

Note – This ordinance was denied on Second Reading on January 12, 2016

**Town of Basalt, Colorado
Ordinance No. 26
Series of 2015**

**AN ORDINANCE OF THE TOWN COUNCIL OF BASALT, COLORADO AMENDING
CHAPTER 4, REVENUE AND FINANCE, OF THE BASALT MUNICIPAL CODE
CONCERNING THE TOWN'S SALES TAX,
BY PROVIDING FOR A SALES TAX CREDIT AGAINST CERTAIN
PUBLIC IMPROVEMENT FEES PAID AT WILLITS TOWN CENTER, BASALT,
COLORADO**

WHEREAS, the Town of Basalt, Colorado (the "Town") by separate ordinance is considering approval of a Development and Reimbursement Agreement (the "Public Finance Agreement") with Willits Town Center LLC, a Delaware limited liability company, concerning the development and construction of certain public improvements in association with the development of a mixed-use retail, commercial project and residential project known as Willits Town Center in Basalt, Colorado (the "Property"); and

WHEREAS, all capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Public Finance Agreement; and

WHEREAS, the Town Council of the Town has agreed to consider adoption of an ordinance granting a Sales Tax Credit in the amount of one and fifty one-hundredths percent (1.50%) against the collection of the increase, if any, in Sales Tax payable on Taxable Transactions occurring within the Property in any year commencing with the year 2016 over Sales Tax collected on Taxable Transactions occurring within the Property in the Base Year, to the extent that a public improvement fee in the amount of one and fifty one-hundredths percent (1.50%) (the "Credit PIF") has been collected on the increase, if any, in Sales Tax payable on Taxable Transactions occurring within the Property after the effective date of the provisions of this ordinance over the Sales Tax collected on Taxable Transactions occurring within the Property in the Base Year, subject to the terms and limitations set forth in the Public Finance Agreement; and

WHEREAS, providing for such Sales Tax Credit against the Credit PIF collected and paid on Taxable Transactions occurring within the Property will substantially aid in the finance and development of necessary public improvements that will benefit the residents of the Town and patrons of the Property, and will protect and promote the public health, safety and general welfare of the residents of the Town.

WHEREAS, the Town Council finds and declares that this Ordinance is promulgated and adopted for the public health, safety and welfare and this Ordinance bears a rational relation to the legislative object sought to be obtained.

NOW, THEREFORE, IT IS ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BASALT, COLORADO AS FOLLOWS:

Section 1. Amendment. Chapter 4, Revenue and Finance, of the Basalt Municipal Code, concerning the Town's sales tax, is hereby amended by the addition of a new Section 4-69 to read as follows:

Sec. 4-69 Tax Credit Against Payment of Public Improvement Fees in Willits Town Center, Basalt Colorado.

Notwithstanding any other provisions of this Chapter to the contrary, and in order to implement the provisions of a Public Finance Agreement to be entered into by the Town of Basalt and Willits Town Center LLC (the "Public Finance Agreement"), there is hereby granted to each person or entity obligated to pay, collect or remit the sales tax on the sale or provision of goods or services which are subject to the Town's sales taxes described in this Chapter occurring within the property known as Willits Town Center, Basalt, Colorado and more particularly to be described in the Public Finance Agreement (the "Property"), a tax credit against the collection of the sales taxes as hereinafter set forth. All capitalized terms used in this section and not otherwise defined herein shall have the meanings given to them in the Public Finance Agreement, as amended from time to time. Such tax credit shall be granted in the form of a reduction in the applicable sales tax rate in an amount equal to one and fifty one-hundredths percent (1.50%), and shall attach to a particular transaction only to the extent that the Credit PIF revenues are collected and received by the Town of Basalt for such transaction. The tax credit shall be automatic and shall take effect immediately upon the occurrence of a Taxable Transaction to which a Credit PIF applies, but shall be subject to the applicable retailer's remittance to the State of Colorado and ultimate receipt by the Town of Basalt of the Credit PIF revenues in accordance with the Public Finance Agreement (as reflected on the retailer's periodic sales tax report).

The sales tax credit granted pursuant this Section and as described in the Public Finance Agreement shall remain in effect for the period set forth in a Public Finance Agreement adopted pursuant to this section and shall thereafter automatically terminate.

Nothing set forth in this Section is intended or shall be construed to constitute or to require a reduction in the use or amount of sales tax revenues collected to fund capital improvement projects to be approved by the Town Council for parks, open space acquisition, and trail projects pursuant to Section 4-65(a) of the Basalt Municipal Code.

Section 2. Invalidity. In the event the sales tax credit established herein or the Credit PIF is determined by a final court decision to be unconstitutional, void or ineffective for any cause, any Public Finance Agreement adopted pursuant to this Ordinance is null and void.

Section 3. Change in Tax Rate. Nothing contained in this Ordinance shall prohibit the Town, after complying with all requirements of law, from increasing or decreasing the Town's sales tax rate.

Section 4. Effect of Credit, Applicability of TABOR. The Town Council hereby determines that the creation or termination of this tax credit does not constitute a tax increase, the imposition of a new tax, or a tax policy change directly causing a net tax revenue gain to the Town, and that nothing herein creates a multiple fiscal year financial obligation or other indebtedness of the Town, nor does the tax credit established by this Ordinance and the termination of such credit meet any of the other criteria requiring approval by the electors pursuant to Article X, Section 20 of the Colorado Constitution, also known as the Taxpayer's Bill of Rights (TABOR).

Section 5. Repealer. Any bylaws, orders, resolutions, ordinances, or parts thereof, inconsistent with this Ordinance are hereby repealed to the extent only of such inconsistency. This repealer shall not be constructed to revise any bylaw, order, resolution or ordinance or part thereof, heretofore repealed.

Section 6. Effective Date. The amendment to Chapter 4 of the Basalt Municipal Code shall become effective 14 days from publication of the Ordinance as per the requirements of the Basalt Home Rule Charter. However, the provisions of the any tax credit adopted pursuant to the amended code will not take effect until the later of: (i) the effective date of this ordinance; and (ii) the Effective Date of the Agreement adopted pursuant to this ordinance.

Section 7. Severability. If any part, section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance and the Town Council hereby declares it would have passed this Ordinance and each part, section, subsection, sentence, clause or phrase thereof regardless of the fact that any one or more parts, sections, subsections, sentences, clauses or phrases be declared invalid.

READ ON FIRST READING, ORDERED PUBLISHED AND SET FOR PUBLIC HEARING TO BE HELD ON January 12, 2016, by a vote of 4 to 2 on December 8, 2015.

READ ON SECOND READING AND DENIED, by a vote of 3 to 4 opposed on January 12, 2015.

TOWN OF BASALT, COLORADO

By: _____
Jacque R. Whitsitt, Mayor

ATTEST:

Pamela Schilling, Town Clerk

First Publication: Thursday, December 17, 2015
Second Publication: NA
Effective Date: NA

DENIED