

Title 3 - REVENUE AND FINANCE

Footnotes:

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Editor's note— Ord. No. 2020-15, § 1(Attach.), adopted Oct. 27, 2020, repealed and readopted former Title 3, Chapters 3.04—3.16, in its entirety to read as herein set out. Former Ch. 3.12, Real Estate Transfer Tax, was renumbered as Ch. 3.03 without changes in the provisions of this chapter.

Chapter 3.01 - FISCAL YEAR

3.01.010 - Established.

The first day of January of each year is fixed and established as the beginning of the fiscal year for the Town.

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

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 tangible personal property at retail upon every retailer in the Town.

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

3.02.020. - Definitions.

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) *Agricultural producer* means a person regularly engaged in the business of using land for the production of commercial crops or commercial livestock. The term includes farmers, market gardeners, commercial fruit growers, livestock breeders, dairymen, poultrymen, and other persons similarly engaged, but does not include a person who breeds or markets animals, birds, or fish for domestic pets, nor a person who cultivates, grows, or harvests plants or plant products exclusively for that person's own consumption or casual sale.
- (2) *Aircraft* means a device that is used or intended to be used for flight in the air.
- (3) *Aircraft part* means any tangible personal property that is intended to be permanently affixed or attached as a component part of an aircraft.
- (4) *Aircraft simulator* means a flight simulator training device (FSTD) as defined in Part I of Title 14 of the Code of Federal Regulations that is qualified in accordance with Part 60 of Title 14 of the Code of Federal Regulations for use in a Federal Aviation Administration Approved Flight Training Program.
- (5) *Aircraft simulator part* means any tangible personal property that is originally designed and intended to be permanently affixed or attached as a component part of an aircraft, and which will also function when it is permanently affixed or attached as a component part of an aircraft simulator.
- (6) *Airline company* means any operator who engages in the carriage by aircraft of persons or property as a common carrier for compensation or hire, or the carriage of mail, or any aircraft operator who operates regularly between

two or more points and publishes a flight schedule. Airline company shall not include operators whose aircraft are all certified for a gross takeoff weight of 12,500 pounds or less and who do not engage in scheduled service or mail carriage service.

- (7) *Auction* means any sale where tangible personal property is sold by an auctioneer who is either the agent for the owner of such property or is in fact the owner thereof.
- (8) *Automotive vehicle* means any vehicle or device in, upon, or by which any person or property is or may be transported or drawn upon a public highway, or any device used or designed for aviation or flight in the air. Automotive vehicle includes, but is not limited to, motor vehicles, trailers, semi-trailers, or mobile homes. Automotive vehicle shall not include devices moved by human power or used exclusively upon stationary rails or tracks.
- (9) *Business* means all activities engaged in or caused to be engaged in with the object of gain, benefit, or advantage, direct or indirect.
- (10) *Candy* means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruit, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. Candy does not include any preparation containing flour, products that require refrigeration or marijuana infused products.
- (11) *Carrier access services* means the services furnished by a local exchange company to its customers who provide telecommunications services which allow them to provide such telecommunications services.
- (12) *Charitable organization* means any entity which: (1) has been certified as a nonprofit organization under Section 501(c)(3) of the Internal Revenue Code, and (2) is an organization which exclusively, and in a manner consistent with existing laws and for the benefit of an indefinite number of persons or animals, freely and voluntarily gives aid to the physical, mental, or spiritual needs of persons or animals, and thereby lessens the burden of government.
- (13) *City or Town* means the Town of Gypsum, Colorado.
- (14) *Coins* means monetized bullion or other forms of money manufactured from gold, silver, platinum, palladium or other such metals now, in the future or heretofore designated as a medium of exchange under the laws of this state, the United States or any foreign nation.
- (15) *Coin-operated device* means any device operated by coins or currency or any substitute therefor.
- (16) *Collection costs* shall include, but is not limited to, all costs of audit, assessment, bank fees, hearings, execution, lien filing, distraint, litigation, locksmith fees, auction fees and costs, prosecution and attorney fees.
- (17) *Commercial packaging materials* means containers, labels, and/or cases, that become part of the finished product to the purchaser, used by or sold to a person engaged in manufacturing, compounding, wholesaling, jobbing, retailing, packaging, distributing or bottling for sale, profit or use, and is not returnable to said person for reuse. Commercial packaging materials does not include commercial shipping materials.
- (18) *Commercial shipping materials* means materials that do not become part of the finished product to the purchaser which are used exclusively in the shipping process. Commercial shipping materials include but are not limited to containers, labels, pallets, banding material and fasteners, shipping cases, shrink wrap, bubble wrap or other forms of binding, padding or protection.
- (19) *Community organization* means a nonprofit entity organized and operated exclusively for the promotion of social welfare, primarily engaged in promoting the common good and general welfare of the community, so long as:
 - (a) No part of the net earnings of which inures to the benefit of any private shareholder or individual;
 - (b) No substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; and
 - (c) Which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

- (20) *Construction equipment* means any equipment, including mobile machinery and mobile equipment, which is used to install, alter, demolish, repair, remodel, or otherwise make improvements to any real property, building, structure or infrastructure.
- (21) *Construction materials* means tangible personal property which, when combined with other tangible personal property, loses its identity to become an integral and inseparable part of a structure or project including public and private improvements. Construction materials include, but are not limited to, such things as: asphalt, bricks, builders' hardware, caulking material, cement, concrete, conduit, electric wiring and connections, fireplace inserts, electrical heating and cooling equipment, flooring, glass, gravel, insulation, lath, lead, lime, lumber, macadam, millwork, mortar, oil, paint, piping, pipe valves and pipe fittings, plaster, plumbing fixtures, putty, reinforcing mesh, road base, roofing, sand, sanitary sewer pipe, sheet metal, site lighting, steel, stone, stucco, tile, trees, shrubs and other landscaping materials, wall board, wall coping, wallpaper, weather stripping, wire netting and screen, water mains and meters, and wood preserver. The above materials, when used for forms, or other items which do not remain as an integral and inseparable part of completed structure or project are not construction materials.
- (22) *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.
- (23) *Contract auditor* means a duly authorized agent designated by the taxing authority and qualified to conduct tax audits on behalf of and pursuant to an agreement with the Town.
- (24) *Contractor* means any person who shall build, construct, reconstruct, alter, expand, modify, or improve any building, dwelling, structure, infrastructure, or other improvement to real property for another party pursuant to an agreement. For purposes of this definition, contractor also includes subcontractor.
- (25) *Cover charge* means a charge paid to a club or similar entertainment establishment which may, or may not, entitle the patron paying such charge to receive tangible personal property, such as food and/or beverages.
- (26) *Data processing equipment* means any equipment or system of equipment used in the storage, manipulation, management, display, reception or transmission of information.
- (27) *Digital product* means an electronic product including, but not limited to:
- (a) "Digital images" which means works that include, but are not limited to, the following that are generally recognized in the ordinary and usual sense as "photographs," "logos," "cartoons," or "drawings";
 - (b) "Digital audio-visual works" which means a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any;
 - (c) "Digital audio works" which means works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones. For purposes of the definition of "digital audio works", "ringtones" means digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication; and
 - (d) "Digital books" which means works that are generally recognized in the ordinary and usual sense as "books."
- (28) *Distribution* means the act of distributing any article of tangible personal property for use or consumption, which may include, but not be limited to, the distribution of advertising gifts, shoppers guides, catalogs, directories, or other property given as prizes, premiums, or for goodwill or in conjunction with the sales of other commodities or services.
- (29) *Dual residency* means those situations including, but not limited to, where a person maintains a residence, place of business or business presence, both within and outside the Town. A person shall be deemed to have established a legitimate residence, place of business or business presence outside of the Town for purposes of dual residency if the person has a physical structure owned, leased or rented by such person which is designated by street number or road location outside of the Town, and conducts business operations on a regular basis at such location in a manner that includes the type of business activities for which the person is organized.

- (30) *Dwelling unit* means a building or any portion of a building designed for occupancy as complete, independent living quarters for one or more persons, having direct access from the outside of the building or through a common hall and having living kitchen and sanitary facilities for the exclusive use of the occupants.
- (31) *Economic nexus* means the connection between the Town and a person not having a physical nexus in the State of Colorado, which connection is established when the person or marketplace facilitator makes retail sales into the Town, and:
- (a) In the previous calendar year, the person, which includes a marketplace facilitator, has made retail sales into the state exceeding the amount specified in C.R.S. §39-26-102(3)(c), as amended; or
 - (b) In the current calendar year, 90 days has passed following the month in which the person, which includes a marketplace facilitator, has made retail sales into the state exceeding the amounts specified in C.R.S. §39-26-102(3)(c), as amended.

This definition does not apply to any person who is doing business in this state but otherwise applies to any other person.

- (32) *Engaged in business in the Town* means performing or providing services or selling, leasing, renting, delivering or installing tangible personal property or taxable services for storage, use or consumption, within the Town. Engaged in business in the Town includes, but is not limited to, any one of the following activities by a person:
- (a) Directly, indirectly, or by a subsidiary maintains a building, store, office, salesroom, warehouse, storage place, or other place of business within the Town;
 - (b) Sends one or more employees, agents or commissioned sales persons into the Town to solicit business or to install, assemble, repair, service, or assist in the use of its products, or for demonstration or other reasons;
 - (c) Maintains one or more employees, agents or commissioned sales persons on duty at a location within the Town, including the employment of a resident of the Town who works from a home office within the Town;
 - (d) Owns, leases, rents or otherwise exercises control over real or personal property within the Town;
 - (e) Retailer or vendor in the State that makes more than one delivery into the Town within a twelve month period by any means other than a common carrier; or
 - (f) Makes retail sales sufficient to meet the definitional requirement of economic nexus.
- (33) *Factory built housing* means a manufactured home or modular home.
- (34) *Farm closeout sale* means full and final disposition of all tangible personal property previously used by a farmer or rancher in farming or ranching operations which are being abandoned.
- (35) *Farm equipment* means any farm tractor, as defined in Section 42-1-102(33), C.R.S., any implement of husbandry, as defined in Section 42-1-102(44), C.R.S., and irrigation equipment having a per unit purchase price of at least \$1,000.00. Farm equipment also includes, regardless of purchase price, attachments and baling wire, binders twine and surface wrap used primarily and directly in any farm operation. Farm equipment also includes, regardless of purchase price, parts that are used in the repair or maintenance of the farm equipment described in this paragraph, all shipping pallets, crates, or aids paid for by a farm operation, and aircraft designed or adapted to undertake agricultural applications. Farm equipment also includes, regardless of purchase price, dairy equipment. Except for shipping pallets, crates or aids used in the transfer or shipping of agricultural products, farm equipment does not include:
- (a) Vehicles subject to the registration requirements of Section 42-3-103, C.R.S., regardless of the purpose for which such vehicles are used;
 - (b) Machinery, equipment, materials, and supplies used in a manner that is incidental to a farm operation;
 - (c) Maintenance and janitorial equipment and supplies; and
 - (d) Tangible personal property used in any activity other than farming, such as office equipment and supplies and

equipment and supplies used in the sale or distribution of farm products, research, or transportation.

- (36) *Farm operation* means the production of any of the following products for profit, including, but not limited to, a business that hires out to produce or harvest such products:
- (a) Agricultural, viticultural, fruit, and vegetable products;
 - (b) Livestock;
 - (c) Milk;
 - (d) Honey; and
 - (e) Poultry and eggs.
- (37) *Finance director* means the Finance Director of the Town of Gypsum or such other person designated by the Town; finance director shall also include such person's designee.
- (38) *Food for home consumption* means food for domestic home consumption as defined in 7 U.S.C. sec. 2012 (k) (2014), as amended, for purposes of the supplemental nutrition assistance program, or any successor program, as defined in 7 U.S.C. sec. 2012 (t), as amended; except that "food" does not include carbonated water marketed in containers; chewing gum; seeds and plants to grow foods; prepared salads and salad bars; packaged and unpackaged cold sandwiches; deli trays; and hot or cold beverages served in unsealed containers or cups that are vended by or through machines or non-coin-operated coin-collecting food and snack devices on behalf of a vendor.
- (39) *Garage sales* means sales of tangible personal property, except automotive vehicles, occurring at the residence of the seller, where the property to be sold was originally purchased for use by members of the household where such sale is being conducted. The term includes, but is not limited to, yard sales, estate sales, and block sales.
- (40) *Gross sales* means the total amount received in money, credit, property or other consideration valued in money for all sales, leases, or rentals of tangible personal property or services.
- (41) *Internet access services* means services that provide or enable computer access by multiple users to the Internet, but shall not include that portion of packaged or bundled services providing phone or television cable services when the package or bundle includes the sale of Internet access services.
- (42) *Internet subscription service* means software programs, systems, data and applications available online through rental, lease or subscription, that provide information and services including, but not limited to, data linking, data research, data analysis, data filtering or record compiling.
- (43) *License* means a Town of Gypsum sales and/or use tax license.
- (44) *Licensee* means the person or entity holding a Town of Gypsum sales and/or use tax license.
- (45) *Linen services* means services involving the provision and cleaning of linens, including but not limited to rags, uniforms, coveralls and diapers.
- (46) *Machinery* means any apparatus consisting of interrelated parts used to produce an article of tangible personal property. The term includes both the basic unit and any adjunct or attachment necessary for the basic unit to accomplish its intended function.
- (47) *Manufactured home* means any preconstructed building unit or combination of preconstructed building units, without motive power, where such unit or units are manufactured in a factory or at a location other than the residential site of the completed home, which is designed and commonly used for occupancy by persons for residential purposes, in either temporary or permanent locations, and which unit or units are not licensed as a vehicle.
- (48) *Manufacturing* means the operation or performance of an integrated series of operations which places a product, article, substance, commodity, or other tangible personal property in a form, composition or character different from that in which it was acquired whether for sale or for use by a manufacturer. The change in form, composition

or character must result in a different product having a distinctive name, character or use from the raw or prepared materials.

- (49) *Marketplace* means a physical or electronic forum, including, but not limited to, a store, a booth, an internet website, a catalog, or a dedicated sales software application, where tangible personal property, commodities, or services are offered for sale.
- (50) *Marketplace facilitator* means a person who:
- (a) Contracts with a marketplace seller or multichannel seller to facilitate for consideration, regardless of whether the consideration is deducted as fees from the transaction, the sale of the marketplace seller's tangible personal property, commodities, or services through the person's marketplace;
 - (b) Engages directly or indirectly, through one or more affiliated persons, in transmitting or otherwise communicating the offer or acceptance between a purchaser and the marketplace seller; and
 - (c) Either directly or indirectly, through agreements or arrangements with third parties, collects the payment from the purchaser on behalf of the seller.
 - (d) A marketplace facilitator does not include a person that exclusively provides internet advertising services or lists products for sale, and that does not otherwise meet the definition of marketplace facilitator.
- (51) *Marketplace seller* means a person, regardless of whether the person is engaged in business in the Town, who has an agreement with a marketplace facilitator and offers for sale tangible personal properties, commodities, or services through a marketplace owned, operated, or controlled by a marketplace facilitator.
- (52) *Medical marijuana* means marijuana acquired, possessed, cultivated, manufactured, delivered, transported, supplied, sold, or dispensed to a person who qualifies as a patient with a debilitating medical condition(s) under Article XVIII, Section 14, of the Colorado Constitution, and which person holds a valid "registry identification card" issued by the State of Colorado pursuant to Colorado Constitution, Article XVIII, Section 14. Medical marijuana includes medical marijuana concentrate and medical marijuana products.
- (53) *Mobile machinery and self-propelled construction equipment* means those vehicles, self-propelled or otherwise, which are not designed primarily for the transportation of persons or cargo over the public highways, and those motor vehicles which may have originally been designed for the transportation of persons or cargo over the public highways, and those motor vehicles which may have originally been designed for the transportation of persons or cargo but which have been redesigned or modified by the mounting thereon of special equipment or machinery, and which may be only incidentally operated or moved over the public highways. This definition includes but is not limited to wheeled vehicles commonly used in the construction, maintenance, and repair of roadways, the drilling of wells, and the digging of ditches.
- (54) *Modular home* means any structure that consists of multiple sections fabricated, formed or assembled in manufacturing facilities for installation and assembly at the building site, and is constructed to the building codes adopted by the State Division of Housing, created in Section 24-32-706, C.R.S., and is designed to be installed on a permanent foundation.
- (55) *Motor fuel* means gasoline, casing head or natural gasoline, benzol, benzene and naphtha, gasohol and any other liquid prepared, advertised, offered for sale, sold for use or used or commercially usable in internal combustion engines for the generation of power for the propulsion of motor vehicles upon the public highways. The term does not include fuel used for the propulsion or drawing of aircraft or railroad cars or railroad locomotives.
- (56) *Multichannel seller* means a retailer that offers for sale tangible personal property, commodities, or services through a marketplace owned, operated, or controlled by a marketplace facilitator, and through other means.
- (57) *Newspaper* means a publication, printed on newsprint, intended for general circulation, and published regularly at short intervals, containing information and editorials on current events and news of general interest. The term newspaper does not include: magazines, trade publications or journals, credit bulletins, advertising inserts,

circulars, directories, maps, racing programs, reprints, newspaper clipping and mailing services or listings, publications that include an updating or revision service, or books or pocket editions of books.

- (58) *Online garage sales* means sales of tangible personal property, except automotive vehicles, occurring online, where the property to be sold was originally purchased for use by the seller or members of the seller's household.
- (59) *Parent* means a parent or legal guardian of a student.
- (60) *Person* means any individual, firm, partnership, joint venture, corporation, limited liability company, estate or trust, receiver, trustee, assignee, lessee or any person acting in a fiduciary or representative capacity, whether appointed by court or otherwise, or any group or combination acting as a unit.
- (61) *Photovoltaic system* means a power system designed to supply usable solar power by means of photovoltaics, a method of converting solar energy into direct current electricity using semiconducting materials that create voltage or electric current in a material upon exposure to light. It consists of an arrangement of several components, including solar panels to absorb and convert sunlight into electricity, a solar inverter to change the electric current from DC to AC, as well as mounting, cabling, metering systems and other electrical accessories to set up a working system.
- (62) *Precious metal bullion* means any precious metal, including but not limited to, gold, silver, platinum, palladium, that has been put through a process of refining and is in such a state or condition that its value depends upon its precious metal content and not its form.
- (63) *Prepress preparation material* means all materials used by those in the printing industry including, but not limited to, airbrush color photos, color keys, dies, engravings, light-sensitive film, light-sensitive paper, masking materials, Mylar, plates, proofing materials, tape, transparencies, and veloxes, which are used by printers in the preparation of customer specific layouts or in plates used to fill customers' printing orders, which are eventually sold to a customer, either in their original purchase form or in an altered form, and for which a sales or use tax is demonstrably collected from the printer's customer, if applicable, either separately from the printed materials or as part of the inclusive price therefor. Materials sold to a printer which are used by the printer for the printer's own purposes, and are not sold, either directly or in an altered form, to a customer, are not included within this definition.
- (64) *Preprinted newspaper supplements* shall mean inserts, attachments or supplements circulated in newspapers that:
- (a) Are primarily devoted to advertising; and
 - (b) The distribution, insertion, or attachment of which is commonly paid for by the advertiser.
- (65) *Prescription drugs for animals* means a drug which, prior to being dispensed or delivered, is required by the federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sect. 301, et seq., as amended, to state at a minimum the symbol "Rx Only", and is dispensed in accordance with any order in writing, dated and signed by a licensed veterinarian specifying the animal for which the medicine or drug is offered and directions, if any, to be placed on the label.
- (66) *Prescription drugs for humans* means a drug which, prior to being dispensed or delivered, is required by the federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sect. 301, et seq., as amended, to state at a minimum the symbol Rx Only, and is dispensed in accordance with any written or electronic order dated and signed by a licensed practitioner of the healing arts, or given orally by a practitioner and immediately reduced to writing by the pharmacist, assistant pharmacist, or pharmacy intern, specifying the name and any required information of the patient for whom the medicine, drug or poison is offered and directions, if any, to be placed on the label.
- (67) *Price or purchase price* means the aggregate value measured in currency paid or delivered or promised to be paid or delivered in consummation of a sale, without any discount from the price on account of the cost of materials used, labor or service cost, and exclusive of any direct tax imposed by the federal government or by this article,

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 same 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. Any money or other consideration paid over and above the value of the exchanged property is subject to tax.

Price or purchase price includes:

- (a) The amount of money received or due in cash and credits.
- (b) Property at fair market value taken in exchange but not for resale in the usual course of the retailer's business.
- (c) Any consideration valued in money, whereby the manufacturer or someone else reimburses the retailer for part of the purchase price and other media of exchange.
- (d) The total price charged on credit sales including finance charges which are not separately stated at the time of sale. An amount charged as interest on the unpaid balance of the purchase price is not part of the purchase price unless the amount added to the purchase price is included in the principal amount of a promissory note; except the interest or carrying charge set out separately from the unpaid balance of the purchase price on the face of the note is not part of the purchase price. An amount charged for insurance on the property sold and separately stated at the time of sale is not part of the purchase price.
- (e) Installation, applying, remodeling or repairing the property, delivery and wheeling-in charges included in the purchase price and not separately stated.
- (f) Transportation and other charges to effect delivery of tangible personal property to the purchaser.
- (g) Indirect federal manufacturers' excise taxes, such as taxes on automobiles, tires and floor stock.
- (h) The gross purchase price of articles sold after manufacturing or after having been made to order, including the gross value of all the materials used, labor and service performed and the profit thereon.

Price or purchase price shall not include:

- (a) Any sales or use tax imposed by the State of Colorado or by any political subdivision thereof.
 - (b) The fair market value of property exchanged if such property is to be sold thereafter in the retailers' usual course of business. This is not limited to exchanges in Colorado. Out of state trade-ins are an allowable adjustment to the purchase price.
 - (c) Discounts from the original price if such discount and the corresponding decrease in sales tax due is actually passed on to the purchaser, and the seller is not reimbursed for the discount by the manufacturer or someone else. An anticipated discount to be allowed for payment on or before a given date is not an allowable adjustment to the price in reporting gross sales.
- (68) *Private communications services* means telecommunications services furnished to a subscriber, which entitles the subscriber to exclusive or priority use of any communication channel or groups of channels, or to the exclusive or priority use of any interstate inter-communications system for the subscriber's stations.
- (69) *Prosthetic devices for animals* means any artificial limb, part, device or appliance for animal use which replaces a body part or aids or replaces a bodily function; is designed, manufactured, altered or adjusted to fit a particular patient; and is prescribed by a licensed veterinarian. Prosthetic devices include, but are not limited to, prescribed auditory, ophthalmic or ocular, cardiac, dental, or orthopedic devices or appliances, and oxygen concentrators with related accessories.
- (70) *Prosthetic devices for humans* means any artificial limb, part, device or appliance for human use which replaces a body part or aids or replaces a bodily function; is designed, manufactured, altered or adjusted to fit a particular

patient; and is prescribed by a licensed practitioner of the healing arts. Prosthetic devices include, but are not limited to, prescribed auditory, ophthalmic or ocular, cardiac, dental, or orthopedic devices or appliances, and oxygen concentrators with related accessories.

(71) Purchase or sale means the acquisition for any consideration by any person of tangible personal property, other taxable products or taxable services that are purchased, leased, rented, or sold. These terms include capital leases, installment and credit sales, and property and services acquired by:

- (a) Transfer, either conditionally or absolutely, of title or possession or both to tangible personal property, other taxable products, or taxable services;
- (b) A lease, lease-purchase agreement, rental or grant of a license, including royalty agreements, to use tangible personal property, other taxable products, or taxable services. The utilization of coin-operated devices, except coin-operated telephones, which do not vend articles of tangible personal property shall be considered short term rentals of tangible personal property;
- (c) Performance of taxable services;
- (d) Barter or exchange for other tangible personal property, other taxable products, or services.

The terms purchase and sale do not include:

- (a) A division of partnership assets among the partners according to their interests in the partnership;
- (b) The transfer of assets of shareholders in the formation or dissolution of professional corporations, if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets;
- (c) The dissolution and the pro rata distribution of the corporation's assets to its stockholders, if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets;
- (d) A transfer of a partnership or limited liability company interest;
- (e) The transfer of assets to a commencing or existing partnership or limited liability company, if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets;
- (f) The repossession of personal property by a chattel mortgage holder or foreclosure by a lienholder;
- (g) The transfer of assets from a parent company to a subsidiary company or companies which are owned at least 80 percent by the parent company, which transfer is solely in exchange for stock or securities of the subsidiary company;
- (h) The transfer of assets from a subsidiary company or companies which are owned at least 80 percent by the parent company to a parent company or to another subsidiary which is owned at least 80 percent by the parent company, which transfer is solely in exchange for stock or securities of the parent corporation or the subsidiary which received the assets;
- (i) The transfer of assets between parent and closely held subsidiary companies, or between subsidiary companies closely held by the same parent company, or between companies which are owned by the same shareholders in identical percentage of stock ownership amounts, computed on a share-by-share basis, when a tax imposed by this article was paid by the transferor company at the time it acquired such assets, except to the extent that there is an increase in the fair market value of such assets resulting from the manufacturing, fabricating, or physical changing of the assets by the transferor company. To such an extent any transfer referred to in this subsection shall constitute a sale. For the purposes of this subsection, a closely held subsidiary corporation is one in which the parent company owns stock or membership interest resulting in at least 80 percent of the total combined voting power of all classes of stock entitled to vote and owns at least 80 percent of the total number of shares of all other classes of stock.

(72) *Rail carrier* means as defined in Section 10102 of Title 49 of the United States Code as of October 10, 2013, and as it may be amended hereafter.

- (73) *Rail carrier part* means any tangible personal property that is originally designed and intended to be permanently affixed as a component part of a locomotive or rail car used by a rail carrier.
- (74) *Recreation services* means all services relating to athletic or entertainment participation events and/or activities including but not limited to pool, golf, billiards, skating, tennis, bowling, health/athletic club memberships, coin-operated amusement devices, video games and video club memberships.
- (75) *Renewable energy* means any energy resource that is naturally regenerated over a short time scale and derived directly from the sun (such as thermal, photochemical, and photoelectric), indirectly from the sun (such as wind, hydropower, and photosynthetic energy stored in biomass), or from other natural movements and mechanisms of the environment (such as geothermal and tidal energy). Renewable energy does not include energy resources derived from fossil fuels, waste products from fossil sources, or waste products from inorganic sources.
- (76) *Resident* means a person who resides or maintains one or more places of business within the Town, regardless of whether that person also resides or maintains a place of business outside of the Town.
- (77) *Retail sales* means all sales except wholesale sales.
- (78) *Retailer or vendor* means any person selling, leasing, renting, or granting a license to use tangible personal property or services at retail. Retailer and vendor shall include, but are not limited to, any:
- (a) Auctioneer;
 - (b) Salesperson, representative, peddler or canvasser, who makes sales as a direct or indirect agent of or obtains such property or services sold from a dealer, distributor, supervisor or employer;
 - (c) Charitable organization or governmental entity which makes sales of tangible personal property to the public, notwithstanding the fact that the merchandise sold may have been acquired by gift or donation or that the proceeds are to be used for charitable or governmental purposes;
 - (d) Retailer-contractor, when acting in the capacity of a seller of building supplies, construction materials, and other tangible personal property;
 - (e) Marketplace facilitator, marketplace seller, or multichannel seller.
- (79) *Retailer-contractor* means a contractor who is also a retailer of building supplies, construction materials, or other tangible personal property, and purchases, manufactures, or fabricates such property for sale (which may include installation), repair work, time and materials jobs, and/or lump sum contracts.
- (80) *Return* means any form prescribed by the Town administration for computing and reporting a total tax liability.
- (81) *Sale that benefits a Colorado school* means a sale of a commodity or service from which all proceeds of the sale, less only the actual cost of the commodity or service to a person or entity as described in this Code, are donated to a school or a school-approved student organization.
- (82) *Sales tax* means the tax that is collected or required to be collected and remitted by a retailer on sales taxed under this Code.
- (83) *School* means a public or nonpublic school for students in kindergarten through twelfth grade or any portion thereof.
- (84) *Security system services* means electronic alarm and/or monitoring services. Such term does not include non-electronic security services such as consulting or human or guard dog patrol services.
- (85) *Soft drink* means a nonalcoholic beverage that contains natural or artificial sweeteners. "Soft drink" does not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than 50 percent of vegetable or fruit juice by volume.
- (86) *Software program* means a sequence of instructions that can be measured, interpreted and executed by an electronic device (e.g. a computer, tablets, smart phones) regardless of the means by which it is accessed or the medium of conveyance. Software program includes:

- (a) Custom software program, which is a software program prepared to the special order or specifications of a single
 - (b) Pre-written software program, which is a software program prepared for sale or license to multiple users, and not to the special order or specifications of a single customer. Pre-written software is commonly referred to as "canned," "off-the-shelf ("COTS")," "mass produced" or "standardized;"
 - (c) Modified software, which means pre-written software that is altered or enhanced by someone other than the purchaser to create a program for a particular user; and
 - (d) The generic term "software," "software application," as well as "updates," "upgrades," "patches," "user exits," and any items which add or extend functionality to existing software programs.
- (87) *Software as a service* means software that is rented, leased or subscribed to from a provider and used at the consumer's location, including but not limited to applications, systems or programs.
- (88) *Software license fee* means a fee charged for the right to use, access, or maintain software programs.
- (89) *Software maintenance agreement* means an agreement, typically with a software provider, that may include:
- (a) Provisions to maintain the right to use the software;
 - (b) Provisions for software upgrades including code updates, version updates, code fix modifications, enhancements, and added or new functional capabilities loaded into existing software, or
 - (c) Technical support.
- (90) *Solar thermal systems* means a system whose primary purpose is to use energy from the sun to produce heat or cold for:
- (a) Heating or cooling a residential or commercial building;
 - (b) Heating or cooling water; or
 - (c) Any industrial, commercial, or manufacturing process.
- (91) *Sound system services* means the provision of broadcast or pre-recorded audio programming to a building or portion thereof. Such term does not include installation of sound systems where the entire system becomes the property of the building owner or the sound system service is for presentation of live performances.
- (92) *Special fuel* means kerosene oil, kerosene distillate, diesel fuel, all liquefied petroleum gases, and all combustible gases and liquids for use in the generation of power for propulsion of motor vehicles upon the public highways. The term does not include fuel used for the propulsion or drawing of aircraft, railroad cars or railroad locomotives.
- (93) *Special sales event* means any sales event which includes more than three vendors taking place at a single location for a limited period of time not to exceed seven consecutive days.
- (94) *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.
- (95) *Student* means any person enrolled in a school.
- (96) *Tangible personal property* means personal property that can be one or more of the following: seen, weighed, measured, felt, touched, stored, transported, exchanged, or that is in any other manner perceptible to the senses.
- (97) *Tax* means the use tax due from a consumer or the sales tax due from a retailer or the sum of both due from a retailer who also consumes.
- (98) *Tax deficiency or deficiency* means any amount of tax, penalty, interest, or other fee that is not reported and/or not paid on or before the date that any return or payment of the tax is required under the terms of this Code.
- (99) *Taxable sales* means gross sales less any exemptions and deductions specified in this Code.
- (100) *Taxable services* means services subject to tax pursuant to this Code.
- (101) *Taxpayer* means any person obligated to collect and/or pay tax under the terms of this Chapter.

(102) *Telecommunications service* means the service of which the object is the transmission of any two-way interactive electromagnetic communications including but not limited to voice, image, data and any other information, by the use of any means but not limited to wire, cable, fiber optical cable, microwave, radio wave, Voice over Internet Protocol (VoIP), or combinations of such media, including any form of mobile two-way communication.

Telecommunications service does not include separately stated non-transmission services which constitute computer processing applications used to act on the information to be transmitted to their exemption language.

(103) *Television and entertainment services* means audio or visual content that can be transmitted electronically by any means, for which a charge is imposed.

(104) *Therapeutic device* means devices, appliances, or related accessories that correct or treat a human physical disability or surgically created abnormality.

(105) *Toll free telecommunications service* means a telecommunications service that allows a caller to dial a number without incurring an additional charge for the call.

(106) *Total tax liability* means the total of all tax, penalties and/or interest owed by a taxpayer and shall include sales tax collected in excess of such tax computed on total sales.

(107) *Transient/temporary sale* means a sale by any person who engages in a temporary business of selling and delivering goods within the Town for a period of no more than seven consecutive days.

(108) *Transient/temporary vendor* means any person who engages in the business of transient/temporary sales.

(109) *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.

(110) *Use tax* means the tax paid or required to be paid by a consumer for using, storing, distributing or otherwise consuming tangible personal property or taxable services inside the Town.

(111) *Wholesale sales* means a sale by a wholesaler to retailers, jobbers, dealers, or other wholesalers for resale and does not include a sale by wholesalers to users or consumers not for resale; latter types of sales shall be deemed to be retail sales and shall be subject to the provisions of this chapter.

(112) *Wholesaler* means any person doing an organized wholesale or jobbing business and selling to retailers, jobbers, dealers, or other wholesalers, for the purpose of resale, and not for storage, use, consumption, or distribution.

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

3.02.030 - License Required.

(1) It is unlawful for any person to engage in the business of selling tangible personal property at retail without first having obtained a license therefor. Such 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 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 tangible personal property at retail 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.

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

3.02.040 - Application.

Such license shall be granted and renewed only upon application stating the name and address of the person desiring such a license, the name of such business and the location and such other facts as the Town Clerk may require, and payment of the established license fee.

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

3.02.050 - Renewal.

It shall be the duty of each licensee, on or before January 1 of each year, to obtain a renewal thereof if the licensee remains in the retail business or liable to account for the tax provided in this Chapter. Upon a licensee's submittal of a complete application for renewal and payment of the renewal fee, nothing contained in this Chapter shall be construed to empower the Town Clerk to refuse such renewal except revocation for cause of licensee's prior license.

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

3.02.060 - Contents, Posting and Transferability.

Each license shall be numbered and shall show the name, residence, place and character of business of the licensee and shall be posted in a conspicuous place in the place of business for which it is issued. Licenses are not transferable.

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

3.02.070 - Exemption.

No license shall be required for any person engaged exclusively in the business of selling commodities which are exempt from taxation under this Chapter.

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

3.02.080 - Sales Tax Imposed.

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, there is hereby imposed on the sale of tangible personal property at retail, the furnishing of services, and sale of food items, a sales tax equal to three percent (3%) of the gross receipts ("sales tax"). The tangible personal property and services taxable under this Chapter shall be the same as the tangible personal property, services, and food taxable pursuant to Section 39-26-104, C.R.S., and subject to the same exemptions as those specified in Section 39-26-114, C.R.S., provided that the exemption for sales of electricity, coal, wood, gas, fuel oil, or coke sold to occupants of residences pursuant to Section 39-26-114(1)(a)(XXI), C.R.S., shall apply to the sales tax and the sale of such items shall not be taxable, and provided further that the exemption for sales of machinery or machine tools pursuant to Section 39-26-114(11), C.R.S., and the exemption for sales of food specified in Section 39-26-114(1)(a)(XX), C.R.S., shall not apply to the sales tax, and the sale of such items is expressly made taxable under this Chapter. The imposition of the sales tax on individual sales shall be in accordance with schedules set forth in the rules and regulations promulgated by the Department of Revenue. If any vendor, during any reporting period, shall collect as the sales tax an amount in excess of the amount of the sales tax imposed by this Chapter, he shall remit to the Sales Tax Auditor the full amount of the sales tax herein imposed and also such excess.

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

3.02.090 - Marketplace Sales.

(1) *Marketplace Sales.*

(a) A marketplace facilitator engaged in business in the Town is required to collect and remit sales tax on all taxable

sales made by the marketplace facilitator, or facilitated by it for marketplace sellers or multichannel sellers to customers in the Town, whether or not the marketplace seller for whom sales are facilitated would have been required to collect sales tax had the sale not been facilitated by the marketplace facilitator.

- (b) A marketplace facilitator shall assume all duties, responsibilities, and liabilities of a vendor under this Chapter 3.02. Marketplace facilitators shall be liable for the taxes collected from marketplace sellers or multichannel sellers. The Town may recover any unpaid taxes, penalties, and interest from the marketplace facilitator that is responsible for collecting on behalf of marketplace sellers or multichannel sellers.
 - (c) The liabilities, obligations, and rights set forth under this Section 3.02.090 are in addition to any duties and responsibilities of the marketplace facilitator has under this Chapter 3.02 if it also offers for sale tangible personal property, products, or services through other means.
 - (d) A marketplace seller, with respect to sales of tangible personal property, products, or services made in or through a marketplace facilitator's marketplace, does not have the liabilities, obligations, or rights of a retailer under this Chapter 3.02 if the marketplace seller can show that such sale was facilitated by a marketplace facilitator:
 - (i) With whom the marketplace seller has a contract that explicitly provides that the marketplace facilitator will collect and remit sales tax on all sales subject to tax under this article; or
 - (ii) From whom the marketplace seller requested and received in good faith a certification that the marketplace facilitator is registered to collect sales tax and will collect sales tax on all sales subject to tax under this article made in or through the marketplace facilitator's marketplace.
 - (e) If a marketplace seller makes a sale that is not facilitated by a licensed marketplace facilitator in a marketplace, the marketplace seller is subject to all of the same licensing, collection, remittance, filing and recordkeeping requirements as any other retailer.
- (2) *Auditing.* With respect to any sale, the Town shall solely audit the marketplace facilitator for sales made by marketplace sellers or multichannel sellers but facilitated by the marketplace. The Town will not audit or otherwise assess tax against marketplace sellers or multichannel sellers for sales facilitated by a marketplace facilitator.
- (3) No tax obligations with respect to marketplace sales may be applied retroactively. Responsibilities, duties and liabilities described in Section 3.02.090(A) of a marketplace facilitator, marketplace seller, or multichannel seller begin upon the earlier of when they become licensed to collect the Town's sales tax or when they become legally obligated to collect the Town's sales tax under this Chapter 3.02.

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

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 gross receipts from such 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 deliver 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.

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

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.

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

3.02.120 - Specific Ownership Tax Exemption.

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

- (1) The purchaser is a nonresident of, or has his principal place of business outside the limits of 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 of Colorado.

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

3.02.130 - Sales Tax Sales Subject to Other Local Sales or Use Taxes.

The applicability of the sales tax shall be subject to the provisions of Section 29-2-105 (2) and (4), C.R.S.

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

3.02.140 - Vendor's Fees.

The vendor shall be entitled as collection agent for the Town to withhold an amount equal to three and one-third percent (3 $\frac{1}{3}$ %) of the total amount to be remitted by the vendor to the Sales Tax Auditor each month to cover the vendor's expense in the collection and remittance of the sales tax. If any vendor is delinquent in remitting the sales tax, other than in unusual circumstances shown to the satisfaction of the Sales Tax Auditor, the vendor shall not be allowed to retain any amounts to cover his expense in collecting and remitting said sales tax, and an amount equivalent to the full amount of the sales tax imposed by this chapter shall be remitted to the Sales Tax Auditor by any such delinquent vendor.

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

3.02.150 - Sales Tax Collection.

The collection, administration, and enforcement of sales tax shall be performed by the Finance Director for the Town. Unless otherwise provided by the Gypsum Municipal Code or Article 2 of Title 29, C.R.S., the provisions of Article 26 of Title 39, C.R.S., shall govern the collection, administration, and enforcement of the sales tax. 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.

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

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., a use tax equal to three percent (3%) of the gross receipts ("use tax").

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

3.02.170 - Excepted From Use Tax.

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

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

3.02.180 - Use Tax Sales Subject to Other Local 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.

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

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.

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

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.

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

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.

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

Chapter 3.03 - REAL ESTATE TRANSFER TAX

Footnotes:

-- (1) --

Editor's note— Ord. No. 2020-15, § 1, adopted Oct. 27, 2020, renumbered former Ch. 3.12 as Ch. 3.03 without making any changes in the text of provisions of this chapter other than renumbering.

3.03.010 - Short title.

The ordinance codified in this chapter shall be known and may be cited as the "Gypsum real estate transfer tax."

(Ord. 7 series 1982 §1)

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

3.03.020 - Applicability.

The property which is subject to this tax consists of all real property lying within the town limits as this time, or which is the subject of annexation into the town in the future.

(Ord. 7 series 1982 §4)

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

3.03.030 - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Consideration means the gross consideration paid for the real property affected by the transfer, and shall include cash paid, the money equivalent of real and personal property delivered or conveyed, in return for the transfer of ownership or interests in real property, and shall include the amount of any lien, mortgage, contract indebtedness, or other encumbrance or debt, either given to secure the purchase price, or any part thereof, or remaining unpaid on the property at the time of the transfer. The term does not include as an addition to gross consideration the amount of any outstanding lien or encumbrance in favor of the United States, the State of Colorado, or of a municipal or quasi-government corporation or district for taxes, special benefits or improvements. In the event the transaction or transfer is by lease agreement not specifically exempted in this chapter, the consideration shall be deemed to be the capitalized value of the average annual rental unit of the lease, computed as follows: the average annual rental over the entire term of the lease, including any renewal term, plus the actual consideration, other than rent, paid or to be paid shall be computed and the average annual rental shall be ten percent of the capitalized value. The payment of ad valorem real property taxes, insurance and the assumption of maintenance obligations shall not be included in the annual rent-capitalization computation; however, capital improvements required to be made shall be part of the consideration. When the average annual rental cannot be determined, the tax shall be based upon the fair market value of the property covered by the lease, or the capitalized value of the consideration in terms of the present worth of the stream of consideration under the lease and any other economic considerations to reflect the capitalized value of the transferred or leased property.

Real estate transfer tax means the tax imposed by this chapter on the transfer of real property.

Real property means real property as defined by and under the laws of the State of Colorado.

Taxable lease means any lease of real property with a term or initial term and all renewal terms which aggregate in length of 25 years or more; provided lessee has possession or the right to possession on payment of rents. Taxable lease also means any lease of real property for less than 25 years of term or initial term and all renewal terms aggregated if lessee has a clause which would permit lessee at its discretion to extend the lease beyond 25 years or if lessee has an option to purchase some or all of the real property leased. If lessee has a lease with such an option to purchase which option may be exercised only within three years after the date the lease and option is entered into, then the land transfer tax shall not be due and payable unless and until the exercise and consummation of such option. If any other lease with such an option to purchase is entered into, the real estate transfer tax shall be due and payable at the time of such transfer as transfer is defined in this section.

Transfer, whether or not the same is in writing or is recorded, means and includes:

- (1) Any sale, grant, assignment, transfer, exchange, or conveyance of any ownership or title to real property in the town;
- (2) The sale, leasing, letting, conveyance, assignment or transfer of a possessory interest in real property, subject to the exemptions provided in this chapter.

(Ord. 7 series 1982 §7)

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

3.03.040 - Tax—Imposed.

There is imposed a tax upon transfers of ownership and possessory interests in real property, which is located within the town, in the amount and as further provided within this chapter.

(Ord. 7 series 1982 §3)

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

3.03.050 - Same—Amount.

The amount of this tax is one percent of the consideration given for the transfer of ownership or possessory interest, as further defined in this chapter.

(Ord. 7 series 1982 §5)

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

3.03.060 - Same—Liability.

Unless otherwise agreed by the parties to a transfer which is subject to this tax, as between the parties to the transfer, the transferees shall be responsible for this tax; but both the transferors and the transferees are jointly and severally liable to the town for the amount of the tax.

(Ord. 7 series 1982 §6)

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

3.03.070 - Same—Payment.

Payment of this tax is due at the time of the transfer of ownership or possessory interest involved. If payment of this tax is not received by the town within 15 days after the due date, interest shall thereafter accrue on the unpaid balance at the rate of one percent per month, compounded annually, with a minimum late payment charge of \$50.00. Such late payment assessments are a

part of the tax. The town shall also be entitled to recover as an addition to this tax, the reasonable expenses of collection, including reasonable attorney's fees.

(Ord. 7 series 1982 §10)

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

3.03.080 - Same—Assessment and lien on property.

This tax shall be assessed against the real property whose transfer of ownership or possessory interest leads to imposition of this tax, and shall be a lien upon that property until paid. This lien may be foreclosed in the same manner as are real estate mortgages and similar liens. This lien shall attach to the subject property at the time of the transfer in question, and shall be superior to all interests in the subject property held by parties responsible for the tax, or who knew or had notice that this tax had not been paid, at the time they acquired such interest.

(Ord. 7 series 1982)

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

3.03.090 - Exemptions—Designated.

(a) The following transfers shall be exempt from this tax:

- (1) Those in which the consideration involved is less than \$500.00;
- (2) Those in which any governmental entity of the United States, or the subdivisions thereof, is a party;
- (3) Those in which the only consideration for the transfer is love, affection or other similar motives commonly associated with gifts;
- (4) Those which arise from the partition of property owned in joint tenancy or tenancy in common, so long as no new consideration is paid or received concerning such partition;
- (5) Those which arise from the operation of the laws of intestacy, or as distribution from a probate estate of a decedent to the parties who are the legatees or devisees of such estate, pursuant to the terms of the decedent's will;
- (6) Those involved in business organizations or reorganizations, such as from individuals to a partnership or corporation, given in exchange for an interest in the partnership or corporation, or such as transfers from a partnership or corporation, as part of dissolution proceedings, to partners or shareholders;
- (7) Those made to effect a distribution pursuant to a plan confirmed or ordered by a bankruptcy court;
- (8) Those conveying interests in cemetery lots;
- (9) Those commonly given only to secure payment of a debt, such as deeds of trust, mortgage deeds and mortgages;
- (10) Those given incident to foreclosure proceedings, by the sheriff or public trustee, or deeds given in lieu of foreclosure for no additional consideration;
- (11) Those involving possessory, but not ownership rights, where the entitlement to possession, including all options or other rights to extend the term of the possessory right do not exceed 25 years.

(b) If a transfer is effected in the form of one or more of the foregoing exempted transfers, but with the purpose of evading payment of this tax, such transfer shall be subject to this tax. In a transfer which is purportedly exempt from this tax, by virtue of subsection (a)(6) of this section, if transfer of a controlling interest in the transferee is made, agreed to be made, or intended to be made, within three years of the purportedly exempt transfer, it shall be presumed that the transfer was made with the purpose of evading payment of this tax.

(Ord. 7 series 1982 §8)

3.03.100 - Same—Certificate.

(a) A party desiring clarification as to whether a transaction is exempt from this tax shall be entitled to a written certificate from the town concerning that question. Upon payment of a five-dollar fee, and submission of an appropriately filled out form which substantially complies with the format given below, a party shall be entitled to receive the town's response in writing, in the manner indicated below:

REAL ESTATE TRANSFER TAX
TOWN OF GYPSUM, COLORADO
EXEMPTION CERTIFICATE

The undersigned hereby requests that the town of Gypsum, Colorado declare that the following transaction be declared exempt from the Gypsum Real Estate Transfer Tax:

(description of transaction - parties, property involved, circumstances which give rise to exemption from this tax)

Done this ___ day of _____, 19___/20___

The undersigned hereby certifies, under penalty of perjury, that the foregoing is a true and complete description of the transaction which is the subject of this application.

_____ Name

Address and Phone Number

State of Colorado)

) ss.

County of Eagle)

The foregoing was sworn to and subscribed before me this ___ day of _____ 19___/20___,

by _____

Notary Public Address:

My commission expires

This is to certify that the transaction described above is exempt from the Gypsum Real Estate Transfer Tax.

Done this ___ day of _____, 19___/20___.

THE TOWN OF GYPSUM, COLORADO

ATTEST: By _____

Mayor

Town Clerk

(SEAL)

- (b) The town shall have the right to require the applicant to furnish such additional information and evidence as may reasonably be required to make a determination as to whether the subject transaction is exempt from this tax. The burden of proof concerning exemption shall lie with the party claiming exemption. The mayor and town clerk are authorized to execute such certificates where a transaction is clearly exempt from this tax. A party aggrieved by the failure of the mayor and town clerk to acknowledge that a transaction is exempt from this tax shall have the right to a hearing on the matter before the council, which shall have the power to order the mayor and town clerk to execute the acknowledgement of exemption if the council finds that the transaction is exempt from this tax.

(Ord. 7 series 1982 §9)

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

3.03.110 - Allocation of funds.

Unless otherwise specified by the council, the proceeds of this tax shall be deposited into the general fund of the town.

(Ord. 7 series 1982 §12)

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

Chapter 3.16 - REIMBURSEMENT FOR CERTAIN TOWN SERVICES

3.16.010 - Reimbursement of costs and expenses by applicants.

All costs and expenses incurred by the town in reviewing any applications or compliance with codes, including but not limited to zoning, rezoning, special uses, water taps, sewer service, subdivisions, and utility franchises shall be reimbursed by the applicant. This list is not inclusive and shall be used by way of illustration for any additional demands placed upon the town services.

(Ord. 3, series 1996 §2)

3.16.020 - Itemization of costs and expenses.

The applicant shall reimburse the town for 100 percent of its costs incident to review of the application, including but not limited to, surveying, plan check, engineering and legal fees.

(Ord. 2, series 1986 §2)

3.16.030 - Fees supplemental to other code requirements.

This chapter provides a supplemental requirement to the requirements for zoning, rezoning, special use permits, water taps, sewer service and subdivision requirements of the town, and does not eliminate, modify or replace any requirements set forth in other statutes or ordinances.

(Ord. 2, series 1986 §3)

3.16.040 - Payment prerequisite to town action—Penalty for late payment— Generally.

- (a) Payment for reimbursement to the town for costs and expenses is due 30 days after the billing.
- (b) Any outstanding balance still due and owing after 30 days from the date of the billing will be charged interest at the rate of 18 percent per year.
- (c) All delinquent fees, costs and reimbursements, together with interest thereon, shall constitute a perpetual priority lien upon the property involved in or subject to the application for which the fees, costs or reimbursement is due. The town clerk may certify said delinquent debt to the Eagle County assessor, to be collected, together with the costs of collection, against the property in the same manner as though they were part of the taxes assessed against the property.
- (d) Except as provided for utility franchise applications in chapter 5.02 of this Code, final action on any application, including but not limited to recording of plats, grants and commencement of service, will not occur until after the town has been reimbursed for its costs and expenses incident to the application.

(Ord. 3, series 1996 §2)