERVICES**

A linen business’s purchase of linens, including but not limited to, uniforms, tablecloths, rugs and other textiles to be provided as part of the service, is exempt from tax as a wholesale purchase. Other items used in the performance of the service, such as soaps, starch, cleaners, hangers, bags, wrap, twine, or other consumables items are taxable to the linen company on the purchase price.

For purposes of taxation to the customer, the only non-taxable service a linen business provides is the cleaning and mending of linens or other tangible personal property not owned by the linen business. All other services where the linen business owns the property being provided are considered taxable rentals of tangible personal property. The entire charge for such rentals, inclusive of cleaning and mending charges, is subject to tax.

**MAINTENANCE, RENOVATION AND DECORATING SERVICES (NON-STRUCTURAL)**

Persons engaged in the business of rendering non-structural maintenance, renovation and decorating services, such as painters and paper hangers, floor waxing services, resurfacing and others under a maintenance or service contract are rendering a service and are considered the users of the articles purchased and are subject to tax on such articles at the time that they are purchased.

No sales or use tax is applicable to the charges made for these services.

**MANUFACTURERS AND PREFabricATORS ACTING AS CONTRACTORS**

A manufacturer or prefabricator may contract to build into real property that which it manufactures or prefabricates. If the contract provides for the transfer of title to the materials prior to the time that the materials are built into the real property, and if the material price is separately stated from the installation price, then the manufacturer shall be considered to have sold the material. Therefore, sales tax must be charged only on the selling price of the material. If not properly segregated, then the amount included for installation is also part of the taxable price.

If a manufacturer or prefabricator builds materials into real property, and title to the materials does not pass until incorporated in the real property, then the manufacturer is a contractor contemplated in the Special Regulation for "Contractors" and must follow such Special Regulation.

**MORTICIANS AND FUNERAL HOMES**

Morticians and funeral homes are considered to be rendering services and making sales of tangible personal property and shall collect sales tax in accordance with the following rules:
1. If a funeral service is contracted for in one lump sum, with no itemizations, sales tax shall be imposed on the entire amount.

2. If a funeral service is contracted for in such a manner that the charges for such tangible personal property as caskets, urns, vaults, shipping boxes, clothing, floral items and similar tangible personal property, are separately stated from the charges for such services as music, police escort, clergy honorarium, and similar services, then sales tax shall be imposed only upon the selling price of such tangible personal property.

The fact that the remains are consigned to a common carrier for delivery elsewhere, whether inside or outside the City, does not change the fact that such tangible personal property was first used in the City and, therefore, a Lakewood taxable sale. These rules apply to all sales of funeral services and related tangible personal property within the City.

Tangible personal property that is purchased and that is not to be resold in the normal course of business is subject to tax at the time of purchase. Tax-free purchases for resale, when removed from inventory and used in the regular course of a mortician's business, must be included in the Lakewood tax return for the month in which such articles are removed from inventory.

**NEWSPAPERS, MAGAZINES AND OTHER PUBLICATIONS**

Newspapers, as defined in Section 3.01.230 of the City Code, are exempt from sales and use tax, whether delivered on newsprint or accessed digitally. The term “published regularly at short intervals,” as stated in the definition of newspapers, shall mean published at least once each week.

A publisher who only makes sales of newspapers is not required to obtain a sales tax license. The publisher shall pay sales tax upon all purchases of tangible personal property except newsprint and printer's ink used in the production of the newspaper products. If the newspaper publisher makes retail sales of other articles delivered in the City, then it shall obtain a sales tax license and collect sales tax and may purchase such articles tax-free for resale.

Magazines, periodicals, trade journals and similar items are tangible personal property whose retail sale is subject to sales tax. If such publications are printed and sold within the City, including subscriptions for such publications, whether or not accessed digitally, then the price is subject to sales tax. If the publication is printed in the City and delivery is made outside the City, then the sale is not subject to sales tax.

Trade journals, advertising pamphlets, circulars, etc. which are to be distributed free of charge and are distributed by means of house-to-house delivery are not exempt from sales tax. “Distributed free of charge” does not include publications that are provided as part of a paid membership. Organizations which produce and distribute free trade publications, and similar items, are deemed to be purchasers for their consumption, and such items are subject to sales tax based on the purchase price of the tangible personal property consumed.

Purchasers of a paid membership who receive trade journals, magazines, etc. as part of such membership are responsible for the sales tax on the publication. If the membership and publication are not separately stated, sales tax shall be due on the entire amount paid for the membership.

Sales tax must be paid to the printer by the advertiser/organization at the time that such items are prepared by the printer. If such items are purchased outside the City, and no sales tax has been paid thereon, then the advertiser must pay the City's use tax on such items.
OPTICAL SALES

Eyeglasses, lenses, frames, contact lenses and similar articles, together with cases or similar containers used to transfer the property to the customer, when dispensed under a prescription or other written order of a licensed practitioner of the healing arts are considered to be prosthetic devices and are exempt from sales and use tax.

Add-ons, including but not limited to non-prescription coatings such as scratch resistant, UV protection and glare reduction coatings, should be separately stated and are subject to sales tax.

Such articles not dispensed under a qualified prescription are subject to sales tax.

PHOTOGRAPHERS, PHOTOFINISHERS AND X-RAYS

Photographers and photofinishers are primarily engaged in the business of selling tangible personal property to their customers, and such sales are subject to sales tax. Purchases of materials that become ingredients or component parts of the finished picture, such as mounts, frames and sensitized paper, are not subject to sales tax because such items are purchased by the photographer or photofinisher for resale. Conversely, purchases of materials that do not become a part of the product sold to the customer are taxable to the photographer or photofinisher. Mounted negatives sold by photographers and photofinishers are subject to sales tax on the total price charged on negative and mount. Only the sale of developed negatives, such as movie film, would be exempt from sales tax.

The charge made by photographers and photofinishers for only the development of film is a service charge and is not subject to sales tax. If individuals deliver their own pictures to photographers for tinting or coloring, then the transaction is a service and is not subject to sales tax. If prints made from developed negatives are sold to a customer, then tangible personal property has been sold, and the selling price is subject to sales tax.

Physicians, surgeons, dentists, hospitals, X-ray laboratories and others who purchase X-ray film and then expose it for the purpose of diagnosis are considered the consumers of the X-ray film. Consequently, tax applies to the purchase of all materials and supplies used to expose and develop the finished X-ray film. These materials include, but are not limited to, film and chemicals.

PRINTERS AND PRINTING

Sales of catalogs, books, letterheads, bills, envelopes, folders, advertising circulars and other printed matter are taxable retail sales if the purchaser does not resell the articles but consumes them as by distributing them free of charge. Except as herein stated, a printer shall not deduct from the selling price any charge for labor or service in performing the printing, even though the labor or service charges may be billed separately from the charge for stock. The labor or service is expended in the production of the article sold. Consequently, it is manufacturing labor incorporated in the product.

If separately stated on the invoice, the services of typesetting, color separation, design, and art and camera mechanicals performed by a printer or its subcontractor for a customer or another printer are not subject to sales or use tax.

On commercial printing of postal cards or stamped envelopes purchased from the United States Postal Service, the amount subject to tax does not include the amount of postage involved.

Printed matter that is partially printed, invoiced to the customer, held in stock for further imprinting, and finally invoiced for subsequent imprinting is subject to sales tax on the full price charged by the printer.
for the item. Sales tax must be collected on the selling price of each part of the job. The subsequent imprinting before delivery is deemed to be completion of the initial sale and not a separate transaction.

Exempt purchases of tangible personal property for resale include:

1. **Paper**: Newsprint, stock on which the finished product is printed and delivered to the customer, and wrapping materials for finished products sold to customers.

2. **Ink**: Printer's ink, ink additives, and overprint varnishes.

3. **Chemicals**: Anti-offset sprays, fountain etch solutions, gum solutions, and all component chemicals when used with the above materials.

4. **Materials**: Padding compound, stitching wire and staples, and bookbinder's tape.

5. **Pre-press preparation materials**: Light sensitive film, plates and proofing materials. Such exemption shall be allowed upon compliance with the procedures stated below.

Printers who are merely performing a service shall be subject to the Special Regulations relating to "Service Enterprises." Printer's ink and newsprint are exempt under Section 3.01.430(M), but all other above listed items are subject to use tax when applied to property which is not sold or incorporated into the final product.

Pre-press preparation materials (which shall be defined as light sensitive films, plates, and proofing materials) shall qualify as exempt purchases of tangible personal property to the extent that such items are utilized for the production of a specific product for a specific customer, and title passes to the customer as part of the total sale, and adequate cost records for the particular job showing amount of prepress preparation material are retained by the printer. If separately invoiced as herein provided, pre-press preparation materials used in the production of a product sold and delivered to a tax-exempt entity will not be deemed subject to the payment of use tax by the printer.

The printer must maintain adequate records of pre-press preparation materials not sold or incorporated into the final product in detail as to each specific job, so that the indication of pre-press material designation on the ultimate billing can be determined upon audit and segregated from other pre-press materials, manufacturing aids or plant property. There must be an audit trail that clearly reflects the passing on to the customer of a particular item of pre-press preparation material and collection of sales tax on a particular invoice when such sales are subject to tax.

A printer may at times retain a customer's property in his place of business. When tangible personal property is retained in the printer's place of business, the department may examine the various records applicable to this property, such as who is liable for the payment of insurance and personal property tax on the property, who is allowed to deduct the depreciation expense on the property, and who benefits from salvage of the item in making a determination of the ownership of the property.

**PRIVATE CLUBS**

Sales of tangible personal property and taxable services at retail by private clubs, such as country clubs, athletic clubs, fraternal organizations or organizations of persons formerly in the armed services of the United States, are subject to tax. Such transactions are taxable even when the transactions are with club members. Private club memberships are not taxable.
READY-MIX CONCRETE

Ready-mix concrete is subject to sales tax on the delivered price, which includes minimum load and transportation charges. (See sec. 3.01.420 of the Tax Code.) Standby charges charged after arrival at the destination are not taxable if segregated on the customer's invoice.

REPOSESSED PROPERTY

If the repossessor of tangible personal property sold the property to the person from whom it was taken and remitted the tax on the total selling price, then the retailer-repossessor may deduct the uncollected selling price from the gross sales on the sales tax return for the period during which the repossession occurred. Repossessed property must be held exclusively for resale by a person holding a valid license. The subsequent retail sale of the repossessed property is subject to sales tax.

No deduction or other credit may be taken from gross sales on account of the repossession when:

1. The repossessed property is a motor vehicle. However, a deduction may be allowed when there is a seller-financed sale. See CRS 39-26-113(6);

2. The retailer-repossessor reports sales tax on the cash basis; or

3. The retailer-repossessor reports sales tax on the accrual basis but elects, consistent with Regulation 3.01.230 for “Taxable Sales,” to report on the cash basis the collections of such credit sales as that subject to repossession.

A person is not liable for sales or use tax on the transaction of repossessing tangible personal property for which he retained a security interest so long as the repossessed property is placed in the repossessor's inventory and held for resale (at retail or wholesale). Repossessed property converted to personal or business use is subject to sales or use tax calculated at the fair market value at the date of conversion.

SAND AND GRAVEL

Sand and gravel removed from the ground becomes tangible personal property and are subject to the sales or use tax that applies to retail sales of tangible personal property. Sales of sand and gravel are taxable unless sold to a licensed retailer for resale.

Tax must be imposed on the delivered price of sand and gravel, including minimum load and transportation charges, in accordance with the provisions of Regulation 3.01.230 for “Price” or “Purchase Price.” Stand-by charges made after arrival at the destination are not taxable if segregated on the customer's invoice.

The retailer of sand and gravel who removes sand and gravel stocks to fulfill its own construction obligations is subject to sales or use tax on the acquisition cost of the products used or consumed at the time of conversion to its own consumption.

Persons who purchase the right to remove sand and gravel from another's land are subject to a use tax on the purchase price of the sand and gravel when removed, unless the same is held for resale.
SERVICE ENTERPRISES

Business engaged in rendering a service are generally consumers rather than sellers of tangible personal property. Tangible personal property which is incidentally transferred with the service to the customer is taxable to the service provider, not to the customer. Service businesses that also sell tangible personal property or taxable services must collect sales tax on these sales. If the charge for service is not separately stated from the charge for tangible personal property, the entire amount is subject to sales/use tax.

To determine if a transaction is a sale of tangible personal property or the transfer of tangible personal property incidental to the performance of a service, one must look to the true nature of the transaction. If the transaction is for advisory services, record keeping, payroll, architectural, tax and like services and the tangible personal property is forms, binders, blueprints, reports or other like property, the tangible personal property is incidental to the performance of the service and, therefore, taxable to the service provider, not the customer. If the purchaser's primary interest is in the physical property of the item purchased, the item is subject to sales/use tax when sold.

Copies sold of the tangible personal property incidental to the performance of a service are subject to sales/use tax. The transfer of the original manuscript by an author to the publisher for the purpose of publication is not subject to sales/use tax. However, the sale of printed copies of the author's book would be subject to sales/use tax.

Sales/use tax would apply to the sale of artistic expressions in the form of paintings, photographs, sculptures and similar artwork, even though the work of art may express an original idea. Generally custom-made items are subject to sales/use tax, with the exception of an original prototype. The materials used to make original prototypes are subject to sales/use tax. The purchaser's primary interest in custom-made items is in the physical property of the item being purchased. Therefore, they are taxable when sold.

The development of information in a research and development contract is not a sale of tangible personal property in the form of a prototype, model, plan, design or like items. Rather it is a contract for information which is an intangible service that cannot be conveyed orally and can only be conveyed via tangible personal property, which is incidental to the service. The materials used to make the prototypes, models, plans, design and like items are subject to sales/use tax to be paid by the service provider. Any copies or additional prototypes and models would be subject to sales/use tax when sold.

When the transaction is determined to be the sale of tangible personal property, sales tax would apply to the full sale price for the item. Deductions are not allowed for labor, management, thought, time or other separately stated items.

Examples:

1. An architectural design firm contracts with a land developer to design a subdivision. The architect transfers blueprints and a 3-D model of the development. The developer requests two additional sets of blueprints and two additional models for his two partners. The original set of blueprints and 3-D model are not taxable to the developer, because they are incidental to the service; but the materials used to make them are taxable to the architect. The additional two sets of blueprints and models are taxable to the developer because they are copies.

2. A law firm contracted with an artist to design and build a sculpture for the firm's lobby. The artist's invoice read: materials $500.00, design work $1,000.00 and labor $2,000.00. The
entire invoice is subject to sales/use tax, even though it is separately stated. A deduction for labor and design is not allowed when the transaction is a sale of tangible personal property.

TOOLS, JIGS, DIES, PATTERNS, MOLDS AND SIMILAR ITEMS

A person who makes and sells tools, jigs, dies, patterns, molds and similar items to a purchaser for use in the purchaser’s manufacturing or processing is making retail sales of the articles and is required to collect and remit the sales tax. After using such items, the purchaser may resell them to the customer for whom the purchaser is manufacturing articles. Such resales, however, do not exempt the sale first described above because the purchaser purchased the article primarily for use and not for resale. The resale of the article to a customer after use by the initial purchaser is taxable.

UPHOLSTERERS

An upholsterer engaged in the repair, recovering, upholstering or similar work on a customer's personal property is engaged in the sale of tangible personal property and shall charge its customers sales tax on the tangible personal property used in this service. If the upholsterer separately states the tangible personal property and the service or labor charges on the billing to the customer, then the labor or services charges are not taxable.

A sale by the upholsterer of upholstery material, manufactured articles or other tangible personal property to a retail customer, without service rendered in connection with the sale, is also taxable on the full selling price of the property.

Upholstery material and other items of tangible personal property that become a part of the upholstered item may be purchased tax-free, but the upholsterer must pay use tax on those items used or consumed that do not become a part of the completed upholstered property.

Where an upholsterer purchases personal property, which it upholds and then offers for sale, the upholsterer is required to charge sales tax on the full selling price of such property. The labor to process and prepare such property for sale to a customer is a taxable part of the transaction of sale.
Chapter 14.27
RESIDENTIAL GROWTH LIMITATIONS

Sections:
14.27.010 Purpose/Intent.
14.27.020 Implementation/Exceptions.
14.27.030 Administration of this Chapter.
14.27.040 General Provisions.
14.27.050 Available Allocations.
14.27.060 Establishment of Allocation Pools.
14.27.070 Schedule of Allocation Periods.
14.27.080 Applications.
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14.27.110 Excess and Unused Allocations.
14.27.120 Failure to Use Allocations; Penalties.
14.27.130 Building Permit Approvals.
14.27.140 Mandatory Review.
14.27.150 Severability Clause.
14.27.160 Authority to Continue.
14.27.170 Definitions.

14.27.010 Purpose/Intent.
A. Establish a building permit management system that limits residential growth in the City of Lakewood to no greater than one (1) percent per annum, which will assure the preservation of its unique environment and exceptional quality of life;
B. Encourage redevelopment of blighted and distressed areas;
C. Encourage preservation of larger open space parcels;
D. Assure that such growth proceeds in an orderly and timely manner and does not exceed the availability of public facilities and urban services;
E. Avoid degradation in air and water quality;
F. Avoid increases in crime and urban decay associated with unmanaged growth;
G. To allow mitigation of the effects of past and future growth on infrastructure and schools.
(Citizen Initiative-Special Election 07-02-2019).

14.27.020 Implementation/Exceptions.
The provisions of this chapter shall apply to the issuance of building permits for all new dwelling units within the City of Lakewood except:
A. Structures located, or to be located, upon land that is designated “blighted.”
B. Structures located, or to be located, upon land located on a campus owned by a college or university, including, but not limited to, Colorado Christian University and Rocky Mountain College of Art and Design, and which are used to house only college or university students, staff, or faculty.
C. A dwelling unit may be replaced with another dwelling unit without obtaining an allocation, provided that the replacement unit is located on the same parcel, tract, or lot.
D. Mobile homes in operating mobile home parks may be removed and replaced with another mobile home without obtaining an allocation.
E. Industrial or commercial construction, unless such industrial or commercial construction includes structures which, in whole or in part, are to be occupied as a dwelling. (Citizen Initiative-Special Election 07-02-2019).

14.27.030 Administration of this Chapter.
A. Planning Commission may recommend and City Council may adopt rules as necessary to administer this chapter.
B. Calculations performed in the administration of this chapter shall be rounded downward for all partial numbers. (Citizen Initiative-Special Election 07-02-2019).

14.27.040 General Provisions.
A system of managing the issuance of residential building permits in the city is established with the following general provisions:
A. Allocation Required for a Building Permit. Except as otherwise provided in this chapter, an allocation is required as a condition precedent to the issuance of a building permit which will result in the creation of a new dwelling unit. For structures containing more than one dwelling unit, one allocation for each dwelling unit in the structure is required as a condition precedent to issuance of a building permit for such structure.
B. Maximum Allocations. The city shall not grant more than forty (40) allocations to a development in a calendar year except upon a finding after hearings held upon reasonable notice to the public pursuant to the provisions of Lakewood municipal code 17.2.2.3 applicable to initial zoning and rezoning that such accumulation of allocations will not prejudice the allocation process; and:
1. That there is an unmet community need for such development; or
2. That insufficient applications have been submitted to exhaust the allocations available and such allocations are available for distribution in the current calendar year.
C. Residential development projects may be specifically exempted from this chapter according to either of the following procedures:
1. Residential developments may be exempted by the adoption by the electors of the City of Lakewood at a regular or special election of an initiated or referred ordinance enacting such an exemption. Such election shall be held according to the applicable provisions of the Lakewood City Charter, with any expenses covered by the applicant requesting the exemption.
2. City Council may upon a finding of compliance with the below-listed criteria grant an exemption from the specific provisions of this chapter for a residential development within the city. City Council’s action shall be by ordinance, shall include two public hearings, and shall occur following public hearing and recommendation by Planning Commission. Planning Commission’s hearing and recommendation, and City Council’s hearing and decision on the requested exemption shall follow the hearing and notice procedures in section 17.2.2.3 of Lakewood municipal code. City Council may grant an exemption from the provisions of this chapter upon a finding that all of the following criteria, as may be applicable, are met:
 a. That the residential project requesting an exemption is a multifamily “senior housing project” which is and will remain housing for individuals over the age of 55; and
 b. That the project requesting an exemption demonstrates compliance with Lakewood Comprehensive Plan and any applicable neighborhood plan(s); and
c. A senior housing project developed based upon an exemption granted shall not be converted to another residential use without first having secured an allocation for each dwelling to be so converted, according to the provisions of this chapter.

D. Period of Validity. Allocations are only valid and can be used only from the date of issue through the last day of the allocation period for which they are issued, at which time they expire, unless a part of an approved banking plan.

E. Use of Allocations. An allocation is used by applying for and being issued a building permit or setting up a mobile home, as applicable. Unused allocations are those for which a building permit has not been issued, or a mobile home not set up, during the period for which the allocation is valid.

F. Surrender of Allocations. Allocations which a recipient does not expect to use during the period for which they are valid may be voluntarily surrendered without penalty at any time up until 30 days prior to the end of that allocation period. Allocations which are surrendered at least 30 days prior to the expiration of the allocation period shall be added to the number of available allocations for the next allocation period in the same calendar year for the same allocation pool, or to the year-end pool, as appropriate. Allocations in the year-end pool may not be surrendered.

G. Transferability. Allocations are site specific and not transferable to other developments. Allocations are issued to a specific building lot, and may only be transferred within a development to other lots which are under the same ownership as the holder of the allocation. Allocations may be transferred with the conveyance of a lot. (Citizen Initiative-Special Election 07-02-2019).

14.27.050 Available Allocations.
A. In January of each year City Council shall determine by resolution the number of allocations which will be available for issuance and use during that year. The annual resolution shall assign a sufficient number of allocations directly for satisfaction of a previously exempted project(s) whose banking plan(s) included a Planning Commission recommendation for commitment of future allocations, if City Council approves such commitment. The resolution shall then assign those remaining available allocations to the “open pool,” “hardship pool,” “affordable/low income pool,” and “surplus pool,” and determine the number of allocations within each such pool as will be available for the respective allocation periods.

B. The total number of allocations available for issuance and use during each calendar year shall be equal to one percent of the number of dwelling units which are estimated to exist in the city on December 31 of the prior calendar year. The number of allocations available for issuance for 2018 will be based on figures from the City of Lakewood and the US Census statistics (152,590 residents divided by 2.27 = 67,220) and thus 672 allocations for new dwelling units will be available in 2018.

C. The number of dwelling units which exist in the city on December 31 of the prior year shall be estimated as follows:
   1. Begin with the number of dwelling units in the city which existed at the beginning of the previous calendar year.
   2. Add the number of new dwelling units for which building permits were issued during the previous calendar year which required an allocation for issuance.
   3. Add the number of allocations secured by, or assigned to, previously exempted projects or dwellings during the previous calendar year.
4. Add the number of dwelling units added to the city by reason of annexations during the previous calendar year. (Citizen Initiative-Special Election 07-02-2019).

5. Subtract the number of dwelling units which were destroyed (and not replaced within 12 months), abandoned or otherwise ceased to be used as such during the prior calendar year.

6. Subtract the number of dwelling units for which building permits had previously been issued, but which expired in the previous year without issuance of a certificate of occupancy. (Citizen Initiative-Special Election 07-02-2019).

14.27.060 Establishment of Allocation Pools.

For the purpose of administration of this chapter City Council hereby creates the following described allocation pools:

A. Open Pool. The open pool is created for all developments within the city that do not otherwise qualify to request allocations.

B. Hardship Pool. The hardship pool is created for distribution of allocations by City Council upon a finding that a hardship or unusual circumstance exists which merits relief. All developments otherwise eligible to apply for allocation in general may participate in the hardship pool. allocations are awarded as requests are granted by City Council, and not as of a specified allocation date.

C. Affordable/Low Income Housing Pool. The affordable/low income housing pool is created for distribution of allocations for residential projects creating dwelling units for households earning up to 120 percent of area median income.

D. Surplus Pool. The year-end pool is created for the purpose of distributing unused and excess allocations which are available as of November 1 of each calendar year. All developments otherwise eligible to apply for allocation in general may participate in the surplus pool. (Citizen Initiative-Special Election 07-02-2019).

14.27.070 Schedule of Allocation Periods.

A. For all calendar years, the open pool will have two allocation periods which occur from January 1 through May 31, and from June 1 through October 31.

B. For all calendar years, the hardship pool will have an allocation period from January 1 to October 31.

C. For all calendar years, the affordable/low income housing pool will have one allocation period from January 1 through May 31. Excess allocations in the pool at the conclusion of the allocation period will be transferred to the open pool for the allocation period beginning on June 1.

D. The surplus pool allocation period will occur from November 1 through December 31. (Citizen Initiative-Special Election 07-02-2019).

14.27.080 Applications.

A. Applications for allocations shall be on a form provided by the city. A separate application submitted by the property owner is required for each allocation period. Except as provided otherwise, complete applications must be submitted to the city at least seven calendar days prior to the beginning of the allocation period for which the application is made. Applications may not be submitted more than 210 days before the beginning of the applicable allocation period. Applications for excess allocations may be made at any time that excess allocations are available, but prior to the last 30 calendar days of any allocation period.

B. Eligibility. To apply for allocations, a development must have completed all steps otherwise necessary to apply for and receive a building permit including the requisite zoning
and subdivision approval, but not including the preparation of building construction plans. Site development review, if necessary, need not be complete prior to applying for allocations, although a pre-submittal conference and review of the site plan by staff must be completed, with an indication that approval of the concept may be achieved.

C. Allocation requests within a development under common ownership shall be combined and treated as a single application. Lots in such developments which are held in separate ownership shall be treated as separate applications.

D. No applicant shall request allocations in excess of the lesser of: The available number of allocations in the appropriate pool in that allocation period, or the available number of lots or units in the subject development. (Citizen Initiative-Special Election 07-02-2019).

14.27.090 Issuance of Allocations.

A. Open Pool. For each respective allocation period in the open pool, one allocation will automatically be issued to each applicant if sufficient allocations are available. The remainder of requests is then tallied, and available allocations are distributed on a pro-rata basis to applicants based upon their requested number.

B. Hardship Pool. Hardship pool allocations are distributed by the City Council at their discretion upon request from an applicant, and subject to a finding that all of the following conditions exist:

1. That the issuance of an allocation is necessary to prevent undue hardship on the applicant; and
2. That the issuance of an allocation(s) will not adversely affect the public interest or the purposes of this chapter; and
3. Allocations are available in the hardship pool; and
4. That the requested allocation and the resulting building permit would be proper and in accordance with all of the ordinances and regulations of the City of Lakewood, excepting the provisions of this chapter.

C. Affordable/Low Income Housing Pool. Allocations assigned to the “affordable/low income” housing pool shall only be available for use by qualifying projects in the initial allocation period of each year. Any excess allocations in the affordable/low income housing pool at the end of the initial allocation period of the year will be transferred to the open pool for distribution pursuant to subsection (A) above.

1. In addition to the application requirements, allocations from the affordable/low income housing pool will contain documentation in a form acceptable to the city attorney of the provisions that will be put in place to assure that rental units created by affordable/low income housing pool allocations will remain available to households making up to 120 percent of area median income for a period of at least 15 years after completion of construction, or assurances that the initial sale of the dwelling units created by the affordable/low income housing pool allocations will be by a bona fide, “arms-length sale” to individual households making no more than 120 percent of area median income, and at an initial sales price that is reasonably calculated to allow an otherwise qualified buyer to obtain a loan for the purchase of the dwelling unit with a down payment of no more than 20 percent of the sale price.

2. If the number of affordable/low income housing pool allocations requested does not exceed the number assigned by City Council, the allocations will be distributed in the same manner as the open pool. However, if the number of allocations requested exceeds the number of allocations available in the affordable/low income housing pool, the applications will be presented to Planning Commission for review. The Planning Commission will award the affordable/low income housing pool allocations to those proposed dwelling units serving the households with the lowest area median income. In such circumstances, no building permit
shall be issued based upon any preference pool allocations until 16 days after the Planning Commission has issued a decision. Any aggrieved party may appeal the Planning Commission decision to City Council. Applicants for allocations from the affordable/low income housing pool may amend the application submitted to change from the affordable/low housing pool to the open pool, at any time prior to the beginning of the allocation period.

D. Surplus Pool. All unused open pool and hardship pool allocations which remain on November 1 of each year will be available in the surplus allocation pool. One allocation will automatically be issued to each applicant if sufficient allocations are available. The remainder of requests is then tallied, and available allocations are distributed on a pro rata basis to applicants based upon their requested number. Allocations which are unclaimed during the surplus pool or which are due to expire will be assigned by the City Council. Acquisition of the final remaining allocation by a banking plan for a specific project during the surplus pool shall trigger the expiration of the banking plan at the end of the first allocation period in the following year.

E. Insufficient Allocations. Except as noted above, if there are insufficient allocations available to issue at least one allocation to each applicant for a particular allocation period due to demand, a lottery shall be held to determine the recipients of the allocations. Those applicants who are unable to obtain an allocation during that particular allocation period will be given first preference to receive an allocation in the following allocation period in the same pool if a timely application is filed.

F. Following the issuance of allocations, staff shall present a report to Planning Commission and City Council summarizing the results of the allocation period. (Citizen Initiative-Special Election 07-02-2019).

14.27.100 Banking of Allocations.

Notwithstanding any other provisions of this chapter, the period of validity of an allocation may be extended through, and the allocation may be used in subsequent allocation periods upon approval by the city as provided in this section. The process of extending the period of validity of allocations in this section is as follows:

A. Banking of allocations will be permitted in the following circumstances only:

1. The Director of Planning shall approve an application for banking of allocations for residential projects of forty (40) units or fewer if the number of units to be banked corresponds to that found in an entire building or buildings in the project, and if the allocations are proposed to be used within the same calendar year as the initial award of allocation.

2. The Planning Commission may approve a banking plan for multifamily projects of forty (40) units or fewer for the purpose of banking beyond the end of a calendar year, upon a finding that building configuration, site constraints, or infrastructure phasing reasonably require that a larger increment of the development be built at one time.

3. The Planning Commission may approve a banking plan for residential projects of forty (40) units or fewer upon a finding that building configuration, site constraints, or infrastructure phasing reasonably require that a larger increment of the development be built at one time.

B. Application for banking of allocations for projects over forty (40) units shall be made at the time of the allocation application. The application shall set forth a banking plan which includes the total number of dwelling units in the project, the number of allocations sought to be banked, the time period during which the validity of allocations is proposed for extension, and the reason therefore.
C. For applications submitted under subsection (A)(2) or (A)(3) of this section, the Planning Commission shall determine at a hearing upon reasonable notice to the public has been posted, whether the requested banking is appropriate as provided in this section.

D. A nonrefundable fee shall be assessed in conjunction with each approved multiyear banking plan to cover the city’s cost of the administrating banking plans. The fee shall be set by City Council by resolution and shall be based upon the number of dwelling units in the approved banking plan. The fee shall be payable on a pro rata (per unit) basis at the time of distribution of allocations to the banking plan. Failure to pay any installment of the fee within 30 days of distribution of allocations to the banking plan shall cause a forfeiture of such allocations.

E. A decision of the Planning Commission or the Director of Planning with respect to an application to bank allocations may be appealed to the City Council.

F. Requests for banking of allocations beyond the end of the calendar year of the application shall be subject to the following conditions:
   1. The maximum number of years in which allocations may be acquired pursuant to any banking plan of allocations shall be five. All allocations acquired within the banking period must be used during this time period.
   2. The maximum number of allocations that may be in the bank at any one time during the banking program shall not exceed the total number of allocations available in the city in the first year of approval of said banking.
   3. Banking plans will be approved only for a number of units which correspond to that found in an entire building or buildings in the project.
   4. Subject to City Council’s annual distribution of allocations, Planning Commission may recommend a commitment of future allocations to an approved banking plan project. Such commitment shall not bind City Council’s action, but shall serve to be an indication of support for a specific project.

G. Surrendered or forfeited allocations distributed to an approved banking plan from calendar years prior to the year during which they are surrendered or forfeited shall be deemed to have expired and shall not be available for distribution. Surrendered or forfeited allocations distributed to an approved banking plan in the same calendar year in which they are surrendered or forfeited shall be made available for redistribution in accordance with the applicable provisions of this chapter.

H. The Planning Commission, may, upon a show of good cause, approve an extension of up to one year to an existing banking plan, to allow use of the banked allocations. The holder of the allocations may not acquire further allocations during the period of such extension.

I. For the purpose of defining the total number of available allocations, the total number of dwelling units in the city shall not include banked allocations which have not received building permits.

J. An applicant banking allocations within the same calendar year, shall notify the Director of Planning in writing within ten days after the allocations are granted of the number of allocations being banked and the reasons therefore.

K. The annual reports to Planning Commission and City Council pertaining to the administration of this chapter shall include information regarding the number of banked allocations approved in the current year, used in the current year, and the total number of banked allocations by individual project.

L. Approval of a “banking plan” shall not constitute a “vested right” to develop the project.

(Citizen Initiative-Special Election 07-02-2019)
14.27.110 Excess and Unused Allocations.
   A. Excess allocations in the open pools will be used to supplement other approved banking plans.
   B. Excess allocations which have not been issued at the end of the allocation period and unused allocations will be added to the available number of allocations for the next allocation period in the same calendar year for the same pool, or to the surplus pool, as appropriate.
   (Citizen Initiative-Special Election 07-02-2019).

14.27.120 Failure to Use Allocations; Penalties.
   A. Failure to use an allocation which is not part of an approved banking plan during the period for which it is issued, without surrendering it at least 30 days prior to the expiration of the allocation period for which it has been issued, shall cause the holder of such allocation to be ineligible to receive allocations for a period of one year from the last day that the unused allocation is valid. This penalty may be waived by the Planning Commission for good cause.
   B. Failure to use an allocation which is part of an approved banking plan during the period of the banking plan, without surrendering it at least 60 days prior to the expiration of the period of the banking plan, shall cause the holder of such allocation to be ineligible to receive allocations for a period of two years from the last day that the unused allocation is valid. This penalty may be waived by the Planning Commission for good cause.
   C. Use of an dwelling unit constructed by reason of an allocation from the affordable/low income housing pool in a manner inconsistent with the affordability criteria listed in this chapter, or contrary to the assurances provided pursuant to such section, including, without limitation the initial sale of a dwelling unit at a price that exceeds the maximum price contemplated in such section, shall cause the holder of such allocation to be ineligible to receive further allocations for a period of three years from the date of the violation. This penalty may be waived by the Planning Commission for good cause. (Citizen Initiative-Special Election 07-02-2019).

14.27.130 Building Permit Approvals.
   All building permit applications will be reviewed within fifteen working days after submission of a complete application. At the end of the building permit review period, either a building permit will be made available for issuance or reasons will be given to the grantee why the permit cannot be issued, in which case the grantee has twenty work days in which to submit all required corrections. If the corrections are not completed in the time and manner required, the building permit application and related allocation are void unless reinstated by the city manager upon a finding that a longer increment of time would be reasonable. (Citizen Initiative-Special Election 07-02-2019).

14.27.140 Mandatory Review.
   City Council shall review this chapter once every five years or as needed. City Council may temporarily reduce the 1% limit at will. Should City Council determine an increase in allocations is needed, Council must send such requested increase to the voters of Lakewood. (Citizen Initiative-Special Election 07-02-2019).

14.27.150 Severability Clause.
   If any part, section, sentence or clause of this chapter shall for any reason be questioned in any court and shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions of this chapter. Any such part, section, sentence
or clause shall not be taken to affect or prejudice in any way the remaining part or parts of this chapter. (Citizen Initiative-Special Election 07-02-2019).

14.27.160 Authority to Continue.

Any building permit that has gone through the processes necessary to secure a building permit, including, but not limited to, rezoning and subdivision, and was legally and formally applied for prior to adoption of this chapter, may be continued without obtaining an allocation. (Citizen Initiative-Special Election 07-02-2019).

14.27.170 Definitions.

The following terms are defined for purposes of this chapter:

A. **Allocation.** “Allocation” means a right, granted by the city pursuant to this chapter, to make application for a building permit to build one dwelling unit. An allocation is not a guarantee of receiving approval for a building permit. Approval of the building permit itself will occur through the established building permit review process.

B. **Allocation Pools.** “Allocation pools” mean separate categories of developments as described in this chapter which are created for the purpose of distributing available allocations.

C. **Area Median Income.** “Area median income” (AMI) means the median annual household income for Jefferson County, as adjusted by household size, and published annually by the United States Department of Housing and Urban Development.

D. **Building Permit.** “Building permit” means a permit issued pursuant to the provisions of the Lakewood Municipal Code.

- Building permits shall be allocated in accordance with the provisions of this chapter such that those issued shall result in no more than a one-percent annual increase in the number of dwelling units.

E. **Development.** “Development” means the entire plan to construct or place one or more dwelling units on a particular parcel or contiguous parcels of land within the city including, but not limited to, a subdivision approval, a planned unit development, and a mobile home park.

F. **Dwelling Unit.** One or more habitable rooms constituting a unit for permanent occupancy, with facilities for eating, sleeping, bathing, that occupies a structure or a portion of a structure.

G. **Excess Allocations.** “Excess allocations” means allocations which are available for issuance from a particular allocation pool and period, but which have not been issued by reason of lack of demand.

H. **Good Cause.** “Good cause,” when used as a basis for relief from timely compliance with specifically referenced provisions of this chapter, means the existence of unanticipated circumstances which are beyond the control of the property owner and which prevented timely compliance with the referenced provisions of this chapter. “Good cause” shall not include delays which are reasonably expected in the development process, including, but not limited to, preparation of plans or securing of financing. The existence of “good cause”, and availability of relief by reason thereof, shall be determined after a public hearing conducted by the Planning Commission. A party aggrieved by the decision of the Planning Commission on such issue may, within 15 days of the date of the decision thereon by the Planning Commission, apply to the City Council for a review of said decision by filing a request for review with the city clerk. The City Council shall, within 30 days of receipt of the review request, and based upon the record alone as certified to Council by the Planning Commission, decide to uphold, deny, or modify the decision of the Planning Commission.
I. **Lottery.** “Lottery” shall mean a drawing held by the city to select applicants which will receive an allocation through a process based upon random chance. Each applicant in a lottery shall be treated equally regardless of the number of allocation requests.

J. **Pro-rata.** “Pro-rata” means the issuing of allocations to applicants in the same proportion that the total number of available allocations bears to the total number of requested allocations, as modified and elaborated in this chapter. For example, if applications for twice the number of allocations were received than the number available, each applicant would be granted approximately one-half the number requested.

K. **Set-up.** “Set-up”, when used in connection with mobile homes, means the process of setting up a mobile home for the purpose of occupancy as a residence including by way of example, connection to utilities and installation tie-downs.

L. **Unused Allocation.** “Unused allocation” means an allocation which has been issued but for which a building permit has not been issued or a mobile home set-up, as applicable, during the period for which the allocation is valid. (Citizen Initiative-Special Election 07-02-2019).
DATE OF COUNCIL MEETING: NOVEMBER 23, 2020 / AGENDA ITEM NO. 13
CONTINUED TO: DECEMBER 14, 2020 / AGENDA ITEM NO. 10

To: Mayor and City Council

From: Travis Parker, Director of Planning, 303-987-7908

Subject: 533 VAN GORDON STREET – ALLOCATION REQUEST

SUMMARY STATEMENT: The applicant, Brian Bulatovic, with Consolidated Investment Group, has submitted applications for review requesting 232 residential allocations and a 3-year banking plan for a multifamily residential project located at 533 Van Gordon Street. The property is zoned Mixed Use Residential Suburban (M-R-S) and approximately 3.6 acres in size.

BACKGROUND INFORMATION: On July 12, 2019, with voter approval, an ordinance went into effect to limit residential growth in the City of Lakewood. The ordinance, chapter 14.27 of the Municipal Code, is attached. In December of 2019, staff began implementation of this ordinance to manage issuance of residential building permits. Any development request of over 40 residential units must submit an allocation request to the City Council for review and approval.

On March 21, 2019, Consolidated Investment Group submitted a site plan application to the City for site and civil review. This site plan application, SP-19-008, received one round of review comments from City staff. Due to uncertainty with the proposed residential growth limitation ordinance in the first quarter of 2019, the applicant chose to suspend the city development review process.

On September 28, 2020, the applicant presented a 309-unit allocation and 5-year banking plan request to the City Council for review and consideration. This allocation and banking plan request were reviewed and denied by City Council by a vote of 7 to 4.

On October 19, 2020, the applicant submitted to the Planning Department a formal request to withdraw from further review site plan case SP-19-008 which proposed to develop 309 multifamily residential units at 533 Van Gordon Street. This planning case status has been changed to “void/withdrawn” and no further reviews will be conducted by city staff for this site plan case.

The applicant has now submitted to City Council an allocation request for 232 units and a 3-year banking plan. The applicant is requesting that City Council review and make a determination on both the allocation and banking plan application requests.
The applicant has submitted applications for an over 40 residential allocation project and a banking plan with a duration of 3 years. Section 14.27.040.B (Maximum Allocations) outlines the review measures to be met when requesting more than 40 allocations.

17.27.040.B Maximum Allocations. The city shall not grant more than forty (40) allocations to a development in a calendar year except upon a finding after hearings held upon reasonable notice to the public - pursuant to the provisions of Lakewood municipal code 17.2.2.3 applicable to initial zoning and rezoning - that such accumulation of allocations will not prejudice the allocation process; and:

1. That there is an unmet community need for such development; or
2. That insufficient applications have been submitted to exhaust the allocations available and such allocations are available for distribution in the current calendar year.

Project will not prejudice the allocation process

As part of their allocation and banking plan request, the applicant is requesting 232 allocations from the 2020 surplus pool to not prejudice the allocation process. This proposal allows the allocation request to be fulfilled from the 2020 surplus and provides a 3-year banking to begin and complete both the site/civil review process as well as the building permit review process.

The applicant’s request for 232 allocations in 2020 will not require additional allocations beyond 2020 so therefore there is no possibility of this application prejudicing the future process in any way. No other projects are requesting these allocations, so no other projects will be affected by this approval in any way.

That insufficient applications have been submitted to exhaust the allocations available and such allocations are available for distribution in the current calendar year.

In January of 2020 City Council set the number of allocations for the calendar year at 413 allocations. As of November 1, 2020, only 181 allocations have been requested for residential projects, 232 remain in the surplus pool. No other projects are requesting allocations from the surplus pool. If this request is not approved, all 232 of these allocations are expected to expire unused on December 31, 2020.

Based upon the applicant request of 232 allocations for the calendar year 2020, and that 232 allocations remain for the calendar year 2020, staff finds that the measures in the Residential Growth Limitations Ordinance have been met and that:

1. The accumulation of allocations shall not prejudice the allocation process; and
2. That insufficient applications have been submitted to exhaust the allocations available and such allocations are available for distribution in the current calendar year.

BUDGETARY IMPACTS: All required public improvements will be constructed with the project, at the expense of the developer.

STAFF RECOMMENDATIONS: Staff recommends approval because the proposed allocation and banking plan requests satisfy the review criteria.

ALTERNATIVES: The City Council may approve or deny the allocation and banking plan requests. More specifically, the City Council may approve the allocation and banking plan requests because the Council agrees with the findings of the provided in this staff report. Also, the City Council may have additional reasons why the application satisfies the review criteria.
Or, the City Council may deny the allocation and banking plan requests based on a determination that the requests do not satisfy the review criteria. More specifically, the City Council may find evidence that the allocation and banking plan requests exhaust allocations available for distribution in the current calendar year.

**PUBLIC OUTREACH:** As required by the Zoning Ordinance, a public hearing has been scheduled before the City Council on November 23, 2020. Notice was provided to meet the standards of Section 17.2.2.3 of the zoning ordinance including letters mailed to property owners within 500 feet and to neighborhood organizations within ½ mile of the subject property.

**NEXT STEPS:** If the allocation request is approved, the applicant may submit applications for site/civil review and building permit review. These reviews must be completed and building permits issued within a 3-year time frame concluding on December 31, 2023. Once allocations have been acquired and all reviews completed the applicant may be issued an approved building permit.

**ATTACHMENTS:**  
Resolution 2020-45  
Lakewood Municipal Code 14.27  
SP-19-008 withdrawal request

**REVIEWED BY:**  
Kathleen E. Hodgson, City Manager  
Benjamin B. Goldstein, Deputy City Manager  
Timothy P. Cox, City Attorney
AUTHORIZING ALLOCATIONS FOR 533 VAN GORDON STREET, LAKEWOOD, CO

WHEREAS, Van Gordon Associates LLC, a limited liability company (the “Owner”) owns the property known as 533 Van Gordon, Lakewood, CO (the “Property”), and Consolidated Investment Group (the “Developer”) is seeking to develop the Property, approximately 3.6-acres, more or less;

WHEREAS, the Property is currently zoned Mixed Use Residential Suburban (M-R-S);

WHEREAS, the Developer is requesting approval of 232 residential allocations and a 3-year banking plan;

WHEREAS, Lakewood Municipal Code ("LMC") section 14.27.040.B specifies that any proposed development in excess of 40 residential units requires a hearing pursuant to LMC section 17.2.2.3 before City Council may approve allocations and a banking plan;

WHEREAS, the Developer desires to ensure that the proposed project is built and desires to develop the Property according to the present zoning; and

WHEREAS, the City Council hereby finds and determines that approving 232 allocations and a 3-year banking plan for the Property will not prejudice the allocation process.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lakewood, Colorado, that:

SECTION 1. The allocation request of 232 allocations and a 3-year banking plan for 355 Van Gordon Street, Lakewood, Colorado 80228, is hereby approved.

SECTION 2. The City shall record the allocation and banking plan request.

SECTION 3. The banking plan shall expire on December 31, 2023.

SECTION 4. This Resolution shall become effective immediately upon adoption.
INTRODUCED, READ AND ADOPTED by a vote of _____ for and _____ against at a virtual regular meeting of the Lakewood City Council held on November 23, 2020, at 7 o'clock p.m.

ATTEST:

____________________________________
Adam Paul, Mayor

Benjamin B. Goldstein, Interim City Clerk

APPROVED AS TO FORM:

____________________________________
Timothy P. Cox, City Attorney
October 19, 2020

Lakewood Planning
480 South Allison Parkway
Lakewood, CO 80226

RE: SP-19-008 - 533 Van Gordon St Site Plan

Dear Mr. Rice,

Consolidated Investment Group (manager of Van Gordon Associates LLC, the owner of 533 Van Gordon Street) would like to withdraw the formal site plan application SP-19-008. The site plan was submitted prior to the growth initiative approval and it appears it may take years before a project will be approved for allocations.

Thank you,

Brian Bulatovic

Development Manager
Consolidated Investment Group
STAFF MEMO

DATE OF COUNCIL MEETING: NOVEMBER 23, 2020 / AGENDA ITEM NO. 7
DECEMBER 14, 2020 / AGENDA ITEM NO. 11

To: Mayor and City Council

From: Daniel McCasky, Police Chief, 303-987-7102

Subject: AN ORDINANCE TO ACCEPT GRANT FUNDING TO ASSIST WITH THE COST OF A PRE-CAST CONCRETE BALLISTIC WALL AT THE ROONEY VALLEY LAW ENFORCEMENT TRAINING FACILITY (“RVLETF”)

This ordinance was approved on 1st Reading by a vote of 10 ayes 1 nays.

SUMMARY STATEMENT:

On March 3, 2020, RVLETF submitted a grant funding request to the Peace Officers Standards and Training (“POST”) to assist with the cost of a pre-cast concrete ballistic wall which is necessary for the overall safety at the training facility. On June 25, 2020, POST approved RVLETF’s grant contract in the amount of $60,000. Per City Charter, City Council can make supplemental appropriations to the annual budget by ordinance. This memo requests City Council adopt the attached ordinance authorizing a supplemental appropriation in the amount of $60,000 for the grant contract.

BACKGROUND INFORMATION:

In 1994, the City of Lakewood signed an intergovernmental agreement with Jefferson County, the City of Wheat Ridge, the City of Golden, the Colorado Division of Wildlife, and Red Rocks Community College to establish RVLETF. The intergovernmental agreement names the City of Lakewood as RVLETF’s fiscal agent.

RVLETF is used for tactical and firearms training by Lakewood Police Department, Jefferson County Sheriff’s Office, Arvada Police Department, Wheat Ridge Police Department, Golden Police Department, Colorado Parks and Wildlife, two police training academies, and two multi-agency SWAT teams.

Due to limited funds, few improvements have been made to RVLETF’s infrastructure and it has reached the point that many major improvements are necessary in order to continue to serve the partnering agencies as the primary firearms training facility.

RVLETF sits next to the Thunder Valley Motocross Park. The $60,000 grant award will be used to assist with the cost of a pre-cast concrete ballistic wall, which will provide a necessary barrier between RVLETF and Thunder Valley Motocross Park. Without the wall, the range cannot safely be used when motocross spectators climb a hill nearby RVLETF to watch the racing. Presently when this occurs the range must be shut down, causing the ability to train personnel to be drastically impacted.
On March 3, 2020, RVLETF submitted a grant funding request to POST.

On June 25, 2020, POST approved RVLETF’s grant contract in the amount of $60,000 to assist with the cost of a pre-cast concrete ballistic wall at the training facility.

**BUDGETARY IMPACTS:**

Adopting this ordinance would authorize a supplemental appropriation to the 2020 annual budget in the amount of $60,000 to assist with the cost of a pre-cast concrete ballistic wall for the training facility.

**STAFF RECOMMENDATIONS:**

Staff recommends that the City of Lakewood adopt the proposed ordinance.

**ALTERNATIVES:**

If City Council chooses not to adopt the proposed ordinance, the city will not be able to utilize the awarded grant dollars.

**PUBLIC OUTREACH:**

There has been no official public outreach on this agenda item.

**ATTACHMENTS:** Ordinance O-2020-28

**REVIEWED BY:** Kathleen E. Hodgson, City Manager
                 Benjamin B. Goldstein, Deputy City Manager
                 Timothy P. Cox, City Attorney
O-2020-28

AN ORDINANCE

AUTHORIZING A SUPPLEMENTAL APPROPRIATION TO THE 2020-2021 CITY OF LAKEWOOD ANNUAL BUDGET IN THE AMOUNT OF $60,000 AND AUTHORIZING THE EXPENDITURE OF GRANT FUNDS FROM THE PEACE OFFICER STANDARDS AND TRAINING BOARD ON BEHALF OF THE ROONEY VALLEY LAW ENFORCEMENT TRAINING FACILITY FOR INSTALLATION OF A PRE-CAST CONCRETE BALLISTIC WALL AT THE TRAINING FACILITY

WHEREAS, in 1994 the City of Lakewood (the “City”) entered into an intergovernmental agreement with Jefferson County, the City of Wheat Ridge, the City of Golden, the Colorado Division of Wildlife, and Red Rocks Community College (the “IGA”) to establish the Rooney Valley Law Enforcement Training Facility (“RVLETF”), which includes a shooting range;

WHEREAS, Pursuant to the IGA, the City acts as the procurement agency and fiscal agent for RVLETF;

WHEREAS, on March 3, 2020, RVLETF submitted a grant funding request to the Peace Officer Standards and Training Board (“POST”) to assist with the procurement of a pre-cast concrete ballistic wall required for the safety of trainees and the public;

WHEREAS, on June 25, 2020, POST approved RVLETF’s grant request in the amount of $60,000;

WHEREAS, as the fiscal agent and procurement agency for RVLETF, the City collects all dues and fees paid, and any grants awarded, to RVLETF and, through the City’s budget process, expends such funds and procures goods, services and equipment for and on behalf of RVLETF;

WHEREAS, Article XII, Section 8, of the City Charter allows the City Council to make supplemental budget appropriations by ordinance during the fiscal year for unanticipated expenditures using monies that have become available but were not anticipated in the adopted budget;

WHEREAS, no additional funding is being requested for this grant;

WHEREAS, approval of this Ordinance on first reading is intended only to confirm that the City Council desires to comply with the Lakewood Municipal Code by setting a public hearing to provide City staff and the public an opportunity to present evidence and testimony regarding the proposal; and

WHEREAS, approval of this Ordinance on first reading does not constitute a representation that the City Council, or any member of the City Council, supports, approves, rejects or denies the proposal.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Lakewood, Colorado, that:
SECTION 1. In accordance with Section 12.8 of the Lakewood Home Rule Charter, there is hereby appropriated in the Grant Fund $60,000 for the purpose of assisting with the procurement of a pre-cast concrete ballistic wall for RVLETF.

SECTION 2. In accordance with Lakewood Municipal Code section 3.04.090, the City Council hereby approves the unbudgeted expenditure of not more than $60,000 to assist with the procurement of a pre-cast concrete ballistic wall at RVLETF, subject to the applicable provisions of Lakewood Municipal Code chapter 3.04.

SECTION 3. This Ordinance shall take effect thirty (30) days after final publication.

SECTION 4. If any provision of this Ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remaining portions or applications of this Ordinance that can be given effect without the invalid portion, provided that such remaining portions or application of this Ordinance are not determined by the court to be inoperable.

I hereby attest and certify that the within and foregoing ordinance was introduced and read on first reading at a virtual regular meeting of the Lakewood City Council on the 23rd day of November, 2020; published by title in the Denver Post and in full on the City of Lakewood's website, www.lakewood.org, on the 26th day of November, 2020; set for public hearing to be held on the 14th day of December, 2020; read, finally passed and adopted by the City Council on the _____ day of December, 2020; and signed by the Mayor on the _____ day of December, 2020.

Adam Paul, Mayor

ATTEST:

Ben Goldstein, Interim City Clerk

APPROVED AS TO FORM:

Timothy P. Cox, City Attorney
STAFF MEMO

DATE OF COUNCIL MEETINGS: NOVEMBER 23, 2020 / AGENDA ITEM NO. 8
DECEMBER 14, 2020 / AGENDA ITEM NO. 12

To: Mayor and City Council

From: Jay N. Hutchison, Director of Public Works, 303-987-7901

Subject: ACQUISITION ORDINANCE FOR 1ST AVENUE SIDEWALK PROPERTY RIGHTS, GARRISON STREET TO CREIGHTON MIDDLE SCHOOL

This ordinance was approved on 1st Reading by a vote of 10 ayes 1 nays.

SUMMARY STATEMENT: This ordinance would authorize steps necessary to acquire interests in property for construction of a public sidewalk with curb and gutter along the south side of 1st Avenue from Garrison Street to Creighton Middle School.

BACKGROUND INFORMATION: This sidewalk will enhance pedestrian safety to and from Creighton Middle School, where pedestrians currently walk on the roadway or in the bike lane. The sidewalk will be on the south side of 1st Avenue and connect to existing sidewalk at each end of the project and avoid numerous conflicts with utilities that exist on the north side of 1st Avenue. Curb and gutter is necessary to distinguish between the pedestrian walk and the motor vehicle travel area and to carry local drainage. Using a roadside swale or ditch for local drainage would require more width and, consequently, more land acquisition than installing curb and gutter.

This ordinance declares the city’s intent to acquire property interests necessary for the project and initiates the negotiation process between the City and the property owners for necessary property rights. It also authorizes acceptance of conveyance instruments and, if needed, condemnation of property interests. However, condemnation would not occur prior to additional City Council approval by resolution.

A map is attached that conceptually illustrates the property rights that are anticipated to be needed. It is anticipated that temporary easements for the construction period, illustrated in orange on the map, will be required from four properties. The temporary easements are required to perform minor re-grading and landscape restoration to blend the area behind the new sidewalk into the surrounding site features and yards.

An unusual circumstance exists along the 95 Holland Street property. In typical circumstances, a temporary easement during construction would be sufficient at this location. However, there is an area between the city-owned 1st Avenue right-of-way and the property of the 95 Holland Street owner. This unusual parcel, shown in blue on the map, was originally part of the right-of-way owned by Jefferson County for 1st Avenue. Jefferson County vacated the parcel in 1959 and it was given to
the then-current owner of 95 Holland Street. Subsequent sales of the 95 Holland Street property did not include this vacated parcel. The previous owner has not been located and property taxes on this parcel have not been paid since 1980.

The current owner of 95 Holland Street was unaware of this unusual parcel’s ownership and is interested in owning the portion of the parcel the City will not need. Public Works will work on resolving the ownership issue with the intent of a portion of the parcel becoming part of the 95 Holland Street property when possible.

The sidewalk adjacent to this unusual parcel may be constructed in a temporary configuration until the ownership is resolved. Resolving ownership of this parcel could take several forms. For example, the actual owner may be found. Or the City could condemn the parcel. Anticipating the owner may not be located, the City has begun paying the back taxes and, if ownership is not resolved in some other way, the City will eventually apply to the county for a Treasurer’s deed to take ownership of the parcel.

**BUDGETARY IMPACTS:** The project is funded by a Safe Routes to School Grant and City Capital Improvement Funds.

**STAFF RECOMMENDATION:** Approval of the ordinance.

**ALTERNATIVES:** If this Ordinance is not approved, the sidewalk will not be built. Pedestrians/students will continue to walk in the street. Grant funding would likely be forfeited.

**PUBLIC OUTREACH:** City staff has contacted the affected property owners seeking to discuss the project. Notification of City Council’s consideration of this ordinance has been mailed to each property owner. The notification includes clear language that there could be no discussion of value at the City Council hearing about this ordinance because this is the very start of the acquisition process and no values have yet been determined.

**NEXT STEPS:** Begin the acquisition process and complete preparation of construction bid documents.

**ATTACHMENTS:**
- Ordinance O-2020-29
- Map

**REVIEWED BY:**
- Kathleen E. Hodgson, City Manager
- Benjamin B. Goldstein, Deputy City Manager
- Timothy P. Cox, City Attorney
O-2020-29

AN ORDINANCE

DECLARING THE INTENT OF THE CITY OF LAKEWOOD TO ACQUIRE INTERESTS IN PROPERTY FOR PUBLIC PURPOSES FOR THE CONSTRUCTION OF A SIDEWALK ALONG THE SOUTH SIDE OF 1ST AVENUE FROM GARRISON STREET TO CREIGHTON MIDDLE SCHOOL AND AUTHORIZING NEGOTIATIONS WITH PROPERTY OWNERS, ACCEPTANCE OF CONVEYANCE INSTRUMENTS AND, SUBJECT TO FURTHER CITY COUNCIL APPROVAL, CONDEMNATION OF REAL PROPERTY INTERESTS

WHEREAS, to enhance safety and better facilitate pedestrian traffic to and from Creighton Middle School, the City of Lakewood (the “City”) desires to build a sidewalk along the south side of 1st Avenue, from Creighton Middle School to Garrison Street (the “Improvements”);

WHEREAS, in order to install the Improvements, the City must acquire certain property interests from the owners of property adjacent to the Improvements (the “Property Interests”);

WHEREAS, in order to acquire the Property Interests in compliance with State law, the City Council desires to:

a. Declare the City’s intent to acquire the Property Interests for public purposes in fulfillment of the requirements of Section 38-1-121, C.R.S.;

b. Authorize negotiations for, and acquisitions of, the Property Interests;

c. Accept the instruments of conveyance for the Property Interests;

d. Authorize the City Attorney, subject to further City Council approval, to initiate condemnation proceedings to acquire the Property Interests in the event the City is unable to acquire the Property Interests despite good faith efforts to do so;

WHEREAS, approval of this ordinance on first reading is intended only to confirm that the City Council desires to comply with Lakewood Municipal Code by setting a public hearing to provide City staff and the public an opportunity to present evidence and testimony regarding the proposal identified herein; and

WHEREAS, approval of this ordinance on first reading does not constitute a representation that the City Council, or any member of the City Council, supports, approves, rejects or denies any particular proposal related to the proposal identified herein.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Lakewood, State of Colorado:
SECTION 1. The City Council hereby finds that the Project will serve to enhance safety and better facilitate pedestrian traffic on 1st Avenue. The City Council further finds it necessary to acquire certain property interests to advance such public purpose.

SECTION 2. The City Council hereby declares its intent to acquire the Property Interests in the form of: (i) fee simple interests; (ii) permanent easements; (iii) temporary construction easements; or (iv) any other interests as may be warranted for the Project, with any improvements contained therein. The properties from which the Property Interests are currently anticipated to be acquired are identified in Exhibit A, attached hereto and incorporated herein by this reference. At such time as the City Manager or designee (the “City Manager”) identifies the particular Property Interests necessary for the Project, notice of intent to acquire the Property Interests shall be given as required by Section 38-1-121, C.R.S.

SECTION 3. The City Manager is hereby authorized to negotiate in good faith to acquire the Property Interests. Negotiations shall be based upon appraisal reports or valuations approved by the City Manager. The City Manager is hereby authorized to make offers to any property owner based upon such appraisal reports or valuations and to execute agreements for the acquisition of the Property Interests.

SECTION 4. The City Council hereby accepts on behalf of the City, upon recordation, the instruments of conveyance of the Property Interests acquired hereunder.

SECTION 5. The City’s Chief Financial Officer is hereby authorized and directed to pay, upon receipt of appropriate documentation, the amounts set forth in the contracts and agreements provided for herein.

SECTION 6. In the event the City is unable to negotiate an agreement for the acquisition of any necessary Property Interest, despite good faith efforts to do so, the City Attorney is hereby authorized and directed to exercise, on behalf of the City, the power of eminent domain vested in the City pursuant to Section 14.4 of the City of Lakewood home rule charter. At such time, the City Council shall identify by resolution the Property Interests to be acquired by condemnation prior to the City Attorney proceeding to condemn such Property Interests.

SECTION 7. The City Attorney is further authorized to apply to the proper court for immediate possession of the Property Interests to be acquired by condemnation, and the City’s Chief Financial Officer and all other officers and agents of the City are authorized and directed to cooperate with the City Attorney in the condemnation action, to make any deposits and payments as may be necessary for acquisition of the Property Interests, and to pay the costs thereof and any condemnation award as it may be finally determined. The City Attorney is additionally authorized to employ such expert witnesses, including appraisers, as the City Attorney determines necessary for the purposes of the condemnation authorized by this Ordinance, and the City’s Chief Financial Officer is directed to pay the costs and expenses of employing such expert witnesses and appraisers.
SECTION 8. Nothing herein is intended to authorize the expenditure of monies in excess of the funds appropriated for the Project.

SECTION 9. If any provision of this Ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remaining portions or applications of this Ordinance that can be given effect without the invalid portion, provided such remaining portions or application of this Ordinance are not determined by the court to be inoperable.

SECTION 10. This ordinance shall take effect thirty (30) days after final publication.

I hereby attest and certify that the within and foregoing ordinance was introduced and read on first reading at a virtual regular meeting of the Lakewood City Council on the 23rd day of November, 2020; published by title in the Denver Post and in full on the City of Lakewood's website, www.lakewood.org, on the 26th day of November, 2020; set for public hearing to be held on the 14th day of December, 2020; read, finally passed and adopted by the City Council on the _____ day of December, 2020; and signed by the Mayor on the _____ day of December, 2020.

Adam Paul, Mayor

ATTEST:

Benjamin B. Goldstein, Interim City Clerk

APPROVED AS TO FORM:

Timothy P. Cox, City Attorney

EXHIBIT A

Property Interests along 1st Avenue for the following addresses:
95 Hoyt Street
90 Hoyt Street
9390 W 1st Avenue
95 Garland Street
Parcel north of 95 Holland Street
DATE OF COUNCIL MEETING: NOVEMBER 23, 2020 / AGENDA ITEM NO. 9
DECEMBER 14, 2020 / AGENDA ITEM NO. 13

To: Mayor and City Council
From: Jay N. Hutchison, Director of Public Works, 303-987-7901
Subject: ACQUISITION ORDINANCE FOR INDEPENDENCE STREET SIDEWALK PROPERTY RIGHTS, US 6 TO LAKEWOOD HIGH SCHOOL

This ordinance was approved on 1st Reading by a vote of 10 ayes 1 nays.

SUMMARY STATEMENT: This ordinance would authorize steps necessary to acquire interests in property for the construction of sidewalk, curb and gutter along the west side of Independence Street from the 6th Avenue Frontage Road to Lakewood High School.

BACKGROUND INFORMATION: This sidewalk will enhance pedestrian safety along Independence Street to and from Lakewood High School, where pedestrians currently walk on the roadway or in yards, including during peak motor vehicle times as school convenes and dismisses. Building the sidewalk along the west side connects into existing sidewalk along Lakewood High School’s Independence Street frontage. Curb and gutter is necessary to distinguish between the pedestrian walk and the motor vehicle travel area and to carry local drainage. Using a roadside swale or ditch for local drainage would require more width and, consequently, more land acquisition than use of curb and gutter.

This ordinance declares the City’s intent to acquire property interests necessary for the project and initiates the negotiation process between the City and the property owners for necessary property rights. It also authorizes acceptance of conveyance instruments and, if needed, condemnation of property interests. However, condemnation would not occur prior to additional Council approval by resolution.

A map is attached that conceptually illustrates the property rights that will be required. It is anticipated that temporary easements for the construction period, illustrated in orange on the map, will be required from seven properties. The temporary easements are required to perform minor re-grading and landscape restoration to blend the area behind the new sidewalk into the surrounding site features and yards.

It is also anticipated that permanent easements, shown in red on the map, will be required from four of the properties as follows:

- 605/615 Independence Street – relocate a piped irrigation ditch lateral and comply with the Americans with Disabilities Act (ADA) while providing a smooth driveway transition.
- 635 Independence Street – comply with the ADA while providing a smooth driveway transition.
- 641 Independence Street – comply with the ADA while providing a smooth driveway transition.
• 9700 W 8th Avenue (Lakewood High School) – comply with the ADA while providing a smooth transition to the existing sidewalk and ensuring drainage functions properly.

**BUDGETARY IMPACTS:** This project is funded from TABOR related revenues retained by the city pursuant to the 2018 citizen vote.

**STAFF RECOMMENDATION:** Approval of the ordinance.

**ALTERNATIVES:** If this Ordinance is not approved, the sidewalk will not be built. Pedestrians/students will continue to walk in the street or in yards.

**PUBLIC OUTREACH:** City staff has contacted the affected property owners seeking to discuss the project. Notification of City Council’s consideration of this ordinance has been mailed to each property owner. The notification includes clear language that there will be no discussion of value during the City Council hearing about this ordinance because this is the very start of the acquisition process and no values have yet been determined.

**NEXT STEPS:** Begin the acquisition process and complete preparation of construction bid documents.

**ATTACHMENTS:**
- Ordinance O-2020-30
- Map

**REVIEWED BY:**
- Kathleen E. Hodgson, City Manager
- Benjamin B. Goldstein, Deputy City Manager
- Timothy P. Cox, City Attorney
O-2020-30

AN ORDINANCE

DECLARING THE INTENT OF THE CITY OF LAKEWOOD TO ACQUIRE INTERESTS IN PROPERTY FOR PUBLIC PURPOSES FOR THE CONSTRUCTION OF A SIDEWALK ALONG THE WEST SIDE OF INDEPENDENCE STREET FROM 6TH AVENUE FRONTAGE ROAD TO LAKEWOOD HIGH SCHOOL AND AUTHORIZING NEGOTIATIONS WITH PROPERTY OWNERS, ACCEPTANCE OF CONVEYANCE INSTRUMENTS AND, SUBJECT TO FURTHER CITY COUNCIL APPROVAL, CONDEMNATION OF REAL PROPERTY INTERESTS

WHEREAS, to enhance safety and better facilitate pedestrian traffic to and from Lakewood High School, the City of Lakewood (the “City”) desires to construct a sidewalk along the west side of Independence Street from 6th Avenue Frontage Road to Lakewood High School (the “Improvements”);

WHEREAS, in order to install the Improvements, the City must acquire certain property interests from the owners of property adjacent to the Improvements (the “Property Interests”);

WHEREAS, in order to acquire the Property Interests in compliance with State law, the City Council desires to:

   a. Declare the City’s intent to acquire the Property Interests for public purposes in fulfillment of the requirements of Section 38-1-121, C.R.S.;
   b. Authorize negotiations for, and acquisitions of, the Property Interests;
   c. Accept the instruments of conveyance for the Property Interests;
   d. Authorize the City Attorney, subject to further City Council approval, to initiate condemnation proceedings to acquire the Property Interests in the event the City is unable to acquire the Property Interests despite good faith efforts to do so;

WHEREAS, approval of this ordinance on first reading is intended only to confirm that the City Council desires to comply with Lakewood Municipal Code by setting a public hearing to provide City staff and the public an opportunity to present evidence and testimony regarding the proposal identified herein; and

WHEREAS, approval of this ordinance on first reading does not constitute a representation that the City Council, or any member of the City Council, supports, approves, rejects or denies any particular proposal related to the proposal identified herein.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Lakewood, State of Colorado:
SECTION 1. The City Council hereby finds that the Project will serve to enhance safety and better facilitate pedestrian traffic on Independence Street. The City Council further finds it necessary to acquire certain property interests to advance such public purpose.

SECTION 2. The City Council hereby declares its intent to acquire the Property Interests in the form of: (i) fee simple interests; (ii) permanent easements; (iii) temporary construction easements; or (iv) any other interests as may be warranted for the Project, with any improvements contained therein. The properties from which Property Interests are currently anticipated to be acquired are identified in Exhibit A, attached hereto and incorporated herein by this reference. At such time as the City Manager or designee (the “City Manager”) identifies the particular Property Interests necessary for the Project, notice of intent to acquire the Property Interests shall be given as required by Section 38-1-121, C.R.S.

SECTION 3. The City Manager is hereby authorized to negotiate in good faith to acquire the Property Interests. Negotiations shall be based upon appraisal reports or valuations approved by the City Manager. The City Manager is hereby authorized to make offers to any property owner based upon such appraisal reports or valuations and to execute agreements for the acquisition of the Property Interests.

SECTION 4. The City Council hereby accepts on behalf of the City, upon recordation, the instruments of conveyance of the Property Interests acquired hereunder.

SECTION 5. The City’s Chief Financial Officer is hereby authorized and directed to pay, upon receipt of appropriate documentation, the amounts set forth in the contracts and agreements provided for herein.

SECTION 6. In the event the City is unable to negotiate an agreement for the acquisition of any necessary Property Interest, despite good faith efforts to do so, the City Attorney is hereby authorized and directed to exercise, on behalf of the City, the power of eminent domain vested in the City pursuant to Section 14.4 of the City of Lakewood home rule charter. At such time, the City Council shall identify by resolution the Property Interests to be acquired by condemnation prior to the City Attorney proceeding to condemn such Property Interests.

SECTION 7. The City Attorney is further authorized to apply to the proper court for immediate possession of the Property Interests to be acquired by condemnation, and the City’s Chief Financial Officer and all other officers and agents of the City are authorized and directed to cooperate with the City Attorney in the condemnation action, to make any deposits and payments as may be necessary for acquisition of the Property Interests, and to pay the costs thereof and any condemnation award as it may be finally determined. The City Attorney is additionally authorized to employ such expert witnesses, including appraisers, as the City Attorney determines necessary for the purposes of the condemnation authorized by this Ordinance, and the City’s Chief Financial Officer is directed to pay the costs and expenses of employing such expert witnesses and appraisers.
SECTION 8. Nothing herein is intended to authorize the expenditure of monies in excess of the funds appropriated for the Project.

SECTION 9. If any provision of this Ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remaining portions or applications of this Ordinance that can be given effect without the invalid portion, provided such remaining portions or application of this Ordinance are not determined by the court to be inoperable.

SECTION 10. This ordinance shall take effect thirty (30) days after final publication.

I hereby attest and certify that the within and foregoing ordinance was introduced and read on first reading at a virtual regular meeting of the Lakewood City Council on the 23rd day of November, 2020; published by title in the Denver Post and in full on the City of Lakewood's website, www.lakewood.org, on the 26th day of November, 2020; set for public hearing to be held on the 14th day of December, 2020; read, finally passed and adopted by the City Council on the _____ day of December, 2020; and signed by the Mayor on the _____ day of December, 2020.

________________________________________
Adam Paul, Mayor

ATTEST:

________________________________________
Benjamin B. Goldstein, Interim City Clerk

APPROVED AS TO FORM:

________________________________________
Timothy P. Cox, City Attorney

EXHIBIT A
Property Interests along Independence Street for the following addresses:

- 605/615 Independence Street
- 623 Independence Street
- 635 Independence Street
- 641 Independence Street
- 649 Independence Street
- 665 Independence Street
- 9700 W 8th Avenue
CITY OF LAKEWOOD ORDINANCE MAP
TRAFFIC SIGNAL IMPROVEMENTS AT INTERSECTION OF KIPLING ST AND W 8TH PL

NOVEMBER 6, 2020
STAFF MEMO

DATE OF COUNCIL MEETING: NOVEMBER 23, 2020 / AGENDA ITEM NO. 10
DECEMBER 14, 2020 / AGENDA ITEM NO. 14

To: Mayor and City Council

From: Jay N. Hutchison, Director of Public Works, 303-987-7901

Subject: ACQUISITION ORDINANCE FOR KIPLING STREET TRAFFIC SIGNALS AT 8TH PLACE AND AT 13TH PLACE/LAKEWOOD HEIGHTS DRIVE

This ordinance was approved on 1st Reading by a vote of 10 ayes 1 nays.

SUMMARY STATEMENT: This ordinance would authorize steps necessary to acquire interests in property for replacement of traffic signals and limited intersection improvements on Kipling Street at 8th Place and at 13th Place/Lakewood Heights Drive.

BACKGROUND INFORMATION: The traffic signals at these locations are old, structurally deficient, have substandard displays and the associated curb ramps do not meet current Americans with Disabilities Act (ADA) standards.

This ordinance declares the city’s intent to acquire property interests necessary for the project and initiates the negotiation process between the City and the property owners for the necessary property rights. It also authorizes acceptance of conveyance instruments and, if needed, condemnation of property interests. However, condemnation would not occur prior to additional City Council approval by resolution.

Maps are attached that conceptually illustrate the property rights that are anticipated to be needed. It is anticipated that temporary easements for the construction period, illustrated in orange on the maps, will be required from three properties, two at 8th Place and one at Lakewood Heights Drive. The temporary easements are required to blend the construction into surrounding site features and yards through minor re-grading and landscape restoration.

It is anticipated that permanent easements, shown in red on the maps, will be required from four properties as follows:

- 10015 W 8th Place – accommodate traffic signal equipment and new curb ramps necessary to comply with the ADA.
- 830 Kipling Street – accommodate traffic signal equipment and new curb ramp necessary to comply with the ADA.
- 1345 Kipling Street – accommodate traffic signal equipment and the new curb ramps necessary to comply with the ADA.
• 10000 W 13th Place – accommodate traffic signal equipment and new curb ramps to comply with the ADA.

It is anticipated that fee simple interest, shown in blue on the map, along with a temporary easement will be required from 1300 Kipling Street. The purchase of fee simple interest is necessary to improve the intersection with Kipling of Lakewood Heights Drive and 13th Place, which are offset from each other but are served by a single traffic signal. Lakewood Heights Drive is planned to be realigned to the south to match 13th Place. To accomplish this re-alignment, property acquisition is required at 1300 Kipling Street.

The property at 1300 Kipling Street is vacant and owned by the Regional Transportation District (RTD). RTD is requesting this acquisition ordinance (with the conditional condemnation authorization) be in place prior to starting any negotiations.

Concurrent with the traffic signal replacements described above, the signals on Kipling at Federal Center Gate 1 and at 13th Avenue will be replaced. Those replacements can be completed within existing public property and no acquisition of property rights is necessary.

**BUDGETARY IMPACTS:** The project is funded with federal and state grant funds along with City Capital Improvements Funds.

**STAFF RECOMMENDATION:** Approval of the ordinance.

**ALTERNATIVES:** If this ordinance is not approved, the City may lose grant funds. The signals at 8th Place and 13th Place/Lakewood Heights Drive would likely not be replaced because replacement requires compliance with the ADA, which is not possible within the publicly owned land at those locations. The offset intersection at 13th Place/Lakewood Heights Drive would remain in its current configuration.

**PUBLIC OUTREACH:** City staff has contacted the affected property owners seeking to discuss the project. Notification of the City Council’s consideration of this ordinance has been mailed to each owner of property where acquisition is anticipated. The notification includes clear language that there will be no discussion of value during the City Council hearing about this ordinance because this is the very start of the acquisition process and no values have yet been determined.

**NEXT STEPS:** Begin the acquisition process and complete preparation of construction bid documents.

**ATTACHMENTS:** Ordinance O-2020-31  
Maps

**REVIEWED BY:** Kathleen E. Hodgson, City Manager  
Benjamin B. Goldstein, Deputy City Manager  
Timothy P. Cox, City Attorney
AN ORDINANCE

DECLARING THE INTENT OF THE CITY OF LAKEWOOD TO ACQUIRE INTERESTS IN PROPERTY FOR PUBLIC PURPOSES FOR THE REPLACEMENT OF TRAFFIC SIGNALS AND INTERSECTION IMPROVEMENTS ALONG KIPLING STREET AND AUTHORIZING NEGOTIATIONS WITH PROPERTY OWNERS, ACCEPTANCE OF CONVEYANCE INSTRUMENTS AND, SUBJECT TO FURTHER CITY COUNCIL APPROVAL, CONDEMNATION OF REAL PROPERTY INTERESTS

WHEREAS, to enhance safety and better facilitate pedestrian and vehicle traffic at intersections along Kipling Street, the City of Lakewood (the “City”) desires to implement the Kipling Signals Project (the “Project”) to install certain improvements at the intersections of Kipling Street with 8th Place and 13th Place/Lakewood Heights Drive (the “Improvements”);

WHEREAS, in order to install the Improvements, the City must acquire certain property interests from the owners of land adjacent to the Improvements (the “Property Interests”);

WHEREAS, in order to acquire the Property Interests in compliance with State law, the City Council desires to:

a. Declare the City’s intent to acquire the Property Interests for public purposes in fulfillment of the requirements of Section 38-1-121, C.R.S.;

b. Authorize negotiations for, and acquisitions of, the Property Interests;

c. Accept the instruments of conveyance for the Property Interests;

d. Authorize the City Attorney, subject to further City Council approval, to initiate condemnation proceedings to acquire the Property Interests in the event the City is unable to acquire the Property Interests despite good faith efforts to do so;

WHEREAS, approval of this ordinance on first reading is intended only to confirm that the City Council desires to comply with Lakewood Municipal Code by setting a public hearing to provide City staff and the public an opportunity to present evidence and testimony regarding the proposal identified herein; and

WHEREAS, approval of this ordinance on first reading does not constitute a representation that the City Council, or any member of the City Council, supports, approves, rejects or denies any particular proposal related to the proposal identified herein.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Lakewood, State of Colorado:
SECTION 1. The City Council hereby finds that the Project will serve to enhance safety and better facilitate pedestrian and vehicle traffic on Kipling Street. The City Council further finds it necessary to acquire certain property interests to advance such public purpose.

SECTION 2. The City Council hereby declares its intent to acquire the Property Interests in the form of: (i) fee simple interests; (ii) permanent easements; (iii) temporary construction easements; or (iv) any other interests as may be warranted for the Project, with any improvements contained therein. The properties from which the Property Interests are currently anticipated to be acquired are identified in Exhibit A, attached hereto and incorporated herein by this reference. At such time as the City Manager or designee (the "City Manager") identifies the particular Property Interests necessary for the Project, notice of intent to acquire the Property Interests shall be given as required by Section 38-1-121, C.R.S.

SECTION 3. The City Manager is hereby authorized to negotiate in good faith to acquire the Property Interests. Negotiations shall be based upon appraisal reports or valuations approved by the City Manager. The City Manager is hereby authorized to make offers to any property owner based upon such appraisal reports or valuations and to execute agreements for the acquisition of the Property Interests.

SECTION 4. The City Council hereby accepts on behalf of the City, upon recordation, the instruments of conveyance of the Property Interests acquired hereunder.

SECTION 5. The City’s Chief Financial Officer is hereby authorized and directed to pay, upon receipt of appropriate documentation, the amounts set forth in the contracts and agreements provided for herein.

SECTION 6. In the event the City is unable to negotiate an agreement for the acquisition of any necessary Property Interest, despite good faith efforts to do so, the City Attorney is hereby authorized and directed to exercise, on behalf of the City, the power of eminent domain vested in the City pursuant to Section 14.4 of the City of Lakewood home rule charter. At such time, the City Council shall identify by resolution the Property Interests to be acquired by condemnation prior to the City Attorney proceeding to condemn such Property Interests.

SECTION 7. The City Attorney is further authorized to apply to the proper court for immediate possession of the Property Interests to be acquired by condemnation, and the City’s Chief Financial Officer and all other officers and agents of the City are authorized and directed to cooperate with the City Attorney in the condemnation action, to make any deposits and payments as may be necessary for acquisition of the Property Interests, and to pay the costs thereof and any condemnation award as it may be finally determined. The City Attorney is additionally authorized to employ such expert witnesses, including appraisers, as the City Attorney determines necessary for the purposes of the condemnation authorized by this Ordinance, and the City’s Chief Financial Officer is directed to pay the costs and expenses of employing such expert witnesses and appraisers.
SECTION 8. Nothing herein is intended to authorize the expenditure of monies in excess of the funds appropriated for the Project.

SECTION 9. If any provision of this Ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remaining portions or applications of this Ordinance that can be given effect without the invalid portion, provided such remaining portions or application of this Ordinance are not determined by the court to be inoperable.

SECTION 10. This ordinance shall take effect thirty (30) days after final publication.

I hereby attest and certify that the within and foregoing ordinance was introduced and read on first reading at a virtual regular meeting of the Lakewood City Council on the 23rd day of November, 2020; published by title in the Denver Post and in full on the City of Lakewood’s website, www.lakewood.org, on the 26th day of November, 2020; set for public hearing to be held on the 14th day of December, 2020; read, finally passed and adopted by the City Council on the _____ day of December, 2020; and signed by the Mayor on the _____ day of December, 2020.

________________________________________
Adam Paul, Mayor

ATTEST:

Benjamin B. Goldstein, Interim City Clerk

APPROVED AS TO FORM:

________________________________________
Timothy P. Cox, City Attorney

EXHIBIT A

Property Interests at the Kipling Street intersections for the following addresses:
10015 W 8th Place
10020 W 8th Place
830 Kipling Street
1345 Kipling Street
10000 W 13th Place
1300 Kipling Street
CITY OF LAKEWOOD ORDINANCE MAP
TRAFFIC SIGNAL IMPROVEMENTS AT INTERSECTION OF KIPLING ST AND W 13TH PL

CURRENTLY ANTICIPATED
- FEE SIMPLE PARCEL
- PERMANENT EASEMENT
- TEMPORARY EASEMENT

NOVEMBER 6, 2020
AN ORDINANCE

ADOPTING A REVISED CHAPTER 3.01 AND ANCILLARY MUNICIPAL CODE CHANGES

WHEREAS, in 2014, the Colorado General Assembly adopted Senate Joint Resolution 14-038 urging Colorado’s home rule municipalities that self-collect their sales tax (the “Self-Collecting Municipalities”) to work with the Colorado Municipal League (“CML”) to develop uniform definitions for the Self-Collecting Municipalities’ tax codes in order to help simplify taxation by using standardized terminology;

WHEREAS, the definitions developed by the Self-Collecting Municipalities and CML initially consisted of 106 definitions, with five more definitions added since, for a total of 111 standard definitions (the “Standard Definitions”);

WHEREAS, when incorporating the Standard Definitions into Lakewood’s tax code, located in Lakewood Municipal Code (“LMC”) Chapter 3.01 (the “Tax Code”), it became clear that portions of the Tax Code and its associated regulations (the “Regulations”) would need to be revised due to inconsistencies between the language of many of the Standard Definitions and the existing Tax Code;

WHEREAS, over the decades since the Tax Code was first adopted, discrete changes have been made in response to state legislative changes, in response to a similar 1992 standardized definition project, and in response to certain local tax disputes;

WHEREAS, moreover, the current Tax Code contains various typographical, spelling and grammar errors; redundant, archaic and obsolete language and formatting; and outdated concepts and references, all of which combine to make it more difficult for local businesses to understand and apply the requirements of the Tax Code to their own tax situation;

WHEREAS, the revised LMC Chapter 3.01, attached hereto and incorporated herein by this reference (the “Revised Tax Code”), has been written to make the City’s sales and use tax requirements less difficult to understand by simplifying language to make it more straightforward, organizing the Chapter in a more intuitive way, combining related concepts, consolidating certain sections, inserting lists and headers for easier navigation, updating references, and adding an “audit” section to clearly identify that procedure;

WHEREAS, in light of the changes to the Tax Code, LMC Chapter 3.26 must be revised to incorporate the provisions of LMC section 3.01.085 - Economic Development Assistance;

WHEREAS, approval of this ordinance on first reading is intended only to confirm that the City Council desires to comply with the Lakewood Municipal Code by setting a
public hearing to provide City staff and the public an opportunity to present evidence
and testimony regarding the proposal; and

    WHEREAS, approval of this ordinance on first reading does not constitute a
representation that the City Council, or any member of the City Council, supports,
approves, rejects or denies the proposal.

    NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of
Lakewood, Colorado, that:

    SECTION 1. Revised Tax Code Adopted. The Revised Tax Code attached
hereto is hereby adopted and shall replace Chapter 3.01 of the Lakewood Municipal
Code in its entirety.

DEVELOPMENT INCENTIVE FUND” is hereby amended to read “ECONOMIC
Municipal Code are hereby amended to read in their entirety as follows:

3.26.010 - Purpose.

    The granting of financial assistance is determined to be a public purpose. Specifically, such assistance protects the public welfare by promoting and fostering the growth of the city's economic base which in turn has positive effects by generating jobs, increasing the tax base, services and products produced by the private sector, encouraging and providing for the vitality of residential areas and of commercial and industrial businesses within the city, as well as providing increased opportunities for employment for the residents of the city and enabling the city to carry forward its functions in the preservation of the health, safety and welfare of the citizens and residents of the city, all of which have a net positive impact on city revenues, and, in general, improve the quality of life in the city.

3.26.030 - Economic Development Fund established; Funding.

    A. Fund Established.

    1. There is established a special fund to be known as the economic development fund (“EDF”). The purpose of said fund shall be to provide funds from the city to further the economic development goals of the city by providing financial assistance to projects attracting enterprises that City Council determines will further the accomplishment of the city's economic goals. The economic development goals of the program include efforts to expand the city's tax base, promote development that will enhance the physical and economic environment of the city, provide permanent jobs and skilled labor availability, services, and products within the city thereby improving employment opportunities for the residents of the City of Lakewood, foster revitalization of physically deteriorating areas, promote development that will have a net positive impact on city revenues, and produce a positive impact upon the community as a whole.

    2. The City Council specifically finds and determines that creation of the economic development fund is consistent with the city's powers as a home rule municipal corporation and that exercise of said powers in the manner set forth herein is in furtherance of the public health, safety and welfare. Notwithstanding any
provisions hereof, the city shall never be a joint venture in any private entity or activity which participates in the economic development fund, and the city shall never be liable or responsible for any debt or obligation of any participant in the economic development fund. The City Council finds, determines, and declares that this ordinance is promulgated under the general police power of the City of Lakewood, that it is promulgated for the health, safety and welfare of the public, and that the ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the ordinance bears a rational relation to the proper legislative object sought to be attained.

B. Funding.
   1. The fund shall be funded by transfer of revenues derived from the tax levied on hotel and motel accommodations within the city.
   2. The fund may also be supplemented by City Council at its discretion.


A. Economic Development Assistance. Except as otherwise set forth herein, the following procedure shall govern requests for assistance from the fund:
   1. The City Manager shall analyze the request for conformance with the criteria established pursuant to this chapter.
   2. The City Manager shall forward the request to the City Council together with a recommendation regarding financial assistance for the project, which shall include suggested terms of participation.
   3. The City Council may subsequently direct the City Manager to develop an agreement between the applicant and the City or a cooperating local, state or federal entity or agency, which agreement embodies such terms and conditions as the City Council deems appropriate for the disbursement of moneys from the fund.
   4. The City Council may, by resolution, authorize the City Manager to execute such agreement on behalf of the City.
   5. The City Manager is authorized to promulgate administrative regulations to implement provisions contained herein applicable to the economic development fund.
   6. This procedure shall not be applicable if the City Council has previously budgeted and appropriated funds for programs or expenditures for the purposes described in this chapter 3.26, nor shall it be applicable to the grant of assistance or refunds in accordance with subsection (B) hereof or the waiver or reduction of fees in accordance with Section 14.02.040A.3 of the Lakewood Municipal Code.

B. Tax Rebates.
   1. Upon application to the City Manager, the City Manager may rebate an amount not to exceed seventy-five percent (75%) of the sales and use tax actually paid to the City of Lakewood by the applicant in the construction or renovation of one or more buildings within the city if such rebate, based on findings by the City Manager, will further the economic development goals of the City as set forth in Section 3.26.010 of the Lakewood Municipal Code. Said findings shall be made in writing.
   2. Upon application to the City Manager, the City Manager may rebate an amount not to exceed thirty percent (30%) of the use tax on tangible personal property actually paid to the city by the applicant for a period not to exceed six (6) years if such rebate, based on findings by the City Manager, will further the economic

SECTION 3. Effective Date. This ordinance shall take effect thirty (30) days after final publication.

SECTION 4. Severability. If any provision of this Ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remaining portions or applications of this Ordinance that can be given effect without the invalid portion, provided that such remaining portions or application of this Ordinance are not determined by the court to be inoperable.

I hereby attest and certify that the within and foregoing ordinance was introduced and read on first reading at a virtual regular meeting of the Lakewood City Council on the 23rd day of November, 2020; published by title in the Denver Post and in full on the City of Lakewood’s website, www.lakewood.org, on the 26th day of November, 2020; set for public hearing to be held on the 14th day of December, 2020; read, finally passed and adopted by the City Council on the _____ day of December, 2020; and signed by the Mayor on the _____ day of December, 2020.

______________________________
Adam Paul, Mayor

ATTEST:

Benjamin B. Goldstein, Interim City Clerk

APPROVED AS TO FORM:

______________________________
Timothy P. Cox, City Attorney
STAFF MEMO

DATE OF COUNCIL MEETING: NOVEMBER 23, 2020 / AGENDA ITEM NO. 11
DECEMBER 14, 2020 / AGENDA ITEM NO. 15

To: Mayor and City Council

From: Holly Björklund, Chief Financial Officer, 303-987-7601

Subject: AN ORDINANCE ADOPTING AN AMENDED CHAPTER 3.01 AND ANCILLARY MUNICIPAL CODE CHANGES

This ordinance was approved on 1st Reading by a vote of 10 ayes 1 nays.

SUMMARY STATEMENT: Staff has rewritten the Sales & Use Tax Code and attendant Regulations to incorporate standardized definitions and simplified language, which is being presented as part of an effort to explore new revenue opportunities.

BACKGROUND INFORMATION: The Lakewood Municipal Code (“LMC”) has been revised to incorporate the standardized definitions that resulted from Senate Joint Resolution 14-038. The intent of this resolution was to simplify taxation by having the municipalities that self-collect sales and use tax use standardized terminology in their tax codes. The City of Lakewood took additional measures to transform its tax code to be more user (business) friendly and more clearly articulate current processes and tax determinations. Additionally, as a result of these, LMC section 3.01.085 is being incorporated into LMC chapter 3.26, which, in turn, necessitated additional changes to that chapter.

BUDGETARY IMPACTS: It is anticipated that the revised Code will result in better compliance and therefore increased revenue.

STAFF RECOMMENDATIONS: Staff recommends that City Council adopt the Ordinance.

ALTERNATIVES: Leave the sales tax code and regulations as they currently exist.

PUBLIC OUTREACH: This item was promoted through the regular communication channels for items that come before the City Council, and staff sought input from local business groups and two other municipalities.

NEXT STEPS: Ordinance 2nd Reading and Tax Regulations Resolution on December 14, 2020

ATTACHMENTS: Ordinance O-2020-32
Revised Sales & Use Tax Code

REVIEWED BY: Kathleen E. Hodgson, City Manager
Benjamin B. Goldstein, Deputy City Manager
Timothy P. Cox, City Attorney
Proposed Taxed Code
Chapter 3.01
Sales and Use Tax
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 12th grade or any portion thereof.

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

“Soft Drink” means a nonalcoholic beverage that contains natural or artificial sweeteners. “Soft Drink” does not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than fifty percent (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.

“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 (20th) 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 (20th) 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 (20th) 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 (20th) 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 (20th) 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 in 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;
   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.


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;

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.
   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.
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 (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.

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’s 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.

WHEREAS, on January 31, 2020, the United States Department of Public Health and Human Services Secretary declared a public emergency for the novel coronavirus (COVID-19) beginning on January 27, 2020; and

WHEREAS, on March 10, 2020, Colorado Governor Jared Polis declared a State of Disaster Emergency as the number of identified COVID-19 cases in Colorado increased, and announced numerous emergency measures to protect public health and safety; and

WHEREAS, the Jefferson County Department of Public Health has informed the City of Lakewood that the number of confirmed cases of COVID-19 in Jefferson County continues to increase; and

WHEREAS, the cost and magnitude of responding to and recovery from the impact of the COVID-19 Pandemic may be far in excess of the City’s available resources; and

WHEREAS, declaration of a local disaster emergency will assist and permit access to local emergency funds and Federal and State assistance, and will allow adjustments to policies, procedures, and ordinances to ensure the public’s health and welfare; and

WHEREAS, it is appropriate and in the interests of the public health and safety of the City and its residents to rapidly address community spread of COVID-19 and subsequent cascading impacts, such as economic distress, and to further protect the health and safety of the public by declaring a state of disaster in the City of Lakewood; and

WHEREAS, the situation is sufficiently serious that it has become necessary for the City Manager to declare a state of disaster within the City of Lakewood pursuant to Chapter 1.27 of the Lakewood Municipal Code, and to exercise the City Manager’s emergency powers set forth therein; and

WHEREAS, I have reviewed the situation, consulted with City of Lakewood Department Directors and the Jefferson County Director of Public Health, and verified the existence of the state of disaster cited below, and the necessity for me to take immediate, extraordinary action as outlined in this Proclamation.

NOW, THEREFORE, I, KATHLEEN E. HODGSON, AS CITY MANAGER OF THE CITY OF LAKEWOOD, COLORADO, DO PROCLAIM AND ORDER AS FOLLOWS:
SECTION 1. DECLARATION OF STATE OF DISASTER

A. Based on my review of the present circumstances and my consultations with City of Lakewood Department Directors, the Jefferson County Director of Public Health and the Director of the Colorado Department of Public Health and Environment, I have determined that a state of disaster exists requiring and authorizing me to exercise any or all of the emergency powers vested in me as City Manager by Lakewood Municipal Code Chapter 1.27 as described in this Proclamation. The issuance and execution of this Proclamation declaring a state of disaster shall automatically empower me as the City Manager to exercise any and all of the disaster and emergency powers and shall activate all relevant portions of the Emergency Plan and Management System. Nothing in this Proclamation shall be construed to limit or reduce the authority or powers available to the City Manager pursuant to Chapter 1.27, and all provisions of Chapter 1.27 shall remain in full force and effect regardless of whether those provisions are referenced herein.

B. I will be exercising the authority provided in Chapter 1.27 through the mechanisms identified therein, including through the promulgation of such regulations as I deem necessary to protect life and property and preserve critical resources, through the issuance of emergency orders, proclamations and other enactments and through the use and direction of City personnel, services and equipment and such additional acts necessary for the management of the state of disaster.

C. Pursuant to Lakewood Municipal Code section 1.27.071, it is unlawful for any person to violate or to knowingly fail to obey any order or regulation made or issued pursuant to that Chapter. Penalties for violations of any order or regulation promulgated by the City Manager or for violations of any provision of Chapter 1.27 shall be as set forth in Section 1.27.120 of the Lakewood Municipal Code.

SECTION 2. DISTRIBUTION OF DECLARATION OF STATE OF DISASTER
Once issued, this Proclamation shall be properly published and disseminated to the public and filed with the City Clerk and the City Council. A copy of this Proclamation shall be forwarded to the Colorado Division of Emergency Management and the Department of Local Affairs.

SECTION 3. DURATION OF DECLARATION OF STATE OF DISASTER.
Pursuant to LMC Section1.27.060(D), the state of disaster declared by this Proclamation shall remain in effect until the City Manager declares by Proclamation that the threat of danger has passed or that the disaster conditions no longer exist, suggesting that the City Manager has the authority to declare a state of disaster of indefinite duration. However, Section 1.27.060(D) further provides that a declaration of a state of disaster cannot extend beyond seven days, unless a majority of the City Council approves a longer duration. Inasmuch as the COVID-19 disaster will obviously extend well beyond seven days, the City Manager intends to ask the City Council to vote, at its next meeting, to declare the state of disaster to continue indefinitely. In making the ultimate determination as to whether the danger has passed or the disaster conditions no longer exist, the City Manager may consider such factors as whether the state of Colorado’s declaration of disaster has been terminated.

SIGNED THIS 17th DAY OF March

BY:

Kathleen E. Hodgson, City Manager
City of Lakewood, Colorado

ATTEST:

Michele Millard, City Clerk
City of Lakewood, Colorado