TOWN OF GYPSUM, COLORADO

ORDINANCE NO. 11
(SERIES 2026)

AN ORDINANCE OF THE TOWN OF GYPSUM, COLORADO REPEALING AND REENACTING CHAPTER 3.02 OF TITLE 3 TO BRING THE TOWN'S SALES TAX REGULATIONS INTO COMPLIANCE WITH STATE STATUTES AND ALLOW STATE COLLECTION OF SALES TAX

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

B. The Members of the Town Council ("Council") have been duly elected and qualified for office.

C. Pursuant to Article 1.3 of the Charter, the Town has all power of local self-government and home rule and all possible power for a home rule municipality to have under the Constitution and laws of the State of Colorado.

D. The Town currently collects its sales taxes locally as a home rule municipality.

E. The Town has determined that it would like to contract with the Colorado Department of Revenue to collect the Town's sales tax.

F. The Town finds that engaging the State to collect the Town's sales tax will likely result in increased levels of collection and reduce the costs to the Town associated with the collection and enforcement of the Town's sales tax regulations.

G. This Ordinance brings the Town's sales tax regulations into compliance with state statutes as required when taxes are collected by the State.

H. The Town Council has determined that eliminating the vendor service fee aligns with the intent of State of Colorado House Bill 25B-1005, concerning the elimination of the sales tax vendor fee that retailers are authorized to retain in connection with collecting and remitting state sales tax.

I. This ordinance does not result in a tax policy change that triggers an election under TABOR and applicable case law.

J. The Town Council finds that this ordinance is in the best interests of the public health, safety, and welfare of the Town.

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. Repeal and Reenactment of Chapter 3.02 of Title 3 of the Gypsum Municipal Code. Chapter 3.02 of Title 3 of the Code is repealed and reenacted as set forth in Exhibit A, attached hereto and incorporated herein.

Section 3. Public Inspection. Copies of this Ordinance and the Gypsum Municipal Code are available for public inspection at the office of the Gypsum Town Clerk.

Section 4. Public Hearing. A public hearing on this Ordinance shall be held on the 25th day of August 2026 at 7:00 p.m. at the Gypsum Town Hall, 50 Lundgren Blvd., Gypsum Colorado.

Section 5. Effective Date. This Ordinance shall become effective as a permanent Ordinance January 1, 2027, following final adoption after a public hearing held on the 25th day of August 2026, at 7:00 p.m. at the Gypsum Town Hall, 50 Lundgren Blvd., Gypsum, Colorado.

Section 6. Severability. If any portion of this Ordinance is found to be void or ineffective, it shall be deemed severed from this Ordinance and the remaining provisions shall remain valid and in full force and effect.

Exhibit A

To Ordinance No. 11 (Series 2026)

Chapter 3.02 SALES TAX

3.02.010. Purpose.

The purpose of this Chapter is to impose a sales tax on the privilege of selling taxable tangible personal property and services at retail upon every retailer in the Town.

3.02.020. Definitions.

The definitions of the words contained in this Chapter shall be as defined in Article 26 of Title 39, C.R.S. as may be amended, which definitions are incorporated herein by this reference. The Town further adopts all rules and regulations adopted by the Colorado Department of Revenue and such rules and regulations are incorporated herein by this reference.

The following words and phrases, whenever used in the ordinances, resolutions or motions of the Town of Gypsum, Colorado, shall be construed as defined in this Chapter unless from the context a different meaning is intended or unless a different meaning is specifically defined and more particularly directed to the use of such words and phrases:

(1) *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 vehicles include, but are not limited to, motor vehicles, trailers, semi-trailers, or mobile homes. Automotive vehicles shall not include devices moved by human power or used exclusively upon stationary rails or tracks.

(2) *Construction materials* mean 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, or other items which do not remain as an integral and inseparable part of completed structure or project are not construction materials.

(3) *Consumer* means any person in the Town who purchases, uses, stores, distributes or otherwise consumes tangible personal property or taxable services, purchased from sources inside or outside the Town.

(4) *Purchase price* means the price to the consumer, exclusive of any direct tax imposed by the federal government or by Article 26 of Title 39, C.R.S., exclusive of any retail delivery fee and enterprise retail delivery fees imposed or collected as specified in C.R.S. section 43-4-218, and, in the case of all retail sales involving the exchange of property, also exclusive of the fair market value of the property exchanged at the time and place of the exchange, if:

(a) Such exchanged property is to be sold thereafter in the usual course of the retailer's business; or

(b) 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.

(c) In the case of the sale or transfer of wireless telecommunication equipment as an inducement to a consumer to enter into or continue a contract for telecommunication services that are taxable pursuant to this part 1, "purchase price" means and shall be limited to the monetary amount paid by the consumer and shall not reflect any sales commission or other compensation received by the retailer as a result of the consumer entering into or continuing a contract for such telecommunication services. Nothing in this paragraph (b) shall be construed to define "purchase price" as it applies to the amount a retailer collects from a consumer who defaults or terminates a contract for telecommunication services.

(d) With respect to the purchase price of a heavy truck, trailer, or tractor, the price to the consumer shall also be exclusive of the federal excise tax on the first retail sale of the heavy truck, trailer, or tractor for which the retailer is liable.

(5) *Storage* means any keeping or retention of, or exercise 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 Town from any person or vendor.

(6) *Taxpayer* means any person obligated to collect and/or pay tax under the terms of this Chapter.

(7) *Use* means the exercise, for any length of time by any person within the Town of any right, power or dominion over tangible personal property or services when rented, leased or purchased at retail from sources either within or without the Town from any person or vendor or used in the performance of a contract in the Town whether such tangible personal property is owned or not owned by the taxpayer. Use also includes the withdrawal of items from inventory for consumption.

3.02.030 License Required.

(1) It is unlawful for any person to engage in the business of selling at retail without first having obtained a sales tax license from the State of Colorado, which license shall be granted and issued by the Department of Revenue, and shall be in force and effect until December 31 of the year following the year in which it is issued, unless sooner revoked.

(2) When business is transacted at one or more separate premises by one person, a separate license for each place of business shall be required.

(3) Any person engaged in the business of selling at retail in the Town, without having secured a sales tax license as required by the State of Colorado, shall be guilty of a violation of this Chapter.

3.02.040 Reserved.

3.02.050 Reserved.

3.02.060 Reserved.

3.02.070 Reserved.

3.02.080 Sales Tax Imposed.

(1) The transaction subject to the sales tax in the amount of three percent (3.00%) of the purchase price shall be as set forth below and as required by Colorado state law.

(2) The tangible personal property and services taxable hereunder shall be the same as the tangible personal property and services taxable pursuant to C.R.S. § 39-26-104, except the following provided herein shall also be taxable:

(a) sales of food specified in Sections 39-26-707(1)(e) & 39-26-102(4.5), C.R.S.

(b) sales of machinery or machine tools pursuant to Section 39-26-709(1), C.R.S.,

(c) sales of gas, electricity, and other specified fuels for residential use pursuant to Section 39-26-715(1)(a)(II), C.R.S,

3.02.090 Sales Tax Exemptions.

(1) The tangible personal property and services shall be subject to the same exemptions as those specified in Part 7 of Article 26 of Title 39, C.R.S., including the following exemptions:

(a) All sales to the United States government, to the state of Colorado, its departments and institutions, and the political subdivisions thereof in their governmental capacities only, and to the Town.

(b) All sales made to religious or charitable corporations in the conduct of their regular religious or charitable functions and activities.

(c) All sales which the Town is prohibited from taxing under the Constitution or laws of the United States or the state of Colorado or the Charter or code of the Town.

(d) All sales of cigarettes.

(e) All commodities on which there have been paid a Colorado motor fuel tax or special fuel tax.

(f) All sales of drugs dispensed in accordance with a prescription and all sales of prosthetic devices.

(g) All sales of personal property on which a specific ownership tax has been paid or is payable, when such sales meet both of the following conditions: The purchaser is a nonresident of or has his principal place of business outside of the Town; and, such personal property is registered or required to be registered outside the limits of the Town, pursuant to the laws of the state.

(h) All sales 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 a statutory or home rule city, town, or city and county equal to or in excess of the tax which would be imposed under this chapter. A credit (not to exceed the tax which would be imposed under this chapter) is hereby granted to the purchaser or user of such transaction against the tax imposed hereunder equal to the tax lawfully imposed and previously paid by the purchaser or user to another home rule or statutory city, town, or city and county.

(i). The retail delivery fee consisting of the community access retail delivery fee imposed in § 24-38.5-303(7), C.R.S., the clean fleet retail delivery fee imposed in § 25-7.5-103(8), C.R.S., the clean transit retail delivery fee imposed in § 43-4-1203(7), C.R.S., the retail delivery fee imposed in § 43-4-218(3), C.R.S., the bridge and tunnel retail delivery fee imposed in § 43-4-805(5)(g.7), C.R.S., and the air pollution mitigation retail delivery fee imposed in § 43-4-1303(8), C.R.S., as such sections existed on June 17, 2021.

(j) the carryout bag fee imposed in § 25-17-505, C.R.S., as such section existed on July 6, 2021.

(k) Sales by a charitable organization. For purposes of this subsection, "occasional sales" means retail sales of tangible personal property for fundraising purposes if the funds raised by the charitable organization through these sales are retained by the organization to be used in the course of the organization's charitable purposes.

(l) Any sale that benefits a Colorado school, if the sale is made by any of the following:

i. A school;

ii. An association or organization of parents and school teachers;

iii. A booster club or other club, group, or organization whose primary purpose is to support a school activity; or

iv. A school class or student club, group, or organization.

(2) The sales tax shall not be imposed on the sale of construction and building materials, as the term is used in C.R.S. § 29-2-109, 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 that a local use tax has been paid or is required to be paid on the value thereof.

(3) The sales tax shall not be imposed on the sale of personal property on which a specific ownership tax has been paid or is payable if: (a) the purchaser is a nonresident of or has its principal place of business outside the Town, and (b) such personal property is registered or required to be registered outside the limits of the Town under the laws of the State of Colorado.

(4) The sales tax shall not be imposed on the sale of tangible personal property at retail or the furnishing of services if the transaction has been previously subjected to a sales or use tax lawfully imposed on the purchaser or user by another statutory or home rule county equal to or in excess of the amount imposed by this Chapter. A credit shall be granted against the sales tax payable with respect to such transaction equal in amount to the lawfully imposed sales or use tax previously paid by the purchaser or user to such other statutory or home rule county, provided that such credit shall not exceed the amount imposed by this Chapter.

3.02.100 Place of Sale.

For the purpose of the sales tax, all retail sales shall be considered consummated at the place of business of the retailer, unless the tangible personal property sold is delivered by the retailer or his 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. The purchase price from such sales shall include delivery charges when such charges are subject to the state sales and tax imposed by Article 26 of Title 39, C.R.S., regardless of the place to which delivery is made. If a retailer has no permanent place of business in the Town, or has more than one place of business, the place at which the retail sales are consummated for the purpose of the sales tax shall be determined by the provisions of Article 26 of Title 39, C.R.S., including but not limited to §39-26-104(3), C.R.S., and by rules and regulations promulgated by the Department of Revenue.

3.02.110 Excepted From Sales Amount.

The amount subject to the sales tax shall not include the amount of any sales or use tax imposed by Article 26 of Title 39, C.R.S. or by the Town of Gypsum.

(Ord. No. 2020-15, § 1(Att.), 10-27-20)

3.02.120 Reserved.

3.02.130 Reserved.

3.02.140 Reserved.

3.02.150 Sales Tax Collection.

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

3.02.160 Use Tax Imposed.

There is hereby imposed on the use and consumption within the Town of any construction and building materials and supplies for residential construction only as provided in Section 29-2-109 (1), C.R.S. and automotive vehicles, a use tax equal to three percent (3%) of the purchase price ("use tax").

Automotive vehicles required by the statutes of Colorado to be registered at an address inside the Town on which a municipal sales tax has not been paid. The County Clerk of the County in which the registration occurs is authorized to collect such tax for the Town prior to or at the time of registration.

(a) The determination of vehicle registration requirements for individuals shall be the same as for the determination of residency for voter registration purposes.

(b) The determination of vehicle registration requirements for automotive vehicles which are owned by a business and operated primarily for business purposes shall be based on the address from which such automotive vehicles are principally operated and maintained.

3.02.170 Use Tax Exemptions.

The use tax shall not apply to:

(1) The storage, use or consumption of any tangible personal property which is subject to a retail sales tax imposed by the Town;

(2) The storage, use or consumption of any tangible personal property purchased for resale in the Town either in its original form or as an ingredient of a manufactured or compounded product, in the regular course of business;

(3) The storage, use or consumption of tangible personal property brought into the Town by a nonresident thereof for his own storage, use or consumption while temporarily within the Town; however, this does not apply to the storage, use or consumption of tangible personal property brought into the state by a nonresident to be used in the conduct of a business in the state;

(4) The storage, use or consumption of tangible personal property by the United States government, or the State, or its institutions or its political subdivisions in their governmental capacities only or by religious or charitable corporations in the conduct of their regular religious or charitable functions;

(5) The storage, use or consumption of tangible personal property by a person engaged in the business of manufacturing or compounding for sale, profit, or use any article, substance, or commodity, which tangible personal property enters into the processing of or becomes an ingredient or component part of the product or service which is manufactured, compounded, or furnished and the container, label or the furnished shipping case thereof;

(6) The storage, use, or consumption of tangible personal property and household effects acquired outside of the Town and brought into it by a nonresident acquiring residency;

(7) The storage, use or consumption of a motor or other vehicle purchased at retail on which registration is required;

(8) The storage, use, or consumption of any construction and building materials and motor and other vehicles on which registration is required if a written contract for the purchase thereof was entered into prior to the effective date of the use tax;

(9) The storage, use, or consumption of any construction and building material required or made necessary in the performance of any construction contract bid, let, or entered into at any time prior to the effective date of this chapter;

(10) Any construction and building materials used for nonresidential construction;

(11) The retail delivery fee consisting of the community access retail delivery fee imposed in C.R.S. § 24-38.5-303(7), the clean fleet retail delivery fee imposed in C.R.S. § 25-7.5-103(8), the clean transit retail delivery fee imposed in C.R.S. § 43-4-1203(7), the retail delivery fee imposed in C.R.S. § 43-4-218(3), the bridge and tunnel retail delivery fee imposed in C.R.S. § 43-4-805 (5)(g.7), and the air pollution mitigation retail delivery fee imposed in C.R.S. § 43-1-1303(8), as such sections existed on June 17, 2021; and

(12) The carryout bag fee imposed in C.R.S. § 25-17-505, as such section existed on July 6, 2021.

3.02.180 Credit for previously paid municipal Sales or Use Taxes.

With respect to the use tax imposed upon the use or consumption of tangible personal property already subjected to a legally imposed sales or use tax of another statutory or home rule town, city, or city and county equal to or in excess of the use tax, a credit shall be granted against the use tax with respect to a person's storage, use or consumption in the Town of tangible personal property purchased by him in a previous statutory or home rule town, city or city and county, which credit shall be equal to the sales or use tax previously paid by him, but shall not exceed the amount of the use tax imposed.

3.02.190 Three-Year Limit on Use Tax.

The use tax shall not be imposed as specified herein more than three (3) years after the most recent sale of the property if, within the three (3) years following such sale, the property has been significantly used within the State for the principal purpose for which it was purchased.

3.02.200 Use Tax Collection.

(1) *Deposit.* Prior to the issuance of a building permit on any project, the Finance Director or designee shall collect the use tax in the amount of three percent of the sale value of the construction materials. For purposes of this subsection, 50% of the estimated general contract costs and/or 50% of the estimated mechanical contract costs shall be deemed to be the sale value of such construction materials. This amount collected shall be held by the Town as a deposit until the ultimate amount of use tax owed is finally determined by the Town.

(2) *Determination of actual use tax.* The person using or consuming the construction or building materials shall, no later than 45 days after issuance of a Certificate of Occupancy for the building or residence on which the materials were used, present to the Town Manager receipts or invoices showing the amount paid for construction materials. If the use tax deposited with the Town exceeds 3% of the actual sales value of construction materials, as evidenced by the receipts or invoices, the Town shall refund the excess. If the use tax deposited with the Town is less than 3% of the actual sales value of construction materials, the person using or consuming the construction materials shall pay the Town the shortfall within seven days.

(3) *Final enforcement.* Until paid in full, the Town may at its discretion withhold any certificates of occupancy, temporary certificates of occupancy or inspections for the property benefited by such construction improvements. For all construction and building materials subject to the use tax which are not used or consumed in a project subject to such certificates or inspection, the use tax shall be paid within seven days of such use or consumption. In addition, until paid the full use tax owing shall constitute a lien upon the real property benefited by such construction improvements, and the Town Manager is authorized to file a notice of such lien with the Eagle County Clerk and Recorder. The unpaid tax may also be certified to the Eagle County Assessor for collection with property taxes.

(4) *Construction materials subject to other local sales or use taxes.* If the taxpayer purchases construction materials which are subject to a legally imposed sales or use tax of the Town or another statutory or home rule town, city, or city and county, then he may submit invoices or statements, in accordance with subsection (b) of this section, reflecting the payment of the tax and make application to the Town for credit or refund of any amount paid as a valid sales or use tax. It shall be the duty of the person making such application to furnish all necessary bills and invoices evidencing the payment of the tax. If the Town manager is satisfied that there has been such payment, then he shall refund or credit the amount as may be necessary. Purchases of construction materials from Town vendors possessing a valid Town retail sales tax license, and construction materials purchased outside of the Town and not delivered by the vendor or a common carrier may be subject to the credit provisions of this section.

3.02.210 Use of Revenues.

(1) *1995 Increase and Authorization.* Use of the revenues derived from the 1% sales tax and the 3% use tax approved by the Town's electors on November 7, 1995, shall be restricted as follows:

(a) Sales tax: 20% to general administration, and 80% to law enforcement, Town hall and recreation.

(b) Use tax: 20% to general administration and engineering, and 80% to roads and road improvements.

(2) Other Revenues. Except as restricted in subsections (1)(a) or (1) (b) of this section, all other revenues generated by sales and use taxes within the Town may be used for any lawful purpose.