

CHAPTER 4

Revenue and Finance

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ARTICLE I

Fiscal Year

Sec. 4-1. Fiscal year established.

The fiscal year of the Town shall commence on January 1 of each year and shall extend through December 31 of the same year. (Ord. 26-1992 §1)

Secs. 4-2—4-10. Reserved.

ARTICLE II

General Fund

Sec. 4-11. General Fund created.

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

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

(2) All fixed assets of the Town (to be separately designated in an account known as the General Fund Fixed Assets) not specifically belonging to any existing special fund of the Town. (Ord. 26-1992 §1)

Secs. 4-12—4-30. Reserved.

ARTICLE III

Special Funds

Sec. 4-31. Custody and management of funds.

Moneys in the funds created in this Chapter shall be in the custody of and managed by the Treasurer. The Treasurer shall maintain accounting records and account for all of said moneys as provided by law. Moneys in the funds of the Town shall be invested or deposited by the Treasurer in accordance with the provisions of law. All income from the assets of any fund shall become a part of the fund from which derived and shall be used for the purpose for which such fund was created; provided that, except as otherwise provided in this Article or by other ordinances or laws or by this Code, the Board of Trustees may transfer out of any fund any amount at any time to be used for such purpose as the Board of Trustees may direct. (Ord. 26-1992 §1)

Sec. 4-32. Capital Improvement Fund.

(a) There is established a special fund known as the Capital Improvement Fund which shall be kept separate from the general and other funds of the Town, and into such fund shall be deposited such revenues as the Board of Trustees may determine necessary from year to year to provide for capital improvements for the Town, including, without limitation, street paving, the acquisition of facilities and

real property for public purposes, and the payment of debt service on bonds and other obligations of the Town issued to provide for capital improvements.

(b) Notwithstanding any provision within this Section, sales tax revenues previously pledged for capital improvement purposes prior to the enactment or amendment of this Section, and particularly revenues pledged for the payment of bonds and/or debt service on bonds, shall be deposited immediately upon receipt or collection in the Capital Improvement Fund (inclusive of bond accounts, interest subaccounts, principal subaccounts and/or reserve accounts) in amounts sufficient to timely and fully pay such obligations, and said deposits shall continue until such time as such obligations are fully satisfied and discharged. (Prior code 3.12.010, 3.12.020; Ord. 1-1998, §1)

Sec. 4-33. Conservation Trust Fund created.

There is hereby created a special fund, to be known as the Conservation Trust Fund, and the funds therein shall be used only for the purposes allowed by law. (Ord. 26-1992 §1)

Sec. 4-34. Police and Court Education Fund.

There is hereby created a special fund to be known as the Police and Court Education Fund, which shall be used only for the purpose of providing job-related education and training for the Town's police and court personnel. (Prior code 1.16.030; Ord. 26-1992 §1)

Sec. 4-35. Airport Fund.

There is hereby established a special fund of the Town to be known as the Airport Fund. Into such special fund shall be deposited all revenues received by the Town generated from or directly related to the operation of the Buena Vista Municipal Airport, also known as the Central Colorado Regional Airport. All monies deposited into such special fund shall be reserved and expended solely to satisfy the expenses and charges incurred by the Town in the operation and maintenance of the airport. Monies credited to the fund shall not be pledged or expended, by interfund transfer or otherwise, for any general purposes of the Town. In the event the airport and Airport Fund should qualify at any time as an enterprise and/or enterprise fund, respectively, as defined under Article X, Section 20 of the Colorado Constitution, then the Board of Trustees, as it deems necessary or appropriate, may declare and designate the airport as an enterprise, and the Airport Fund as an enterprise fund, by written resolution duly passed at a public meeting. (Ord. 18-1993 §1; Ord. 9-2002 §1)

Sec. 4-36. Victims and Witnesses Assistance Fund.

There is hereby created and established a special fund to be known as the Victims and Witnesses Assistance Fund, which fund shall be used to provide assistance and services to natural persons against whom any crime has been perpetrated or attempted, and to any natural person who witnessed or has knowledge of a criminal act, or attempted criminal act, and who has reported such act to a proper law enforcement authority; and into such fund shall be deposited all revenues generated from the surcharge imposed by Section 1-78(2) of this Code. Monies deposited into the Victims and Witnesses Assistance Fund may be allocated by the Board of Trustees to fund victims and witnesses assistance programs operated by public or nonprofit agencies serving the victims of crime in and around the Town and County. (Ord. 8-1998, §2)

Sec. 4-37. Fixed assets threshold and inventory.

The Town Treasurer shall annually prepare and present to the Board of Trustees a written inventory and accounting of the Town's fixed capital assets with a value of five thousand dollars (\$5,000.00) or more. Such inventory and accounting shall be prepared and submitted as part of the Town's annual fiscal year audit and in no event later than six (6) months after the close of each fiscal year. (Ord. 13-2001 §1)

Secs. 4-38—4-50. Reserved.

ARTICLE IV

Reserved

Secs. 4-51—4-70. Reserved.

ARTICLE V

Sales Tax

Sec. 4-71. Purpose.

The purpose of this Article is to impose a sales tax on the sale of tangible personal property at retail within the Town as authorized and provided in Section 29-2-105(1)(d), C.R.S., and any successor statute thereto. (Prior code 3.08.010; Ord. 14-2002 §1)

Sec. 4-72. Definitions.

For purposes of this Article, the definitions of words herein contained shall be as said words are defined in Section 39-26-102, C.R.S., or any successor statute, and said definitions are incorporated herein by reference. (Prior code 3.08.020; Ord. 14-2002 §1)

Sec. 4-73. Levy and schedule of sales tax; collection and administration.

(a) There is hereby imposed on all sales of tangible personal property at retail and the furnishing of taxable services as provided in Section 39-26-104, C.R.S., a tax equal to two percent (2%) of the gross receipts. The tangible personal property and services taxable by this Article shall be the same as the tangible personal property and services taxable pursuant to Section 39-26-104, C.R.S., and any successor statute thereto, subject to the exemptions specified in Section 39-26-114, C.R.S., except as provided in Section 29-2-105(1)(d), C.R.S. The imposition of the tax on individual sales shall be in accordance with the schedules set forth in the rules and regulations promulgated by the Department of Revenue or by separate ordinance of the Town. If any vendor, during any reporting period, shall collect as a tax an amount in excess of two percent (2%) of the vendor's total taxable sales, the vendor shall remit to the Director of Revenue the full amount of the tax herein imposed and also such excess.

(b) The amounts subject to tax under this Article shall not include the state sales and use tax imposed by Article 26, Title 39, C.R.S.

(c) The collection, administration and enforcement of this sales tax shall be performed by the Director of Revenue in the same manner as the collection, administration and enforcement of the state sales tax. The provisions of Article 26, Title 39, C.R.S., and all rules and regulations promulgated by the

Director of Revenue shall govern the collections, administration and enforcement of the sales tax imposed by this Article.

(d) The gross receipts from sales shall include delivery charges when such charges are subject to the state sales and use tax imposed by Article 26 of Title 39, C.R.S., regardless of the place to which delivery is made. (Prior code 3.08.160; Ord. 14-2002 §1)

Sec. 4-74. Consummation of sales.

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

(b) In the event a retailer has no permanent place of business in the Town, or has more than one (1) place of business, the place or places at which the retail sales are consummated for the purpose of the sales tax imposed by this Article shall be determined by the provisions of Article 26 of Title 39, C.R.S., and by rules and regulations promulgated by the State Department of Revenue. (Prior code 3.08.150; Ord. 14-2002 §1)

Sec. 4-75. Exemptions; credits.

There shall be exempt from taxation under the provisions of this Article all of the following retail sales of tangible personal property and services:

(1) All sales exempted under Section 39-26-114, C.R.S., except as provided in Section 29-2-105(1)(d), C.R.S., and any successor statute.

(2) Food purchased with food stamps or funds provided by the special supplemental food program for women, infants and children. For purposes of this Subsection, *food* shall have the same meaning as provided in Section 39-26-102(4.5), C.R.S.

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

a. The purchaser is a nonresident of or has its principal place of business outside of the Town; and

b. Such tangible personal property is registered or required to be registered outside the limits of the Town under the laws of the State.

(4) The sale of construction and building materials if such materials are picked up by the purchaser and if the purchaser of such materials presents to the retailer a building permit or other acceptable documentation evidencing that a local use tax has been paid or is required to be paid. For purposes of this Subsection, the term *construction and building materials* shall have the same meaning as provided in Section 29-2-105(2), C.R.S.

(5) The sale of tangible personal property at retail or the furnishing of services if the transaction was previously subjected to a sales or use tax lawfully imposed on the purchaser or user by another statutory or home rule municipality equal to or in excess of the rate provided in this Article. A credit shall be granted against the Town's sales tax with respect to such transaction equal in amount to the

lawfully imposed local sales or use tax previously paid by the purchaser or user to the previous statutory or home rule municipality. The amount of the credit shall not exceed the rate provided in this Article. (Ord. 14-2002 §1)

Sec. 4-76. Violations and penalty.

(a) It shall be unlawful for any person, business, organization or other entity subject to the terms of this Article V to fail to collect or submit to the State Department of Revenue the sales tax levied in Section 4-73, or to violate any of the provisions of this Article.

(b) Violations of this Article shall be punished by a fine up to one thousand dollars (\$1,000.00) or by a term of imprisonment up to one (1) year, or by both such fine and imprisonment. (Prior code 3.08.110; Ord. 14-2002 §1)

Secs. 4-77—4-100. Reserved.

ARTICLE VI

Industrial Development Revenue Bonds

Sec. 4-101. Purpose.

It is the purpose of this Article to establish and set forth the Town's policy with respect to the issuance of its industrial development revenue bonds under the "County and Municipality Development Revenue Bond Act," Section 29-3-101 *et seq.*, C.R.S. (Prior code 3.16.010)

Sec. 4-102. Demonstration of benefit.

In general, the Town will consider issuing industrial development revenue bonds only upon a clear and factual demonstration of direct economic benefit to the Town's economic development goals, such as the creation of additional employment opportunities; expansion of the tax base; increasing sales, property or other tax revenues to the Town; maintenance and promotion of a stable, balanced and diversified economy among natural resource development, business, tourism, commerce and trade; and promotion or development of the use of manufactured, commercial or natural resource products within or without the State. Consideration will also be given to any adverse effect upon the Town's development or other goals of the Town. The following guidelines apply:

(1) No particular type of business or enterprise will be excluded from consideration for the issuance of industrial development revenue bonds by the Town so long as such business or enterprise qualifies under the "County and Municipality Development Revenue Bond Act," but every applicant should be prepared to demonstrate that the proposed facility will promote the general economic development of the Town within the context of the existing rules, regulations and requirements of the Town, State and U.S. government.

(2) Proposals for issuance of all industrial development revenue bonds will be carefully considered in order to determine whether there would result from such proposed issuance substantial benefit to the Town and its inhabitants.

(3) It must be demonstrated that each project for which industrial development revenue bonds are to be issued will result in:

- a. The creation of new or additional employment opportunities in the Town;
- b. Expansion of the tax base and increase of sales, property or other tax revenues to the Town;
- c. Maintenance and promotion of a stable, balanced and diversified economy among natural resource development, business, tourism, commerce and trade; and
- d. Promotion or development of the use of manufactured, commercial or natural resource products within or without the State. (Prior code 3.16.020)

Sec. 4-103. Applicant financial information.

The Town, in evaluating proposals for the issuance of industrial development revenue bonds, will seek to protect the good fiscal reputation of the Town and will require information and proof of such matters as may be necessary in the Town's opinion to establish the feasibility of the project and the financial responsibility and capacity of the applicant. At least ten (10) days prior to any meeting with Town officials, the following information, together with the application fee provided for in Section 4-104, shall be submitted to the Town and used in its determination of whether or not to proceed with the proposed industrial development revenue bond financing:

- (1) A description of the project, including a complete list of assets to be purchased or constructed, the estimated life of such assets and the estimated cost of constructing and acquiring the project;
- (2) A descriptive statement of how the proposed project would benefit the Town and fulfill the requirements of Section 4-102;
- (3) A description of alternative forms of financing investigated, together with the reasons for seeking industrial development revenue bond financing;
- (4) History of applicant, including a description of its operations;
- (5) A resume of the principals and key personnel of the applicant, including directors and officers;
- (6) Historical, financial information for the applicant for the past three (3) years, including the applicant's audited financial statements (including at least a balance sheet, income and expense statement and cash flow analysis) for the most recent fiscal year for which they are available;
- (7) A proposed bond redemption schedule including the estimated debt service on the proposed industrial development revenue bonds;
- (8) A proposed timetable for the issuance of the bonds;
- (9) A report of any litigation pending against the applicant, including nature of case, court where litigation is pending and amount of claim;
- (10) A proposed timetable for completion of the project;
- (11) Description of previous participation in industrial revenue bond financing, including location of issue, amount, description of project and parties involved;
- (12) The name and address of the bond underwriter that the applicant intends to employ in connection with the bond issue;

(13) The name and address of the bond attorneys that the applicant intends to employ in connection with the bond issue; and

(14) Any other matters specifically desired by the Town not set forth above. (Prior code 3.16.030)

Sec. 4-104. Application fee; financing fee and applicant's obligation to reimburse Town for all expenses.

(a) At the time of submission of the information required by Section 4-103, the applicant shall deposit with the Town an application fee of five hundred dollars (\$500.00). Said application fee shall not be refundable in any event.

(b) Whether or not the proposed bonds are issued, the applicant will be required to provide for the reimbursement of all expenses incurred by the Town in evaluating the project proposal, in processing the application (including publication expenses of ordinances, notices and resolutions) and in connection with the issuance of bonds, if bonds are issued. The application fee will be credited against the cost of the time of all personnel of the Town involved in the evaluation, publication and similar expenses and the other expenses incurred by the Town related to the project evaluation, processing and issuance of bonds; provided, however, that said application fee will not be applied to the cost of counsel and such consultants as the Town may employ to assist in the evaluation and issuance of such bonds, and the applicant will be required to pay said costs in addition to the application fee.

(c) In addition to the application fee, to cover any nonitemized expenses of the Town in connection with the transactions contemplated by the bond issuance, the applicant will be required to execute an agreement prior to issuance of the bonds obligating the applicant to pay to the Town, at the time of delivery of the bonds, an amount which, together with the application fee, shall be referred to as the "financing fees," in an amount equal to one hundred twenty-five thousandths of a percent (0.125%) of the principal amount of bonds outstanding each year for the life of the bond issue discounted back to present value at a rate not to exceed the coupon rate plus one hundred twenty-five thousandths of a percent (0.125%); provided, however, that the total amount of the financing fees shall not be equal to or exceed an amount which would cause the bonds to become arbitrage bonds under the Internal Revenue Service Code and regulations. The applicant, prior to the issuance of the bonds, shall calculate and verify the exact amount of such fees and a certificate shall be filed with the Town setting forth the basis and result of such calculation.

(d) The applicant's obligations as set forth in this Section shall be reduced to a contract to be approved and executed by the applicant and the Town prior to the adoption by the Town of the inducement resolution. (Prior code 3.16.040)

Sec. 4-105. Bond underwriter/counsel.

It shall be the responsibility of the applicant to select and pay bond underwriters and bond counsel in connection with the application and bond issue. Further, applicant must demonstrate by acceptable evidence that the proposed industrial development revenue bond issue can be sold without violating federal or state securities laws through a qualified underwriter or to an experienced investor or group of investors. (Prior code 3.16.050)

Sec. 4-106. Bond expenses.

It shall be the sole responsibility of the applicant to pay for any and all costs associated with the bond application, the processing of said application and the issuance of the bonds. Such obligation shall include, but shall not be limited to the cost of, preparing and publishing the official statement and all other matters connected with the proposed bond issuance, such that the Town will not be obligated under any circumstances for any costs associated with the bond issue. (Prior code 3.16.060)

Sec. 4-107. Board of Trustees' determination conclusive.

At such time as the applicant has satisfied all of the above-stated requirements, the Board of Trustees will review the material and information submitted, taking into consideration the findings and recommendations of such officers or employees of the Town who have been requested by the Board of Trustees to examine such information and make such findings and recommendations, and taking into consideration any other matters which the Board of Trustees in its sole discretion determines to be significant in deciding whether or not to proceed with the proposed industrial development revenue bond issue. The decision of the Board of Trustees shall be at the full and complete discretion of the Board of Trustees, and the Board of Trustees reserves the right to modify, delete or add to any of the requirements stated herein for good and sufficient reason. (Prior code 3.16.070)

Sec. 4-108. Liability of Town and bond purchaser.

(a) The acceptance of the financial information and agreement by the Town to issue industrial development revenue bonds does not constitute approval by the Town of the applicant's financial condition or soundness. In case of a private placement of the bonds, the ultimate purchaser will be required to certify to the Town that it has independently satisfied itself of the credit-worthiness of the applicant.

(b) Regardless of whether the bonds are to be sold publicly or privately, neither the Town, any official thereof, nor any purchaser, underwriter or attorney shall in any way represent in an official statement, offering circular or other offering material or otherwise, that the Town has in any way reviewed or passed upon the financial condition or soundness of the applicant or the proposed project to be financed by the industrial development revenue bonds or has, in any way, evaluated whether or not the bonds are marketable. (Prior code 3.16.080)

Sec. 4-109. Bonds to be special obligations.

(a) All bonds issued by the Town under the authority of this Article and the "County and Municipality Development Revenue Bond Act" shall be special, limited obligations of the Town, and except as provided in Section 29-3-116, C.R.S., the principal of and interest on such bonds shall be payable, subject to the mortgage provisions in the "County and Municipality Development Revenue Bond Act," solely out of the revenues derived from the financing, refinancing, sale or leasing of the project with respect to which the bonds are issued, or from other collateral pledged by the applicant in connection with the bond issue.

(b) The bonds and interest coupons, if any, appurtenant thereto shall never constitute the debt or indebtedness of the Town within the meaning of any provision or limitation of the State Constitution or statutes, and shall not constitute or give rise to a pecuniary liability of the Town or a charge against its general credit or taxing powers. Such limitation shall be plainly stated on the face of each bond. (Prior code 3.16.090)

Sec. 4-110. Limitation of inducement resolution.

Upon the Board of Trustees' determination to proceed with the industrial development revenue bond issue, it will entertain a resolution of inducement which, once passed, will be effective for the period stated in the resolution. (Prior code 3.16.100)

Sec. 4-111. Sales and business license.

Any applicant will be required, prior to the passage of a bond ordinance, to obtain a Town sales tax license and business license. (Prior code 3.16.110)

Secs. 4-112—4-130. Reserved.