

ORDINANCE NO. 34

Series 2002

AN ORDINANCE CONCERNING THE REGULATION OF SINGLE FAMILY ACCOMMODATION UNITS UNDER CHAPTER 1 OF TITLE 4 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE "BUSINESS AND OCCUPATIONAL LICENSES AND TAX" ORDINANCE; AMENDING THE BUSINESS AND OCCUPATIONAL LICENSES AND TAX ORDINANCE WITH RESPECT TO THE PROCEDURES AND STANDARDS GOVERNING THE SUSPENSION OR REVOCATION OF A LICENSE ISSUED THEREUNDER; AND PROVIDING OTHER MISCELLANEOUS AMENDMENTS TO THE BUSINESS AND OCCUPATIONAL LICENSES AND TAX ORDINANCE

WHEREAS, the Town Council of the Town of Breckenridge is authorized to regulate businesses operating within the Town pursuant to Section 2.2 of the Breckenridge Town Charter and Section 31-15-501, C.R.S.; and

WHEREAS, the Town Council finds and determines that there have been numerous incidents where the rental of single family "accommodation units", as defined in the Town of Breckenridge Business and Occupational Licenses and Tax Ordinance (Chapter 1 of Title 4 of the Breckenridge Town Code), has resulted in conditions which are extremely disturbing and disruptive to persons residing next to or in close proximity to the single family accommodation unit; and

WHEREAS, the Town Council further finds and determines that the rental of single family accommodation units creates special problems for those persons who live near such accommodation units including, but not limited to, ownership of single family accommodation units by nonresident owners who often are not fully aware of how their property is being used on a day to day basis; overcrowding of the single family accommodation unit; noise disturbances emanating from the single family accommodation unit; insufficient parking to accommodate all of the persons who occupy the single family accommodation unit; and inadequate disposal of trash generated from the use of the single family accommodation unit; and

WHEREAS, the Town Council further finds and determines that this Ordinance is timely in that current laws and Town regulations are insufficient to adequately address the aforementioned problems; and

WHEREAS, in enacting this Ordinance the Town Council is exercising its police power as granted by Town's Charter, and the statutes of the State of Colorado, as well as its power to license and regulate business activities; and

WHEREAS, to the extent that the amount to be paid to the Town pursuant to the Town's Business and Occupational Licenses and Tax Ordinance is deemed to be a tax (and not a fee), the amendments to the Town of Breckenridge Business and Occupational Licenses and Tax Ordinance made by this Ordinance do not result in a new tax, a tax rate increase or a tax policy change directly causing a net tax revenue gain to the Town within the meaning of Article X, §20 of the Colorado Constitution.

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

Section 1. It is the purpose of this Ordinance to regulate single family accommodation units in order to promote the health, safety and general welfare of the citizens of the Town, and to establish reasonable regulations intended to eliminate the deleterious effects of unregulated single family accommodation units. In adopting this Ordinance, the Town Council is mindful of the substantial economic benefits derived from the rental of short term accommodation units, and the provisions of this Ordinance are not intended, nor shall they be interpreted or construed, to eliminate all single family accommodation units within the Town, or to deny a landowner the ability to use his or her property as a single family accommodation unit so long as such unit is operated in accordance with the requirements of this Ordinance.

Section 2. There is hereby added to Section 4-1-2 of the Breckenridge Town Code a new definition of "Single Family Accommodation Unit", which shall read in its entirety as follows:

SINGLE FAMILY ACCOMMODATION UNIT: An accommodation unit which is a single family residential structure as defined in the Town's Development Code (Chapter 1 of Title 9 of this Code); provided, however, that a chalet house as defined in Section 9-1-5 of this Code shall not be considered to be a single family accommodation unit.

Section 3. There is hereby added to Section 4-1-2 of the Breckenridge Town Code a new definition of "License", which shall read in its entirety as follows:

LICENSE: A license issued by the Town Clerk pursuant to this Chapter.

Section 4. There is hereby added to Section 4-1-2 of the Breckenridge Town Code a new definition of "Licensee", which shall read in its entirety as follows:

LICENSEE: A person to whom a license has been issued by the Town Clerk pursuant to this Chapter.

Section 5. There is hereby added to Section 4-1-2 of the Breckenridge Town Code a new definition of "Licensed Premises", which shall read in its entirety as follows:

LICENSED PREMISES: A premises for which a license has been issued by the Town Clerk pursuant to this Chapter.

Section 6. There is hereby added to Section 4-1-2 of the Breckenridge Town Code a new definition of "Motor Vehicle", which shall read in its entirety as follows:

MOTOR VEHICLE: A motor vehicle as defined by the Town's Traffic Code adopted pursuant to Chapter 1 of Title 7 of this Code.

Section 7. There is hereby added to Chapter 1 of Title 4 of the Breckenridge Town Code a new Section 4-1-8-1, to be entitled "Special Conditions of License—Single Family Accommodation Units", which shall read in its entirety as follows:

4-1-8-1: SPECIAL CONDITIONS OF LICENSE—SINGLE FAMILY ACCOMMODATION UNITS:

A. Special Conditions. In addition to the other requirements of this Chapter, the owner of a single family accommodation unit licensed pursuant to this Chapter shall, as a condition of such license, be subject to the following requirements:

1. The motor vehicles of all occupants of the single family accommodation unit shall be parked only on the site of the single family accommodation unit, or in a Town-designated parking area located off of the site of the single family accommodation unit. No motor vehicles shall be parked on the lawn or landscaped areas of a single family accommodation unit, or in the public street or right of way adjacent to the single family accommodation unit. No person shall be permitted to stay overnight in any motor vehicle which is parked at a single family accommodation unit. Further, all motor vehicles parked at a single family accommodation unit shall comply with the requirements and be subject to the limitations of Section 9-3-11 of this Code.

2. No privately owned, non-governmental vehicle with a passenger capacity of sixteen (16) persons or more shall be used to transport persons to or from a single family accommodation unit, or parked upon the premises of a single family accommodation unit.

3. The storage and disposal of all trash and garbage from a single family accommodation unit shall comply with the requirements of Section 5-2-3-1 of this Code.

4. While occupying a single family accommodation unit, no person shall: (i) make, cause or control unreasonable noise upon the single family accommodation unit which is audible upon a private premises that such occupant has no right to occupy in violation of Section 6-3C-1(A)(2) of this Code, or (ii) violate Chapter 8 of Title 5 of this Code.

5. No single family accommodation unit shall be operated in such a manner as to constitute a nuisance pursuant to Chapter 1 of Title 5 of this Code.

6. The licensee shall provide to the Town Clerk the name, address and telephone number of any current management company, rental agency or other person employed or engaged by the licensee to manage, rent or supervise the single family accommodation unit. It shall be the duty of the licensee to update such information throughout the term of the license so that the Town Clerk always has the correct and current information.

7. At the time of the issuance of the license the licensee shall provide to the Town Clerk the name, address and telephone number of a local contact person who is authorized by the licensee to receive communications from the Town concerning the single family accommodation unit. The local contact person may be a management company, rental agent or other person employed or engaged by the licensee to manage, rent or supervise the single family accommodation unit. The local contact person shall maintain a residence or permanent place of business within the Town. The designated local contact person may be changed by the licensee from time to time throughout the term of the license. To effect such change, the licensee shall notify the Town Clerk of the change in writing and shall, at the same time, provide the Town Clerk with the name, address and telephone number of the licensee's replacement contact person. Any replacement contact person shall meet the requirements of this subparagraph.

B. Owner Liable. Compliance with the special conditions set forth in Paragraph A of this Section shall be the non-delegable responsibility of the owner of a single family accommodation unit; and each owner of a single family accommodation unit shall be strictly liable for complying with the conditions set forth in Paragraph A of this Section.

C. Licensee To Receive Special Conditions. At the time of the issuance of a license, the Town Clerk shall provide the licensee with a copy of the special conditions set forth in Paragraph A of this Section.

D. Licensee To Post License and Special Conditions. The licensee shall post a copy of the license and the special conditions set forth in Paragraph A of this Section in a conspicuous location in the single family accommodation unit. The license and the special conditions shall remain continuously posted in the single family accommodation unit throughout the term of the license.

E. Licensee To Provide Management Company With Special Conditions. The licensee shall provide any management company, rental agency or other person employed or engaged by the licensee to manage, rent or supervise the single family accommodation unit with a copy of the special conditions set forth in Paragraph A of this Section.

F. Revocation or Suspension of License. The failure of the licensee of a single family accommodation unit to comply with the special conditions set forth in Paragraph A of this Section shall constitute grounds for the suspension or revocation of the license. Any action to suspend or revoke the license shall be conducted by the Town Clerk in accordance with Section 4-1-10-1 of this Chapter.

Before an action is commenced to suspend or revoke a license for a single family accommodation unit, the Town Clerk shall first provide the licensee with a written warning that an apparent violation of the special conditions of Paragraph A of this Section has occurred, and the licensee shall be given a reasonable opportunity to cure such apparent violation. A copy of such warning notice shall also be sent to any management company, rental agency or other person employed or engaged by the licensee to manage, rent or supervise the licensed premises who has been properly identified by the licensee pursuant to Paragraph (A)(6) of this Section and to the local contact person identified by the licensee pursuant to Paragraph (A)(7) of this Section. Not more than one written warning shall be required to be sent during the term of each license.

Section 8. Section 4-1-5 of the Breckenridge Town Code is hereby amended by the inclusion of a new Subparagraph A.5, which shall read in its entirety as follows:

A.5. The Town Clerk shall issue a license for a single family accommodation unit under this Chapter only to the owner of such single family accommodation unit.

Section 9. Section 4-1-10-1 of the Breckenridge Town Code is hereby amended so as to read in its entirety as follows:

4-1-10-1: SUSPENSION OR REVOCATION OF LICENSES; PAYMENT OF FINE IN LIEU OF SUSPENSION:

A. A license issued pursuant to this chapter may be suspended or revoked by the Town Clerk after hearing for the following reasons:

1. Fraud, misrepresentation or a false statement of material fact contained in the license application;
2. Any violation of the provisions of this chapter; or
3. As to any person required to have a town sales tax license pursuant to title 3, chapter 1 of this code, proof that such license has been revoked by the finance director in accordance with section 3-1-23 of this code.

In connection with the suspension of a license, the Town Clerk may impose reasonable conditions.

B. Notice of a hearing to be held pursuant to this chapter shall be given by the Town Clerk in writing to the licensee at the address shown on the license application, the management company, rental agency or other person employed or engaged by the licensee to manage, rent or supervise the licensed premises who has been properly identified by the licensee pursuant to Paragraph (A)(6) of Section 4-1-8-1, and to the local contact person identified by the licensee pursuant to Paragraph (A)(7) of Section 4-1-8-1. Such notice shall set forth the grounds for the hearing, and the time and place of the hearing. Such notice shall be mailed to the licensee, the management company, rental

agency or other person employed or engaged by the licensee to manage, rent or supervise the licensed premises who has been properly identified by the licensee pursuant to Paragraph (A)(6) of Section 4-1-8-1, and to the local contact person identified by the licensee pursuant to Paragraph (A)(7) of Section 4-1-8-1, postage prepaid, at least twenty (20) days prior to the date set for the hearing. At the hearing the licensee may appear with or without counsel and present such evidence as may be relevant.

C. In deciding whether a license should be suspended or revoked in accordance with this Section, and in deciding what conditions to impose in the event of a suspension, if any, the Town Clerk shall consider: (i) the nature and seriousness of the violation; (ii) corrective action, if any, taken by the licensee; (iii) prior violation(s), if any, at the licensed premises by the licensee and the effectiveness of prior corrective action, if any; (iv) the likelihood of recurrence; (v) all circumstances surrounding the violation; (vi) whether the violation was willful; (vii) the length of time the license has been held by the licensee; (viii) the number of violations by the licensee within the applicable 12 month period; (viii) previous sanctions, if any, imposed against the licensee; and (ix) other factors making the situation with respect to the licensee or the licensed premises unique.

D. If the Town Clerk determines after a hearing that cause exists for the imposition of a sanction against a licensee of a single family accommodation unit pursuant to Section 4-1-8-1, the Town Clerk shall impose the following sanction against the licensee:

First violation within 12 months:	Suspension of license for 30 days. Licensee may pay administrative fine of \$200.00 within 3 days of entry of suspension order in lieu of serving suspension.
Second violation within 12 months:	Suspension of license for 60 days. Licensee may pay administrative fine of \$500.00 within 3 days of entry of suspension order in lieu of serving suspension.
Third violation within 12 months:	Suspension of license for 90 days. Licensee may pay administrative fine of \$999.00 within 3 days of entry of suspension order in lieu of serving suspension.
Fourth and each subsequent violation within 12 months:	Suspension for such period of time as Town Clerk may determine, not to exceed 1 year, or revocation of license. In determining what sanction to impose, the Town Clerk shall consider the factors set forth in Paragraph C of this Section. For a fourth and each subsequent violation occurring within a 12 month period, no administrative fine may be accepted by the Town Clerk in lieu of the licensee serving a suspension or revocation.

E. If a license is suspended by the Town Clerk, upon the timely payment of the optional administrative fine as set forth above, the suspension order shall be deemed to have been satisfied. If a licensee shall elect not to pay the optional administrative fine as set forth above, the order of suspension shall become effective immediately, and no business shall be conducted by the licensee at the licensed premises during the period of suspension.

F. If the Town Clerk suspends or revokes a business and occupational tax license, the aggrieved licensee may appeal said suspension or revocation to the town council by filing a letter of appeal with the town manager within twenty (20) days after the date of mailing of the Town Clerk's order of suspension or revocation. The clerk's suspension or revocation of the license shall be stayed until the appeal has been determined by the town council. The town council shall conduct a de novo hearing on the appeal at a regular or special Town Council meeting held within thirty (30) days of date of the filing of the letter of appeal, unless the licensee agrees to a longer time. Notice of the de novo hearing shall be given to the licensee by the Town Clerk at least twenty (20) days before the hearing. The burden of proof in the appeal shall be on the Town. At the appeal, the licensee may appear with or without counsel and present such evidence as may be relevant. The strict rules of evidence shall not apply to the de novo hearing. If the Town Council finds by a preponderance of the evidence that grounds for suspension or

revocation of the license exist as specified in this Chapter, the Town Council may order the license suspended or revoked; provided, however, that if the license is for a single family accommodation unit, the Town Council shall adhere to the provisions of Paragraph D of this Section. If the Town Council finds by a preponderance of the evidence that no grounds exist for the suspension or revocation of the license, the appeal shall be sustained, and the Town Clerk's order of suspension or revocation shall be set aside. The Town Council's decision shall be final, subject to the right of the licensee to contest the matter in an appropriate court action commenced under Rule 106(a)(4) of the Colorado Rules of Civil Procedure. For purposes of determining the time limit for the commencement of an action under Rule 106(a)(4) of the Colorado Rules of Civil Procedure, the Town Council's decision shall be deemed to be final upon the Council's issuance of a written order or suspension or revocation of a license.

G. A person whose license has been revoked under this Section may not apply for a new license for the same premises a period of one (1) year from the date the revocation took effect.

H. No portion of a license fee previously paid by a licensee shall be refunded if such license is suspended or revoked.

Section 10. Paragraph B of Section 4-1-10 of the Breckenridge Town Code is hereby amended so as to read in its entirety as follows:

B. Enforcement: The Town may seek an injunction pursuant to Section 1-8-10 of this Code, or other applicable law, to restrain a person from engaging in business on premises within the Town who has not obtained an annual business license under this Chapter or whose license is revoked or suspended, and this remedy shall be in addition to all other remedies prescribed in this Chapter by law.

Section 11. 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 12. This Ordinance shall not be interpreted or construed as impairing any valid contract which existed at the time that this Ordinance becomes effective.

Section 13. The Town Council hereby finds, determines and declares that this Ordinance is necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants thereof.

Section 14. The Town Council hereby finds, determines and declares that it has the power to adopt this Ordinance pursuant to the provisions of Section 31-15-501, C.R.S., and the powers possessed by home rule municipalities in Colorado.

Section 15. 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.

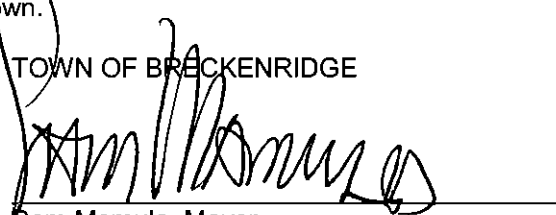
Section 16. This Ordinance shall be published and become effective as provided by Section 5.9 of the Breckenridge Town Charter.

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL this 9th day of July, 2002. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the 8th day of October, 2002, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the Town.

ATTEST:


Mary Jean Loufek, CMC,
Town Clerk

TOWN OF BRECKENRIDGE


Sam Mamula, Mayor

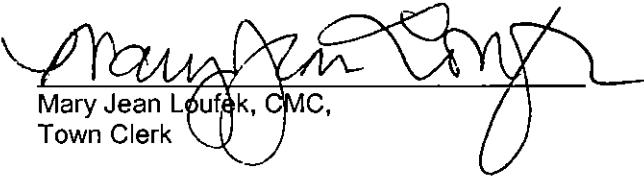
This Ordinance was published in full in the Summit County Journal, a newspaper of general circulation within the Town of Breckenridge, on July 19, 2002.

The public hearing on this Ordinance was held on October 8, 2002, the date to which such hearing was lawfully continued.

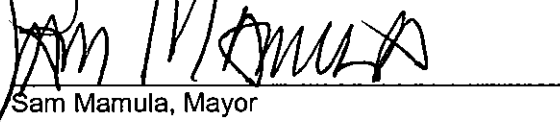
READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED IN FULL, this 8th day of October, 2002. A copy of this Ordinance is available for inspection in the office of the Town Clerk.

ATTEST:

TOWN OF BRECKENRIDGE



Mary Jean Loufek, CMC,
Town Clerk



Sam Mamula, Mayor

APPROVED IN FORM:

Town Attorney Date

This Ordinance was published in full in the Summit County Journal, a newspaper of general circulation within the Town of Breckenridge, on October 18, 2002.