

## CHAPTER 4

### Revenue and Finance

#### Article I Fiscal Year

Sec. 4-1-10 Fiscal year established

#### Article II General and Special Funds

Sec. 4-2-10 Custody and management of funds

Sec. 4-2-20 General Fund created

Sec. 4-2-30 Capital Improvement Fund created

Sec. 4-2-40 Conservation Trust Fund created

Sec. 4-2-50 Reserved

#### Article III Sales Tax

Sec. 4-3-10 Purpose

Sec. 4-3-20 Definitions

Sec. 4-3-30 Vendor's fee

Sec. 4-3-40 Schedule of sales tax

Sec. 4-3-50 General provisions and exemptions from taxation

Sec. 4-3-60 Imposition of sales tax

Sec. 4-3-70 Election and amendments

Sec. 4-3-80 Penalty

#### Article IV Fees for Permits, Licenses and Services

Sec. 4-4-10 Fees set by resolution; review

Sec. 4-4-20 Costs; timely payment

#### Article V Revenue Changes

Sec. 4-5-10 Retention of Town revenues

#### Article VI Procurement Policies

Sec. 4-6-10 Procurement Officer

Sec. 4-6-20 Authorized appropriations

Sec. 4-6-30 Procurement authorizations

Sec. 4-6-40 Public works and improvements

#### Article VII Enhanced Sales Tax Incentive Program

Sec. 4-7-10 Short title

Sec. 4-7-20 Legislative purpose

Sec. 4-7-30 Definitions

Sec. 4-7-40 Participation

Sec. 4-7-50 Agreement

Sec. 4-7-60 Uses

- Sec. 4-7-70      Increments
- Sec. 4-7-80      Existing sales tax not impaired
- Sec. 4-7-90      Criteria for approval
- Sec. 4-7-100     Terms of agreement
- Sec. 4-7-110     Public purpose

**Article VIII    Business Incentive Zone**

- Sec. 4-8-10      Short title
- Sec. 4-8-20      Legislative declarations
- Sec. 4-8-30      Definitions
- Sec. 4-8-40      Eligibility
- Sec. 4-8-50      Application
- Sec. 4-8-60      Review of application
- Sec. 4-8-70      Recourse for inaccurate estimates of expected incremental future sales tax revenue

**Article IX      Property Improvement Incentive Program**

- Sec. 4-9-10      Short title
- Sec. 4-9-20      Legislative purpose
- Sec. 4-9-30      Definitions
- Sec. 4-9-40      Participation
- Sec. 4-9-50      Agreement
- Sec. 4-9-60      Uses
- Sec. 4-9-70      Amount of PIIP rebate—matching funds
- Sec. 4-9-80      Criteria for approval
- Sec. 4-9-90      Terms of agreement
- Sec. 4-9-100     Public purpose

**ARTICLE I**

**Fiscal Year**

**Sec. 4-1-10. 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. 11, 2002 §1)

**ARTICLE II**

**General and Special Funds**

**Sec. 4-2-10. Custody and management of funds.**

Moneys in the funds created in this Chapter shall be in the custody of and managed by the Town Treasurer. The Town 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 Town 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, 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. 11, 2002 §1)

**Sec. 4-2-20. General Fund created.**

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

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

(2) All fixed assets of the Town (to be separately designated in an account known as the General Fund Fixed Assets) not specifically belonging to any existing special fund of the Town. (Ord. 11, 2002 §1)

**Sec. 4-2-30. Capital Improvement Fund created.**

There is hereby created a special fund, to be known as the Capital Improvement Fund, and the funds therein shall be used only for the purposes allowed by law. (Ord. 11, 2002 §1)

**Sec. 4-2-40. 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. 11, 2002 §1)

**Sec. 4-2-50. Reserved.**

**Editor’s note:** Ord. No. 2014-4, § 3, adopted May 5, 2014, repealed § 4-2-50, which pertained to police training and equipment fund and derived from Ord. 5, § 1, adopted in 1996.

**ARTICLE III****Sales Tax****Sec. 4-3-10. Purpose.**

The purpose of this Article is to impose a sales tax on the sale of tangible personal property at retail as provided in Section 29-2-105(1)(d), C.R.S., upon every retailer in the Town. (Ord. 4, 1985 §1; Ord. 11, 2002 §1)

**Sec. 4-3-20. Definitions.**

For the purpose of this Article, the definitions of words herein contained shall be defined as in Section 39-26-102, C.R.S., and said definitions are incorporated herein by this reference. (Ord. 4, 1985 §2)

**Sec. 4-3-30. Vendor's fee.**

The vendor (retailer) shall be entitled as collection agent for the Town to withhold a collection fee in the amount of three and one-third percent (3 $\frac{1}{3}$ %) from the total amount remitted by the vendor to the Town each month. If any vendor is delinquent in remitting said tax, other than in unusual circumstances shown to the satisfaction of the Executive Director, the vendor shall not be allowed to retain any amounts to cover his or her expense in collecting and remitting said tax, and an amount equivalent to the full three and one-third percent (3 $\frac{1}{3}$ %) shall be remitted to the Executive Director by any such delinquent vendor. (Ord. 4, 1985 §4)

**Sec. 4-3-40. Schedule of sales tax.**

The tax imposed by this Article shall be in accordance with schedules published from time to time by, and available from, the Colorado Department of Revenue. (Ord. 4, 1973 §5; Ord. 1, 1997 §1; Ord. 9, 1997 §1)

**Sec. 4-3-50. General provisions and exemptions from taxation.**

(a) For the purpose of collection, administration and enforcement of this Article by the Executive Director of the Department of Revenue, the provisions of Section 39-26-114, C.R.S., shall be deemed applicable and incorporated into this Article, except sales of food as provided in Section 39-26-102(4.5) and Section 29-2-105(1)(d), C.R.S.

(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) For the purpose 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.

(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.

(e) If a retailer has no permanent place of business in the Town, or has more than one (1) place of business, the place at which the retail sales are consummated for the purpose of this sales tax shall be determined by the provisions of Article 26 of Title 39, C.R.S., and by the rules and regulations promulgated by the Department of Revenue.

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

- (1) The purchaser is a nonresident of or has his or her principal place of business outside the Town; and

(2) Such personal property is registered or required to be registered outside the limits of the Town under the laws of the State. (Ord. 4, 1985 §5; Ord. 11, 2002 §1)

**Sec. 4-3-60. Imposition of sales tax.**

(a) There is hereby imposed on all sales of tangible personal property at retail as provided in Section 39-26-104, C.R.S., a tax equal to four percent (4%) of the gross receipts. The tangible personal property 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., 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 four percent (4%) of his or her total taxable sales, he or she shall remit to the Director of Revenue the full amount of the tax herein imposed and also such excess.

(b) 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. (Ord. 4, 1985 §6; Ord. 1, 1997 §2, 4; Ord. 9, 1997 §2; Ord. 11, 2002 §1)

**Sec. 4-3-70. Election and amendments.**

The Board of Trustees may amend, alter or change this Article, except as to the four-percent rate of tax herein imposed, or as to the persons upon whom the tax is imposed, subsequent to its adoption, by a majority vote of the Board of Trustees. Such

amendment, alteration or change need not be submitted to the electors of the Town for their approval, provided that an election on any proposed amendment, alteration or change is not required by Section 20 of Article X of the Colorado Constitution, and/or such amendment would not violate the provisions of Article 2, Title 39, C.R.S. (Ord. 4, 1985 §7; Ord. 6, 1985 §1; Ord. 1, 1997 §§3, 5; Ord. 11, 2002 §1)

**Sec. 4-3-80. Penalty.**

Any person convicted of violating any of the provisions of this Article, other than those enforced by the Director of Revenue, shall be punished as set forth in the general penalty provisions of this Code. (Ord. 4, 1985 §8; Ord. 11, 2002 §1)

## ARTICLE IV

### Fees for Permits, Licenses and Services

**Sec. 4-4-10. Fees set by resolution; review.**

Except as may be otherwise established by individual ordinance, fees, assessments or charges for permits, licenses or services as called for in this Code shall be set from time to time by resolution duly adopted by the Board of Trustees. The Town Clerk shall regularly review all fees, assessments and charges and shall make recommendations on the same to the Board of Trustees as he or she deems necessary and prudent. It is the intent of the Board of Trustees that all municipal fees and charges shall, at a minimum, be reviewed annually in conjunction with the adoption of the Town's annual budget, and that additions, deletions or adjustments in such fees and charges shall be adopted and become effective by resolution at the commencement of each new fiscal year as part of the Town's annual budget process. A failure to conduct an annual review of any fee, assessment or charge shall not in any way affect the continuing validity thereof, and all fees, assessments and charges shall remain in full force until amended by subsequent resolution or ordinance adopted by the Board of Trustees. (Ord. 11, 2002 §1)

**Sec. 4-4-20. Costs; timely payment.**

*Costs* referenced with regard to any fee or charge shall include, at a minimum, all costs for the publication and/or posting of notices, mailing, copying and recording/filing fees. Unless otherwise specified, fees, charges and costs shall be due and paid at the time of the application, and a failure to timely pay any fee, charge or cost shall result in the denial or revocation of the subject permit, license or service. (Ord. 11, 2002 §1)

**ARTICLE V**

**Revenue Changes**

**Sec. 4-5-10. Retention of Town revenues.**

Pursuant to Article X, Section 20 of the Colorado Constitution, the Town is authorized to collect, retain and expend the full proceeds of all Town revenues from all sources commencing in 1996, and for all years thereafter, notwithstanding any state restriction on fiscal year spending, including, without limitation, the restrictions of Article X, Section 20 of the Colorado Constitution. Nothing in this Section shall be interpreted to authorize any new tax or increase in a rate of taxation without a vote of the people when required pursuant to Article X, Section 20 of the Colorado Constitution. (4/2/96 election; 11/4/97 election; Ord. 11, 2002 §1)

**ARTICLE VI**

**Procurement Policies**

**Sec. 4-6-10. Procurement Officer.**

Unless otherwise determined by the Board of Trustees in a particular instance or for a specific procurement, the Town Treasurer shall act as the Town's Procurement Officer and be charged with ensuring that the Town's procurement policies are fully complied with in the purchase of goods and services. (Ord. 2, 2005 §1)

**Sec. 4-6-20. Authorized appropriations.**

No goods or services shall be purchased or contracted for unless sufficient funds to pay for the same have been duly appropriated by the Board of Trustees, nor shall the expenditure of funds for any goods or services exceed the amount appropriated therefor. Any and all purchases of goods and services, or contracts for purchase, that require the expenditure of public funds beyond a single fiscal year shall be made subject to and contingent upon duly authorized future appropriations. (Ord. 2, 2005 §2)

**Sec. 4-6-30. Procurement authorizations.**

No procurement or purchase shall be made without prior written approval as set forth in this Article.

(1) Department heads shall have the authority to undertake and/or approve purchases of goods and services in amounts not to exceed one thousand dollars (\$1,000.00) without obtaining prior written approval from the Town Treasurer or Board of Trustees; provided, however, that sufficient funds have been budgeted, appropriated and are available in the departmental budget to pay for the goods and services purchased.

(2) The Town Treasurer, as Procurement Officer, shall have the authority to undertake and/or approve purchases of goods and services in amounts not to exceed two thousand five hundred dollars (\$2,500.00) without obtaining prior written approval from the Board of Trustees; provided, however, that sufficient funds have been budgeted, appropriated and are available in the appropriate departmental budget or budget fund/line item to pay for the goods or services purchased.

(3) All purchases of goods and services in amounts greater than two thousand five hundred dollars (\$2,500.00) must first be authorized and approved by recorded motion or written resolution duly voted upon and passed by the Board of

Trustees at a public meeting. Purchase and/or service contracts involving the expenditure of public funds in excess of two thousand five hundred dollars (\$2,500.00) shall only be authorized and approved by written resolution.

(4) No procurement shall be divided into two (2) or more increments or amounts for the purpose of evading or attempting to evade the approval thresholds or procedures set forth in this Section.

(5) All procurements shall be timely reported to the Town Treasurer in writing, who shall maintain complete and accurate records of the same. (Ord. 2, 2005 §3)

**Sec. 4-6-40. Public works and improvements.**

Procurement for public works projects shall be made in compliance with this Article.

(1) All goods, services or work provided or performed in the construction, improvement or repair of the Town's public works, improvements or property in an amount of five thousand dollars (\$5,000.00) or more shall be done only under written contract awarded after competitive sealed bidding to the lowest responsible bidder on open public bids submitted after reasonable public advertisement. No public works project shall be segmented or divided into two (2) or more separate projects for the purpose of evading or attempting to evade the requirements of this Article, unless the total cost of any such project would be less if divided into two (2) or more projects when compared to the cost of undertaking and bidding the project as a single project. If no bids are received for a project subject to competitive open bidding or if, in the judgment of the Board of Trustees, all bids received are too high or nonresponsive, then the Town may obtain the necessary goods, services or work for the project by negotiation.

(2) The requirement to publicly advertise and bid projects contained in this Section shall not require the Town to advertise for or obtain bids for technical, professional or incidental assistance needed or deemed appropriate to oversee a public works project or protect against the neglect of contractors or other persons performing work thereon.

(3) As used in this Section, the term *lowest responsible bidder* shall not be limited to mean the bidder who submitted the lowest price to perform the work. *Lowest responsible bidder* shall also mean to include that bidder who possesses the skill, work experience, expertise, industry reputation and integrity to perform the project in a timely and competent manner.

(4) Nothing contained in this Section is intended or to be construed as requiring public advertisement or competitive sealed bidding to perform emergency work needed to remedy, avoid or otherwise address damage or threatened damage to the Town's public works or other property arising from a natural or man-made catastrophe or disaster. In such event, the Town may proceed to solicit and obtain such emergency work for that period of time deemed necessary to secure and protect the public health, safety and interest and/or until the normal procurement procedure as contained in this Article may be implemented. (Ord. 2, 2005 §4)

**ARTICLE VII**

**Enhanced Sales Tax Incentive Program**

**Sec. 4-7-10. Short title.**

There is hereby established within the Town an Enhanced Sales Tax Incentive Program ("ESTIP"). (Ord. 2008-03A)

**Sec. 4-7-20. Legislative purpose.**

The purpose of the Enhanced Sales Tax Incentive Program created hereby is to encourage the establishment and/or substantial expansion of retail sales tax-generating businesses within the Town, thereby stimulating the economy of and within the Town, thereby providing employment for residents of the Town and others, thereby further expanding the goods available for purchase and consumption by residents of the Town and further increasing the sales taxes collected by the Town, which increased sales tax collections will enable the Town to provide expanded and improved municipal services to and for the benefit of the residents of the Town, while at the same time providing public or public-related improvements at no cost or at deferred cost to the Town and its taxpayers and residents. (Ord. 2008-03A)

**Sec. 4-7-30. Definitions.**

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

*Enhanced sales tax* means the amount of the sales tax collected by the Town over and above a base amount negotiated by, and agreed upon by, the applicant and the Town, and which amount is approved by the Board of Trustees, which base amount shall never be lower than the amount of sales tax collected by the Town at the property in question in the previous twelve (12) months, or such other period of time as agreed to by the Board of Trustees, plus a reasonable and agreed-upon percentage of anticipated increase in sales taxes or, in the case of a newly established business, an amount which represents the good-faith determination by the applicant and the Town as to the amount of sales taxes which could be generated from the new business without the participation by the applicant in the ESTIP created hereunder.

*Owner or proprietor* means the record owner or operator of an individual business or, in the case of a shopping center, the owner of the real property upon which more than one (1) business

is operated, provided that said owner (whether an individual, corporation, partnership or other entity) is the owner or lessor of the individual businesses operated thereon. (Ord. 2008-03A)

**Sec. 4-7-40. Participation.**

Participation in ESTIP shall be based upon approval by the Board of Trustees, exercising its legislative discretion in good faith. Any owner or proprietor of a newly established or proposed retail sales tax-generating business or location, or the owner or proprietor of an existing retail sales tax-generating business or location who wishes to expand substantially or has expanded substantially in the twelve (12) months preceding the application for ESTIP participation, may apply to the Town for inclusion within the ESTIP, provided that the new or expanded business is reasonably likely to generate enhanced sales taxes of at least one thousand dollars (\$1,000.00) in the first year of operation. The Board of Trustees may waive the twelve-month limitation on eligibility for ESTIP participation set forth above if the applicant establishes, to the Board of Trustees' satisfaction, the existence of extraordinary circumstances justifying such waiver. (Ord. 2008-03A; Ord. 2010-8)

**Sec. 4-7-50. Agreement.**

Approval by the Board of Trustees of an agreement implementing this ESTIP shall entitle the successful applicant to share in enhanced sales taxes derived from the applicant's property or business in an amount which shall not in any event exceed fifty percent (50%) of the enhanced sales taxes; provided, however, that the applicant may use said amounts only for public and/or public-related purposes such as those specified herein and which are expressly approved by the Board of Trustees at the time of consideration of the application. The time period in which said enhanced sales taxes may be shared shall not commence until all public or public-related improvements are completed and shall be limited by the Board of Trustees, in its discretion, to a specified time or until a specified amount is reached. (Ord. 2008-03A)



**Sec. 4-7-60. Uses.**

The uses to which said shared enhanced sales taxes may be put by an applicant shall be strictly limited to those which are public or public-related in nature. For the purposes of this Article, *public or public-related purposes* shall mean public improvements, including but not limited to streets, sidewalks, curbs, gutters, pedestrian malls, streetlights, drainage facilities, landscaping, decorative structures, statuaries, fountains, identification signs, traffic safety devices, bicycle paths, off-street parking facilities, benches, rest rooms, information booths, public meeting facilities, building upgrades, historical restoration, construction or enlargement or improvement of privately owned property that will generate additional employment opportunities and/or sales tax revenues and all necessary, incidental and appurtenant structures and improvements, together with the relocation and improvement of existing utility lines and any other improvements of a similar nature which are specifically approved by the Board of Trustees upon the Board's finding that said improvements are public or public-related improvements or will serve the purposes set forth in Section 4-7-20 of this Article. (Ord. 2008-03A)

**Sec. 4-7-70. Increments.**

The base figure for sales taxes shall be divided into four (4) quarterly increments, which increments are subject to agreement between the parties and approval by the Board of Trustees, and which increments shall be reasonably related to the average quarterly performance of the business or property in question or similar businesses in the area (i.e., adjust for seasonal variations). If in any quarter the agreed-upon base figure is not met by the applicant so as to create enhanced sales tax for that quarter, no funds shall be shared with the applicant for said quarter, and no increment shall be shared until that deficit, and any other cumulative deficit, has been met, so that at the end of any twelve-month cycle, funds in excess of those enhanced sales taxes agreed to be shared shall not have been shared with any applicant. (Ord. 2008-03A)

**Sec. 4-7-80. Existing sales tax not impaired.**

It is an overriding consideration and determination of the Board of Trustees that existing sources of Town sales tax revenues shall not be used, impaired or otherwise affected by this Enhanced Sales Tax Incentive Program. Therefore, it is hereby conclusively determined that only enhanced sales taxes generated by the properties described in an application shall be subject to division under this ESTIP. It shall be the affirmative duty of the Finance Director to collect and hold all such enhanced sales taxes in a separate account apart from the sales taxes generated by and collected from the other sales tax-generating uses and businesses within the Town and to provide an accounting system which accomplishes the overriding purpose of this Article. It is conclusively stated by the Board of Trustees that this Article would not be adopted or implemented but for the provisions of this Section. (Ord. 2008-03A)

**Sec. 4-7-90. Criteria for approval.**

Approval of an application for inclusion in this ESTIP shall be given by the Board of Trustees at a public hearing held as a portion of a regularly scheduled Board meeting, based upon the following criteria:

- (1) The amount of enhanced sales taxes which are reasonably to be anticipated to be derived by the Town through the expanded or new retail sales tax-generating business;
- (2) The public benefits which are provided by the applicant through public works, public improvements, additional employment for the Town residents, etc.;
- (3) The amount of expenditures which may be deferred by the Town based upon public improvements to be completed by the applicant;
- (4) The conformance of the applicant's property or project with the comprehensive plan and zoning ordinances of the Town; and

(5) The agreement required by Section 4-7-100 below having been reached, which agreement shall contain and conform to all requirements of said Section.

Approval shall be by motion adopted by a majority of the entire Board of Trustees. (Ord. 2008-03A)

**Sec. 4-7-100. Terms of agreement.**

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

(1) A list of those public or public-related improvements which justify the application's approval and the amount which shall be spent on said improvements;

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

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

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

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

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

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

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

(9) Any other provisions agreed upon by the parties and approved by the Board of Trustees. (Ord. 2008-03A)

**Sec. 4-7-110. Public purpose.**

The Board of Trustees has enacted this ESTIP as a joint benefit to the public at large and to private owners for the purpose of providing the Town with increased sales tax revenues generated upon and by properties improved as a result of this program; public improvements being completed by private owners through no debt obligation being incurred on the part of the Town; and allowing applicants an opportunity to improve properties which generate sales activities, which improvements make those properties more competitive in the marketplace and further provide to the applicant additional contingent sources of revenues for upgrading said properties. The Board of Trustees specifically finds and determines that creation of this ESTIP is consistent with the Town's powers as a statutory municipal corporation and that exercise of said powers in the manner set forth herein is in furtherance of public health, safety and welfare. Notwithstanding any provision

hereof, the Town shall never be a joint venture in any private entity or activity which participates in this ESTIP, and the Town shall never be liable or responsible for any debt or obligation of any participant in this ESTIP. (Ord. 2008-03A)

**ARTICLE VIII**

**Business Incentive Zone**

**Sec. 4-8-10. Short title.**

This Article shall be known and may be cited as the Fairplay Business Incentive Zone Ordinance. (Ord. 2007-2)

**Sec. 4-8-20. Legislative declarations.**

(a) The Board of Trustees hereby finds and declares:

(1) That the health, safety and welfare of the people of this Town are in large part dependent upon the continued encouragement, development and expansion of opportunities for employment in the private sector in the Town;

(2) That there currently exist in the Town businesses or vacant land which require new development or revitalization opportunities to overcome conditions of unemployment, underemployment, net out-migration of the population, diminution of tax revenues, chronic economic distress, deterioration of business districts, deterioration of public infrastructures or sudden severe economic dislocations; and

(3) That, by creating new development opportunities for businesses within the Town, the Board of Trustees will increase the likelihood that new and improved businesses will generate more municipal sales tax revenues for the Town in the future.

(b) It is therefore declared to be the policy of the Town, in order to provide incentives for private enterprises to expand and for new businesses to

locate in the Town, to develop a program which declares the Town a "Business Incentive Zone" and provides for the abatement of certain categories of fees, taxes and other business development-related charges for new development or redevelopment expected to generate revenue to the Town, within a one-year period, equal to or exceeding the amount of the abatement.

(c) The Board of Trustees has enacted this Article as a joint benefit to the public at large and to private owners for the purposes of providing the Town with increased sales tax revenues generated upon and by properties improved as a result of this program and allowing owners and proprietors opportunities to improve properties which generate sales activities, which improvements make those properties more competitive in the marketplace and further provide to owners and proprietors additional contingent sources of revenues for upgrading said properties.

(d) The Board of Trustees specifically finds and determines that creation of this Business Incentive Zone Article is consistent with the Town's powers as a municipal corporation and that exercise of those powers in this Article promotes the public health, safety and general welfare of the citizens of the Town. Notwithstanding any provision hereof, the Town shall never be a joint venturer in any private entity or activity which participates in this program, and the Town shall never be liable or responsible for any debt or obligation of any participant. (Ord. 2007-2)

**Sec. 4-8-30. Definitions.**

As used in this Article, the following phrases shall have the following meanings, unless the context clearly indicates another meaning:

*Eligible Town fees, charges and taxes* means and shall be limited to tax on machinery, furniture and fixtures associated with the initial development or redevelopment project, tax on building materials, building permit fees, zoning fees and plan check fees.

*Expected incremental future revenues* means the amount of the additional sales tax, property tax and water/sewer user charges as projected by the Town expected to be generated over a one-year period from the time of completion of the project over and above the sales tax fees generated on the premises in the twelve (12) months preceding the application described in Section 4-8-50 below.

*Owner or proprietor* means the record owner, tenant or operator of an individual business or, in the case of a shopping center, the owner of the real property upon which more than one (1) business is operated.

*Project* means the specific development or redevelopment expenditures which relate both to the abatement of eligible Town fees, charges and taxes and expected incremental future sales tax revenues. (Ord. 2007-2)

**Sec. 4-8-40. Eligibility.**

Participation in the Business Incentive Zone fee, charge and tax abatement program shall be based upon approval by the Board of Trustees. Any owner or proprietor of a newly purchased, established or proposed business, or the owner or proprietor of an existing business which wishes to expand, may apply to the Town for inclusion within the program. Abatement of eligible Town fees, charges and taxes shall be granted up to the amount of expected incremental future sales tax revenue to be generated by the project during the ensuing one-year period. (Ord. 2007-2)

**Sec. 4-8-50. Application.**

Any owner or proprietor may file a written application for inclusion in the Business Incentive Zone program on forms provided by the Town and attaching such information as the Town may require. Such application shall be filed with the Town Clerk who shall refer the application to the Board of Trustees. (Ord. 2007-2)

**Sec. 4-8-60. Review of application.**

The Board of Trustees shall review the application and any other information which it may reasonably require from the applicant and shall determine the expected incremental future sales tax revenue, if any, attributable to the project. If the application is approved by the Board of Trustees, the applicant's eligible Town fees, charges and taxes attributable to the project shall be reduced by an amount equal to the expected incremental future sales tax revenue. (Ord. 2007-2)

**Sec. 4-8-70. Recourse for inaccurate estimates of expected incremental future sales tax revenue.**

Neither the Town nor the applicant shall have cause to recover amounts resulting from differences in actual versus estimated collections of sales taxes during the one-year estimate period. (Ord. 2007-2)

**ARTICLE IX**

**Property Improvement Incentive Program**

**Sec. 4-9-10. Short title.**

There is hereby established within the Town of Fairplay a Property Improvement Incentive Program (PIIP). (Ord. No. 2014-1, 4-7-2014)

**Sec. 4-9-20. Legislative purpose.**

The purpose of the Property Improvement Incentive Program created hereby is to encourage improvements to the exterior appearance of privately-owned structures and properties within the Town, thereby stimulating the economy of and within the Town, increasing tourist visits, and generally enhancing the livability of the Town all of which will, in the long term, increase property values and retail sales thereby increasing property and sales tax revenues to the Town for the provision of public services. (Ord. No. 2014-1, 4-7-2014)

**Sec. 4-9-30. Definitions.**

As used in this Article and all sections thereof, the following phrases shall have the following meanings:

(a) The term *improvements* shall mean improvements to the exterior façade of structures or the landscaping of real property located in the Town of Fairplay which improvements are visible from the street located directly to the front of the property or, as to properties located on street corners, from the street adjacent to the property. The term shall not include improvements to the interior of a structure, structural improvements or landscaping that do not enhance the appearance of the property, landscaping improvements that are temporary in nature, or structural improvements or landscaping that are screened from street view by fencing or other similar visual barriers.

(b) The term *owner* shall mean the record owner of taxable real property or improvements thereon located in the Town of Fairplay, but shall not include the owner of public or governmental property.

(Ord. No. 2014-1, 4-7-2014)

**Sec. 4-9-40. Participation.**

Participation in the PIIP shall be based upon approval by the Town Board of the Fairplay, exercising its legislative discretion in good faith. Any owner of property may apply for participation in the PIIP as set forth in this Article. The Town Board shall consider complete applications in the order submitted and may approve, deny or approve in part, such applications based on the merit of the proposed project. Nothing contained in this Article shall be interpreted or construed to create an entitlement to participation in the PIIP. The Town Board may deny any application which it concludes does not adequately serve the public purposes of this Article.

(Ord. No. 2014-1, 4-7-2014)

**Sec. 4-9-50. Agreement.**

Approval by the Town Board of an agreement implementing this PIIP shall result in the granting of a rebate of all or a portion of the real property taxes paid to the Town by the owner of the property making the application for a period not to exceed the preceding five (5) tax years. The agreement shall contain, at a minimum, the terms set forth in Section 4-9-90 below.

(Ord. No. 2014-1, 4-7-2014)

**Sec. 4-9-60. Uses.**

The uses to which the PIIP rebate may be put by an applicant shall be strictly limited to the installation or construction of improvements to the property owned by the applicant and only upon the Town Board's finding that said improvements will serve the purposes set forth in Section 4-9-20.

(Ord. No. 2014-1, 4-7-2014)

**Sec. 4-9-70. Amount of PIIP rebate—matching funds.**

(a) The total amount of the PIIP rebate paid to an applicant shall not exceed the amount of real property taxes paid by the owner of the property (whether the applicant or a preceding owner) to the Town for the preceding five (5) tax years. No PIIP rebate shall be made for property taxes paid to other public entities.

(b) The total amount of PIIP rebate paid out by the Town in any calendar year to all PIIP participants shall not exceed the amount budgeted and appropriated for that purpose by the Town Board for that calendar year. PIIP applications received after the funds budgeted and appropriated for the PIIP in any calendar year are fully committed may be held in abeyance for consideration by the Board in the following year. Projects may be divided into phases and funded in successive years.

(c) The owner of the property shall, as a condition of participation in the PIIP, pay not less than an amount equal to fifty percent (50%) of the total cost of the improvements.  
(Ord. No. 2014-1, 4-7-2014)

**Sec. 4-9-80. Criteria for approval.**

Approval of an application for participation in the PIIP shall be given by the Town Board, at a public hearing held as a portion of a regularly scheduled Town Board meeting, based upon the following criteria:

- (1) No PIIP participation shall be approved where the total cost of the improvements is less than five hundred dollars (\$500.00).
- (2) The PIIP project must, as determined by the Town Board, enhance the overall appearance of the Town and the property for which the application is made.
- (3) The improvements must be constructed or installed by a contractor or professional experienced and capable of performing the work. The Town may maintain a list of pre-approved contractors but shall consider the qualifications of other contractors and professionals submitted by the applicant. In no case shall the work be performed by the applicant unless the applicant can establish, to the satisfaction of the Board, that the applicant is himself or herself, experienced and capable of performing the work in question.
- (4) The scope of work and accompanying plans submitted with the application shall be sufficiently detailed for their intended purpose.
- (5) The agreement required by Section 4-9-50 shall contain all of the terms set forth in Section 4-9-90 and shall be otherwise acceptable to the Board.

Approval shall be by motion adopted by a majority of the entire Town Board.  
(Ord. No. 2014-1, 4-7-2014)

**Sec. 4-9-90. Terms of agreement.**

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

- (1) A scope of work and plans for the improvements to be constructed or installed;
- (2) The estimated cost of the project;
- (3) The name of the contractor or other person by whom the work will be performed;
- (4) The maximum amount of property tax to be rebated by the Town, and the maximum time during which said agreement shall continue, it being expressly understood that any such agreement shall expire and be of no further force and effect upon the termination date whether or not the work has been completed;
- (5) The matching funds to be furnished by the owner, which amount shall be not less than fifty percent (50%) of the total cost of the work to be performed;
- (6) The period during which the owner or the owner's successor in interest shall be obligated to maintain the improvements;
- (7) A provision providing that the property tax rebate shall only occur after completion of the work and final inspection and approval by the Town;
- (8) A statement that this is a personal agreement which is not transferable and which does not run with the land;
- (9) A statement that the agreement shall never constitute a debt or obligation of the Town within any constitutional or statutory provision;

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

(11) An affirmative statement that the agreement will be recorded, and that the owner's obligation will run with the land and be binding upon the owner's heirs, successors and assigns; and

(12) Any other provisions agreed upon by the parties and approved by the Town Board.  
(Ord. No. 2014-1, 4-7-2014)

**Sec. 4-9-100. Public purpose.**

The Town Board has enacted this PIIP as a joint benefit to the public at large and to private owners for the purpose of: improving the appearance and livability of the Town; providing the Town with increased sales tax revenues by increasing tourism; and allowing applicants an opportunity to improve properties, which improvements make those properties more valuable, thus increasing property tax revenues. The Town Board specifically finds and determines that creation of this PIIP is consistent with the Town's powers as a statutory municipal corporation, and that exercise of said powers in the manner set forth herein is in furtherance of public health, safety and welfare. Notwithstanding any provision hereof, the Town shall never be a joint venture in any private entity or activity which participates in this PIIP, and the Town shall never be liable or responsible for any debt or obligation of any participant in this PIIP.  
(Ord. No. 2014-1, 4-7-2014)