

TOWN OF GYPSUM, COLORADO

ORDINANCE NO. 08 (SERIES 2024)

AN ORDINANCE CALLING A SPECIAL MUNICIPAL ELECTION TO BE HELD NOVEMBER 5, 2024 AND SUBMITTING TO THE ELIGIBLE ELECTORS VOTING IN THE TOWN'S SPECIAL ELECTION, A BALLOT ISSUE CONCERNING THE IMPOSITION OF A LODGING TAX, AND CONTINGENT UPON ELECTOR APPROVAL, AND AMENDING THE GYPSUM MUNICIPAL CODE TO PROVIDE FOR THE SAME

WHEREAS, the Town of Gypsum ("Town") is a home rule municipality duly organized and existing under Articles XX of the Colorado Constitution and the Town's Home Rule Charter effective October 21, 1982; and

WHEREAS, the Members of the Town Council ("Council") have been duly elected and qualified; and

WHEREAS, Article X, Section 20, of the Colorado Constitution ("TABOR") authorizes the Town to submit ballot issues proposing new taxes to its eligible electors at the state general election, which next occurs on November 5, 2024 ("Election"); and

WHEREAS, pursuant to Section 1.3 of the Town of Gypsum Home Rule Charter, the Town shall have all the power of local self-government and home rule and all power possible for a home rule municipality to have under the Constitution and laws of the State of Colorado; and

WHEREAS, the Council hereby determines that both the Town's interest and the public interest and necessity require that the Town impose a lodging tax at the rate of three percent (3%) of the purchase price for lodging within the Town and be allowed to collect, retain and spend all revenues generated from such lodging tax; and

WHEREAS, contingent on approval of the lodging tax by the Town's eligible electors at the Election, the interest of the Town and the public interest and necessity require that the Gypsum Municipal Code ("G.M.C.") be amended to provide for the imposition, collection, and enforcement of the lodging tax;

NOW, THEREFORE, be it ordained by the Town Council of the Town of Gypsum, Colorado that:

Section 1. Incorporation. The recitals set forth above are incorporated and ordained as if set forth in this section in full.

Section 2. Special Election. The Election of the registered electors of the Town shall be held on November 5, 2024 at which Election there shall be submitted to the registered electors of the Town the question substantially as stated in the form of ballot title set forth herein. The Election shall be conducted in coordination with the Eagle County Clerk and Recorder in accordance with all relevant provisions of the Codes.

Section 3. Designated Election Official. The Town Council hereby appoints the Town Clerk as the Designated Election Official for the conduct of the Election on behalf of the Town, who is hereby authorized and directed to proceed with any action necessary or appropriate to effectuate the provisions of this Resolution and the Election Laws or other applicable laws. Among other matters, the Designated Election Official shall arrange for the required notices of election, including the TABOR Notice. The Town Council hereby approves and authorizes the Designated Election Official or Town officers, on behalf of the Town, to execute and enter into the Intergovernmental Agreement with Eagle County, Colorado regarding the conduct of the Election and the mailing of the TABOR Notice. The Election and mailing of the Town's TABOR Notice shall be in accordance with the provisions of such Intergovernmental Agreement. Any and all actions previously taken by the Designated Election Official or the officers of the Town or any other persons acting on their behalf pursuant to the Election Laws or other applicable laws, are hereby ratified and confirmed.

Section 4. Contest of Election. Pursuant to Section 1-11-203.5, C.R.S., any election contest arising out of a ballot issue or ballot question election concerning the order of the ballot or the form or content of the ballot title shall be commenced by petition filed with the proper court within five (5) days after the title of the ballot issue or ballot question is set and certified by the Designated Election Official to the County Clerk and Recorder.

Section 5. Lodging Tax Imposed. Subject to voter approval as provided in Section 5 of this Ordinance, there is hereby imposed a lodging tax of three percent (3%) of the purchase price for lodging within the Town.

Section 6. Use of Revenues. The revenues derived from the lodging tax shall be used exclusively for:

- (a) capital costs associated with roads, parks and recreation facilities maintained by the Town;
- (b) special events sponsored, funded, or assisted by the Town; and
- (c) such other uses determined reasonable and necessary by the Town Council.

Section 7. Duration. The lodging tax shall commence for collection purposes beginning January 1, 2025, and continue until repealed by ordinance.

Section 8. Election and Ballot Title. Before the tax provided in this Ordinance shall become effective, it shall be submitted to and receive the approval of a majority of the eligible electors of the Town voting thereon at the Election. The ballot title for the lodging tax shall be in substantially the following form:

BALLOT ISSUE NO. 1;

SHALL TOWN OF GYPSUM TAXES BE INCREASED \$198,000 ANNUALLY BEGINNING JANUARY 1, 2025, AND BY SUCH AMOUNTS AS ARE RAISED ANNUALLY THEREAFTER, BY A LODGING TAX IN THE AMOUNT OF 3% OF THE PURCHASE PRICE FOR LODGING WITHIN THE TOWN, , AND CONTINUING UNTIL REPEALED BY ORDINANCE, IN CONFORMANCE WITH ORDINANCE NO. 08 (SERIES 2024); THE REVENUE FROM SUCH TAX TO BE USED EXCLUSIVELY TO PAY FOR:

- CAPITAL COSTS ASSOCIATED WITH ROADS, PARKS AND RECREATION FACILITIES MAINTAINED BY THE TOWN;
- SPECIAL EVENTS SPONSORED, FUNDED, OR ASSISTED BY THE TOWN; AND
- SUCH OTHER USES AS DETERMINED REASONABLE AND NECESSARY BY THE TOWN COUNCIL;

SUCH LODGING TAX REVENUES AND THE EARNINGS FROM THE INVESTMENT OF SUCH REVENUES TO BE COLLECTED, RETAINED AND SPENT AS A VOTER-APPROVED REVENUE CHANGE WITHOUT CONTRACTUAL, STATUTORY OR CONSTITUTIONAL LIMITATION OR CONDITION, INCLUDING LOCAL INTERGOVERNMENTAL AGREEMENTS, ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION OR ANY OTHER LAW?

YES _____

NO _____

Section 9. Codification. To implement the lodging tax provided herein, the Gypsum Municipal Code is amended with the adoption of the provisions of Exhibit A,

EXHIBIT A
CHAPTER 3.04 OF THE GYPSUM MUNICIPAL CODE

Chapter 3.04 – LODGING TAX

3.04.010 – Definitions

The following words, terms and phrases, when used in this Chapter, shall have the meanings ascribed to them in this Section:

- 1) *Charitable organization* shall mean:
 - a) any entity that has and maintains a current sales tax exemption certificate from the Colorado Department of Revenue; or
 - b) any out-of-state entity that has been certified as a nonprofit organization under Internal Revenue Code Section 501(c)(3) and maintains a current tax exemption certificate from another state.
- 2) *Town Manager* shall mean the Town Manager of the Town of Gypsum.
- 3) *Collection costs* shall mean all the Town's costs incurred to enforce the provisions of this Chapter, which shall include, without limitation, all costs of audit, assessment, hearings, execution, lien filings, distraint actions, litigation, locksmith fees, auction costs, bank fees, prosecution costs and related attorney fees.
- 4) *Dwelling unit* shall mean one or more rooms constituting a separate, independent housekeeping unit establishment for owner occupancy or for rental or lease, physically separated from any other rooms or dwelling units which may be in the same structure.
- 5) *Finance Director* shall mean the Finance Director of the Town of Gypsum or such other such person designated by the Town; finance director shall also include such person's designee.
- 6) *Lodging* shall mean the furnishing of a room or other accommodation within the Town by any person to another person who for consideration uses, possesses or has the right to use or possess that room or accommodation in a hotel, motel, inn, bed and breakfast, residence, apartment, hotel, lodging house, motor hotel, guest house, guest ranch, trailer coach, dwelling unit, or any similar establishment or accommodation, including the furnishing of space at a campground, mobile home park, auto camp, trailer court, trailer park, recreational vehicle park, truck stop or truck parking area, under any lease, rental, concession, permit, right of access, license to use or other agreement.

- 7) *Lodging customer* shall mean any person who, through a taxable lodging transaction, acquires lodging from a lodging provider.
- 8) *Lodging price* shall mean the gross price paid in money, credit, property or other consideration valued in money, exclusive of other taxes paid and charges separately stated including, without limitation, pet fees, cleaning fees, security deposits and in-room charges for food, beverages, and telephone and video services, by the lodging customer for lodging.
- 9) *Lodging provider* shall mean any person furnishing lodging or such person's authorized agent, and shall include any person, who facilitates the sale of lodging, directly or indirectly, by receiving payment for lodging.
- 10) *Lodging tax* shall mean an excise tax in the amount of three percent (3%) upon the purchase of lodging or the aggregate amount of lodging taxes due from a lodging provider during the period for which such lodging provider is required to report the collections of lodging tax as herein specified.
- 11) *Lodging tax deficiency* shall mean any amount of lodging tax, penalties, interest, collection costs and other charges owed that is not reported or not paid on or before the date that any return or such payment is required.
- 12) *Lodging transaction* shall mean the furnishing of lodging to any person who, for consideration, uses, possesses or has the right to use or possess that lodging.
- 13) *Person* shall mean any individual, firm, partnership, joint venture, corporation, limited liability company, estate, trust, receiver, trustee, assignee, lessee, or entity, or any person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, or any group or combination acting as a unit.
- 14) *Taxpayer* shall mean any person obligated to pay the lodging tax.

3.04.010 – Tax levied.

Pursuant to Article XX of the Colorado Constitution and the Town's Home Rule Charter effective October 21, 1982, including section 1.3 and Article VI of the Charter, beginning January 1, 2025, there is levied a lodging tax which shall be paid, collected, and remitted to the Town. The lodging tax shall be in addition to the Town sales and use taxes. It shall be a violation for any lodging customer to fail to pay, or for any lodging provider of such lodging to fail to collect and remit to the Town, the lodging tax.

3.04.020 – Exemptions.

The following lodging transactions are exempt from taxation:

- 1) All lodging provided to the United States Government, the State of Colorado, and their departments or institutions and political subdivisions in their governmental capacities only, including the Town;
- 2) All lodging provided to charitable organizations;
- 3) All lodging provided to persons which the Town is prohibited from taxing under the Constitution or laws of the United States or Colorado Constitution; and
- 4) All lodging provided to any natural person who is, in fact, a resident of, and who enters into or has entered into, a written agreement for occupancy of a room or rooms or other accommodations in any hotel, apartment hotel, lodging house, motor hotel, guest house, bed and breakfast residence, guest ranch, mobile home, auto camp, trailer court, or trailer park in the Town for a period of thirty (30) consecutive days or more.

3.04.030 – Use of Tax.

Lodging tax revenue shall be used by the Town exclusively for the following purposes:

- 1) capital costs associated with parks and recreation facilities maintained by the Town;
- 2) special events sponsored, funded, or assisted by the Town;
- 3) such other uses as determined reasonable and necessary by the Town Council.

3.14.040 – License Required.

- 1) It shall be unlawful for any person to engage in the business of providing lodging without first having obtained a license, which license shall be granted and issued by the Town Clerk and shall be in force and effect until the 31st day of December of the year in which it is issued, unless sooner revoked.
- 2) When a lodging business is transacted at one or more separate premises by one person, a separate license for each place of business shall be required.

- 3) Such license shall be granted only upon application stating the name and address of the person desiring such license, the name and type of lodging to be provided, the location of the business, including the street number and such other information as may be reasonably required by the Town Clerk, and payment of the established license fee.
- 4) If an application for a license is submitted by a person that previously held a lodging license, the Town Clerk may require that any lodging tax deficiency being owed and due under the previous license be paid and a bond posted in an amount set by the Town Clerk to ensure payment of lodging taxes under the new license prior to the issuance of such new license.
- 5) Each license shall be numbered and shall show the name, mailing address and place of business of the licensee and shall be posted in a conspicuous place in the place of business for which it is issued. No license shall be transferable.
- 6) Any person engaged in the business of selling lodging in the Town, without having secured a license therefor, except as specifically provided in this Chapter, shall be guilty of a violation of this Chapter.

3.14.050 – Exception to Licensing Requirement.

No license shall be required for any person engaged exclusively in the business of providing lodging which is exempt from taxation.

13.14.060 – Lodging Tax Collection

The collection, administration, and enforcement of sales tax shall be performed by the Finance Director for the Town. The Finance Director may issue a distraint warrant in accordance with Section 39-21-114, C.R.S., except that such warrant may be directed to any duly authorized revenue collector, any agent of the Town, or the sheriff of any county in the state. The Finance Director may, in his or her discretion, make a jeopardy assessment and pursue collection of the sales tax in accordance with Section 39-21-111, C.R.S. The Finance Director may prescribe forms and reasonable rules and regulations in conformity with this Chapter for the making of returns, for the ascertainment, assessment and collection of the taxes imposed hereunder, and for the proper administration and enforcement hereof, a copy of which forms, rules and regulations shall be made to the public.

13.14.070 - Payment and Remitting Taxes and Filing Returns.

- 1) Every lodging provider shall add the lodging tax to the lodging price, showing such tax as a separate and distinct item and when added the

lodging tax shall, until paid, constitute a debt from the lodging customer to the lodging provider.

- 2) Lodging providers shall file a return with the Finance Director on or before the twentieth day of each month for the preceding month and remit an amount equivalent to the lodging tax due.
- 3) A lodging provider providing lodging in two (2) or more places or locations taxable hereunder may file one (1) return covering all such business activities.
- 4) The burden of proving that a lodging provider or lodging transaction is exempt from the lodging tax shall be on the lodging provider under such reasonable requirements of proof as the Finance Director may prescribe.
- 5) Lodging tax returns shall contain such information and be on such forms as the Finance Director may prescribe. The Finance Director may extend the time for filing returns and paying the lodging taxes due under such reasonable rules and regulations as the Finance Director may prescribe.
- 6) If the accounting method regularly employed by the lodging provider in the transaction of business, or other conditions, is such that filing lodging tax returns on a calendar month basis will impose unnecessary hardship, the Finance Director may upon written request of the lodging provider accept the filing of returns at such intervals as will, in the Finance Director's opinion, better suit the convenience of the lodging provider and will not jeopardize the collection of the lodging tax. The Finance Director may by rule permit a taxpayer whose monthly tax collected is less than one hundred fifty dollars (\$150.00) to make returns and pay taxes at quarterly intervals.

3.14.080 – Assumption or Absorption of Tax Prohibited.

It shall be a violation of this Chapter for any lodging provider to pay, assume, refund, or absorb any portion of the lodging tax or fail to add the lodging tax to the lodging, or to advertise or state to the public or to any customer, directly or indirectly, the intent to do the same.

3.14.090 – Excess Collections; Failure to Remit Collections.

If any lodging provider shall during any reporting period collect as a lodging tax an amount more than the lodging tax amount, the lodging provider shall remit to the Town the full amount of the tax collected.

3.14.100 - Disputes and Refunds.

- 1) If a dispute arises between the lodging customer and lodging provider as to whether any lodging customer or transaction is exempt from taxation, the lodging provider shall collect, and the lodging customer shall pay such lodging tax. The lodging provider shall issue to the lodging customer a receipt or certificate on forms prescribed by the Finance Director showing the names of the lodging customer and lodging provider, the lodging furnished, the date, the price, the amount of lodging tax paid and a brief statement of the claim of exemption.
- 2) A lodging customer may apply to the Finance Director for a refund of lodging taxes paid based on an exemption. The Finance Director shall determine the question of exemption. Applications for a refund shall be filed within one (1) year after the lodging transaction for which the exemption is claimed and must be supported by the affidavit of the lodging customer, accompanied by the original paid invoice or sales receipt and a certificate issued by the lodging provider, made on such forms as prescribed and furnished by the Finance Director, and accompanied by such other relevant information as the Finance Director may require.
- 3) The burden of proving that a lodging customer or transaction is exempt from paying the lodging tax shall be upon the lodging customer under such reasonable requirements or proof as the Finance Director may prescribe. Upon receipt of an application for refund, the Finance Director shall examine it promptly and shall give notice to the applicant by an order in writing of the decision.
- 4) The right of any person to a refund shall not be assignable, and application for a refund must be made by the lodging customer who acquired lodging and paid the lodging tax as shown in the invoice of the sale.

3.14.110 – Keeping of Records and Accounts.

It shall be the duty of every lodging provider to keep and preserve suitable records and such other books or accounts of all lodging transactions as may be necessary to determine the amount of lodging tax for the collection and remittance. All such books, invoices and other records shall be preserved for each lodging transaction for a period of three (3) years after the later of: (i) the date that the return for the lodging transaction was required to be filed; or (ii) the date the return was filed. These records shall be open for examination in the Town at any time by the Finance Director.

3.14.120 – Examination of Returns; Credits; Deficiencies.

As soon as practicable after a return is filed, the Finance Director shall examine it. If the amount paid exceeds that which is due, the excess shall be refunded or credited against any subsequent remittance from the lodging provider. If the amount paid is less than the amount due, the difference, together with interest thereon at the rate of one (1) percent

per month from the time the return was due shall be paid by the lodging provider within twenty-one (21) days after written notice of determination, assessment and demand for payment from the Finance Director is sent to the lodging provider. The lodging provider may protest the notice of determination, assessment and demand for payment as provided in §3.04.100.

3.14.130 – Notices.

All notices required to be given to any taxpayer under the provisions of this Chapter shall be in writing and hand delivered, mailed by prepaid first class or certified to the taxpayer's last-known address on file with the Town, or electronically mailed to such taxpayer at the last known such address on file with the Town, and such notice shall be deemed to have been received by the taxpayer when so delivered or mailed.

3.14.140 – Violations and Penalty.

It shall be unlawful for any person to fail to comply with the requirements of this Chapter. The penalty for violating any requirement of this Chapter shall be as provided in Section 2.01.100(6) of the Code.

3.14.150 – Rules and Regulations.

To provide uniform methods for administering, paying, collecting, remitting the lodging tax, the Finance Director, with the approval of the Town Manager, may formulate and promulgate appropriate rules and regulations.

3.14.160 - Right to Amend Chapter.

The Town Council shall have the right to amend or repeal the provisions of this Chapter, including all provisions regarding collection, administration, use and enforcement of the lodging tax, except that the amount of the tax and activities subject to the tax as approved by the voters on November 5, 2024, shall not be increased, expanded or broadened without additional voter approval.