

**TOWN OF HOT SULPHUR SPRINGS,
COUNTY OF GRAND, COLORADO**

ORDINANCE NO. 2025-09-421

**AN ORDINANCE OF THE BOARD OF TRUSTEES OF THE TOWN OF
HOT SULPHUR SPRINGS, COLORADO, SUBMITTING A BALLOT
QUESTION TO VOTERS SEEKING AUTHORIZATION TO IMPOSE A
USE TAX ON THE PRIVILEGE OF USING OR CONSUMING ANY
CONSTRUCTION AND BUILDING MATERIALS IN THE TOWN AND
ADDING A NEW CHAPTER 5 TO TITLE 3 OF THE HOT SULPHUR
SPRINGS TOWN CODE, CONDITIONED UPON VOTER APPROVAL,
TO ADOPT PROVISIONS IMPOSING AND GOVERNING SUCH USE
TAX ON THE AND IMPOSING PENALTIES FOR VIOLATIONS
THEREOF**

WHEREAS, the Town of Hot Sulphur Springs is authorized by law to impose a use tax on the use or consumption of construction and building materials, subject to approval of the registered electors of the Town; and

WHEREAS, the Town currently imposes a four percent (4%) sales tax on the sale of construction and building materials so long as that sale occurs within Town; and

WHEREAS, the Town is experiencing additional construction permit requests and the Town with money paid to other jurisdictions for materials used or consumed within Town; and

WHEREAS, the Town Board finds and determines that proposing a use tax at a rate of four percent (4%) on the privilege of using or consuming construction and building materials would benefit the Town and its residents by reclaiming tax revenues generated from such materials being used or consumed in the Town that are paid to other jurisdictions through imposition of such jurisdictions' respective sales tax; and

WHEREAS, the Town Board finds and determines that proposing a use tax for approval of the eligible electors of the Town at the November 4, 2025 regular election is necessary for the public health, safety and welfare.

NOW THEREFORE, BE IT ORDAINED by the Board of Trustees of the Town of Hot Sulphur Springs:

Section 1. Recitals Incorporated. The above and foregoing recitals are incorporated herein by referenced and adopted as findings and determinations of the Board of Trustees

Section 2. Election. Before the use tax provided herein shall become effective, it shall be submitted to and receive the approval of a majority of the registered electors of the Town voting thereon at the regular election to be held on Tuesday, November 4, 2025. The regular election shall be conducted in coordination with Grand County.

Section 3. Ballot Question. The ballot title for the construction use tax shall be in substantially the following form with numbering to be provided by Grand County and any corrections approved by the Mayor and Town Attorney:

BALLOT QUESTION --

SHALL TOWN OF HOT SULPHUR SPRINGS TAXES BE INCREASED ANNUALLY BY \$200,000 IN THE FIRST FULL FISCAL YEAR OF COLLECTION COMMENCING JANUARY 1, 2026, AND BY WHATEVER AMOUNT IS RAISED ANNUALLY THEREAFTER, BY THE IMPOSITION OF A FOUR PERCENT (4.0%) USE TAX ON THE PRIVILEGE OF STORING, USING, OR CONSUMING ANY CONSTRUCTION AND BUILDING MATERIALS IN THE TOWN, GENERALLY TO BE COLLECTED AT THE TIME A BUILDING PERMIT IS ISSUED, SUCH USE TAX REVENUES TO BE APPROPRIATED AND SPENT FOR ANY MUNICIPAL PURPOSE, IN ACCORDANCE WITH SUCH TERMS, CONDITIONS, AND POLICIES AS MAY BE ADOPTED BY THE BOARD OF TRUSTEES, ALL IN ACCORDANCE WITH ORDINANCE NO. 2025-09-421; AND SHALL ALL REVENUES FROM SUCH TAXES AND ANY EARNINGS THEREON BE COLLECTED, RETAINED AND SPENT AS A VOTER-APPROVED REVENUE CHANGE WITHOUT LIMITATION OR CONDITION CONTAINED IN ARTICLE X SECTION 20 OF THE COLORADO CONSTITUTION OR ANY OTHER LAW?

____ YES

____ NO

Section 4. Adoption of Chapter 5 in Title 3 of the Hot Sulphur Springs Town Code. A new Chapter 5 of Title 3 entitled "Use Tax" is hereby adopted to read as follows so long as the ballot question in Section 3 is approved by voters.

CHAPTER 5 – Use Tax

3-5-1. - Definitions.

The following words, terms and phrases used in this Chapter shall be defined as follows, unless the context clearly indicates otherwise:

Charitable Organization means any entity which:

- (1) Has been certified as a not-for-profit 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 ministers to the physical, mental, or spiritual needs of persons or animals, and thereby lessens the burden of government.

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 or inseparable part of completed structure or project are not Construction Materials.

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.

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.

Retailer means any person selling, leasing, renting, or granting a license to use tangible personal property or services at retail.

Tangible Personal Property means personal property that can be one (1) or more of the following: seen, weighed, measured, felt or touched, stored, transported, or exchanged, or that is in any other manner perceptible to the senses.

Taxpayer means any Person obligated to collect and/or pay tax under the terms of this Chapter.

Town Clerk means the Town Clerk or such person's designee and may include employees of the Town or contracted agents or representatives of the Town.

Use means the exercise, for any length of time, by any person with the Town of any right, power or dominion over tangible personal property or services when rented, leased, or purchased.

3-5-2. - Rate and imposition of use tax on Construction Materials.

Unless otherwise exempted, there is hereby levied and there shall be paid a use tax at the rate of four percent (4%) upon the privilege of using or consuming within the Town any Construction Materials purchased at retail, from wherever purchased. The Contractor, property owner/lessor and lessee are held liable for any tax due in this Chapter.

3-5-3. - Exemptions to use tax imposed on Construction Materials.

The use tax on Construction Materials imposed under this Chapter shall not apply to:

(A) Exempt Organizations: The use or consumption by a Contractor or subcontractor of Construction Materials for use in the building, erection, alteration or repair of structures, highways, roads, streets and other public works owned and used by:

(1) The United States government, the State, its departments and institutions and the political subdivisions thereof in their governmental capacities only;

(2) Charitable Organizations in the conduct of their regular charitable functions and activities; or

(3) Educational institutions having a curriculum comparable to grade, grammar, junior high, high school or college, or any combination thereof, requiring daily attendance, having an enrollment of at least forty (40) students and charging a tuition fee other than such educational institutions held or conducted for private or corporate profit.

(B) The use or consumption of electricity, coal, coke, fuel oil, steam, nuclear fuel or gas for use in processing, manufacturing, mining, refining, irrigation, building construction, telegraph, telephone and radio communication, street and railroad transportation services and all industrial uses.

(C) The use of components used in the production of alternating current electricity from a Renewable Energy source, including but not limited to wind. As used in this exemption, *components* shall include, but shall not be limited to, wind turbines, rotors and blades, solar modules, trackers, generating equipment, supporting structures or racks, inverters, towers and foundations, balance of system components such as wiring, control systems, switchgears and generator step-up transformers and concentrating solar power components that include, but are not limited to, mirrors, plumbing and heat exchangers. As used in this exemption, *components* shall not include any components beyond the point of generator step-up transformers located at the production site, labor, energy-storage devices or remote monitoring systems.

(D) Any of the exemptions which are allowed on the use and consumption of Construction Materials under State law as of January 1, 2026.

(E) The use or consumption of Construction Materials the sale of which is subject to a retail sales tax imposed by the Town.

3-5-4. - Sales tax paid to others.

(A) In the event that a sales or use tax of another statutory or home rule town, city or city and county has been legally imposed on the Purchaser or user on the Purchase of Construction Materials equal to or in excess of the use tax imposed by this Chapter, the use tax imposed hereunder shall not apply to the use or consumption of such Construction Materials. A credit shall be granted against the use tax imposed by this Chapter with respect to a Person's use or

consumption in the Town of Construction Materials purchased by him or her elsewhere, the amount of the credit being equal to the tax paid by reason of the imposition of a legally imposed sales or use tax of another statutory or home rule municipality on purchase or use of the Construction Materials. The amount of the credit shall not exceed the tax imposed by this Chapter.

(B) It is the intent of this Chapter for all Town taxes to be paid at the time a building permit is issued. Once such permit is issued, Contractors, property owners or lessees engaged in construction projects in the Town are considered to be the end users of Construction Materials in the Town and must not pay municipal sales tax to a Retailer in another jurisdiction for Construction Materials to be used or consumed at a location in the Town. No refund or credit of another municipality's tax will be allowed unless such tax is legally imposed.

(C) If a Contractor, property owner/lessor or lessee engaged in construction projects in the Town purchases such Construction Materials from Town retailers possessing a valid Town business license, then such Contractor, property owner/lessor or lessee may submit invoices or statements reflecting the purchase thereof and make application to the Town Manager within sixty (60) days directly following the determination by the Town of the use tax due, which determination shall be made within thirty-six (36) months from the date of issuance of the certificate of occupancy for the project or date of the final inspection by the Town of the project, for credit or refund of any amount paid as sales taxes to the Town; in which event, 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 Clerk is satisfied that there has been such payment, then the Town Clerk shall either credit the account of the Contractor, property owner/lessor or lessee engaged in construction projects in the Town if the use tax has not been levied or refund the amount if the use tax has been paid through a Use Tax Deposit, within sixty (60) days after such application shall have been received by the Town Clerk.

3-5-5. - Collection of Construction Materials use tax.

(A) The administration of this Chapter is hereby vested in the Town Clerk, who shall prescribe forms and promulgate rules and regulations for the proper administration and enforcement of this Chapter.

(B) Every Contractor, property owner or lessee engaged in construction projects in the Town who purchases Construction Materials needed therefor, and to whom a building, fence, right-of-way, development or other permit is issued or approved by the Town for construction within Town limits, shall remit, at the time of Town review, approval, or permit issuance, a deposit to the Town prior to the issuance of any such permit ("Use Tax Deposit"). The Use Tax Deposit shall be calculated by multiplying the Town use tax rate, as set forth in Section 3-5-2 above, on Construction Materials by fifty percent (50%) of the total valuation of the construction project. Total valuation for the purposes of the Use Tax Deposit shall be determined by the Town. Use tax due on the actual cost of Construction Materials may be subsequently determined and adjusted through audit. Upon payment of the Use Tax Deposit, the Town shall issue a receipt identifying the property that is the subject of the Use Tax Deposit and the permit number(s).

(C) Within thirty-six (36) months from the date of issuance of the certificate of occupancy for the project or the date of the final inspection by the Town of the project, if it is determined by the Town that the actual cost of the Construction Materials for the project is greater than the estimate therefor and that the amount of the Use Tax Deposit is not sufficient to provide for full payment of the use tax, then the additional use tax due must be received by the Town Clerk within thirty (30) days of such determination. If it is determined by the Town that the Use Tax Deposit is sufficient to pay for the use tax due, then the Use Tax Deposit shall be used to pay the amount of the use tax due, and any excess amount of the Use Tax Deposit shall be refunded to the Person who made the Use Tax Deposit, within thirty (30) days of such determination.

(D) Every Contractor, property owner or lessee engaged in construction projects in the Town who purchases Construction Materials needed therefor and who does not apply for and have issued a permit as described in Subsection (B) above, or every Contractor, property owner or lessee engaged in construction projects in the Town who seeks and obtains prior approval of the Town Clerk to remit use taxes in accordance with this Subsection (D) shall, on or before the twentieth day of each succeeding month following the start of such construction, file a return with the Town Clerk attaching all relevant statements and invoices along with a summary sheet for the Construction Materials purchased the previous month, and shall thereupon pay to the Town the full amount of the use tax due thereon for the preceding month or months. Any failure to make such return and payment of such use tax shall be deemed a violation of this Chapter and, upon conviction thereof, shall subject the violator to the penalties provided in this Chapter.

3-5-6. - Unpaid use tax shall constitute a lien.

The full amount of any use tax due and not paid for Construction Materials, together with penalties and interest thereon as herein provided, shall be and constitute a lien upon the real property benefited by the improvements upon which the Construction Materials were used or consumed, and the Town Clerk is authorized to file a notice of such lien with the County Clerk and Recorder.

3-5-7. - Penalties and interest; recovery and enforcement of obligations.

(A) If a Person obligated to collect and/or to remit use tax in accordance with this Chapter fails to pay any use tax as required by this Chapter, the Town Clerk shall make an estimate, within ten (10) days after the same is due based upon such information as may be available, of the amount of taxes due for the period for which the Taxpayer is delinquent and shall add thereto a penalty equal to the greater of the sum of fifteen dollars (\$15.00) or fifteen percent (15%) of the amount due and interest at the rate of one-and-a-half percent (1.5%) per month from the time delinquent payment was due, and provide written notice to the Taxpayer of the estimate, penalty and interest imposed. In the event such an estimate of taxes due is made and penalty assessed, a Taxpayer may be excused from imposition of such estimate and/or penalty if the Taxpayer shows that its failure to comply fully with this Chapter is due to reasonable cause at a hearing requested by the Taxpayer pursuant to the manner and timeframe set forth in this Chapter.

(B) If any part of the deficiency is due to fraud with the intent to evade the tax, there shall be added a penalty of one hundred percent (100%) of the total amount of the deficiency, and in such case the whole amount of the tax unpaid, including the additions, shall become due and payable ten

(10) days after written notice and demand by the Town Clerk, and an additional three percent (3%) per month on said amount shall be added from the date payment was due, until paid.

(C) The Town Clerk may, for good cause shown, waive any penalty or interest.

3-5-8. - Remedies not exclusive.

In addition to enforcement remedies expressly provided in this chapter, the Town may pursue any other remedies available at law or in equity.

3-5-9. – Refunds.

(A) Burden of proof. The burden of proving that eligibility for a refund shall be on the Person making such claim under such reasonable requirements of proof as the Town Clerk may prescribe, which may include, in the Town's discretion, an audit.

(B) Refunds on use tax overpayment. Application for a refund by a Person paying a Use Tax Deposit shall be made within thirty-six (36) months after the date of the certificate of occupancy or date of purchase, whichever is sooner. With the exception of a written request submitted to the Town that tolls the running of the statute of limitations, no refund shall be allowed or paid more than thirty-six (36) months after the date of the certificate of occupancy or date of purchaser, whichever is sooner.

(C) The right of any Person to obtain a refund pursuant to this Section shall not be assignable.

3-5-10. - Audit.

(A) The Town may audit, or the Taxpayer may request an audit, within three (3) years from the issuance of any certificate of occupancy for the improvement on which the use tax was paid. An audit requested by the taxpayer shall be at the Taxpayer's sole cost.

(B) If the recomputed use tax is less than the amount of use tax paid by the Taxpayer, the difference shall be refunded to the taxpayer within thirty (30) days of the final determination of the Town. If the recomputed use tax is more than the amount of use tax paid by the Taxpayer, the difference, along with any interest and penalty imposed by this chapter, shall be due and payable by the Taxpayer immediately upon the final determination of the Town with notice to the Taxpayer.

3-5-11. - Book, Records, Reports, and Returns.

(A) Every person liable for any use tax imposed by this Chapter shall keep and preserve, for a period of three (3) years from the date of issuance of a final certificate of occupancy for the improvement on which the use tax was paid, all books, records, reports and returns necessary to determine the amount of tax liability. All such books, records, reports, and returns shall be open for examination at any time by the Town Clerk.

(B) Any information gained by Taxpayer disclosure or as part of an audit or investigation shall be confidential.

(C) For the purpose of determining the amount of tax due from any taxpayer, the Town Clerk may hold investigations and hearings concerning any matters covered by this Chapter, and may examine any relevant books, papers, records, or memoranda of any such person, requiring the attendance of such taxpayer, or any officer or employee of such taxpayer, or of any person having relevant knowledge, and taking such testimony and proof as may be necessary to properly ascertain any tax liability. The Town Clerk shall have power to administer oaths to any person in the course of such investigations or hearings. Production of documents and attendance of witnesses shall be requested by the Town Clerk on his or her own motion or on motion of any party; any request for production or attendance shall inform persons that compliance is voluntary but that, if the request is not complied with, the Town Clerk may apply to the Municipal Judge for issuance of a subpoena.

(D) The Municipal Judge, upon application of the Town Clerk, may compel the attendance of witnesses, the production of books, papers, records or memoranda, and the giving of testimony before the Town Clerk or any of his or her duly authorized agents, by the issuance and enforcement of subpoenas, in the same manner as production of evidence may be compelled before the court.

3-5-12. – Violation.

(A) It is a violation of this Chapter for any person subject to the use tax levied by this chapter to submit any false or fraudulent use tax information to the town, to make any false statement on any document used to calculate taxes due under this chapter, to fail or refuse to make payment of any taxes due, to evade the payment of any taxes due, or to aid or abet another in any attempt to evade the payment of any taxes due under this chapter.

(B) In addition to any other penalty provided in this Chapter, any person who violates any provision of this Chapter shall be punished for a noncriminal violation Title 1, Chapter 4 of the Town Code.

Section 5. Safety Clause. The Board of Trustees hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the Town of Hot Sulphur Springs, that it is promulgated for the health, safety, and welfare of the public.

Section 6. Severability. If any provision of this Ordinance is found by a court of competent jurisdiction to be invalid, the remaining provisions of this Ordinance will remain valid, it being the intent of the Town that the provisions of this Ordinance are severable.

Section 7. Effective Date. The Hot Sulphur Springs Board of Trustees hereby declares that the provisions in Sections 2 and 3 pertain to an administrative action and may commence immediately. The provisions in Section 4 shall take effect only if the ballot question in Section 3 is approved by voters at the November 4, 2025 election. This Ordinance shall be effective in accordance with law.

INTRODUCED, READ, ADOPTED, APPROVED AND ORDERED PUBLISHED BY TITLE ONLY BY THE TOWN BOARD OF TRUSTEES OF THE TOWN OF HOT SULPHUR SPRINGS, COLORADO, UPON A MOTION DULY MADE, SECONDED AND PASSED AT ITS MEETING HELD ON THE 18 DAY OF September, 2025, BY A VOTE OF 7 IN FAVOR, 0 AGAINST, and 0 ABSTAINING.

TOWN OF HOT SULPHUR SPRINGS, COLORADO

By: Raymond R. Tinkum
Raymond R. Tinkum, Mayor

I hereby certify that the above Ordinance was introduced and adopted by the Town Board of Trustees of the Town of Hot Sulphur Springs, Colorado, at its meeting of Sept 18, 2025, and ordered published in the *Sky Hi* newspaper on Sept 25, 2025.

ATTEST:

SEAL

By: Katie LaDrig
Katie LaDrig, Town Clerk / Treasurer

Publication Date: September 25, 2025

