

## **TITLE 3**

### **Business and License Regulations**

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## CHAPTER 1

### Sales Tax

- 3-1-1 General provisions
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#### 3-1-1. General provisions.

(A) Purpose. The purpose of this Chapter is to impose a sales tax on the sale of tangible personal property at retail and the furnishing of services within the Town pursuant to Article 2 of Title 29, C.R.S., as may be amended.

(B) Definitions. For the purpose of this Chapter, words not otherwise defined below shall have the meanings set forth in Section 39-26-102, C.R.S., as may be amended, and said definitions are incorporated herein by this specific reference:

*Board of Trustees.* The Board of Trustees of the Town of Hot Sulphur Springs.

*Chapter.* This Chapter 1 of Title 3 of the Municipal Code of the Town of Hot Sulphur Springs.

*C.R.S.* Colorado Revised Statutes, as currently exist or may hereafter be amended.

*Executive Director.* The Executive Director of the Colorado Department of Revenue.

*Sales tax.* A tax on tangible personal property or the furnishing of services at a rate of four percent (4%) of gross receipts.

*Town.* The Town of Hot Sulphur Springs.

*Vendor.* A person doing a retail business, known to the trade and public, and selling to the user or consumer and not for resale.

#### 3-1-2. Imposition of tax.

Sales tax imposed. There is imposed on the sale of tangible personal property at retail or the furnishing of services as provided in Section 29-2-105(1)(d), C.R.S., a sales tax equal to four percent (4%) of the gross receipts. The tangible personal property and services taxable under this Chapter shall be the same as the tangible personal property and services taxable pursuant to Section 39-26-104, C.R.S.

**3-1-3. Calculation of sales tax.**

(A) Schedules. The imposition of the sales tax on individual sales shall be in accordance with the schedules set forth in the rules and regulations promulgated by the Colorado Department of Revenue, or by separate ordinance of the Town.

(B) Place of sale. Except as otherwise provided herein, all retail sales shall be considered consummated at the place of business of the vendor, unless the tangible personal property sold is delivered by the vendor or is 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. Where a vendor has no permanent place of business in the Town or has more than one place of business, the place at which the sale was consummated is determined by Article 26 of Title 39, C.R.S., and the rules and regulations promulgated by the Department of Revenue.

(C) Gross receipts. The gross receipts from all retail 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 delivery is made. Gross receipts, however, shall not include the state sales and use tax imposed by Article 26 of Title 39, C.R.S.

**3-1-4. Sales tax exclusions and exemptions.**

(A) State exemptions. The tangible personal property and services taxable under this Chapter shall be subject to the same exemptions as those specified in Section 39-26-114, C.R.S., except as otherwise provided in this Chapter, including exemptions for the following:

- (1) Purchases of machinery or machine tools specified in Section 39-26-114(11), C.R.S.;
- (2) Sales and purchases of electricity, coal, wood, gas, fuel oil or coke for residential purposes as set forth in Section 39-26-114(1)(a), C.R.S.; and
- (3) The sale of food as specified in Section 39-26-114(1)(a)(XX), C.R.S.

The items set forth in Paragraphs (A)(1), (2) and (3) above shall be exempt from sales tax.

(B) Construction materials. The sale of construction building materials, as the term is used in Section 29-2-109, C.R.S., shall be exempt from sales tax if the following conditions are met:

- (1) Such materials are picked up by the purchaser; and
- (2) The purchaser of such materials presents to the vendor a building permit or other documentation acceptable to the Town evidencing that a local use tax has been paid or is required to be paid.

(C) Specific ownership tax. 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.

(D) Double taxation. The sales tax shall not apply to the sale of tangible personal property at retail or the furnishing of services if the transaction was previously subjected to a sales or use tax lawfully imposed on the purchaser or user by another statutory or home rule city, town or county equal to or in excess of the sales tax. A credit shall be granted against the sales tax with respect to such transaction equal in amount to the lawfully imposed local sales or use tax previously paid by the purchaser or user to the previous statutory or home rule city and county, city or town. The amount of the credit shall not exceed the amount of the sales tax.

### **3-1-5. Collection, administration and enforcement.**

The collection, administration and enforcement of the sales tax shall be performed by the Executive Director in the same manner as the collection, administration and enforcement of the state sales tax. The provisions of Article 26 of Title 39, C.R.S., as amended, and all rules and regulations promulgated thereunder by the Executive Director shall govern the collection, administration and enforcement of the sales tax imposed pursuant to this Chapter.

### **3-1-6. Vendor responsibilities.**

(A) License. A general business license, as set forth in Chapter 2 of this Title, shall be required for any person to engage in the business of selling at retail in the Town tangible personal property or services that are subject to sales tax pursuant to this Chapter.

(B) Vendor liable for tax. As provided in Article 26, Title 39, C.R.S., every vendor shall be required to make a monthly return of his sales tax collections.

(C) Overcollection. If any vendor, during any reporting period, shall collect as the sales tax an amount in excess of the amount of the sales tax due hereunder, said vendor shall remit to the Executive Director the full amount of the sales tax herein imposed and also such excess.

(D) Vendor's fee. A vendor, at the time of making his monthly return of the sales tax as required by this Chapter, shall be entitled to withhold a collection fee in the amount of three and one-third percent (3⅓%) from the total amount remitted by the vendor. If any vendor is delinquent in remitting sales tax each month, other than in unusual circumstances shown to the satisfaction of the Executive Director, the vendor shall not be allowed to retain the three and one-third percent (3⅓%) vendor's fee.

### **3-1-7. Disposition of revenue.**

All revenue derived from this Chapter shall be used as provided by law by the Board of Trustees.

### **3-1-8. Amendments of rates.**

The Board of Trustees may amend, alter or change this Chapter, except as to the four percent (4%) rate of sales tax imposed in this Chapter and except as to the disposition of revenues derived therefrom, as set forth in Section 3-1-5 of this Chapter. Such amendment, alteration or change need

not be submitted to the qualified electors of Hot Sulphur Springs, Colorado, for their approval. (1990 Code; Ord. 220, 01-18-82; Ord. 221, 03-05-82; repealed and reenacted by Ord. 331; 01-16-03)

## CHAPTER 2

### Business Licensing

- 3-2-1 Purpose
- 3-2-2 General business license
- 3-2-3 Peddler permits
- 3-2-4 Penalty

#### 3-2-1. Purpose.

The purpose of this Chapter is to impose the terms, manner and procedure for licensing businesses within the Town and to identify and maintain current basic identification information about persons engaged in businesses, trades and professions in the Town. The issuance of a license pursuant to this Chapter shall not cure or furnish a defense to any alleged violation by the licensee of any other provision of this Code, any other ordinance or regulation of the Town, or any state or federal law or regulation.

#### 3-2-2. General business license.

(A) Definitions. As used in this Section, the following terms shall have the meanings indicated:

*Application* shall mean the application for a business license submitted to the Town in accordance with this Section.

*Business* shall mean all types of establishments, occupations, enterprises and other kinds of activities and matters, conducted at a permanent location in the Town or anywhere else within its jurisdiction for which a sales tax license is required by the Colorado Department of Revenue pursuant to Article 26 of Title 39, C.R.S., and any rules and regulations promulgated thereunder. *Business* shall not include the trade of a peddler, solicitor or distributor, as such terms are defined at Subsection 3-2-3(A).

*License* shall mean a license issued under this Section which shall be valid for a calendar year or a prorated portion thereof if application therefore is made during the calendar year.

*Licensee* shall mean the holder of a business license.

*Premises* includes all lands, structures, places and also the equipment and appurtenances connected or used therewith in any business, and also any personal property which is either affixed to or is otherwise used in connection with any business conducted on such premises.

(B) License required. It shall be unlawful for any person, by himself or through an agent, employee or partner, to hold himself forth as being engaged in business or solicit patronage therefor, actively or passively, or perform or attempt to perform any part of such business in the Town or

conduct, operate or engage in or carry on any business within the Town without first having complied with the provisions of this Section and obtained a business license therefor, as is herein provided.

(C) Doing business in more than one (1) location. A separate business license shall be required for every sales tax license held by a business issued by the Colorado Department of Revenue.

(D) Applications:

(1) Applications for new licenses and renewals thereof required by this Section shall be made in writing to the Town and submitted to the Town Clerk.

(2) Each application for a new license shall be on a form as provided to the applicant by the Town and shall contain all the following information:

(a) The names under which the business is to be conducted (name of business owner and trade names, if applicable).

(b) The name and address of the applicant. (If a corporation, give names and addresses of the officers and registered agent of the corporation; if a partnership, give names and addresses of all partners; if a limited liability company, give the names and addresses of all managers and registered agent.)

(c) The physical address and mailing address of the premises on which the business is sought to be conducted.

(d) The nature of the business.

(e) The business telephone number of the applicant, including day and night telephone numbers to allow for emergency contact if necessary.

(f) An acknowledgment by the application of the requirements of this Section 3-2-2 and all other applicable rules and regulations governing businesses operating within the Town, with a copy of this Chapter to be provided by the Town on the form application and retained by the applicant.

(g) The use/sales tax license number of the business issued by the Colorado Department of Revenue.

(h) The license fee in an amount set by resolution of the Board of Trustees.

(3) License renewal applications shall require the renewal applicant to pay the license fee and to update any information contained on the original application.

(E) Approval and issuance process.

(1) All licenses shall be issued and approved by the Town upon payment of the business license fees set by resolution of the Board of Trustees and approval of the application in accordance with this Subsection 3-2-2(E).

(2) Upon receipt of an application for a new license or for renewal, the Town Clerk shall refer such application to the Town Administrator for appropriate investigation or inspection. The Town Administrator shall have a period of twenty (20) calendar days from the date an application is filed with the Town Clerk in which to examine the information provided by the applicant for the license and shall have the authority to: (a) approve a license; or (b) refer such application to the Board of Trustees for review and determination on whether to issue a license. If the business proposed for license clearly complies with all applicable federal, state and local statutes, ordinances and regulations, including the provisions of this Section, the Town Administrator shall approve the license and so indicate by signing the application.

(3) Upon a referral to the Board of Trustees, the Board of Trustees shall, within two (2) business days, convene a public hearing to be held within ten (10) calendar days of the date of referral to determine whether a license should issue by examining whether the applicant and proposed business comply with all applicable federal, state and local statutes, ordinances and regulations, including the provisions of this Section. All interested parties shall be given an opportunity to be heard at such hearing.

(4) Notice of the hearing time, place and date shall be provided to the applicant by placing such notice in first-class mail addressed to the applicant at the address on the application within one (1) day of the date the hearing and conspicuously posting the premises identified in the application with a similar notice.

(5) Within three (3) business days from the date of approval of the license by either the Town Administrator or Board of Trustees, the Town Clerk shall issue the license.

(F) Grounds for denial of license. The Town shall have authority to deny a new license or renewal of an existing license if the Board of Trustees finds that the applicant, licensee, business or premises has not complied with the general laws, statutes, ordinances and regulations of the State or of the Town, including but not limited to the building and zoning regulations. No license shall be issued for any business if the proposed use of the premises does not fully comply with the requirements of the Town, or would otherwise violate any federal, state or local law.

(G) Expiration; renewal. All licenses shall expire on the last day of the calendar year for which such license is effective. All applications for renewal shall be made at least thirty-five (35) days before the end of the calendar year. It shall be unlawful for a licensee to continue to engage in any business after expiration of a license. All licenses shall be renewed by the Town unless grounds for revocation exist as set forth in Subsection 3-2-2(J).

(H) License contents and posting. Licenses shall be issued from the Town with consecutive numbering and shall show the name of the license holder and the business, the address of the premises and the character of the business and shall be continuously and conspicuously posted on the premises shown on the license.

(I) Records. The Town Clerk shall keep a record of all licenses issued, setting forth the name of every licensee and the premises licensed, and other pertinent information as is required to be provided in an application.

(J) Revocation; appeal.

(1) Licenses issued under the provisions of this Section may be revoked upon seven (7) days' notice by the Town Administrator, in writing, for any of the following reasons:

(a) Fraud, misinterpretation or false statement contained in the application for license or committed or made in the course of conducting the business.

(b) Any violation of this Section or failure to provide any information or fees required by this Section.

(c) Conduct of the business violates any federal, state or local law.

(d) Conducting the licensed business in any unlawful manner or in any such manner as to constitute a breach of the peace, a menace to the health, safety or general welfare of the public, or a nuisance as defined by any ordinance or statute.

(e) The existence of any fact or condition which, if it had been made known at the time of the application, would have warranted the refusal of the issuance of such license.

(2) Any business in violation of any ordinance or statute may have its license revoked by the Town Administrator, and such business shall cease operations until such business is brought into compliance with all ordinances and statutes.

(3) Any person aggrieved by the action of the Town Administrator in the revocation of a license shall have the right of appeal to the Board of Trustees. Such appeal shall be taken by filing with the Board of Trustees, within fourteen (14) days after the notice of the action complained of has been mailed to such person's last known address, a written statement setting forth fully the grounds for appeal. The Board of Trustees shall set a time and place for a quasi-judicial hearing on such appeal, and five (5) days' notice of such hearing shall be given to the licensee by first-class mail. The decision of the Board of Trustees on such appeal shall be final and conclusive. The licensee may not operate the business during the pendency of said appeal. The Board of Trustees' decision shall be the final action of the Town.

(K) Fees. All fees for new and renewal licenses shall be paid in advance at the time the application is submitted in the amount set by resolution of the Board of Trustees. The annual license fee shall not be prorated. In the event a business license is denied, the license fee shall be returned to the applicant. In the event that any license is revoked, all fees paid therefor shall be and remain the property of the Town, and no refund shall be made to any licensee.

### **3-2-3. Peddler permits.**

(A) Definitions. As used in this Section, the following words shall have the meanings indicated:

*Distributor* means any person who distributes or causes to be distributed on any street or public place within the Town any newspaper, periodical, book, magazine, handbill, circular, card, pamphlet or printed material of any kind.

*Merchandise* means all goods, wares, food, printed material, farm products, services and orders or contracts for services, home improvements or alterations and anything that may be sold or distributed by peddlers, solicitors or distributors as used herein.

*Peddler* means any person who goes from house to house, from place to place or from street to street, traveling by foot, vehicle or any other type of conveyance, carrying or transporting merchandise for the purpose of selling and delivering merchandise to customers.

*Permit* means a permit issued under this Section.

*Solicitor* means any person who goes from house to house, from place to place or from street to street, traveling by foot, vehicle or any other type of conveyance, soliciting, taking or attempting to take orders for the sale of merchandise or services of any kind for future performance or delivery, whether or not such individual has, carries or exposes for sale a sample of the merchandise or services and whether or not he is collecting advance payments on such sales or orders, or who engages in any of the foregoing activities from a stationary location, any street or other public place. *Solicitor* shall also refer to the word canvasser or any other person who goes from door to door as described above or stands upon any street or other public place soliciting or collecting funds.

(B) Permit required. It shall be unlawful for any peddler, solicitor or distributor to sell, offer for sale or distribute merchandise or printed material soliciting the sale of merchandise or services within the Town without first applying for and obtaining a permit from the Town. This Section shall not apply to any sales conducted pursuant to statute or by order of any court, persons selling tangible personal property at wholesale or merchants operating from a licensed business premises within the Town pursuant to a license issued under Section 3-2-2.

(C) Issuance of permit.

(1) The applicant shall submit the permit fee in an amount determined by resolution of the Board of Trustees, unless exempted therefrom as provided for in Subsection 3-2-3(D), and file with the Town Clerk, on a form approved by the Town, an application for a permit which shall, as a minimum, give the same information as required for a business license under Section 3-2-2, except that the application shall also provide information regarding the length of time for which the permit is desired and any additional information requested by the Town.

(2) If an application is found satisfactory, the Town Administrator shall issue a permit addressed to the applicant to conduct the activity applied. Such permit shall contain the signature of the Town Administrator and shall show the name, address and photograph of the applicant, the type of business (peddler, solicitor or distributor) for which the applicant has registered, the kind of goods or services to be sold thereunder, the date of issue and the length of time the permit shall be operative.

(D) Fees. Where an organization has several agents peddling, soliciting or distributing, each such agent shall be required to carry a separate permit and pay the permit fee. Permit fees shall not be refunded for any reason and shall not be prorated. Local, nonprofit religious, charitable, educational, civic or political organizations, including but not limited to the Boy Scouts, Girl Scouts or local volunteer fire or police organization, must obtain a permit but, with written approval of the Town

Administrator, may not be required to pay a permit fee, provided that, if required by the Town Administrator, an official uniform, clothing or other suitable and widely recognized identification approved by the Town Administrator is displayed while such permit holder engages in any activities requiring a permit hereunder:

(E) Conditions of permit.

(1) Upon obtaining a permit as herein provided, a peddler, solicitor or distributor may conduct his activities within the Town only as long as he complies with the regulations set forth in this Section and any other Town ordinance or regulation and only for the period shown on the permit.

(2) A permit shall not be assignable.

(3) No applicant to whom a permit has been refused or who has had a permit revoked shall make further application until a period of at least twelve (12) months shall have elapsed since the last previous rejection or revocation, unless the applicant can show that the reason for such rejection or revocation no longer exists.

(4) Every peddler, solicitor or distributor shall, while conducting his activities, carry the permit with him and shall exhibit the same upon demand of any police officer or target of his peddling, soliciting or distribution activities within the Town.

(5) No person or permit holder shall:

(a) Peddle, solicit or distribute on Sunday.

(b) Peddle, solicit or distribute merchandise in any residential district or area except between the hours of 8:00 a.m. and 6:00 p.m., unless specifically having been invited into a house by the occupant or having made an appointment with a person previously. A peddler, solicitor or distributor operating in a public place may do so between the hours of 6:00 a.m. and midnight.

(c) Attempt to peddle, solicit or distribute merchandise or printed material without first having identified himself as a peddler, solicitor or distributor registered with the Town and displaying his permit.

(d) Have exclusive rights to any location in the public streets or operate in any congested area where the operations might impede or inconvenience the public.

(e) Leave at any property or house or in any public place circulars, samples or other matter, except a newspaper, except when handed to a person willing to accept the same.

(f) Engage in conduct that is objectionable or annoying to an occupant of any residence or remain upon the property of another after being asked or ordered to leave.

(g) Shout, cry out, blow a horn, ring a bell or use any sound-making or amplifying device upon any of the streets, parks or public places of the Town or upon private premises, in such manner that sound of sufficient volume is emitted or produced to be capable of being plainly

heard upon the streets, avenues, parks or other public places of the Town or upon private premises therefrom, for the purpose of attracting attention to any merchandise or services.

(h) Litter the streets, public places or properties within the Town with any merchandise or printed material.

(F) Revocation of permit. Permits issued under this Section may be revoked in the same manner and for the same reasons as for business licenses under Section 3-2-2.

#### **3-2-4. Penalty.**

Failure to comply with the terms of Section 3-2-2 or 3-2-3 of this Chapter shall constitute a violation of this Code and shall be punishable in accordance with Subsection 1-4-1(A) of this Code. (Ord. 319, 05-18-00; Ord. 331, 01-16-03; Ord. 341, 05-04-03; Ord. 348)

### **CHAPTER 3**

#### **Liquor Licensing**

**3-3-1 Local Licensing Authority established**

**3-3-2 License fees**

**3-3-3 Suspension and revocation**

**3-3-4 Payment of fine in lieu of liquor license suspension**

**3-3-5 Delegation of authority subject to all applicable laws**

#### **3-3-1. Local Liquor Licensing Authority established.**

(A) Authority established. The Town hereby establishes a Local Liquor Licensing Authority for the Town. The Board of Trustees shall serve as the Local Liquor Licensing Authority. The Liquor Licensing Authority and shall have and exercise all of the powers and duties of the local licensing authority provided by Articles 46, 47 and 48 of Title 12, C.R.S., and all related regulations promulgated by the State.

(B) License renewals. The Town Clerk is authorized to administratively review and approve an application for the renewal of any classification of previously approved liquor license where, after a reasonable investigation by the Town Clerk and consultation by the Town Clerk with other appropriate administrative and law enforcement personnel, all of the following circumstances are found by the Town Clerk to exist:

(1) The applicant has timely and properly submitted a complete license renewal application and tendered all required fees in accordance with applicable provisions of Title 12, C.R.S.

(2) The applicant's license is in good standing with the Town and the State and no violation of law has occurred over the previous year.

(3) To the knowledge of the Town Clerk and the appropriate law enforcement personnel for the Town, there is no pending or proposed criminal or legal investigation or charges against the applicant or the licensed premises.

(4) There is no other information or knowledge available to the Town Clerk which would cause the Town Clerk, in his reasonable belief, to believe that a violation of applicable law has occurred and the license should not be renewed.

The Town Clerk shall retain the discretion to refer and forward any renewal application to the Liquor Licensing Authority. Such referral shall be for purpose of the Liquor Licensing Authority's review and approval when, in the Town Clerk's sole discretion, the renewal application presents questions or issues more appropriately considered by the Liquor Licensing Authority or where the Town Clerk believes that cause may exist to support suspension or revocation of the license or to support the denial of the renewal application.

**3-3-2. License fees.**

License fees for all liquor license applications shall be set by resolution of the Board of Trustees.

**3-3-3. Suspension and revocation.**

The Board of Trustees, in its capacity as the Local Liquor Licensing Authority, may suspend, fine or revoke any license issued by the Town as provided by statute.

**3-3-4. Payment of fine in lieu of liquor license suspension.**

(A) Whenever a decision of the Liquor Licensing Authority suspending a license for fourteen (14) days or less become final, whether by failure of the licensee to appeal the decision or by exhaustion of all appeals and judicial review, the licensee may, before the operative date of the suspension, petition for permission to pay a fine in lieu of having his license suspended for all or part of the suspension period. Upon the receipt of the petition, the Authority may, in its sole discretion, stay the proposed suspension and cause any investigation to be made which it deems desirable and may, in its sole discretion, grant the petition if it is satisfied:

(1) That the public welfare and morals would not be impaired by permitting the licensee to operate during the period set for suspension and that the payment of the fine will achieve the desired disciplinary purposes;

(2) That the books and records of the licensee are kept in such a manner that the loss of sales of alcoholic beverages which the licensee would have suffered had the suspension gone into effect can be determined with reasonable accuracy therefrom; and

(3) That the licensee has not had his license suspended or revoked, nor had any suspension stayed by payment of a fine, during the two (2) years immediately preceding the date of the motion or complaint which has resulted in a final decision to suspend the license.

(B) The fine accepted shall be the equivalent to twenty percent (20%) of the licensee's estimated gross revenues from sales of alcoholic beverages during the period of the proposed suspension; except that the fine shall be not less than two hundred dollars (\$200.00) nor more than five thousand dollars (\$5,000.00).

(C) Payment of any fine pursuant to the provisions of this Section shall be only in the form of cash, certified check or cashier's check made payable to the Town of Hot Sulphur Springs.

(D) Upon payment of the fine pursuant to this Section, the Authority shall enter its further order permanently staying the imposition of the suspension. The Authority shall deliver such payment to the Town Clerk who shall promptly cause such moneys to be paid into the general fund of the Town.

(E) In connection with any petition pursuant to this Section, the authority of the Liquor Licensing Authority is limited to the granting of such stays as are necessary for it to complete its investigation and make its findings and, if it makes such findings, to the granting of an order permanently staying the imposition of the entire suspension or that portion of the suspension not otherwise conditionally stayed.

(F) If the Liquor Licensing Authority does not make the findings required in Subsection 3-3-4(A) and does not order the suspension permanently stayed for any reason, the suspension shall go into effect on such date set by the Authority.

(G) The Local Liquor Licensing Authority shall report all actions taken to impose fines, suspensions and revocations to the state licensing authority in the manner required by the state licensing authority.

**3-3-5. Delegation of authority subject to all applicable laws.**

In establishing a Local Liquor Licensing Authority and delegating authority to the Liquor Licensing Authority as provided by this Chapter, the Board of Trustees directs that such delegation be governed by all applicable state laws and regulations and that the Authority shall abide by and exercise its authority in accordance with such laws. (Ord. 302, 05-21-98, Chapter repealed and reenacted Ord. 329, 05-20-02)