

20.00

PEOPLE'S ORDINANCE # 20

SERIES 1980

AN ORDINANCE ENACTING A REAL ESTATE TRANSFER TAX WITHIN THE TOWN OF BRECKENRIDGE, COLORADO.

WHEREAS, the Town of Breckenridge (the "Town") is experiencing activity in the areas of land sales, land development, residential and commercial building construction and sales; and

WHEREAS, these activities are increasing the demand for municipal services to provide for the health, safety and well-being of residents of the Town; and

WHEREAS, there is a need for additional revenues to fund increased municipal services and capital improvement projects; and

WHEREAS, the benefits to be provided under this Ordinance will accrue to those persons who are taxed hereunder;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE, COLORADO:

Section 1. TITLE

This Ordinance shall be known and may be cited as "The Breckenridge Real Estate Transfer Tax Ordinance".

Section 2. IMPOSITION OF TAX

There is hereby imposed a tax on all transfers whether by deeds, instruments, writings, leases, or any other documents or otherwise by which any lands, tenements or other interests in real property located in the Town of Breckenridge are sold, granted, let, assigned, transferred, exchanged or otherwise conveyed to or vested in a purchaser, or purchasers thereof, or any other person or persons, except as may be specifically exempted by Section 6 of this Ordinance. Said tax shall be due and payable at the time of transfer and contemporaneously therewith as hereinafter specified.

Section 3. PERSONS LIABLE FOR TAX

Each purchaser and any other person or persons to whom a transfer is made, which transfer is subject to the tax imposed under Section 2 above, shall be jointly and severally liable for payment of the tax. The purchaser or person to whom a transfer is made shall remit the tax to the Town.

ARLTON WARD  
SEP 17 9 20 AM '80  
SUMMIT COUNTY  
CLERK AND RECORDER

211836

#### Section 4. DEFINITIONS

a. Consideration. "Consideration means the gross consideration paid for the real property affected by the "transfer" and shall include actual cash paid, the money equivalent of real and personal property delivered or conveyed in exchange for the transfer, or contracted to be paid or 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 Section 6, 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 10% 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 actual consideration. When the average annual rental cannot be determined, or at the election of the Town Manager, the tax shall be based upon the appraised total value of the property covered by the lease as determined by an independent appraisal obtained by the Town Manager and paid for by the Purchaser, 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.

b. Real Estate Transfer Tax. "Real Estate Transfer Tax" means the tax imposed by this ordinance on the transfer of real property.

c. Person. "Person" means any individual, corporation, business trust, estate, trust, partnership, association or any other legal entity.

d. Transfer. "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 situated in the Town of Breckenridge, (2) the sale, leasing, letting, conveyance, assignment or transfer of a possessory interest in real property, subject to the exemptions provided in this ordinance.

e. Real Property. "Real property" shall be deemed to mean real property as defined by and under the laws of the State of Colorado.

f. Taxable Lease. "Taxable lease" means any lease of real property with a term or initial term and all renewal terms which aggregate in length of 29 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 29 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 29 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 3 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 herein.

#### Section 5. AMOUNT OF TAX

The amount of tax payable in each case shall be as follows:

a. Where there is no consideration or when the consideration is Five Hundred Dollars (\$500.00) or less, no Real Estate Transfer Tax shall be payable.

b. Where the consideration shall exceed Five Hundred Dollars (\$500.00), the Real Estate Transfer Tax payable shall be one percent (1%) of the consideration, the proceeds of which tax shall be deposited in the general fund or any special fund or funds of the Town of Breckenridge as the Town Council shall determine from time to time.

#### Section 6. EXEMPTIONS

The Real Estate Transfer Tax imposed by this ordinance shall not apply to:

a. Any transfer wherein the United States, or any agency or instrumentality thereof, the State of Colorado, any county, city and county, municipality, district or other political subdivision of this State, is either the grantor or grantee.

b. Any gift of real property, where there is no consideration other than love and affection or charitable donation.

c. Any transfer by document, decree or agreement partitioning, terminating or evidencing termination, of a joint tenancy, tenancy in common or other co-ownership in real property; however if additional consideration or value is paid in connection with such partition or termination, the tax shall apply and be based upon such additional consideration.

d. The transfer of title or change of interest in real property by reason of death, pursuant to a will, the law of descent and distribution, or otherwise.

e. Transfers made pursuant to reorganization, merger or consolidation of corporations, or by a subsidiary to a parent corporation for no consideration other than cancellation or surrender of the subsidiary's stock, or transfers made to a corporation, partnership, limited partnership, joint venture, business trust or other association or organization if that association or organization is owned by the persons by whom such transfer was made if such owners have the same relative interests in said association or organization as they had in the real property immediately prior to said transfer and there is no consideration other than their respective interests in the new association or organization.

f. Transfers to make effective any plan confirmed or ordered by a court of competent jurisdiction under the Bankruptcy Code or in an equity receivership proceeding.

g. Any transfer made and delivered without consideration for the purpose of confirming, correcting, modifying or supplementing a transfer previously recorded; making minor boundary adjustments; removing clouds of titles; or granting rights-of-way, easements or licenses.

h. Any decree or order of a court of record quieting, determining or resting title, including a final order awarding title pursuant to a condemnation proceeding.

i. Any transfer of cemetery lots.

j. Any lease of any real property (or assignment or transfer of any interest in any such lease) provided the terms and conditions of such lease do not constitute a taxable lease of the property.

k. Any mineral transfer or royalty transfer.

l. Transfers to secure a debt or other obligation, or releases of real property which is security for a debt or other obligation.

m. An executory contract for the sale of real property of less than three years' duration under which the vendee is entitled to or does take possession thereof without acquiring title thereto or any assignment or cancellation of any such contract.

n. Any transfer that is made pursuant to a valid and legally enforceable contract for sale entered into between the seller and purchaser prior to the date of adoption of this Ordinance No. 20, Series 1980 pursuant to which transaction the deed or instrument of conveyance is executed and recorded on or before January 1, 1981.

o. Any transfer that is made pursuant to a valid and legally enforceable pre-sale contract (a) entered into between a seller and a purchaser prior to the date of adoption of this Ordinance No. 20, Series 1980; (b) pursuant to which transaction the deed or instrument of conveyance is executed and recorded on or before January 1, 1981. A "pre-sale contract" is defined as a valid and legally enforceable contract for the sale of real property which has been signed prior to the commencement of construction of improvements thereon, to be closed following completion of the improvements and pursuant to which contract seller is obligated to construct the improvements to the property after the contract is signed and prior to the closing date of the contract.

p. Any sale or conveyance of real property or improvements for the purpose of constructing, or providing low or moderate priced housing units for sale or lease to low or moderate income persons; provided, that the parties to the transaction shall apply to the Town Manager for the exemption prior to its being allowed, and the parties shall agree to appropriately restrict the future use of the property to low and moderate priced housing units by recorded agreement, deed, restrictions, covenants, declarations, or similar instrument as may be required by the Town Council.

#### Section 7. APPLICATION FOR EXEMPTION

a. In the event of any transfer claimed to be exempt from the Real Estate Transfer Tax herein imposed, the grantor or purchaser shall apply for and obtain from the Town Manager a Certificate of Exemption, which may be affixed to the deed or instrument of transfer. The burden of proving any exemptions shall in all cases be upon the one claiming it. Provided further, that the exemption provided in Section 6 shall be allowed only with a Certificate of Exemption issued by the Town Manager prior to the date of the transfer tax is payable to the Town. The Certificate of Exemption shall be in substantially the following form:

EXEMPTION FROM REAL ESTATE TRANSFER TAX

The undersigned, as purchaser pursuant to a deed or other instrument of transfer from \_\_\_\_\_ to \_\_\_\_\_ dated \_\_\_\_\_, hereby applies for exemption from the payment of the Real Estate Transfer Tax, imposed by Ordinance No. 20, Series of 1980, of the Town of Breckenridge. The basis of such exemption is as follows:

(State briefly grounds for exemption, including applicable section and subdivision of Ordinance No. 20, Series 1980)

I hereby certify this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_ under penalty of perjury that the foregoing statements are true and correct.

\_\_\_\_\_  
Purchaser

Certificate of Exemption

I hereby certify this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_ that the above described transfer of real property is exempt from the payment of Real Estate Transfer Tax under Ordinance No. 20, Series 1980.

\_\_\_\_\_  
Town Manager

b. Any person whose claim of exemption duly applied for under the provisions of this section is denied by the Town Manager may immediately appeal to the Town Council for a determination of such exemption and such appeal shall be considered by the Town Council within 30 days of receipt of the same. In the event of a determination by the Town Council favorable to the appellant, any amount previously deposited, or so much thereof as may be allowed by the Town Manager, shall be promptly refunded to the person paying or depositing the same. If a decision is not made by the Town Council within 30 days of the receipt of the appeal, the decision will be deemed favorable to the appellant, unless appellant has obtained a continuance of the matter, in which case the Town Council shall make its decision within 6 months after receipt of the appeal.

c. In case of an application for an exemption which is not granted before the transfer takes place, the tax shall be paid as required by this Ordinance. Thereafter if the exemption shall be allowed, upon application to the Town

Manager, the person who has paid said tax shall be entitled to a refund thereof, or so much of said tax as shall qualify for refunding pursuant to the exemption granted.

Section 8. LANDS AFFECTED

When a transfer subject to the Ordinance includes real property located within the Town of Breckenridge and real property located elsewhere the tax imposed under the authority of this ordinance shall be computed only with respect to real property located within the Town of Breckenridge, and the tax shall be assessed based on that part of the consideration fairly attributable to such real property located within the Town of Breckenridge.

Section 9. TOWN MANAGER TO ENFORCE

a. The Town Manager of the Town of Breckenridge is charged with the enforcement of the provisions of this ordinance and is hereby authorized and empowered to prescribe, adopt, promulgate and enforce rules and regulations pertaining thereto.

b. At the time of any transfer upon which a tax is imposed or which is claimed to be exempt under this Ordinance, there shall be made a report to the Town Manager on forms prescribed by him, setting forth the true, complete and actual consideration for the transfer, the name of the parties thereto, the location of the real property transferred, the basis of the claimed exemption, and such other information as he may require.

c. For the purpose of collection of the taxes imposed by this ordinance, all banks, title companies, escrow companies, building and loan institutions, attorneys, real estate agencies, or other closing agents or agencies, permitted as such to do business under the laws of the State of Colorado may collect the Real Estate Transfer Tax (holding said funds in trust for the Town of Breckenridge) and remit the same to the Town for and on behalf of the purchaser, forthwith. Said funds shall not be comingled with other funds of the collector.

d. The Town Manager is hereby authorized to negotiate and enter into a inter-governmental contract with appropriate officers of Summit County for the collection of this tax, including the payment of a fee to the County officers for said collection.

Section 10. DUE DATES, DELINQUENCIES, PENALTIES, INTEREST, EVASION

a. The tax imposed under this ordinance is due and payable at the time of the transfer, and is delinquent if it remains unpaid for thirty days thereafter. In the event that the tax is not paid prior to becoming delinquent, a delinquency penalty of ten percent (10%) of the amount of tax due shall accrue.

In the event a portion of the tax is paid prior to becoming delinquent, the penalty shall only accrue as to the portion which is delinquent. Interest shall accrue at the rate of 1 1/2 percent (1.5%) per month, or fraction thereof, on the amount of tax, exclusive of penalties, from the date the tax becomes delinquent to the date of payment. Interest and penalty accrued shall become part of the tax.

b. Any person liable for a Real Estate Transfer Tax upon a transfer who shall cause the deed, instrument of conveyance or document evidencing said transfer to be filed of record in the office of the Summit County Clerk and Recorder or attempt to so record the document until and unless the Real Estate Transfer Tax and all penalties and interest thereon have been paid in full, shall be in violation of this Ordinance.

c. Notwithstanding the provisions of Section 6, if an artifice or device is employed in connection with the transfer of real property, which term "artifice or device" means a transaction or transactions a substantial purpose of which was to evade the provisions of this Ordinance and the imposition of the tax hereunder, then such transfer will nevertheless be subject to the Real Estate Transfer Tax. "Artifice or device" includes, but is not limited to, (1) a transfer to a corporation, partnership, limited partnership, joint venture, business trust, or other association or organization followed within 3 years by an assignment of the controlling interest in such association or organization, (2) such a transfer plus the intent to ultimately assign the controlling interest in such association or organization.

#### Section 11. LIEN

a. The tax imposed by this Ordinance, and any penalty and interest due thereon, if not paid when due, and all costs of collection of said tax, penalty and interest, shall constitute a perpetual lien on the real property transferred in the amount applicable to each lot or parcel of real property transferred and shall have priority over all other liens except general tax liens and special improvement district assessment liens. Except as aforesaid, the lien for said tax shall be and until paid shall remain a first and prior lien superior to all other liens upon said property and shall take precedence on such property over other liens or claims of whatsoever kind or nature. Said lien shall continue until the amount thereof is paid or until its discharge of record by foreclosure or otherwise.



b. The recording of this ordinance in the office of the Clerk and Recorder of the County of Summit, State of Colorado, shall constitute notice to all persons interested in the transfer of real property of the existence of and the lien imposed by the Real Estate Transfer Tax.

c. If the tax is unpaid and delinquent, the Town Manager shall give written notification to the purchaser or person to whom the transfer is made at the address shown on any deed or instrument evidencing the transfer, or his last known address, of said delinquency. Said notification shall be mailed certified or registered mail, postage prepaid, return receipt requested, and shall be effective on the date of mailing. If the tax, penalty, and interest are not paid within thirty days of the effective date of the notification, the Town Manager shall commence foreclosure of the lien for said tax in the same manner as the foreclosure of a mortgage in accordance with Colorado Law.

d. The amount of the tax, penalty and interest imposed under the provisions of this Ordinance shall be deemed a debt to the Town. Any person owing money to the Town under the provisions of this Ordinance shall be liable to an action brought in the name of the Town for the recovery of such amount.

e. Any person who shall fail or refuse to pay any tax due hereunder may be punished by a fine not exceeding Three Hundred Dollars (\$300.00) or imprisonment for a period of not more than ninety (90) days, or both such fine and imprisonment.

f. Any remedies provided for herein shall be cumulative and not exclusive and shall be in addition to any other remedies provided by law.

#### Section 12. REVIEW

The Town Manager shall prepare a report of the receipts from the Real Estate Transfer Tax, expenditures made in the preceeding fiscal year, funds into which the proceeds have been deposited, the disposition of those funds, and the projected revenue and expenditures for the next fiscal year.

#### Section 13. SEVERABILITY

If any provision, clause, phrase or section of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions, clauses, phrases or sections or applications of the Ordinance which can be given effect without the invalid provisions or

applications and to this end the provisions or applications of this Ordinance are declared to be severable.

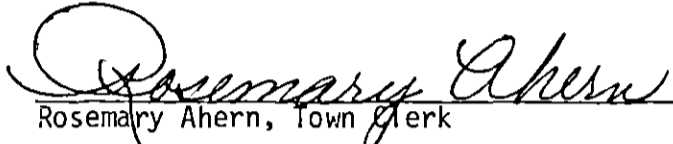
Section 14. EFFECTIVE DATE

The effective date of this Ordinance shall be January 1, 1981.

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL, this 26th day of August, 1980. A Public Hearing on this Ordinance shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado, on the 9th day of September, 1980, at 7:30 p.m. or as soon thereafter as possible in the Municipal Building of the Town.

ATTEST:

TOWN OF BRECKENRIDGE

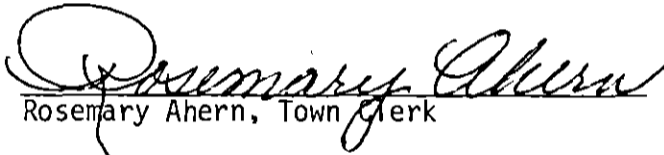
  
Rosemary Ahern, Town Clerk


  
Bernard P. McMenamy, Mayor

READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED BY TITLE ONLY, this 9th day of September, 1980.

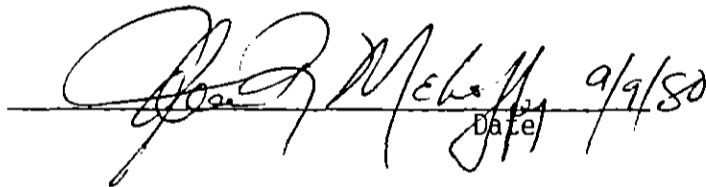
ATTEST:

TOWN OF BRECKENRIDGE

  
Rosemary Ahern, Town Clerk

  
Bernard P. McMenamy, Mayor

APPROVED BY TOWN ATTORNEY

  
Date: 9/9/80