

ORDINANCE NO. 26

Series 2013

AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 4 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE "TOWN OF BRECKENRIDGE "BUSINESS AND OCCUPATIONAL LICENSES AND TAX ORDINANCE", BY AUTHORIZING THE FINANCIAL SERVICES MANAGER TO ISSUE AN ADMINISTRATIVE BUSINESS AND OCCUPATIONAL LICENSE; ESTABLISHING THE REQUIREMENTS FOR AN ADMINISTRATIVE BUSINESS AND OCCUPATIONAL LICENSE; AND MAKING ADDITIONAL MISCELLANEOUS AMENDMENTS TO SUCH ORDINANCE

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

Section 1. Section 4-1-2 of the Breckenridge Town Code is amended by the addition of the following definitions:

ADMINISTRATIVE LICENSE: A license issued by the Financial Services Manager pursuant to Section 4-1-8-2 of this Chapter.

FINANCIAL SERVICES MANAGER: The Financial Services Manager of the Town, or such person's designee.

Section 2. The definition of "Licensee" in Section 4-1-2 of the Breckenridge Town Code is amended to read as follows:

LICENSE: A license issued by the financial services manager pursuant to this chapter.

Section 3. The definition of "Licensed Premises" in Section 4-1-2 of the Breckenridge Town Code is amended to read as follows:

LICENSED PREMISES: A premises for which a license has been issued by the financial services manager pursuant to this chapter.

Section 4. The definition of "Licensee" in Section 4-1-2 of the Breckenridge Town Code is amended to read as follows:

LICENSEE: A person to whom a license has been issued by the financial services manager pursuant to this chapter.

Section 5. Section 4-1-5(A) of the Breckenridge Town Code is amended to read as follows:

A. The financial services manager shall issue a license under this chapter upon presentation of a completed application therefor and payment of the fee required by section 4-1-4 of this chapter.

1. The financial services manager shall issue a license for a single-family accommodation unit under this chapter only to the owner of such single-family accommodation unit.

Section 6. Section 4-1-7 of the Breckenridge Town Code is amended to read as follows:

4-1-7: DENIAL OF LICENSE:

A. An application for the initial issuance or renewal of an annual business license shall be denied by the financial services manager:

1. If the business for which the license is sought is an unlawful business;

2. If the applicant is not qualified to engage in such business under applicable federal, state or local law; or

3. If the applicant or, in the event of an applicant which is other than a natural person, if any principal of the applicants, owes to the town any unpaid and delinquent tax of any kind. As used in this subsection, the term "principal" means: a) as to a corporation, any officer, director, or shareholder owning fifty percent (50%) or more of the issued and outstanding capital stock of the corporation, b) as to any general partnership, any partner, c) as to any limited partnership, any general partner, and d) as to any limited liability company, any manager or member owning more than fifty percent (50%) interest in the entity. The term "delinquent" means the nonpayment of any tax obligation owned to the town within sixty (60) days of the date such obligation is due.

B. Before denying an application the financial services manager shall cause a hearing to be held using the general procedures provided for the revocation of a license in section 4-1-10-1 of this chapter. In the event an application is denied, the financial services manager shall deliver to the applicant a written order of denial stating the reason for denial, together with a refund of the license fee submitted with the application.

Section 7. Section 4-1-8(A) of the Breckenridge Town Code is amended to read as follows:

A. Public Streets And Rights Of Way: It shall be unlawful to conduct any business on the public streets or public rights of way in the town without a permit issued pursuant to chapter 15 of this title, or as otherwise authorized by applicable law.

Section 8. Section 4-1-8-1 of the Breckenridge Town Code is amended to read 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, nongovernmental 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 title 5, chapter 2 of this code.

4. While occupying a single-family accommodation unit, no person shall: a) 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 subsection 6-3C-1A2 of this code, or b) violate title 5, chapter 8 of this code.

5. No single-family accommodation unit shall be operated in such a manner as to constitute a nuisance pursuant to title 5, chapter 1 of this code.

6. The licensee shall provide to the financial services manager 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 financial services manager always has the correct and current information.

7. At the time of the issuance of the license the licensee shall provide to the financial services manager 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 financial services manager of the change in writing and shall, at the same time, provide the financial services manager with the name, address and telephone number of the licensee's replacement contact person. Any replacement contact person shall meet the requirements of this subsection A7.

B. Owner Liable: Compliance with the special conditions set forth in subsection A of this section shall be the nondelegable 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 subsection A of this section.

C. Licensee To Receive Special Conditions: At the time of the issuance of a license, the financial services manager shall provide the licensee with a copy of the special conditions set forth in subsection 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 subsection 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 subsection 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 subsection 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 financial services manager 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 financial services manager shall first provide the licensee with a written warning that an apparent violation of the special conditions of subsection 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 subsection A6 of this section and to the local contact person identified by the licensee pursuant to subsection A7 of this section. Not more than one written warning shall be required to be sent during the term of each license.

Section 9. Chapter 1 of Title 4 of the Breckenridge Town Code is amended by the addition of a new Section 4-1-8-2, to be entitled "Administrative License", which shall read in its entirety as follows:

4-1-8-2: ADMINISTRATIVE LICENSE: The Financial Services Manager may issue an administrative business and occupational license to an applicant if doing so would be in the best interest of the Town because either: (1) the Town is the applicant's only customer within the Town limits; or (2) the only location within the Town limits at which the applicant does business is a Town-owned facility. All provisions of this Chapter shall apply to an administrative business and occupational license issued pursuant to this Chapter unless the Financial Services Manager determines otherwise; provided, however, there shall be no license fee required in connection with such license. The Financial Services Manager may issue administrative regulations governing administrative business and occupational licenses issued pursuant to this Section.

Section 10. Section 4-1-10 of the Breckenridge Town Code is amended to read as follows:

4-1-10: ADMINISTRATION AND ENFORCEMENT:

A. Administration: The administration of the annual business licenses required by this chapter shall be vested in the financial services manager who is authorized to do the following:

1. Collect license fees;
2. Adopt all forms and prescribe the information to be given therein;
3. Promulgate and enforce all reasonable rules and regulations necessary to the operations and enforcement of this chapter. Such administrative rules and regulations shall be adopted in accordance with the procedures established by Chapter 18 of Title 1 of this Code;
4. Investigate and determine the eligibility of each applicant for an annual business license;
5. Investigate, determine and order the revocation or suspension of an annual business license for violation by the licensee of a provision of this chapter;
6. Examine at any time those records of each licensee which the financial services manager determines are necessary to verify license requirements provided the contents of such records shall remain confidential and not a part of the public records. (Ord. 38, Series 1986)

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.

C. Presumption Of Continued Use: With respect to a license issued under this chapter to the owner of an accommodation unit, the financial services manager shall be entitled to presume that such unit will continue to be rented as an accommodation unit in the next license year, thereby obligating such person to obtain a license for such unit under this chapter, until such time as the owner of such unit submits information to the financial services manager, under oath, which demonstrates that such unit will not be rented as an accommodation unit.

D. Obligation To Provide Information: It shall be unlawful for any owner of real property within the town to fail or refuse to provide to the financial services manager upon request information sufficient to permit the financial services manager to determine if such person is required to obtain a license pursuant to this chapter. Any person convicted of violating the provisions of this subsection shall be punished as provided in subsection 4-1-11B of this chapter.

Section 11. Section 4-1-10-1 of the Breckenridge Town Code is amended to read 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 revoked by the financial services manager 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 financial services manager may impose reasonable conditions.

B. Notice of a hearing to be held pursuant to this chapter shall be given by the financial services manager 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 subsection 4-1-8-1A6 of this chapter, and to the local contact person identified by the licensee pursuant to subsection 4-1-8-1A7 of this chapter. 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 subsection 4-1-8-1A6 of this chapter, and to the local contact person identified by the licensee pursuant to subsection 4-1-8-1A7 of this chapter, 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 financial services manager shall consider: 1) the nature and seriousness of the violation; 2) corrective action, if any, taken by the licensee; 3) prior violation(s), if any, at the licensed premises by the licensee and the effectiveness of prior corrective action, if any; 4) the likelihood of recurrence; 5) all circumstances surrounding the violation; 6) whether the violation was willful; 7) the length of time the license has been held by the licensee; 8) the number of violations by the licensee within the applicable twelve (12) month period; 9) previous sanctions, if any, imposed against the licensee; and 10) other factors making the situation with respect to the licensee or the licensed premises unique.

D. If the financial services manager 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 of this chapter, the financial services manager 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 financial services manager may determine, not to exceed 1 year, or revocation of license. In determining what sanction to impose, the financial services manager shall consider the factors set forth in subsection 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 financial services manager in lieu of the licensee serving a suspension or revocation.

E. If a license is suspended by the financial services manager, 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 financial services manager 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 financial services manager'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 financial services manager 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 subsection 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 financial services manager'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 of 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 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 12. Based upon the information provided to it in connection with the adoption of this ordinance by the Financial Services Manager of the Town, the Town Council finds, determines, and declares that the adoption of this ordinance will not result in a net tax revenue gain to the Town within the meaning of Article X, Section 20 of the Colorado Constitution, also known as the "TABOR Amendment."

Section 13. 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 14. The Town Council 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 15. 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 11th day of June, 2013.

This ordinance was published in full on the Town of Breckenridge website on June 14, June 15, June 16, June 17 and June 18, 2013.

A public hearing on this ordinance was held on June 25, 2013.

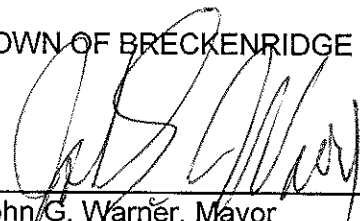
READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED IN FULL ON THE TOWN'S WEBSITE this 25th day of June, 2013. A copy of this Ordinance is available for inspection in the office of the Town Clerk.

ATTEST:

TOWN OF BRECKENRIDGE

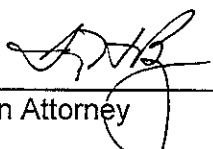


Helen Cospolich, Town Clerk



John G. Warner, Mayor

APPROVED IN FORM



Town Attorney

6/25/13

Date

This Ordinance was published on the Town of Breckenridge website on June 27, June 28, June 29, June 30 and July 1, 2013. This ordinance shall become effective on July 31, 2013.