

ORDINANCE NO. 24

Series 1998

AN ORDINANCE ADOPTING A NEW USE TAX ON THE PRIVILEGE OF USING OR CONSUMING WITHIN THE CORPORATE LIMITS OF THE TOWN OF BRECKENRIDGE CONSTRUCTION MATERIALS PURCHASED AT RETAIL; PROVIDING THE DETAILS OF THE IMPLEMENTATION OF SUCH NEW USE TAX; SUBMITTING TO THE REGISTERED ELECTORS OF THE TOWN OF BRECKENRIDGE AT THE GENERAL ELECTION TO BE HELD ON NOVEMBER 3, 1998 THE QUESTION OF WHETHER SUCH TAX SHOULD BE APPROVED AS A NEW TAX PURSUANT TO ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION AND OTHER APPLICABLE LAW; SETTING FORTH THE BALLOT TITLE; AND PROVIDING FOR THE CONDUCT OF THE ELECTION

WHEREAS, §12.1 of the Breckenridge Town Charter authorizes the Town Council of the Town of Breckenridge ("Town Council") to adopt a use tax within the corporate limits of the Town of Breckenridge; and

WHEREAS, Article 2 of Title 29, C.R.S., further authorizes the Town Council to adopt a use tax within the corporate limits of the Town of Breckenridge; and

WHEREAS, the Town Council finds and determines that although the imposition of a new use tax of two and one-half percent (2½ %) as herein provided would result in new use tax revenues to the Town of approximately \$600,000 during the first fiscal year such tax was collected, the actual incremental increase in total tax dollars collected from the Town would only be approximately \$250,000; and

WHEREAS, the Town Council has determined that it would be in the public interest for a use tax to be imposed upon the privilege of using or consuming within the corporate limits of the Town of Breckenridge construction materials purchased at retail; and

WHEREAS, Article X, §20 of the Colorado Constitution, §12.1 of the Breckenridge Town Charter and Article 2 of Title 29, C.R.S., require prior voter approval of a use tax Ordinance before such new tax may become effective; and

WHEREAS, Paragraph 7(b) of Article X, Section 20 the Colorado Constitution, Article 2 of Title 29, C.R.S., and §31-11-111(2), C.R.S., authorize the Town Council to refer the ballot issue herein submitted to a vote of the registered electors of the Town; and

WHEREAS, Article X, Section 20 of the Colorado Constitution further provides that a ballot issue such as that set forth in Section 4 of this Ordinance may be decided in conjunction with a state general election; and

WHEREAS, the Town Council has determined that it should fix the ballot title, designation and submission clause for the referred measure set forth in this Ordinance; and

WHEREAS, the Town Council finds and determines that the ballot title, designation and submission clause of the referred measure set forth in this Ordinance correctly and fairly express the true intent and meaning of such issue; and

WHEREAS, at the election held on November 7, 1995, the voters of the Town approved Question "B", which authorizes the Town to collect and retain whatever amounts are raised annually from all sources, without limitation, and, as a result thereof, no further authorization is required from the voters in order for the Town to collect, retain and expend the new revenues received from the new use tax adopted herein, provided, however, that the voters must first approve the new tax at the November 3, 1998 election.

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

Section 1. There is hereby added to the Breckenridge Town Code a new Chapter 6 of Title 3, to be entitled "Use Tax", which shall read in its entirety as follows:

CHAPTER 6

USE TAX

SECTION:

- 3-6-1: Authority; Effective Date
- 3-6-2: Use Tax
- 3-6-3: Tax Rate; Method Of Payment
- 3-6-4: No Certificate of Occupancy to Issue
- 3-6-5: Exemptions From Use Tax
- 3-6-6: Non-Applicability
- 3-6-7: Credit For Sales or Use Tax Previously Paid to Another Municipality
- 3-6-8: Applicability of Certain Provisions of Town Sales Tax Ordinance
- 3-6-9: Amendments

3-6-1: AUTHORITY; EFFECTIVE DATE: The provisions of this Chapter were adopted pursuant to the authority granted by Article 2 of Title 29, C.R.S., Article X, §20 of the Colorado Constitution and §12.1 of the Breckenridge Town Charter. The adoption of this Chapter was approved by the electors of the Town at a special election held November 3, 1998, and became effective January 1, 1999.

3-6-2: USE TAX: There is hereby levied and there shall be collected from every person in the Town a tax or excise upon the privilege of using or consuming in the Town any construction materials purchased at retail. Such tax is hereafter referred to in this Chapter as the Town's "use tax". The use tax imposed by this Chapter shall not apply to the storage of construction materials. The use tax shall be paid in the manner provided in Section 3-6-3 of this Chapter.

3-6-3: TAX RATE; METHOD OF PAYMENT: The use tax imposed by this Chapter shall be due and payable at the time of the issuance of any building permit required to be issued pursuant to the Town's Building Code adopted pursuant to Chapter 1 of Title 8 of this Code. Any person who shall obtain a building permit from the Town shall, in conjunction therewith, pay a use tax to the Town equal in amount to two and one-half percent (2 ½ %) of fifty percent (50%) of the estimated cost of the construction for which a building permit is requested, which fifty percent (50%) amount is determined to reasonably represent the value of construction materials purchased at retail which are to be used or consumed in the Town and are therefore subject to the Town's use tax. The payment of the tax herein required and the acquisition of a building permit shall entitle the applicant to a certificate of exemption from payment of any further sales or use tax for the materials to be used or consumed pursuant to such building permit.

3-6-4: NO CERTIFICATE OF OCCUPANCY TO ISSUE: No final Certificate of Occupancy shall be issued by the Town's Building Official with respect to any construction project for which a use tax is due pursuant to this Chapter unless all taxes, penalties and interest, if any, due with respect to such construction project has been paid.

3-6-5: EXEMPTIONS FROM USE TAX: The use tax imposed pursuant to Section 3-6-2 of this Code shall not apply:

- A. To the storage, use or consumption of any tangible personal property the sale of which is subject to the retail sales tax imposed pursuant to Chapter 1 of Title 3 of this Code.
- B. To the storage, use or consumption of any tangible personal property purchased for resale in the Town either in its original form or as an ingredient of a manufactured product in the regular course of business.
- C. To the storage, use or consumption of any tangible personal property brought into this Town by a nonresident thereof for such person's own storage, use or consumption while temporarily in the Town; however, this exemption does not apply to the storage, use or consumption of tangible personal property brought into this state by a nonresident to be used in the conduct of a business in this state.

- D. To the storage, use or consumption of any tangible personal property by the United States government or the state of Colorado, or its institutions, or its political subdivisions in their governmental capacities only or by religious or charitable corporations in the conduct of their regular religious or charitable functions.
- E. To the storage, use or consumption of any tangible personal property by a person engaged in the business of manufacturing, compounding for sale, profit or use, any article, substance or commodity, which tangible personal property enters into the processing of or becomes an ingredient or component part of the product or services which is manufactured, compounded, or furnished and the container, label, or the furnished shipping case thereof.
- F. To the storage, use or consumption of any article of tangible personal property the sale or use of which has already been subject to a legally imposed sales or use tax of another statutory or home rule town, city or city and county equal to or in excess of that imposed by this Chapter. A credit shall be granted against the use tax imposed by this Chapter with respect to a person's storage, use or consumption in the Town of tangible personal property purchased by such person in a previous statutory or home rule town, city or city and county. The amount of the credit shall be equal to the tax paid by such person by reason of the imposition of a sales or use tax of the previously statutory or home rule town, city, or city and county on the purchase or use of the property. The amount of the credit shall not exceed the tax imposed by this Chapter.
- G. To the storage, use or consumption of tangible personal property and household effects acquired outside the Town and brought into it by a nonresident acquiring residency.
- H. To the storage, use or consumption of any construction materials if a written contract for the purchase thereof was entered into prior to January 1, 1999.
- I. To the storage, use or consumption of any construction materials required or made necessary in the performance of any construction contract bid, let, or entered into at any time prior to January 1, 1999.

3-6-6: NON-APPLICABILITY: For transactions consummated on or after January 1, 1999, the use tax imposed pursuant to this Chapter shall not apply to the use or consumption of taxable tangible personal property within the Town which occurs more than three years after the most recent sale of the property if, within the three years following such sale, the property has been significantly used within the state for the principal purpose for which it was purchased.

3-6-7: CREDIT FOR SALES OR USE TAX PREVIOUSLY PAID TO ANOTHER MUNICIPALITY: For transactions consummated on or after January 1, 1999, the tax imposed by this Chapter shall not apply to the storage, use or consumption of any article of tangible personal property the sale or use of which has already been subjected to a sales or use tax of another statutory or home rule municipality legally imposed on the purchaser or user equal to or in excess of that imposed pursuant to this Chapter. A credit shall be granted against the use tax imposed pursuant to this Chapter with respect to the person's storage, use or consumption in the Town of tangible personal property, the amount of the credit to equal the tax paid by such person by reason of the imposition of a sales or use tax of the previous statutory or home rule city, town, or city and county on such person's purchase or use of the property. The amount of the credit shall not exceed the tax imposed by the subsequent home rule city, town, or city and county.

3-6-8 APPLICABILITY OF CERTAIN PROVISIONS OF TOWN SALES TAX ORDINANCE; The following Sections of the Town's Sales Tax Ordinance, as amended from time to time, are incorporated into this Chapter by reference, and shall apply to the collection, administration and enforcement of the use tax adopted pursuant to this Chapter: 3-1-2 (Definitions); 3-1-11 (Exemption; Burden of Proof); 3-1-13 (Unlawful to Assume or Absorb Tax); (3-1-15: Duty to Keep Books and Records); 3-1-16 (Investigation of Books); 3-1-16-1 (Coordinated Audit); (3-1-17 (Sales Tax Information Confidential); 3-1-18 (Statute of Limitations); 3-1-19 (Subpoenas); 3-1-24 (Appeal); (Collection and Refund of Disputed Tax); (Refunds); (Recovery of Taxes, Penalty and Interest); 3-1-29-1: (Failure to Collect and Pay Over Tax, Attempting to Evade or Defeat Tax); 3-1-29-2: Imposition of Civil Penalty on Responsible Party; 3-1-30 (Tax Lien; Exemption From Lien); 3-1-31 (Negligent or Intentional Tax Deficiency); 3-1-32 (Interest Rate on Delinquent Taxes); 3-1-33

(Interest on Underpayment, Overpayment, Nonpayment or Extensions of Time For Payment of Tax); 3-1-34 (Other Remedies); 3-1-35 (Hearings By Finance Director); 3-1-36 (Review By District Court); 3-1-37 (Alternative Review By Department of Revenue); 3-1-38-1 (Notice of Sales and use Tax Ordinance Amendment); and 3-1-39 (Violation; Penalties).

3-6-9: AMENDMENTS: The Town Council may amend, alter or change any provision of this Chapter, except as to the rate of tax herein imposed, by ordinance duly adopted in accordance with the Town Charter. Such amendment, alteration or change need not be submitted to the electors of the Town for their approval.

Section 2. The definition of "Designated Revenues" set forth in Section 3-5-1 of the Breckenridge Town Code is hereby amended so as to read in its entirety as follows:

DESIGNATED REVENUES: A sum equal to the revenues received by the Town from the collection of one-half (½) of one percent (1%) of the Town's Sales Tax and the Town's Use Tax.

Section 3. Except as specifically amended hereby, the Breckenridge Town Code, and the various secondary codes adopted by reference therein, shall continue in full force and effect.

Section 4. In conjunction with the state general election to be held on Tuesday, November 3, 1998, a special Town election shall be held and there shall be submitted to the vote of the registered electors of the Town the ballot issue hereinafter set forth. At the said election, the official ballot, including absentee and early ballots, shall state the substance of the ballot issue to be voted upon, and as so stated shall constitute the ballot title, designation and submission clause, and each registered elector voting at the election shall indicate his or her choice on the ballot issue submitted, which shall be in the following form:

QUESTION " ___ "

SHALL TOWN OF BRECKENRIDGE TAXES BE INCREASED \$600,000 ANNUALLY, COMMENCING JANUARY 1, 1999, BY THE ADOPTION OF A USE TAX AS PROVIDED IN ORDINANCE NO. 24, SERIES 1998 ON THE PRIVILEGE OF USING OR CONSUMING WITHIN THE CORPORATE LIMITS OF THE TOWN OF BRECKENRIDGE CONSTRUCTION MATERIALS PURCHASED AT RETAIL, SUCH TAX TO BE CALCULATED AT THE RATE OF TWO AND ONE HALF PERCENT (2 ½ %) OF THE COST OF CONSTRUCTION MATERIALS AS A NEW TAX APPROVED PURSUANT TO ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION AND OTHER APPLICABLE LAW, AND SHALL A SUM EQUAL TO THE REVENUES RECEIVED BY THE TOWN FROM THE COLLECTION OF ONE HALF (½) OF ONE PERCENT (1%) OF SUCH USE TAX BE PAID INTO THE TOWN OF BRECKENRIDGE OPEN SPACE FUND AND USED AS PROVIDED BY APPLICABLE TOWN ORDINANCE?

YES _____

NO _____

Section 5. If a majority of all the votes cast at the election shall be for the ballot issue set forth in Section 4 of this Ordinance ("ballot issue"), the ballot issue shall be deemed passed; this Ordinance shall become effective January 1, 1999; and the Town of Breckenridge shall be authorized to collect, retain and expend the full amount of the new revenues received in accordance with the approved ballot issue. Pursuant to the ballot question previously approved by the electors of the Town on November 7, 1995, upon approval of the ballot issue by the voters, the Town shall be authorized to budget and appropriate the approved new use tax revenues and expenditures apart from any other expenditures of the Town which may be limited pursuant to Article X, Section 20 of the Colorado Constitution, or any other state restriction on the Town's fiscal year spending, and the new use tax revenues authorized for collection, retention and expenditure by the passage of the ballot question shall not be counted in any such spending limitation. If a majority of all the votes cast at the election shall be against the ballot issue, the ballot issue shall be deemed to have been defeated, and this Ordinance shall be deemed to be null, void and no effect.

Section 6. The election to be held on November 3, 1998 to consider the ballot question shall be conducted as a coordinated election with Summit County. The Summit County Clerk and Recorder shall conduct the special Town election on behalf of the Town. Pursuant to Section 1-12-6 of the Breckenridge Town Code, the election shall be conducted under Uniform Election Code of 1992. The cost of the election with respect to the ballot issue shall be paid from the general fund of the Town.

Section 7. The officers of the Town are authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Ordinance.

Section 8. Pursuant to Section 1-5-205, C.R.S., not less than ten days prior to the election the designated election official of the Town is hereby instructed to give or cause to be given notice of the election, by causing a printed notice of the election to be published at least one time in a legal newspaper of general circulation in the Town. Such notice shall also be mailed to the County Clerk at or prior to the time of such publication and shall be posted at least ten days prior to the election and until two days after the election in a conspicuous place in the office of the designated election official. Additionally, pursuant to Section 1-7-906, C.R.S., on or before the 42nd day prior to the election, the designated election official shall cause the notice required by Section 20(3)(b) of Article X of the Colorado Constitution to be prepared and delivered to the County Clerk.

Section 9. The Town Clerk shall serve as the designated election official of the Town for the purposes of performing acts required or permitted by law in connection with the election on the ballot issue, and shall take such action as may be required to comply with all applicable laws pertaining to the conduct of the election.

Section 10. This Ordinance shall be published and, if approved by the voters at the November 3, 1998 election, shall become effective January 1, 1999.

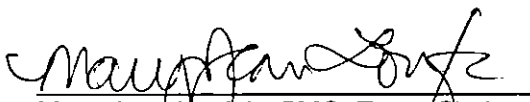
Section 11. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Town Council hereby declares that it would have passed this Ordinance, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid.


Section 12. The Town Council hereby finds, determines and declares that it has the power to adopt this Ordinance pursuant to the authority granted to home rule municipalities by Article XX of the Colorado Constitution and the powers contained in the Breckenridge Town Charter.

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL this 11th day of August, 1998. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the 2nd day of September, 1998, at 6:00 P.M., or as soon thereafter as possible in the Municipal Building of the Town.

ATTEST:

TOWN OF BRECKENRIDGE


Mary Jean Loufek, CMC, Town Clerk


Stephen C. West, Mayor

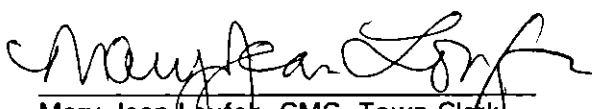
This Ordinance was published in full in The Summit County Journal, a newspaper of general circulation within the Town of Breckenridge, on August 20, 1998.

READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED BY TITLE WITH AMENDMENTS this 2nd day of September, 1998.

A copy of this Ordinance is available for inspection in the office of the Town Clerk.


ATTEST:

TOWN OF BRECKENRIDGE


Mary Jean Loufek, CMC, Town Clerk


Stephen C. West, Mayor

APPROVED IN FORM


Town Attorney 9/2/98
date

This Ordinance was published in full with amendments in The Summit County Journal, a newspaper of general circulation within the Town of Breckenridge, on September 10, 1998.