

TOWN OF GYPSUM, COLORADO

**(EMERGENCY) ORDINANCE NO. 9
(SERIES 2020)**

AN EMERGENCY ORDINANCE AUTHORIZING THE TEMPORARY DEFERRAL OF PAYMENTS OF TOWN SALES TAX DUE AND OWING FOR THE MONTHS OF FEBRUARY THROUGH JUNE, 2020, IN RESPONSE TO THE COVID-19 VIRUS PUBLIC HEALTH EMERGENCY, WITH SUCH DEFERRED PAYMENTS BEING REQUIRED TO BE PAID BY JUNE 30, 2021

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

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

WHEREAS, on January 31, 2020, the United States Health and Human Services Secretary declared a national public health emergency with respect to the transmission of a novel virus that causes a highly contagious and potentially fatal disease known as coronavirus disease 2019 (“COVID-19”); and

WHEREAS, COVID-19 has resulted in a worldwide pandemic, as determined by the World Health Organization; and

WHEREAS, on March 6, 2020, Eagle County declared a local disaster emergency related to the spread of COVID-19 within Eagle County; and

WHEREAS, on March 10, 2020, the Governor of the State of Colorado declared a state of emergency related to the COVID-19 outbreak state-wide; and

WHEREAS, on March 13, 2020, the President of the United States declared a national state of emergency related to the COVID-19 outbreak nationwide; and

WHEREAS, on March 18, 2020, the Mayor of the Town declared a local disaster emergency related to the COVID-19 outbreak; and

WHEREAS, on March 18, 2020, Eagle County Public Health issued a Standing Public Health Order that limits most activities to ten (10) or fewer people in an effort to slow the spread of COVID-19; and

WHEREAS, on March 18, 2020, the Mayor declared an extraordinary emergency related to the COVID-19 outbreak (the “Emergency Declaration”), pursuant to Section 4.8 of the Charter and Section 24-33.5-709(1), C.R.S.; and

WHEREAS, on March 24, 2020, the Town Council continued the Mayor’s Disaster Declaration for sixty (60) days upon finding and determining that said continuation is appropriate and necessary for the function and operation of the Town and for protection of the public health, safety and welfare of the citizens of and visitors to the Town; and

WHEREAS, in response to the COVID-19 virus public health emergency, Governor Jared Polis and the Colorado Department of Public Health and Environment (“CDPHE”) in a series of public health orders (“PHOs”) pursuant to law ordered that all Colorado businesses not defined as “critical businesses” in the PHOs cease operations and temporarily suspend offering goods and services at retail to the public; and

WHEREAS, the Governor's Orders and PHOs have had an immediate effect on retail establishments in Gypsum, reducing sales and causing harmful ripple effects with employees, suppliers and fixed-cost imbalances; and

WHEREAS, various taxing entities, in recognition of the business impacts of the Governor's Orders and PHOs, have sought to provide temporary assistance to affected businesses through tax deferral policies intended to improve short-term cash flow; and

WHEREAS, Town Council has considered the recommendations of the Mayor and staff and the financial implications thereof, and has concluded that a temporary deferral of sales tax payments, imposed pursuant to Chapter 3.08 of the Gypsum Municipal Code (“Gypsum Sales Tax”), is a reasonable measure in response to the immediate effects of the COVID-19 pandemic, the Governor's Orders and the PHOs; and

WHEREAS, the Gypsum Home Rule Charter vests the Mayor with the authority to prudently manage the Town's income, expenses, assets and liabilities in accordance with generally-accepted fiscal standards; and

WHEREAS, the Section 3.08.140 of the Gypsum Municipal Code directs that Town Finance Director to collect, administer, and enforce the Gypsum Sales Tax pursuant to Article 26 of Title 39, C.R.S., unless otherwise provided by the Gypsum Municipal Code or Article 2 of Title 29, C.R.S.; and

WHEREAS, Town Council desires to amend the Gypsum Municipal code to allow deferred payment of the Town sales tax as set forth herein; and

WHEREAS, the Town Council finds and determines that believes that an emergency requires the immediate passage of this ordinance is needed to provide economic relief to retailers who are subject to the Town’s sales tax and who are in

significant economic stress because of the COVID-19 pandemic, and thereby insure the protection of life, the public health, and property.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF GYPSUM, COLORADO, AS FOLLOWS:

Section 1. Incorporation of Recitals. The foregoing recitals are incorporated herein by this reference.

Section 2. Declaration of Emergency. It is hereby declared that the economic hardship and stress on retailers who are subject to the Town's sales tax due to the presence and spread of COVID-19 within Eagle County and the Town, as described in the foregoing recitals, is a public emergency affecting life, public health, property, or peace within the Town.

Section 3. Definitions. Except as specifically set forth herein, there terms used herein shall have the meanings set forth in Section 3.08.020 of the Gypsum Municipal Code.

Section 4. Temporary Deferral of Town Sales Tax. Each retailer subject to payment of the Gypsum Sales Tax shall be granted a temporary deferral for payment of Gypsum Sales Tax, subject to the following conditions:

- a. Each retailer shall continue to timely and completely file sales tax returns as otherwise required by the Gypsum Municipal Code.
- b. Subject to the terms set forth in Section 5 below, based upon a determination by a retailer of its COVID-19 impacts creating an economic need, the full remittance of sales tax to the Town shall be deferred, upon the filing of sales tax returns, commencing with taxes due for the month of March, 2020 (return due and otherwise payable by April, 20, 2020), and concluding with taxes due for the month of June, 2020 (return due and otherwise payable by July 20, 2020).
- c. Effective for sales tax payments due beginning July 1, 2020 (payable by August 20, 2020), the deferral of sales tax payments provided in this Ordinance shall terminate, and all retailers shall resume the full and timely payment of sales tax as required under the Gypsum Municipal Code.
- d. The Town shall not initiate enforcement of, nor impose any penalty or interest charge for, unpaid sales tax during the period of deferral set forth in Section 5 below, so long as the eligible establishment otherwise timely files its sales tax return (without payment of the deferred sales tax), pays the deferred sales tax as set forth in Section

5 below, and complies with the other requirements of Chapter 3.08 of the Gypsum Municipal Code.

Section 5. Deferral Period; Payment of Deferred Sales Tax; Enforcement.

- a. All sales tax payments deferred for each retailer pursuant to this Ordinance shall be paid in full on or before 12:00 p.m. on June 30, 2021.
- b. Any deferred sales tax payments not paid in full as required by sub-section a. of this Section shall be subject to enforcement (including penalties and interest thereon) as provided in the Gypsum Municipal Code, and shall be further subject to the lien set forth in Subsection 5 c. below.
- c. Any deferred sales tax payments, together with penalties and interest, not paid in full as required by sub-section a. of this Section shall create a lien pursuant to § 39-26-117, C.R.S. upon goods and business fixtures of or used by the retailer. Such lien shall be deemed perfected on and shall relate back to the date any deferred sales tax payments would have been due under the Gypsum Municipal Code without the deferral provided in this Ordinance.

Section 6. Coordination and Procedures. The Finance Director shall develop procedures and coordinate the manner and form of reporting, payment and record-keeping necessary to carry out this Ordinance, including the schedule for payment of deferred amounts by each retailer.

Section 7. Chapter 3.08 of Gypsum Municipal Code Not Affected. Except as specifically amended herein, the provisions and requirements of Chapter 3.08 of the Gypsum Municipal Code, including the incorporation by Section 3.08.140 of the provisions of Article 26 of Title 39, C.R.S., shall remain in full force and effect as if this Ordinance had not been adopted.

Section 8. Deferral Not Mandatory. The purpose of the deferral for payment of sales tax provided herein is to assist retailers in economic stress due to the COVID-19 pandemic, the Governor's Orders and the PHOs. While the decision to utilize the deferral as provided herein is based on the determination of the retailer of their COVID-19 related economic impact, retailers with the economic means are urged to remit their sales tax payments without such deferral.

Section 9. Interpretation. In the event of any express or implied conflict or inconsistency between the provisions of this Ordinance and any provision set forth in the Gypsum Municipal Code, the provisions of this Ordinance shall govern.

Section 10. Effective Date, Emergency Ordinance. This Ordinance shall be effective as an emergency ordinance immediately upon adoption at the meeting at which it is introduced, for a period of sixty (60) days, and a summary of this Ordinance shall be published.

Section 11. 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 12. 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.

ADOPTED, PASSED AND APPROVED ON April ____, 2020.

TOWN OF GYPSUM

By: _____

Stephen M. Carver, Mayor

Attest:

Danette Schlegel, Town Clerk


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ADOPTED, PASSED AND APPROVED ON April 22, 2020.

TOWN OF GYPSUM

By: 
Stephen M. Carter, Mayor
THOMAS G. LIA
MAYOR PRO TEM

Attest:


Danette Schlegel, Town Clerk

